VICTIMHOOD AND SOCIO-LEGAL NARRATIVES OF HATE CRIME
AGAINST QUEER COMMUNITIES IN CANADA, 1985-2003

by

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A thesis submitted in conformity with the requirements for the Doctoral degree.
Centre of Criminology
University of Toronto

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Abstract

This dissertation analyzes personal and institutional narratives that shape the Canadian phenomenon of anti-LGBT violence as hate crime and locate queers within and without the discursive figure of the responsible, legitimate and undeserving victim of hate crime. These socio-legal narratives were taken from interviews with LGBT community activists involved in anti-violence projects, mainstream and gay print news media reportage of two notable homicides, Parliamentary debates of the enhanced sentencing provision that sought to include ‘sexual orientation’ to the list of biased motivating factors, Senate witness testimony on the amendment to Canada’s hate propaganda statutes which sought to include ‘sexual orientation’ to the list of protected groups, interviews with police officers who had direct experience with anti-hate crime initiatives, and judicial reasons for sentence. Utilizing an interdisciplinary analysis and drawing on hate crime scholarship and victimology, this dissertation asks: how is legitimate and, consequently, illegitimate LGBT hate crime victimization being represented and constituted through Canadian socio-legal narratives?
In revealing how socio-legal actors and institutions have positioned LGBT individuals discursively within or without legitimate victimhood, that is, within and without the status of innocent victim deserving of social empathy and socio-legal institutional response, my dissertation illustrates how the spectre of illegitimate victimization is repeatedly invoked in socio-legal narratives of anti-LGBT hate crime. My analysis of these narratives about queer victimization and hate crime suggests that the figure of the responsible, legitimate and undeserving victim of hate crime remains an elusive and unstable identity for the queer victim of hate crime.

Insofar as hate crime scholars have argued that the mobilization of hate crime activism has produced a victim whose hate crime status ensures its legitimacy, I contribute to this scholarship by arguing that this status is particularly challenging for the queer victim of hate-motivated violence. I demonstrate that the resiliency of the figure of classic victimology’s self-endangering and risky ‘homosexual’ and the sustained ideological resistence to LGBT individuals as full citizens, despite their notable legal gains, positions LGBT individuals, particularly gay men, ambiguously, situating them conceptually both without and within legitimate victimhood.
Dedication

This dissertation is dedicated to my father, Kenneth Urban Lunny, whose steadfast love, generosity of heart, and conviction of spirit is, and will continue to be, with me as I move through this life, this intrepid journey, this heartfelt stumbling, this curiosity of struggle. I thank you for all that you have given me – I love you, dad.
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Chapter One

Introduction

I am offered a text. This text bores me. It might be said to *prattle*. The prattle of the text is merely that foam of language which forms by the effect of a simple need of writing. Here we are not dealing with perversion but with demand [...] It can be said that after all you have written this text quite apart from bliss; and this prattling text is then a frigid text, as any demand is frigid until desire, until neurosis forms in it. Roland Barthes, *The Pleasure of the Text*

I hope at the end of it all, this dissertation is judged not to prattle. My desire is that my engagement with narratives of anti-LGBT hate crime and their constitution of the ‘victim’ is provocative, if not perverse. It is a high hope, a perverted idea, but nevertheless an expression which has taken form, however inadequately and lacking. I begin, though, by a kind of prattling, an attempt to adhere to doctrinal structure to achieve an end both deeply utilitarian and desirable. I begin by way of an introduction that situates my dissertation in relation to the relevant literatures from which I have produced this work.

As a general observation about hate crime and its victimization, one could say this phenomenon is socially constructed, fundamentally about identity, and highly contested.

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2 Anti-LGBT is an acronym for anti-gay/lesbian/bisexual/transgender.
This dissertation launches from this general observation. The bulk of the work of this dissertation analyzes personal and institutional narratives that shape the Canadian phenomenon of anti-LGBT violence as hate crime and locate queers within and without the discursive figure of the responsible, legitimate and undeserving victim of hate crime. I extracted and elicited these socio-legal narratives from a variety of discursive sites: interviews with LGBT community activists involved in anti-violence politics and projects, mainstream and gay print news media reportage of the homicides of two gay men, Parliamentary debates of the enhanced sentencing provision that sought to include ‘sexual orientation’ to the list of biased motivating factors, witness testimony given before the Standing Senate Committee on the issue of amending the hate propaganda statutes to include ‘sexual orientation’ to the list of identifiable protected groups, interviews with police officers who had direct experience with anti-hate crime initiatives and policing practices, and judicial reasons for sentence. A number of areas of scholarship inform my research and analysis. These include hate crime scholarship, victimology, semiotics, critical Freudian psychoanalysis and queer theory. In this introduction, I locate my research and analysis within these traditions and provide my reader with a foregrounding in them. The fundamental question that my dissertation pursues is: under the sign ‘anti-LGBT hate crime,’ how is legitimate and, consequently, illegitimate victimization being represented and constituted through Canadian socio-legal narratives?

My use of the terms ‘legitimate’ and ‘illegitimate’ victimization with respect
specifically to anti-LGBT hate crime is conceptually derived from victimology discourse,\(^3\) hate crime scholarship\(^4\) and an engagement with queer theory.\(^5\) As will be fully discussed in the methodological section of this introduction, the issue of legitimacy and, conversely, illegitimacy pivots on the belief and constitution of the LGBT victim of hate crime violence as respectively deserving, or conversely not deserving, of social-legal response, including responses of empathy, sympathy, legal protections and retort, including, but not limited to, punitive responses like enhanced sentencing for hate crime offenders. Thus the ‘legitimate’ victim of anti-LGBT hate crime is someone legally and socially constituted as a victim undeserving of hate-motivated violence and fully deserving of state and social protections and responses. Alternately, the ‘illegitimate’ victim of anti-LGBT hate-motivated violence is a person who is, on the one hand, recognized as being an object of violence, yet on the other hand, is thought to be instrumental or precipitatory to that violence and thus not deserving of the state’s protection and response. Drawing heavily from both classic and contemporary victimology, this dichotomy pivots on whether the victim is deemed agentic or responsible for the circumstances leading to his/her victimization.

\(\text{Theoretical Methodology}\)

\(^3\) Richardson and May 1999


\(^5\) See, for example, Didi Herman’s “(Il)legitimate Minorities: The American Christian Right’s Anti-Gay-Rights Discourse” (1996).
This dissertation is critically informed by and relies upon the methods of interpretation inherent in post-structural semiotics, critical Freudian psychoanalysis and queer theory. First, let me define semiotics as the study of signs. A sign is anything that can be taken as “significantly substituting for something else”⁶: for instance, smoke is an indexical sign of fire. Signs derive meaning relationally, that is, a sign is meaningful only in that it is positioned against something else. Language, fashion, architecture, and political rhetoric are all examples of sign systems. I want to be clear that I employ a “post-structural semiotic” analysis to my study of private and institutional narratives that shape the Canadian phenomenon of anti-LGBT violence as ‘hate crime’ and locate queers within and without the discursive figure of the responsible, legitimate and undeserving ‘victim’ of hate crime. Like the “post” in Post-modern⁷, the “post” of post-structural semiotics signifies both continuation (lineage) and transcendence (development beyond). Post-structural semiotics continues the work and interpretation of linguistic sign systems, but breaks with a tradition that is purely linguistic. Emile Benveniste’s shift away from structuralism’s object, *language*, to that of *discourse*, read in the speaking and writing subject.⁸ This acknowledgement of the subject would also involve the recognition of the subject who listens and reads, that is, the active subject of interpretation. As Roland Barthes notes in the preface to his seminal (post-structural) semiotic work, *Mythologies*, his analysis and demystification of popular cultural sign-systems is very much guided by

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⁷ Jencks, 7. See also Hutcheon 1989.

⁸ Benveniste 1971.
his own interests and by the significance that he reads into them. He writes, “[i]s there a significance which I read into them? In other words, is there a mythology of the mythologist? No doubt, and the reader will easily see where I stand.”\footnote{Barthes [1957] 1972: 12.} Moreover, both of these subjects to discourse, the speaker/writer and listener/reader, are historically located, and thus are subject to the demands and context of history and its ideological forces. This locationality sets up a kind of complicity that ultimately acts as a kind of conundrum by which the active reader must acknowledge the force of ideology, to which she is subject and upon which she seeks to comment. It is a conundrum that I as listener/reader of socio-legal narratives face in this dissertation. Insofar as this dissertation is an interpretive analysis of discourses of the subjects of hate crime, it bears the indelible sign of myself, my desires, my conflicts, my place in the scheme of it all.

To the degree that post-structural semiotics is a study of sign systems, with an adherence to reading signs relationally, it is also a method of interpretation that recognizes that, as Derrida noted, “meaning is never anything but a slippage or displacement from one term to another,”\footnote{Silverman, 37-8.} an escape from authoritative or transcendent meaning, an endless play and abeyance of signification. Insofar as this is a problematic for interpretation, that others like Umberto Eco\footnote{Eco 1989.} have struggled with, this dissertation is aroused and vexed by such a possibility, but, nevertheless, seeks to make some meaning of these hate crime narratives. That is to say, insofar as this dissertation does not seek out
a ‘truth’ about the constitution of legitimate and illegitimate victimization in narratives of anti-LGBT hate crime victimization – seeking instead a polysemic and at times ambiguous relationship to this constitution –, this dissertation is not fraught with a post-structural malaise or equivocation about offering meaning. This dissertation then reads and plays with signs and their cultural systems not so much in an effort to defer or avoid meaning, but to unsettle meaning, to ‘queer’ meaning.

Another interpretative strategy procured by this dissertation is that of critical Freudian psychoanalysis. I use the adjective “critical” to signify that my use of psychoanalysis is neither as a science nor as a cure. I use it as a tool of interpretation. My engagement with psychoanalysis as a critical tool rejects the notion that psychoanalysis provides a truth about the subject; rather, it suggests a ‘reading’ of a subject, one among many. This engagement with psychoanalysis is also “critical” in that it is highly cognizant and rejecting of the misogynistic and heterosexualizing imperative of Freud’s oedipal logic. Critical of these failings of Freudian psychoanalysis, I nevertheless marvel at Freud’s theory of the unconscious. This would include, in part, his claim that all psychic activity is an impulse to avoid unpleasure (psychic excitation often in the form of tension, anxiety and so forth). According to Freud, the unconscious works to control or diminish tension by way of a number of psychical operations including that of defence. Unconscious materials, including instinctual and forbidden

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12 The reference to Freudian works could be overly extensive here. For expediency, I point my reader to two theoretically dense texts, The Interpretation of Dreams (1900) and his (in)famous case study of hysteria, “Dora” ([1901] 1905). See also Silverman (1983) and for clarity of psychoanalytic terms, see Laplanche and Pontalis (1988).
desires, find disguised expression consciously when the repression of those materials fail. Freud notes several ways these materials express themselves: through dreams, parapraxes (slips of the tongue or pen), jokes, and neuroses (obsession, hysteria, and paranoia). Thus the manifest sign secrets unconscious materials, which are foremostly forbidden or unbearable desires. The disguise of the unconscious signifier works by way of displacement and condensation seeking expression through other signifiers bound to it by way of relationality and signification. For example, Freud, in his study of hysteria, stated that Dora’s disgusting symptom of catarrh was a displaced and metonymic sign for women’s genitals and her chronic tickle in her throat was interpreted as an oral sign of her oedipal wish. But as Freud notes in a footnote (a kind of textual displacement), Dora’s symptoms were not merely a sign of repressed oedipal (hetero)sexuality, but a sign of repressed lesbian sexuality whose forbidden object, Frau K., was part of a long chain of relationality and signification. Freud arrives at this by inverting heterosexual desire in the forbidden oedipal wish to that of forbidden lesbian desire, and by amplifying the sign of ‘family’ from that of father to husband (Herr K) to wife (Frau K.). In the case of the neurotic symptom, as demonstrated in the reference to the case of Dora, it reveals itself by such psychical mechanisms as repetition, over-determination, denial, negation, and displacement. The work of analysis, then, is to read the manifest signifiers by unmasking their cathexis (psychic attachment) to unbearable materials. Although the unconscious can never be truly “known,” psychoanalysis is a method of interpreting disguised and resistant signs of the unconscious. Another aspect to note of psychoanalysis is that it is a

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13 Lunny 1997.
dynamic encounter between analyst and her subject, the analysand. In the analytic scenario whereby unconscious wishes actualize, the analyst is subject to a counter-transference whereby her unconscious reactions to the analysand and the analytic scenario manifest. Like Barthes’ active reader of signs, the analyst is similarly subject to and invested in her own interests and conflicts in the analytic scenario.

Commonalities between psychoanalysis and semiotics are numerous. Both are theoretical methods of the interpretation of signs. Both view the signifier (the manifest symptom in psychoanalysis) as the first term of the system of signification and the signified (the latent meaning) as the second term of signification. Barthes writes of these shared commonalities noting that Freudian theory and analysis, like semiotics, postulates a relation between two terms and that each is “no longer concerned with facts except inasmuch as they are endowed with significance.”¹⁴ Both theorize that, although meaning is structured upon relationality, there is not a one-to-one relationship in signification; rather, meaning may be disguised, displaced, deferred, negated and denied. Further, my engagement with semiotics, as I have noted, is post-structural. It too impacts the engagement with critical psychoanalysis by the highlighting of displacement and slippage in my analytic observations. My psychoanalytic observations are thus not end-products of a scientific truth or a meta-physical transcendental signified (“truth”), but are rather signs of possibility and speculation. My adherence to possibility and speculation should not be read as an equivocation. Both psychoanalysis and semiotics position the one who interprets as internal to the process of signification, at least to some degree. This too adds

to the instability of the signified, of the analytic meaning, insofar as meaning is not a transcendental signified, but rather, as Barthes noted, a myth tied to the mythologist.

One distinction that I draw between post-structural semiotics and Freudian psychoanalysis is the place of ideology. Clearly Freud positions psychoanalysis and the constitution of the subject within the social and the symbolic, as evidenced by his oedipal theory and his work on civilization and taboo. However, from my reading of Freud, the normative and hegemonic aspects of the constitutive power and demands of the social and the symbolic on the subject are not openly challenged or critiqued by him.\textsuperscript{15} For my purposes here, a useful aspect of post-structural semiotics, particularly that influenced by Barthes, is the political critique of ideology in the constitution of the subject and the cultural systems to which it is subject and in which it is embedded.

This dissertation takes the following from queer theory: the homo/hetero divide and its compulsory production, and the performative and unstable nature of identities. In her “return to psychoanalysis,”\textsuperscript{16} Judith Butler, in \textit{Bodies That Matter}, writes that materialization of the (hetero)sexed body is achieved by way of “reiterative and citational practices [ie. Butler’s notion of performance] by which discourse produces the effects that it names.”\textsuperscript{17} Stated another way, the heterosexual imperative is a regulatory regime structured upon reiterative and citational discursive practices that fix and materialize the

\textsuperscript{15} Notable sites which offer challenge to the normative and hegemonic aspects of Freudian psychoanalysis are, for example, found in the feminist works of Jane Gallop (1982), Jacqueline Rose (1989) and Laura Mulvey (1990 [1975]).

\textsuperscript{16} Butler, 22.

\textsuperscript{17} Butler, 2.
things that it names, in this case, the heterosexual subject. That reiteration is necessary to materialization, she argues, demonstrates, however, that materialization is “never quite complete”¹⁸ and that regulatory regimes, such as the reiterative discursive practice, are both an index of instability and of resistance and threat to such regimes. “It is also by virtue of this reiteration that gaps and fissures are opened up,” she theorizes, “as the constitutive instabilities in such constructions, as that which escapes or exceeds the norm, as that which cannot be wholly or fixed by the repetitive labor of that norm.”¹⁹ This notion of excess and radical exterior also finds expression in Butler’s engagement with the psychoanalytic term ‘identification’ which she links to the discursive practice of reiteration. In the production of the heterosexual subject, certain sexed identifications are enabled and others are foreclosed and/or disavowed. This process is necessarily a “matrix”²⁰ of exclusion by which subjects are formed against their simultaneously produced abject other. Borrowing from Kristeva, this abject other is the necessary constitutive outside to the subject, the “site of dreaded [and threatening] identification against which – and by virtue of which – the domain of the subject will circumscribe its own claim to autonomy and life.”²¹

The effect and influence of Butler’s thinking on the performance of subjectivity is evidenced in Diana Fuss’s challenge of the hetero/homo divide. Drawing on Lacan’s

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¹⁸ Butler, 2.

¹⁹ Butler, 10. This also hints at Derrida’s notion of supplementarity.

²⁰ Butler, 3.

²¹ Butler, 3.
mathematical and tropical figure of the Borromean knot, Fuss challenges the
distinctiveness, rigidity and opposition structured hegemonically in such a divide. The
“compulsion”\textsuperscript{22} of heterosexuality to distinguish itself from its “specter of abjection,”\textsuperscript{23} homosexuality, is a (neurotic) practice repeated to fail. Fuss writes, “heterosexuality
secures its self-identity and shores up its ontological boundaries by protecting itself from
what it sees as the continual predatory encroachment of its contaminated other,
homosexuality.”\textsuperscript{24} Her memorable adage, “borders are notoriously unstable,”\textsuperscript{25} challenges
the notion of oppositional logic by which there are only positive and negative terms. For
her, the potential radicalness of queer theory exposes the collapse of such divisions and
disturbs fixed identities. Here Fuss’s reader again sees the debt to psychoanalysis in her
conjuring of the “specter of abjection” connoting both Freud’s notion of
\textit{heimlich}/\textit{unheimlich}, the eerie ghosting of the familiar and the familial to the subject, and
Kristeva’s theory of abjection in which the subject’s constitution of self is both
compulsive and endless in its repulsion/expulsion of an abject interior. For Fuss, in her
play with the trope of binaries as indexed by the figure of ‘inside/out,’ exclusive identities
are always already contaminated by their constitutive other.

This dissertation, in part, argues that legitimate victimhood is a regulatory

\textsuperscript{22} This is both a nod to Adrienne Rich’s essay “Compulsory Heterosexual and Lesbian
Existence” and to psychoanalytic theory that claims the neurotic subject is compelled to repeat
his trauma.

\textsuperscript{23} Fuss, 3.

\textsuperscript{24} Fuss, 2.

\textsuperscript{25} Fuss, 3.
discursive regime reminiscent of Butler’s straight subject. Its constitution is necessarily predicated upon its abjected and antithetical other, illegitimate victimhood. The contestation over this identity in scholarly tracts on hate crime, and more importantly for this work, in socio-legal narratives of hate crime and victimhood, reveal the inherent instability of such an identity. Moreover, when victimhood is matched with the signifiers that connote the victim as queer, the reiterative performance of that opposition betrays a fundamental and radical destabilization. In the figure of the queer subject, it is as if legitimate victimhood deserving of social empathy and institutional response is continuously contaminated by its abject other, illegitimate victimhood. Despite several repeated instances of the discursive materialization of the legitimate LGBT victim in the narratives that I have studied and analyzed, the ghosting of illegitimacy is an over-determined presence. Post-structural semiotics and critical psychoanalysis are two interpretative methods that allow me to read critically this constitution of queer victimhood in socio-legal narratives on hate crime in Canada.

**Fundamentals about Hate Crime**

Definitionally, the term ‘hate crime’ escapes a fixed notion. Under the U.S. federal *Hate Crime Statistics Act (HCSA 1990)*, hate crime is defined legally as “crimes that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity.” In Canada, legally, there is no such thing as ‘hate crime’ *per se*. Under the Canadian Criminal Code, there are hate propaganda offences and under Canadian sentencing principles, there is consideration for an offence’s motivation based on bias,
prejudice or hate as an aggravating factor at the time of sentencing. The hate propaganda statutes – the advocation or promotion of genocide, the public incitement of hatred and the wilful promotion of hatred of an identifiable group – limit membership of ‘identifiable group’ to colour, race, religion, ethnic origin, and most recently, sexual orientation. Under the enhanced sentencing provision, consideration of bias motivation is extended more fully to “race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation and any other similar factor.” As noted by Julian Roberts in his seminal 1995 report on hate crime in Canada, municipal police forces in their guidelines provided to their officers do not follow one uniform definition of bias crime nor is there a uniform composition of characteristics considered.

More recent data confirm this difference. For example, a document produced by the British Columbia Hate Crime Team describes a hate or bias-related incident as “an act or attempt by an individual or group directed at a person, property or public order that demonstrates intentional hostility to another because of race, religion, sexual orientation, place of origin, ethnicity, disability, gender, age or identifiable characteristics.” The Edmonton Police Service defines bias motivated crime as “a criminal offence committed against a person or property, that is based in whole or in part, upon the victim’s race, religion, nationality, ethnic origin or sexual orientation.” This definition also highlights

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26 Roberts 1995.


Roberts’ observation that some police forces use an exclusive definition of hate crime limiting the offence to that “based solely upon” the victim’s enumerated characteristics, whereas other police services use an inclusive definition broadening the offence’s motivation to be “based in whole or in part upon” the victim’s enumerated characteristics.\(^{29}\) Furthermore, definitions of the term used by community groups in their data collection of hate-motivated incidents often include non-criminal considerations like “name-calling.”\(^{30}\)

Another central aspect to hate crime is the place of identity in its elemental constitution. This is manifest in its organizational politics, in its constitution of the legitimate victim, and in its symbolic dimensions, such as the perpetrator’s epithetical nomination of his victim. In terms of organizational politics, the work by Valerie Jenness and Kendal Broad (1997) and Jenness and Ryken Grattet (2001) identify the constitution of the identity of hate crime ‘victim’ to social movement mobilization. The hate crime movement in the United States, for example, mobilized to frame victimization of the last twenty-five years as a social condition deserving of social empathy and institutional and legislative response. Utilizing a social constructionist model, these scholars argue that legitimate victimization is a status conferred onto injured parties, denoting a transformation from a merely harmed status to a status connoting innocence and harmed by forces beyond the individual’s control. It is a symbolic status whose transformation is the result of organizational and political efforts. Jenness and Broad write: “The label of

\(^{29}\) Roberts 1995: 8-9.

\(^{30}\) See for example, B’nai Brith’s 2002 Interim Audit of Anti-Semitic Incidents.
victim underscores the individual’s status as an injured person who is harmed by forces beyond his/her control; dramatizes the injured or harmed person’s essential innocence; renders her/him worthy of others’ concern and assistance; and contributes to the assignment of ‘social problems’ to select social conditions.”  The status of victim of hate crime is such a political and symbolic transformation.

The work of James Jacobs and Kimberley Potter (1998) and Jacobs and Jessica Henry (1996) position the issue of identity markedly differently from that of Jenness, Broad and Grattet. They too claim that hate crimes are a socially and politically constructed phenomenon driven by the interests of particular identity groups. However, for Jacobs, Potter and Henry, these aspects of hate crime serve to delegitimize it as a valid socio-legal phenomenon. For them, hate crime is a social construct, fabricated from self-serving identity politics, media hyperbole, and dubious statistics. As Jacobs and Potter note of the phenomenon, “[b]efore the mid-1980s, the term ‘hate crime’ did not exist. ‘Hate crime’ as a term and as a legal category of crime is a product of increased race, gender, and sexual orientation consciousness in contemporary American society.” They argue that hate crimes are socially constructed, which for them implicitly suggests a fictive quality; yet, they never consider the claim that crime itself is also a social construction, contingent upon historical, political and symbolic forces. In their work,


32 Jacobs and Potter, 3

33 This fictive quality, raised by Jacobs and Potter, also hints at a state of illegitimate or inauthentic victimization.
Jenness and Grattet respond to this criticism of hate crime’s status as a socially constructed phenomenon by noting the following: “[r]ecognizing that policy domains are rooted in social constructions does not, however, mean that the social conditions they address are not real or, by extension, that the social facts and attendant suffering underlying the problem are only illusory.” 34 Further, Jacobs and Potter claim that there is nothing new or special about violence directed at minorities; such violence has a historical precedence and legacy. As such, they argue, there should not be a socio-legal response to it beyond what there has traditionally been. The creation of hate crime laws as a response to the organized pressures of identity groups, they argue, merely caters to special interests and creates societal divisions where there were none: “This pessimistic and alarmist portrayal of a fractured warring community is likely to exacerbate societal divisions and contribute to a self-fulfilling prophesy. It distorts the discourse about crime in America, turning a social problem that used to unite Americans into one that divides us.” 35

A number of scholars have noted that the hate crime movement is an odd conflation of seemingly antithetical social movements. Jenness, Broad and Grattet trace how the hate crime movement is a product of “strange bedfellows.” 36 They claim that the civil rights movement, the contemporary women’s movement, the gay and lesbian movement, and the crime victim’s movement have converged, in part, producing the hate

34 Jenness and Grattet, 6.

35 Jacobs and Potter, 64.

36 Jenness and Grattet, 21-32.
crimes movement in the United States and abroad.

The discursive themes emanating from the “rights” movements of the 1960s and 1970s formed the sociopolitical terrain that inspired and continues to fuel the contemporary movement to recognize, respond to, and criminalize violence motivated by bigotry in the United States.37

The product of this ideological and political mobilization “overlap” converged around the issue of rights and harm. They note that surprisingly groups on the left and the right of the American ideological spectrum united around the issue of violence as a criminal issue that terrorizes communities – for the hate crime movement, those communities are minority groups – and that such violence was in need of a socio-legal response. Legal redress, they note, has been at the centre of each of these movements, including the gay/lesbian movement.38

Kent Roach examining the Canadian phenomenon of victims’ rights and due process notes that all victims’ rights advocates do not march under the same banner; instead, those on the right traditionally side with state and police interests, and those on the left seek equality for disadvantaged and marginalized groups.40 Positioning gays and lesbians on the side of equality-seeking politicization, he writes that the demands for ________

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37 Jenness and Broad, 23. See also Jenness and Grattet 2001.

38 Jenness and Grattet, 31.

39 The appeal to law as a strategy of gay/lesbian politics has been a problematic noted by numerous scholars, including Leslie Moran (2001, 2004), Moran and Skeggs (2004), Mariana Valverde (2003), Gary Kinsman (1987), Ruthann Robson (1992) and Anna Marie Smith (1994). Further on in this introduction, I will elaborate this problematic.

equal protection under criminal law produced a number of troubling outcomes. One result was the “pit[ting] of the accused’s due-process claims against the equality claims of disadvantaged groups.”\(^{41}\) Another concern was the use of criminal sanction in the name of minority rights. The argument of equal protection to groups historically ignored or targeted by law as an advancement of legal equality is questioned by Roach. Further, he challenges the notion that the use of the criminal law actually remedies or controls crime.\(^{42}\) With respect to the criminalization of hate crime politics, Roach notes the government responded to the mobilizing efforts of interest groups like B’nai Brith and EGALE (Equality for Gays and Lesbians Everywhere) by codifying a sentencing doctrine already in Canadian case law. The enhanced sentencing provision, he remarks, was largely a symbolic gesture lacking in any substantive movement toward equality.\(^ {43}\) With respect to the power of law through this provision, he queries its efficacy. Insofar as the enhanced sentencing provision was a punitive response that required enhanced punishment for bias-motivation in criminal offences, Roach notes that “the fact that Parliament did not create a separate offence”\(^ {44}\) potentially frustrated the prosecution of hate crimes. Moreover, he positions the creation of this provision within a larger sentencing restructuring that Canada underwent in the mid-1990s. To the degree that hate

\(^{41}\) Roach 1999: 222.

\(^{42}\) Roach 1999: 222.

\(^{43}\) See as well Carter (2001) who argues the value of the enhanced sentencing provision as an “anti-discrimination” strategy and warns that such principles may have detrimental and unforeseen effects on other non-retributive sentencing principles under Canadian criminal law.

\(^{44}\) Roach, 1999: 239.
bias was now seen under Bill C-41 as an aggravating factor at sentencing, he argued that the codification of Canadian sentencing principles – such as proportionality – under the same bill, “may dilute the symbolic and educational value” of the enhanced sentencing provision.\footnote{Roach, 1999: 239.} In my analysis of reasons for sentence, I note Roach’s observations and examine the ways in which another sentencing provision, the conditional sentence, worked at odds and in conjunction with the punitively assigned enhanced sentencing provision.

It is also worth noting briefly that demands for enhanced penalty spring from, in part, the now orthodox notion that hate crimes are disproportionately harmful. Hate crime scholars with very different research agendas, including Jacobs and Potter (1998), the NCAVP, Jenness and Grattet (2001) Leslie Moran (2004), and Canadian scholars Julian Roberts (1995), Cynthia Petersen (1991), Martha Shaffer (1995) and Marie-France Major (1996), have all noted that the mid-1990s were characterized as a period of hate crime “crisis” and “epidemic” against which law was summoned to respond. Excess has not only been represented by the magnitude of incidents of violence, the violence of hate itself has been circumscribed as excessive\footnote{In addition to the NCAVP studies from the 1990s that note the frequency of anti-gay homicides as being particularly brutal, often standing as examples of ‘overkill,’ Sagarin and MacNamara (1975) provide an older reference to excessive violence of homophobic murder: “A feature of homosexual homicide that deserves further study is the bizarre nature [emphasis mine] of many of these crimes. The corpse is often dismembered, and the genitals may be mutilated, or may have disappeared” (78).} and disproportionately harmful. The studies of Levin and McDevitt (1993), and McDevitt \textit{et al.} (2001), measure the injury of hate-
motivated violence at much higher rates and intensity than non-hate-motivated violence. Moreover, their studies and that of Herek and Gillis (1999) claim that the psychological effects of this violence are more severe and more persistent than other forms of trauma generated by violent crime. Garafolo and Martin (1991) located the disproportionality of the harm in the violence done to the ontological security of the victim. Arguing that hate crimes attack the very identity (or perceived identity) of the victim, they remark that this kind of violation is profoundly damaging to the self. Further, they argue that hate crimes have a secondary effect of victimization, a kind of magnified or “ripple effect,” that impacts the victim’s (perceived) community, potentially even impacting the nation itself. Disproportionate harm has also been linked to hate speech for which the epithet stands as a symbolic injury to the ontology of the victim and as an additional harm to the violence that usually accompanies such speech.47

Barbara Perry’s work (2001) on the role that hate crimes play in assigning meaning and identity to social actors repositions the focus in hate crime scholarship from that of social movement mobilization to a consideration of the symbolic dimensions of identity. She stresses that hate crime is a vital mechanism for “doing difference,” an interactive and situational process through which identity is (per)formed. According to Perry, the act of hate violence is a means of responding to what the perpetrators perceive as threats or violations to their normative social order and their standing in it. She writes:

[H]ate crime provides a context in which the perpetrator can reassert


48 Perry, 46.
his/her hegemonic identity and, at the same time, punish the victim(s) for their individual or collective performance of identity. In other words, hate-motivated violence is used to sustain the privilege of the dominant group, and to police the boundaries between groups by reminding the Other of his/her “place.”

With respect to homophobic violence, Perry builds off the work of R. W. Connell on masculinities and that of Gregory Herek on heterosexism. She argues that gay bashing is a regulation and practice of sexuality and gender that “plays a dual role of reaffirming the perpetrator’s ability to ‘do gender,’ while simultaneously punishing the victim’s propensity to ‘do gender inappropriately.’”

Hegemonic masculinity, she asserts, is achieved by the “simultaneous valuation of aggressive heterosexuality and the denunciation of homosexuality [by way of violence].” She notes that this production of hegemonic and subordinate masculinities is “performative,” not in the Butlerian sense of that term, but rather in the sense that the perpetrators often play to their audience. Noting that gaybashing statistically is often carried out by a group of perpetrators, not a single assailant, Perry remarks that gaybashers perform for each other by acting as an audience or witness to their “unquestionably straight sexuality.”

Part of Gail Mason’s study of homophobia, violence and gender (2002) explores

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49 Perry, 55.
50 Perry, 106.
51 Perry, 106.
52 Perry, 108. In this dissertation, I utilize the theoretical insights of Judith Butler’s notion of gender performance to query the ‘unquestionability’ of these types of gender and sexual identity performances.
the symbolic function of anti-lesbian violence and epithets. She does this by analyzing what she names “interpretive repertoires”\textsuperscript{53} of anti-lesbian violence. That is to say, Mason analyzes the “linguistic and contextual patterns”\textsuperscript{54} found in the incidents of violence described to her by a number of lesbians whom she interviewed. By examining the kind of language perpetrators regularly use and types of violence they engage in, she remarks that this has allowed her to “highlight the kinds of sexual and gendered assumptions that transform the words and actions of violence into a statement about lesbian sexuality.”\textsuperscript{55} Her analysis of the epithet of “dirty lesbian” is particularly insightful to the symbolic quality of hate crime. Drawing on a wealth of critical theory that theorizes corporeality, including that of Julia Kristeva and her theory of abjection and Elizabeth Grosz and her notion of female bodies as leaking, boundary disrupting, and disordering, Mason argues that the expression “dirty lesbian” has the effect of producing lesbians as the abject and a contagion to proper\textsuperscript{56} social order. This particular body and identity is to be reviled and “excluded from legitimate social and political spheres.”\textsuperscript{57}

The works of Leslie Moran (2001, 2004), and that of Moran and Skeggs (2004),

\textsuperscript{53} Mason, 36.

\textsuperscript{54} Mason, 36.

\textsuperscript{55} Mason, 36.

\textsuperscript{56} Mason does not use the word ‘proper’ in this analysis, but I found it fitting when writing of the abject, as Kristeva’s theory of the abject exploits the polysemic and multilingual notions of ‘proper.’ Kristeva notes that the French word ‘propre’ means both ‘clean’ and ‘of one’s own,’ connoting not only the subject, but the contained, ordered and holistic subject. See Kristeva 1982.

\textsuperscript{57} Mason, 45.
have contributed uniquely to the affective dimensions of hate crime and the politics of violence and safety. Seeking debate and reflection on the emotive appeal to law articulated and demanded by gay men and lesbians in response to hate crime, Moran, and Moran and Skeggs, seek to alert their readers to the perils of pursuing an emancipatory politics – a politics seeking freedom from both legal regulation and violence – by way of vengeance and retribution. Emotional and affective resonance is found, they note, in the demands for new law and enhanced penalty. Careful not to condemn gay and lesbian demands for state violence in the punishment of hate crimes as a simple alignment with a conservative law and order agenda, they warn that such emotions, nevertheless, are a “disavowed” presence in the violence of institutional punishment in which “punishment as law-bound practice is celebrated as impersonal, tempered, calibrated, measured, and reasonable.” This normative characterization of law’s violence as a kind of redemptive violence, measured and restorative, a sign of social (re)order, not disorder, necessarily negates the unruly, irrational and emotive aspects of criminal law.

Victimology

A critical study of victimology informs this dissertation’s analysis of the production, and resistance to that production, of queer subjects as legitimate hate crime

58 Moran 2004: 941.
60 The work of Moran, and of Moran and Skeggs, note the plethora of affective states inherently bound to criminal law and its mechanism of punishment: fear, anger, hate, vengeance, terror, and pleasure.
victims, undeserving of the harm that they experienced and thus deserving of social empathy and institutional protection. In this section, I first trace victimology’s linguistic and etymological interest in the ambiguity of the term ‘victim’ meaning both a self-sacrificing figure and one who is sacrificed by another. I do this to establish the inherent ambiguity of the term and to signal to my readers that this ambiguity finds its way into the socio-legal narratives of the LGBT victim of hate crime in such a way as to destabilize the queer victim as a ‘legitimate’ victim of hate-motivated violence. Second, I locate the figure of ‘the homosexual’ as a paradigmatic type within classic victimological literature, a literature that theorized the precipitatory victim responsible for his/her own victimization. As Maghan and Sagarin note, “[h]omosexuality appears to be an almost classic instance of victimology.”  

Third, I sketch the emergence of the ‘legitimate victim’ as a product of the modern legal state and formulate the hate crime victim within this paradigm of victimhood.  

Last, I turn to the critique of responsibilization and the figure of the ‘good’ – read: responsibly prudent – queer citizen. By returning to familiar dividing practices and categories, for example, of the responsible and the irresponsible, the good and the dangerous, the figure of the responsibilized queer citizen, I argue, problematically reintroduces the spectre of the precipitating and self-inflicting homosexual, its illegitimate other, and works further to destabilize the notion of queers as legitimate victims of hate-motivated violence.

*Etymology of the term ‘victim’*

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61 Maghan and Sagarin 1983: 147.

62 See Bell, 1995.
In victimology, the concept of the victim is an ambiguous notion denoting both self-sacrifice and a suffering incurred by no fault of one’s own. Beniamin Mendelsohn (1976), one of the pioneers of victimology, links this concept to the Hebraic word ‘korban’ as concept of a man suffering from acts committed by an aggressor and the Modern Hebrew definition of ‘korban’ as ‘a self-sacrificing individual.’ Quoting two definitions from a 1965 Larousse’s Dictionary, he notes that a ‘victim’ is both “a person who voluntarily sacrifices his life or his happiness,” and “a person who suffers by the fault of another or by his own fault.” In the second of these Larousse definitions, a state of ambiguity is cohesively produced. The constitutive element of ‘suffering’ may be at the fault of another or by the fault of the self.

Embedded in these etymological and denotative meanings of victim are two ideas that strongly influence the constitutive nature of victimology’s ‘victim.’ On the one hand, there is the sacrificed. Here, the idea is that the victim is reduced to suffer by an agency or force external to self. In this concept, the victim suffers at the will of another. Injury, suffering, loss, or hardship is beyond the will or actions of the individual. His sacrifice is at the agency of another. Most often, this external agency which produces the suffering is symbolically understood as being malevolent. On the other hand, there is the pressing idea that the victim is a self-sacrificing individual. In this conception of self-sacrifice, the victim is destined to suffer as if it were his fate to be victimized. The ‘fault’ of victimization originates within the psyche or actions of the victim. Victimization is internally driven, internally constituted. The victim is sacrificing, not sacrificed.

63 Mendelsohn 1976: qtd. on 11.
This linguistic dual origin of the ‘victim’ is significant in that much of the victimological debate and scholarship as to ‘victim’ typologies — for example, deserving and undeserving ‘victims,’ and precipitatory and compensatory ‘victims’ — hinges on this competing nature. It is also significant in that both constitutions produce knowledges of the ‘victim’ that are worthy of critical inquiry. To dispel one and to hold on to the other is unproductive. Rather than negate one aspect of the ‘victim’ and celebrate the other, I propose that a critical conception of the ‘victim’ is enriched by attending to its dualistic constitution. My claim is not that either side of the dualistic figure — the ‘victim’ — is more true or more real than the other element, but rather that, taken together, the knowledges produced and implemented through these competing constitutions illuminate inherent complexities and paradoxes within the popular, political and criminological imagination of the sexual minority ‘victim’ of hate crime.

Classic victimology and the ‘homosexual victim’

Early victimologist Hans Von Hentig argued in 1948 that, in the dynamic between perpetrator and victim, “the victim assumes the role of a determinant.” By this he meant that psychic interaction of repulsion and attraction exchanged between perpetrator and victim positioned the victim in an agentic role. In a typology of victims comprised of twelve types, Von Hentig argued that each type “consents tacitly, cooperates, conspires, or provokes” their victimization. Taking the example of the blackmailed ‘homosexual,’ Von Hentig writes, “[s]ome sort of temptation is dangled before the strongest human

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64 Von Hentig, 384.

65 Von Hentig, 436.
urges; the victim takes the bait and the crime is committed in the ensuing discrediting situation.⁶⁶ Tropes of desire are replete throughout Von Hentig’s typology as evidenced by this quotation: “[t]he injury may be desired, in some cases even lustfully longed for.”⁶⁷ Von Hentig’s ‘homosexual victim’ is both a particular and paradigmatic type, and I argue that this figure can be read in Von Hentig’s work even where he does not explicitly name him so. For instance, in Von Hentig’s work he remarks upon the criminal argot of the victimized. He remarks:

The terms ‘mark,’ ‘chump’ [...] only designate the aim of the attack or the inferiority of the attacked [...] The term ‘sucker’ [means] one ‘who is sucked or bled, hence one easily duped or gulled’ [...] It could be that the original meaning was a victim who is easy to deceive, or one who could be made to suck [my italics]. It is certainly not without psychological significance that ‘sucker’ means both the sucking and the sucked.⁶⁸ His claim that it is not without psychological significance that ‘sucker’ means both the sucking and the sucked suggests an unstable and dual identity, a subject who is both active and passive in his own duping or victimization. The double meaning of ‘sucker’ suggests a victim who acts and who is acted upon. The sexually explicit connotation of the term ‘sucker’ conjures an analogy to the figure of his blackmailed homosexual ‘victim,’ the compromised and duped victim who falls victim to his own desires. Read through this analogy, the homosexual ‘sucker’ is thus actively implicit in his own

⁶⁶ Von Hentig, 387.
⁶⁷ Von Hentig, 419.
⁶⁸ Von Hentig, 388.
victimization. Moreover, Von Hentig suggests by the phrase ‘could be made to suck’ that
the homosexual ‘sucker’ offers little resistance to that which comes naturally to him — a
supposedly ‘passive’ sexuality and his own victimization. An ‘inferior,’ ‘helpless,’ and
even impotent subject, Von Hentig’s homosexual ‘victim’ is inherently drawn into his
own victimization by a self-sacrificing ontology of irrepressible desires.

Menachem Amir’s Patterns in Forcible Rape (1971) contributed significantly to
the constitution of the ‘victim’ as self-sacrificing and whose victimization was linked to,
what he deemed, “risky situations marred with sexuality.” Amir’s reproduction of
Marvin Wolfgang’s term “victim-precipitation” conjures up a psychoanalytic model of
unconscious wishes and repressed desires on the part of the ‘victim.’ Similarly serving
the misogynistic theories of neo-Freudians, he re-articulates the banal psychoanalytic
belief in the tendency of victimization to be a universal condition of every woman:
“Reflected in women is the tendency for passivity and masochism, and a universal desire
to be violently possessed and aggressively handled by men. Some writers even claim that
there is a universal wish among women to be raped or at least be forcefully seduced by
strangers.” Reminiscent of Von Hentig’s “sucker,” this emphasis on passivity and
masochism structures the rape victim as both passive and not-passive. That is to say, she
is actively passive in the rape. Her passivity is not to be understood as a ‘not-doing,’ but

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69 Amir, 266. One of his examples of a risky situation is “a picnic where alcohol is
present” (273).

70 Wolfgang 1958.

71 Amir, 254.
rather as ‘a doing of not-doing.’ Whether by an act of commission or by an act of omission, “the victim is the one who is acting out, initiating the interaction between her and the offender, and by her behaviour [i.e. the unconscious ‘acting out’] she generates the potentiality for criminal behaviour of the offender or triggers this potentiality [....] Her behavior transforms him into a doer.” 72 Read more broadly, the sexualized victim, then, is a type of passive initiator who puts her/himself (either unconsciously, carelessly or pathologically) at risk of sexual violation. For Amir, “the victim is always the cause of the crime.” 73

Stephen Schafer (1968) argued that a victim typology should not simply be “a set of profiles,” but rather should be “a directive toward assessing responsibility.” 74 It will be this notion of ‘responsibility’ and victimology’s task of assessing it that will produce the next significant shift in this notion of the ‘victim’ as self-sacrificing. He too developed a typology of victims structured around the degree of victim responsibility in the criminal-victim relationship. Two of his victim types can be linked to the classic discursive production of ‘the homosexual’ as being responsible for their own victimization: precipitative and self-victimizing victims. Precipitative victims are those who have done nothing specifically against the criminal, but whose thoughtless behaviour instigates, tempts, or allures the offender to commit a crime against the enticing victim. Schafer argues that this victim ought to have “ponder[ed] the risk” and thus cannot be seen as

72 Amir, 259.
73 Amir, 259.
74 Schafer, 45.
entirely blameless, and “some responsibility should be carried by the victimized person.”\textsuperscript{75} Naming the ‘homosexual’ specifically, Schafer writes that self-victimizing victims are those “who victimize themselves and are thus their own criminals.”\textsuperscript{76} Here the drug-addict, the alcoholic, the homosexual, and the gambler are all “criminal-victim[s]”\textsuperscript{77} who are fully responsible for their own victimization.

This idea of ‘victim-risk’ will be incorporated into the lifestyle/exposure approach of victimization developed by Hindelang, Gottfredson and Garofalo (1978). Their lifestyle approach model postulated that the likelihood that an individual will suffer personal victimization depends heavily on the concept of lifestyle. Defining lifestyle as “routine daily activities,”\textsuperscript{78} they argued that there is a direct link between an individual’s lifestyle and exposure to high-risk victimization, noting that there are “high-risk times, places, and people.”\textsuperscript{79} They also stigmatize the ‘homosexual’ victim remarking that, with respect to the ‘desirability’\textsuperscript{80} of targets, they note that “the lifestyles of some persons may occasionally place them in situations that involve violations of legal or other norms (e.g.

\textsuperscript{75} Schafer, 46.
\textsuperscript{76} Schafer, 47.
\textsuperscript{77} Schafer, 47.
\textsuperscript{79} Hindelang, Gottfredson and Garofalo, 245.
\textsuperscript{80} The term ‘desirability’ ghosts the problematic sexual-psychic tension between the victim and the victimizer as articulated by Von Hentig and Amir respectively.
visiting a prostitute, purchasing drugs, or seeking out a homosexual partner).”

Brief mention needs to be made of classic victimological studies of gay men themselves. The literature emphasizes the life-style approach as the major causative factor in the victimization of gay men, but positions it alongside a model of psychological weakness and ignores the offender’s responsibility as predatory and opportunistic. For example, Edward Sagarin and Donal MacNamara’s 1973 study of the homosexual as crime victim notes that their disproportionately high victimization numbers compared to heterosexual victims is dependent upon the homosexual victim’s engagement with risk as determined by their social isolation and stigmatization and their “participa[tion] in high-risk activities, either because of personality traits [my emphasis] or because of goals that make the risk a necessity for assurance of success.” Much of their study focusses on the sexual encounter of gay men as high risk and locates risk-oriented behaviour, not with social marginalization and stigma directed at gay men, but with internal ‘compulsions’: “many homosexual contacts are made in bars, and that the potential victim’s self-protective mechanisms may be as much impaired by alcohol as by compulsive sexuality [my emphasis].” However, against poorly researched and highly “moralistic” claims, like those made by Rupp (1970) which state that gays are self-victimizing with jealousy between gay lovers being the major causative factor in the murder of homosexual men,

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81 Hindelang, Gottfredson and Garofalo, 266.
82 Sagarin and MacNamara, 73.
83 Sagarin and MacNamara, 77.
84 Miller and Humphreys, 180.
Brian Miller and Laud Humphreys (1980) argue that legal marginalization and social stigmatization fuel and result in most victimizations against homosexuals. Rebuking the self-victimizing model of the homosexual, and shifting the nomination of ‘homosexuals’ to ‘gay,’ they hypothesize that “the movement of homosexual marginals into openly gay lifestyles appears to decrease their vulnerability to violent crime. The gay world not only offers a variety of social, affectional, and cultural opportunities but also tends to protect members from those who may victimize them.”

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The making of the ‘legitimate’ victim

Conjoined to the notion of the precipitatory victim, whose victimization is fundamentally a causal agent of risk and a self-sacrificing nature, is the victim whose victimization is not a product of risky behaviour, victim neglect, or a fundamental psychopatholgy towards self-harm. This victim has suffered harm through no fault of their own. Their victimization happens despite the proper management of safety and self-care; it is beyond their control. Victimology has designated this victim as rightfully deserving of social empathy and state response. This is the ‘legitimate’ victim whose constitution is fundamentally tied to the modern legal state and the notion of the good citizen. What follows is a brief mapping of the historical construction of the ‘legitimate’ victim whose positionality within law and rights of citizenship are fundamentally determined by a notion of innocence and the maintenance of good public order. Insofar as hate crime scholars86 have argued that social and legal mobilization of hate crime

85 Miller and Humphreys, 182.

86 See for example Jenness and Broad 1997; Jenness and Grattet 2001; Suffredini 2000.
activism is an example of a political attempt of repositioning minority victims of hate-motivated violence as deserving of the rightful protections of citizenship, I contribute to this scholarship by arguing that this repositioning is particularly challenging for the queer victim of hate-motivated violence. I argue that the resiliency of the figure of classic victimology’s self-endangering and risky ‘homosexual’ and the sustained ideological resistance to LGBT individuals as full citizens, despite notable legal gains, positions LGBT individuals, particularly gay men, ambiguously, situating them conceptually both without and within legitimate victimhood.

Supporting a materialist theory of the progress of history, Stephen Schafer writes that as societies evolved socially and economically so too did the legal system of compensatory justice. Referencing early legal codifications of victim compensation, particularly that of Anglo-Saxon England, Stephen Shaffer declared the ‘victim’ as being birthed in a Golden Age of legal compensation in which the “law of injury” changed from vengeful retaliation to “composition” described as system of punishment and damages.  

Shaffer notes that this Golden Age of the ‘victim’ was an ancient era in which “[t]he injury, harm, or other wrong done to the victim was not only the main or essential issue of the criminal case: it was the only issue.” As states and, subsequently, state power grew, victims lost control over the process of determining the fate of those who had harmed them. In Anglo-Saxon England, Schafer describes a compensation system of twofold

87 Shafer 1968; see also Karmen 1990 and Wallace 1998.
88 Shaffer, 11.
payment whereby the king shared in the victim’s composition. Eventually, as the Golden Age of the victim waned, the injured person’s right to restitution diminished and the king received the full composition. “As the state monopolized the institution of punishment,” Schafer writes, “the rights of the injured were slowly separated from penal law: composition, as the obligation to pay damages, became separated from criminal law and became a special field in civil [tortious] law.”90 Under this rationale, the subjective interests and the ‘real harm’ of the victim were arrogated by the state. Thus crime was no longer an offense against an individual, but an offense against the governing body of the people and the people whom it represented. Criminal law spoke to the injury of the state. McShane and Williams argue that the actual harm suffered by the ‘victim,’ real harm as they describe it, was “subordinated to theoretical conceptions of legal harm [that is the transgression of legal codes] and the definition of a victim becomes an artificial one.”91

Two notable ideas are produced within this context of the state as the injured party. In a broad sense, it can be argued that the state’s arrogation of the subjective interest of the individual erases individual victimhood. As the agent of its citizenry, the state as read within the context of criminal law is a kind of generalized ‘victim.’ More pointedly, though, insofar as the state produces law, the state produces its ‘victims.’ In this sense, laws not only create criminals, but they formally define persons as ‘victims’ at the same time. Andrew Karmen writes that “[t]he outlawing of specific harmful activities

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90 Shaffer, 14.

thus always marks, in a sense, discovery of another set of victims.” 92 Thus not only are ‘victims’ under the purview of law, subsumed through its representational interests, but they are continuously constituted by law. In this model, law’s ‘victims’ can only be those who are deemed as legitimately protected under the purview of the state. That is to say, law is the constitutive force of legitimate victimization.

If the waning of the rights of the victim were a product of the creation of the modern legal state, the waxing of those rights were an initial product of the British welfare state. Mawby and Walklate remark that the ‘victim’ as a significant socio-legal actor, who was figuratively absent from the criminal justice processes of the mid-nineteenth and early-twentieth centuries, was re-birthed with the inception of the British welfare state in the immediate post-war years. 93 According to them, the British welfare state was a product of the intertwining of notions of citizenship and capitalism. Under the welfare state, social rights were likened to “individual entitlements that arise from a contractual relation.” 94 Shifts to the British criminal justice policy in the 1950s and 1960s were stimulated by public calls for penal reform and for the establishment of government compensation programs like those advocated by Margery Fry. 95

In this particular vision of the British welfare state, compensation was understood to be “a collective insurance provided by society” in which the taxpayer would be

92 Karmen, 15-6.
95 Mawby and Walklate 1994; Walklate 1989; and Lamborn 1976.
regarded as the subscriber. This notion of collective insurance rested on the belief that “[a]ll taxpayers were at risk of becoming victims.” For instance, the Criminal Injuries Compensation Board (CICB) was established in 1964 as “the culmination of a logic built on notions of insurance, contract and individual responsibility, and as such also represented a point at which certain victimological ideas had become enmeshed in policy responses.” The concept of legitimate victimhood can be gleaned from this excerpt from the 1964 British Home Office White Paper on victim compensation:

Compensation will be paid *ex gratia*. The government do not accept that the State is liable for injuries caused to people *by the acts of others* [my emphasis]. The public does, however, feel a sense of responsibility for and sympathy with the *innocent victims* [my emphasis], and it is right that this feeling should find practical expression in the provision of compensation on behalf of the community.

Two key points need to be extrapolated from this development of the legally compensatory victim. First, victimization was seen as ubiquitous: all taxpayers were at risk. Second, although the state did not recognize victimhood as its contractual failure to protect its citizens, the state recognized a ‘sense of responsibility for and sympathy with innocent victims’ resulting in compensation. This public constitution of the ‘innocent victim’ embraces “the traditional welfare distinction between those who are considered to

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98 Mawby and Walklate 1994: 76.
be deserving and those considered undeserving.” 100 It is significant to note that only victims of “crimes of violence” were compensated under this scheme. 101 Noting that victims of violent crime evoked the greatest sympathy from the public, Walklate remarks that it was “politically useful” to be seen to be responding to the public sympathy that violent crime provoked. 102 In fact, she remarks, the government’s concern for the victim remained “in many ways an oblique one” and the politicized response to and generated by the ‘innocent victim’ of violent crime “can be seen [as having] more connections with the concern to maintain law and order than a genuine commitment to victims of crime in general.” 103

Insofar as this compensation was reserved for ‘citizens,’ I suggest that the realm of victimization was conceived of as ‘public’ and that the victimized seen as internal to the body politic of citizenry. This last point is crucial in understanding how the state’s claim for responsibility of one group of citizenry can be simultaneously read as a foreclosure of another group of citizens. For example, Mawby and Walklate note that the 1950s saw the first of a series of incidents of racial violence in Britain. Citing the ‘riots’ of 1958 in Notting Hill and Nottingham, they remark that the post-colonial victims 104 of

103 Walklate 1989: 130.
104 The term ‘the post-colonial victims’ is my explicit naming, not Mawby and Walklate’s, which identifies the political context in which these racialized ‘riots’ erupted, and continue to erupt, in Britain.
these racialized attacks “did not figure in the debates around legislation concerned with
criminal injuries compensation which ultimately came into being in the early 1960s.”\textsuperscript{105} This absence from national legislative debate would suggest that these racialized subjects of hate-motivated violence, these citizens of Britain, were not thought of as a legitimate part of the body politic of the welfare state. Another example that highlights the ‘public’ condition of legitimate victimhood is that of domestic violence thought at that time to be a private, domestic issue between husband and wife. Taking this example, Mawby and Walklate write that “a woman beaten by her husband [was thought to have] probably deserved what she got as a result of being an inadequate or ‘slovenly’ housekeeper.”\textsuperscript{106} In this case, the wife is perceived as the ‘deserving victim’ insofar as she is seemingly deserving of her victimization. What she is not deserving of is protection from the state. Within this paradigm, the failure of the burden of contractual (familial) obligation rests with the wife and not with the state. For LGBT individuals in 1950s and 1960s Britain, as in Canada, their place within citizenry was constantly at risk particularly for those who challenged the divide between legal and illegal acts, and between public and private space. As was made explicit in my citing of classic victimological notions of the ‘homosexual,’ LGBT victims of hate-motivated violence would not have been deemed innocent legitimate victims of crime insofar as they were constituted as liminal to or outside of law and legitimate social space.

This last aspect of the historical trajectory of the legitimate victim brings us back

\textsuperscript{105} Mawby and Walklate 1994: 74.
\textsuperscript{106} Mawby and Walkalte 1994: 73.
to the hate crime victim and his/her place in legitimate victimhood. By the 1960s, Americans had become “sensitized to victims and victimization.” This sensitivity and the subsequent growth of the victims’ rights movement had been fostered and inspired by the social movements and historical developments of the civil rights and civil liberties movements, the feminist movement, and the law-and-order movement. This odd composition of founding forces and movements aptly characterises the fundamental tension still felt within what has been broadly labelled ‘the victims’ rights movement.’ On the one hand, the civil rights and civil liberties movement, and to a large extent, the second-wave feminist movement, advocated social recognition of and political equality and protection for the social underclasses: Afro-Americans and women respectively. Victimization was constituted in terms of systemic discrimination and oppression of these groups and its remedy was constituted through a rights discourse: civil rights for black Americans, due-process rights for offenders, and women’s right to equal pay and to control of their bodies. On the other hand, the law-and-order movement reacting to due process advancements for the criminally accused argued that the Supreme Court under Earl Warren was protecting the rights of criminals while ignoring the rights of criminal victims. Feminists too emphasized the rights of the victim over those of the offender and called for tougher laws and stricter enforcement particularly with reference to rape

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and domestic violence.\textsuperscript{110} Despite these ideological tensions between those on the progressive left and those on the reactionary right, it was a ‘rights’ discourse that imbricated these opposing social forces weaving together a figure of the ‘rightful and innocent victim.’ It was the question and pursuit of rights given under law — the ‘natural’ law of liberal Enlightenment thinking and the constitutional law as interpreted and enacted by the U.S. Supreme Court — that constituted the U.S. rights-driven ‘victim.’ As hate crime scholars have noted, the hate crime movement of the United States is a direct spin-off from equity seeking groups and the crime victims’ movement. In this respect then, the political struggle and legal advancements of the hate crime movement can be understood as concerted efforts to establish the hate crime victim within legitimate victimhood. The question for this dissertation is: under the sign ‘anti-LGBT hate crime,’ how is legitimate and, consequently, illegitimate victimization being represented and constituted through Canadian socio-legal narratives?

\textit{Queers and the critique of responsibilization}

Addressing the homophobic construction of “dangerous gayness” and the constitution of gay men who engage in public sex as a “self at risk,”\textsuperscript{111} Elisabeth Stanko and Paul Curry warn of the effects of self-regulation of victimization as a “strategy of governance.”\textsuperscript{112} Wary of criminological knowledges produced by victimization surveys

\textsuperscript{110} Best 1999.

\textsuperscript{111} Stanko and Curry, 516.

\textsuperscript{112} Stanko and Curry, 519.
that both document and constitute the queer subject as “at risk at all times,” they note that this condition category of ontological insecurity, to cite Giddens, locates homophobic violence within a responsibilization paradigm. As such, they remark that such knowledges contribute to the generation of “the expectation that ‘good citizens avoid crime.’” Crime prevention and the self-disciplinary techniques that it proffers “foist[...] the problem of crime onto the shoulders of would-be victims.” For queers, this kind of management of risk through self-disciplinary techniques often involves a policing of the ‘queer’ self, or what Gail Mason calls ‘body-mapping,’ “a cartographic matrix of practices for surveying, screening and supervising the times, places and ways in which one is manifest as homosexual.” For Stanko and Curry, the self-policing and surveillance of sexual identity and unconventional gender expression is a strategy of governance that has “neatly and efficiently transform[ed] coercive control into self-control” – the queer-always-at-risk of victimization must always be on guard for the homophobe, policing and regulating his/her identity and desire at all times in order to fulfill the obligation of private prudentialism. Problematically, “[t]he wider political regulation of self-identities [that is a condition of responsibilized citizenship],” they note,


114 Stanko and Curry, 1997: 519.

115 Stanko and Curry, 1997: 519. They are drawing on the work of Pat O’Malley on crime prevention through risk-management.


“acts to resist the positive work of queer activism against violence.”

A fundamental feature of the politics of violence and safety, note Moran and Skeggs, is its vexed relationship to responsibilized citizenship. As theorized by David Garland, responsibilization is “a new mode of governing crime” whereby the neo-liberal state “alone is not, and cannot effectively be, responsible for preventing and controlling crime.” The work, and responsibility, of citizens (and of citizenship) is that of partnerships, networks and joint initiatives with public, private, and quasi-private agencies and organizations for the effective management of safety and security. Accordingly, “[t]he morally responsible individual or self is a key provider of safety and security in this new order of crime control.” Speaking to this neo-liberal configuration of citizenship and security, Nikolas Rose writes that “[a]s far as individuals are concerned, one sees a revitalization of the demand that each person should be obliged to be prudent, responsible for their own destinies, actively calculating about their futures and providing for their own security and that of their families.” As partners in prudence, individuals are “also to secure themselves against crime risks and to take care not to make themselves victims of crime.” Failure to satisfy this requirement of private and individual responsibility for safety and security, warn Moran and Skeggs, “may

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119 Garland, 1996: 452 and 453 respectively.
120 Moran and Skeggs, 2004: 44.
121 Rose, 2000: 324.
122 Rose 2000: 328.
impact on a person’s status as a good [read: ‘responsibly prudent’] victim and citizen.”\textsuperscript{123}

In Moran and Skeggs’s discussion of David Garland’s notion of responsibilized citizenship, they note that Garland’s observations with respect to gays and lesbians should be met with “some caution.”\textsuperscript{124} Moran and Skeggs’s wary prognostication, interestingly, situates gay and lesbian prudence uneasily within the responsibilization of safety and security whereby citizenship may come at the cost of policing and managing dissident sexuality.

The nature of the vexed relationship of the politics of violence and safety to responsibilized citizenship, for Moran and Skeggs, is two-fold. First, they see the gay and lesbian demands for state violence, an example of which would be enhanced sentencing, as a challenge to, and a convergence with, the role of the neo-liberal state in its provision and governance of safety and security. Moreover, the demands for state violence have the power to produce gays and lesbians as subjects of violence for whom emotions like hate, anger and revenge are rationalized as reasonable and just. Second, they note that responsibilization has become an index of inclusive citizenship. They note, as do others,\textsuperscript{125} that historically, “due to state hostility, lesbians and gays have had primary responsibility for their own safety and security from homophobic violence.”\textsuperscript{126} Moreover, they stress that “individual strategies of taking responsibility for safety were developed in

\textsuperscript{123} Moran and Skeggs, 2004: 47.

\textsuperscript{124} Moran and Skeggs, 2004: 47.

\textsuperscript{125} See Stanko and Curry, 1997: 519; Mason, 2002; Jenness and Broad, 1997; and Robson, 1992.

\textsuperscript{126} Moran and Skeggs, 2004: 44.
response not only to the violence of private individuals, but also in response to the violence, and the threat of violence, of the state.”\textsuperscript{127} In Canada, for example, lesbians and gay men in particular were subject to legal prohibitions and restriction, and police surveillance and crack-downs (including police extortion and violence).\textsuperscript{128} Moran and Skeggs’s observation about responsibility and citizenship is worth highlighting here:

What differs is that in the past, individual lesbian and gay responsibility for safety and security was not so much associated with citizenship, but rather a mark of lesbian and gay oppression, and lesbian and gay exclusion from citizenship. There is considerable \textit{irony} for lesbians and gay men in the suggestion that the practices that marked their exclusion in and through the infrastructure of criminal justice \textit{might now be a feature of their inclusion} through the contemporary infrastructure of that same social institution of safety and security.\textsuperscript{129}

Both Derek McGhee and David Bell respectively heed the cost of responsibilized citizenship. “[I]t is important to consider the price of citizenship before the lgbt community buys into it wholesale,” remarks McGhee.\textsuperscript{130} Locating the notion of ‘active citizenship’ squarely within Thatcherite politics, Bell notes that this particular use of the term ‘citizenship’ relies heavily on “counterbalancing the citizen’s rights with his or her responsibilities, and it also uses narrowly consumerist notions of rights.”\textsuperscript{131}

\textsuperscript{127} Moran and Skeggs, 2004: 48.
\textsuperscript{128} See Kinsman, 1987; and Adam, 1995.
\textsuperscript{129} Italics are mine. Moran and Skeggs, 2004: 48.
\textsuperscript{130} McGhee, 2003: 367.
\textsuperscript{131} Bell, 1995: 140.
neo-liberal paradigm of citizenship, rights are interpreted as a “matter of consumer sovereignty free of any government dictates.”\textsuperscript{132} In a discussion of the ‘empowered’ citizen, Nikolas Rose writes that “the collective logics of community come into alliance with the ethos of individual autonomy characteristic of advanced forms of liberalism: choice, personal responsibility, control over one’s own fate, self-promotion and self-government.”\textsuperscript{133} In this new regime of “autonomization and responsibilization,” subjects are “to do the work on themselves, not in the name of conformity, but to make them free.”\textsuperscript{134} A seminal critic of the logic of ‘empowerment,’ Barbara Cruikshank argues that “power works by soliciting the active participation of the poor [for our purposes, read: marginalized] in dozens of programmes on the local level, programmes that aim at the transformation of the [marginal] into self-sufficient, active, productive and participatory citizens.”\textsuperscript{135} The ethical reformulation of the marginalized – the poor, the queer, the racialized – into the ‘active’ citizen and the ‘freedoms’ that they enjoy is accomplished through and by the subjectivities of the marginalized. The appeal of such empowerment and constitution of citizenship partnered with government and other public and private organizations is that it appears to reject, as Rose notes, “the logics of patronizing dependency that infused earlier welfare modes of expertise.”\textsuperscript{136}

\textsuperscript{132} Bell, 1995: 140.
\textsuperscript{133} Rose 2000: 329.
\textsuperscript{134} Rose 2000: 324 and 334 respectively.
\textsuperscript{135} Cruikshank, 1994: 35.
\textsuperscript{136} Rose, 2000: 334.
With respect to the ethical reformulation of the queer subject, McGhee asks, “Will all LGBT [sic] members want to become active and responsible citizens in the first place?” Resisting the notion that responsibilization does not come at the cost of conformity, he warns that the “seductive” invitation to active and empowered citizenship may bear the additional responsibility of adherence to a “vanillized homonormativity.”

The ‘freedoms’ of market capitalism and neo-liberal citizenship may well translate for sexual and gendered minorities into ‘community’ defined by consumption and market tastes. “Trade-off responsibilities” incurred by queers may also include “a return to familiar dividing practices and categories, for example, of the responsible and the irresponsible, the good and the dangerous in relation to specifically male homosexuals.” Further, I would add the responsibilized citizen in relation to the figure of the queer subject reintroduces the spectre of the precipitating and self-inflicting homosexual.

* * *

Data Collection

The dissertation pursues its primary question – under the sign ‘anti-LGBT hate crime,’ how is legitimate and, consequently, illegitimate victimization being represented and constituted through Canadian socio-legal narratives? – by interrogating and analyzing

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139 See Bell, 1995.
140 McGhee 2003, 366.
a variety of materials covering the period 1985-2003 and the cities of Toronto and
Vancouver. I nominate these materials not only as socio-legally discursive, but as socio-
legally ‘narrative.’ My nomination of these materials as narrative signals several things.
As noted by several leading scholars, including socio-legal scholars Patricia Ewick and
Susan Silbey (1995), psychologist Jerome Bruner (1986; 1991) and literary scholar
W.J.T. Mitchell (1980), narrative is a mode of making sense of reality that is never an
empirical truth, but rather is a representation of reality. Bruner argues that the narrative,
“not only represent[s] but constitute[s] reality”\(^\text{141}\) in that what is told has the effect of
producing what is told. Bruner (1991) and Frank Kermode (1980) remark that narrative
compels interpretation. “A story,” notes, Kermode, “is always subject to
interpretation.”\(^\text{142}\) Bruner phrases this compulsion of interpretation slightly differently,
remarking, “the moment a hearer [or reader] is made suspicious of the ‘facts’ of a story or
the ulterior motives of a narrator, he or she immediately becomes hermeneutically
alert.”\(^\text{143}\) Further, I argue, following a critical psychoanalytic tradition, that any story is
suspect and requires hermeneutical alertness and a compulsion to interpret.

The stories that I interpret in this dissertation are varied, ranging from news
reportage of two homicides to a recurrent story of a community’s trauma to a judge’s
discussion of harm and national belonging. Specifically, I examine and interpret the
interview data of LGBT community activists involved in anti-violence politics and

\(^\text{141}\) Bruner 1991: 5.

\(^\text{142}\) Kermode 1980: 85.

\(^\text{143}\) Bruner 1991: 10.
projects, mainstream and gay print news media reportage of the homicides of two gay men, Parliamentary debates of the enhanced sentencing provision that sought to include ‘sexual orientation’ to the list of bias motivating factors, witness testimony given before the Standing Senate Committee on the issue of amending the hate propaganda statutes to include ‘sexual orientation’ to the list of identifiable protected groups, the interview data of police officers who had direct experience with anti-hate crime initiatives and policing practices, and judicial reasons for sentence.

Chapter 2:

Each chapter, to a great extent, had its own collection needs. How and what I collected in terms of data were predicated on those needs. Chapter two, “News Stories of Homicide,” for instance, critically reads, or interprets, the mainstream and gay news coverage of two specific killings: that of Toronto’s Kenneth Zeller in 1985 and that of Vancouver’s Aaron Webster in 2001. My research also involved more general media coverage of hate crimes and acts of violence against LGBT individuals in order to contextualize and to distill my object of inquiry.

For chapter two, a number of resources and electronic databases were tapped in my research of hate crime paper news reportage in Canada. In terms of electronic databases, I searched the Canadian News Index (CNI) which covered news reportage from 1985 to 1992, and the Canadian Index (CI) which covered news reportage from 1993 to 2003. I also searched the CBCA and Activa databases looking for articles that might have been missed by the CNI and CI searches. There were many duplications and those were removed from my hard-copy collection of the relevant news articles. I first

Initial exclusions: I had originally thought to include articles of anti-LGBT violence reported in The Western Report, a conservative, pro-family, Christian-based, and now defunct, news source. However, after I perused The Western Report for articles containing the words “homosexual,” “gay,” and “hate crime,” from 1985 to 2003, I found no articles reporting anti-LGBT incidents of violence. The only references to anti-LGBT violence were in the context of the political debate around Bill C-250, the enhanced sentencing provision of the Criminal Code. For example, in “Harsh penalties for a mythical crime,” Western Report, July 3, 1995, p.9, the phrase ‘mythical crime’ is a reference to hate-motivated violence directed at gays and lesbians.

Early on in my conception of this dissertation, I made the decision not to include tabloid representation of anti-LGBT violence; thus, both the Toronto Sun and The Vancouver Province were eliminated from my consideration. I thought tabloid newspapers tended to use rhetorically inflamed language, particularly given the anti-
The Body Politic, a “gay liberation” magazine, operated by a volunteer collective, was in print from late 1971 to 1987. In 1975, Pink Triangle Press was incorporated to give The Body Politic formal existence as a not-for-profit company “born out of and committed to the struggle of lesbians and gay men for sexual liberation and human fulfillment.” In March 1984, Pink Triangle Press published Xtra to attract advertising from Toronto’s gay bars. By 1987, The Body Politic stopped publishing, and Xtra was marketed as Toronto’s “Free Gay Guide to Toronto.” It is now marketed as “Toronto’s lesbian & gay biweekly.” In late August 1993, with the creation of Vancouver’s locally produced biweekly Xtra West, Pink Triangle Press became, according to Griffin, the “world’s first gay newspaper chain” (for more about TBP and Xtra, see Griffin, Vancouver Sun, “First Gay Newspaper chain launched in Canada,” Sept 14, 1993, and Xtra’s website, http://www.xtra.ca/site/toronto2/html/about.shtm).

Queer News Retrieval: While I did some initial research using the resources of the Thomas Fisher Rare Book Library (University of Toronto) and the Canadian Lesbian and Gay Archives, my most productive research of news coverage of anti-LGBT violence was conducted with the help of Xtra (Toronto) and Xtra West (Vancouver). Each gave me access to their magazine archives, including those of The Body Politic. Robin Perelle at Xtra West allowed me to go through her personal news file of anti-LGBT violence. As well as archival research, while in Vancouver during the month of May 2003, I collected hardcopies of Xtra West, and I read Xtra online weekly from 2001-2003 looking for stories of anti-LGBT violence. The gay/lesbian news stories were particularly useful.

144 The Body Politic, a “gay liberation” magazine, operated by a volunteer collective, was in print from late 1971 to 1987. In 1975, Pink Triangle Press was incorporated to give The Body Politic formal existence as a not-for-profit company “born out of and committed to the struggle of lesbians and gay men for sexual liberation and human fulfillment.” In March 1984, Pink Triangle Press published Xtra to attract advertising from Toronto’s gay bars. By 1987, The Body Politic stopped publishing, and Xtra was marketed as Toronto’s “Free Gay Guide to Toronto.” It is now marketed as “Toronto’s lesbian & gay biweekly.” In late August 1993, with the creation of Vancouver’s locally produced biweekly Xtra West, Pink Triangle Press became, according to Griffin, the “world’s first gay newspaper chain” (for more about TBP and Xtra, see Griffin, Vancouver Sun, “First Gay Newspaper chain launched in Canada,” Sept 14, 1993, and Xtra’s website, http://www.xtra.ca/site/toronto2/html/about.shtm).
because they reported minor incidents of violence and victimization, not covered by the municipal and national papers, and they often followed up a story with court coverage if the offenders had been charged. From this type of local community coverage, I collected news stories not only on the homicides of Kenneth Zeller and Aaron Webster, but on various acts of homophobic violence including the Vancouver fire bombings of the Little Sister’s Bookstore and Art Emporium (1987 and 1992), the assault of gay patrons at the Edge Café (1994), the assault of Duncan Wilson (1996), the group assault of three women thought to be lesbian in Gastown (2001), the assault of transsexual activist Velvet Steel (2002), the Toronto assaults of patrons at the Church St. Second Cup (1994) and of Ed Pollak (1995), and the homicides of three transsexual sex-workers (1996).

Having read these news reports of bashings, beatings and killings, I felt quite overwhelmed, both emotionally and in terms of volume of data to analyze. Wanting to distinguish myself from the type of study and analysis – quantitatively exhaustive yet somewhat substantively thin – conducted by Douglas Janoff in *Pink Blood: Homophobic Violence in Canada*, I chose to focus my analysis instead on the newspaper reports of two strikingly similar homicides, those of Kenneth Zeller and Aaron Webster respectively. While not analyzed comparatively *per se*, it is significant to note that both men were killed by a group of boys and young men in a cruising park. In a sense, as well, these homicides, one in Toronto and the other in Vancouver, are bookends that chronologically frame this dissertation. My analysis then was contained by a refined focus on and semiotic interpretation of the news reports of two specific acts of homicidal violence.
Chapter 5:

In this chapter, I discuss the symbolic meanings of judicial pronouncements of penalty and examine reported cases of hate-motivated violence against LGBT individuals. My analysis centres on two distinct phases of enhanced sentencing practice: those common law judgements that considered bias motivation against LGBT in sentencing prior to the enactment of the statute and those afterwards. In order to trace the usage and application of hate-motivation as an aggravating factor in sentencing of anti-LGBT violence cases, I searched for judgements reported before the enhanced sentencing provision came into force on September 3, 1996, and those judgements that were reported after this date.

The majority of collected cases (approximately 17) were retrieved through QuickLaw as reported cases; a handful of unreported cases were given to me by the B.C. Attorney General’s office and by Karen Baldwin of the 519 Victims’ Assistance Program (Toronto). I found eight reported judgements that appeared between November of 1985 and March of 1996, and twelve reported cases, of which eight were trial decisions and four were appellate, from September 1996 to December 2003. Karen Baldwin provided me with the unreported trial judgement of *R. v. Cvetan and Iacozza*.

Essentially my search terms for both periods (pre- and post-the enhanced sentencing provision) were identical – (singularly and in combination) ‘homosexual,’ ‘gay,’ ‘lesbian,’ ‘assault,’ ‘homicide,’ ‘violence,’ ‘sexual minority,’ ‘Ingram’ (the first common law judgement to take sexual orientation into account as an aggravating factor at sentencing) – except I added the terms ‘enhanced sentencing,’ ‘s.718.2(a)(i),’ and
‘aggravating factor’ to these original search terms for cases post-718. The term ‘Ingram’ was useful to my search as it was the first common law reference acknowledging hate violence motivated by the sexual orientation of the victim and thereafter was frequently cited by judges in their reasons for sentence.

As a preliminary method of data organization (see example of my chart below), I separated the cases as pre- and post-718 cases, and identified each case by name, date, municipality, judge, charge, plea, conviction, mention of aggravating and mitigating factors at sentencing, the sentence, mention of s.718.2(a)(i) (if relevant), whether the offender was a young offender, number of offenders, and any additional relevant information that would shed light on the judge’s reasoning for sentence and whether the sexual orientation of the victim was recognized by the court. This provided me with a rudimentary form of structural comparison. See Diagram 1 on the following page.
**Diagram 1:**

### Queer-Case Table (Sentencing)

<table>
<thead>
<tr>
<th>Case</th>
<th>Y/M/D</th>
<th>Munc.</th>
<th>Judge</th>
<th>Charge</th>
<th>Plea</th>
<th>Conv.</th>
<th>Aggr. Factor</th>
<th>Mit. Factor</th>
<th>Sentence</th>
<th>7/18</th>
<th>VO</th>
<th>+</th>
<th>Info</th>
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<tr>
<td>Rutledge*</td>
<td>1996.03.2</td>
<td>New Westminister</td>
<td>Josephson</td>
<td>Assault (appeal from conviction X; from sentence X)</td>
<td>Y</td>
<td></td>
<td>*“vicious, totally unjustified &amp; predatory beating of a defenceless drunk” *premeditated</td>
<td><strong>“hard worker &amp; a good businessman”</strong> *“man of general honesty”</td>
<td>Dismissed</td>
<td>1</td>
<td></td>
<td>+</td>
<td>Info</td>
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<tr>
<td>Cvetan &amp; Iacozza</td>
<td>1995.05.1</td>
<td>Toronto</td>
<td>McRae</td>
<td>Assault causing bodily harm</td>
<td>Y (J&amp;J)</td>
<td></td>
<td>*anti-gay [although qualified]</td>
<td>*pre-sentence report</td>
<td>6 mths each incar; 2 yrs probation; $100</td>
<td>Minor traffic altercation; “knowledge” of victim’s homosexuality.</td>
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<tr>
<td>McDonald</td>
<td>1993.01.0</td>
<td>Toronto</td>
<td>Hamilton</td>
<td>Robbery at knife point</td>
<td>Y</td>
<td></td>
<td>*crime record + prison time *violence *predatory</td>
<td></td>
<td>5 yrs incar (+ 2 yrs concurrent for use of knife); $100 (life).</td>
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</tbody>
</table>
Chapter 4 and Chapter 7:

In chapters 4 (Bill C-41, specifically the enhanced sentencing provision) and 7 (Bill C-250, the amendment to the hate propaganda statutes), I analyze the debates of the House of Commons and the Senate Committee witness testimony respectively using the theoretical methods of both critical psychoanalysis and semiotics.

Using the Parliament of Canada’s search engine “LEGISinfo,” I retrieved electronically all Hansard materials on the Commons debates on C-41, the omnibus bill that included the enhanced sentencing provision, and that referenced specifically the issues of hate crime, enhanced sentencing and sexual orientation. At that time, however, the Parliament of Canada website did not have electronic records of the minutes of the proceedings and evidence of the House of Commons Standing Committee on Justice and Legal Affairs; however, University of Toronto’s Robarts Library, in its government publications section, held a hard copy of that material which I photocopied.

LEGISinfo also provided me with electronic access to the Hansard records of the House of Commons debates on numerous bills involving amendments to the hate propaganda statutes. These included not only the successful bill, Bill C-250, but also Bills C-326, C-207, C-223, C-247, C-350, C-429, C-431, C-263, and Bill C-415. I also electronically retrieved the Hansard records of Bill C-250's Senate debates, as well as the proceedings and evidence of the House of Commons Standing Committee on Justice and Human Rights and the Standing Senate Committee on Legal and Constitutional Affairs. All of this electronic material was downloaded to my computer which allowed me both to maintain an electronic copy of these materials and to print a hard copy for my ease of
reading and coding. Having all of this as electronic data also allowed me to search words and terms, like ‘hate crime,’ ‘sexual orientation,’ ‘threat,’ ‘dangerous,’ and ‘fear,’ through my word-processing program, which I then noted on the hard copy.

Chapter 3 and Chapter 6:

I conducted semi-structured personal interviews with LGBT community activists involved in anti-violence politics and projects and police officers who had direct experience with anti-hate crime initiatives and policing practices. My questions sought out their understanding of the term hate crime, how they understood hate crime victimization, specifically that of LGBT subjects, and their experience of hate crime, including its victimization, and of anti-violence strategies and initiatives, including the policing of hate crime. In total, I conducted interviews with 17 LGBT community activists (five from Toronto and twelve from Vancouver) and 10 police officers (three from Toronto and seven from Vancouver). This yielded approximately 27 hours of recorded interviews.

The imbalance of numbers between the interviews obtained in Vancouver compared to Toronto may have to do with each city’s perception and response to anti-LGBT violence. Chronologically, Toronto seems to have experienced a ‘wave’ of anti-LGBT violence (as determined by dates on legal cases involving anti-violence, reports from the 519, and media accounts) in the 1990s, whereas Vancouver had just gone through the Webster homicide and was in its aftermath at the time of my interviews. Archival news accounts also identify the 1990s as a time of significant anti-LGBT
Established in 1975, the 519 Church Street Community Centre is a publically and privately funded neighbourhood community service centre. It services the LGBT communities as well as other local communities. The AVP, formerly the Victim Assistance Program (VAP), provides a number of anti-violence resources to LGBT individuals including an anti-homophobia telephone reporting bashline, as well as referrals to legal, medical, social and counselling services.

Vancouver’s The Centre, presently named QMUNITY, is a provincial resource centre offering community services and programs that celebrate, support and enhance the diverse cultures of queer communities.

I found my police interviewees by researching which officers, presently and formerly, were involved with the hate crime units in the two cities and which officers were or had been involved in community-policing initiatives with the LGBT communities since the mid-1990s when police services in Canada were establishing their hate crime units. Hate crime police reports yielded some of this information, as did news reports on anti-LGBT hate crimes, as well as introductions made by police officers whom I had interviewed. I contacted these officers by telephone and email in order to set up the interviews.

I found my LGBT community activist interviewees through a variety of ways. At the time of my interviews, both Toronto and Vancouver had LGBT-positive community centres with attendant victim service programs and violence reporting phonelines: Toronto’s 519 Church Street Community Centre and their AVP (Anti-Violence Program), and Vancouver’s The Centre. Early on in the initial research stages of this dissertation, I attended a few AVP meetings to get a sense of the program and their perception of anti-LGBT violence in Toronto at that time. I learnt of Vancouver’s

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Diversity Advisory Committee (DAC), a joint community-police advisory committee, by reading Xtra-West and contacted members of that committee by email and conducted interviews while in Vancouver. Other community organizations, such as the gay/lesbian media, provided interviewees, as did political figures involved in anti-hate crime initiatives at the municipal, provincial and federal levels of government. By reading local LGBT media, I got a sense of who was active in anti-LGBT hate crime and community-policing initiatives and then contacted a number of those people. Referrals also added subjects to my list of interviewees.

All interviews were recorded on a digital recorder so that they could be transferred onto my computer for archival safety and listening convenience. For expediency and facilitation, I used voice-recognition software (Dragonware) to transcribe these interviews as my typing skills leave much to be desired.

* * *

Organization of the Thesis

The remainder of this thesis is organized as follows. In chapter two, I analyze gay and mainstream news coverage of the homicides of Kenneth Zeller in 1985 and Aaron Webster in 2001. In that the analysis is primarily semiotic, I look closely at signifiers used to describe, in one case, Kenneth Zeller and his killers, and in the other, Aaron Webster’s homicide in a cruising park. In both cases, differently constituted, responsibility for the murderous violence shifts, in ever so nuanced ways, from the perpetrators to the men cruising in a public park.

In chapter three, I utilize psychoanalytic theory to read metaphorically the effects
of hate-motivated violence as traumatic affect. My interviews with LGBT activists and community members involved in anti-violence initiatives and programs yielded a recurrent trope, that of a community resilient and bound together in its fight against hate-motivated violence. Springing from Benedict Anderson’s observation that community is an imaginary and lacking sign, I tie its invocation by my interviewees to traumatic affect and examine the ways in which despite its production as a resilient and holistic entity, it is necessarily fraught with fraction, division, and antipathy.

In chapter four, I perform a close analysis of the contested terrain of competing knowledges of gay and lesbian victimhood as played out in the House of Commons debates and committee testimony of Bill C-41, the sentencing reform bill. In particular my focus is on the enhanced sentencing provision and its inclusion of the term ‘sexual orientation.’ I trace the logic of four resistant positions held by opponents to the inclusion of sexual orientation. These four positions, while distinct, inevitably attempted to weave together a coherent logic of exclusion. These positions were, in no particular order: remove s. 718.2(a)(i) completely from the bill; remove mention of all enumerated groups; remove the phrase ‘sexual orientation’ from the list; and, set definitional limits to the term ‘sexual orientation.’

In chapter five, I discuss the symbolic meanings of judicial pronouncements of penalty and examine reported cases of hate-motivated violence against LGBT individuals. My analysis centres on two distinct phases of enhanced sentencing practice: those common law judgements that considered bias motivation against LGBT in sentencing prior to the enactment of the statute and those afterwards. I argue that reported
judgements in cases of violence against sexual and gendered minorities offer valuable insights to discussions of citizenship, responsibility, sexuality and violence. Utilizing linguistic theories of the performative utterance, I argue that legal judgements are richly meaningful texts that voice not only social opprobrium and condemnation, but also, in their utterance, constitute imagined communities of law-abiding citizens and responsible social actors. This chapter examines how and the extent to which queer victims of hate-motivated violence are constituted as such.

In chapter six, I analyze the open-ended interviews with police officers and LGBT community activists who had direct experience with anti-hate crime initiatives and policing practices. From these interviews, it became clear that there was, on one hand, a narrative being produced of policing expertise, efficacy and professionalism – the official narrative of the policing of hate. Butted against this official narrative, at times even threaded within, was its abject other – the counter narrative in which failures, gaffs, gaps and inconsistencies were revealed. Within the official narrative is the figure of the good queer victim of hate crime: a product of a strict adherence to police knowledge and instruction, who overcomes a seemingly natural state of disorder, ignorance and incivility.

In chapter seven, I identify and analyze Senate Committee witness opposition to Bill C-250, the amendment to the hate propaganda statutes that sought to include ‘sexual orientation’ to the list of identifiable groups protected under the legislation. The witness opposition framed its concern, predictably, around the issue of speech censorship and the harms that would stem from such censorship. The Christian right, who formed the majority of the oppositional witnesses, framed harm as a harm to their right of religious
expression and religious speech. In addition to classic libertarian arguments against the amendment, and against the hate propaganda statutes all together, the arguments of the Christian right displayed what could be characterized as a “fantastical” apprehension of religious persecution by the state.
Chapter Two

News Stories of Homicide

News tells a story about an event or incident to its readership, its public. This chapter of the dissertation analyses the mainstream and gay media news reportage of two homicides. It is a detailed analysis, primarily semiotic, that looks closely at the use of language in these news reports. As a semiotic analysis, it rejects the popular assumption that news reporting ‘presents’ events and facts objectively. In that news reportage is understood in this dissertation as a selective, interpretive and constitutive process, my work here is to decode the ways in which the news media represented the homicides of Kenneth Zeller and Aaron Webster respectively. Of particular interest is the nomination of the signs ‘hate crime’ and ‘victimization’ by the different media and the symbolic effects that produces in the reader when reading about the killings of gay men in known cruising parks. This attention to the effects of nomination underscore the larger claim of the dissertation that there is a sustained and contested relationship to legitimate victimization for queer individuals in the constitution of hate crime.

I begin this chapter by way of a prologue that is an affective expression rather than an academic one. When first writing this chapter, I found the research process of reading story after story of anti-LGBT violence to be harrowing, taxing, deflating, and personally wounding. As noted in the theoretical methodology of the dissertation, narratives are in large part a revelation of the speaking subject. The prologue serves to express myself as a
proisoner to writing and to story-telling specifically.

*    *    *

**Prologue**

*Perhaps this chapter, even more than the others, bullies me into the world of narrative where I am forced to tell a tale of violence over and over again. I am uncomfortable in this world of beginning, middle and end, of characters evil, good, and pathetic, of orchestrated meaning and clear conclusions. But how does one talk of violence without such limitations? And in my telling of one story and then the next, only to be followed by another and another, am I not woven into these tales of violence, suffering and morality? There is something ghoulish and gruesome about this process of which I am a part. But I am bound to it – bound to narrative, bound to tales that can be spoken for a thousand and one nights – endless stories of violence. I am bound to a narrative for which there should be no pleasure in writing, no pleasure in reading – no pleasure in the text. Where there is pleasure in “news” I must distance myself. I must resist its teleological temptation in the re-telling. I must resist the erotics of violence and the seduction of meaning. I am a resistant, bullied author.*

**Writing for The Body Politic** in 1986, Andrew Lesk, Ken Popert and Ric Taylor asked, “Was [Kenneth] Zeller a victim of anti-gay violence? The facts seem to speak for themselves […] But the facts were not allowed to speak for themselves; they spoke all too eloquently of a truth that no one in the court proceedings or
in the media wanted to hear, know or understand: you can be killed just for being gay.”

Their lengthy commentary on Kenneth Zeller’s murder by five male teenagers in Toronto’s High Park in 1985 and the subsequent characterization of that violence by the media in its representation of defence experts, family and friends of the boys, and Zeller himself at the time of his murder, raises a number of key issues for this dissertation. First, how is violence against gay men, lesbians, bisexuals and transgendered people represented in print media? Is this violence condemned? Is it rationalized, minimized or dismissed? Is it understood as ‘homophobic,’ as a ‘hate crime,’ or as both? How and where is violence figured? For instance, is violence merely figured as the assault or the homicide, or is it figured as something else in addition to this immediate and material violence? That is to say, is the representation of violence against LGBT individuals also represented in the absence of its representation – for those incidents of violence for which there is no popular story, no media representation. When Lesk, Popert and Taylor question why homophobia as a motivation for hate violence was not raised by the media nor in the courtroom proceedings surrounding the killing of Kenneth Zeller, do they not index a lacuna that itself does violence to Zeller and his memory? That is, by the remarkable absence of homophobia as a motivation for the fatal violence, does that constitute another type of violence – a symbolic violence – upon Zeller and his memory? Moreover, in the popular news media construction of the event of violence, does not the characterization of that violence as precipitatory, to whatever extent, redouble the original violence in that the victim is held responsible for his or her suffering? Of interest to this

chapter, then, is the ways in which anti-LGBT violence is embedded in media representations by way of their construction of events, their characterization of social actors, and their choice and assemblage of words that produce their new stories.

The idea raised by *The Body Politic* article that “facts speak for themselves” is particularly significant to this chapter. The claim suggests that there is a one-to-one relation between the ‘thing’ and the ‘word,’ or the event and the language used to describe that event. It is a claim that authorizes the notion that language mediates the world directly, without any consideration for the practice of signification, or for the polysemy and the place of subjectivity in language. With respect to media, cultural theorists have questioned and challenged the ways in which signs and sign systems ‘present reality,’ offering instead a critique of signification. For example, Janet Woollacott remarks that “[n]ews-reporting presents itself as a selection of and impartial comment on ‘reality’ as it unfolds.”\(^{148}\) Elaborating on Roland Barthes’ and John Fiske’s respective works on popular culture and signification, Woollacott notes that cultural systems – for example, media – ‘represent,’ and in the representation of news, news subjects are represented in such a way as to mask their selective, interpretive and ideological functions. As Stuart Hall notes of news photographs, “[t]hey seek to warrant in that ever-pre-given neutral structure, which is beyond question, beyond interpretation: the ‘real’ world [...] They also guarantee and underwrite [the newspaper’s] objectivity (that is they neutralize its ideological function).”\(^{149}\) Taking this media analysis into consideration along with

\(^{148}\) Woollacott, 1982: 100.

\(^{149}\) Hall cited in Woollacott, 100.
rudimentary post-structuralist critiques of the ‘naturalness’ of language, this chapter examines the print news representation of the killings of Kenneth Zeller and Aaron Webster respectively.

My reasons methodologically for selecting only these two incidents and their print representation are well-considered. First, as a nod to Butler’s theory of reiterative speech as a derivative chain of speakers, there is a kind of extreme displeasure to reiterating violence. Further, I did not want simply to catalogue anti-LGBT violence in Canada. Having researched and read extensively on anti-LGBT incidents of violence as reported in Canadian print media, I focussed on incidents of violence that occurred in Toronto and Vancouver between the years 1985 and 2003 which fits with the parameters of this dissertation. Of these incidents, I further limited my scope by looking at violent incidents that were reported in the gay/lesbian press, the local press of the city in which the violence occurred, and *The Globe and Mail*, Canada’s national newspaper. These selective criteria resulted in my decision to look closely at the print news representation of the killings of Kenneth Zeller and Aaron Webster respectively.

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**Kenneth Zeller**

On Saturday, June 22, 1985, Kenneth Zeller was beaten to death by five teenage males in Toronto’s High Park. If there are any “facts” to be spoken of, perhaps these are

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150 See for example Janoff 2005.

151 In order to be clear, I am stating that this chapter’s project is not generalizable. It is not aimed at developing or extrapolating a generalizable understanding or knowledge of media representations of violence against sexual and gendered minorities.
them. Insofar as all words signify denotatively, as well as connotatively, I have struggled to represent this incident of violence as straightforwardly as possible in order to ground my analysis in some semblance of materiality. The rub, of course, is that materiality is always and already representational even before I have uttered or written a word. It is inescapable and I am prisoner to language. Having recognized and submitted to this paradox, my analysis of the print media’s representation of Zeller’s homicide focuses on how Zeller and the males who killed him were represented.

The first report of Zeller’s homicide was in The Toronto Star’s Wednesday paper.152 The article described Zeller as a forty year old “Metro school librarian” and resident of Melbourne Ave. Citing police, the article noted that police had “determined Kenneth Zeller was alone when he drove into [High Park] and likely met the killer or killers when he stopped at a washroom beside the parking lot.” Zeller had been “bludgeoned” and “died of severe head injuries.” His assailants were described as “the killer or killers.” And police remarked that “[a] group of four or five white males” were seen in the area at the time of the “murder.” “Robbery was probably the motive,” noted the police. Almost three weeks later, The Star under a publication ban reported that “four juveniles”153 charged with first-degree murder were still awaiting a bail decision.154 Nothing was reported of the “four hours of testimony” into the death of Zeller and the only notation about Zeller was that he was found by police “slumped behind the wheel of

153 There seems to have been an error or misprint here because five youths were charged and this is noted further down in the article.
his Audi car in a parking lot off Colborne Lodge Rd."

From November 25th to the 27th,155 The Star reported daily on the sentencing hearing of the accused.156 The Star reported that the police stated that the accused had been drinking the night of the murder and had decided to go to High Park “to rob homosexuals.” Quoting the youth, the police remarked that one had said, “Let’s go faggot-bashing” and another said they had decided to “get money from a queer.” Citing police testimony, The Star reported that “the five [...] drove to a men’s washroom in High Park and waited.” They chased Zeller who walked past them back to his car where they “punched him in the face,” “kicked in the window of the passenger door,” “continued to beat Zeller after he told them he had no money,” “kicked Zeller a number of times about the head and torso,” “slashed three of the tires on Zeller’s car with a knife and then all five fled.” In this article, the assailants are described as “boys,” “west-end teenagers,” and by their respective names. Kenneth Zeller is described once again as a “school librarian.”

The following day, The Star reported the testimony of Dr. Clive Chamberlain, a


156 The five were denied bail and held in custody at the East Metro Detention Centre until their trial. The Crown later reduced the charges of first-degree to second-degree murder. The Crown also was successful in its application to have the trial transferred from youth to adult court thereby circumventing the three year maximum sentence specified in the now defunct Young Offenders Act. Before the Ontario Supreme Court, Richard Bauer, 15, Michael Bedard, 18, Michael Burak, 16, Steven Christou, 16, and Henryk Juszczuk, 16, plead guilty to manslaughter. Once the trial was transferred to adult court the publication ban would have been nullified.
psychiatrist testifying for the defence. Quoting and paraphrasing Chamberlain, Zeller’s killers were described as “well-behaved, average students” who acted like “a gang of predators” whose behaviour resulted from a “combination of group dynamics, peer pressure, alcohol consumption” and, as noted by Chamberlain, “the subtle social permission to victimize homosexuals.” Although Chamberlain stated that one of the assailants “was sickened by what he had done,” that was challenged by the assistant crown attorney who noted that “within an hour of the killing, Michael Burak went home and ate two bacon-and-tomato sandwiches.” Of the initial encounter, it was reported that Zeller “encountered the youths as he walked down a wooden path” and as he ran back to his car one assailant “yelled out a derogatory remark.” According to The Star, upon sentencing, Mr. Justice Gregory Evans described the act as an “‘execution’ of a 40-year-old school librarian they thought was a homosexual” and as “vigilante activity which has no place in our society.” The judge was also quoted as saying that he felt “their remorse is genuine” and they had “succumbed to peer pressure.”

The Toronto Star also published two letters to the editor. The first spoke at length about “the shock” of Zeller’s parents learning that “their eldest son had been beaten to death.” It evoked the familial noting how “the victim’s two younger brothers [and their wives] had their lives torn apart” and uncles, aunts, and cousins “agonized over such a brutal death of a relative they loved.” It called up the “shock” felt by neighbours and friends and of the enduring love expressed by the “deaf children” whom he had

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taught. The second letter,\textsuperscript{158} speaking to “this pervasive spirit of intolerance that fostered the five teens to commit their act of brutality,” warned that “[i]f we don’t become more open-minded, there will be more of these vigilante attacks on homosexuals.”

Another \textit{Star} article published in January, 1986, was an interview with Peggy and Roy Zeller, Kenneth Zeller’s parents, from their home in Stouffville.\textsuperscript{159} Peggy Zeller spoke of Kenn as a boy who “craved schooling” and dreamt of an “artistic” future preferring figure skating to hockey because there was “art to it.” Described as “kindness personified,” Kenn Zeller “loved children [and] spent his entire life trying to educate them and trying to help them.” Notions of incomprehensibility were repeated in various ways throughout the article. For example, Roy and Peggy Zeller were described as “unsettled and unable to understand,” and the murder was characterized as “unbelievably brutal.” Of her need to attend the trial, Peggy Zeller said, “I wanted to see the kind of people who could do this horrible thing.” She described an incident outside the court where a stranger approached her. “Expecting words of kindness,” she said the man said, “ ‘Well, he was queer wasn’t he?’ ” “Struck and stunned” by “the dead weight of the words” spoken by the grandfather of one of the defendants, she thought, “if that’s the environment the kid was brought up in, what the heck could you expect from the child?” She complained that the courtroom testimony “held these kids up on a pedestal” and that she found it “hard to believe that this was the first time this group went out and did

\textsuperscript{158} “Murder of librarian a warning to society,” The Toronto Star, Dec. 19, 1985, p.A16

something.”

*The Globe and Mail* also published a story on the murder of Kenneth Zeller. The article begins with a short descriptive imagining of what that night must have been like for the five males who “plan[ned] a visit to High Park, to beat up a fag” and “get money from a queer.” The article moves quickly through the assault and to “the afternoon of Tuesday, Nov. 26, 1985,” the day of their sentencing where the teenagers “are weeping in the prisoner’s dock as they are handcuffed” and led from the courtroom past “school friends and members of their families shout[ing] words of encouragement” and “[t]he victim’s family and friends file out of he courtroom quietly, pain on their faces, tears in their eyes.” The article then seeks to answer the question that drives its title: “how could this have happened?” Citing and quoting a number of expert witnesses including psychiatrist Dr. Chamberlain, Dr. Hunt, a psychology professor at the University of Toronto, and psychologist Dr. Barry Cook, the author explores whether the murder was a result of character “flaws” of the “boys” or “a tragic fluke?” For example, although the author notes early in the article that “witness after witness said none of the boys had ever shown homophobic or violent tendencies,” much of the medical testimony repeated the belief that the five assailants were affected by “alcohol’s ‘disinhibiting’ effect, a subtle permission to victimize homosexuals, and group dynamics.” Dr. Chamberlain is quoted as remarking that “among some teenagers there is a tendency to put down homosexuals in order to come to terms with their own sexuality.” The medical

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testimony describing the “taunting” that the “boys” might engage in is steered away from any inference that it would be directed at “homosexuals” exclusively: “the boys would probably not be averse to taunting a couple of any sexual persuasion who indulged in public displays of affection in the park.” Testimony cited in the article of family and friends of the assailants focussed on the popularity, courteousness, politeness and athleticism of the assailants. Michael Burak, “who struck the first blow with a closed fist and sat on the victim, pinning him to the car seat,” was described by his hockey coach as “big in heart.” The article notes that Chamberlain stated that Michael “was not of a predatory nature and had no homophobic tendencies” and followed this observation in the next paragraph with “Michael called the man a ‘f...ing queer,’ kicked him twice and hit him.” The article ends with a short consideration of Kenneth Zeller – “And what of the victim?” The article describes Zeller as “a well-liked, 40-year-old bachelor” and public school librarian. It mentions that the police noted he had been at a party prior to going to the park and had “drank too much.” Zeller’s sexuality and sexual activity is raised at the very end of the article that simultaneously brings them into focus and renders them inconsequential: “‘Whether the man is a homosexual is not at issue here,’” argued the Crown attorneys; “[w]hat is the issue is that these boys perceived him to be and felt that justified attacking him.”

*The Body Politic* article, “Boys will be boys,” opens in a similar way to the *Globe* article. It begins with the lead up to the murder. The “teenage males” are described as being in a “party mood” and “looking for action.” Their suggestions of “let’s get money from a queer” and “let’s beat up a fag” were met “with a chorus of ‘yeahs.’” A marked
difference in how this article begins occurs at this point in the narration; here, the story of Kenneth Zeller begins. Described as a “40-year-old gay man,” the article details the actions of the “teacher and librarian” noting that after driving into the park and parking, “he walked towards the dark woods, a bottle of poppers in his pocket.” The article describes the late evening air as “still and inviting” and Zeller’s initial impression of Burak as “a young, attractive stranger on the path.” Immediately the encounter shifts from a scene of invitation to one of violence: “Suddenly, Michael Burak screamed at him, ‘You fucking faggot!’ and lunged at him, pushing Zeller to the ground.” The homicide is described in vivid detail. Phrases and words liked “[t]he five ran in pursuit, Bedard leading the pack,” “smashed down with his fists,” “savagely kicked Zeller’s head,” and “their savagery” reconstructed the violence of Zeller’s death.

Much of the article concentrates its focus on the defence testimony of psychological experts, teachers and coaches and on the legal aspects of the homicide. In its coverage of these events, the language of the article reveals a marked disdain and sardonic incredulity with the expert judgement offered in defence of “the five,” and to a lesser extent, with the action taken by the Crown in its move to reduce the charge of murder to manslaughter. For example, in describing general, and not specific, intent as a legal requirement for manslaughter, the article states, “[t]he Crown seemed content to accept the contention that the five never intended to kill Zeller.” Seven short paragraphs later, the article notes, “Kenn Zeller died of a savage beating, the expression of the homophobia of five teenage boys. But the courts and the media have delivered a different verdict: he died because of peer pressure, male-bonding, and a case of beer.” Defence
witnesses are described as “a parade [...] all singing the praises of the five youths.” The praises included quoting such phrases as “courteous, fun-loving and helpful.” The issue of “intolerance towards homosexuals” was raised at a number of points in the defence testimony and the article draws attention to those moments which reinforce the authors’ frustrated disbelief with what it characterised as “exercises in the denial of homophobia” and “a truth no one in the court proceedings or media wanted to hear, know or understand.” The article notes:

> When cross-examined by the crown as to the significance of the youth’s use of the phrase ‘You fucking faggot,’ Chamberlain maintained that it was used only to please the group. ‘Its usage,’ he said, ‘did not indicate a hostility towards homosexuals.’

> “Coupled with the desire not to see or admit that Zeller’s killing was an instance of extreme prejudice against gays,” wrote Lesk, Popert and Taylor, “was the strange disappearance of Zeller himself.” Strongly condemning the article by Clark in *The Globe and Mail*, they close their piece with the observation that Zeller was figuratively erased from the public’s attention. Questioning why Clark’s article “contained only a few lines about Zeller at the end,” they devote the last eight paragraphs to Zeller eulogizing his work with children and the National Ballet Company, quoting the powerful memories of his loved ones who remembered him as “kind, loving and gentle,” and openly constituting Zeller as a “gay” man: “And that brings us to the final point about Kenn Zeller. He was gay. He was one of us.”

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161 In 1999, Robin Fulford published “Faggot! Steel Kiss,” a play whose first production was in 1987 at the Poor Alex Theatre, Toronto. It had two subsequent productions in 1991 and 1999 at the Buddies in Bad Times Theatre, Toronto. The play “is loosely based upon the murder
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Figuring Violence

One general observation that can be made about the various print media representations of Kenneth Zeller, his killers and the homicidal act itself is that each represents these figures and events differently. Stuart Hall in “The Rediscovery of Ideology” remarks that media is one ideological arena in which the struggle over meaning reveals the sign’s “multi-accentuality” so that “the same event could be signified in different ways.” And so we have several different news stories detailing the events of the encounter of Zeller and his assailants, the assault, and the sentencing hearing. The event of violence, for example, has been described as a “moment of insanity,” an “execution,” and a “vigilante attack.” Not only events, but terms themselves are a site of contestation. Note the tension over signification in the following pairs of terms: “boys” and “killers,” “homosexuals” and “gays,” “a gentle and kind librarian” and a “fucking faggot.” Moreover, Hall observes that the struggle over meaning may take “the form of a different accenting of the same term: e.g. the process by means of which the derogatory colour ‘black’ became the enhanced value ‘Black’ (as in ‘Black is Beautiful’).” We are then presented with the signs “boys,” “boys,” and “boys.” Denotatively the ‘same,’ these signs have the potential to signify differently according to their inflexion and their

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162 Hall, 1982: 77.

163 Italics are in the original: Hall, 1982: 78.
“connotative field of reference.”^164 The article title, “Boys will be boys,” mocks the aphorism and draws bitter reflection to its normative meaning, being a kind of pastoral resignation to a naturalized, unruly young male behaviour. The aphorism in the context of *The Body Politic*’s critique of homophobia and homophobic violence radically alters that seemingly benevolent phrase and redesignifies it as a warning to its readers.

A more acute observation to be made is one that comprehends the power of naming. The issue of naming is a central one, not only to an analysis of hate-motivated violence more generally,^165 but to the analysis of media representations of violence against sexual and gendered minorities. To ground this observation, I will study two sites of naming. The first site of naming is one where the sexological identity of the ‘homosexual’ and the sexual/political identity of ‘gay’ clash. The second site offers three different versions of the phrase called out to Zeller by Burak seconds before Burak attacked him. Insofar as hate violence is most often coupled with the hateful epithet – the communication that figuratively brands the victim –, how is it that this communication that names can be repeated in the media three different ways? And further, what is to be made of these differences?

In her philosophical treatment of performativity and language, Judith Butler asks, “[w]hat does it mean for a word not only to name, but also in some sense to perform and,

^164 Hall, 1982: 79.

^165 For a detailed analysis of the power of words to injure, as when hurled as an epithet or as a verbal accompaniment to an assault, see Matsuda et al. (eds.). (1993). *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*, and Butler (1997). *Excitable Speech: A Politics of the Performative*. 
in particular, to perform what it names?" Butler argues that naming has the power to constitute identity. Part of this power, she theorizes, derives from a history of speakers. That is, insofar as naming has the power to constitute the very thing it names, the force of that term does not originate with the speaker, the one who mistakenly believes him/herself to be the originary author, but rather the force is derivative. Butler posits, “[i]s a community and history of such speakers not magically invoked at the moment in which that utterance is spoken?” Thus, what might it mean to name Zeller a “homosexual”?

The Globe and Mail article and those in The Star use the word “homosexual” exclusively when describing Zeller’s behaviour in the park that night or when classifying his sexual orientation. Significantly, The Body Politic article never refers to Zeller as a “homosexual” naming him “gay” instead, a term of sexual liberation and identity politics. To name Zeller “homosexual” in this context, I argue, confers a kind of violence upon him, the violence of sexological history. The “homosexual” became a “personnage” to be studied, classified, theorized, and pathologized in the late-nineteenth century by

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166 Butler, 1997: 43.

167 Butler, 1997: 49.

168 Gail Mason is her discussion of violence as power makes this cogent statement: “violence is both a corporeal injury which inflicts direct harm upon individual bodies, and a discursive statement that infiltrates the processes of subjectification through which these bodies are constituted” (2002: 129-130).
sexologists. Although not all sexologists were condemning of “homosexuals,” various theories of inversion nevertheless reinforced the notion of pathology and morbidity when theorizing and medicalizing “homosexuality.” To invoke the “homosexual” calls forth the history and discourse of sexology and subjects the one named, in this case Zeller, to its power of history, clinical expertise, scientific authority, and pathologization.

The second site of naming represented in the press coverage is those words uttered by Burak seconds before the assault. Each newspaper offers a different version of what was said at that critical moment: The Toronto Star in its representation of this utterance

169 This observation is cited as Foucauldian; see Foucault, 1990 [1976]: 43, and Weeks, 1985.

170 In 1869, sexologist Carl Westphal first published the term *konträre Sexualempfindung*, “contrary sexual feeling,” to classify the psychosexual expression of a young woman who, “from her earliest years, liked to dress as a boy, cared more for boys’ games than girls’, and found herself attracted only to females” (Bullough, 7). However, in the medico-sexological writings of Krafft-Ebing, Albert Moll, P. J. Möbius, Havelock Ellis, Jean Martin Charcot, Valentin Magnan, and Magnus Hirschfeld, inversion could describe a plethora of psychosexual behaviours, identifications, proclivities, inclinations and orientations including those of transvestism and transsexuality. A loose classification within a complex taxonomy of sexual perversions, inversion denoted, as gay historian, Jonathan Katz, notes, “feelings, a temperament, or beings turned upside down or inside out, improperly reversed” (Gay Lesbian Almanac 147). Essentially predicated upon a binary model of reproductive sexuality, inversion [*konträre Sexualempfindung*] was understood as a turning of the genital, that is to say, procreative “instinct” away from its “natural” orientation toward a non-reproductive, degenerative, and morbid end.

The notion of homosexuality as a type of morbidity will rear its phobic head again in the mid-1960 psychoanalytic writings of ego psychologists Irving Bieber and Charles Socarides in which the complicated psychological matrix of gay desire, societal shame, isolation and depression would be their evidentiary testimony to the morbid and pathological effects of such a, so-called, anally stagnant and fixated desire. In the wake of the Conservative and Christian Right’s political and sexual backlash around the AIDS epidemic, contemporary queer theorists Simon Watney and Leo Bersani have chosen respectively to theorize the notions of morbidity and gay sex by evoking the ideologically telling question, “Is the rectum a grave?” In this sense, the satiric notion of morbid ends, sexologically situated in the practice of gay male sex, remains a current representation to the force of late nineteenth-century sexological underpinnings of ‘inversion’ (see Lunny, 1997).
writes that the assailant “yelled out a derogatory remark;”¹⁷¹ Linda Clark of *The Globe* writes, “Michael called the man a ‘f...ing faggot’;” and *The Body Politic* writes, “[s]uddenly, Michael Burak screamed at him, ‘You fucking faggot!’.” Whatever the motive in not describing the “derogatory remark,” whether that be a refusal to participate in the performance of hate and injury or a repudiation of a highly sexualized identity, the effect of the phrase written by *The Star* negates the power of that communication, and in doing so, never represents the sense of imminent violence constituted by the phrase, ‘You fucking faggot!’ Moreover, to ‘yell out’ something is to utter a loud cry, scream or shout, as in ‘he yelled out to his neighbour, “your BBQ smells great!”.’ It does not carry the same power to signify violence as does the phrase, ‘Burak screamed at him,’ which conveys a certain sense of emotional loss of control or of uncontrolled anger.

Clark’s representation of the utterance, “f...ing faggot,” is, I believe, both similar to and markedly different from that of *The Body Politic’s*, “You fucking faggot!” First, in place of a ‘derogatory word,’ the name ‘faggot’ is written in both articles. Its presence has the power to invoke a subject position “linked to accusation, pathologization, insult.”¹⁷² But there the similarity between the articles ends. *The Body Politic’s*

¹⁷¹ “Youths under ‘peer pressure’ in librarian’s slaying 5 teens called a ‘gang of predators,’” *The Toronto Star*, Nov. 26, 1985, p.A2

¹⁷² Butler, 1993: 226. Butler actually remarks that it is the term ‘queer,’ and not ‘faggot,’ that as a repeated invocation “has become linked to accusation, pathologization, insult” (226). Butler theorizes that the term ‘queer’ can “overcome its constitutive history of injury” (223) in its re-inscription and performance by ‘queer’ and other disruptive speakers. Thus, for example, the positively asserted acronym, LGBTQ, or the identity ‘queer,’ has the power to reconstitute ‘queer’ as an affirmative identity no longer subject to the monopoly of injurious interpellation uttered by the homophobe. I wonder to what extent, though, ‘faggot’ can be reconstituted in such a way? Is ‘faggot,’ like ‘nigger,’ a term “capable of only reinscribing pain” (222)?
representation of the exclamatory utterance – “You fucking faggot!” – clearly hails a subject, and in doing so, reduces that newly constituted subject to a base, shameful, degraded subject whose sexuality is marked by ‘accusation, pathologization [and] insult.’ The violence is given full force; it is acutely figured in the language of the injurious hail. This reproduction of violence insofar as it reconstitutes that injurious hail and its attendant injured subject can be clearly understood as a scene of violence. However, it is possible also to recognize this reproduction of violence as a kind of un-doing of violence, for in that depiction of Kenneth Zeller’s death as homophobic, *The Body Politic* does justice, in a sense, to the way in which he died and lived his life as a gay man.

In contrast, the ellipsis – “f...ing faggot” – is written as a trace or palimpsest of the injurious constitution. This may have two effects, each with its own constitution of violence. Read in one way, it may have the power to negate the full injury of the interpellation and thus diminish the representation of the harm experienced by Zeller at that terrifying and critical instant. I argue nevertheless that this, in effect, reproduces a certain violence upon Zeller in the imagining of a violence elliptically rendered. That is, to lessen the impact of the representation of Zeller’s violent death reinscribes another kind of violence, a violence that is figured by its negation or absence. But the ellipsis is not wholly about absence. It is absence made present. Insofar as an ellipsis is used most commonly in a context that, no matter this absence, is totally comprehensible, the reader fully understands what is missing and reads the ellipsis as if the letters were not absent. The phrase, “f...ing faggot,” elliptically rendered or not, nevertheless reproduces the comprehensibility of such a commonplace and quotidian phrase, a phrase which when
uttered constitutes its ‘fucking faggot’ subject. I suggest, however, that this absence-made-present by the commonplace understanding of this elliptical phrase is not the same as *The Body Politic*’s use of the phrase, “You fucking faggot!” The difference is subtle but meaningful. *The Body Politic*’s use of the phrase, “You fucking faggot!” is immediate in its reproduction of violence and in doing so honours Zeller in its recognition of his horror upon hearing these words and knowing the violence that would follow. *The Globe*’s elliptically written hail of injury does erase, or at least delays, the violence of the injurious constitution, and by doing so, reproduces another kind of violence upon Zeller, a violence that attempts to render itself absent.

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Aaron Webster

In the early morning hours of Saturday, November 17, 2001, Aaron Webster was beaten to death in Vancouver’s Stanley Park by a group of young men. Despite differences of time and place, the circumstances surrounding this homicide are notably similar to that of the beating death of Kenneth Zeller in Toronto’s High Park sixteen years earlier. Both men were killed by a group of young men; both were attacked in a park late at night. In passing, it is worthy to note that the eeriness of this similarity is made even more disturbing by Stephen Tomsen’s research of what he calls “anti-homosexual killings.” In his Australian study of seventy-four killings of gay men from a twenty-year period, Tomsen recognized two general scenarios of killing. One scenario can be

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characterised as “a fatal attack carried out in public space on a victim who is homosexual or perceived to be, and usually a complete stranger to the assailants who attack in groups.” While it would be worthy to explore these similarities in the deaths of Zeller and Webster, my focus in this chapter is the representation of Webster’s homicide in three newspapers, The Vancouver Sun, Xtra West and The Globe and Mail. I am particularly interested in the ways in which violence, victimization and responsibility get constituted in the press coverage of the homicide and the events surrounding it. In terms of space given to the homicide, the coverage of these newspapers is unequal. For example, in the year of Webster’s homicide, The Vancouver Sun devoted eight news articles, two editorials and several letters to the Webster homicide, whereas The Globe and Mail ran three news stories. The highest degree of coverage was given by Xtra West which covered the story until its legal resolution in 2005. In order to produce a close reading, and in part because of this unequal newspaper coverage, I describe and analyze the first reportings from each of these papers of the Webster killing.

Two days after the killing of Aaron Webster, the front page of Monday’s Vancouver Sun final edition read, “Police on park murder: ‘It’s a hate crime’/ Gay victim found naked and beaten in Stanley Park.” The article begins with an eye-witness account of the discovery of Webster. Tim Chisholm, who found Webster, is quoted as

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175 In the last successful prosecution of four men charged in Webster’s death, Ryan Cran was found guilty of manslaughter and sentenced to six years imprisonment; see R. v. Cran (2005 BCSC 171).

saying that he saw a “a bloodied, naked body lying in the parking lot” illuminated by his van’s headlights. The description of the figure is brought more to light when Chisholm adds that he saw a man “lying unconscious on the pavement, naked except for his hiking boots – his arm covering his face, as if he had been protecting himself.” This is followed by a re-enactment of the 911 emergency call. Written as a kind of back and forth one-sentence dialogue, the account of the 911 call reaches a pitch when the operator asks him to turn the body over in order to check for a pulse: “As he reached for a pulse, Chisholm got his first glimpse of the victim’s face – and cried out in shock./ ‘What is it?’ the operator asked./ ‘This is my best friend,’ Chisholm said.” The recounting of the discovery of Webster is followed by Chisholm remarking on Webster’s movements earlier that night. Quoting Chisholm, the article notes that Webster had “stopped by the Dufferin Hotel,” and had turned down an invitation by Chisholm to “look at the stars that evening” saying that he was “busy and had to get a good night’s sleep.”

Quoting “friends of Webster” including Chisholm, the article reports that Webster was a “caring individual who had been through numerous personal tragedies” but was “‘getting his life together’” and “very dedicated to self-improvement.” It was noted that Webster had “lost two long-term partners to AIDS” as well as a “beloved collie” to old age. He was described as being “estranged” from his family and a neighbour who attended the “march” that Sunday claimed she was “the closest thing to a mother” that he had. Described as being “depressed” and subject to “odd mood swings,” these “friends” of Webster were also quoted as saying that he was “a spiritual person,” a “calm mediator,” and someone with a “great sense of humour.” Chisholm remarked that he
knew Webster would “sometimes go to Stanley Park at night to meet other men for sex.”

Noting that police “have few leads,” the article describes the investigation as still being “piece[d] together,” but remarks that, according to police, the homicide “appears to have been an anti-gay hate crime.” Specifically, the article quotes three different police representatives: Vancouver Police spokesman Detective Scott Driemel, Inspector Dave Jones who attended the Sunday “march,” and Corporal Mike Labossiere of the “RCMP’s Hate Crime Unit.” Driemel is quoted as stating that the police “do not know what motivated Webster’s killers,” but the “nature of the attack ‘has the earmarks of a hate crime’.” Immediately after this quotation, the article follows it with a claim by Jones who “was even less reserved, calling the murder ‘a hate crime, pure and simple’.” Labossiere is cited as saying that “if Webster was murdered because of his sexual orientation, it would be the first hate-motivated murder of a gay man in B.C. history.”

The Vancouver Sun ran a second article that day about the “rally” of gays, lesbians and “heterosexual people” who came together “to show support for a community that feels under siege.” After positioning the rally as a response to Webster’s death, it noted that “Stanley Park [was] known in the gay community as a place to cruise for casual sex.” The article then focussed its attention on the public cries for a change to the public school curriculum quoting activist, Jim Deva, who stated that “youth who perpetrate crimes against gays initially manifested their homophobia in the school corridors.” The article concludes by noting that the solemn and angry mood of the crowd was “uplifted” at the

end. Remark ing that “the gay community does things a little differently,” the article stated that a moment of silence turned into a moment of “clapping and cheering for Webster.”

*The Globe and Mail* published two articles about the Webster homicide on Monday, November 19th. The one that I first examine concentrated on the police investigation. The first sentence of the article reads: “A candle flickered in the rain Monday at a parking lot memorial to a man police believed was the victim of a hate crime.” References to the police’s “belief” that the attack was hate-motivated are worded with reservation: “Police aren’t sure why Mr. Webster was targeted but believe it may have been a gay-bashing.” Detective Scott Driemel is quoted as saying that the homicide had “all the earmarks of a type of a sexually oriented attack” but that “the police haven’t ruled anything out.” Describing the police’s quandary, Driemel states that the police have “no idea whether it was a premeditated event [...] or whether it was sparked by some sort of an encounter.” Noting that several witnesses had come forward, “two of whom saw the assault,” the police make an appeal to the suspects to “turn themselves in.” Noting that witnesses claimed some suspects were active in the assault and others were not, police issue a warning to those involved stating that “[t]he longer they take to come forward, of course, lessens the likelihood of them not being included as a party to the offence of murder.” The police then offer a description of the main assailant, “who they believe was armed with a baseball bat or pool cue”: “white and in his early 20s [...]”

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wearing dark clothing and had a baseball hat on backwards.”

The article notes that the “parking lot memorial” formed by “[a] circle of flowers, about two dozen burned-out candles inside, adorns the spot” where Webster was found by “one of his best friends.” The article identifies this locale as “an area frequented by gay men” and as “an area where gay men cruise for sex.” This blunt observation is immediately followed by a description of Webster as he was found: “Mr. Webster was wearing only his hiking boots and socks. His clothes were in his vehicle nearby.” Warning the gay community “to be cautious,” the article quotes Det. Driemel as saying that “[p]eople who go to the park create a perfect circumstance to become victims of crime.” Responding to the police’s observation, Donna Wilson, executive director of the Gay and Lesbian Community Centre, is quoted as remarking that “‘harassment and bashing [are experienced] not just in areas where people would frequent for casual sexual encounters’.”

The second The Globe and Mail article\(^\text{179}\) published on November 19\(^\text{th}\) reported that Vancouver’s gay community “roared loudly in anger [...] over the bloody slaying” of Webster. Describing the emotional impact of the homicide on the gay community, Matas wrote metaphorically that the “news of the killing sent shivers down Davie Street” to which he then added a brief description of Davie Street for clarity – “the unofficial main street of the city’s well-established gay community.” Insofar as the gay community’s collective physical response was described as a “march[...] to a memorial service” of

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2,000 people, the community’s emotional response mirrors, that is, reverses the physical response. Matas wrote that the people’s “fear and mourning turned to anger.”

Participants interviewed described their emotional response as being “outraged” and “angry.” Tim Chisholm is quoted as stating that the discovery of Webster when he lifted Webster’s “arm off [his] face” “blew [him] away.”

The article noted that Webster was found “at the entrance to a well-known gay stroll in Stanley Park.” Insofar as Webster’s activity preceding the attack is never described in the article, the article locates Webster “next to his car in a parking lot across from the street from a trail that has been used for decades by homosexuals looking for anonymous sex in the bushes.” This sentence is immediately followed by “[p]olice said he was naked, except for his boots.”

The homicide of Webster is described in a variety of ways including as “the bloody slaying,” “this type of violence,” and by Det. Driemel as having “the earmarks of a crime motivated by sexual orientation.” Without making explicit reference to any authority, the author explained that “[t]he slaying comes at a time when tensions between homosexuals and the wider community appeared to have lessened after a rash of gay-bashing incidents in the early 1990s.” Citing nameless sources, the article remarked that such “incidents in recent years have been less frequent and less violent.”

Insofar as Xtra West is a biweekly, its first article was published on November 26th. Unlike the articles of the Vancouver Sun and The Globe and Mail, perhaps in

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part because of the more advanced date, Perelle’s article focussed on the community response to the killing. Naming it a “murder” from the onset, the story described the atmosphere and politics of protest expressed by Vancouver’s gay and lesbian community. A highly descriptive article, it moved from describing the “solemn crowd of [...] mourners” to briefly noting when and how Webster died – “in the arms of his friend” – to giving voice to community activists expressing outrage at the killing. Quoting activists directly, the article described their grief and anger: “Yesterday morning,” proclaimed Jim Deva, “when I heard that a gay man had been murdered in the park it was like a knife went into my gut and turned and turned [...] We’ve lived in a state of terrorism [...] and we won’t take it any more.” Focussing on the police, Deva stated, “I don’t want to hear them tell us to stay out of the parks. I want them to tell us how they’re going to protect us when we go into the parks.” The article notes that after each of Deva’s comments to the crowd, the “applause got louder.” Another activist, noted the article, identified the killing as a hate crime: “A hate crime has been committed here.” The article closes with the affirmation by Inspector Dave Jones that the police will “find these people [the suspects] and bring them to justice” and that the killing was “a hate crime, pure and simple.”

Ambiguous Victimization

As in the newsprint depictions of the Zeller homicide and trial, the mainstream and gay/lesbian print depictions of the Webster homicide differ from one another. Here, though, the difference is not as stark whereby the gay reportage proffers a very different understanding of the homicide from the mainstream newspapers. One could say that the
coverage of the *Vancouver Sun, The Globe and Mail*, and *Xtra West* were relatively similar in that all, at some point through their citation of police officials or LGBT activists, represented the killing as a possible hate crime against sexual orientation. Such a depiction, one might say, connotes a shift in the institutionalized thinking about violence against gay men. That is to say, through the labelling of the violence as a potential ‘hate crime,’ the newspapers clearly evoke a discourse of institutionalized rights movements and, by way of the hate crime designation, assign a status to Webster of an innocent victim deserving of social concern and assistance.\(^\text{181}\) One could also argue that the receptivity of the mainstream newspapers in their reference to cruising signals an openness, perhaps even a tolerated understanding, to alternative sexual practices.

On the other hand, one might read all of this differently. Another reading might suggest that the two mainstream newspapers represented the homicide in such a way as to create doubt about whether the crimes could be understood as a hate crime. By shifting the responsibility of violence from the perpetrators to the victim and by drawing the attention of the reader to the ambiguous police position regarding the homicide as a hate crime, the mainstream newspapers introduced incertitude in their readers as to the status of the crime and its victim.

The *Vancouver Sun*’s headline and subhead, “Police on park murder: ‘It’s a hate crime’/ Gay victim found naked and beaten in Stanley Park,” function as an exemplar of this production of incertitude. On the one hand, the articles in their reference to police authority cite the homicide as both a “murder” and a “hate crime.” The nomination of

\(^{181}\) Jenness and Broad 1997; and Jenness and Grattet 2001.
“murder” underscores the police’s assumption as to the intent of the perpetrators: deliberate, intentional, malicious. Further labelling the murder as a “hate crime” positions the perpetrators’ as acting out of bias, prejudice and hatred. Their violent motivation is brought to light and Webster, at this point, is represented as a random-targeted\textsuperscript{182} victim whose identity – understood by the perpetrators as deviant and socially illegitimate –, and not actions, constituted him in their minds as a legitimate target of violence. Further, the nomination of ‘hate crime’ counters this (il)logic of a victim deserving of violence by according social legitimacy to the victim. Under the designation of hate crime, the victim’s identity is now socially constituted as legitimate and deserving of socio-legal protections. Despite this production of legitimacy, this work of the hate crime nomination butts up against the paper’s first description of Webster: “gay victim found naked and beaten.”

Webster’s nakedness is at the heart of the underlying production of incertitude. This first description of Webster’s body – “naked and beaten” – draws the reader’s attention to the relationship between nakedness and being beaten. From this, questions arise. Was Webster stripped naked, then beaten? Was the stripping naked a part of a humiliating punishment? What exactly is the relationship between Webster’s state of undress and being beaten to death? The question is never answered directly by the article. Instead, the reader is further inscribed into the mystery of the body. The term “naked” is

\textsuperscript{182} Random in the sense that the perpetrators could have attacked any lone man on that trail and targeted in that the perpetrators, armed with golf clubs and baseball bats, deliberately sought out a victim in a well-known gay cruising area, something that one of the accused admitted to police during the investigation.
raised in two other places within the article. The first of these – the “bloodied, naked body” – implicitly ties Webster’s nakedness to the violence that he has suffered. The final reference – “naked except for his hiking boots” – contributes to the mystery by adding the seemingly out of place reference to Webster’s hiking boots. The picture left in the reader’s mind is somewhat bizarre and the reason for Webster’s nakedness is left unanswered.

The mystery of Webster’s state of undress and its relationship to his killing are followed by the article’s characterization of Webster’s personality. The reader learns that Webster suffered from depression and “odd mood swings.” She also learns that Webster was a man who suffered personal loss and tragedy and was attempting to get “his life together.” His personal hardships included being estranged from his family to the point whereby a neighbour described herself as “the closest thing to a mother” for Webster. His virtues are listed as his spiritualism, his calm mediation and his sense of humour. These strengths and struggles of personality are summarized at the end of the paragraph in the revelation by his friend, Chisholm, that Webster would “sometimes go to Stanley Park at night to meet other men for sex.” The mention of his precarious emotional state, his lack of close familial relationships, and his casual sex behaviour harken back to the victim type of classic victimology. Insofar as the readings of Hans Von Hentig, Beniamin Mendelsohn, and Menachem Amir\textsuperscript{183} respectively on the vulnerable and precipitatory victim probably would not resonate for most readers, the idea that some people create their own luck or misfortune, I suggest, is a product of the way in which the story is

written.

By taking into account The Globe and Mail article, titled “Two witness attack on gay man,” the notion of victim precipitation is further underscored. This, in turn, undercuts the status accorded to Webster as a victim of a hate crime. At the heart of the article is the resounding notion that police are equivocal about the motivation about the attack: “police aren’t sure why Mr. Webster was targeted but believe it may have been a gay-bashing.” With such equivocating phrases and words such as “aren’t sure why,” “believe” and “may have been,” the status of hate crime starts to deteriorate. Further, the police warning to the gay community to “be cautious” shifts the weight of responsibility of the victimization upon the targeted population. The notion of victim precipitation is particularly facilitated by what is perceived as Webster’s risky behaviour, as exemplified by the police’s statement that “people who go to the park create a perfect circumstance to become victims of crime.” Against these statements made by police, the majority of which were made by the official spokesperson for the Vancouver Police Department, is the lone and unequivocal voice of Inspector Dave Jones who is reported in the mainstream papers as repeatedly saying that the killing was “a hate crime, pure and simple.”

Simplicity and lack of equivocation are two key elements that define the Xtra West article. Throughout the article, the killing of Webster is defined as a “murder” and is nominated through the voice of activism as a “hate crime.” Insofar as responsibility for the violence is squarely directed at the suspects, it is also more broadly understood. This is acutely expressed by Jim Deva when he remarked that the Vancouver gay community
has “lived in a state of terrorism.” This comment is particularly insightful in that the terror of hate is not only to be understood as a general frightening, violent and oppressive atmosphere under which gays and lesbians live, but may also be read as commentary on the political reproduction of terror implicit in government policies that oppress and marginalize the LGBT communities. Deva, a metonymic voice of the community, represents, by way of his visceral expression of empathy – “when I heard that a gay man had been murdered in the park it was like a knife went into my gut and turned and turned” – the paradigmatic victim of homophobic violence. That is to say, his empathetic “gut” reaction to Webster’s death reproduces himself as victim. This powerful statement is followed by his rejection of police warnings to stay out of the parks. In a voice of activist citizenship, he admonishes such directives and calls for state protection when cruising. Unlike the mainstream paper’s first reportings of Webster’s death, that of Xtra West does not equivocate on the issue of locating the responsibility of homophobic violence, the killing of Webster in particular, on a state sanctioned ideology of homophobia, in this case, manifested through the violent actions of Webster’s killers. In naming the crime a “hate crime,” Xtra West clearly locates the responsibility of victimization on the perpetrators and positions Webster as a legitimate citizen deserving of state protection and social empathy.

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Conclusion

Within Canadian hate crime scholarship, there has been little attention to media representations of hate-motivated violence. Other than this chapter, to date there has been
Steven Bittle’s policy study of newspaper coverage of the Miloszewski case\textsuperscript{184} and Evelyn Kallen’s article on hate propaganda and the effect that publicity of the Zundel and \textit{Keegstra} trials had on the respondents’ attitudes towards anti-Semitic hate propaganda.\textsuperscript{185}

My semiotic study of the news reportage of the Zeller and Webster homicides contributes to this aspect of Canadian hate crime scholarship by demonstrating that “facts” do not “speak for themselves.” Despite the absence of any overt depictions of Zeller and Webster respectively as illegitimate victims of anti-LGBT hate-motivated violence, the seemingly objective news reporting of mainstream newspapers nevertheless position gay victims of violence, in this case specifically gay men who cruise, as undeserving of social empathy. In the case of Zeller, mainstream news reportage played down the presence of homophobia in the homicidal motivation and repositioned social sympathy towards the “boys” convicted of Zeller murder. In the case of Webster, despite the prominent position of the nomination of his homicide as a ‘hate crime,’ the mainstream news reportage introduces equivocation with respect to Webster’s status as an innocent victim of homophobic rage. By shifting the responsibility of violence from the perpetrators to the victim and by drawing the attention of the reader to the ambiguous police position regarding the homicide as a hate crime, the mainstream newspapers introduced

\textsuperscript{184} Bittle 2001. This manslaughter case in which five men pled guilty to the killing of a Sikh caretaker, Nirmal Singh Gill, was “precedent setting in that it marked the first major case before the courts in which the judge was asked to consider the aggravating sentencing circumstance” (1.3) for an offence motivated by racial hatred. Bittle argues that the codification of the enhanced sentencing provision increased the media’s representation of the “symbolic message of the sentence” (v). Bittle’s analytic evidence of the media’s representation, I note, is weak and is based upon the number of times the media cites the provision only.

\textsuperscript{185} Kallen 1991. Kallen found that almost half of her respondents “expressed the belief that trials increased anti-Semitism [and that] the trails did not increase tolerance for Jews” (58).
incertitude in their readers as to the ‘legitimate’ status of Webster as a true victim – that is, a victim deserving of social empathy – of hate crime.
Chapter Three

Narratives of Trauma and Community

This chapter analyzes the interviews of LGBT community activists involved in anti-violence politics and projects. Initially, these semi-structured interviews were structured by and attempted to elicit epistemological considerations of the interviewees knowledge of hate crime. These considerations were displaced by the striking presence of a story of retaliatory, communal gay violence against a gay-basher: the Barn story. The persistent and troubling effect that this fantastic story had on me made me reconsider what exactly I was getting from these interviews. I looked more closely at the interviewees’ narratives of hate crime and their relationship to trauma. In effect, I found that each interview had within it stories that similarly evoked the presence of ‘community,’ constituted in traumatic response to anti-queer violence; that is to say, these interviews produced a unique connection between hate crime, trauma and fantasies of (communal) identity. The Barn story’s fantastical elements, combined with the recurrent presence of the evocation of community as a response to anti-LGBT violence in my interviewees’ discussion of hate crime, compelled me to analyze these interviews psychoanalytically as traumatic responses to anti-LGBT violence. To be clear, I am not analyzing a community response to trauma, but rather am analyzing various individual stories that evoke the same curious response to trauma, that being the evocation of the

\[186\] Shoshana Felman in her study of trauma and twentieth-century trials notes that “trauma can be collective as well as individual and that traumatized communities are something distinct from assemblies of traumatized persons” (2002: 171 fn. 1).
signifier ‘community.’ Although there are well-established treatises that apply the
psychoanalytic method to a study of the social as subject – Freud’s *Totem and Taboo* and
*Civilization and Its Discontents* for instance – I acknowledge the limitations of applying
the psychoanalytic method to the social as subject. Further, the notion of a collective
psyche is not raised here. Rather, my analysis contains itself to individual stories of hate
crime and their relationship to trauma and the signifier ‘community.’ The appearance of
a social collectivity as it is evoked in these narratives – through the sign ‘community’ – is revealed as a fantasy, as a defense mechanism that is a productive response to trauma.

It is important here to recognize that my analysis is not clinical; rather it is
metaphorical. I am suggesting that, in narratives of anti-LGBT violence, trauma is
discursively manifest and symbolically revealed in the recurrent presence of the signifier
‘community.’ To what extent my interviewees have been clinically traumatized by their
professional, volunteer and personal experiences with anti-LGBT violence has not been
empirically measured; this is not the focus of my analysis. Nor is my analysis
generalizable. I would not expect to find that all queer people invoke the signifier of
‘community’ when talking about anti-LGBT hate crime. The LGBT individuals whom I
interviewed had direct experience with anti-LGBT hate crime initiatives in a professional
and/or volunteer capacity, thus their relationship to anti-LGBT hate crime indexes a
social and political commitment to ending this violence.

Critically, the psychoanalytic analysis of these narratives as signs of trauma
allowed me to come at larger questions that inform this dissertation. For instance, the
recognition that ‘community’ was, in a sense, a traumatic symptom, allowed me to
interrogate more fully this particular narrative of political and psychic remedial response to anti-LGBT violence and to reveal its contested nature, as Benedict Anderson argued, as dually holistic and necessarily lacking – an imaginary identity, in this case produced by a socially experienced trauma – the hate crime.

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The traumatic effects of hate crime have been well documented. Jack Levin and Jack McDevitt, collectively and separately, have produced a substantial body of work on the effects of hate crime victimization noting that the psychological impact, in the form of its sequelae, is more profound for victims of hate-motivated violence than for those of non-targeted random violence. Commonly termed “disproportionate,” the symptoms of post-traumatic stress following a hate-motivated assault, according to these psychological studies, including that of Herek and Gillis on LGB victims of hate-motivated violence, are more profound, more intensively experienced by and have longer traumatic impact on its victims. Garafolo and Martin’s 1991 study characterized the harm, in part, as an attack upon the identity of the victim, at both an individual and social level. Insofar as they argue that hate crimes are not random in their targetization, they note that perpetrators target victims based upon assumed identity markers, such as religious clothing, thus making the attack both personal and social. That is, insofar as the attack is upon an individual directly, it is also

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187 Levin and McDevitt 1993; Roberts 1995; Levin 1999; McDevitt et al. 2001; Dauvergne et al. 2006; and Beauchamp 2004.

188 Herek et al. 1999.

189 Garafolo and Martin 1991.
a symbolic attack against the community to which the perpetrator believes the victim belongs.\textsuperscript{190} Critical race scholars have long argued that hate speech, not only hate motivated assault, produces material and concrete harm at the level of identity. Identifying these harms as a kind of “spirit murder,”\textsuperscript{191} Mari Matsuda has pointedly named the profundity of this ontological trauma.

From this cursory compilation, I make this simple observation, hate crime produces a kind of trauma. Its trauma is both experienced at the level of immediate injury or harm and then psychologically as an after-effect often taking the form of post-traumatic stress. It is an attack upon identity; it is a blow to the self. Its effects are overdetermined psychologically and symbolically. In psychoanalytic terms,\textsuperscript{192} trauma is a psychical wound, a punctual event that overwhelms the psyche and overpowers its defences causing an intolerable, perhaps irreparable wound to the psychical apparatus. The overwhelmed psyche unable to process the traumatic event nevertheless, in an attempt at mastery or control over the overwhelming sense of loss, has the irrepressible necessity to repeat it, belatedly, in a disguised form. Its repetition, in the form of a symptom, is triggered through some later event and the unconscious association made with that event. The symptom therefore is both a sign of the trauma, albeit in another form, and an attempt to master the trauma by way of defence or compulsion. Thus, despite being disguised or represented as something completely different, the symptom

\textsuperscript{190} This effect of secondary, and even tertiary, victimization has been termed “waves of harm” (Iganski 2001) and the “ripple effect” (Berrill and Herek 1992; Noelle 2002).

\textsuperscript{191} Patricia Williams 1987; Matsuda \textit{et al.} 1993.

\textsuperscript{192} See Laplanche and Pontalis 1988; Shoshana Felman 2002.
nonetheless betrays the ever-present trauma enacting it by way of displacement and
disguise.\textsuperscript{193} Understood then psychoanalytically, hate-motivated trauma will repeat itself
as both an outcome of the trauma in the form of a symptom and as an attempt at
mitigating the trauma by way of defence or compulsion, for example the compulsion to
repeat. Those two things, the irrepressibility of the trauma and the need to ameliorate it
by way of mastery, co-exist in a dynamic psychical tension.

For the moment, let me draw attention to my data collected in the interviews with
LGBT hate crime activists in Vancouver and Toronto. In over twenty interviews, each
held some story of violence and trauma. Some were autobiographical, others historical.
On its surface, this recounting of victimization, at first, did not seem particularly
significant to me. The place of the narrative of trauma figures dominantly in anti-hate
crime discourse. For example, annual published reports from B’nai Brith Canada and the
American National Coalition of Anti-Violence Programs (NCAVP) supplement their
statistical documentation efforts with personal narratives of victimization. Similarly, the
technical report of the 519 Church Street Community Centre prepared for the Department
of Justice Canada\textsuperscript{194} used personal statements from its survey to illustrate the extent and
impact of anti-gay/lesbian violence in Toronto. These “horror stories”\textsuperscript{195} of hate violence

\textsuperscript{193} See Freud 1926: “The ego is able by means of repression to keep the idea which is the
vehicle of the reprehensible impulse from becoming conscious. Analysis shows that the idea
often persists as an unconscious formation” (242). With respect to the symptom, Freud writes,
“For the symptom, being the true substitute for and derivative of the repressed impulse, carries
on the role of the latter; it continually renews its demands for satisfaction and thus obliges the
ego in its turn to give the signal of unpleasure and put itself in a posture of defence” (252).

\textsuperscript{194} Faulkner 1997.

\textsuperscript{195} Best 1999: 58.
and victimization work rhetorically to personalize the effects of violence for the reader
and to make ‘real’ visceral harm that cannot be emotively conveyed by statistical data.
Moreover, the single instance repeated countless times in narratives of victimization and
violence aids in producing a generalized understanding of hate motivated violence.
Whether rhetorically orchestrated or not to elicit emotive responses, stories of
victimization are a common trope in anti-hate crime discourse.

As I stated, I found this phenomenon of narration and story-telling throughout my
interviews. Interviewees would often interpose their definitional analysis of hate crime to
tell me about anti-LGBT violence that they or someone else experienced. Marc, a former
member of Parliament, segued from a discussion of anti-hate crime legislative efforts to a
recounting of violence that he experienced as a public official: “I’ve had bullets fired
through my window a couple of times. I had a Molotov cocktail once. Just a month ago I
was sitting here at night and I heard this terrible crash on my window. And it turned out
to be an egg and some people driving by yelling ‘faggot,’ but it could have been a gun,
right?” The experiential aspect of narration, I found, often gave an immediacy and
tangibility to a discussion of violence that was shaped by straightforward interview
questions that sought my participants’ understanding of hate crime. To this extent, I
wondered if these narratives held, not only remnants of the trauma described, but an
attempt to control the trauma in its retelling, to reproduce it in such a way as to position
the self not wholly overwhelmed by the violence directed at it. It was here too that I
realized that the trauma of hate-motivated violence constitutes the social in another way
Secondary victimization is commonly called ‘waves of harm.’\(^\text{196}\) The irrepresibility of trauma, its inability to be silent, its re-enactments in the form of symptoms necessitate the place of the Other. Narratives of trauma constitute the social through the act of communication. They are profoundly social in that there is a reliance upon being heard. That is to say, they are social, not because they speak for the community, but in telling a story of victimization, there is a reliance\(^\text{197}\) to be heard by a listener, by one who documents, by one who analyzes.

As I sat with my data, some of it organized in tidy piles of printed text, other bits as dishevelled piles amongst other piles strewn about my floor, I became increasingly preoccupied by one story in particular – the Barn story. From my perspective, the Barn story was like the symptom that disrupts and makes itself present. It begged my analytical attention. It is a story told to me by Andrew, whose gay activism spanned over two decades. The story goes like this:

“It was a nasty [gaybashing], but the person yelled for help. And a bunch of people supposedly piled out of the Barn [a gay male leather bar] and chased the basher back into the buildings, the brick buildings over on the west side of Church Street, back in through there. They eventually caught the basher, and literally stomped him into the pavement, until there was nothing but a mound of flesh. And then [they] went back to party. And nobody knew anything about it when the police arrived.”

Unsure whether this story was merely an urban myth, Andrew remarked, “I don’t know if there’s any truth to it, or whether it comes from the frustration of a community that would

\(^{196}\) Secondary victimization is commonly called ‘waves of harm.’

\(^{197}\) I choose the word ‘reliance’ as the story in essence requires a listener.
really like to see a little kind of old traditional [...] eye for an eye sort of thing, and the concept that we’re all united, and we’d never tell if we knew about something, or if we knew of someone who did something like that.” It was a story that Andrew claimed to have “made the rounds,” circulating through the Toronto gay and lesbian community for years.

There are a number of significant aspects of Andrew’s story that I would like to illuminate. First, Andrew’s fantastic story of retaliatory violence was his response to my question, “How would you define a hate crime?” That is to say, when asked by me how Andrew understood the meaning of anti-LGBT hate crime, he responded by narrating an experience of violence. He told me a story. He did not offer a definition of hate crime; he did not cite the Criminal Code; he did not offer statistical evidence as to its frequency or impact. Rather, he told me a story. Moreover, he did not recount a story about homophobic violence; the traumatic event was not spoken; it remained silent. Rather, he told me a story, a story in which anti-gay violence was met by retaliatory violence that was communal, fantastic and taciturn. It was as if my question about his understanding of anti-LGBT hate crime triggered the telling of this fantastical story. The story is also remarkable in that it is not a story of gay-bashing. It is a story of gays bashing back, a story of communal retaliation, of communal formation. It is the narrative of a reaction to violence, not a narrative of the original violence itself. The gay-bashing, in fact, is nearly skipped over, made inconsequential, noted by Andrew’s only reference to it as being “nasty.” What takes prominence is the story of trauma inflicted on the basher, a trauma so profound, so fantastical that he was “stomped [...] into a mound of flesh.” In this
manner, the trauma of the gay-bashing is seemingly vanquished and remedied by a retaliatory violence generated by a community of gay men standing together.

But is the trauma vanquished? The profound violence directed at the gaybasher, in effect, reproduces the trauma of the gay-bashing. That is to say, the trauma of the gay-bashing is not made inconsequential by the off-hand reference to it. The seeming inconsequentiality of its reference (its almost literal absence) and the profound violence that is meted out as its response signal the overdetermination of trauma. In an attempt at controlling the traumatic effects of homophobic violence, Andrew’s story moves the listener away from that original site of trauma to an outcome that is apparently empowering and positive: a community coming to one individual’s aid. The problem with trauma though, despite its attempt at recovery, is that it persists by way of the symptom – in this instance, the sign ‘community’ – and the psychic mechanism of repetitive mastery, after all it was a story that “made the rounds” for decades. Examining Andrew’s Barn story in this light, violence is inescapable, actually sought after, and the violence of the gay-bashing returns by way of metonymic displacement and a disturbing absent-presence. The violence that produces “community,” then, is both a psychic attempt at remedying the trauma of homophobic violence and an irrepressible sign that trauma lingers, re-experienced in the violence of a community fighting back.

Strangely, Andrew’s Barn story and its narrative of a community generated by homophobic violence resonated in other interviews. Andrew’s Barn story appears the most fantastical of all the stories – the level of violence expressed, the completeness of community, the way in which the story seems to have no origin and seems to be repeated
interminably – but the other stories of anti-LGBT victimization also speak of a unified community response to violence, some within law, others at law’s margins, but never so extremely, so fantastically outside its boundaries. In this chapter, I argue that the other stories of violence retold to me echo Andrew’s fantastical Barn story in that they too offer a vision of a community “united” in response to the trauma of hate motivated violence directed at LGBT individuals. Andrew’s Barn story stands as a model, not of retaliatory violence, but of the formation of ‘community’ as a reparative attempt of mitigating the traumatic effects of anti-LGBT violence. Its curious invocation by my interviewees when asked about hate crime and its definition indexes a kind of compulsion to repeat, a means of mastering the persistence of traumatic memory. I argue that the sign ‘community’ raised in these interviews with anti-hate crime queer activists can be read as a symptom of trauma. If we follow the model of interpretation opened by a psychoanalytic reading of trauma and its effects, this vision of a ‘community’ simultaneously is a reaction formation that attempts to repair the original trauma and is an irrepressible sign of fracture and wounding. That is to say, with the evocation of ‘community’ in stories of anti-LGBT victimization comes a repetition of the trauma originally experienced in a disguised form. In analyzing these narratives of trauma and community recounted to me by my interviewees, I look to see where and to what extent trauma manifests in stories of anti-LGBT hate crime and the significance of producing a seemingly resilient, unified community in response to anti-LGBT violence. One of the vexations of violent trauma is the seemingly insurmountable difficulty in overcoming it. It appears doomed to repeat itself by way of disguised symptoms even at the moment when it demonstrates the ability
for healing and reparation. As noted in my interviews, discussions of hate crime and stories of violence and victimization have also produced stories of political action and community solidarity. My observation in this chapter on narratives of trauma and community is that along-side stories of community generated by traumatic violence are the less evident stories of recurring violence and trauma. These less evident stories, as will be explained in this chapter, are for the most part cloaked or woven into stories of reparation and positive regeneration.

* * *

Imagined Community

The production of ‘community’ as a sign of the trauma overcome, of the wound healed and the ruptured (social) self mended, runs throughout my interviews. The grand way that it is constituted in these narratives cannot help but be linked to Benedict Anderson’s famous line about imagined community. In his writings about community and nation, he wrote that community “is imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion [my emphasis].”\(^{198}\)

What I particularly like about Anderson’s engagement with what is imagined is that it does not mean productions of the mind are false, falling into some kind of dialectic with the external ‘real.’ Rather, he means that any invocation of ‘community’ is reduced exponentially to the single instance of individual imagining and that this imagining of the

communal necessarily is fantastical, larger-than-life, overly inclusive, and necessarily omissive, exclusionary and lacking. It is a kind of all-and-nothing phenomenon, shared yet not necessarily similarly experienced or imagined. This structure of the imagined community, I argue, bodes well when applied to the traumatic evocation of community uttered by story-tellers of hate-motivated violence. That is, in these interviews, the traumatic symptom that arises in defiant response to the psychic wound is a sign that is fundamentally fantastical.

Insofar as violence generates trauma, that trauma has generated a broad spectrum of political and psychological responses from the LGBT communities. Speaking about the murder of librarian Kenneth Zeller in 1985, Dedalus remarked, “It was stunning. It put a cold chill through the community. I can’t even remember whether they got the guys who did it. It’s a long time ago now. I just remember Ken Zeller’s name and what a horrible experience that was [...] There was outrage, but there was no activism.” Here, in Dedalus’ recollection of one of the first-noted homophobic murders of a gay man in Canada, he speaks of outrage and chills but no political response to a targeted attack on a gay man in a known cruising area of Toronto. This recollection of a violent trauma stands in marked contrast to the numerous accounts of community mobilization in response to both the perceptive rise in gay-bashings in Toronto in the early 1990s and the killing of Aaron Webster in 2001 late one night in Stanley Park by several young men armed with aluminum baseball bats and golf clubs.

“I remember,” stated Greg sitting comfortably in a Toronto café, “I saw two gay-bashings inside of two days, and at the second one I saw cops drive away. People came
According to my interviewees whom recalled Queer Nation, the Toronto group primarily focussed on anti-violence activism including whistle campaigns, take-downs, marches and rallies against bashings, safety patrols and pamphlets, and the posting of bashers’ photographs throughout the Church-Wellesley area and that of the bashers’ neighbourhood where possible.

So that was the summer of 1990. That summer ... just a couple of weeks later in fact, I think it was ... or maybe a couple of months later there was a notice [that] went out [stating] that people were looking at starting a group to address violence in the community. Because that was the summer of terrible violence in Toronto. Out of that, we formed Queer Nation [...] our first meeting was six people in Cawthra Park. That grew to 200, maybe 400 people turning out. The first couple of meetings in the 519 [Community Centre] were packed. Finally the community was addressing anti-dyke and anti-gay violence.”

Here, the “community” is shocked into life, generated by violence, no longer chilled but vitalized by hate to form a cohesive unit as Queer Nation. Echoing Andrew’s fantastical Barn Story, Kevin recalled one whistle take-down in which he and some friends “stumbled upon a gay bashing in progress [...] I chased after this person, found him, used my whistle, and everybody came and we surrounded the guy.” The proud but exaggerated utterance that “everybody came” indexes a fantasy of plentitude. The community response is retold as overwhelming, larger-than-life. The appeal of Queer Nation, according to Kevin, was that “the community was doing things for

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themselves. People felt like the community was acting as a community and taking care of itself, as opposed to just a bunch of autonomous individuals, you know, every man for himself kind of thing.”

Greg’s and Kevin’s respective recollection that homophobic violence was the driving force behind the formation of Toronto’s Queer Nation relates to the main argument of this chapter that one of the critical effects of trauma resulting from hate-motivated violence is the production of the sign ‘community.’ According to Greg’s and Kevin’s recollections, Queer Nation was a response by a community of queers to anti-queer hate-motivated violence. As a reaction formation to hate-motivated violence, the sign ‘community’ in the form of Queer Nation is both an attempt at traumatic healing and, significantly, a sign of the sustained inability to heal. That is to say, if ‘community’

200 Greg’s and Kevin’s respective recollection of Queer Nation find resonance in Terry Goldie’s assertion that Queer Nation was founded on the notion that “community supersed[e][d] the traditional view of the nation state” (1997: 3). A radical reaction to gay/lesbian political and socio-legal exclusion, Queer Nation celebrated its exclusion from the larger nation state by reinventing citizenship via hegemonic censure. A citizenry of sexual dissidents, it strategically adopted its nomenclature in that political inclusion and security of its ‘citizens’ was not left to the nation state, which had historically failed and persecuted marginalized queer subjects, but rather sought political demands and sexual security through their own organized vigilance and militantism. For a historical précis of Queer Nation, see Adam 1995: 163-164; Jenness and Broad 1997: 101; and Pendleton 2001: 19.

Moreover the use of the term ‘queer’ was an attempt at breaking free of, what Queer Nation saw as, limitations to gay and lesbian identity politics. Despite the radicalizing potential of such a grass-roots political project, many of the Queer Nation chapters disbanded within a year or two of their respective inceptions. Noting the disparity and apparent lack of political cohesion of Queer Nation, Lisa Duggan remarked that for many ‘queer’ was not a destabilizing term, but rather “a synonym for lesbian or gay” (1992: 20). According to Duggan, “Queer Nation, for some, [was] quite simply a gay nationalist organization; for others, the ‘queer’ nation [was] a newly defined political entity, better able to cross boundaries and construct more fluid identities” (1992: 21). Furthering the critique of Queer Nation, Barry Adam wrote, “In the case of queer nationalism, the tendency is toward reducing politics to questions of aesthetics, style, or performance, while failing to address the state, political economy, kinship, or family structures [...] Queer Nation turns out not as the overarching unifier but as yet another faction in the overall mosaic of contemporary gay and lesbian organizing” (1995: 164).
is a product of violent homophobic trauma, that is if ‘community’ is a symptom of this trauma and an attempt at reparative address, there lies encoded within it signs that not all is well. My discussions with interviewees about Queer Nation and “the summer of terrible violence” eventually lead to revelations about discontentment, political dissent and group atrophy. Nathan remarked that “the community did not seem, in the end, to be that interested in [Queer Nation]. And with good reason, you know. You have to give up your Friday or Saturday night to put yourself in potentially dangerous situations. So I certainly think that was one of the reasons why it didn’t last.” According to Nathan’s recollection, the risk of confronting violence and the sacrifices that the individual group members made for the protection of the ‘community’ – giving up a Friday or Saturday night – gave way to a re-evaluation of danger and pleasure. Dedalus cited the attrition of the group to a realization that it was “a waste of time [and] mostly navel-gazing and blaming.” Complaining of the constituency of the group membership, he observed, “only the irritating, loud, obnoxious people were left [...] it tended to be the people that people didn’t want to work with.” Greg’s recollection of the dissolution of Queer Nation seemed even more vitriolic. In his words, Queer Nation “really only lasted six months [with] its demise start[ing] by the third public meeting. The meeting was hijacked by black lesbians who claimed that the group had no right to address anti-dyke violence until they ‘purged the racism from within.’” Dismissive of these criticisms, Greg left me with the perception that his imagining of a ‘community’ united to fight ‘gay-bashing’ did not include a politics of race and gender, nor was it inclusive of difference that exceeded hegemonic gay white male culture, a culture of consumption and aesthetic duly critiqued
by Adam in his reprobation of Queer Nation.

To what extent my Vancouver interviews, which were conducted in the spring of 2003, were shaped by being historically situated in the wake of Aaron Webster’s killing, I can only speculate as being frontmost and clearly present in the minds of my interviewees as a result of its fatality and extreme brutality. Every one of my Vancouver interviewees spoke of the way that Webster’s death generated a newly politicized community. Jacquelyn, a social worker who worked with LGBT clientele, described the killing as a “defining moment” for the Vancouver LGBT community. As Andrew remarked, “There was nobody interested in a community response [to anti-LGBT violence] at that point until Aaron Webster was killed and then the universe changed in Vancouver.” Jason, having previously referenced the homophobic violence that his gay/lesbian business suffered in the early 1990s including three percussion bombings, stated with pride that the politicized response to Webster’s killing was “the coming of age of our community.”

Freud tells us that there is a momentary pleasure to trauma. Or at least there is a possibility of pleasure. That pleasure, albeit ultimately fleeting, is found in the subject’s attempt at overcoming the damage inflicted upon the wounded psyche, the broken self. One such pleasure that I have identified in my interviews is that of political organization, of community response. One such demonstration of pleasure was expressed by Jason who stated that “[the community] took control” of the aftermath of Webster’s killing by immediately organizing a rally demanding that the police protect gay men and lesbians from, and the state respond to, hate-motivated violence.

201 Freud’s fort/da game would be an example of this.
Similarly, Dana, a writer living in Vancouver, described the spontaneous mobilization of the Vancouver LGBT community within hours of hearing about Aaron Webster’s fatal beating in Stanley Park:

[T]he community was galvanized by the murder. Up until the murder, the community was extremely complacent and just not activist. After the murder, everyone responded and marched. 2,000 people marched in Vancouver. For the gay community that broke every record – not counting our Pride parade. It was shocking to the people who know the community. Most of the time, honestly, we just play sports. Suddenly people cared [...] I remember it was the making of the march in five hours. “Taking control,” though, extended beyond the march and the numerous speeches and calls for police and government accountability for homophobia and its resultant product of violence. Framing the ways in which community leaders took control, Jason noted, “We had to start with something demanding of the police that they treat it as a hate crime.” Continuing he added, “we took control of the media. We called the press conferences. We didn’t wait for them to come to us. We really did plan it very, very strategically.” The key element of this community strategy of taking control, Jason revealed to me, was the omission of what he called “the details”: “It [“the details”] is why we as community leaders took such an active role [...] But it was because primarily of the details of the crime itself that it could have been spun into a National Enquirer kind of a story.” By consciously naming it as a hate crime to media, both local and national, and omitting the “salacious the part of it,” Jason stated, “it took it away from a man cruising in park with no clothes on at 2 o’clock in the morning. It immediately stopped that dialogue.” For Jason, having one unified perspective on the killing of Aaron Webster,
one encompassed under the term ‘hate crime,’ and not under the term ‘cruising,’ was a strategy to control the media’s construction and the public’s subsequent reaction to Aaron Webster’s lethal beating. The term ‘hate crime’ here operates as an emotive focal point sharpening the experience of violent trauma. By placing the emphasis on it and not on ‘cruising,’ a term connoting illicit pleasures, Jason and other community leaders attempted to control the traumatic effects of Webster’s killing, one of which was public sympathy.

If ‘taking control’ of the traumatic effects of Webster’s killing finds expression in the public construction of his killing as a hate crime, then loss of control and the re-emergence of trauma finds expression in the signifier ‘cruising.’ “I think that if he was just attacked,” stated Donal, “and not killed, [there] wouldn’t have been as much sympathy [...] because it’s not that I think anyone deserves violence for cruising in the park, but it’s sort of like ...” A point to note here in this interview is that Donal never completed his statement, rather it just trailed off awkwardly. What is significant about Donal’s statement is not that it is a personal revelation about the limits of sympathy, but rather it evokes the troubled notion of precipitatory or deserving violence. A classic victimological notion, the theory of precipitatory violence claims that in some way the victim has produced the circumstances, often both physical and psychology, to induce the offence. In this way, as the victim is held, at least, partially accountable for his/her victimization, they are deserving of it.

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Paul, a community outreach worker, spoke about the erosion of community compassion in the aftermath of Webster’s killing as the “details” were released by mainstream and gay media:

The other thing too that I was surprised, in the aftermath of Aaron’s murder was the blaming. I know that in terms of mainstream there was some talk about, ‘well what was he doing in the park?’ But we were seeing that in our own community – ‘Why was he in the park? He shouldn’t have been cruising the park.’ So I was struck by there were members of our own community, that are queer/ LGBT that were blaming of Aaron’s murder ... that he was responsible for his own murder, as if he should have known better. And that really upset me.

Paul’s observation about ‘blaming,’ as he names it, underscores the way in which this narrative of trauma harbours within it a seemingly irreparable wound. The introduction of the ‘community’ as segmented, and not wholly united, in their response to Webster’s victimization, challenges the larger narrative of a community galvanized and vitalized.

The story of blame evidences a fractured community response to Webster’s victimization by drawing a distinction between the gay victim deserving of public sympathy and subsequently of socio-legal protections, and those victims who are not. The victim deserving of public sympathy and the victim deserving of violence, while not exact binaries, are reproduced as a kind of specular Other whereby what each (supposedly) deserves is necessarily foreclosed to its Other: for the sympathetic victim there is concern and public outrage, for the unsympathetic victim, there is blaming. In this case, sympathy and blaming turn on the same signifier, ‘cruising,’ an act of illicit and often dangerous
sexual pleasures.\textsuperscript{203}

The Janus-like paradigm of the ‘responsible homosexual’ – that is, the ‘homosexual’ responsible for his own victimization, and the ‘homosexual’ who acts responsibly thus avoiding potential risky and dangerous situations – has a rich and troublesome place in victimological literature and theory. In early victimology, the ‘homosexual’ is bound to the site of the ‘victim,’ not because of a cultural and legal climate of discrimination, harassment, and exclusion, but as a result of intrinsic weakness, vulnerabilities and limitations, mostly of the psychological type, that produced the ‘homosexual’ as a victim.\textsuperscript{204} More contemporary victimological studies of gay men and lesbians’ relationship to victimization suggest that homophobic violence is undeserving.\textsuperscript{205} This, however, is often conditional upon a prudentialism that structures

\textsuperscript{203} As Richardson and May note about notions of culpability and victimization: “some individuals are seen as more ‘deserving’ of violence and less deserving of victim status than are others on the basis of their ‘behavioural responsibility’ for risk avoidance” (1999: 309).

\textsuperscript{204} Prior to the changes brought about by the gay (and lesbian) liberation movement, which included in part the 1969 Canadian decriminalization of ‘homosexual acts’ between consenting adults in private and the delisting of ‘homosexuality’ \textit{per se} as a psychopathology in the DSM-II in 1973, gay men and lesbians were subject to discrimination, blackmail and violence without legal and societal recourse or remedy; see Warner 2002, and Katz 1983. See also Maghan and Sagarin 1983; Miller and Humphreys 1980; and Harry 1982. Without awareness of or sensitivity to this climate of criminalization, pathologization, discrimination, extortion, and violence, classic victimology scholarship reproduced this figure of the ‘homosexual’ as an exemplar victim type: the closeted ‘homosexual’ was Von Hentig’s lonesome ‘victim’; Amir’s risky sexual rape victim can be read paradigmatically to the homosexual crusier. I am not suggesting that LGBT individuals are necessarily any less vulnerable to acts of discrimination and violence post-Stonewall; however, I do suggest that decriminalization, LG(BT)social movement mobilization, depathologization, and the advancement in legal rights have helped in the precarious security of the queer citizen.

\textsuperscript{205} See annual reports of the National Gay and Lesbian Task Force Policy Institute and the National Coalition of Anti-Violence Programs, as well as Jenness and Broad 1997; Mason 2002; and Leslie Moran \textit{et al.} 2004.
the gay man and lesbian as risk-adverse individuals. Gail Mason describes the length
to which queers manage risk through self-disciplinary techniques such as ‘body-
mapping,’ “a cartographic matrix of practices for surveying, screening and supervising
the times, places and ways in which one is manifest as homosexual.” Critical of this
managed prudentialism, Elizabeth Stanko and Paul Curry observe how “[t]he
‘responsible’ queer must learn to live with the condition category of ontological
insecurity, positioning the self at risk at all times.” Accordingly, they note that the
sexual practice of cottaging – a sexual practice of men who engage in public sex with
other men, of which cruising would be a part– is considered, particularly by police, “risky
and irresponsible.” As Tina, an activist in the community noted, some in the
community, particularly older gay men “who had to live in the closet a very long time”
worried that Webster because of his cruising was “giving us all a bad name.” Within
such an observation, the spectre of imprudent and irresponsible homosexuality of
victimology’s past returns.

Despite Jason’s and others’ best efforts to frame Webster’s homicide as a ‘hate
crime’ and to structure the communal response to his death as unified and sympathetic,

206 This idea of ‘victim-risk’ will be incorporated into the lifestyle/exposure approach of
victimization developed by Hindelang, Gottfredson and Garofalo (1978). Arguing that there are
“high-risk times, places, and people” (245), they noted that lifestyle differences (for example,
living in the inner city or in the suburbs) are associated with differences in exposure to situations
of high victimization risk. See also Stanko and Curry 1997.


208 Stanko and Curry 1997: 520.

the narrative presence\textsuperscript{210} of the terms ‘cruising’ and ‘blaming’ undermines this. The
spectre of ‘responsible homosexuality’ introduced in these discussions of the after-math
of Webster’s death erodes the wholly reparative effect of a community galvanized by
violence. Insofar as it is the ‘community’ who blames, trauma is reintroduced by way of
‘community.’ Narratives of ‘community,’ as the symptom of the trauma of anti-LGBT
violence, are revealed in their psychic fullness, on the one hand, as a response of defence
against trauma and as an attempt at healing the wounds of violent victimization, and on
the other hand, as the failure of this defence and the site of irreparable rupture in that
‘community,’ by reproducing the precipitatory model, revictimizes Webster post-mortem.

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Traumatic Failings

Dana, a writer for the one of Canada’s regional “gay and lesbian” biweeklies, was
quite eager to share with me the fact that the paper, since Webster’s homicide, had “built
an expectation that the community cares” about homophobic violence and victimization.
“You can call us if you get bashed. We will care,” she stated, “We will write it. And
others will care.” For her, the newspaper’s reporting of attacks on gay, lesbian and trans

\textsuperscript{210} The narrative presence refers to the narratives of my interviewees, all of whom
worked or volunteered with LGBT anti-hate crime initiatives. These interviewees never
themselves attributed blame to victims of hate crime. Whether this was a conscious or
unconscious rhetorical strategy or not, I cannot say. If it was a rhetorical strategy, conscious or
not, it served to displace blame from the speaker onto the ‘community.’ This displacement then
situated rupture (‘blame’) within the symptom (the sign ‘community’) effectively confirming my
thesis here that trauma is manifest through the sign ‘community.’ More literally, the LGBT anti-
hate crime activists whom I interviewed displayed sensitivity and compassion for victims of anti-
LGBT violence. Had they articulated blame for victimization, this would have seemed
incongruent with the nature of their activism.
members of the community was both an act of witnessing and validating the violence 
experienced and a site of community itself. As a kind of vox populi, the reporting of 
violence not only gave voice to the victims but, in effect, generated community giving it 
not merely a voice, but virtual substantiation.

Against this now-common story of community generated through violence, there 
was another story that Dana offered, a story that reveals the ways in which trauma 
infiltrates and corrodes the materialization of community. Commenting on the 
nomenclature that she used to describe the violence directed at a trans woman and her 
partner, Dana stated that she named the violence a “gay-bashing,” not because she was 
ignorant or dismissive of this woman’s gender-identity, but because, as she explained it, 
the perpetrators misread the victim and her partner as gay men, calling them “fucking 
faggots” as they assaulted them. “When it’s gender-identity-based, I think I say ‘trans-
bashing,’” she said, “When it’s sexuality-based, I usually say ‘gay-bashing.’” Reflecting 
on her distinctions a bit further, she commented on the journalistic importance of being 
“accurate” remarking that she also uses the term ‘lesbian-bashing’ and ‘queer-bashing’ 
depending on the self-identification of the victim and the context of the violence.

However, despite her commitment to ‘accuracy,’ she revealed that her general descriptive 
term was ‘gay-bashing.’

The reason ‘gay’ is the most used term in my bashing stories is that there’s 
a rule here at [the newspaper]. It’s for purposes of community building. 
Too many terms dilute that sense. [The editor] would be perfectly happy 
for me to say ‘gay community’ and encourages me to do so. But 
sometimes I just can’t. Because when I’m concerned the people I’m
writing about won’t see themselves reflected in the term I’m using, I can’t use that term. But I try to stick to ‘gay’ because [the editor] wants me to. Such an admission reveals a number of things that index a tension produced in this ‘community-building’ response to bashing. First, the editorial ‘rule’ of naming the victim as a member of the ‘gay community’ shapes, both narratively and historically, victim constitution as being male. Although ‘gay’ has been understood by some as an umbrella term, and thus inclusive of a diverse sexual and gendered community, queer, lesbian and trans critics have argued, on the other hand, that this term is actually restrictive and highly specific which forecloses a broader and more diverse sexual and gendered membership.²¹¹ The editor’s rationale of using this term, instead of broader terms such as LGBT or queer, to community build seem disingenuous, even ironic. Dana’s response to her editor’s directive signals a profound tension and ambiguity with respect to the way in which the newspaper attempts to represent hate crime and stories of victimization. On the one hand, she remarked that this type of identificatory inaccuracy works against her journalistic integrity: “when I’m concerned the people I’m writing about won’t see themselves reflected in the term I’m using, I can’t use that term.” On the other hand, Dana felt compromised by the demands of her editor and attempted to please him with her willingness to follow his directive.

²¹¹ With a specific reference to the way in which ‘community’ historically has been promoted by the gay and lesbian press, see Chasin 2000. Chasin critically raises the issue that insofar as the gay and lesbian press historically constituted community by means of advocating a liberation politics and generating an identity politics partially based in consumer culture, she also notes the ways in which the gay and lesbian press promoted divisions. Citing the absence of a concern for racial and feminist struggles and inequalities, Chasin characterizes this media as a “white-dominated gay male press” (62).
The journalistic figuring of the community as ‘gay’ and the portrayal of the ‘gay community’ as the victims of hateful violence figuratively and publicly erases a broad spectrum of community membership and those constituents’ relationship to victimization and violence. Mason, in her study of violence against lesbians, argues that, for the most part, “literature on homophobic violence continues to allow sexuality to subsume the relevance of gender.”

Speaking to the erasure of intersectional identity positions and complex power relations, she remarks that any analysis of violence against lesbians is:

- neither typical of gendered violence nor homophobic violence. Neither is it atypical. This is not a problem in itself. It only becomes one when we try to sequester violence in ways that restrict its complexities and contradictions to the singularity of one identity-based power relation: either gender or sexuality.

Thus, Mason offers complexity to the notion of identity and its situatedness within power relations. Her vision and analysis of violence against women, lesbians, gay men and trans men and women seeks an understanding of power relations that attempt to broaden, and not limit, the impact and experience of hateful violence.

Similarly, Viviane Namaste in her theorizing of the erasure of transsexual and

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212 Mason 2002:41. Elizabeth Bartle challenges the notion that lesbians experience fewer hate crimes compared to gay men. Addressing issues of reporting and documentation, she argues that under-representation is inherently connected to lesbian “invisibility” (2000: 36) whereby crimes against lesbians may get subsumed statistically as ‘homophobic’ hate crimes or as ‘anti-woman crimes’ like rape. See also Robson 1992.

213 Faulkner touches upon the statistical erasure of anti-lesbian violence from self-report studies noting that “[l]esbians may have difficulty determining whether a violent incident was an anti-lesbian attack or an anti-woman attack” (1997: 41-2). She offers, however, no theoretical nor elaborated discussion of intersectionality.

214 Mason 2002:41.
My inclusion of Mason’s and Namaste’s discussion of gendered violence is not meant to reproduce a damaging type of identity politics whereby, as Moran and Sharpe

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218 For a further discussion of the eclipsing of (trans)gender more broadly in institutionalized hate crime responses, see Suffredini 2000. Comparing the institutional and public responses to the killing of Matthew Shepard, a gay man, and Brandon Teena, a transgendered man, Suffredini notes that “[a]uthorities responded to Matthew’s attack with timeliness and efficiency; authorities responded to Brandon’s attack with ignorance and inaction” (461). Citing the most important difference between the two murders, she notes that “Brandon’s attack went largely unnoticed, while Matthew’s attack sparked a nationwide outcry for more expansive [American] federal hate crime legislation” (461).
warn, one victimized identity based claim competes with and attempts to trump other claims of victimization. Rather, I include their analysis in order to realize the ironically fractious result of naming, and very publically constituting, a violently traumatized, diverse community as ‘gay.’ In the Vancouver newspaper’s constitution of the community as a consciously ‘gay’ community, it forecloses the traumatic experience of violence suffered by a multitude of community constituents. By attempting to shore up the borders of community, the editorial directive in its response to victimization repeats the harm by omitting and effectively erasing a significant community membership. Other sexual and gendered members of the community are literally cut out of its imagined constitution. The (post)-traumatic blow returns in the form of this erasure.

Recalling Anderson, ‘community’ is, at one level, an imagined product of the mind. It will always be lacking and inconceivable despite its imaginative fullness, for as Anderson reminds us, no one member can ever know (or imagine) all its constituents. Its membership or constituency, moreover, is always in flux and the limits, borders and contours of community are unstable and subject to omission and exclusion. As I claimed earlier, the invocation of ‘community’ is an all-and-nothing phenomenon, both overly excessive and necessarily lacking. To invoke ‘community’ as a reparative response to master the trauma of homophobic violence, a violence that targets and ruptures notions of the ontology of self, is doomed to fail. First, the failure occurs at the Andersonian point

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219 Moran and Sharpe 2004: 412.

220 Dana noted that the newspaper marketed itself as a ‘gay’ paper. She said the paper was “consciously a gay paper. [The] cute twink on the cover. That’s a marketing decision. It’s an on-going battle.”
of imagining. Second, the failure is the necessary result of the traumatic after-effect. If, as I have argued, ‘community’ is a product of trauma, its symptom, then it holds, in a complex psychical tension, the promise of psychical reparation and the inevitability of its collapse. The collapse of the promise of reparation took several forms in my interviewees stories of hate crime and community response – exclusionary vitriol and the rhetorical presence of illegitimate victimization in the figure of the risky cruiser.

I am not arguing that the social formation of community is a poor or failed response to anti-LGBT hate-motivated violence. I have stated that stories of hate crime told to me by LGBT activists involved in anti-hate violence projects and initiatives circulated around the discursive production of ‘community’ as a response to violence. And in their stories, the sign ‘community’ stands for reparation, a trauma healed by a ‘community’ coming together. However, Freudian psychoanalysis looks askance at egoistic claims that are defensive or excessive. Insofar as the sign ‘community’ is, as Anderson tells us, an imaginary product wholly excessive and wholly lacking, such egoistic claims call for a closer examination. Upon queries from me about the ‘community’ that was evoked in my interviewees’ discussion with me, the plentitude of ‘community’ fell away. ‘Community’ as a symptomatic response to anti-LGBT violence revealed itself as a site of rupture and lack. In particular, the discursive invocation of the imprudent cruiser as a victimized figure undeserving of social empathy and support reproduced not only rupture within the sign of reparation and plentitude – the sign ‘community’ – but made present the ideologically problematic and resilient figure of the illegitimate queer victim.
that sign of masterful response to the trauma of violence – the sign ‘community’ –
ultimately revealed itself as the symptom of trauma.
Legislating Victims of Hate

In this chapter, I perform a close analysis of the contested terrain of competing knowledges of gay and lesbian victimhood as played out in the House of Commons debates and committee testimony of Bill C-41, the sentencing reform bill. In particular my focus is on the enhanced sentencing provision and its inclusion of the term ‘sexual orientation.’ I trace the logic of four resistant positions held by opponents to the inclusion of sexual orientation. These four positions, while distinct, inevitably attempted to weave together a coherent logic of exclusion. These positions were, in no particular order: remove s. 718.2(a)(i) completely from the bill; remove mention of all enumerated groups; remove the phrase ‘sexual orientation’ from the list; and, set definitional limits to the term ‘sexual orientation.’

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The place of sexual orientation under and before the law of Canada made its first statutory appearance in Bill C-41. In September of 1994, Justice Minister Allan Rock introduced Bill C-41, the sentencing reform bill. A product of

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221 This is the first time ‘sexual orientation’ is written into proposed legislation. Valverde notes, “[e]xamining a large number of rights-oriented cases, one finds that new knowledges and different authorities are required by law to investigate and legally certify the existence of the object, invented for legal purposes, but quickly adopted by many as a descriptor of experience, that has come to be called ‘sexual orientation’” (2003: 87).

222 Bill C-41, S.C. 1995, c. 22, An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof, received Royal Assent on July 13, 1995 and was proclaimed
nearly two decades of inquiries, commissions, reports, and research, this omnibus bill proposed, as one of its provisions, a subsection that would allow a judge to take into consideration at the time of sentencing “evidence that the offence was motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation or any other similar factor” as an aggravating circumstance. A relatively short provision in a bill some sixty-three pages long, s. 718.2(a)(i) contained two words — “sexual orientation” — that would be at the centre of a prolonged and divisive debate in the House of Commons. Major sentencing reform provisions were “dwarfed” by a phrase for which there was intractable resistance to define. A product of the Liberal election campaign promises of 1993, the explicit inclusion of sexual orientation to the enumerated list of “vulnerable

in force (except for subsection 718.3(5) and the provisions dealing with hospital orders, ss. 747 to 747.8) on September 3, 1996. Amendments: national or ethnic origin, language, or similar factor.

223 Daubney, 1999.

224 The words seemed so diminutive against the rest of the content of the bill that Russell MacLellan, Parliamentary Secretary to the Minister of Justice and Attorney General), described the them as “just a little itsy-bitsy part of a section” (June 13, 1995 @ 2120-25).

225 For an interesting discussion of American hate crime legislative domain expansion to include ‘sexual orientation,’ see Jenness 1999 and Jenness and Grattet 2001.

226 These sentencing reforms included, but were not limited to, providing direction to the courts on the purpose and principles of sentencing, creating a new sentencing option called a conditional sentence, providing a provision for alternative measures (diversion) for adult and aboriginal offenders, modernizing probation provisions, codifying rules of evidence and procedure, and establishing various reforms to victim restitution and presentation at early parole hearings; see Daubney, 1999.

227 Hon. Allan Rock, Minister of Justice and Attorney General of Canada, June 15, 1995 @ 1525.
groups who are typically the victims of hate motivated violence” would ignite a national debate, not only about special interest groups and the so-called privileging of one crime over another, but about the very ‘truth’ of the victimization of gays and lesbians and their claim to legitimate victimhood. Competing epistemologies of victimhood as argued in the House of Commons and given as testimony before the Commons’ Standing Committee of Justice and Legal Affairs positioned gays and lesbians, on the one hand, as “innocent law-abiding Canadians who are sadly victimized by violent attacks,” and on the other hand, as a special interest group driven by the “homosexualist” agenda whose very claim to victimhood was rebuffed and deemed illegitimate. These disparate positions configured the legislative terrain of the gay and lesbian subject of hate violence. Taken together they provide further insight into the constituted identity of the sexual and gendered minority victim of ‘hate crime’ and socio-legal narratives of anti-LGBT violence in Canada.

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Liberal Promises

Ahead of the 1993 federal election, the Liberal Party published *Creating Opportunity*, a “red book” of political promises and liberal philosophy. While the book mainly centred on economic policy, it touted a broadly applied philosophy of “reciprocal

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228 Hon. Allan Rock, June 15, 1995 @ 1525.

229 The first characterization was offered by Stan Keyes, June 14, 1995 @ 1545 and the second was uttered by Roseanne Skoke, Sept. 20, 1994 @ 1630.

230 In this election, the Liberals under Jean Chrétien won a “significant parliamentary majority” (Rayside 1998: 111).
obligation” that could be applied to social and legal policy as well. “We believe,” stated the Red Book, “that if Canada is to work as a country, Canadians have to see themselves as belonging not to a society composed of isolated individuals or of competing interest groups, but to a society of reciprocal obligation, in which each of us is responsible for the well-being of the other.” In this particular framing of responsibility, the liberal emphasis on what they termed “reciprocal obligation” allowed them to enter into the mired controversy of ‘sexual orientation’ as an advocate of human rights while simultaneously preserving an arms-length distance from the issues of non-normative sexuality. Thus the Liberal commitment to gay rights was magnanimously framed as responsibility to the Other.

Insofar as the Red Book was an election campaign product, its promises were framed vaguely and in highly rhetorical terms. For example, with respect to the direct issue of hate crime and sexual orientation, the Red Book addressed the issue briefly in two sites: personal security and equality. With an ever so brief mention to gender, race, religion, age and sexual orientation, it expressed commitment to protecting the rights of citizens from violent crime. In a similarly rhetorical way, the book spoke of the “core values of Canadian society [as] a strong belief in the equality of our citizens.” Noting that “gay communities have [...] become targets” of crimes motivated by hatred, the Liberal Party promised that it would “take measures to combat hate propaganda” and

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231 Creating Opportunity, 11.
232 Creating Opportunity, 86.
enhance programs promoting tolerance and mutual understanding.²³³

Another promise of the Red Book was “a comprehensive, integrated, and
progressive reform of our sentencing system.” This took expression in the government’s
sweeping omnibus bill on sentencing reform, Bill C-41. In Parliament, much of the
government’s rationale for the bill was framed around the government’s Trudeau-esque
commitment to a “just, peaceful and safe society [my emphasis].”²³⁴ Secretary of State,
Sheila Finestone, remarked that Bill C-41 reflected the Liberal government’s
“commitment to protecting the fundamental right of all Canadians to live without being
afraid, to live in peace and security, and to live as equals.”²³⁵ This combined sentiment of
equal rights and right to security shaped much of the government’s stand with respect to,
not only Bill C-41 more broadly, but to the inclusion of the term ‘sexual orientation’ to
the enhanced sentencing provision specifically. As one Liberal member noted, “[a] vote
for this bill is a vote against discrimination and hate towards individuals and groups.”²³⁶

In Parliament, the government challenged claims by Reform that the bill was
supported only by elites, arguing that it received wide popular support. Citing the
endorsement of the United Church of Canada, B’nai Brith Canada, the Canadian Jewish
Congress, the Federation of Canadian Municipalities, the chief of the Ottawa police force,
the chair of the Ottawa-Carleton Regional Police Services Board, the Centre for Research

²³³ *Creating Opportunity*, 86.

²³⁴ Justice Minister Rock, Sept 20, 1994 @ 1215.

²³⁵ Finestone, Liberal, Sept 20, 1994 @ 1515.

²³⁶ Lastewka, Liberal, June 15, 1995 @ 1935.
Action on Race Relations, the Urban Alliance on Race Relations, the chief of the metropolitan Toronto police force, the Canadian Association of Chiefs of Police, and the mayor of the city of Toronto, the government argued that the enhanced sentencing provision reflected values, not only of a Liberal philosophy, but of a Canadian value system of which the *Charter* was one shining achievement of Liberal provenance.

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**The Logic of Exclusion**

Resistance to the inclusion of ‘sexual orientation’ to the list of enumerated groups under the proposed provision came predictably from the Reform Party, at the time Canada’s western-based, self-identified populist party which represented “a neoconservative mixture of free enterprise economics and morally conservative social policy,” and dissident Liberals who opposed any political recognition for gay rights. Their arguments took four positions that, while distinct, inevitably wove together to produce a more coherent logic of exclusion. These positions were, in no particular order: remove s. 718.2(a)(i) completely from the bill; remove mention of all enumerated groups; remove the phrase ‘sexual orientation’ from the list; and, set definitional limits to the term ‘sexual orientation.’ These arguments of exclusion did not form a neatly orchestrated narrative. Rather, they were raised at various points in debate, at times contradicting and, at others informing their mutual rationalities. Marked against these arguments of exclusion were the voices of inclusion including New Democratic Party’s

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237 Rayside, 111.
Svend Robinson and the Bloc Quebecois’s Réal Ménard, two ‘out’ members of parliament, and numerous supportive Liberals, most notably the Hon. Allan Rock, then Minister of Justice and Attorney General, Hedy Fry, then Parliamentary Secretary to Minister of Health, Bill Graham, Stan Dromisky and backbencher Sue Barnes.

In an effort to remove s. 718.2(a)(i) from Bill C-41, its opponents argued that its inclusion was unnecessary and highly redundant. This argument of redundancy followed two tracks. The first, as argued by Liberal dissident, Roseanne Skoke, in Committee, was that the Criminal Code had a “hate crimes section already ... which means an individual can be charged for a hate crime.” Erroneously meshing existing hate propaganda law, that did not include sexual orientation as a protected identifiable group, with the proposed enhanced sentencing provision, Skoke formed an imaginary hybrid of legal protection for gays and lesbians. The second track of the redundancy argument restricted itself correctly to the judicial practice of sentencing whereby legal knowledges of “texts, illustrations and periodicals and case law” informed judge-made law in the adjudication of hate-motivated offences. Insofar as judges had been recognizing ad hoc hate-motivation against racial, religious and sexual minorities as an aggravating factor at sentence from as early as 1977, the redundancy argument could not be easily dismissed by those

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238 Ménard came out publically during these debates; see press report/headline.

239 Skoke, Committee, 75:36.

240 Myron Thompson, Wild Rose, Reform, June 15, 1995 @ 2015.

attempting explicit inclusion. Nevertheless, the defenders of the provision attacked the accuracy of Myron Thompson’s unmeasured claim that the judiciary had been applying this sentencing principle “very effectively.”

Testifying before the Justice and Legal Committee as an expert witness, Mark Sandler, senior counsel to B’nai Brith’s League for Human Rights, advocated the statutory importance of s. 718.2(a)(i): “What I have seen as counsel dealing with these cases across Canada is an uneven application [my emphasis] of the judge-made law by various judges.” This issue of the eye-witness account by a well-respected lawyer of the ‘uneven application’ of the provision substantially weakened the redundancy claim, significantly so that the Reform and their Liberal allies reoriented their redundancy strategy.

“An assault,” voiced Reform’s Dick Harris, “is an assault is an assault.” In a rather Thatcherite response to crime, Harris reduced all assaults to a state of

242 Thompson, June 15, 1995 @ 2015.
243 Sandler 78:13.
244 Harris, Prince George-Bulkley Valley, June 15, 1995, 2045.
245 In May, 1981, it was reported that then UK Prime Minister, Margaret Thatcher stated that "[a] crime is a crime is a crime.” Rejecting the political nature of the actions of members of the IRA, she is reported to have said, such crimes are not political
(http://www.nationmaster.com/encyclopedia/Rose-is-a-rose-is-a-rose-is-a-rose.)

So this phrase used by opponents to s. 718.2(a)(I) mimics Thatcher’s characterization of IRA action. It is also thatcherite in that it articulates a particular law and order politics popularized under Thatcher’s government. Mawby and Walklate argue that the economic and social unrest of Britain in the 1980s fertilized the socio-political environment in which a neo-conservative ideology of “authoritarian populism” (Stuart Hall, 1988, quoted on 81) flourished. In the 1980s, the U.K. saw a “continuing rise in crime, escalating unemployment, and a growing gap between rich and poor” (Mawby and Walklate, 81). Among other neo-conservative agendas, including the promotion of a racialized national and of traditional family values (Smith 1994), Thatcherism employed a range of political, economic, and ideological mechanisms which were put in place to secure social order. The Tory campaign of the 1980s responded to a sensationalised ‘crime problem’ by advocating a tougher approach to enforcement and punishment. At the same time, however, the fiscal politics of neo-conservatism produced cutbacks in public expenditure, wide-spread privatization, and a discourse of self-sufficiency and
equivalency whereby differences among assaults were rendered without significance, particularly without symbolic or political significance. Here, redundancy was utilized as a sign of transparency. By this, I mean that the referent, ‘an assault,’ was both paradigmatically and syntagmatically organized into a meaning system of hyper-equivalence. Much like Gertrude Stein’s famous modernist declaration, “a rose is a rose is a rose, is a rose,” the statement, an assault is an assault is an assault, is seemingly unambiguous, transparent, and dully tautological. However, one possible function of such a tautology would be to reduce something to such a state of equivalence that its meaning becomes commonsensical. This notion of commonsense, as espoused by the Reform Party and its supporters, draws on the evangelical and fundamentalist belief in a literal reading of the Bible whereby literalism, according to Peter Gomes, “liberates [the reader] and the text from obscurantism and secret knowledge not readily accessible to any believer, by the use of common sense.” Derived from Reformationist and Enlightenment philosophical traditions, literalism maintained that meaning’s significance was to be found at the literal level “fixed and discernable by the application of the faculties of reason and common sense.” Thus, crimes motivated by hate were rendered indistinct from those not motivated by hate, and the symbolic message of the attack and efficacious government spending. The U.S., under Presidents Reagan and Bush senior respectively, also advocated and practiced an enforcement crackdown by increasing police response, prosecutions, convictions, and punishments.


247 Gomes, 43.

248 Gomes, 45.
the symbolism of its judicial response, the enhanced sentence, were rendered insignificant and without true meaning. Oddly enough, this commonsense argument of equivalency was repeated, almost mantra-like, throughout the Commons’ debates and the Committee’s hearings by the proponents of exclusion whereby phrases, like that uttered by REAL Women’s national vice-president — “a victim is a victim is a victim” — reduced hate crime and victimization to a system of hyper-equivalence.

It was not a big leap for the Reform to position this literalist argument as an argument of equality. “Reformers believe in true equality,” claimed Reform member, Garry Breitkreuz, “and that all Canadians are equal before the law. Every time the government divides us into different categories it creates the politics of envy, which divide us rather than unite us.” This ‘politics of envy’ argument finds common links with Jacob and Potter’s warning that:

By redefining crime as a facet of intergroup conflict, hate crime laws encourage citizens to think of themselves as members of identity groups and encourage identity groups to think of themselves as victimized and besieged, thereby hardening each group’s sense of resentment. That in turn contributes to the balkanization of American society, not to its unification.251

This imaginary vision of America-the-melting-pot as a cohesive and egalitarian society brought to ‘balkanization’ by special interests and identity politics can be read as

249 Gwendolyn Landolt 64:37. See also Elwin Hermanson, June 13, 1995 @ 2300, “[a] crime is a crime,” and John Williams, Sept 22, 1994 @ 1720, “[a] victim is a victim.”

250 Breitkreuz, Yorkton-Melville, Reform, June 14, 1995 @ 1555.

251 Jacobs and Potter, 131.
scaegoating minority concerns and historic victimization. According to Reform members, the ‘politics of envy’ is fraught with risk: the creation of “elites,” and the generation of ‘rational’ resentment towards minorities which in turn may be translated into a ‘justifiable’ hatred and bias.

Reform M.P. Jack Ramsay, warning of this ‘rational’ causation, alerted Parliament to the risks of hate crime law. He stated:

After all was said and done we all stood equal before the law and that is what is being destroyed. At least the sense of that is being destroyed; that the government is introducing legislation creating special rights for special status for some citizens. That is what will create bias. If one grants special rights and special privileges to individuals, one will see other individuals resenting that. They will see the bias and the prejudice occur. ... It is aiding and abetting those feelings ... we will see the anger, the frustration and the hate.

Not only is the creation of hate crime law constructed as a predictor of civil strife and violence, but it is viewed as its causal agent. Here, the enhanced sentencing provision is constituted as precipitatory to the very violence it legislatively seeks to target. Circular reasoning and commonsense rationality relocates violence against minorities as understandable, reasonable, and teleological.

Insofar as the Reform members positioned themselves as proponents of ‘true

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252 Barbara Perry makes a similar observation, critically rebuking Jacobs and Potter for their position that hate crime law creates intergroup hostilities and their failure to recognize fully that “structural exclusions and cultural imagining leave minority members vulnerable to systemic violence” (2002: 486).

253 Lee, Committee Minutes 77:24.

254 Ramsay, Crowfoot, Reform, June 15, 1995 @ 1615-30.
equality,’ they also positioned themselves and their constituents as the discriminated, the dis advantaged, and the violated, and as part of a larger, silent Canadian majority — “not hyphenated Canadians, not divided Canadians” — whom the government dismissed in favour of minority special interests. Acting out their politics of envy warning, Reform members openly expressed their dissatisfaction with the provision and its protection of minority status. Taking a strident tone, Ian McClelland asserted, “I am absolutely fed up with being discriminated against. It is really starting to get to me. After studying the legislation, I see no mention of white, middle aged, sort of Catholic males.”

Insofar as the legislative provision named race, age, religion and gender as protected statuses, McClelland’s misunderstanding of its protections indexes a highly defensive posture in which someone with social privilege represents themselves as outside of law and as a marginalized subject. This identificatory posture of defence is also apparent in Myron Thompson’s criticism of the list of enumerated groups. Citing his social difficulties as an over-weight child, he questioned why “fat people” were not explicitly mentioned in the legislation. That is, why was his particular ‘identity’ as over-weight not given consideration and protection in the proposed legislation? These parliamentary expressions of a politics of envy were met with outrage from the other side of the House. Liberal Hedy Fry, responding as a visible minority to one such claim, stated, “[w]hat does

255 Spoken as part of Philip Mayfield’s (Cariboo-Chilcotin, Reform) response to s. 718.2(a)(i) which he felt divided and retrenched racism in Canada ( June 15, 1995 @ 2130).

256 Ian McClelland, Edmonton Southwest, Reform, June 13, 1995 @ 2140

257 See newspaper articles for quote; or Jack Ramsay, Crowfoot, Reform, June 15, 1995 @ 1640): cites comment by member for Wild Rose, Myron Thompson. “Obesity”, Committee 69:28
that member who spoke so glibly know about hate and prejudice? The member is one person of a majority group in the House. He has status. He does not ever have to know what it is like to be vilified or discriminated against. I know what it is like.”

In some instances, the Reform’s expressions of a politics of envy and resentment were transformed into fantastic visions of minorities gone criminally mad and held unaccountable by the proposed hate crime provision for their depraved violence. Rank anecdotes of “Vietnamese gangs [...] pillaging and terrorizing [white] neighbourhoods” deteriorated further into allegories of castrating, man-hating feminists with blood-dripping hunting knives and crazed smiles. Referencing an anti-feminist cartoon from Carleton University’s student newspaper that depicted these caricatured homicidal, man-hating women, Reform member Diane Ablonczy petitioned Parliament: “Another cartoon showed her holding a dripping axe over the heading ‘No guilt’, I would like to ask my colleague why she can support a bill that would consider hatred against some groups more serious than hatred against others. The group that was the object of these cartoons is not listed in Bill C-41.” In another instance, after commending the Christian Brethren for their Committee testimony, which included citations from Leviticus and Deuteronomy, as expressing “compassion for members of the homosexual

258 Hedy Fry, Parliamentary Secretary to Minister of Health, Liberal, June 15, 1995 @ 1655.
259 John Williams, St. Albert, Reform, June 15, 1995 @ 2030.
260 Diane Ablonczy, Calgary North, Reform, June 15, 1995 @ 2215. To this outrageous scenario, Paddy Torsney (Burlington, Liberal) responded, “... men have a gender. They are male” (June 15, 1995 @ 2215).
community.” Moris Bodnar then offered personal knowledge of anti-heterosexual hate-motivated violence into the record. According to his “understanding,” vigilante gays were beating up heterosexual families in their homes and so he endorsed the provision as it would protect him and his family from such violence. These visions of madness and disorder blatantly betrayed a populist anxiety of a nation, not only filled with ‘Vietnamese gangs,’ castrating feminists and groups of home-invading gays, but a nation turned upside down and inside out where power relations of racial, gender and sexual privilege were terrifyingly inverted and where law protected the lawless.

The response to such conservative anxiety and outrageous predictions was swift and varied. For every claim made by the Reform and its supporters about the risks of enumerating groups in the legislation, the government had to counter it with, as Allan Rock phrased it, “the rigour of logic [and] the evidence in front of us.” Stan Dromisky, defending the government’s position and echoing his fellow Liberals, argued that Bill C-41 did not give special rights to anyone: “It protects all Canadians. Every Canadian has a

261 Bodnar, Saskatoon-Dundurn, Reform, Committee 81:19.

262 Bodnar: “I think of myself, my wife, my son and two daughters at home. I consider that section [s.718.2(a)(i)] protects them and me in the event of a heterosexual — and I put myself in that category — being beaten up in any way by a group of gays because of sexual orientation. It’s my understanding that is starting to occur” (my emphasis, Committee, 81:20). This issue of a “backlash” against heterosexuals in the form of “heterosexual bashing” was raised earlier in Committee and was responded to by John Fisher of Equality for Gays and Lesbians Everywhere (EGALE) who claimed that the term ‘sexual orientation’ offered equal protection to heterosexuals even though “[t]he reality is that heterosexuals don’t live in a society where they are targeted as heterosexuals when they walk out the door” (69:26).

263 Hon. Allan Rock, Minister of Justice and Attorney General of Canada, June 15, 1995 @ 1530.
nationality, a race, an age, a gender, a sexual orientation, and a religious belief.”\footnote{264} This
simple argument of inclusion and others like it\footnote{265} attempted to disarm the volatile issue of
special rights, to counter predictions of a backlash against such protection for minorities, and to rebuff fantastic stories of minorities as lawless vigilantes.

Insofar as the government was generally able to position such anxieties as unfounded and to derail the opposition to the explicit listing of protected statuses, it encountered a much more vehement and intractable position against the inclusion of ‘sexual orientation.’ Unlike the negative reactions and opposition to the enumeration of a general list of protected categories, the opposition to the inclusion of ‘sexual orientation’ generated a uniquely different set of arguments. First, it was argued that the inclusion of ‘sexual orientation’ to s. 718.2(a)(i) was part of a larger political agenda that was attempting to “slip sexual orientation into the Charter through the backdoor.”\footnote{266} Second, opponents to the provision argued that gay men were not a discriminated against minority, but rather a well-organized, wealthy, and highly educated lobby. Third, they claimed that stories of gay and lesbian victimization were unsubstantiated and thus

\footnote{264} Dromisky, Thunder Bay-Atikokan, Liberal, June 15, 1995 \@ 2010

\footnote{265} Appearing before Committee, Mohamed Chérif stated that the Centre for Research-Action on Race Relations (CRARR) “categorically rejected the unreasonable and unsubstantiated arguments that the protection of hate crime victims will create more class inequities between citizens and destabilize the foundations of our pluralistic and democratic society” (78:18). In debate, Hedy Fry stated, “I do not know if the member knows what he means by special interest groups. The bill deals with women, children, elders, and victims. Now we are being told by members of the third party that women are a special interest group. Actually they said that already. Now children are special interests and victims are special interests. Everyone is a special interest as far as members of the third party are concerned. They do not speak for Canadians. I do not know who they speak for” (June 15, 1995 \@1700).

\footnote{266} Val Meredith, Surrey-White Rock- South Langley, Reform, 78:32.
unbelievable. Lastly, if gays were subject to violence, the detractors’ logic contended, then it was necessarily contingent upon their risky sexual behaviours and often self-inflicted. Combined, these arguments for the exclusion of ‘sexual orientation’ from the provision attempted to produce an illegitimate and undeserving recipient of governmental protection. What follows is a close analysis of the contested terrain of competing knowledges of gay and lesbian victimhood as played out in the debates and committee testimony of Bill C-41.

* * *

“Backdoor” Legislation

The fear I hear is that the motivation of the government is not honest, is not up front, and what they are trying to do is slip sexual orientation into the Charter of Rights through the backdoor.  

One objection to the inclusion of sexual orientation to the list of protected groups was that the government was attempting to advance gay and lesbian rights by pushing ‘sexual orientation’ through a piece of (criminal) legislation in the hope that it would be amended to human rights legislation with little public notice. This so-called “back-door” approach to human rights legislation met with great resistance from the Reform
and its allies. “It is not an innocuous thing,” argued Jay Hill, “It is not an inconsequential thing. It actually is the first step in a logical legal sequence for that undefined term to be included in the Charter of Rights and Freedoms.” Such apprehensions, whether judged to be insightful or repressively alarmist or both, garnered force from other volatile political issues of the time, particularly the Liberal government’s own commitment to gay and lesbian rights. In its “Red Book” of 1993 election promises, the Liberals under the leadership of Jean Chrétien pledged a commitment to amend the Canadian Human Rights Act (CHRA), though as political scientist David Rayside noted, “without specifying

@ 1920, “We object to the minister’s back door attempt through the bill to keep his word to provide added protection for certain groups of people and thereby create a semblance of special status for those groups;” and Ian McClelland, Edmonton Southwest, Reform, June 13, 1995 @ 2150, “It [the government] should show the courage of its convictions and do it through the front door honestly and honourably, not try to slide it in the back door through this legislation;” and Elsie Wayne, Saint John, PC, June 14, 1995 @ 1605, “I also fear the inclusion of the words sexual orientation in the statement of principle is a back door attempt at eventually legalizing same sex benefits and same sex marriages. It has been reported that on March 30, 1995 in New York City at a UN meeting the top Canadian officials at the United Nations were pushing for homosexual rights internationally so they can compel domestic compliance in Canada and justify the route they are taking with Bill C-41. The government should be up front about its agenda and should also listen to Canadians.” This term was not used in any other context in debates surrounding the other content of Bill C-41.

Warning of such inclusion, Dennis Mills, Parliamentary Secretary to Minister of Industry, voiced, “I hope I have made it clear why I, without any personal disrespect or malice toward homosexual persons, do not feel it would be prudent to include the words sexual orientation in this legislation. We are opening the door to the use of this language in other contexts that may lead to legitimizing other forms of sexual orientation we would not want to approve or to the use of the concept of sexual orientation to harm the rights of religious and other groups to freedom of religion, freedom of expression and freedom of association” (June 14, 1995 @ 1610).

I cannot but help think that this metaphor has a richer reading, one that indexes the very act of sodomy. I explore this idea further in the chapter when I discuss REAL Women’s use of the term “piggybacking” with respect to gays and lesbians wanting equity with “the legitimate claims of genuinely discriminated people” (testimony of Gwendolyn Landolt, National Vice-President, REAL Women of Canada, Justice and Legal Affairs Standing Committee, 22-11-1994, 64:10).

269 Hill, Prince George-Peace River, Reform, June 14, 1995 @ 2315.
sexual orientation."

The issue of amending ‘sexual orientation’ to the CHRA had a sustained and unsuccessful history of almost two decades following the passage of the act in 1976. Rayside noted that since the inception of the Human Rights Commission (HRC), the Commission had “inaugurated an annual ritual of recommending the addition of sexual orientation to the act.” This annual recommendation of the HRC, coupled with Quebec’s inclusion of sexual orientation to their Human Rights Code in 1977 and the equality guarantees of the Charter of Rights and Freedoms that came into effect in 1985, opened the door essentially to gay and lesbian equality-seeking activists. As argued by Tom Warner, by 1985 “the [gay liberationist] advocacy focus shifted

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270 Rayside, 111. The inclusion of ‘sexual orientation’ to the CHRA would prohibit discrimination against gays and lesbians in areas covered by federal jurisdiction. As Bill C-33, the amendment was passed on May 9, 1996, “ending the long and tortuous campaign commenced by gay and lesbian activists over two decades earlier” (Warner, 214).

271 Rayside, 109.

272 The Charter of Rights and Freedoms, as part I of the Constitution Act, was enacted in 1982. Section 15 of the Charter, the equality section, came into effect only in 1985 in order “to allow the federal and provincial governments enough time to review all legislation and to introduce any amendments necessary to ensure compliance” (Warner, 193).

273 My use of the ‘door’ metaphor seems quite apropos here as it both accurately reflects the tangible and symbolic effects of the Charter and continues the play of the ‘backdoor’ trope used extensively around this issue. Interestingly, both Rayside and Warner respectively use the same language to describe the expansion of gay and lesbian rights. According to Rayside, the Charter’s “final wording included enumeration of specific grounds on the basis of which discrimination was prohibited, and the vitally important general wording that would provide courts with flexibility, in addition to a subsection explicitly opening the door for affirmative action” (109). Warner wrote that the 1985 discussion paper, Equality Issues in Federal Law, “opened the door” to gay and lesbian activists seeking equality rights. Unlike the ‘backdoor’ metaphor, the sign ‘door’ used in these ways does not connote a devious, indirect or concealed approach to rights-seeking activism.
overwhelmingly towards pursuit of legislated equality rights.”

Some of the effects of this social, legal and political *tour de force* that met with the displeasure of the Reform and its social conservative allies during the debates around Bill C-41 were the addition of ‘sexual orientation’ to seven provincial human rights codes, the unfulfilled, but articulated, promises made in 1992 by then Justice Minister Kim Campbell and her Conservative government to include sexual orientation to the *CHRA*, and the Ontario Court of Appeal’s reading of ‘sexual orientation’ as an analogous ground into the federal human rights code on the basis of the Charter’s section 15(1). It was this history of

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274 Warner, 191. See also Miriam Smith, who writes that “[t]he Charter fundamentally altered the equation. For the first time, there was the possibility that lesbians and gays could obtain actual legal protection and defence of their rights in a broad range of areas […] the Charter also created a new discourse of rights talk. The defining feature of rights talk is its positivistic approach to law, meaning that the law is taken seriously on its own terms as a means of achieving social change” (109-110).

275 Five provinces and one territory amended their human rights codes before 1996. They were: Ontario in 1986, the Yukon and Manitoba in 1987, New Brunswick and British Columbia in 1992, and Saskatchewan in 1993. In 1990, the Nova Scotia Human Rights Commission “directed that in all places where the act referred to *sex* it would be interpreted to mean *sexual orientation*, citing section 15 of the Charter and the recommendation of the parliamentary subcommittee [that inquired into equality rights and whose 1985 report, *Equality for All*, recommended that federal and provincial human rights codes be amended to include sexual orientation explicitly(see Rayside, 109)]” (Warner, 202).

276 The Conservative government made such a promise, but included a provision stipulating marital status, including common law relationships, in exclusively heterosexual terms (see Rayside, 110-11).

277 See *Haig and Birch v. Canada* (1992), 9 O.R. (3d) 495 (Ontario Court of Appeal). Both Warner and Miriam Smith, in *Lesbian and Gay Rights in Canada*, respectively track major equality-seeking litigation during this period. Three critical cases that festered in the imagination of social conservatives of the times were *Egan and Nesbit v. Canada* (1995), 124 D.L.R. (4th) 609 (Supreme Court of Canada) whereby a majority of the Supreme Court confirmed that ‘sexual orientation’ could be an analogous ground of discrimination for s.15 *Charter* purposes; *M. v. H.* (1996), 27 O.R. (3d) 593 (Ontario Court (General Division)) where the Court of Appeal upheld the decision that exclusion of same-sex couples in s.29 of the *Family Law Act* infringes s.15 of the *Charter*; and the Alberta Court of Queen’s Bench’s decision in *Vriend* (1994), 152 A.R. 1 that found that the omission of protection against discrimination on the basis of sexual
rights politics and litigation, together with a socially conservative ideology, that fuelled
the staunch resistance by the Reform and others to the inclusion of ‘sexual orientation’ to
the provision.

Resistance conjoined with a discourse of risk. Criticized as being part of a thinly
veiled Liberal agenda of “social engineering,” the effects of this inclusion to Bill C-41
were shaped by its adversaries as an attack upon democracy, the family, and the church.
More extreme opinions suggested that “[i]f we in the House pass the bill we will propel
ourselves down the slippery slope of governmental redefinition of the family, of

orientation from the Alberta Individual’s Rights Protection Act was an unjustified violation of s.
15(1). At this time of the parliamentary debates on Bill C-41 from 1994-96, the Supreme Court
of Canada had not yet ruled on M v. H. or Vriend v. Alberta; those judgements would be
delivered in 1999 and 1998 respectively.

As evidence of agitation felt by socially conservative members of the House, I offer two
accounts. The first was by Roseanne Skoke and the second by Dennis Mills; both were Liberal
members. “To endorse or to include the words sexual orientation in any federal legislation
would confer on homosexuals the ability to obtain special legal status, allow them to redefine the
family, to enter into the realm of the sanctity of marriage, to adopt children, to infiltrate the
curriculum of schools and to impose an alternative lifestyle on youth. All these demands are
encroaching on and undermining the inherent and inviolable rights of family and the rights of the
church” (Skoke, June 13, 1995 @ 2040). “I fear that by including the words sexual orientation in
federal law for the first time without clarification or definition, we are extending an invitation to
the courts to read sexual orientation into other statutes as they have done with the Canadian and
Alberta bill of rights in previous provincial court decisions. The legitimacy of this reading has
not yet been ruled on by the Supreme Court of Canada. By including these words in a section 15
like list in a federal statute we are saying as federal legislators that what we did not want to
include in 1981 we want to include today. The courts may well turn to this wording for guidance
on other matters. What we have already seen is not encouraging. The Alberta Court of Queen's
Bench ruled the Alberta human rights code had to be read as if sexual orientation was included in
the Vriend case, which meant a private Christian Reformed college had to hire a teacher who was
a practising homosexual despite its religious objections to his behaviour” (Mills, June 14, 1995
@ 1610).

278 Myron Thompson, Wild Rose, Reform, June 15, 1995 @ 2110. See also Jay Hill,
Prince George-Peace River, Reform, June 13, 1995 @ 2325.
governmental sanction of unhealthy relationships.”

Such a forewarning of downward social spiralling located this risk squarely in the inclusion of ‘sexual orientation.’ Here the spectre of ‘unhealth’ and national morbidity is located in the homosexual union and can be read as a criticism of the supposed dysfunctional, degenerative and potentially lethal ‘nature’ of gay and lesbian relationships. Described as a potential “avalanche” sweeping away the traditional family unit, detractors argued that the inclusion of sexual orientation to the provision would “inevitably lead [...] to new limits for the majority of people who do nothing more than go to work, go to church, pay their taxes, raise their kids and ask nothing more than to be left untouched as much as possible by the long arm of the Liberal state apparatus.”

Such statements, which were frequent and common both in the House and in Committee, located risk, not in the marginal status of gays and lesbians, but in the lives and rights of the “average person” and “ordinary Canadians” who in some way would be ‘limited’ by the inclusion of the words ‘sexual orientation’ to an enhanced sentencing provision.

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279 Art Hanger Calgary Northeast, Reform, June 13, 1995 @ 2200-05.

280 This reading of a seemingly innocuous statement – “unhealthy relationships” – is supported by my extensive reading of right-wing Christian media during this historic period. For example, REAL Women of Canada’s newsletter, REALity, republished a rabidly homophobic commentary from a lawyer commenting on the Vriend case. Marking out the “fundamental differences” between homosexuals and heterosexuals, William Somerville remarked that gays are a “high risk to life and health” and that they cannot contribute to “the regeneration of society.” See the following: http://www.realwomenca.com/newsletter/2000_Sept_Oct/article_9.html

281 The avalanche quotation was provided by Elsie Wayne, June 14, 1995 @ 1605 and the larger quotation by Art Hanger Calgary Northeast, Reform, June 13, 1995 @ 2205.

282 Dick Harris, Prince George-Bulkley Valley, Reform, June 15, 1995 @ 2040.

283 Jim Abbott, Kootenay East, Reform, June 14, 1995 @ 1535.
Roseanne Skoke, Liberal member for Central Nova, exploited this polarizing belief. Arguing that “[t]he specific inclusion of the words sexual orientation gives legal recognition and legal status to a faction in society which is undermining and destroying Canadian values and Judeo-Christian morality,” she matched the “inherent and inviolable rights of family and the rights of the church” against the individual rights claims of ‘special interest groups’ and pitched Natural law against man-made, politically-driven positive law. Her shrill warning against the “homosexualist agenda” whipped up a petition-writing campaign of staggering numbers. In the House, she announced that as of June 6, 1995, the House had received “over 83,000 signatures on petitions directly related to the wording of sexual orientation [and that her] office had received over 10,000 letters, faxes and telephone calls confirming the views, values, principles and

\[284\] Skoke, June 13, 1995 @ 2040.

\[285\] Skoke, June 13, 1995 @ 2040.

\[286\] Insofar as natural law is constructed as being both anterior and superior to positive law, natural law typically provides an absolute and (on its own terms) indisputable grounding for positions – especially in contrast to the positive law generated by the conventional or legal sovereignty of the state. I am rather fond of Jerome Frank’s indictment of natural law: “eloquent verbal adherence to Natural Law gives no assurance of moral practices, may indeed furnish a smoke-screen for highly questionable activities […]. Pragmatically, such devotion is no guaranty against injustice and immorality” (Frank, 351). Bill Graham responding to Skoke stated, “[w]hen I hear comments from members of the House about relativism and about characterizing one group as being outside the bounds of protection afforded by civilized society and refer to natural law, I think of that quote and I shudder. My natural law is found in the Supreme Court of Canada in \textit{Egan v. Nesbitt} which holds that discrimination is outlawed in the country” (Rosedale, Liberal, June 15, 1995 @ 1705.

\[287\] Skoke, June 14, 1995 @ 1540; she has repeated used this term, “homosexualist,” to describe gays and lesbians, see Sept. 20, 1994 @1630.

\[288\] It was reported in the media that members of the Reform attempted to deliver a wheelbarrow full of petitions against adding sexual orientation to the bill.
morality of Canadian people."\textsuperscript{289}

According to other House members whose constituents had received information from church groups or other conservative groups, like Focus on the Family, the content of these alerts and calls for action were profoundly misleading, often remarking that the inclusion of sexual orientation to the provision would fundamentally alter the constitution of the Canadian family and limit religious freedom of expression. Liberal member Carolyn Parrish, responding to the agitation felt by her constituents, ended up speaking to a local church group in order to correct some of the misconceptions produced by such an anti-gay/lesbian campaign. Bringing the matter before the House, she remarked, “I have had church groups in my area send me profoundly disgusting pieces of literature because members of Parliament have sent them letters stirring them all up with false information.”\textsuperscript{290} Indicative of this campaign of Skoke and others was a battle for the public’s belief in and support of specific, so-called ‘truths’ about gays and lesbians.

\textsuperscript{289} Skoke, June 13, 1995 @ 2045.

\textsuperscript{290} Parrish, Mississauga West, Liberal, June 13, 1995 @ 2255. See also Sue Barnes, London West, Liberal, June 14, 1995 @ 1705: “I have also heard it said that the new bill will make it a crime to speak out publically against homosexuality. Again, let us be perfectly clear. It is the right of every Canadian to be able to speak his or her mind. A church sermon expressing a moral view is not a crime. Freedom of speech and religion are both specifically protected under our charter of rights and freedoms.” Even Liberal Don Boudria, who was not a proponent of gay and lesbian equality rights, noted his displeasure with the content and volume of public misinformation: “Never, since first arriving in this House a long time ago, have I read letters from constituents and others expressing such disturbing grievances. Let us remember that the bill is about sentencing with regard to crimes already committed. I received letters and postcards from people in other ridings, like this one, which talk about the government wanting to legitimize the lifestyle of a group that undermines basic family values. I have here another letter I have received. Another letter says Bill C-41 would harm the rights of parents to protect their children, the rights of institutions to have a preference over adoption policy, historical rights of freedom of religion, the right of religious institutions to have hiring practices consistent with their religious belief and so on” (June 14, 1995 @ 1630).
According to its critics, if inclusion were a ‘back door’ means of getting sexual orientation into other sites of rights-based law, once it was in, it would be impossible to contain. Warnings from Reform and its allies stressed that the government was “leaving itself wide open” subject to the whims and interests of “an active movement for paedophilia” and activist courts unilaterally to define the term. Warning the need for civic prudence, Mills stressed that the inclusion of sexual orientation to the enumerated list would lead “to legitimizing other forms of sexual orientation we would not want to approve.” Urging the need to contain the term by an explicit definition, Paul E. Forseth drew upon the ‘expert’ testimony of Committee witnesses: “Witnesses had come before the justice committee and stated that sexual orientation could mean anything, including transsexuality and even pedophilia […] to my mind, the term ‘sexual orientation’ is pretty broad. It could involve all kinds of repugnant possibilities, even those that are illegal.”

When asked by Committee member, Tom Wappel, whether in his opinion did ‘sexual orientation’ have a legal definition, Robert Wakefield, Director of the Ontario Criminal Lawyers Association, remarked, “I don’t think there’s a legal definition of it. It’s a psychiatric term [that includes] deviant behaviours.”

Similarly, John Conroy,

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291 Gilmour, June 14, 1995 @ 1640.
292 Mills, June 14, 1995 @ 1610.
293 Similarly, in their submission to the Committee, Victims of Violence’s Research Director, Steve Sullivan, citing the opinion of Dr David Greenberg, a psychiatrist with the sexual behaviour clinic at Royal Ottawa Hospital, stated that sexual orientation is “a descriptive term about what turns a person on […] it does include pedophilia” (67:7).
294 Forseth, New Westminster-Burnaby, Reform, June 14, 1995 @ 1615. He used the same statement in Committee on November 24, 1994, 65:18.
295 Wakefield, 76:54.
Chair of the Committee on Imprisonment and Release, opined that “[i]t could be any kind of sexual orientation, and it could be something that, as you say, is illegal.”\textsuperscript{296} Stressing both the non-legal nature of the term and the term’s apparently uncontainable meaning, Committee members appealed to select expert and common-sense knowledges about the definition of sexual orientation. This appeal to seemingly objective, skilled, and transparent knowledges, I note, stands in stark contrast to Reform’s other characterisation of Committee witnesses – that is to witnesses who were in favour of sexual orientation’s inclusion as a select group of special interest seekers.\textsuperscript{297}

In an attempt to guide his fellow parliamentarians’ knowledge of the term sexual orientation, Tom Wappel, one of the vocal Liberal opponents to the inclusion, submitted a discussion paper to the House titled, ‘Sexual Orientation: Issues to Consider.’\textsuperscript{298} Citing a number of ‘scientific’ authorities including Dr. Greenberg and Dr. Paul Cameron\textsuperscript{299} of

\textsuperscript{296} Conroy, Committee on Imprisonment and Release National Crim Justice Section, 65:18.

\textsuperscript{297} Dick Harris, Prince George-Bulkley Valley, Reform, June 15, 1995 @ 2040: “Bill C-41 does not reflect the views of the average Canadian because the Liberals did not pursue a broad sampling of the views of average Canadians […] Instead they selected people to attend the committees, to submit briefs from groups and organizations, not individuals views, so they could mould them into the real Liberal agenda of the bill, something politically expedient for that party.”


\textsuperscript{299} According to a link on the Queer Resources Directory, http://www.qrd.org/QRD/www/RRR/cameron.html, Cameron was expelled from the American Psychological Association in 1983 (Los Angeles Times-2/22/1993). The reason for his expulsion reportedly was that “[h]e was misrepresenting and distorting other peoples' psychological research and using it to sensationalize his point of view on homosexuals. He talks about homosexuals being mass murderers and child molesters and credits other people for those findings. If you read their research, they have in no way made such claims. We have letters from those researchers saying his (work) has distorted their research,” (Natalie Porter, assistant professor of psychology at University of Nebraska, LA Times-8/20/1985).
the Family Research Institute and author of *The High Cost of Sodomy*, Wappel framed sexual orientation in the broadest of terms by syntagmatically linking the words ‘sexual orientation,’ ‘homosexuality,’ and ‘pedophilia’ in a number of places. His range of expert knowledges with which he made his case against inclusion consisted of the following: the quoting and citing of ‘authorities’ on homosexuality including Focus on the Family, a radically conservative, Christian family-rights organization, the *Alberta Report*, a neo-conservative magazine, and scriptures from Christian and Muslim religious texts.

Against the alarmist notion that paedophilia and other paraphilias would be legitimately protected under Canadian law, Justice Minister Allan Rock stated that:

[…] it has now been some 17 years since the first of the provincial human rights acts was amended to add sex orientation as a ground upon which discrimination is prohibited. In all of that time the consistent use of that provision and interpretation of that provision have been that sexual orientation encompasses homosexuality, heterosexuality, and bisexuality. There has been no confusion on that point. It has not been the subject of controversy or difficulty in the tribunals or courts […] The authority for that proposition is most recently – and I use this as an example – the judgement of the Federal Court of Appeal in *Egan v. Canada*, where Mr. Justice Robertson, I believe it was, made plain that the term ‘sexual orientation’ encompasses homosexuality, heterosexuality, and bisexuality.300

300 Rock 62:30. Rock’s interpretation of sexual orientation was supported by John Fisher, Executive Director of EGALE, who stated that “in our view there is no chance whatsoever that sexual orientation will be interpreted by the courts to include pedophilia”
Notwithstanding this clear reference to the legal interpretation of sexual orientation as being limited and definable to three named sexual orientations, social conservatives nevertheless resisted such authority preferring instead their expert witnesses and their own discovery. Accordingly Jim Slater, Vice-President of Public Policy for Focus on the Family, argued that sexual orientation had no legal standing: “I know that Mr. Rock has said differently. I just do not happen to believe what he has said. For instance, in any of the court cases where we’ve been present as interveners, I don’t find any judgements that have, as Mr. Rock has claimed, defined what sexual orientation is.”

Fuelling this resistance to the inclusion of ‘sexual orientation’ to s. 718.2(a)(i) was the socially conservative argument that gays and lesbians, in particular gay men, were not a discriminated against minority, but rather a well-organized, wealthy, and highly educated lobby. Representing REAL Women of Canada at the Committee hearings, Gwendolyn Landolt stated that “[t]he homosexual activists pushing for special recognition or protection are a powerful interest group, which is using its considerable wealth and political clout to piggyback on the legitimate claims of genuinely discriminated people.”

Responding to such claims, John Fisher of EGALE remarked:

(69:15). Pierrette Venne, BQ member for Saint-Hubert, similarly argued that “[i]n the Egan case, the federal court seems to indicate that a sexual tendency or orientation can be heterosexual, homosexual or bisexual. This case made a challenge under section 15 of the Canadian Charter of Rights and Freedoms. The court concluded that, although the Supreme Court has never issued an opinion on the issue, the fact that sexual tendencies can be invoked as motives constituting discrimination such as those prohibited under subsection 15(1) had become a matter of settled law” (June 13, 1995 @ 2035).

301 Slater 81:5.

302 Landolt 64:10.
“I wish I knew who all these wealthy homosexuals are, and I wish we had more of them in EGALE. I’m familiar with the study that identifies lesbians and gays as a fabulously wealthy, privileged class. Again, it’s based upon very poor research methodology and a bunch of stereotypes and misconceptions.”

The study to which Fisher referred was a 1988 American marketing study by the Simmons Market Research Bureau that surveyed readers of several gay magazines. These findings appeared in a 1991 Wall Street Journal article about marketing strategies geared towards the gay community. Broadly criticized for its weak methodology, this survey claimed that gay American households earned an average of $55,430 per year compared to a national average of $32,144 and averages of black and hispanic households of $12,166 and $17,939 respectively. As Didi Herman observed, the Christian Right deployed this data as part of an anti-gay/lesbian strategy designed to prove that gays and lesbians were not a disadvantaged group (and thus were undeserving of civil rights) and

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303 Fisher 69:22. See also Hardisty and Gluckman in which they write that antihomosexual literature in addition to portraying gays and lesbians as “immoral, disease-ridden child molesters [are further] described as superwealthy, highly-educated free spenders” (1997: 218).


305 Didi Herman notes the methodology is flawed citing that “self-selecting readers of a glossy gay men’s magazine are likely to be amongst the most affluent members” (349) of the gay and lesbian community, that in the rare data that has been collected on lesbian income “lesbian households earn anywhere from far below, to somewhat above, the national [American] average” (349), and that the comparative statistic of gay to African-American household is misleading noting that “the gay average is not being contrasted with the African-American average, but with the average of the poorest [her emphasis] black households” (350). Another observer notes that respondents were “self-selected [...] and that there was no means to prevent multiple responses in the survey” (Wilke, Mike, “Commercial Closet: Controversy Dogs Gay Marketing Research,” The Gay Financial Network, 8 November 2001, http://www.gfn.com/archives/story.phtml?sid=10475).
to create a political wedge between the gay and lesbian community and other minority communities, particularly the Afro-American and Hispanic communities.  

Interestingly, in Committee testimony, the issue of minority status and whether gays and lesbians had a legitimate claim to it was reduced to a numbers game built on this economic data. One the one hand, opponents of the inclusion of sexual orientation to the provision argued that gays and lesbians did not make up a demographic of 10% of the adult population as Alfred Kinsey’s classic studies concluded, but rather their numbers were much smaller. According to this argument, although small in numbers, this minority nevertheless suffered no discrimination or political disadvantage as a class. In essence, the numbers game reduced gays and lesbians to an insignificant population while simultaneously offering that their economic privilege unfairly advantaged them socially and politically. As Jim Slater of Focus on the Family argued, “[t]he homosexual community is known by many people across the country to be a powerful lobby at various levels of government and in society. They are, however, only some 2% of our social unit

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306 See also Hardisty and Gluckman 1997: 218: they note that the slogan of “special rights” implies that “the movement to ensure civil rights for lesbians and gay men is usurping and destroying the African American civil-rights agenda.”

307 For example, citing American Focus on the Family research, Landolt of REAL Women stated: “There has been absolutely no proof to indicate a convincing pattern of oppression causing them, as an entire class, to experience abuse – physical or verbal abuse. It’s true that some individual homosexuals have been subject to verbal or physical abuse, but of course so have many heterosexuals. However, no matter how loudly proclaimed, allegations of oppression against them as a class simply do not hold up” (my emphasis, 64:10). Landolt was adamant about the issue that sexual orientation was not a historically discriminated class arguing that gays and lesbians had not suffered economically, socially, or culturally as had other minority groups. Coupling this argument with another that rejected the notion that, as she re-phrased it, “sexual behaviour” was “an analogous group to gender, ethnicity and race,” she concluded that “homosexuals” could not be perceived to be “victims” (64:19).
here in our nation. Yet they have achieved positions from which they can speak with some power and authority.\textsuperscript{308} The construction of gays and lesbians as disproportionately influential, both economically and politically, negated any minority status that may have been accorded to them strictly by their numbers.

Landolt’s claim – “[t]he homosexual activists pushing for special recognition or protection are a powerful interest group, which is using its considerable wealth and political clout to piggyback on the legitimate claims of genuinely discriminated people; race and gender are listed in the human rights legislation of the provinces and also in section 718.2” – deserves additional attention. In this particular understanding of gay and lesbian activism, a seemingly illegitimate group – ‘homosexuals’ — is attempting to profit from the struggles and rights claims of ‘legitimate’ groups distinguished, as she noted directly after this declaration, by race and gender.\textsuperscript{309} The ‘piggybacking’ trope suggests that gays are attempting a free ride, in essence, by being carried on the backs of ‘genuinely discriminated people.’ Her use of the ‘piggybacking’ trope, to my mind, echoes a similar concern raised earlier about ‘back door’ activism whereby gays and lesbians were attempting to ‘slip’ sexual orientation into the Charter. Taken together,

\begin{itemize}
\item \textsuperscript{308} Slater 81:5. Queer legal scholar, Did Herman, in her excellent article on America’s Christian Right anti-gay discourse cited a 1993 Christian Right document written by Tony Marco which claimed that “[g]ays are no minority; gay militants constitute a rich, powerful special interest. And, to coin a phrase, enough money makes anyone a ‘majority’” (1996: 350, emphasis in the original).
\item \textsuperscript{309} I am convinced that Landolt’s inclusion of ‘gender’ is not produced out of a feminist understanding of gender oppression, but rather an obligatory mention insofar as she represents REAL Women, a national, Christian-based, socially conservative movement that is “pro-family” (Landolt 64:8) and advocates for traditional gender roles.
\end{itemize}
these sodomitical tropes represent gays and lesbians as dangerous and deceptive free- loaders devoid of an ethical politics.

* * *

Illegitimate Victims

To the extent that gays and lesbians were constituted by their detractors as a deceptive, privileged and powerful group, their very victimization by acts of hateful violence was questioned by those who opposed the inclusion of ‘sexual orientation’ to the provision. The question of believability, though, was reformulated in this context of victimization as a question about knowledges. That is to say, the question – *are gays and lesbians believable in their claims of victimization?* – was restated by those who sought to exclude ‘sexual orientation’ from the provision as *how do we know about their victimization?* This epistemological shift was critical for the provision’s opponents for it seemingly established ‘truth.’ Moreover, the reframing of the question about victimization in this way shifted a more apparent socially conservative argument about

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310 Herman’s article on the anti-gay strategies and rhetoric of the American Christian Right (CR) is illuminating and her findings parallel many of the arguments of exclusion voiced by Reform and its supporters. For example, with respect to the construction of gays as deceitful, she wrote: “Often using lesbian and gay theorizing and ‘queer’ politics, several CR pragmatists argue that the notion of ‘gay’ is meaningless; that lesbians and gays themselves are discarding these labels, and that civil rights protections based on gay sexuality will actually be open to anyone claiming any sort of sexual identity at all (for example, paedophiles, necrophiliacs, and so on). Furthermore, this fluidity, the CR suggests, is additional evidence of the deceit of the gay community; on the one hand, they persist in advocating immutability, and on the other, they insist on the shifting terrain of sexuality signified by the word ‘queer’” (my emphasis, Herman, 1996: 354).

the ‘homosexual’ subject with his/her so-called “activist agenda” and “perverse lifestyle” practices to seemingly impersonal, objective knowledges of the scientific method. That is to say, such a question about the knowledge of victimization relocated the truth of victimization from the evidentiary body of the queer subject – the assaulted body, the traumatized psyche, the first-person narrative – to a body of evidence that was amassed by apparent hard data and impersonal statistics. For example, John Nunziata, a Liberal opponent to the inclusion of sexual orientation, framed this question when he argued:

As far as I know, and I have asked several members of the [Justice and Legal Affairs] committee, there was no study presented to the committee and there was no evidence other than anecdotal evidence [....] The member for Burnaby-Kingsway [Svend Robinson] and others can talk about a particular hate motivated crime that happened in Vancouver, Toronto, or Halifax.\footnote{Several incidents of gaybashing and anti-gay/lesbian victimization were mentioned in the Commons debates. Notably, Svend Robinson raised the issue early stating: “Just last weekend in Toronto two men on a downtown street walking home from a café, the Second Cup coffee shop, were attacked. Six young men piled out of a van and beat these two men with fists, boots, and beer bottles, right in the heart of downtown Toronto” (Oct 18, 1994 @1115). After the Committee hearings, other members spoke of anti-gay/lesbian victimization, often speaking in a highly personalized way. For example, Hedy Fry, Parliamentary Secretary to Minister of Health, recounted gay victimization through her experience as an emergency physician: “When I was a physician I saw many young men come into the emergency room with injuries from beatings inflicted because they were gay. Gay bashing in my riding is a favourite Friday and Saturday night sport when brave, macho males drive into town and identify men who are gay, or even worse, who they think are gay, and in bullying, frightened, drunken bravado afflict brutal harm on these people” (June 15, 1995 @1650). Bill Graham, the Liberal member for Rosedale, a riding that includes the Church-Wellesley village, spoke personally of knowledge that was conveyed to him by his constituents: “In my own riding of Rosedale, like the member for Vancouver Centre [Hedy Fry], I know of people walking down Church Street and having cars pull up and people jump out who have been beaten them up, crying that they were gay” (June 15, 1995 @ 1705).} We know these crimes take place. But how often do they take place? Does the government have that evidence? Does the minister have a study that indicates that 1,000, 1,500, 2,000 or 10,000 so-
called hate motivated crimes are taking place? For Nunziata, veracity of anti-gay and lesbian hate-motivated victimization could only be realized in terms of statistical evidence.

Before addressing how the contestation over knowledges of victimization was enacted in the House, the issue of statistical evidence of gay and lesbian victimization and the claim that there was “no study presented to the committee and there was no evidence other than anecdotal evidence” needs to be contextualized. EGALE did submit a brief to the Committee on Justice and Legal Affairs in December, 1994. In this brief, it was noted that “[t]here is no Canadian equivalent of the American Hate Crimes Statistics Act to measure the incidence of homophobic violence.” Rightly, EGALE’s notation drew attention to the fact that Parliament had not responded to a private member’s bill, Bill C-455, that called for hate and bias crime statistics to be collected by the federal government similar to the Hate Crimes Statistics Act and the data collected by the United Kingdom on racially-motivated bias crime. Nevertheless, EGALE’s submission cited a number of studies conducted by various gay and lesbian groups both in Canada and the United States. Canadian studies included a 1990 New Brunswick study on discrimination

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313 Nunziata, York South-Weston, Liberal, June 13, 1995 @ 2155.

314 EGALE, Submissions to House of Commons Standing Committee on Justice and Legal Affairs.

315 EGALE, Submissions: 7.

316 Member for St.Laurent-Cartierville, Shirley Maheu, brought forward Bill C-455, Bias Incidents Statistics Act. It has first reading in June 8, 1993, but not receive second reading: “An Act to provide for the collection of statistics respecting incidents investigated by police forces where those incidents manifest evidence of bias against certain identifiable groups” (cited in Roberts, 1995).
against lesbians, gays and bisexuals, a 1994 public interest research study on homophobic abuse and discrimination in Nova Scotia, and a 1994 preliminary finding of anti-gay/lesbian violence in Vancouver. Deferring to the Quebec Human Rights Commission in its 1993 report on public violence and discrimination against gays and lesbians, EGALE stated that “[t]he Commission accepted the American figures of the National Gay and Lesbian Task Force (NGLTF) that one-fifth of gay men and one-tenth of lesbians have been physically assaulted.” Thus, Nunziata’s complaint that there was no statistical evidence to support anecdotal claims of victimization was inaccurate.

Whether an oversight or a blatant disregard for EGALE’s submission, Nunziata’s claim illuminated the very problematic or resistance to statistical evidence produced by LGBT-positive advocacy, such as the evidence brought forward by EGALE at Committee. Moreover, what might be considered as ‘neutral’ empirical data produced through police statistical reports on bias crime also met with resistance. Liberal members Rock and Barnes respectively noted in the House that bias crime statistical reports from the Ottawa-Carleton and Toronto police forces concluded that hate crimes motivated by sexual orientation represented the third largest category of hate related offences. In

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318 EGALE, Submissions: 7. See also Commission des droits de la personne, From Illegality to Equality.

319 Rock, Minister of Justice and Attorney General of Canada, Liberal, Bill C-41, June 15, 1995 @ 1530, and Barnes, London-West, Liberal, Bill C-41, June 14, 1995 @ 1705.
Committee, Reform MP Thompson approached these reports by way of actual numbers of incidents versus percentage of incidents in order to diminish the ranking of bias crimes motivated by sexual orientation. Citing the 1993 Metropolitan Toronto Police report, he remarked:

I see that in 1993 there were 155 offences under this category [of general bias], and 16 of them were based on sexual orientation, just barely 10%. Some 50% were on race; that is the high part [...] I’m trying to figure out what’s the motivation, what’s the reason for adding sexual orientation to the list, when obviously we’re doing a pretty good job of it now, and obviously from the numbers from a city of 3.5 million people it is not an outrageous amount of crime.\(^{320}\)

Thompson’s observation that hate crimes committed against gay men and lesbians does not add up to “an outrageous amount of crime” fails to acknowledge the harmful impact of bias crime whether that be understood in terms of its often excessive display of violence,\(^{321}\) its prolonged negative effects post-trauma,\(^{322}\) or its ontological injury.\(^{323}\) As Roberts observed, “[i]t would be a mistake to measure the importance of hate crimes simply by the number of incidents reported to police [...] These statistics fail to convey a sense of the true harm inflicted upon the individuals or groups that are the target of hate crimes.”\(^{324}\)

\(^{320}\) Thompson, Wild Rose, Reform, Committee, Nov 24, 1994, 66:27.


\(^{322}\) See for example Berrill 1991 and Herek 1999.

\(^{323}\) Matsuda 1993 *Words That Wound*.

\(^{324}\) Roberts, 1995: 1.2
In addition to this, the appeal to statistical evidence as the exclusive source of authentication and veracity of anti-gay and -lesbian hate-motivated victimization is in need of contextualization. First, as noted by criminologist Julian Roberts in Committee, hate crimes are “one of the most under-reported crimes of all, if not the most under-reported crime.” Specifically, the under-reporting rate of hate crime victimization motivated by sexual orientation is “particularly high when compared to other groups who are often the victims of hate-motivated offences.” In part, the issue of under-reporting anti-LGBT bias crime is connected to the risk of public disclosure by non-out gay men and lesbians and to a reluctance to report to police involving complex issues of historical victimization by and the institutionalized homophobia of police. With respect to police data collection in the 1990s, Roberts noted that Canada had no federal collection of hate crime data and that across police jurisdictions hate crime statistics suffered from a lack of definitional uniformity, differences in collection protocols, and an absence of dedicated police bias units or expertise.

Despite the multiple sources that authenticated and verified anti-gay/lesbian violence and victimization brought before the House and the Standing Committee, the dominant narrative voiced by the opponents to the inclusion of sexual orientation to the provision kept attempting to constitute the queer subject as inauthentic, illegitimate and

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325 Roberts, Committee, Feb 7, 1995, 75:12.
326 Statistics Canada, 2000: 2.2 box.
327 Sepajak 1977.
328 Roberts 1995.
incredible, and thus undeserving of socio-legal protections. The final argument that I bring to light in these legislative debates involves testimony and evidence given before the Standing Committee that attempts to discredit the queer subject as a legitimate and authentic victim of violence. “What if I were to tell you,” stated Reform MP Thompson, “that most of the crimes committed against, say, homosexuals are committed by homosexuals?” 

This suggestion of self-victimization undermines the constitution of gay men and lesbians as targets of homophobia and heteronormativity and reproduces them as targets of their own self-directed violence. This is seen quite clearly in the dialogue between Reform member Paul Forseth, and Committee witness, Gwendolyn Landolt, National Vice-President of REAL Women of Canada:

[…] the information I’m getting is that a fair amount of assaults on gays, especially in public areas like a park, are perpetrated by gays. It’s gays against gays [my emphasis] because of the types of relationships they have – the jealousies and whatnot. Do you have any information on that?

Landolt’s response:

[…] I think that’s a very valid point. The incidence of violence between lesbians and between homosexuals is extremely much higher. There are studies on that and if you want me to provide them, I can. They bash each other. Don’t think it’s necessarily these terrible heterosexuals doing terrible things to homosexuals.

This exchange raises several notions about violence, self-victimization and

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329 Thompson, Reform, Committee, Nov 24, 1994 @ 65:29.

330 Forseth, Reform, Committee, Nov 22, 1994, 64:32.

331 Witness Landolt, Committee, Nov 22, 1994, 64:32-3. My initial and continued reaction to reading this is shock and outrage.
homosexuality, all of which needs examination and a critical response.

This notion of self-victimization – “gays against gays” – needs historical contextualization. The notion of the self-victimizing homosexual has its origin in the classical victimology of Von Hentig and his followers embedded in which are neo-Freudian ideas about self-loathing and self-hatred as a defensive posture against an irrepressible and dreaded desire – homosexuality. These theories were dominant in the United States in the 1940s and 50s when social stigmatization, clinical pathologization, and political oppression of gay men and lesbians was the reality. It was in this milieu that von Hentig developed his theory of the deviant victim as being vulnerable to predators insofar as he or she lacked social protections and the benefits of the law including police protection and civil rights. Mixed, though, with his theory, are two neo-Freudian psychiatric notions. The first is that the subject is psychically terrorized by his own irrepressible same-sex desire due to a failed Oedipal resolution; this is defensively turned into hatred for other gay men whom the subject will victimize. Under this aspect of the theory, the homosexual is predator and it is his own group whom he victimizes. Forseth’s comment about gay men attacking other gay men in parks mimics this theory of self-victimization.

The second notion of classic victimology qua neo-Freudian theory is that the homosexual is in some way precipitatory to his victimization. Within this aspect of the theory, this precipitation usually took the form of psychological weakness or a

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332 With respect to this notion of defence, Bristow notes that the inference is that “repressed homosexual desire is the cause of [...] homophobia [and that] such an argument gives the impression that gay men are the culprits” (63-4) of their own victimization.
masochistic tendency. It was believed that the supposed psychological weakness of the homosexual constituted him as a vulnerable, risk-taker whose poor judgements lead him into situations with a high risk of victimization – like seeking an anonymous sexual partner in a park at night. Here this assessment of risk and pleasure is structured around poor judgement and psychological instability, rather than a calculated assessment of risk and pleasure. In addition, neo-Freudian theory problematically argues that the homosexual is both effeminate (hence the psychoanalytic linkages to masochism\textsuperscript{333}) and self-loathing.\textsuperscript{334} Thus, according to this theory, lacking supposed masculine qualities of strength and self-assurance, the homosexual seeks out or perhaps stumbles upon the sadistic, dominant personality of the victimizer falling victim to that dynamic. Of course, if the homosexual is masochistic, weak and vulnerable, how is it that he is also psychically characterized as a sadistic predator?

Despite these inconsistencies, such theories were quite popular with studies of gay men as victims in the 1970s and 80s. With this as their intellectual pedigree, Maghan and Sagarin argued that homosexuals, as they termed gay men, were found to be both victims and victimizers. “Much but not all victimization of homosexuals takes place in the hands of heterosexual society and of various people who make a complete heterosexual identification,” they argued, “It seems clear that some of the homosexual victimization is at the hands of homosexual offenders.”\textsuperscript{335} Describing a “rage against society,” they argue

\textsuperscript{333} Both Freud and his epigones believed that femininity was psychically structured around masochistic tendencies.

\textsuperscript{334} Bieber 1962, and Bayer 1987.

\textsuperscript{335} Maghan and Sagarin 1983: 158-9.
that the self-loathing and ostracized homosexual targets out of opportunity finding “a ready target in his own backyard, neighbourhood, or bedroom. So it is with homosexuality.”

Such work was later challenged, if not discredited, by others in the fields of victimology and psychology. Perhaps the earliest shift in the neo-Freudian notion of the pathological homosexual finds resonance in the work of Weinberg. In his seminal work, *Society and the Healthy Homosexual*, Weinberg coins the term ‘homophobia’ and stresses that societal fear of the homosexual is both irrational and inculcated to youth at a very young age. That phobia manifests in an irrational prejudice against homosexuals and, for the homosexual himself, this may manifest in self-loathing, which for the most part did not lead to violent victimization of his own group. Mostly, Weinberg noted of then contemporary psychological research, this self-loathing was self-directed and manifested in depressive and suicidal tendencies. The critical argument of Weinberg is that the irrational fear and hatred of gay men is structurally reproduced and sanctioned by societal institutions. This notion was taken up by the 1970s gay liberation movement which rejected the pathologization of gays and lesbians and, in this liberation from the pathological model, refocused on societal and structural oppression and stigmatization of gays and lesbians. As Crew and Norton remarked, “negative self-concepts [are] entirely the result of unjustified guilt [and shame] that has been internalized by the constant

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337 Weinberg 1972.
pressures of homophobic society.”

Contemporary gay/lesbian and queer scholarship speaks of heteronormativity and the social regulation of bodies and desires. The refusal to acquiesce to heteronormative gender codes by queers, for example, produces societal backlash and potential violence. As Stanko and Curry observe, “[i]n short, homophobic violence is a form of governance of sexual differences which poses direct and actual danger to its individual recipients for ‘just’ being or being perceived to be ‘not straight’.” In this model, homophobic violence is not directed at the group nor the self, but is an external violence that attempts to oppress and regulate sexual and gender difference.

Thompson’s references to “their types of relationships” and “jealousies and whatnot” are veiled codes that infer that gay and lesbian intimate relationships are fraught with instability and destructive emotionalism. This notion of ‘gay jealousy’ has deep roots, one of which is a “moralistic” article by Rupp. Miller and Humphreys in their article on gay male victims of assault and murder directly refute the 1970 claim by Rupp that jealousy between gay lovers is “a major causative factor in the murder of homosexual

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339 This literature spans widely from the psychological – see Herek and Berrill – to the philosophical – see Butler, Foucault and Fuss.

340 Tomsen and Mason 2001, Mason 2002, and Perry 2001 in which she adopts the phrase “doing gender appropriately” to describe the heteronormative ideal of adhering to a strict code of gender performance; “doing gender inappropriately” would be a violation of these codes and subject to punishment or opprobrium.


342 Miller and Humphreys labelled Rupp’s article in this way; see Rupp 1970.
men.”

Of their own research, they write, “[n]o case in our sample could be classified as resulting from a dispute between present lovers or members of a love triangle.” Rather than gay relationships constituting a lethal threat, they note that “[t]he gay world not only offers a variety of social, affectional, and cultural opportunities but also tends to protect members from those who may victimize them.”

Despite such contemporary research, Landolt responds to Forseth’s problematic characterizations with her own veiled claim of same-sex domestic violence: “[t]he incidence of violence between lesbians and between homosexuals is extremely much higher.” Thus she enters into the Committee’s record this alarmist claim as witness, but with no tangible evidence nor any direct comparison to another group. Is this supposed violence higher than rates of domestic violence for opposite sex couples? To that, I make note of the following conclusion of studies on same-sex domestic abuse: same-sex and opposite sex intimate relationships experience comparable levels and rates of violence.

Insofar as some lesbians and gay men may experience domestic abuse, it is not at a higher rate than heterosexual domestic abuse, nor does it account for the majority of violence experienced by lesbians and gay men.

The length to which the political opponents to the inclusion of sexual orientation to the provision attempted to reproduce gay men and lesbians as illegitimate and

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343 Quoted in Miller and Humphreys 1980: 180.
345 Miller and Humphreys 1980: 182.
inauthentic victims of violence is staggering. Despite such overwhelming and convoluted argumentation, Bill C-41, the omnibus bill on sentencing reform, was proclaimed in force on September 3, 1996 and the term ‘sexual orientation’ was included as an enumerated category to the enhanced sentencing provision. The bill passed by a vote of 168-51.

Although the debates were dominated by the opposition to the words ‘sexual orientation,’ in terms of actual numbers, the opposition was small. The government, enforcing strict party discipline, did not allow a free vote and threatened disciplinary action for dissent. Ultimately, only four Liberals voted against the bill: Roseanne Skoke, Tom Wappel, Dan McTeague and Paul Steckle. In November 1994, McTeague was quoted in the press as stating that 46 Liberals expressed concerns about the inclusion of the term ‘sexual orientation,’ a claim that he later backtracked on.\textsuperscript{347}

These Parliamentary debates and Standing Committee testimony reveal the extent to which the legislative provision respecting hate motivation and the legitimacy of the status of gay men and lesbians as legitimate and authentic victims deserving of a legislative response were hotly contested. Competing epistemologies of victimhood as argued in the House of Commons and given as testimony before the Commons’ Standing Committee of Justice and Legal Affairs positioned gays and lesbians, on the one hand by supporters of the legislation, as “innocent law-abiding Canadians who are sadly victimized by violent attacks,” and on the other hand by opponents, as a special interest group driven by the “homosexualist” agenda whose very claim to victimhood was

rebuffed and deemed illegitimate. Ultimately, these disparate positions configured the legislative terrain of the gay and lesbian subject of hate violence as unstable, positioned legally within the nomination of ‘legitimate hate crime victim’ but straddled ideologically between legitimate and illegitimate victimization.

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348 The first characterization was offered by Stan Keyes, June 14, 1995 @ 1545 and the second was uttered by Roseanne Skoke, Sept. 20, 1994 @ 1630.
Chapter Five

**Sentencing Hate**

In this chapter, I discuss the symbolic meanings of judicial pronouncements of penalty and examine reported cases of hate-motivated violence against LGBT individuals. My analysis centres on two distinct phases of enhanced sentencing practice: those common law judgements that considered bias motivation against LGBT in sentencing prior to the enactment of the statute and those afterwards. I argue that reported judgements in cases of violence against sexual and gendered minorities offer valuable insights to discussions of citizenship, responsibility, sexuality and violence. Utilizing linguistic theories of the performative utterance, I argue that legal judgements are richly meaningful texts that voice not only social opprobrium and condemnation, but also, in their utterance, constitute imagined communities of law-abiding citizens and responsible social actors. This chapter examines how and the extent to which queer victims of hate-motivated violence are constituted as such.

Canadian crimino-legal scholars, including Kent Roach, Julian Roberts and Martha Shaffer, have noted that the enhanced sentencing provision included in Bill C-41 simply codified existing sentencing principles.\(^{349}\) Roach, for

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\(^{349}\) Roach (1999); Roberts (1995); Roberts and Hastings (2001); and Shaffer (1995). See also MacMillan, Claridge and McKenna (2002).
example, argued that the new law “added little” to the practice and jurisprudence of sentencing. He noted that Parliament’s response to pressures from victims’ rights groups promoted a criminalizing of politics whereby criminal justice reforms, in an attempt to better protect victims and potential victims of crime, sought a punitive, divisive, and symbolic response to crime, rather than a non-punitive model based on crime prevention and restorative justice. According to his analysis, the value of enhanced sentencing, whether codified or left at the level of common law, was often symbolic and divisive, pitting “the accused’s due-process claims against the equality claims of disadvantaged groups.”

Shaffer, in an earlier analysis of hate crime law, similarly remarked that Bill C-41 would merely codify an existing sentencing practice as evidenced by the Ontario Court of Appeal judgements in *Ingram* (1977) and *Atkinson, Ing and Roberts* (1978). She also questioned whether Bill C-41’s enhanced sentencing provision was the best approach to the phenomenon of hate crime. In Shaffer’s analysis, “[c]onsidering motive in the sentencing process is not as powerful a statement [as creating a distinct hate crime offence], since it does not constitute an explicit denunciation of hate-motivated violence but treats hatred as only one of the many factors going to the severity of the crime.”

This chapter will not advocate a position that is either in favour of the enhanced sentencing provision or against it. The fact is, enhanced sentencing is now written into the *Criminal Code* under s. 718.2(a)(i) and judges are to “take into consideration” at the

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351 Roach, 1999: 222.
time of sentencing “evidence that the offence was motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor” as an aggravating factor. What is of critical interest to the larger project of this dissertation is the extent to which interpersonal violence against gay men, lesbians, transgendered people, and bisexuals – where discernable – is constituted by the courts as motivated by hatred of sexual and gendered minorities. My analysis centres on two distinct phases of enhanced sentencing practice: those common law judgements that considered bias motivation against LGBT in sentencing prior to the enactment of the statute and those afterwards.

As with any study of hate crime, there are a number of knowledge constraints that limit my analysis of enhanced sentencing. First, it is well-documented that hate-motivated crimes generally are recognized as among the most under-reported offences. Under-reporting stems primarily from two sources: victims of hate-motivated crimes who are reluctant to report for a variety of reasons including fear of additional victimization and apprehension regarding the response of the criminal justice system which may be negatively biased toward the victim, and police who may fail to recognize or classify such crimes as hate-motivated. Second, gay and lesbian victims are “less likely to report to the police than any other group.” This is often attributed to historically poor relations with the police, including criminalization of queer sexual practices, and political mistrust.

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According to data compiled over a five year period by Toronto’s Gay and Lesbian Bashing Line in 1995, of the 239 reports recorded by the hotline, only 104 were reported to police. For these reasons, officially reported cases reflect only a portion of actual hate-motivated offences.

Continuing with this trend of attrition, few crimes generally result in the imposition of a sentence. For example, British and Canadian data indicate that “only 2-5 percent of crimes result in a conviction and, consequently, in a sentencing hearing.”

With respect to the sentencing of hate-motivated crimes, the Toronto Police Services (TPS) 2002 Hate Bias Crime Statistical Report noted that of the 37 reported hate motivated occurrences that concluded with charges, only 19 reached disposition. There were six concluded cases and 13 remained before the courts. Of these six concluded cases, four ended with guilty pleas, one with a peace bond and the other was withdrawn. Toronto’s Gay and Lesbian Bashing Line’s 1995 report stated that of the 104 anti-gay/lesbian incidents reported to the police, charges were laid in eight cases and convictions recorded in only two cases. The significant gap between charges reported to police and charges laid may be attributed to a number of factors including the reporting of

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357 TPS 2002 Hate Bias Crime Statistical Report, 2003: 12. In 2001, this annual hate crime statistical report noted that 23 reported cases concluded with charges. Of this, there were 13 concluded cases (8 guilty pleas, 3 peace bonds, and 2 withdrawn) and 10 before the courts. Analyzing a different statistical issue, Jones and MacMillan, in their study of 2001-2002 hate/bias incidents reported to the Vancouver Police Department (VPD), stated that the VPD cleared 24 of 128 hate/bias cases (18.8%). “When this frequency is compared to the Total Clearance Rate of 12.4% (N= NA) of all the offences for 2001, the results are quite positive” (Jones and MacMillan, 2003: 15). No comparative data is available on the TPS.
incidents that are not criminal code offences, such as shouting a homophobic epithet. However, this issue of discrepancy is not explored in this chapter. What is crucial to note for the interests of this chapter is that over a five-year period, as documented by the Victim Assistance Program\textsuperscript{358} in their Bashing Line report, only 2 cases resulted in conviction.\textsuperscript{359} Echoing this finding, the executive summary of the seminal policy paper, \textit{Disproportionate Harm}, noted that “data from the same source [VAP’s Bashing Line five-year report] suggests that hate crimes directed at this group are also less likely to result in the conviction than other crimes.”\textsuperscript{360} Moreover, only a select few of those cases would have generated a reported judgement either at the trial or appellate level.

Despite these constraints and limitations, reported judgements in cases of violence against sexual and gendered minorities offer valuable insights to discussions of citizenship, responsibility, sexuality and violence. Legal judgements are richly meaningful texts that voice not only social opprobrium and condemnation, but also, in their utterance, constitute imagined communities of law-abiding citizens and responsible

\textsuperscript{358} As they were known then. The VAP subsequently charged their name to the Anti-Violence Project (AVP); see the chapter on community for more about this.

\textsuperscript{359} I am not arguing that two cases of conviction over a five year period is either a low or high rate of conviction. While there are no data that compare an attrition rate of non-hate-motivated assaults against hate-motivated assaults, there are some data available produced by the Toronto Police Services hate crime team about rates of conviction for charges laid against offenders of hate-motivated incidents. This data do not identify those offences motivated by hatred or bias against sexual orientation and reflect rather all incidents of hate crime. For example in the 2000 TPS hate crimes report, of 204 reported occurrences (18 of which listed sexual orientation as the motivation), 38 resulted in charges being laid (often there are multiple charges laid). At the time of the report’s publication 15 of those cases had been concluded and 23 remained before the courts. The report did not note how many resulted in conviction and sentencing. These data are inconclusive for any type of comparative quantitative analysis. This, however, is not the purpose of this chapter.

\textsuperscript{360} Roberts, 1995: xi. Roberts does not include any data to substantiate this statement.
social actors. Before I begin my analysis of cases, I present an overview of the philosophical resistance to the use of enhanced sentences to address hatred of minority groups, and an overview of Canadian sentencing principles and purposes. Following this, I devote some time to the theory of judicial performativity in order to ground my case analyses in theories of ‘doing things with words.’

Apprehensions

There are well-considered apprehensions with respect to enhanced sentencing as a response to violence against sexual and gendered minorities. Leslie Moran and Beverley Skeggs note that “the demand for law that is at the heart of the sexual politics of violence and safety is a demand for good violence in and through the state institutions of criminal justice.” In this conception, law is understood as the ‘good’ violence that redresses the ‘bad’ violence of hate. They warn that such activism together with some gay/lesbian scholarship on hate crimes are “in danger of promoting a position that threatens to render invisible one more time the violence of law that they have so persistently and diligently exposed.” This production of and by lesbians and gays not only as objects of violence, but also as subjects of violence, they claim, has hidden dangers. These dangers include the generation of a politics of hate that dignifies emotions like hate, anger, and revenge by naming them reasonable and just. Perhaps

what is most compelling about Moran and Skegg’s thoughtful argument is that it does not simply reduce the demands for law to that of a conservative law and order politics. Rather they question and seek to challenge lesbians’ and gay men’s relationship to a politics that “places violent crime as the problem of social disorder and a more brutal regime of criminal justice as the solution.” Moran has furthered the discussion of the emotional investments that are being made in gay and lesbian demands for increased sentencing by seeking to draw attention to the complex and contradictory nature of the relationship among sexuality, the state, and violence that is being forged in the context of a lesbian and gay politics of safety and violence.

Mark Carter, in a specifically Canadian analysis of enhanced sentencing, warns of the retrograde effects of turning to criminal sanctions as a productive response to discriminatory conduct. Informed by the work of human rights scholar, Walter Tarnopolsky, on discrimination and the law in Canada, Carter questions the ability of criminal law to advance progressive social agendas. The codification of principles which enacts enhanced sentencing, he argues, does little, if anything, to advance alternative principles similarly codified in the amendment which “marshal criminal law in aid of

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363 Moran and Skegg, 2004: 35.
365 Carter, 2001. Describing hate-motivated violence as ‘discriminatory conduct’ may be a weakness in Carter’s analysis. Insofar as discrimination may be argued as a kind of social and political violence, it is the violence of physical injury and threat and its corollary violence of psychological injury and of threat to the communities at large for which some members of the queer communities demand criminal legal intervention. Importantly, enhanced penalty legislation is not understood uncritically by the queer communities as a panacea for the ills and injustices of discrimination. Rather, some members of the queer communities were attempting to remedy violence as a criminal behaviour through criminal law.
human rights.”\textsuperscript{366} Clearly not restorative in nature, the principles of penalty as set out by s. 718.2(a)(i) are distinguished, he notes, for their symbolism and focus on retribution.\textsuperscript{367} Rebuking the argument that society can punish in the name of human rights, Carter acknowledges that “[i]f we must punish, then perhaps we should not pretend that there is anything noble about it.”\textsuperscript{368} In his appeal to “intellectual honesty” Carter warns of the risks of aligning a progressive human rights agenda with the “simplistic ‘law and order’ solutions to perceived social problems as a part of broader conservative and even reactionary political and social agendas.”\textsuperscript{369} It is a point well taken.

Carter’s analysis, in observing that enhanced sentencing does little, if anything, to advance alternative principles similarly codified that may be judged progressive, also highlights the ambiguous and contradictory aspects of the sentencing reforms adopted by Bill C-41. Anthony Doob locates the most significant ambiguities in the statute’s purposes and principles of sentencing. Supporting similar observations about Canada’s sentencing policy, he notes, “the question of why we punish is not clear.”\textsuperscript{370} Section 718.1, the fundamental purpose of sentencing, states “[a] sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.” Insofar as this principle is now codified, Doob points out that this principle is then subject to

\textsuperscript{366} Carter, 2001: 415.

\textsuperscript{367} Roach similarly critiques the symbolic and retributive effects of enhanced sentencing; see Roach, 1999.

\textsuperscript{368} Carter, 2001: 435.

\textsuperscript{369} Carter, 2001: 435.

\textsuperscript{370} Doob, 1999: 350. For a comprehensive discussion of the purposes and principles of sentencing, see Roberts and Cole, 1999.
modification under s. 718.2(a) whereby aggravating factors, such as hate-motivation in the commission of an offence, disrupt the strict principle of proportionality.

In its idealized configuration, sentencing is a measured, carefully crafted act of judicial balancing of interests, penalty and responsibility. Canadian sentencing scholars openly recognize that sentencing is designed to serve many purposes.371 The Criminal Code’s fundamental purpose of sentencing lists denunciation, deterrence, and incapacitation directly above what has been termed ‘restorative’ principles, namely rehabilitation, restitution to victims, and the promotion of a sense of responsibility and acknowledgement of harm in the offender.372 This array of varied sentencing principles is not unique to modern democratic societies. David Garland in his analysis of punishment and the modern state describes contemporary democratic penalty as “a dense cacophony of sounds and images rather than a carefully orchestrated message.”373 It is, as he describes it, “a palimpsest in which the archaic and the contemporary are able to coexist.”374

Another area of concern with respect to Canadian penalty is the conditional sentence. A newly created sanction under Bill C-41, the conditional sentence was


372 See section 718. Roach notes that in Gladue, Justices Iacobucci and Cory “observed that while the other objectives in s.718 were ‘in part, a restatement of the basic sentencing aims,’ ss.718(e) and (f) are new and along with rehabilitation (s.718(d)): ‘focus upon the restorative goals of repairing harm suffered by individual victims and by the community as a whole, promoting a sense of responsibility and an acknowledgement of harm caused on the part of the offender, and attempting to rehabilitate or heal the offender’” (2000: 30).


developed as a means to reduce incarceration rates. Designed as an alternative to imprisonment, the conditional sentence allows the offender to serve a sentence of up to two years less a day in the community, subject to mandatory and optional conditions.\textsuperscript{375} Despite its ostensible restorative value, there have been a number of issues and concerns raised around the conditional sentence. One criticism targets the idea of the conditional sentence as a restorative sanction. Patrick Healy, among others, has remarked that conditional sentencing does not mark “a shift from punitive to restorative sentencing and indeed the current interpretation of the conditional sentence is consistent with continuing emphasis upon punitive objectives in sentencing.”\textsuperscript{376} Among the punitive applications of the conditional sentence are house arrest, curfews and electronic monitoring. Moreover, punitiveness is realized upon a violation of conditions. Critics, like Kent Roach, have noted that a breach of conditions would automatically result in incarceration. Concerns about net-widening have also been raised. Roach has argued that “offenders are subject to more intrusive sanctions than before”\textsuperscript{377} in that offenders eligible for conditional sentencing and all its conditions would have previously been given a fine or been subject to a probation order. As well, conditional sentences typically result in lengthier sentences than a term of imprisonment. On the other hand, there are others who illustrate that the imposition of a conditional sentence “could be said to subvert the message that the


\textsuperscript{376} Healy, 2000: 3. Kent Roach (2000) is also highly critical of the notion that the conditional sentence is restorative in principle.

original sentence of imprisonment was meant to communicate.\textsuperscript{378} This is particularly significant to the discussion of crimes motivated by hate and their disposition in that imposing a conditional sentence does not preclude using s. 718.2(a)(i) to acknowledge hate motivation as an aggravating factor.

One final point about conditional sentencing that I will make, before I discuss the symbolic meanings of judicial pronouncements of penalty and examine reported cases of hate-motivated violence against LGBT individuals, relates to violence in the commission of a hate-motivated offence. Particularly confusing, in this context of sentencing hate-motivated offences against sexual and gendered minorities, is Jack Gemmell’s assertion that “conditional sentences represent a means of reducing Canada’s high incarceration rate for non-violent offenders.”\textsuperscript{379} In my research on post-Bill C-41 cases of anti-LGBT violence, conditional sentences were clearly applied to violent offenders, that is those who were convicted of violent offences against LGBT individuals. Perhaps Gemmell has taken subsection (b) of s. 742.1 — “the court is (b) satisfied that serving the sentence in the community would not endanger the safety of the community” — to mean that the offender serving a conditional sentence poses no threat to ‘community.’ In the case of gay-bashers, this is a curious statement. Members of the AVP have repeatedly expressed concern for the use of conditional sentencing for offenders convicted in gay-bashing incidents stressing that the queer ‘community’ does feel threatened by the presence of

\textsuperscript{378} Gemmell, 1999: 64.

\textsuperscript{379} Gemmell, 1999: 64. This assertion is closely repeated, or at least inflected by Daubney and Parry who write that “[t]he innovation of the conditional sentence is, in part, a response to the fact that Canada has a very high incarceration rate for non-violent offences” (1999: 41).
these offenders in the general community. Gemmell’s assessment does not distinguish between the community at large and a sub-community to which the victim may identify as a member. In my discussion of citizenship, responsibility, sexuality and violence, the usage of ‘community’ as articulated by judicial pronouncements of sentence will be closely analyzed.

* * *

Judicial Pronouncements of Penalty

Legal interpretative acts, like sentencing, “signal and occasion the imposition of violence upon others.” Robert Cover’s famous analysis of the violence of law reminds us that judicial pronouncements are, in effect, implements of violence for they put deeds in action by mandating the institutional apparatus of law. Judges’ words, writes Cover, “serve as virtual triggers for action.” Moreover, law does not only occasion violence; law is always already violence. Thus, despite whether there is an increase in quantum or severity of sentence in cases where the judge has taken hate motivation to be an aggravating factor, we cannot deny law as a kind of a priori violence, a violence that precedes and makes possible the imposition of penalty by the very promise or foundation of force upon which law is built. To obscure the fact of legal interpretation as violence, Cover argues, “is precisely analogous to ignoring the background screams or

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381 Cover, 1986: 1613.
visible instruments of torture in an inquisitor’s interrogation.”

In her discussion of the power of sovereign language, Judith Butler argues that the judge is “a sovereign agent with a purely instrumental relation to language.” By this she means that the power of juridical speech is its ability to perform what it names at the moment of naming. Following J. L. Austin’s illocutionary speech-act theory, Butler writes, “[a] judge pronounces a sentence and the pronouncement is the act by which the sentence first becomes binding.” Juridical speech acts, like that of sentencing, “do what they say on the occasion of the saying.” This ‘occasion of saying,’ Butler argues, is ritualized, not only by the authority of the speaker and the ceremony of speaking, but by the invocation of prior ritualized practice.

Here Butler expands Austin’s notion of conventional speech by theorizing it through Jacques Derrida’s notion of iterability. Ceremonial speech, according to Austin, is “secured through convention,” that is, it invokes a formula, a ritual of speech-action whose very existence and meaning is founded upon prior actions, repeated and recognizable – “legacies of citation.” In this way, Butler argues that “[t] he Austinian subject speaks conventionally, that is, it speaks in a voice that is never fully singular.”

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382 Cover, 1986: 1608.
384 Butler, 1997: 49.
385 Butler, 1997: 3.
387 Butler, 1997: 51
That is to say, convention acts as a kind of citational practice. Derrida, in Butler’s analysis, exposes the ‘masquerading’ performative of the pronouncement, not as “the function of an originating will,” but as derivative speech-act.\(^{389}\) The judicial speech-act, “I sentence you to a term of imprisonment,” spoken in the first-person, masquerades as originary. Derrida’s theory of iterability undermines and exposes this fiction of originary sovereign speech to the force of ritualized history. Thus, according to Butler, the power of performatives derives not only from the way in which performatives enact what they name, but also from their accumulated force of authority through the repetition or citation of a prior and authoritative set of practices.\(^{390}\) Leslie Moran notes that “[i]terability has particular significance for law: legal interpretation is a practice of repetition that has the characteristics of both novelty (declaring for the first time) and saying again (a reiteration).”\(^{391}\)

If the power of juridical speech is its ability to perform what it names at the moment of naming, then what is it that is named? Law’s performance may indeed be about power, but this power should not be understood as only violence. Garland’s analysis of penalty as a signifying practice is instructive here. He observes that law does not only enact power as brute violence, but rather enacts power in (re)producing social and moral order. Following a Foucauldian notion of penalty as productive and meaningful, Garland reads penalty, on the one hand, as a set of practices that incarcerate,

\(^{389}\) Butler, 1997; 51.

\(^{390}\) Butler, 1997: 51.

supervise, regulate, isolate, and rehabilitate the offender, and on the other hand, as a system of signification. The conventional distinctions between instrumental penalty and symbolic penalty are rendered obsolete and artificial. Insofar as every act of punishment symbolizes and every expression of penalty has real effects, Garland understands penalty as a signifying practice. He writes, “[i]n its own way, penal practice provides an organizing cultural framework whose declarations and actions serve as an interpretative grid through which people evaluate conduct and make moral sense of their experience.”

The didactic power of punishment, as exemplified by the judicial sentence, for example, “routinely interprets events, defines conduct, classifies action, and evaluates worth, and, having done so, it sanctions these judgements with the authority of law, forcefully projecting them on to offenders and the public audience alike.” In seeking “to organize our moral and political understanding and to educate our sentiments and sensibilities,” penalty “goes beyond the immediacies of condemnation and speaks of other subjects and other symbols.” The sentence, insofar as it sets in motion a procedure of legal sanction, is also highly symbolic and expressive. This formal, authoritative utterance of judgement, condemnation and classification speaks by means of symbols, signs, declarations, and rhetorical devices to an imagined community constituted through and by law. In this way, the offender is not the sole addressee of the judgement. Judgement necessarily imagines a community beyond the offender.

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“It is not just ‘the criminal’ who is interpellated by the symbols of penalty,” argues Garland, “the identity of the ‘law-abiding citizen’ derives in part from the same symbolic frame.” 395 When judgement speaks, it interpellates a subject. By this I mean, following Althusser, that “the address animates the subject into existence.” 396 To claim that the ‘law-abiding citizen’ is also animated into existence by the act of sentencing, recognizes the necessary anterior to criminality that is critical to the instruction of judgement. The ‘law-abiding citizen’ is a necessary constituent in that imaginary community invoked at the time of sentencing. “Penal practices, discourses, and institutions hold out specific conceptions of subjectivity,” observes Garland, “and they authorize specific forms of individual identity.” 397 Beyond judgement, condemnation and classification, judicial sentencing names, that is, ‘performs’ what it is to be a ‘criminal’ and a ‘law-abiding member of the community,’ and how such persons and their subjectivities are to be understood. In this constitution of social subjects, penalty demonstrates and gives authority to “specific practices of blaming, holding accountable, and fixing responsibility.” 398

Case Analyses pre-718.2(a)(i): A Legacy of Citation?

As in any genealogy, particularly those after Foucault, the structure of that knowledge has attended to small details and is formed, not by way of a linear history, but by way of instinctually attaching curious facts and odd insights to the production of knowledge. This chapter began with a scholarly recognized assertion that the enhanced sentencing provision did little more than codify existing sentencing principles. But, as Roberts points out, “this assertion has never been fully documented, and the few existing sentencing texts are silent on the issue. It is important to know whether the courts have in fact recognized the motivation in this way, and also to what extent.”

Along with the two originary common law judgements that expressed hate-motivation as an aggravating factor at sentencing, I examine eight reported judgements that appeared between November of 1985 and March of 1996 and that explicitly mention the perceived sexual orientation of the victim as ‘homosexual,’ ‘gay’ or ‘lesbian’ in these cases of violence. To the extent that I trace the usage and application of hate-motivation as an aggravating factor, I also analyze judicial performances of citizenship and responsibility.

Sentencing scholars, including Roach, Roberts and Shaffer, locate the ‘origin’ of hate-motivation as an aggravating factor in the sentencing principles of *Ingram and Grimsdale* (1977). In the case of *Ingram*, a 49-year-old recent immigrant to Canada, Mr.

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400 As noted in my section of the dissertation’s methodology, there are only eight reported judgements during this time period (that coincides with my research timeframe) that explicitly mention sexual orientation. With respect to the end date of March 1996, this is the last of the reported cases prior to the change in sentencing law. The enhanced sentencing provision, s. 718.2(a)(i), came into force on September 3rd, 1996.
Kanji, was attacked by two white men, Ingram, 21, and Grimsdale, 18. The “unprovoked [...] and racially motivated” attack upon Kanji began with a series of “loud and abusive” racial insults against himself and a TTC guard.  The uttering of racial insults escalated to the physical harassment and intimidation of Kanji inside a TTC subway car. Breaking free of his harassers, Kanji managed to exit the subway car but was subsequently pursued, jostled, hit and pushed by the offenders. In a failed attempt to trip him, Kanji was nevertheless pushed off the edge of the subway platform onto the tracks. As a result, both legs were fractured. He was hospitalized for four months and sustained permanent, serious damage to his knee joints. Ruling that the learned trial judge “erred in failing to hold that the racial motivation for the cowardly attack was an aggravating factor” to be taken into consideration in the imposition of the sentence, the Ontario Court of Appeal recognized that “an assault which is racially motivated renders the offence more heinous” and is deserving of a sentence which “expresses the public’s abhorrence for such conduct and their refusal to countenance it.” In its deliberation, the Court warned that “[s]uch assaults, unfortunately, invite imitation and repetition by others and incite retaliation.” The danger even greater still, opined the Court, was to “the very fabric of our society”

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401 All pagination prefaced by QL indicates that the pagination corresponds to the Quicklaw print format. These are the findings of the trial judge at QL 2..

402 Ingram at QL 3.

403 My emphasis at QL 3. This analogy of the Court is problematic. Apart from the dated language of disability, this analogy represents racial minorities as a class of citizens who are disadvantaged by some kind of essential vulnerability. The issue that is overlooked in each of these cited classes is the systemic and structural inequities that foster, reproduce and edify such vulnerability.
described as a “multi-cultural, pluralistic urban society.”

A year later, in *R. v. Atkinson, Ing and Roberts* (1978), the same Court applied those sentencing principles as articulated in *Ingram* to three accused who had attacked three different men with “indescribable brutality.” These accused, along with two juveniles, “set out to beat up ‘queers’ in Riverdale Park.” Justice Dubin J.A. writing for the Court remarked that the youths “sought out” three men who were complete strangers to them. The court was clear to add the assaults were “completely unprovoked” and were not a result of a “melee.” Summarizing the incident, Justice Dubin stated, “[h]ere, a vicious assault was carried out by a cowardly gang of youths who selected innocent victims, complete strangers, who had the misfortune of being in a public park on that occasion,” a public park that the Court acknowledged “had a reputation of being a place

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404 QL 3.
405 QL 1.
406 QL 1.
407 My italicization for emphasis, QL 3.

In another Ontario Court of Appeal case, *R. v. M.D.* (1990), the appellant, who was a few months from his eighteenth birthday, sought leave to appeal from a judgement ordering that the youth be tried in adult court. In its dismissal of the appeal, the Court supported a lower court’s decision that “the cumulative effect of the extraordinary brutality and violence alleged, society’s concern that a class of persons, homosexuals, was being preyed upon and terrorized, and the perception of injustice resulting from the possibility of wider disparate sentences to accused persons only a few months apart in age, far outweighs any advantage of treatment for young offenders” to which MD did not avail himself (QL 3). The act of violence was committed in two separate incidents, and included three counts of attempted murder, one count of kidnapping and one of break and enter and robbery.

In *R. v. Gallant* (1994), the accused appealed from a sentence of two years imprisonment and two years probation for his part in the assault causing bodily harm to “a man who [sic] they perceived to be a homosexual” (QL 1). The appeal was allowed and the sentence was reduced to seven months imprisonment and one year probation. In its deliberation, the Manitoba Court of Appeal noted that the appellant was a first-time offender who “profess[ed] to have changed his attitude and to [have] disassociate[d] from those who shaped his previous views” (QL 1).
frequented by homosexuals." Ruling that the trial judge erred in finding that the principles set out in *Ingram* were not relevant because that case was concerned with a racially motivated attack, Justice Dubin made no such distinction and affirmed that such principles were not limited to such an attack: “the motives for the assaults should have been considered by the trial Judge as an aggravating factor in imposing sentence.”

In law’s discussion of criminal responsibility, as noted in *Atkinson*, the legal interpretation of the scene of violence adds to the constitution of innocence and guilt. A judicial reading of the scene of violence as a deliberate and unprovoked attack upon unsuspecting strangers not only contributes to the egregiousness of the violence, but also affixes a state of innocence upon the recipients of that violence and locates guilt in the actions of the violent. In *R. v. H.J.J.* (1985), the Court noted that the five accused along with three others decided to go to High Park, where they beat a man to death, for the purposes of “getting some money from a queer” and to go “faggot beating.” The Court acknowledged that the youth went to the park with “the intention of seeking out someone whose sexual proclivities they were unhappy with.” Insofar as the Court was quick to note that there is no concrete evidence that the accused was a homosexual,” it remarked that the area was “apparently [...] frequented by homosexuals seeking sexual encounters” and that there was a “pretty strong inference from all the circumstances (the location, the

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408 QL 1.

409 QL 3.

410 QL 2.
time, and so forth) that that may well have been his sexual orientation." As a result of this knowledge, and not despite it, the Court stated that it had “reason to believe that at some stage, after drinking, when their inhibitions had probably been overcome, that they intended to assault someone whom they believed to be a homosexual.” Condemning the youths’ “vigilante activity,” the Court reminded its audience that “[i]t is well to remember that they were not solicited, if, in fact, any solicitation was to take place, by this victim.” The absence of ‘solicitation’ on the part of the deceased – which probably would have been read as a kind of provocation thus altering the judicial reading of this scene of violence – secured his status as innocent and undeserving of the violence that ended his life. To that end, although the Court makes no mention of Atkinson or Ingram, in its deliberation of the “proper sentence,” it clearly cites the motivation for the killing as a factor to be considered among a host of sentencing principles including deterrence, protection of the public, reformation and rehabilitation.

In R. v. Wilson (1991), the site of ‘homosexuals’ identified by the Court is not the public park, but rather a particular street, Church Street, and an area shaped around that street, the Church/Wellesley area. “It is no secret,” remarked Judge Harris, “that this particular street and area are populated by a significant number of gay persons.” The victim, John Russell, gave testimony that he was “attracted to the scene [of violence]”

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411 QL 2.
412 QL 4.
413 QL 7.
414 QL 6-7.
because he saw some sort of altercation on Church Street and heard the accused and his friend yelling, “You fucking faggot. You fucking freak of nature.”

“When a gay man, as I am,” he testified, “hears that, you immediately think of gay bashing which has become imminent in the community.” At the scene of violence, Russell and Wilson “exchanged words” and then Wilson attacked him, kicking him in the groin and punching him in the face. Assessing the nature of the attack, Judge Harris noted, “[i]n common street terms the accused participated in what has become known as ‘gay bashing.’

In this particular case, issues of citizenship, specifically those that describe inclusion and exclusion, are realized through references to social space. Dispersed among his insults and homophobic epithets, Wilson made this particular statement to Russell, a self-described member of the gay community: “‘fuck off’ and get out of the neighbourhood.” The ‘neighbourhood,’ though, is clearly identified as the social space of the gay community. Evoking a corporal metaphor of community as body politic, Judge Harris noted that the Community Centre is located “in the heart of the gay community at 519 Church Street.” In its search to find remedy, the Court asked Russell for his opinion on the following questions: “what would you do to try and educate someone?

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415 QL 3.
416 QL 3.
417 QL 3.
418 QL 7.
419 QL 3-4.
420 My emphasis, QL 7.
How do you change a person’s thinking?" Significantly, Russell recommended that Wilson, who has been described by the Court as a “visitor” to Toronto, serve some sort of “community service within the gay community, preferably at the community centre at 519.” Remedy to violence is envisioned as the incorporation into the social fabric of the urban community.

Issues of citizenship are also raised by citational practice. Noting a nexus between the anti-Semitic violence of Nazi Germany and a “fashionable and acceptable [practice], but only to a despicable minority, [...] ‘to have a few beers and beat up on a queer,’” Judge Harris warned that “permitting repulsive conduct of this nature to fester without going unchecked is reminiscent of what history says took place in Europe as recently as during the 1930’s and 1940’s.” Having said this, he then turned to case law to substantiate his finding that the assault on Russell was “sexually motivated” and thus an aggravating factor. Citing *Ingram*, as well as *Lelas* (1990), in which anti-Semitism was understood to be an aggravating factor, the Court remarked that “[t]he victim was assaulted because he appeared to belong, or was sympathetic to, a minority community or both.” Insofar as the Court recognized violence against the gay community, it was careful to establish that it also incorporated other minority communities and addressed larger social issues: “Accordingly, the sentence I ultimately tailor for this accused is not

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421 QL 4.
422 QL 6 and 4 respectively.
423 QL 7.
424 QL 11.
425 QL 6.
specifically meant to strike a blow for the gay community, although if in fact it does, so be it. [...] the sentence is meant to strike a blow for justice and humanity, and for all the ‘little people’ who strive to live their lives in and around the laws of our country, but for whatever reason may appear to others as being ‘different,’ either in looks or speech or belief, or in any multitude of ways.  

Neither the trial judgement of R. v. Cvetan and Iacozza (1995) nor R. v. McDonald (1995) makes explicit reference to Ingram or Atkinson. However, both judgements identify violence against sexual minorities as unjustifiable and as a consideration in sentencing. In R. v. Cvetan and Iacozza, the judge ruled that the assault was precipitated by a “minor traffic incident” and that “if it had not been for that [...] there would have been no incident at all.” He noted that there was conflicting evidence as to whether any witnesses had heard homophobic language being used. Only one witness testified that he heard the words “fucking fag” and “fag” several times. “All in all, I am not satisfied, required to the degree of certainty,” Justice McRae opined, “that the sexual orientation of the two victims was the primary motive for these assaults.” Nevertheless, he stated that “on all the evidence, that [sexual orientation] did play a role, in that community, of which the two accused were familiar and they had been to before, at that time of night on a weekend, and I am satisfied that the two accused were aware of

\[426 \text{QL 11.}\]
\[427 \text{An unreported case, not available on QuickLaw, 74.}\]
\[428 \text{75.}\]
\[429 \text{75.}\]
the victims’ orientation, and that the violence with which they pursued their purpose was affected by this knowledge; that constitutes an aggravating factor.” Cognizant of his judicial “responsibility in the community,” Justice McRae denounced the attack on Dr. Pollak and Mr. Shiels stating that “unprovoked violence on innocent victims whether gay, black, white or not” will not be accepted. Similarly, in *R. v. McDonald*, the judge described the accused as a “violent con man” who took “pride” in his use of “violence on weaker people.” According to the facts of the case, McDonald placed personal ads in newspapers and then robbed at knife point those whom responded. He attempted to justify his criminal activities to a police detective by claiming that the victim was just “a fag.” In its pronouncement of sentence, the Court noted that “people of violence” were accountable to “people in this city” and that it was “not justifiable to pick on minorities or it is not justifiable to pick on people of different sexual persuasion than yourself and to prey on these people.”

If a deliberate and unprovoked attack upon unsuspecting citizen strangers safeguards the judicial assignation of innocence to the victim, then an attack that is judged to be of joint responsibility, to a lesser or greater degree, confers no such status. In *R. v. Longpre* (1993), the accused pled guilty to the attempted murder of his married step-daughter’s lesbian lover. In his summary of the facts, Judge Devine noted that the

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430 76.
431 76.
432 QL 1.
433 QL 1.
434 QL 2.
step-daughter’s family was “vehemently opposed to this lesbian relationship” and after an altercation with the family in a Sudbury hotel room, the step-daughter and her lover fled to Winnipeg. After a few weeks, the family discovered their whereabouts and drove to Winnipeg. The family, consisting of the accused, two of his other adult step-daughters and their boyfriends (all of whom are co-accused), spotted the couple on the street and chased the lover into a furniture store. The “complainant,” who is never referred to as the ‘victim’ in the judge’s reason for decision, was then forced out of the store into an awaiting car. The accused, brandishing a knife, punched her about the face and head. The car drove to a residence into which she was then dragged. The accused threatened her again at knife point to end the relationship or he would kill her. She refused and “the accused stabbed her while she was being held by persons whom she was unable to identify.” In this attack, she was stabbed several times near her heart and suffered the loss of several fingers when she raised her hand in self-defence. The judge in his consideration of responsibility noted that “Mr. Longpre was seeking assurances from the complainant that she would leave Marlene alone until immediately before the stabbing” and that “it was the complainant’s bravado in insisting that she loved Marlene and wouldn’t give her up and that Mr. Longpre better do a good job that provoked his client to take the ultimate step of stabbing her.” In this judicial reading of the limits of reason, the lover’s ‘bravado’ and defiant refusal to succumb to the knife-wielding threats of an enraged patriarch mitigates the accused’s responsibility for the violence enacted, at least

435 QL 2.

436 My emphasis, QL 3.
partially so.

In a rather unique judgement, the issue of provocation is raised again. Only, in this case, provocation appears as a kind of legal *doppelganger*. By this I mean, provocation, both as legal doctrine and as the scenario of violence, haunts the case of *R. v. Young* (1991). According to the facts of the case, the accused, Kenneth Young, 24 years of age, had known Arnold Hayden, a 64 year old retired man, for a number of months. Both had been patrons of a local restaurant/tavern and had often “shared a beer” together. On the afternoon of the attempted murder, Young and Hayden “drank beer, talked and watched television” at the restaurant. There was, as the judge had noted, “no ill-will between them.” After a time, they left the restaurant and went back to Hayden’s apartment. “Neither was intoxicated.” They drank some more beer at the apartment and Hayden “decided to take his evening shower.” He returned to the living room “clad only in a T-shirt and bathrobe.” Within a short time, the accused and Hayden “engaged in a variety of homosexual activities, including mutual acts of fellatio” whereupon they then retired to the bedroom where “similar homosexual activity continued.” At some point, the accused got up to remove his T-shirt when Hayden

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437 QL 1.
438 QL 1.
439 QL 1.
440 QL 2.
441 QL 2.
442 QL 2.
443 QL 2.
heard him say, “turn around, I’ve got a surprise for you.” The accused struck Hayden on the back of his head and stabbed him in the back. Having fallen forward by the force of the impact, Hayden was stabbed again in the back. Both knives were “embedded in [Hayden’s] back up to the full extent of the blade” causing “irreversible damage to [his] spinal cord.”

Hayden survived the attack and did not die. In his sentence, Judge Watt remarked that the offence was “a cowardly, unprovoked and considered attack on a defenceless, unarmed, older and unsuspecting victim.”

In describing Hayden’s attitude toward the accused, he noted that Hayden was “a lonely man with nothing better than time on his hands, he had befriended a youth whom he naively trusted implicitly.”

For all intents and purposes, *R. v. Young* is not a case of provocation. The judge clearly identified the attack as ‘unprovoked.’ Legally, there was no homicide, so that a defence of provocation is a moot issue. However, the scenario of violence is an exemplar of cases that have used provocation or ‘homosexual advance’ as a partial defence to second-degree murder.

Stephen Tomsen observes that anti-gay killings usually take on one of two scenarios: the first can be characterized as a fatal attack in a public space by strangers who attack in groups, and the second as a “personal dispute, usually occurring between two men in private space, that leads to fatal violence.” In this second scenario, Tomsen adds that the assailant alleges a sexual advance by the deceased. This scenario,

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444 QL 2.
445 My emphasis, QL 2.
446 QL 2.
447 See Howe, 1997; Banks, 1997; MacDougall, 2000; Tomsen, 2002; and Lunny, 2003.
according to his analysis of anti-gay homicides in New South Wales, is subject to a significant internal variation. In one form of this scenario, the men are in a situation of “friendly socializing and drinking between ‘mates’,” and in the second variation, the situation is sexualized whereby the men have linked up for “the ostensible purpose of a casual sexual encounter.” Tomsen argues that the claim of being subject to a sexual advance that was unexpected and provocative is “generally less believable in the second, more sexualized type of setting.” Had Kenneth Young killed Hayden, I believe that his defence would have been provocation. There would have been no witness to contradict his version of events and, in this telling, I surmise – having read dozens of these cases of homosexual advance – that the acts of mutual fellatio would have disappeared in Young’s account. Insofar as this insight is purely speculative, R. v. Young resembles Tomsen’s scenario of homicide in a private space. The scenario seems all too familiar – hauntingly so. Nevertheless, despite this presence of provocation, the judge ruled that the attack was unprovoked and that the responsibility for the violence remained solely with Young.

To me, what is striking about these particular judgements is the extent to which sexuality, specifically homosexuality, is articulated by the Court. The Court does not silence or disavow homosexuality. Homosexuality is given a context in the judicial re-telling and denouncement of violence. Sometimes, through judicial pronouncements, homosexuality forms a social space. In other instances, it constitutes identity. And in others, it shapes perceptions and drives behaviour. But what seems to be key in these

Tomsen, 2002: 27.
Tomsen, 2002: 27.
judicial articulations of homosexuality, and I include lesbianism in this pronouncement of sexuality, is the extent to which ‘homosexuality’ is constituted as ‘innocent’ in its expression or not. It is this articulation of ‘innocence,’ I argue that constitutes the queer victim of hate-motivated violence as deserving of social empathy, of social inclusion, and of legal recognition. Take for example, the closing statement of the trial judge in Cvetan:

“I found that the fact they [the assailants] must have known that these were two homosexual men on their way home, minding their own business, is an aggravating factor and was an aggravating factor.”

Here, the social expression of homosexuality is contained, domesticated, private. It is not solicitous nor provocative. It is not precipitatory. It poses little threat to an (imagined) community that is not only composed of such minorities, but embraces them in the fabric of ‘multicultural urbanism.’ The crack, if you will, in this social fabric or covenant is produced when the sexual citizen poses a threat, not necessarily to his or her assailant directly, but to the heteronormative social order. In Longpre, it was not the victim’s lesbian relationship per se that formed, for the Court, reasonable provocation in her attack; it was, according to the judicial pronouncement, her defiant ‘bravado’ which produced, at least in part, her undoing. Such a ‘cocky’ display of her will, defiant even in the face of lethal danger, demonstrated not only to her assailant, but to the Court, her apparent mocking of gender norms and challenge to normative (heterosexual) masculinity. Here this is read by the Court as

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451 Emphasis is mine, 76.

452 Gail Mason writes in her analysis of the ‘butch lesbian’ that “same-sex desire not only mocks the rules and obligations of heterosexuality, it also disregards fundamental gender norms” (2002: 51).
constituting, at least partially, her victimization.

This section on the sentencing of hate notes that judicial pronouncements about the victim as innocent or provocative have the effect of constituting queer victims of hate-motivated as legitimate or illegitimate victims respectively. As legitimate victims they are woven into the social fabric of citizenship. The section does not argue that judicial sentencing practices consistently applied sentencing enhancement to cases of hate-motivated violence prior to the 1996 legal reforms that introduced a statutory obligation to consider hate motivation at the time of sentencing. Rather, in these cases, I argue that consideration of hate motivation as an aggravating factor at the time of sentencing was invoked in judgements that clearly positioned innocence on the side of the victim and criminal responsibility on the side of the offender. The following section continues this analysis of judicial pronouncements of responsibility, innocence, citizenship and violence in judgements shaped by the statutory considerations and constraints of the enhanced sentencing provision.

* * *

Enhanced Sentencing: An Analysis of Cases

On September 3, 1996, Bill C-41 came into force. Among the numerous provisions of the Bill, three are particularly significant to the study of the judicial response to acts of violence against sexual and gendered minorities. These provisions are: the enhanced sentencing provision, reasons for sentence, and the
conditional sentence. The enhanced sentencing provision requires judges to “take into consideration” at the time of sentencing “evidence that the offence was motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor” as an aggravating factor. As its name suggests, reasons for sentence require judges “[w]hen imposing a sentence, [to] state the terms of the sentence imposed, and the reasons for it, and enter those terms and reasons into the record of the proceedings.” To any legal researcher, these requirements in their apparent transparency make the study of judicial reasoning and legal logic a much more straightforward task. The conditional sentence is essentially a custodial sentence of up to two years less a day served in the community subject to mandatory and optional conditions. The conditional sentence may be applied to cases where the court has recognized bias, prejudice or hate as an aggravating factor at sentencing.

My interest in this particular section of the chapter is whether enhanced sentencing as a statutory principle is raised in cases of violence where there is some mention of the victim’s sexual orientation as ‘homosexual,’ ‘gay’ or ‘lesbian’ or their gender identity as ‘transsexual’ or ‘transgendered.’ If it is raised, then by whom, and whether the statutory principle is actually being applied, and not merely raised, at sentencing and to what effect. I examine twelve reported cases, of which eight are trial decisions and four are appellate, from September, 1996 to December, 2003. The last of

453 S. 718.2(a)(i), the enhanced sentencing provision; s. 726.2, reasons for sentence; and s. 742, the conditional sentence.
the reported cases\textsuperscript{454}, \textit{R. v. J.S.} (2003), will be analyzed separately from the other eleven and at the end of this section. I do this because \textit{R. v. J.S.} is a unique judgement deserving of special critical attention. All the judgements, nonetheless, communicate, and contribute to, the legal production of responsibility, victimization, and community.

In \textit{R. v. M.D.J} (2001), the two co-accused, M.D.J. and Wilton, were convicted of assaulting Rob Larson. According to the facts of the case, M.D.J. and Wilton made derogatory comments, such as ‘fucking faggots’ and ‘queers,’ to Larson as he entered a 7-11 store. M.D.J. then “aggressively pursue[d]” Larson to the back of the store. As Larson exited the store, he was attacked by both Wilton and M.D.J.\textsuperscript{455} Further evidence was introduced to the effect that, after his arrest, M.D.J. was bragging in jail that he had “‘beat up some freak’.”\textsuperscript{456} Admonishing the defence’s suggestion that the attack was in response to some sort of provocation, Judge Burdett remarked that “[t]he assault was completely unprovoked and was committed apparently for no reason.”\textsuperscript{457} The judge also noted that they were strangers to one another. The issue, the judge observed, was whether consideration should be given to the Crown’s submission that s. 718.2(a)(i) be applied. “After considering all the circumstances, I have come to the conclusion, based on the evidence that this event was motivated by bias, prejudice or hated \textit{sic} of homosexuals.”\textsuperscript{458}

\textsuperscript{454} My timeline is from 1985-2003.
\textsuperscript{455} QL 1.
\textsuperscript{456} QL 2.
\textsuperscript{457} QL 1.
\textsuperscript{458} QL 2.
Insofar as the Crown referred to a number of unspecified cases that dealt with the application of s. 718.2(a)(i), the judge made explicit, although ironically imprecise, reference to *R. v. Wilson* (1991) in its citation of *R. v. Ingram*: “an assault which is sexually motivated renders the offence more heinous. [...] The danger is even greater [of inviting imitation by others and inciting retaliation] in a multicultural, imperialistic [*sic*], urban society. The sentence imposed must be one which expresses the public abhorrence for such conduct and their refusal to countenance.”

“I adopt those comments made by Mr. Justice Dubin,” stated the judge, “unequivocally.” In the imposition of sentence, Judge Burdett again acknowledged the small legacy of enhanced sentencing judgements brought to him by the Crown: “But for one case, each of the decisions describes sentences that are custodial.” With that knowledge in mind, he sentenced Wilton to 14 days incarceration and a period of probation for one year, and M.D.J. to 30 days incarceration plus one year probation because he had a prior record. “In the light of the fact that Mr. Wilton does not have a criminal record,” he observed, “it is my view that he can serve that sentence in the community without endangering the safety of the community.” And in reference to M.D.J., he reasoned: “I have considered the conditional sentencing provisions, and, in light of M.D.J.’s employment and the fact that he is the sole support for his family and his lawful behaviour since these events occurred, I am going to find

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459 QL 2.
460 QL 2.
461 QL 2.
462 QL 3.
that he can serve that sentence in the community.”

In *R. v. Peers* (1999), Richard Peers along with two friends, Randall Foss and Zephyr Wilson, were causing a disturbance on Davie Street in Vancouver and “making threats to harm gay people because of their sexual orientation.” Drunk and openly drinking beer on the street, they were shouting things such as “kill fags,” “women only,” “queer” and “fucking faggots.” They were also heard to have made remarks about “whether ‘faggots’ had the right to live or were even deserving of life.” Three different citizens responded to these threats: two called police and one, who had passed them on the street, reproached them for such behaviour. Peers confronted Allan Bennett-Brown, who had reproached him and his friends, daring him to fight. Witnesses heard Peers shout, “come on, faggot” as he grew increasingly agitated and advanced toward the retreating complainant. Peers attacked him, punching him repeatedly, until his friends held him back. All three ran away. Wilson and Foss were apprehended at a nearby bus stop, where Foss complained to police that Bennett-Brown bled “fucking homo blood on [his] arm and now [he] probably [has] HIV.” Peers, who had been out of jail one week earlier and was wearing an electronic monitoring anklet, was apprehended at his cousin’s

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463 QL 3.
464 Charged with disturbing the peace, Foss’s proceedings were stayed.
465 QL 2.
466 QL 2-3.
467 QL 3.
468 QL 4.
469 QL 6.
apartment, his head half-shaved “as if to change his appearance.”

In its findings, the Court stated that the assault, to which Peers pled guilty, was “completely unprovoked [and] was degrading to not only those of different sexual orientation but to all citizens who are peaceful and law-abiding.” Acknowledging the Crown’s submission of case law that recognized hate-motivation as an aggravating factor at sentencing, the Court noted that such an attack is “essentially a praying [sic] on other members of the community based on what at least is perceived to be a situation that you didn’t approve of and decide to discipline someone to express your displeasure at what you thought that person was doing or represented.” Particularly interesting is the judicial attention given to the perception of Peers that Bennett-Brown was gay. As revealed in his victim impact statement, cited by the Court, Bennett-Brown declared that he was “not a member of the homosexual community of Vancouver.” Despite this lack of affiliation, he voiced his belief in “a moral obligation for the capable to protect the vulnerable and that this obligation applies as much to individuals as society as a whole.”

Along with a term of imprisonment of six months to be served consecutively with

470 QL 5.
471 QL 6.
473 QL 23. This revelation by Bennett-Brown drew a rather telling response from Peers’ lawyer, who “wish[ed] to apologize to Mr. Bennet-Brown for [his] own presumption that [Bennett-Brown] was a member of the community” (QL 24).
474 QL 12.
his current sentence and 2 years probation, the Court mandated Peers to keep out of 
Vancouver’s West End, an area densely populated by gay men. Setting up the parameters 
of the no-go zone, the Court defined the West End as Cambie on the east, Pacific on the 
south, Cordova on the north and Stanley Park on the west. The following exchange 
between the Crown and the Court is fascinating in that it reveals not only how 
communities shape space, but how space constitutes identities and how safety is to be 
managed.

Ms Adams (Crown): Nothing on placement. But just on the western border of the no-go 
area, I’m wondering if it — instead of just saying Stanley Park, it could be the 
seawall of Stanley Park?
The Court: The seawall?
Ms Adams: Well, the seawall would be something that would be a definite boundary 
through Stanley Park.
The Court: Well, it would be a definite boundary but –
Ms Adams: Because that would include the area of concern which is partly the park 
which is of concern. And it’s just a –
The Court: Well, I know, but that’s fine. He could get there by boat, I guess.
Ms Adams: Well, just otherwise, the park is left – it’s vague and although it’s what the 
police suggested, I accept that Mr Bennett-Brown told me, it’s difficult then to 
determine where the western boundary would be and the park should be 
concerned.475

In this legal discussion and negotiation of a no-go order of probation, the park as a whole, 
not just its eastern border, is understood and ultimately judicially constituted to be ‘gay
In his discussion of the dispassionate sentence, Giroday invoked the sentiments of another B.C. judge, Judge Stewart who presided in the 1999 R. v. Miloszewski case in which five neo-nazi skinheads pled guilty to manslaughter in the beating death of Mr Gill, a Sikh caretaker of a Sikh temple. Such an invocation would conjure up the horror of that racist killing and the Court’s refusal to countenance it.

In R. v. Zephyr Wilson (2000), Wilson, for his part in the Bennett-Brown incident, pled guilty to causing a disturbance in a public place and a breach of probation. In expressing the “repugnance” of the Court, Judge Giroday remarked that the utterance of the “extremely detrimental comments about homosexuals” attracted the invocation of s. 718.2(a)(i) and constituted a “a serious aggravating factor.” In his consideration of sentence, Judge Giroday enunciated the “dispassionate” and balanced nature of the sentence noting that it must not reflect any personal view of the sentencing judge. Taking into account a number of mitigating factors, including the fact that Wilson attempted to discourage the assault by Peers and that he had no criminal record for any violent offence, Giroday “see[ing] no alternative to a period of custody” sentenced Wilson to 45 days in custody and 2 years probation with a no-go order similarly structured to that of Peers.

One of the judgements to which the Crown in Peers referred the judge was R. v. Howald (1998). In this particular case, both the complainant and the offender were being held in the drunk tank of the St. Thomas police station. As recorded by the cell’s video

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476 QL 1.

477 QL 1. In his discussion of the dispassionate sentence, Giroday invoked the sentiments of another B.C. judge, Judge Stewart who presided in the 1999 R. v. Miloszewski case in which five neo-nazi skinheads pled guilty to manslaughter in the beating death of Mr Gill, a Sikh caretaker of a Sikh temple. Such an invocation would conjure up the horror of that racist killing and the Court’s refusal to countenance it.
camera, the complainant “momentarily touched the apparently sleeping offender on the buttocks.”\textsuperscript{478} The response – which the judge described as “a drunken provocation by the complainant”\textsuperscript{479} – also captured on tape, was swift, brutal and directed against a “passive and retreating victim, truly captive.”\textsuperscript{480} In his consideration of the facts of the case, the judge acknowledged that the offender was “not required to submit to such sexual touching” and was “entitled to remove himself from that aggravation or to take reasonable steps to have it stopped.”\textsuperscript{481} Nevertheless, the judge condemned the actions of the offender noting that it “far exceed[ed] any action required to preserve [Howald’s] own sexual integrity.”\textsuperscript{482} The “aggressive and sustained” violence administered was judged to be “devoid of any self-defence [and delivered] with force sufficient to render the victim unconscious for at least twenty minutes.”\textsuperscript{483} Compounding the aggravation of the violence, the judge considered the offender’s subsequent actions of returning to the “prostrate, unconscious victim” and in the presence of police and “in apparent bravado,” violently kicked the victim in the abdomen stating that “I hope I killed the f____ing faggot. I’d like to get him in the EMDC.”\textsuperscript{484} In delivering his sentence, the judge distinguished the “cowardly gesture of the afterthought kick” and remarked that “[v]iolence, fuelled by
bigotry, requires a stern response." Taking into consideration that the assault for which Howald was convicted was “energized in part by prejudice based on sexual orientation” and the fact that he had an extensive criminal record, the judge sentenced him to five months in custody.

In R. v. Demelo (1999), a case where “everything smack[ed] with aggravation,” the judge described the sexual assault of lesbian as “vicious and disgusting.” In his condemnation of the assailant’s motive, the judge noted that the assault was not only motivated by sexual “gratification,” but was motivated in part because, “of who the victim was and her sexual preference.” Insofar as the judge recognized that the assault was “imposed because of the sexual preference of the victim,” there is no explicit reference to s. 718.2(a)(i). Rejecting the defence’s recommendation of a conditional sentence for Demelo, the judge noted that such a sentence would be “totally inappropriate” and “totally inconsistent in [his] view with the fundamental purpose and principles of sentencing.” Further, he added: “I am not satisfied that serving a conditional sentence in the community would not endanger the safety of the community.” He sentenced Demelo to 60 days imprisonment and 18 months probation.
for the sexual assault.

In another case involving an assault upon a lesbian, in this case, an assault causing bodily harm, the Ontario Court of Justice reversed on appeal against conviction and sentence an eight month custodial sentence and $9,000 restitution order to a conditional discharge and a restitution order of $5,000 and six months probation. According to the facts of the case, the “complainant” and her girlfriend were walking hand in hand to the women’s washroom of a university pub. The appellant, according to complainant, was “glaring” at them, and when the complainant confronted appellant, words were exchanged. The exchange of words escalated to the complainant shoving the appellant, who responded with an immediate single punch to the area of the complainant’s mouth causing severe dental damage. In the trial judge’s findings, the defendant used more force than was necessary to defend himself and found that there was “no air of reality to the defence of self defence.” Further, the use of the word “dyke” in the verbal exchange constituted in the judge’s opinion an aggravating factor. In terms of mitigating factors, the trial judge recognized that the defendant acted impulsively and out of character, and being a first-time offender, he recommended that the trial should proceed by way of summary conviction. The trial judge imposed a custodial sentence, and not a conditional sentence because he felt that the defendant “posed a danger to the public.”

The assailant’s appeal against conviction was dismissed. Nevertheless, the

492 QL 1.
493 QL 1.
494 QL 2.
Ontario Court of Justice did reverse what it called an “excessive” sentence imposed by
the trial judge.495 In considering the defence’s submission that the twenty-three year old,
mixed, landed immigrant from Dominican Republic, with a “promising career in
professional baseball,” be granted a conditional discharge, the Court noted that a
conditional discharge is only granted “where it is in the appellant’s best interests and not
contrary to the public interest to do so.”496 Highlighting that there was some confusion
about whether the term ‘dyke’ was actually used and remarking that “[t]here was some
provocation by the victim [and] there was no premeditation” on the behalf of the
appellant, the Court ruled that the “granting of a conditional discharge would represent a
fit sentence.”497

As both the trial and the appellate judges noted, fitness of sentence is premised, in
part, by the assessment of risk to the public. What is interesting to me is that there were
two different and distinct assessments of risk in Jimenez: one by the trial judge who
deemed that a conditional sentence in this case would be “contrary to the public interest,”
and a second by the appellate Court, which dismissed the issue of custody entirely, and
limited its assessment of fitness to the issue of discharge and whether it would be in “the
public interest” to grant an absolute or a conditional discharge. Such a reversal of
sentence is significant as it raises the legal principle of deference. Insofar as the trial
judge in Jimenez held that the use of the word “dyke” by the appellant constituted an

495 QL 2.
496 QL 2. A conditional discharge vacates the record of the conviction.
497 QL 4.
aggravating factor to be taken into consideration at sentencing, whereas the appellate decision questioned the use of that word and its relationship to the assault, I think that the issue of finding of fact can be said to be relevant in this particular case. According to the legal principle of deference, an appeal court cannot reverse a trial judge’s finding of facts unless the trial judge has made a “palpable and overriding error,” that is, an error that can be plainly seen.\textsuperscript{498} The reasons for deferring to a trial judge's findings of fact can be grouped into three basic principles. First, given the scarcity of judicial resources, setting limits on the scope of judicial review in turn limits the number, length and cost of appeals. Secondly, the principle of deference promotes the autonomy and integrity of the trial proceedings. Finally, appellate deference recognizes the expertise of trial judges and their advantageous position to make factual findings, owing to their extensive exposure to the evidence and the benefit of hearing the testimony viva voce.\textsuperscript{499}

My concern about the absence of appellate deference is evidenced again in \textit{R. v. Cvetan and Iacozza} (1999). In the appeal case of \textit{Cvetan and Iacozza}, a number of appeals were raised by Cvetan and Iacozza including, but not limited to, unreasonable verdict and several grounds challenging the trial judge’s instruction to the jury on the defence of self defence and on the issue of consciousness of guilt. All appeals were dismissed except that with respect to sentence. As the reader will remember, the trial judge in \textit{Cvetan and Iacozza} (1995) did note that there was conflicting evidence as to whether any witnesses had heard homophobic language being used, with only one witness


\textsuperscript{499} \textit{Housen v. Nikolaisen}, QL 2.
testifying that he heard the words “fucking fag” and “fag” several times. However, although the trial judge stated that he was “not satisfied, required to the degree of certainty that the sexual orientation of the two victims was the primary motive for these assaults,” he also held that the ‘knowledge’ and ‘familiarity’ of the assailants about the area in which they were driving – Church and Wellesley – ‘played a role’ in the violence they directed at Pollak and Shiels. Upon review, the Ontario Court of Appeal opined that “[w]ithout this evidence [of homophobic language], we see no other evidence to support the trial judge’s conclusion that the sexual orientation of the complainants played any part in this assault and was an aggravating factor in imposing sentence.” Here, the Court dismisses the trial judge’s assertion that the appellants’ knowledge of the Church-Wellesley area as a gay residential/commercial area played, at least, a partial motivation in the assault. Reversing the sentence, the Court noted that the absence of any criminal record and the fact that the appellants had been on bail for four years pending appeal during which they exhibited “exemplary conduct and contribution to the community,” the “proper disposition is a conditional sentence” of six months without probation. My analysis of this particular chapter is confined to the materials published in the reported judgements. As a result of this limitation, I would suggest to the reader that they return to the trial decision of Cvetan (1995) and note that the defendants had been described as “star athletes.” Moreover, in the chapter on community responses to victimization, one member of Toronto’s gay community in discussing this case revealed that the appellants’

500 QL 2, my emphasis.

501 QL 2.
“exemplary conduct and contribution to the community” consisted of volunteering as after-school soccer coaches and nothing more, which in the opinion of my interviewee demonstrated nothing but an attribution of “jockism” to good citizenship.

In *R. v. Stringer* (1997), the issue before the Alberta Court of Appeal was whether the intermittent aspect of a ninety-day custodial sentence was illegal and whether the additional 18-month sentence to be served in the community was unfit. According to the facts of the case, Stringer, who pled guilty to robbery, and an accomplice “lured the victim” to a place where they “viciously attacked him.” They chose this particular victim because they believed he was “homosexual and thus less likely to complain to police.” The Crown at appeal argued that the intermittent sentence was illegal because the total imprisonment was more than 90 days and that “community service was unfit considering the circumstances of the offence.” Ruling in favour of the Crown on both issues, the Court called the original sentence “demonstrably unfit” for such a “premeditated and predatory attack.”

In the last of the four reported appellate judgements to be analyzed, *R. v. Priddle* (2003), the British Columbia Court of Appeal made no reference to the issue of sentence. The issue before the Court was an appeal from conviction for assault causing bodily harm. Priddle, the appellant, argued that a statement that he made to a police officer –
“fucking faggots and their dogs” – should not have been admitted into evidence and that the evidence was insufficient to prove that he was the assailant. According to the facts of the case, the “victim and his same-sex partner” were walking their dogs. The victim saw a man kick the dogs. When he confronted the man, he was pulled to the ground, losing his glasses in the fall, and kicked. When the police arrived, they found Priddle in the same location as where the assault occurred.

The Court, in dismissing the appeal, noted that the officer had not detained Priddle when he made his statement about gay men and their dogs. The appellant also raised the issue of voluntariness arising out of the fact that he was intoxicated. To this, the Court remarked that the issue was not raised on voir dire and there was no attempt then to impugn the legal voluntariness of the statement. On the second ground of appeal, although the victim, Robert Ruffell, could not positively identify the accused in court, he did give a general description of his assailant as a man with a beard and mustache, wearing purple pants and a green jacket who smelt of alcohol. As well, his partner was able to positively identify Priddle in court as the man who attacked Ruffell. This positive identification along with the description of the assailant and his clothing of “a rather unusual colour combination” and the police’s discovery of Priddle in the same location as the assault constituted for the Court enough evidence to support a positive identification.
beyond a reasonable doubt.\textsuperscript{509} From the terse material available in this appellate case, I make the point that the issue of sexual orientation and the epithet used to describe the victims of the assault did not appear to impact the finding of guilt. This was clearly linked to the positive identification of Ruffell as the assailant. Moreover, the issue of sexual orientation was not raised at sentencing and thus was not recognized by the court as a hate-motivated act.

The reasons for judgement in \textit{R. v. Palma} (2001) never raised the issue of hate-motivation in the Victoria Day shootings of three Toronto sex-workers, two of whom were transgendered.\textsuperscript{510} The Court’s reasoning focussed on the issue of Palma’s criminal responsibility and whether or not he suffered from “a mental disorder that was so severe that it made him incapable of appreciating the nature and quality of his acts, or of knowing that those acts were wrong.”\textsuperscript{511} In outlining the facts of the case, Justice Watt noted that “each victim was a complete stranger,” “each was a prostitute,” and “each was shot in the head” one or more times with a .357 magnum loaded with hollow point bullets.\textsuperscript{512} Describing the care with which Palma conducted his killings, Justice Watt stated:

“There can be no doubt that for some time Marcello Palma, in confidential psychotherapy sessions, had expressed a desire to kill street people, ‘scum’

\textsuperscript{509} QL 3.

\textsuperscript{510} Although unlikely, under the enhanced sentencing provision, hate motivation of sex-workers or of transgendered persons could have been raised under “any other similar factor.”

\textsuperscript{511} QL 2.

\textsuperscript{512} QL 2.
as he designated them. Dressed for the weather, armed with a variety of weapons and a significant amount of ammunition of incredible destructive force, he drove to familiar areas where prostitutes are not uncommon. In each case, he executed his victim in circumstances likely to minimize the risk of detection.”

The first of Palma’s victims was Brenda Ludgate. According to Palma’s testimony, he drove her to the rear of business premises with which he was familiar. He originally wanted her to perform oral sex on him. At some point, he changed his mind and ordered her out of the truck. When she refused, he hit her with the gun and dragged her out of the truck where upon he put the revolver to the back of her head and pulled the trigger. About forty minutes later, Palma picked up Shawn Keegan, in an area, which according to Detective Sargeant McMermott, is “well-known for transvestite prostitutes.” They went into a poorly-lit stairwell and ten minutes later, Palma shot Keegan in the face and then the back of his head. A short distance away, Palma then encountered Thomas Wilkinson, “a transsexual who was wearing women’s clothing.” Alone, at the rear of a building, Palma shot Wilkinson to death by shooting her in the face.

After reviewing conflicting expert testimony by a number of psychiatrists and

513 QL 52.
514 QL 5.
515 QL 5.
516 QL 5.
517 Respecting Wilkinson as a transsexual, my use of the pronoun is correct.
psychologists who examined Palma and performed various clinical tests on him, Justice Watt concluded that he was “not satisfied that the presumption of criminal responsibility ha[d] been rebutted.”

“No matter how ingeniously it is presented [that is, medical evidence of Palma’s state of mind], there is no getting around the self-evident,” Watts argued, “[w]ithout Marcello Palma’s account, there would be little left on the plate on which to found any expert’s opinion.”

Noting the radical differences in medical opinion including one diagnosis that stated that Palma had suffered a “brief psychotic episode” at the time of the killings and another that described Palma’s lethal behaviour as “narcissistic rage, not disassociation or a brief psychotic episode,” Justice Watts expressed that there was “formidable legal impediment to the satisfaction of the standard of proof required by this evidence [...] But there is more, including credible evidence of malingering and an account that on many issues critical for the experts is unsupported.”

Fully satisfied that Palma was criminally responsible for the killings of Ludgate, Keegan and Wilkinson, Justice Watts opined that these acts were “planned and deliberate” and that there was no provocation on the part of any victim. “His entire course of conduct,” noted Justice Watts, “is eloquent of a single purpose, the hunting-down and intentional destruction of those whom he regarded as lesser beings. They were members of a class of persons whose services he might use, but whom he despised and

518 QL 49.
519 QL 49.
520 QL 46.
521 QL 50-51.
522 QL 53.
Having found Palma guilty of three counts of first-degree murder, Justice Watts sentenced him to life imprisonment without eligibility for consideration of parole until he had served at least 25 years of his sentence. From this case, I observe that the issue of gender identity of two of the sex workers murdered was not given judicial notice. The brief judicial reference to “a class of persons” is linked syntagmatically to “whose services he might use” signifies merely the sex worker, not the transsexual sex worker. This omission is notably present by the lack of reference to hate-motivation of LGBT individuals.

In this last case, before I turn my attention to the first judgement handed down in the Aaron Webster homicide, a police officer was found guilty of assault and threatening death. A ten-year veteran of the Metropolitan Toronto Police Department, as it was then known, and a “well-respected, contributing member of the community,” Darren Arsenault attacked a man in the early morning hours who had been doing his rounds as a Toronto Sun delivery person near Ashbridges Bay. Described by the Court as “an unprovoked, unexplained attack,” the attack included “three blows to the head area, threats to kill, spitting, and the use of the derogatory words directed at the complainant, such ‘fucking faggot’ and ‘fucking queer’.” The Crown made submissions that the Court should find that “the offences were motivated by bias and

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523 QL 56.
525 QL 1. Toronto’s Ashbridges Bay area is a well-known gay cruising area.
526 QL 1.
prejudice or hate due to sexual orientation." Having considered the Crown’s submission, the Court stated that it was not persuaded on the evidence that the offences were motivated by bias, prejudice or hate based on sexual orientation. “The words used,” opined the Court in *Arsenault*, “were just one part of the whole incident, but not the motivating factor.”

Judicial discussions of responsibility in *Arsenault* were concentrated on Arsenault’s responsibility to the public trust and to the community as a police officer and on the judicial responsibility to recognize not only Arsenault’s obligation to a higher standard of conduct, but to balance that against the knowledge that the conviction and sentence of a police officer would “in all likelihood” produce more severe consequences. Noting that Arsenault also faced two charges under the Police Act, the Court observed that the “police discipline panel is swayed a great deal by the type of sentence imposed by the court, and a sentence which included even one day in jail, whether it be conditional or not, would result in dismissal from the police force.” In view of this consideration, the Court announced that it would not sentence Arsenault to “a period of incarceration by way of a conditional sentence or otherwise.” However, it also dismissed the defence’s submission that he be granted a discharge stating “although it would certainly be in his best interest to grant a discharge, [...] it would not be in the

527 QL 2.
528 QL 3.
529 QL 3.
529 QL 3.
530 QL 2.
531 QL 3.
public interest to do so.”\textsuperscript{532} Perhaps in a fleeting and veiled reference to Ashbridges Bay as a cruising area, the Court noted that “[t]he time, locale, the unprovoked and serious nature of the offences, and the fact that he is a police officer, sworn to uphold and not break the law, amongst other things, all add up to require that a conviction be imposed rather than a discharge being granted.”\textsuperscript{533} Arsenault was fined $500 and placed on an eighteenth-month probation order under which he would be required to perform seventy-five hours of community service.

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**Peeping Toms and Fucking Voyeurs**

I am of the opinion that this crime was motivated by ‘bias, prejudice, or hate based’ on a similar factor to sexual orientation and is covered by this section of the Criminal Code. It strikes me that this section contemplates hatred against ‘peeping toms’ and/or ‘voyeurs’ as being within its purview, since in my opinion such activity represents a sexual lifestyle which some may consider deviant, but is a sexual lifestyle all the same.\textsuperscript{534}

In \textit{R. v. J.S.} (2003), the case of a youth charged for his part in the beating death of Aaron Webster, Judge Romilly’s opinion expanded the current definition

\textsuperscript{532} QL 3.
\textsuperscript{533} QL 3.
\textsuperscript{534} \textit{R. v. J.S.} (2003), Judge Romilly at sentencing, QL 42.
and application of the enhanced sentencing provision. By eliding the legal knowledge of ‘sexual orientation’ with that of ‘any similar factor,’ Judge Romilly produced a unique judgement whereby ‘peeping toms’ and ‘voyeurs’ were within the purview of the provision. This convergence of legal and sexual identities under the signs of ‘peeping toms’ and ‘voyeurs,’ I argue, can be read as a judicial contribution to a re-conceptualization of public sexuality as a right of sexual citizenship, at least to the extent that law recognizes some sort of obligation to the safety of such citizens.

According to detailed police transcriptions of interviews with J.S. that are cited in the reasons for sentence, J.S. and four other male friends got drunk with a couple of girls on Saturday night. Deciding that it would be good “fun” to beat someone up, they dumped the girls and drove to Stanley Park armed with golf clubs and aluminum baseball bats. It was not their first visit to the park. Under questioning by the police, J.S. openly admitted to having gone to Stanley Park with the same friends on at least three other occasions looking for “peeping toms” and “fucking voyeurs” to beat up. Challenged by police as to whom they targeted, the police asked J.S., “you were looking for gays were you?” Answering “no,” J.S. responded by claiming that they went looking for “peeping tom guys who look in cars at guys making out.” The statement, at

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535 To remind the reader, s. 718.2(a)(i) states that “evidence that the offence was motivated by bias, prejudice, or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor” shall be deemed to be an aggravating factor at the time of sentence.

536 QL 5.

537 QL 10.

538 QL 25.
best, is oblique if not absurd, as Webster’s killers literally positioned themselves by this
description as vigilant protectors of “guys making out” in cars. Nevertheless, the trope of
vigilance is threaded throughout J.S.’s description to police of the park and its
inhabitants, which ironically included themselves.

J.S. told police that they had hidden behind bushes and trees and lay in wait for
someone to walk past. “And then Aaron came out of nowhere,” J.S. explained pointing
to a map of Stanley Park, “naked, walking here.” The next few lines of the police
transcription describe the moment when the young men hiding in the bushes see Webster
for the first time and he senses, and then notices them. The scene, as described by J.S.,
enacts the phenomenologically rich experience of both cruising and bashing, in which
vigilance is both the end game of sexuality and of violence respectively. The verbatim
description as noted in the reasons for sentence is as follows: “And un him, he was kind
of standing there for a while [...] I think he spotted us in the trees first and then he was
kind of looking at us right, and we were looking at him and then I think he started
walking [...] We didn’t know what to do like we just, we were kind of shocked, right so I
guess we all decided and then we started running after him.” Probing J.S. on what
knowledge this exchange produced, the officer asked, “Did you know he was gay when
you got him?” After getting a response in the negative, he then asks J.S., “Why would

539 QL 29. I thought it was very odd that J.S. referred to Webster in such a familiar,
almost friendly, way as “Aaron.” And I am not sure what to make of it. Perhaps the police had
been referring to Webster by his first name, and J.S. merely repeated what he had heard. But
there’s no explanation for it in the sections of police transcription that were cited in the reasons
for sentence.

540 QL 29.
you think he’s walking around nude for?” Resisting a straightforward answer, J.S. replied that Webster’s state of public nakedness was “a good excuse to beat him up.”

In those moments of visual exchange, prolonged by the reading and misreading of bodies in nocturnal space, identities were constituted. I would like to suggest that in that visual exchange between Webster and his killers, for an instant, bashers became cruisers, mistakenly caught up in the eroticised charge of the cruising exchange. I am suggesting that this encounter as played out by the attackers in their vigilante pursuit of ‘voyeurs’ and ‘peeping toms’ dynamically fuses the surveillant economies of cruising and bashing. By this, I mean that the cruising space as a nocturnal, fluid space of eroticized danger, where, as R.M. Vaughan notes, cruisers “decide / to fuck what frightens” is a liminal space constituted by risk, danger, sex and surveillance. It is a space, an economy of sexual surveillance, that is easily mapped by vigilante violence and gay-bashing. Moreover, if we read the act of ‘peeping’ as a covert act of eroticised surveillance, then the dynamism of lying in wait in the bushes in a cruising ground necessarily reproduces vigilantes as voyeurs. That is to say, the notable thing about this particular exchange between those hiding in the bushes, lying in wait for their prey, and Webster in the act of cruising is that, caught up in the cruising park’s economy of sex and surveillance, the bashers took on the very identity they apparently sought to punish: the voyeur.

The vigilant punishment, as reported in the autopsy, included a fractured jaw and a fractured rib, deep bruising to the face and neck, and a “massive traumatic basal

541 QL 27.

subarachnoid hemorrhage” due to a beating assault to the head and neck that was the principal cause of death.  

In his consideration of sentence, Judge Romilly observed that the Crown claimed that she had no way of establishing that this beating death was a ‘hate crime.’ Constrained by the evidence given to police by J.S. that he and his friends went to the park looking for ‘peeping toms’ and ‘voyeurs,’ and that J.S. did not know that this area was frequented by gay men, she did not invoke the enhanced sentencing provision. On this point, Judge Romilly declared that he found it “incredible that the accused and his friends who were obviously in the habit of visiting the park to ‘beat up’ ‘peeping toms’ and ‘voyeurs’ were so naive that they did not notice that this area was frequented by gays.” Seriously questioning the knowledge claims of J.S., including his lack of powers of observation of an area that he claimed to have stalked more than once, the Court disagreed with the Crown’s assessment of whether a ‘hate crime’ had occurred in the beating death of Aaron Webster. Naming the hatred against ‘peeping toms’ and/or ‘voyeurs’ as being within the purview of the enhanced sentencing provision, Romilly invoked s. 718.2(a)(i).

Romilly’s condemnation of the assault was without reservation. Naming the act a “cowardly [...] random, unprovoked attack by a group of strangers,” he described J.S. and his friends as a “thug brigade stalking human prey for ‘entertainment’ in a manner very

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543 QL 30.
544 QL 41.
545 QL 42.
In his consideration of individual responsibility in such a group action, he raised *R. v. Miloszewski*, the case of the skinhead-beating death of a Sikh man who was the caretaker of a Sikh temple, and remarked that J.S.’s degree of participation in the assault was irrelevant noting that it was both reckless and intentional.547 Further, he dismissed J.S.’s claim to have been drunk when he committed the offence rendering it a “mere[...] tactic to deflect culpability.”548 Citing the eerie similarity549 with *Atkinson*, Romilly held that J.S. should receive a custodial sentence despite his youth and that the sentence must reflect, as noted in *Ingram*, the public’s refusal to countenance such attacks.550 Under the *Youth Criminal Justice Act*, Romilly sentenced J.S., who had pled guilty to manslaughter in order to avoid a transfer to adult court, to the maximum penalty of three years custody, two-thirds of which would be served in closed custody and the remaining third in the community under conditional supervision.551

I would like to make a few terse points about Romilly’s unique sentence that will lead me to the chapter’s conclusion. Under s. 718.2(a)(i), the term ‘sexual orientation’ had been clearly defined by the House of Commons to mean, and only mean, ‘heterosexuality, homosexuality and bisexuality.’ What would be deemed paraphilias by

546 QL 42 and QL 38 respectively.
547 QL 39-40.
548 QL 41.
549 QL 45.
550 QL 45-47.
551 QL 48.
the psychiatric establishment, like voyeurism, would be excluded from this definition. Romilly’s judicial acknowledgement of voyeurism as a “deviant, but [...] sexual lifestyle all the same” reshapes the rigid and disciplined psychiatric identity of a scopic paraphilia into a ‘sexual lifestyle.’ This notion of sexual lifestyle may indeed facilitate Romilly’s rhetorical, and legal, manoeuvre of incorporating voyeurism within the legally recognized category of sexual orientation. Moreover, Mariana Valverde has argued in her analysis of legal knowledges that the socio-legal category of sexual orientation is no longer “an entity that is neither an act nor a deep inner identity nor a combination of both of these, but something like a lifestyle.”  

552 By this, she means that sexual orientation as reproduced in the shadow of law is no longer about “‘acts’ of pre-modern regimes [— for example, the act of sodomy —] or the ‘identities’ of modern disciplinary regimes” as in sexology’s invert or psychiatry’s immature sexual type. 553 Rather, sexual orientation as a legal category is more about the cultural, political, economic and sexual habits of a community or group. Romilly’s elision of ‘sexual orientation’ with ‘a similar factor’ inscribes voyeurism within the field of law as a legitimate community, or perhaps more accurately as a community under law, the effects of which are simultaneously expansive and constrictive. This double movement of expansion and constriction operates by opening up the category of ‘sexual orientation’ to include a (potentially) much more fluid notion of identity and psychosexuality (at both the individual and community levels), while simultaneously producing ‘peeping toms’ and ‘voyeurs’ as one more group subject to


The purpose of this chapter is not to compare pre-judicial reform sentencing practices with post. The structural sub-sections into pre- and post-reform cases were an organizational strategy. In addition to my assertion that comparison is not the point of my chapter, I can note the following: more reported judgements mentioned ‘sexual orientation’ as a factor in the assault post-sentencing reform. From 1985 to 1996 (an eleven year period), there were eights reported judgements that did so, and after 1996 to 2003 (a seven year period), there were twelve such judgements. What contributed to that increase was not the focus of my research. Another question that may be raised is, did sentences increase for cases of hate-motivation against sexual orientation post-reforms? This was not a focus of this chapter; however, an untested observation would be that sentences did not generally increase as a result of the enhanced sentencing provision. One must note that along with the enhanced sentencing provision, Bill C-41 contained numerous sentencing reforms including that of the conditional sentence. From an untested observation, the conditional sentence was used in several of these post-reform cases.

One could argue then that the codification of existing sentencing practices in cases involving hate-motivation had little effect. True, the enhanced sentencing provision may have had little punitive effect on the sentences of the guilty, but I am arguing in this chapter that judicial recognition of sexual orientation in the motivation of an offence had an effect upon judicial pronouncement insofar as whether the victims were constituted as sexual citizens innocent of the violence directed at them and thus constituted within a notion of legitimate victimhood.

Conclusion

The response of law to violence against sexual and gendered minorities through the formal mechanism of the enhanced sentence is violence and more. Law’s power to isolate, confine, inflict, and enforce are examples of its violence. But law is not simply constricted by, or limited to, this. It is violence and more. Its performance is also didactic, remedial, restorative and constitutive. It is, as Garland suggests of modern penalty, a cacophony of rationalities and directives. Enhanced sentencing in the Canadian context can be said to index these disparate logics and philosophies of punishment. It is a kind of violence and more.

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In the enunciation of the legal sanction, law not simply speaks to communities; law interpellates communities. In this interpellation, law constitutes, for example, in the performative of denunciation, the culpable offender, the innocent victim, and the law-abiding citizen. What is particularly interesting about these analyses of Canadian legal judgements is that law not only constitutes communities morally – the bad offender, the good victim, the community that abhors violence – but constitutes communities spatially. The no-go order is an exemplar of this, producing community through spatially drawn lines and borders of inclusion and exclusion. Of course, this spatial constitution merely reifies those very moral distinctions of good and bad, guilty and innocent through a kind of grounding and mapping of legal transgression.

The chapter, by way of case analysis of judicial reasons for sentence, engages with linguistic theories of the performative utterance arguing, one, that legal judgements perform, not only law’s violence in the productive pronouncement of penalty, but law’s attempt at reparative social restitution, and two, that in the judicial utterance of reparation, the utterance has the effect of constituting imagined communities of law-abiding citizens and responsible social actors. This particular production of the judicial pronouncement at the time of sentencing is not without its difficulties in that it has the potential of reinvoking the dichotomous figure of the ‘innocent’ and responsibly prudent queer victim of violence and the imprudent queer victim deserving of anti-LGBT violence. Sexual and gendered minorities’ relationship to law and law’s benefaction is a precarious relationship, complex, contingent, fraught with uncertainty and potential peril.
Chapter Six

**Telling Stories and the Policing of Hate**

This chapter analyzes the interviews of police officers and LGBT community activists who had direct experience with anti-hate crime initiatives and policing practices from 1985-2003. From these interviews, it became clear that there was, on one hand, a narrative being produced of policing expertise, efficacy and professionalism – the official narrative of the policing of hate. Butted against this official narrative, at times even threaded within, was its abject other – the counter narrative in which failures, gaffs, gaps and inconsistencies were revealed. A product of the official narrative of police efficiency is the figure of the good queer victim of hate crime. It is a fabricated and disciplined figure, a product of a strict adherence to police knowledge and instruction, who overcomes a seemingly natural state of disorder, ignorance and incivility. Significantly, the good queer victim is not produced in these official narratives against the risky and sexualized figure of the cruiser; rather, the good queer victim seems to be positioned against an uncivil, hysterical and ignorant victim – who, nonetheless, still constitutes a ‘bad’ queer victim of hate crime.

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As outlined in the dissertation’s introduction, this chapter is based on personal interviews with police officers and LGBT community activists who had direct experience with anti-hate crime initiatives and policing practices from
1985 to 2003. My questions sought out their understanding of the term ‘hate crime,’ how they understood hate crime victimization, and their experience of the policing of hate crime, including anti-violence strategies and initiatives. In total, I conducted interviews in 2003 with 17 LGBT community activists (five from Toronto and twelve from Vancouver) and with 10 police officers (three from Toronto and seven from Vancouver). Three additional officers involved in anti-LGBT hate crime initiatives in British Columbia were unable to be interviewed; one of whom did not respond to my emails. This yielded approximately 27 hours of recorded interviews.

Although this chapter is not a comparative study between Vancouver and Toronto, there are apparent differences that need contextualization. The most apparent difference is that of numbers of interviews per city. I obtained nearly double the number of Vancouver police and community interviewees to that of Toronto. The imbalance between the numbers of interviews obtained in Vancouver compared to Toronto may have to do with each city’s experience, perception and response to anti-LGBT violence. Chronologically, Toronto seems to have experienced a ‘wave’ of anti-LGBT violence (as determined by dates on legal cases involving anti-LGBT violence, the Toronto Police Services annual hate bias crime statistical reports, reports from the 519 Church Street Centre’s Victim Assistance Program, and media accounts on anti-LGBT violence) in the 1990s. By the early 2000s – at the time of my interviews –, the political issue of anti-LGBT violence in Toronto, as evidenced by queer news reports, seems to have shifted away from hate-motivated violence to other issues – for instance, police raids on Remington’s, a gay male bar, and on the Pussy Palace, an ad hoc bath house event for
queer women. Data from the Toronto Police Services annual hate bias crime reports in the early 2000s support a decline in police reported anti-LGBT hate-motivated victimization. Vancouver, on the other hand, had just experienced the Aaron Webster homicide in 2001 and was in its legal and psychological aftermath at the time of my interviews in 2003. Although Vancouver seems to have experienced a peak in anti-LGBT violence in the early and mid-1990s as evidenced by my interviewees’ anecdotal and personalized accounts and by archival news accounts, the impact of the Webster homicide “galvanized,” as one interviewee stated, a political and policing response to anti-LGBT hate-motivated violence in Vancouver. Thus, I found many more Vancouver interview participants, both in terms of police and LGBT community members, able to speak to me about anti-LGBT hate crime, its victimization, and its policing response at the time of my research.

I found my police interviewees by researching which officers, presently and formerly, were involved with the hate crime units in the two cities and what officers were or had been involved in community-policing initiatives with the LGBT communities since the mid-1990s when police services in Canada were establishing their hate crime units. Hate crime police reports yielded some of this information, as did news reports on anti-LGBT hate crimes, as well as introductions made by police officers whom I had interviewed. I contacted these officers by telephone and email in order to set up the interviews which I conducted in person.

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555 See Valverde 2003.
Most, if not all, of the Canadian research on the policing of hate crime to date has concentrated on three areas: policy recommendations generated from policy studies on the state of hate crime activity in Canada and the policing response to it; hate crime statistical reports generated by municipal and provincial hate crime policing units; and internal departmental policing policy guides. This chapter deviates from these areas and focusses instead on the narrative discrepancies of expertise and professionalism in the policing of hate crime as disclosed to me by police officers and LGBT community activists involved in anti-LGBT hate crime initiatives and projects. These discrepancies do not fall neatly into polarizing sides where, on one side, the police project themselves as highly professional, competent, knowledgeable and responsive to violence and LGBT community hate crime service expectations, and on the other, where LGBT community interviewees are cynical of and harshly critique the policing of hate crime noting the police’s procedural failings and gaffs. This would be a problematic differential for a number of reasons. First, insofar as a number of police officers interviewed identified as

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556 See Sepajak 1977. Sepajak’s M.A. thesis examined the willingness of gay men to report criminal victimization to the police; it did not consider the notion of ‘hate crime’ per se as the term first comes into parlance in 1985.


558 See the annual hate/bias crime reports, beginning mid-1990s, of the Toronto Police Service Hate Crime Unit, and the B.C. Hate Crime Team Status Report 2002.

lesbian and/or trans, the split between police and LGBT community is blurred.\(^{560}\)

Similarly, a number of LGBT civilian respondents worked with police on joint police-community liaison projects, including that of Vancouver’s Chief Constable-appointed Diversity Advisory Committee. Further, in my interviews, I did not hear unequivocal or overt acrimony expressed for police by my LGBT interviewees. Their observations about the police and the police’s response to anti-LGBT violence and hate crime tended to be measured and contextualized noting, for example, that in Toronto during the 1980s and 1990s police-LGBT community relations were highly strained, whereas relations after this period\(^{561}\) with respect to the issue of the policing of hate crime were described as being mature, less strained and more stable. Similarly, my police interviewees in a number of cases openly revealed instances where, despite knowledge of hate crime policy operational guidelines or best intentions of individual police officers, the policing of hate crime in practice did not match with policy directives or publically articulated knowledges and formulas of how to combat anti-LGBT violence. That is to say, in some instances, it was the police themselves who recognized their failings and limitations.

That being said, the interviews with police and LGBT community anti-violence leaders on the policing of anti-LGBT violence often yielded dichotomous perceptions of

\(^{560}\) None of the officers whom I interviewed identified themselves as gay men. One lesbian officer expressed that gay male officers tended to be more closeted due to the hyper-masculine culture of policing, which, for whatever reasons, was more accepting of lesbian officers. Bernstein and Kostelac, in their study of attitudes about homosexuality among police officers, claimed that “police culture promotes a heterosexual masculinity” and that “heterosexual female officers are likely more positive toward lesbians than are heterosexual women in nonpolice populations” (2002: 307 and 319).

\(^{561}\) Note my research covers the period from 1985 to 2003 only.
police efficacy, expertise and working relations with the queer communities of Toronto and Vancouver. On the one hand, there was this official story of effective, expert and professional policing of hate crime told to me by officers and LGBT civilians who tended to be highly invested in diversity and community-relations projects managed by the police. Whereas, on the other hand, there was this counter-narrative that betrayed the official narrative revealing failures, gaps and inconsistencies in policing practices of anti-queer violence. These counter-stories, not surprisingly, were told to me, for the most part, by officers now retired or marginalized within the force\footnote{Reenen, in his study of the difficulties involved in the research of police organizations, notes that “‘marginal people’ within the [police] organization and/or people who have left it [are] more prepared to break the silence of the police” (1983: 15). Reenen warns researchers that “the data collected this way will be somewhat distorted, especially when one is not only gathering factual information but is also enquiring into opinions, attitudes, and experience” (1983: 15). For my purposes, this warning is acknowledged, however, what my research actively seeks is the “distorted,” the unique, and the uncanny of the personal narrative.} and by community members critical of police-queer liaisons. The stories paired together reveal significant insights into the policing of anti-LGBT violence as hate crime and the place of the queer citizen within and without the discursive figure of the responsible, legitimate and undeserving victim of hate crime.

This chapter analyzes official and counter narratives of the policing of anti-LGBT hate crime. Specifically, I examine two thematic areas where official narratives butt up against their counter narratives. Those two thematic areas are that of expert, professional and efficacious hate crime policing and that of the good queer victim of hate crime. Many of my police interviews contain examples, evidence and stories of expert, professional and knowledgeable policing practices of anti-LGBT hate crime and violence.
Reams of interview data attest to the expert hate crime training of officers, as well as to the professional and responsive relationship that police have with queer communities in Toronto and Vancouver with respect to hate crime. The bulk of my interviews with police, for example, contained the history of their hate crime policing units, the operation and policies of those units, and the internal training given to officers by those units. I encountered difficulties in my interviews with police to talk beyond these parameters or to disclose beyond what seemed often as rehearsed policing scripts for public consumption. Despite ethical controls on my project’s interview confidentiality and anonymity, I believe that police, nevertheless, felt constrained to talk about issues in such a professional manner. Despite these limitations and constraints, another narrative revealed itself. Positioned against the narrative of expert, professional and efficacious hate crime policing ran its counter narrative, that of a mismanaged, poorly trained and under-resourced police service.

Similarly, the figure of the good queer victim of hate crime is formed against its abject other in the counter narrative. Within official narratives of police efficiency, the figure of the good queer victim of hate crime is an outcome of police efficiency. According to these official narratives, it has no prior existence and needs to be produced by a strict adherence to police knowledge and instruction. It is a fabricated and disciplined figure who overcomes a seemingly natural state of disorder, ignorance and incivility. Significantly, the good queer victim is not produced in these official narratives against the risky and sexualized figure of the cruiser; rather, the good queer victim seems to be positioned against an uncivil, hysterical and ignorant victim – who, nonetheless, still
constitutes a bad queer victim of hate crime. Interestingly, official policing narratives were remarkably silent on the issue of cruising and victimization, and when pressed by me about their attitudes around the cruising victim of violence responded in a highly professional manner; this will also be briefly examined at the end of this chapter.

* * *

Official and Counter Narratives of the Policing of Hate

Policy recommendations generated from policy studies on the state of hate crime activity in Canada and the policing response to it have concentrated on several main issues and identified needs: the adoption and implementation of an administrative policing policy that contains, for one, procedures of identification, investigation, intervention and handling of hate crime; development and implementation of training for current and future police officers on hate crime policy and procedure; the creation of specialized hate crime units in all major urban police forces across Canada; the collection of hate crime statistics by all urban police forces; a uniform national definition of hate crime; and greater commitment, financial and technical, to develop and sustain good relations with vulnerable communities, in particular that of the

563 See for example, Commission des droits de la personne et des droits de la jeunesse 1994; Roberts 1995; and Canadian Association of Chiefs of Police 1996.

564 See for example, Commission des droits de la personne et des droits de la jeunesse 1994; Roberts 1995; and Canadian Association of Chiefs of Police 1996.

565 See Roberts 1995.

566 See for example, Roberts 1995; and Janhevich 2000.

567 See for example, Commission des droits de la personne et des droits de la jeunesse 1994; Roberts 1995; Faulkner 1997; and Janhevich 2000.

In From Illegality to Equality: Report on the Public Consultation on Violence and Discrimination against Gays and Lesbians, the Quebec Commission studying anti-gay/lesbian and anti-trans violence in Montreal in the 1990s specifically recommended a number of policing initiatives to improve community relations with and safety for the gay and lesbian community. Recommendation 18 of this report, for example, stated “[t]hat the Montreal Urban Community (MUC) police publically state its vocation as, and movement towards, a socio-preventative and community-based police service, and that it continue to reinforce communications and partnership links with gays and lesbians in pursuing its objectives in order to prevent tension and conflict as far as possible.” Similarly, Julian Roberts in his study of hate crime in Canada and its policing response recommended that “[g]reater efforts need to be made to increase visibility of the criminal justice response to hate crime. This includes reaching out to groups that have been the target of hate motivated crimes, particularly the gay and lesbian communities.” With respect to internal police documents, Toronto Police Services note the extensive, step-by-step procedures to be followed in the identification, investigation and reporting of bias/hate crime incidents, including in its rationale a statement about police commitment to the professional and expert response to bias/hate incidents: “An appropriate police response to Hate/Bias Crime goes beyond law enforcement and must convey a strong message of our respect for, and commitment to, a

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diverse society. These, in part, form an official hate crime narrative of police expertise, professionalism, commitment and efficacy. However, they are policy studies, police-community committee recommendations and police service internal policies; one would expect them to narrativize such an earnest and stellar representation of policing hate crime.

Another part of the official narrative of police expertise and efficacy is discerned from police and LGBT community leaders themselves who had worked with police in anti-hate crime initiatives. When asked by me about the policing of hate crime, and specifically that of policing anti-LGBT violence, police officers and LGBT community leaders involved in anti-hate initiatives concentrated on three areas: training, procedures and operations, and anti-hate crime police-community initiatives. Often my interviewees would raise some positive aspect of training, for example, and then later in the interview reveal a short-coming or failure. Thus, I found that often each interview presented both aspects of the official and counter narrative of the expert, efficient and professional policing of anti-LGBT hate crime.

With respect to the official narrative on the training of police in matters of identifying, reporting and investigating hate crime, the story was that the officers were well trained. This representation of the effective training of police was signified by the assurance that all officers, from the senior officers to the beat cops, received specialized hate crime training that was current and up to date. One officer involved in the training

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of police in hate crime stated:

I was given the task to train senior officers, deputies, inspectors because the Chief wanted everybody and that was a good thing. He said, “they need to know what this hate is and how to respond to the community’s needs and that these are serious types of crimes.” It was tailor-made for each rank more or less.

A constable with the Toronto Police Services (TPS) informed me that all officers were trained in the policing of hate crime at the Ontario Police College. Insofar as this officer stated that all officers received this training, later in the interview she remarked, “I couldn’t tell you how many hours I was trained in hate crime, but I would say very few.”

This notion of annual training for all new officers seemed to contradict what was told to me by a former TPS Hate Crime Unit detective who remarked that the hate crime unit trained officers at the Ontario Police College in 2001 as “a one shot.” Explaining that the unit had “two hours with them, [the unit] had created a card to take away with them – a reminder, a quick double-sided primer\textsuperscript{572} that tells them what to look for.” This type of inconsistency and gap in training was also raised by an officer in the Vancouver Police Department (VPD). In the first half of our interview, this officer stated that officers are well trained and updated regularly on hate crime procedures and legislation. Somewhat later in the interview the officer confessed, “we have team training days throughout the

\textsuperscript{572} The VPD, I would suggest problematically, has a similar short-hand informational document on hate crime. A VPD sergeant stated, “the pamphlet [...] that guys carry around in their brief case identifies it [ie. hate crime].” The VPD has published a two-sided pamphlet for beat officers on how to identify whether a crime is hate motivated; this would include guiding questions like, do the victim and the perpetrator belong to different ethnic or racial groups? One critique, among several that can be raised, of these simplistic kinds of questions would be, how is it that ‘race’ or ‘ethnicity’ is being determined?
year, but I can’t remember when the hate crime team had visited our team in training days.”

Another VPD officer revealed that “as a department – and here’s where I go way off kilter – are doing an absolutely shitty job [of] getting the message out about what is a hate crime.” Describing the paucity of hate crime training, this officer laid out the VPD’s mandatory four days of annual training: “One of those days is range qualification. So that’s all one day gone. Another day is aerosol spray and hats and bats. So that’s another day gone. So then they want us to update our legal. Then do everything else in the other two days –ten hour days.” Similarly, this issue of the lack of training was raised by a VPD detective who noted, “with the high cost of policing, our training program has been cut.” According to the policy guide published by the B.C. Attorney General, training of Vancouver police is part of the mandate for the B.C. Hate Crime Team.573 Despite this policy, a former officer of the Team stated that “[t]here is nothing being taught on hate crimes now. They have one guy in Surrey. They haven’t even replaced [an originary team member no longer working with the Team]. He hasn’t got time to teach recruits. So we’re not teaching our people. So things are slipping through the cracks all the way down the line.”

With respect to the effective operation of hate crime policing policies and procedures, a significant difference of perception and experience was ascertained by the interviewees of the TPS and the VPD. TPS officers spoke professionally of their hate crime unit citing both its commitment to policing hate crime and its ability to do so

effectively. One detective, who was one of the three original detectives who implemented the unit in 1992, stated that the unit received tremendous initial support from then police chief David Boothby. Under Boothby’s command, the unit set up a policy for the unit focussing on three key areas: intelligence, education and investigation. With respect to efficacy, this officer remarked that the unit educated “senior officers right down to the frontline officers” and established good working relationships with target communities, including the gay/lesbian community. Despite this positive start, the officer commented on the fundamental lack of resources and the strain that this produced: “In our unit, we had three detectives to start off with and a crime analyst. I have to be very honest, I don’t think we have enough resources [...] at three detectives we were, at times, overwhelmed.” Since then the hate crime unit has had one, sometimes two, detectives working within it. As one LGBT community leader, who remains fundamental to Toronto’s anti-LGBT violence initiatives, stated, “we had a good relationship with the hate crimes unit before it was basically gutted – for lack of a better word – they had a lot of their funding cut back; I guess that shows the priority of the hate crimes units within the Toronto Police Services.”

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“The Ladies” and “Legal Mumbo-jumbo”

The gaps and inconsistencies in the narratives of policing hate are, I argue, aptly demonstrated by two stories that were told to me by Vancouver police officers. These stories demonstrate the power of the counter narrative to destabilize the official narrative of knowledgeable, effective and professional policing of hate crime. The first story is one
that I call “the ladies” and the other I call “legal mumbo-jumbo.” These terms are taken verbatim from my police interviews. Both stories challenge the official story of the policing of hate crime.

Speaking with a sergeant who formerly had direct knowledge of the B.C. Hate Crime Team, I was told the procedures of hate crime reporting, including the identification procedures of a hate/bias incident and the collection of hate/bias departmental statistics. According to a policy document generated by the B.C. Attorney General’s office, one mandated area that the Team is responsible for is the collection and analysis of all reports of hate crime, and the maintenance of a provincial database of hate crime suspects. That being said, my police interviewee claimed it was “impossible [for two Hate Crime Team officers] to try to keep the stats up month to month and go through every report written in Vancouver that had any mention of hate or bias.” Pressed on how the Team received these statistics, the officer stated the following:

The ladies down at 312 [Main St.] would write the reports and they would decide if they thought it should come up to [the Hate Crime Team officer], and then [the Team officer] had to re-read them and decide whether they were criminal in nature and should be investigated and followed up and it was hard enough just to do that.

According to this officer, “the ladies” were city employees with no formal training in hate crime identification. These women would put a file together of what they thought were hate crime incidents and send them to the Hate Crime Team: “so every month [the Team officer would] get a 100 ... 200 reports not necessarily designated by the policeman as

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hate crime, but by the ladies downtown.” The officer described the ladies’ process of identification and determination in the following manner: “Just ladies reading reports, ‘Gee, I think that one should go there.’” In addition to this significant insight into the identification and collection of police hate crime statistics, the officer cited another area of mismanagement. As a sergeant, this officer explained that he/she was “responsible for checking for what they call my ‘handle’ – that’s all the reports done by my people” logged into the police department’s computer system. The department tasked one police officer to “do the hate crime portfolio off the corner of his desk.” In checking up on the ‘hate crime handle,’ the sergeant noted that “[t]here must be a couple of hundred of reports in there that have never been looked at. So anything that’s happening in Vancouver, as far as I’m concerned, is lost. And that’s not just sexual orientation, that’s across the board.”

“Legal mumbo-jumbo” is another area that I identify as being exemplary of the practical and radical gap between official police narratives on expertise, professionalism and efficacy on the one hand, and their counter narratives of mismanagement and poor-training on the other. At the time of these interviews, Bill C-250 was still before the House of Commons. Inspector Dave Jones of the VPD had produced a quantitative content analysis of hate/bias incidents in Vancouver and was about to present the conclusions of this study to both the House and Senate Standing Committees reviewing

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575 Bill C-250, an act to amend the hate propaganda statutes to include ‘sexual orientation’ to the list of protected groups.

evidence on Bill C-250. Inspector Jones had also been instrumental in creating several joint police-LGBT community projects, including one named Plate Fight Hate. The idea was to encourage members of the LGBT community who were verbally harassed, often from vehicle drive-bys, to report to police the incident and the suspect’s licence plate number. LGBT community members could either report through the Bashline, a volunteer run police-LGBT reporting line, or 911 and a police officer would follow up. In fact, Inspector Jones had told the queer community publically that he would personally visit these people. As one LGBT member stated, “Dave Jones said, ‘Look, you guys phone in the numbers and I will personally go and visit these people.’ Quite amazing. And he has on several occasions [...] he’s at their door.” I mention all of this because there was clearly confusion expressed in my interviews with some Vancouver police officers around the meaning of the amendment and what hate propaganda meant.

First, there was a popular (mis)conception that Bill C-250 was the ‘hate crime bill.’ How this played out with the one officer in particular is telling. When asked about what this officer knew of Bill C-250, for he/she had stated earlier that all officers were well versed in the legal aspects of hate crime, the officer could not provide a clear definition. He/she stated, “I don’t have the legislation written down with all the legal mumbo-jumbo.” Despite not being able to articulate the meaning of the bill, he/she provided me with an example:

But I do have an incident that happened just the other day and it was a real eye opener for the woman who committed this crime. It’s not to do with hate crime against homosexuals, it has to do with the hate crime against a particular race. It was a parking dispute, and she got a parking spot before
he did. Words were exchanged. And the last thing that she said was – I heard her say it – “fucking nigger, go back to where you belong.” So to me, that’s a hate crime [my emphasis]. Because it’s not just a dispute between two people over parking. Now she is opened up a whole new can of worms with that last comment. So I talked to her and got down all of her information and I told her I was going to report her to the hate crimes team because of what she had said [my emphasis].

Legally, this epithet, despite its venomousness, would not reach the threshold of hate propaganda. The idea that a police officer would tell a civilian this and then threaten her with action from the Hate Crime Team is both outrageous and profoundly disturbing. When I probed this response further, the officer back-tracked, stating, “[t]hat example I told you about parking incident, I mean that wouldn’t go anywhere, but I am using it more as an education to the woman who was saying it.”

This is not the only example of official misunderstanding I encountered about the meaning of Bill C-250. For instance, in that quantitative analysis of hate incidents produced by Inspector Jones, the document erroneously claims:

The legislative change in question [Bill C-250] will ensure that ‘Sexual Orientation is added to the ‘identifiable groups’ definition within section 318(4) CCC. This in effect will give the courts more discretion in the length of sentence [my emphasis] that can be handed down to offenders of hate crimes against homosexuals, bisexuals and transsexuals.577

It was Bill C-41, before the House in the mid-1990s, that included the enhanced sentencing provision; Bill C-250 had nothing to do with the court’s discretion to increase

the offender’s sentence. Further, as clearly noted in Canadian jurisprudence and in the
debates on Bill C-250 (as well as Bill C-41), the term ‘sexual orientation’ does not
include gender identity, and thus would exclude protection of transgendered and
transsexual individuals.578

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Policing the Good Queer Victim of Hate Crime

By now examining official narratives of police knowledge and professionalism
with respect to joint community-police initiatives, the figure of the good queer victim of
hate crime takes shape. The good queer victim of hate crime, according to police officers
whom I interviewed, is one who: knows how to report and to whom, knows what to
expect of police response, knows how to be a good witness. That is, the good victim has
acquired the lessons of police knowledge and expertise and has adhered to them. A
Vancouver detective phrased an idealized community response to homophobic violence
in the following way: “I got a licence plate number; this is exactly what happened; I
wrote out a statement for you, officer; thank you very much.” In this idealized scenario,
the queer victim is efficient, productive, exact, knowledgeable, and polite.

In these official narratives, the idealized queer victim stands in stark contrast to
accounts of ignorant and agitated victims whose demands for police action are either
excessive or unrealistic. An inspector stated the following:

So most of the cases of complaints about lack of police of response have
come down to someone has phoned with a huge attitude – expectations

578 Chapter six of this dissertation explicitly examines Bill C-250.
with the negative cognitive filter and a self fulfilling prophecy – where eventually they became so agitated that the operator could not deal with them and they either hung up in frustration or the operator said, “I’m not taking this abuse anymore,” and hung up.

Misunderstanding and lack of knowledge of police procedure and the criminal justice system more generally were complaints made by police about the victim of anti-queer violence. As one officer stated, “the gay community didn’t understand police investigation procedures and police protocols, what we can release and what we can’t release, the length of time that it takes to do these investigations.” Another constable phrased this complaint of misunderstanding more broadly, citing “a lack of communication – a situation of lack of trust and lack of relationship amongst the general populace.”

In order to combat such misperceptions and misunderstandings held by the queer victim, police interviewees advocated education of the LGBT public. One such educative forum was that of the Vancouver ad hoc safety committee, a joint community-police committee formed in response to the homicide of Aaron Webster. A number of objectives were set by police in the education of the queer victim of violence: how to report, what to expect after reporting, what not to do. Evoking the figure of the responsibilized citizen partnered with police, a senior officer stated:

Where people are energized to take responsibility for community safety, we join with them […] We’re always looking for people who want to get involved and take responsibility for their own community […] Like the dealing with safety stuff – how to be safe – more importantly, how to get a good reaction from the police, that’s something people need to learn. If
you phone and you scream at us, we are just as likely to scream and hang up on you.

In this statement, what is to be learnt from the police expert is not safety strategies *per se*; rather the educative elements centre on the ability of the complainant to “get a good reaction from the police.” Here the good victim is once again civil and well-behaved. Moreover, the officer attempted to instruct those who attended this safety forum on how to avoid victimization by “stepping aside” and being “calm” when confronted with homophobic threat and hostility. Do not engage, he schooled, “silence ends it.”

Addressing directly the issue of physical contact, he directed his expertise towards the queer victim stating, “we also tried to tell the community not to get into arm locks and wrist holds.” According to these official narratives, strict adherence to police knowledge and instruction results in positive and responsive police action.

However, insofar as the good queer victim is to report victimization to police, albeit calmly, succinctly and politely, the practice of reporting indexes a breakdown, not only in the management of the good queer victim of hate crime, but in the police-community relationship and in the lessons that the community is being schooled in. For example, Inspector Jones at the community safety forum, and implicitly through the Plate Fight Hate program, encouraged LGBT community members to report incidents of victimization to police. As one community member recalled:

> the police were putting out a very clear message, “even if somebody’s called you a name or somebody has intimated something that might be violence towards you or a hate crime, call 911, because we want to identify the hot spots as it were. We want to identify...” I think to some
extent that sent the message that “oh, the police are going to respond every
time someone’s called a ‘fag’ or ‘dyke’ or whatever.” I think there was
some sense of disillusionment initially thereafter, because it triggered that
sense of, “Oh, finally somebody’s going to listen.” And of course,
people’s experience of calling 911 or flagging down an officer on the
street was far different from that. It was like, “Well, we’ll record it, but
you know we’re not going to call out a squad because you’ve been called a
fag on Davie Street.”

The figure of the good queer victim of hate crime, despite his/her adherence to
good reporting practices and polite police interaction, remains an unstable figure. I will
use the following story to support my claim. The assault of Duncan Wilson, the then
chairman of the Vancouver Park Board, and the subsequent police response, illustrates
the precarious place of queer victimhood despite knowledge of hate crime and correct
police protocol. It was 1996, Wilson and a friend were walking home at night from a bar
when a car drove by and noticed them. The car drove speedily at them; Wilson’s friend
slapped the trunk of the car as it sped past; the car then stopped abruptly and four young
men got out. The men surrounded them and one of the men with a weapon in his hand
assaulted Wilson. The blow fractured his cheekbone and he fell to the ground. “They
were coming after us; they were yelling and screaming, ‘you fucking faggots’ and all that
stuff and ‘we’re going to kill you,’ Wilson recounted, “The usual stuff that gets said.”

Neighbourhood people were awoken and that seemed to have frightened the
attackers off. Wilson returned home and phoned police describing to the 911 operator
what had happened. He was told that the police were very busy that night. He waited for
three hours for officers to arrive. According to Wilson, “the police show up and the guy says ‘we’re too busy tonight to take a report. We’ll have to see you in the morning.’”

The next morning the police arrived to take the report and Wilson described the attack in clear detail, providing as well a detailed description of the car. The officer taking the report stated, “oh, so it’s a traffic incident.” Stunned by this, Wilson tried to explain to the officer that it was a hate motivated assault:

because of my involvement in the community and my knowledge of the gaybashing that goes on, I knew full well that the police department will only record it as a hate crime if it’s ... you know, if you report it as such, right? So, I knew I had to take the conscious step to do that. So I did. I said, ‘No, this is a hate crime. It’s not a traffic incident.’

According to Wilson, the assault was picked up by the media when Wilson’s absence from a Park’s board meeting was noticed and the story of his assault came out. Initially, the police spokesperson, Cst. Anne Drennan, stated, “well, my information was that this was a traffic incident. It wasn’t a hate crime.” It was only when the police became aware of the political status of Wilson that, he noted, “all of a sudden they were doing a Crime Stoppers segment on television about it, and they just bent over backwards [...] that really made me angry because it’s like if I were just an average citizen .”

Wilson’s observation is a critical one. Despite his being a ‘model victim’ of good queer victimhood schooled in correct hate crime reporting and identification protocol, it was his status as an elected municipal figure that shifted police perception reconstituting the assault as hate-motivated.
Entrenched in the persistent discourse of classic victimology in which the ‘homosexual’ is the paradigmatic precipitatory victim, the model of the good queer victim is ghosted by its uncanny other, the risky and sexualized figure of the cruiser. Commenting on perceptions and interactions with the police in the early 1990s, one Toronto LGBT interviewee stated the police were “completely fixated by public sex” and had little interest in protecting queer citizens: “they felt that you were putting yourself at risk if you’re going to have sex in a park or in a back laneway. They saw that as ‘you’re just asking for it.’” A Vancouver LGBT interviewee expressed a similar observation. Commenting on police advice given to the gay community in the late 1980s, James stated, “I was reasonably dissatisfied with the level of discussion that went on [...] And it seemed all they wanted to do was warn our community if there was park sex going on or washroom sex.” Here the ghosting of the bad victim of hate crime takes form quite obviously. What is interesting, though, is that current official narratives of victimization were remarkably silent on the issue of policing, cruising and victimization. When pressed by me about their attitudes about the policing of men who cruise and the issue of homophobic violence, one high ranking officer said, “are we going to go and catch casual consensual sex between men in a bathhouse? I can’t imagine being less interested. I don’t hold any value judgments against AaronWebster. But I do about people who killed him.” One police officer stated it was a matter of police resources and the individual’s prudent management of risk: “my feeling and I think – and I know my bosses are online with me – is that we are not going to put resources into a victimless crime. The men know that they are putting themselves at risk. They know they’re doing it, but they are
Concluding Remarks

This chapter adds to the larger hate crime conversation about policing, public safety and queer victimization by collecting and analysing interview data from Canadian police officers and LGBT community activists, both of whom worked with anti-hate crime initiatives. It supports Jenness and Grattet’s argument that “the policing of hate crime is highly contingent upon predictable personnel and organizational characteristics.” They argue that where there is “a high degree of organization commitment to the enforcing of hate crime law and a set of organizational routines built around detecting and processing hate crime cases, there is a greater likelihood that hate crimes will be recognized, verified, and classified as such.” With respect to the VPD and the Toronto Hate Crime Team, there has been at times a great organizational commitment to the policing of hate crimes, including those targeting LGBT individuals. However, both units have suffered from budgetary constraints and poor training of new recruits in the matter of hate crime detection and protocols.

This chapter also joins the conversation on the policing of the responsibilized queer. It adds to that of Moran and Skeggs critique of UK policing strategies that stress self-management of ‘risky’ lifestyle and behaviours that, as they note, reproduce myths and misinformation that represent long-standing institutional investments that

579 Jenness and Grattet 2001: 151.
misrepresent the reality of everyday violence, giving institutional credence to problematic ontological assumptions\(^{581}\) by using Canadian interview data from police to test to what extent this model reflects a Canadian perspective. To the extent that the police officers interviewed for this research stressed both the avoidance of violence through the self-management of risk and the proper methods of reporting to police once violence has happened, the critique of the responsibilized queer is apt. However, this critique does not wholly capture my findings.

In Stanko and Curry’s seminal article, “Homophobic Violence and the Self ‘At Risk’,” they identify the policing of cottaging – a British term for the “sexual practice of men who engage in the exchange of sex in ‘public places’\(^{582}\) – as the policing of risky and irresponsible sexual behaviour. According to their research on the policing of public spaces, the policing of cottaging represents not only the regulation of that space and the sexualized agents within it, but the constitution of that space as a legitimate site for police surveillance, interference, and legal regulation. The virtual silence demonstrated by my police interviewees on the policing of cruising parks and cruisers is striking. While my sample is much too small to make any generalized observation about the Canadian policing of men who cruise, my data suggest that this preoccupation with the policing of cruisers is not a concern for those officers of TPS and the VPD involved in anti-hate crime initiatives and projects. I noted that my Toronto LGBT interviewees recalled a police ‘fixation’ on public sex in the 1990s. However, this issue as a concern for Toronto

\(^{581}\) Moran and Skeggs 2004: 51.

\(^{582}\) Stanko and Curry 1997: 521.
LGBT anti-violence activists was not apparent. Data from my VPD interviewees noted that police were not actively interested in the policing of gay public sex as long as there were no public complaints. Their response, stated officers, was the investigation, apprehension, and arrest of bashers, not cruisers.

According to other studies of police response to sexualized victims, this response by police is not necessarily unsurprising or inconsistent. Gary LaFree, in his longitudinal study of police decision-making in cases of sexual assault, challenged other scholarship in this area, noting that police do “not [generally] discriminate between victims on the basis of extralegal attributes.” 583 Other scholars, using a feminist lens to theorize about police discretion in cases of sexual assault, noted that the police, for example, use determining factors other than the legal to consider arrest. These extralegal factors would include things like whether the complainant had a ‘bad’ reputation or was hitchhiking at the time of the alleged assault. However, LaFree’s findings indicate that, while in some cases police do use extralegal factors in their decision-making processes, police do not discriminate upon extralegal factors and their decision-making processes were largely dictated by legal determinants such as whether the victim was able to identify a suspect or was willing to testify, and whether a weapon was used during the assault. As he states, “[t]he data were most consistent with the legal model. I found only weak support for [the] extralegal” model. 584

In my interviews, police admonitions, nevertheless, raised the figure of the ‘risky’

583 LaFree 1981: 582.
584 LaFree 1981: 583.
cruiser who may be putting himself at risk of homophobic violence; however, that was not an immediate policing concern. I take from this the following: the ‘risky’ and sexualized figure of the queer cruiser is not wholly absent from police concerns; this figure still haunts police narratives of professional and responsive policing. Moreover, I argue that this figure is mirrored by its responsible queer other, a product of police education. As evidenced by my interviews, the responsible queer victim is a figure who is manifestly present in the official narrative of the expert and efficacious policing of hate crime. This is the civil and polite victim who is properly trained in the ways of reporting to police. This victim, like that of Stanko and Curry’s “responsible” victim of homophobic violence, works with police in the prevention of risk: he avoids confrontation; he does not engage with a threat; he stands under a street light; he does not place a wrist-hold on an offender. Interestingly, this victim is the unruly, uncivil and hysterical victim transformed. Borrowing from critical feminist observations, the notion of the hysterical figure problematically signifies the paradigmatically feminine. Like the ‘homosexual’ of classic victimology, the ‘feminine’ shares a similar provenance being one of several paradigmatic victim types. In a curious article by Judith Howard on the effects of gender stereotypes on reactions to victims, she notes that “[v]ictimization appears to be perceived as a feminine and potentially feminizing experience.” One of her more interesting conclusions suggests that victimization itself is understood to be a feminizing phenomenon. That is to say, victimization not only is attributed to women,

585 See for example the collection of essays in Berheimer and Kahane 1990.

586 See Von Hentig for example.
but victimization constitutes the stereotypically feminine by signifying weakness, lack of potency, poor judgement, “failure to fight back, looking scared [and] not trying to escape.”

It is interesting to note that the ‘good’ queer victim of hate crime, according to the official narrative on the policing of hate, is a victim made civil, a hysterical unruly victim transformed into a victim who is ordered, calm, and succinct in his complaint to police. Using a heterosexist framework, this construction and transformation of victimhood is symbolically gendered. Disorder, incivility, hysteria fall within the heterosexist paradigm of the feminine; whereas, orderliness, civility, rational behaviour line up stereotypically with the masculine. Insofar as the ‘homosexual’ and the ‘at risk’ victim also align with the feminine in this model, it is curious that the reconstituted queer victim transitions to the masculine under the influence of the police. It is curious indeed, for the queer victim of hate crime, in this instance of policing, is rendered unstable and precarious through the constitutive invocation of the transitioning figure, the FTM.

In conclusion, this chapter argued that interviews with police officers and LGBT community activists involved in anti-LGBT hate crime initiatives and projects produced narrative discrepancies of expertise and professionalism in the policing of hate crime. On the one hand, there was the narrative production of the official story of the policing of hate crime in which policing was constituted as effective, expert and professional. On the other hand, there was its counter-narrative that betrayed the official narrative revealing

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587 Howard 1984: 279.
588 This acronym of the transgendered individual stands for female-to-male.
failures, gaps and inconsistencies in policing practices of anti-queer violence. The counter narrative tells a tale of hate crime policing that is mismanaged, poorly trained and under-resourced. Embedded in the official narrative of the professional and effective policing of anti-LGBT hate crime is the figure of the good queer victim. This figure is an outcome of police efficiency. According to these official narratives, the good queer victim of hate crime needs to be produced by a strict adherence to police knowledge and instruction. It is a fabricated and disciplined figure who overcomes a seemingly natural state of disorder, ignorance and incivility. Significantly, the good queer victim is not produced in these official narratives against the risky and sexualized figure of the cruiser; rather, the good queer victim seems to be positioned (queerly) against an uncivil, hysterical and ignorant victim – who, nonetheless, still constitutes a ‘bad’ queer victim of hate crime.
Chapter Seven

Bill C-250: Fantastical Fears

This chapter identifies and analyzes Senate Committee witness\(^{589}\) opposition to Bill C-250, the amendment to the hate propaganda statutes that sought to include ‘sexual orientation’ to the list of identifiable groups protected under the legislation. The witness opposition framed its concern, predictably, around the issue of speech censorship and the harms that would stem from such censorship. The Christian right, who formed the majority of the oppositional witnesses, framed harm as a harm to their right of religious expression and religious speech. In addition to classic libertarian arguments against the amendment, and against the hate propaganda statutes all together, the arguments of the Christian right displayed what could be characterized as a “fantastical” apprehension of religious persecution by the state.

This chapter distinguishes itself from the previous chapter on Bill C-41 and its analysis of the logic of exclusion that sought to keep the term ‘sexual orientation’ from the provision. Although both chapters analyze the arguments and the rhetoric of opposition to these two pieces of legislation, these pieces of legislation are not comparable. Bill C-41 was an omnibus sentencing reform bill of which one aspect called for judges to consider the motivation of bias, hate and prejudice as aggravating factors at the time of sentencing; Bill C-250 was an amendment to existing hate propaganda law.

\(^{589}\) The Senate Committee Hearings were conducted from March 10-25, 2004. The First Reading of C-250 was October 24, 2002.
which sought to include ‘sexual orientation’ under the term ‘identifiable group.’ As well, these two bills are approximately eight years apart. If there appears to be commonality and redundancy, I note that this is significant. Why is it that nearly eight years after the passage of C-250 that social conservatives and their political allies were once again before governmental committees voicing opposition to another piece of hate crime legislation that had as its focus the term ‘sexual orientation’? To dismiss an analysis of this particular bill as redundant cedes legitimate inquiry and analysis of right-wing rhetoric to a different socio-legal issue, the inclusion of ‘sexual orientation’ as a protected group under Canada’s hate propaganda laws.

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“It [Bill C-250] will swiftly impose a hate-crimes ‘chill’ on those who object to the gay agenda. Before too long, those who speak out in opposition to government – or court-imposed gay rights – may find themselves pulling their punches out of fear of prosecution for their beliefs [...] It is hardly fantastical to worry that an activist judge, armed with the hon. member for Burnaby–Douglas’ law, could rule at the national level that all opinions troubling to gays are hateful, and none are protected, no matter what the Criminal Code says.”

Tom Wappel, Liberal member opposed to Bill C-250, quoting columnist Lorne Gunter, *Edmonton Journal*, June 5, 2002

The spectre of the ‘gay agenda,’ ‘activist judges’ and the suppression of speech by an oppressive government regime littered both the Parliamentary and Senate debates

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590 Wappel, HCD, June 6, 2003@ 1440.
and Committee hearings on Bill C-250, a private members’ bill seeking, by amendment to the hate propaganda statutes, the expansion of “identifiable group” to include “sexual orientation” under sections 318 and 319 of the Criminal Code.\(^{591}\) This chapter identifies and analyzes opposition to this amendment by way of witness testimony presented to the Standing Senate Committee on Legal and Constitutional Affairs.\(^{592}\) Seeking to distinguish itself from the previous chapter that mapped the opposition to Bill C-41 in the House of Commons debates, this chapter shifts its focus from the House to the Senate and examines, not the Senators’ opposition to Bill C-250, but the arguments presented by the Senate Committee witnesses who voiced opposition to the bill. The witness opposition framed its concern, predictably, around the issue of speech censorship and the harms that would stem from such censorship – a chilled climate on legitimate debate and rightful dissent. Less predictable, to a certain extent, was the way in which witnesses from the Christian right, who were the majority of the oppositional witnesses,\(^{593}\) framed harm as a harm to their right of religious expression and religious speech. In addition to classic libertarian arguments\(^{594}\) against the amendment, and against the hate propaganda statutes

\(^{591}\) See Appendix for hate propaganda statutes pre and post Bill C-250.

\(^{592}\) 37\(^{th}\) Parliament, 3\(^{rd}\) Session, dates: March 10, 2004 to March 25, 2004.

\(^{593}\) The panel of witnesses opposing Bill C-250 was composed, principally, by Gwendolyn Landolt from REAL Women of Canada, Derek Rogusky from Focus on the Family (Canada), Janet Epp Buckingham from the Evangelical Fellowship of Canada, Dr. Andre Lafrance from the Canadian Family Action Coalition, Dr. Charles McVety, president of Canada Christian College, and Dawn Stefanowicz, a certified management accountant.

\(^{594}\) Libertarian arguments are two-fold: free expression is intrinsic to the autonomy, self-development and self-expression of the rational citizen and the social collective, and free expression is instrumental insofar as it promotes autonomy and self-expression, and contributes to the advancement of democracy in that opposing ideas, particularly the political, circulate and are debated in the public forum (see Kallen, 1991; and Moon, 2000). Posited against libertarian
all together, the arguments of the Christian right displayed what could be characterized as a “fantastical” – to borrow from Lorne Gunter – apprehension of religious persecution by the state.

Resistance to the amendment had a long history in failed bills. Originally tabled as Bill C-326 in 1990, the private member’s bill brought forward by Svend Robinson sought to amend the hate propaganda statutes with the addition of “sex” and “sexual orientation” as identifiable groups. In the House of Commons, Robinson argued the need to criminalize hate literature directed at women, lesbians and gay men, claiming Parliament must “send out a clear message” to the Canadian people that hate literature “will not be tolerated in Canada.” A year later, Robinson reintroduced the proposed amendment as Bill C-247; this too died in the House. Seven years later, in 1999, as Bill C-263, Robinson tried again to expand the list by limiting his proposed amendment to “sexual orientation.” It is interesting to note that despite the wording of the amendment only to include the term “sexual orientation,” he stated that the purpose of

ideas are egalitarian notions on freedom of expression. These state that there are reasonable limits to expression, particularly with respect to hate propaganda, that advancement of truths is not always the inevitable outcome of expression, and that the state, in its duty to protect all citizens, must reasonably limit extreme expression that vilifies targeted groups.


596 Prior to the inclusion of “sexual orientation” to the list of identifiable groups, the list consisted only of “any section of the public distinguished by colour, race, religion or ethnic origin” (R.S., c, 11 (1 Supp.), s. 1)


598 In that same session of Parliament, M.P. Peter Milliken sought to expand the list further by adding “age, sex, sexual orientation, or mental or physical disability” to two subsequent bills, Bill C-350 and Bill C-429 respectively. Both bills died in the House.
the bill was to expand the hate propaganda protections to include “gay, lesbian, bisexual and transgender people.”

This too died quickly in the House, yet re-emerged in late 2001 as Bill C-415. Noting the timing of the bill – a week after the homicide of Aaron Webster in Stanley Park by a group of gay-bashers, Robinson spoke passionately about the need to protect LGBT people against the public incitement of hatred. He remarked that the Canadian government, by its continued exclusion of “sexual orientation” from the list of identifiable groups, delivered the message that gay men and lesbians were “in fact second class citizens in [their] own country.” Because Parliament was prorogued prior to C-415 receiving royal assent, Robinson sought to reintroduce his bill in October of 2002, now as Bill C-250, pursuant to Standing Order 86.1, a special provision that allowed for the reinstatement of Private Members’ Bills at the same stage they had reached in the previous session without requiring a motion. Thus when the third session of the 37th Parliament convened, the bill had already passed by the House at second reading and was referred to the justice committee. “My bill,” he stated, “seeks only to extend that same level of protection to those who are targeted on the basis of their sexual orientation. It is important to note that this bill in no way limits or threatens the freedom of religious expression or religious texts.”

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599 Robinson, HCD, Oct. 26, 1999 @ 1735.
600 Robinson, HCD, May 29, 2002 @ 1735.
601 Information on prorogation and the Standing Order 86.1 accessed through http://www.parl.gc.ca/information/about/process/house/Prorogation/prorogation-e.htm
602 Robinson, HCD, Oct 24, 2002 @ 830.
603 A motion was carried and accepted in the House that an additional clause be added to the amendment. To the defences of s. 3(b) – “No person shall be convicted of an offence under
The perception of threat to religious expression and expression more generally permeated the Standing Senate Committee’s testimony from Christian and social conservatives who spoke about the various ways in which adding “sexual orientation” to the list under “identifiable groups” would bring about a legal atmosphere of censorious oppression to those who spoke out against homosexuality. Stating that the bill would have “catastrophic” effects, the president of the Canada Christian College gave evidence that “[i]f the bill were passed, people could be convicted under this and sent to prison.”

In an even more fantastical vision of the effects of the amendment, Gwendolyn Landolt, National Vice-President of REAL Women of Canada, claimed that not only would the bill “prohibit thought,” but it would “require us to think certain thoughts.” While not clearly articulated to the Committee, this notion of mind-control and loss of individual liberty of conscience and religious belief is one element in a more elaborate, and fantastic, vision of a “homosexual agenda,” an activist liberal court, and a persecuted Christian and social conservative minority. Another witness, Janet Epp Buckingham of the Evangelical Fellowship of Canada, foretold the Bible being labelled as “hate literature.”

The exaggerated claims, inflamed rhetoric, and illogical conclusions drawn

subsection (2), (b) if, in good faith, the person expressed or attempted to establish by an argument an opinion on a religious subject” – was added the phrase “or an opinion based on a belief in a religious text.”

607 Buckingham, Director of Law and Public Policy, and General Legal Counsel for the Evangelical Fellowship of Canada, Issue 4 - Evidence for March 17, 2004.
by the witnesses who opposed the bill seem fantastical in light of the jurisprudential history of hate propaganda under Canadian law and the numerous protections built into sections 318 and 319 against zealous prosecution and frivolous or malevolent concern for the fundamental Charter rights of freedom of religion and freedom of expression, including that of religious expression. Responding to a comment made by one of the witnesses, Senator Smith remarked, “[s]ometimes I have the feeling that the evangelical community — which I know well because that is my background — sense conspiracies that are not really there.”

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**Fantastical Apprehensions**

“Anyone who may object to the homosexual agenda will be regarded as hateful,” stated the representative from REAL Women of Canada to the Standing Senate committee, “Anything could happen to anyone.” The hyperbolic expansiveness of such a claim – anything could happen to anyone – reveals the extent to which the Christian right and social conservatives feared the impact of the inclusion of “sexual orientation” to the identifiable groups listed under the hate propaganda statutes. At the heart of their apprehensions was the belief that, with the addition of “sexual orientation” to the groups protected under sections 318 and 319 of the Criminal Code, any public speech, particularly religious speech, expressing objection to homosexuality would be met with criminal sanction. Their arguments can be summarized as taking four basic tenets: the

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amendment would censor religious opinion on the subject of homosexuality thus producing a chilling effect on public speech in Canada, that the terms constituting the propaganda laws were vaguely defined and thus subject to prosecutorial abuse, that there were no legal protections offered to the right of legitimate expression, and that the state would be increasingly zealous in their prosecution of those expressing an opinion on homosexuality that did not support, as social conservatives termed it, “the homosexual agenda.”

Of great concern to the detractors of the bill was the meaning of the term “sexual orientation.” They argued that the term was too vague and lacked definition under sections 318 and 319. Drawing on psychological definitions of the term, they expressed vexation that the term “could include all sorts of deviations from heterosexual sex,” noting that pedophilia had been defined as an ‘orientation’ under that behavioural science. Reverend Richard Parkyn, appearing without organizational affiliation, stated that in his opinion “adding ‘sexual orientation’ to this section opens the door to the protection of the pedophile, the predator, and the polygamist.” Echoing similar arguments made against the inclusion of “sexual orientation” to the enhanced sentencing provision in 1994, these apprehensions towards the vagueness of the term were dismissed as being without justification. As Svend Robinson noted in Committee, “the words ‘sexual orientation’ are not new to Canadian jurisprudence. They have been in Canadian law since 1977

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Sen. Joyal reiterated this point by stressing that every provincial human rights code enumerated ‘sexual orientation’ as a protected group and that it was read into section 15 of the Charter by the Supreme Court of Canada’s majority opinion in Vriend in 1998: “It is not a concept we invented for the purpose of this bill [...] Section 15 of the Charter, which we cherish as Canadians, has been interpreted as including sexual orientation by the Supreme Court of Canada repeatedly. In other words, it is not another vague concept.”

Another site of anxiety focussed on the notion of hate itself: “What is hate? No one knows.” Suggesting that this term in the existing statute was both vague and unknowable, Landolt attempted to validate her perception by citing then Justice McLachlin’s dissenting opinion in Keegstra. Quoting McLachlin, Landolt read into testimony the following:

The first difficulty lies in the different interpretations which may be placed on the word “hatred”. The Shorter Oxford English Dictionary defines “hatred” as: “The condition or states of relations in which one person hates another; the emotion of hate; active dislike, detestation; enmity, ill-will, malevolence.” The wide range of diverse emotions which the word “hatred” is capable of denoting is evident from this definition. Those who defend its use in s. 319(2) of the Criminal Code emphasize one end of this range — hatred, they say, indicates the most powerful of virulent emotions

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613 Sen. Joyal, Issue 4 - Evidence for March 24, 2004. The term under Canadian law means heterosexuality, homosexuality, and bisexuality; no specific philia are recognized nor are sexual acts or behaviours that are illegal under Canadian law.

lying beyond the bounds of human decency and limiting s. 319(2) to extreme materials. Those who object to its use point to the other end of the range, insisting that “active dislike” is not an emotion for the promotion of which a person should be convicted as a criminal. To state the arguments is to make the case; “hatred” is a broad term capable of catching a wide variety of emotion.  

Any assurances by then Chief Justice Dickson’s clarification in the majority opinion that ‘hatred’ under s. 319(2) meant “a most extreme emotion that belies reason; an emotion that, if exercised against members of an identifiable group, implies that those individuals are to be despised, scorned, denied respect and made subject to ill-treatment on the basis of group affiliation” offered little comfort to Landolt. Further, it appears that she took no solace in his direction that “[a] dictionary definition may be of limited aid to such an exercise” in that “by its nature a dictionary seeks to offer a panoply of possible usages, rather than the correct meaning of a word as contemplated by Parliament.” Despite Landolt’s anxiety that the law was vague and overly broad, those issues had been settled constitutionally under Keegstra some fourteen years earlier. As reflected by Keegstra, the term ‘hatred’ under s 319(2) was limited to the most extreme expression, and not to merely distasteful, disliked, or offensive expression.

A further source of apprehension for the bill’s detractors was the fear that, with the addition of ‘sexual orientation’ to the meaning of identifiable group, there would be increased and vexatious prosecutions for those who voiced opposition to homosexuality.

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“I have a concern that the day will come that the word ‘genocide’ will be applied to a person simply objecting to a certain sexual orientation on moral, religious or simply personal convictions,” argued Reverend Parkyn. As an attempt to allay this worry, Senate Committee witnesses arguing for the bill responded by citing the number of times the various sections of the hate propaganda laws had been used. Speaking for EGALE, Trevor Fenton gave testimony stating that there had been only one prosecution under the genocide section \(^{617}\) and that there had “not been a single case involving a prosecution” \(^{618}\) under 319(1). Both Fenton and Robinson gave testimony noting that only five cases had been prosecuted under s. 319(2), four successfully. \(^{619}\) Despite the limited number of prosecutions under s. 319(2), the representative from the Evangelical Fellowship of Canada held that “[w]hile there have not been many prosecutions under this section, up to this point it has not included sexual orientation, and there is a huge public debate about sexual orientation and same-sex marriage in our society.” “We are concerned,” she further remarked, “that this section will actually be used much more than it has been previously.” \(^{620}\) Buckingham’s apprehension, while acknowledging the limited historical use of the hate propaganda laws, has proven to be unfounded; to date, there have been no charges under any of the hate propaganda laws involving ‘sexual orientation.’

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\(^{617}\) S. 318 was only used once, unsuccessfully, to prosecute a number of Manitoba Knights of the Ku Klux Klan, in Dec. 1991 (Suriya 1990: 51, fn 110).


\(^{619}\) As of 2009, there were six reported cases under s 319(2) as of 2009. Four cases were successful: \textit{R. v. Harding} (2001), \textit{R. v. Keegstra} (1990), \textit{R. v. Andrews} (1990), and \textit{R. v. Safadi} (1994) (see Suriya 1990). The other two were unsuccessful at appeal: \textit{R. v. Buzzanga and Durocher} (1979) and \textit{R. v. Ahenakew} (2009).

Robinson noted in Committee, “[t]his bill is largely symbolic; I would be the first person to concede that. There will not be a lot of prosecutions under this legislation. Yet the symbolism is enormously important because it says to gay and lesbian people that our lives and our safety and our security are just as important.”

With respect to the various checks and balances built into the propaganda laws, including the requirement of the consent of the Attorney General in order for a charge to be laid under sections 318 and 319(2) and four defences structured principally around truth and good-faith arguments, the objectors to the amendment argued that these protections were insufficient and offered a false sense of civil security against the power of the state. Speaking to the requirement of the consent of the Attorney-General prior to any charge being laid, Landolt claimed that this provision was merely political smoke and mirrors: “We know that attorneys general are simply political officials. They are part of a political party and are simply doing what is politically correct. They are not upholding the law; they are promoting party policy. We have no guarantee that the attorneys general will protect us.” In a much less conspiratorial tone, the president of Canada Christian College correctly noted that section 319(1) did not provide any attorney general protection.

However, insofar as the intention behind securing the consent of the Attorney General is the avoidance of frivolous prosecution and a high likelihood of conviction, the fact that s. 319(1) has never been used should have offered some solace to those who questioned the

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absent requirement of the Attorney General’s consent. With respect to the built-in defences, under the then-current statute, s. 319(3)(b) stated the following: “No person shall be convicted of an offence under subsection(2) – if, in good faith, he expressed or attempted to establish by argument an opinion on a religious subject.” By the time Bill C-250 had reached the Standing Senate Committee in March of 2004, after much debate in the House, the bill was expanded by way of an additional clause that added to the defence: “or an opinion based on a belief in a religious text.” As Fenton noted of s. 319(3)(b), this particular defence “unequivocally tells the courts that the Bible and other scriptures are not hate literature and are off-limits to prosecutors.”

Despite this addition to the then-current defence of religious belief, Derek Rogusky of Focus on the Family argued that “Bill C-250 poses a real risk to the religious freedom and freedom of expression that Canadians enjoy. The defences against prosecution and/or conviction are rather limited.” As proof of this belief of ineffective defences and as an index of what would follow if Bill C-250 became law, Janet Buckingham, legal counsel for the Evangelical Fellowship of Canada, cited a case in which the Ontario Court of Appeal ruled on s. 319(3).

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623 Senator Banks voiced the same sentiment when he addressed a witness: “Do you take any comfort from the fact that in order to protect against all prosecutions under the Criminal Code, one must convince an attorney general that the bringing of a charge is likely to result in a conviction and that absent that, the kinds of frivolous things that you are talking about would not likely obtain?” (Evidence for March 17, 2004)


626 R. v. Harding 2001 CANLII 21272 (ONT CA).

publication and distribution of pamphlets and the communication of telephone messages by a Christian pastor who claimed that all Canadian-Muslims are a part of a worldwide terrorist conspiracy that poses a threat to the security and well-being of Canadians. The trial judge opined that “[a]lthough Mr. Harding denies having the intent to promote hatred when disseminating his message, he was at best wilfully blind” and sentenced Harding to a concurrent three month conditional sentence and two years probation. Buckingham took issue with the phrase “wilful blindness” as the legal standard which she claimed was much lower than “wilful promotion” as set out in the statute. However, addressing this very issue, Justice Weiler of the Ontario Court of Appeal wrote that:

Wilful blindness is more than mere recklessness. Criminal law treats wilful blindness as equivalent to actual knowledge because the accused “knew or strongly suspected” that inquiry on his part respecting the consequences of his acts would fix him with the actual knowledge he wished to avoid. The appellant’s submission that wilful blindness is insufficient to support the stringent mens rea requirement contained in s. 319(2) because it limits freedom of expression is not supported by the jurisprudence. Wilful blindness satisfies the stringent mens rea requirement for the offence of wilfully promoting hatred and does no violence to Dickson C.J.C.’s definition of the mental element for the offence in Keegstra, supra. The trial judge did not convict the appellant based on an insufficient mens rea requirement and Dambrot J. did not err.

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628 R. v. Harding 2001 CANLII 28036 (Ontario Supreme Court). Examples of Harding’s published statements are the following: “[Muslims are] “violent and hateful towards Jews, Christians and anyone else that denies or objects to their false religion” and Muslims masquerade as pacifists “but underneath their false sheep’s clothing are raging wolves, seeking whom they may devour and Toronto is definitely on their hit list.”

Buckingham’s defence and use of such a case – a religious vitriol against Muslim Canadians – as an example of sound religious expression and of an oppressive legal apparatus appears slightly misplaced.

With direct respect to the weary claim that legal protection of sexual orientation always comes at the cost to freedom of religious expression, Clair Schnupp, a psychologist speaking as an individual witness against the bill, stated:

The courts have simply failed to protect religious freedom against claims based on sexual orientation [...] I also have a concern that was expressed by the Evangelical Fellowship of Canada, that the Bible could easily — and I think will — be classified as hate literature, at least sections of it. Then what do we have for healing as Christians? [...] You [the Evangelical Fellowship of Canada] warned that people of faith would be specifically targeted if Bill C-250 were to become law.

The claim that the courts had failed to protect religious freedom in favour of sexual orientation was an oblique citation to three cases that were referenced by opponents to Bill C-250 during the Senate Committee hearings: Vriend, Owens, and another unnamed case, none of which was ill-considered by the courts. In Vriend, for example, Delwin Vriend, a laboratory coordinator at a Christian college which held “strong religious views against homosexuality and homosexual practices,” was fired from his job upon the discovery of his sexual orientation. Vriend’s complaint to the Alberta Human Rights
Commission was rejected on the ground that “sexual orientation” was not a prohibited
ground of discrimination under the listed objectives of the Individual’s Rights Protection
Act (IRPA) of the Province of Alberta. He sought a declaration from the Alberta Court of
Queen’s Bench that the omission in the provincial human rights code breached section 15
of the Charter. The trial judge found that the omission of protection against
discrimination on the basis of sexual orientation was an unjustified violation of s.15 and
ordered that the words “sexual orientation” be read into the relevant sections of the IRPA
as a prohibited ground of discrimination. This decision was overturned by the Alberta
Court of Appeal. On appeal to the Supreme Court of Canada, the unanimous decision
held that the legislative omission constituted a Charter violation that could not be saved
under s.1 and ordered that the words “sexual orientation” should be read into the
prohibited grounds of discrimination in the appropriate provisions of the IRPA.\textsuperscript{633} Thus,
in this case, what was ruled on by the Supreme Court was not whether the act of firing
Vriend from his job at a Christian college constituted discrimination, but rather, whether
Vriend has recourse to the Alberta Human Rights Commission to lodge a complaint of
discrimination against the college. That is to say, no ruling was made that trumped gay
devices over religious rights.

The second case cited by religious conservative witnesses was that of Owens v.
Saskatchewan (Human Rights Commission).\textsuperscript{634} In Owens, three separate human rights
complaints were made against Hugh Owens for publishing in a local newspaper an


\textsuperscript{634} Owens v. Saskatchewan (Human Rights Commission), 2002 SKQB 506 (CANLII).
advertisement for a bumper sticker that displayed references to four Bible passages: Romans 1, Leviticus 18:22, Leviticus 20:13 and 1 Corinthians 6:9-10, on the left side of the sticker. An equal sign (=) was situated in the middle of the sticker, with a symbol on the right side of the sticker. The symbol on the right side was comprised of two males holding hands with the universal symbol of a red circle with a diagonal bar superimposed over top.635 A number of experts in human sexuality, various religions and religious fundamentalism testified as to the message of the sticker and the impact of that message. With that testimony and that of Owens himself, the Board of Injury found Owen’s advertisement to have violated s. 14(1)(b) of the Saskatchewan Human Rights Code in that the publication of this representation “exposed the complainants to hatred, ridicule and an affront to their dignity because of their sexual orientation”636 contrary to the code. Responding to this case, Buckingham stated the following:

Our concern is, if there is a criminal provision, people will then face criminal action on it [...] The decision [in Owens] simply talked about Biblical texts promoting hatred against gays and lesbians. That is the precedent stating that these Biblical texts promote hatred against gays and lesbians. We then wonder what kind of protection we can have for the Bible now that such a precedent exists [...] People said afterwards that the Bible had been labelled ‘hate literature.’637


637 Buckingham, Issue 4 - Evidence for March 17, 2004. As a point of interest, Owens has overturned by Saskatchewan’s Court of Appeal in 2006: “The Board of Inquiry and the Chambers judge both took these passages at face value, making no allowance for the fact they are
At the heart of this misapprehension by Buckingham was the confusion between human rights law and criminal law. As Richard Moon notes, under Canadian law there are two distinct mechanisms to deal with hate promotion: “the criminal prohibition against hate promotion considered in Keegstra 1990 and provincial and federal human rights code provisions against racist expression.”\footnote{Moon 2000: 144.} Thus, under the \textit{Canadian Human Rights Act} (S.C. 1976-77, c.33), s. 13(1) states that it is a “discriminatory practice” contrary to the \textit{Act} for a person to “communicate telephonically [...] repeatedly [...] any manner that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.”\footnote{Moon 2000: 144.} In terms of provincial human rights codes, the \textit{B.C. Human Rights Code}, for example, states under s. 7(1) that “[a] person must not publish, issue or display, or cause to be published, issued or displayed, any statement, publication, notice, sign, symbol, emblem or other representation that (a) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or (b) is likely to expose a person or a group or class of persons to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of
persons.” Section 7(2) makes clear that the prohibition does not apply to private communication, a communication intended to be private or a communication related to an activity otherwise permitted by this Code.

Insofar as the law responds to hateful expression under both human rights and criminal law paradigms, the differences between human rights law and criminal law are significant. First, the aim of the human rights statutes is conciliatory, not punitive or carceral. As then Chief Justice Dickson wrote for the majority in Taylor 1990, the aim of human rights codes “is not to bring the full force of the state’s power against a blameworthy individual for the purpose of imposing punishment.” Insofar as individual acts of discrimination are thought to be, for the most part, part of a systemic practice, Richard Moon writes that the response of human rights law is conciliatory, educational and remedial. Where conciliation and resolution have failed, the human rights tribunal may make “a variety of orders, including a compensation order or an injunction against further wrongful acts.” As a last resort, criminal sanction may be imposed on the individual who refuses to obey the tribunal’s order and who is found to be in contempt. That is to say, criminal punishment is not a result of hate speech, but a result of disobeying a court order. Second, as noted by EGALE’s Trevor Fenton in

http://www.bclaws.ca/Recon/document/freeside/-%20H%20--/Human%20Rights%20Code%20RSBC%201996%20%20c.%20210/00_96210_01.xml#section7


Qtd in Moon 2000: 144.

Moon 2000: 145.

Moon 2000:145.
Committee, in order to violate human rights law, one must “merely expose an identifiable group to hatred or ridicule.”\textsuperscript{645} Whereas, under criminal law, the accused must have promoted hatred which under the \textit{Criminal Code} indicates “active support or instigation.”

Third, violation of human rights law does not require a mental element; the effect of discrimination is what matters. On the other hand, the promotion of hatred under criminal law must be wilful, which under \textit{Keegstra} means that it be both intentional and purposeful; wilful does not include recklessness. This wilfulness, like every other element of the offence in s. 319, must be proved beyond a reasonable doubt by the Crown. Third, under human rights law, good faith as a defence is irrelevant; whereas, s. 319(3) provides four defences, two of which are explicitly good faith and the other two are truth and public benefit defences. Responding to the Christian right’s use of the \textit{Owens} case to infer that the citation to religious texts offered no defence of religious expression, and that religious expression was in fact under attack by the state, and further that what transpired under human rights law could be mapped neatly onto criminal law, Fenton stated the following:

With respect, I submit that this case \textit{[Owens]} is simply not relevant to the bill in front of you. Using a human rights case like \textit{Owens} to discredit a \textit{Criminal Code} provision betrays a considerable misunderstanding of our legal system.\textsuperscript{646}

A number of senators, the chief exception being Senator Anne Cools, expressed

\textsuperscript{645} Fenton, Issue 3 - Evidence for March 11, 2004.

\textsuperscript{646} Fenton, Issue 3 - Evidence for March 11, 2004.
incredulity at the claims and fears voiced by witness-representatives of the Christian right. Responding to the veiled argument by McVety that *anything* expressed religiously about sexual orientation – rather than religious condemnation specifically of homosexuality – could be caught by a vaguely worded bill, Senator Smith asked, “You really think that if this bill passes, that anyone who preaches against fornication or adultery […] will run the risk of being charged on this?”647 Others countered with pointed discussion about limits under Canadian law. “Our freedoms,” noted Senator Joyal, “are not in any sense, in any area, absolute.”648 Citing a balance in civil society between pluralism, religion and public policy, Senator Joyal remarked that “freedom of belief does not trump the rule of law […] There are limits to freedom of belief expressed publically […] If your religious belief endangers the right to physical integrity, then the law somewhere must place some limits on the expression of those beliefs publicly.”649 The stress on ‘limits’ may be read not only as a rebuke to outlandish claims and misguided beliefs expressed by some of the Committee’s witnesses, but also as an attempt to shore up emotions and fears that were stirring up much public controversy and agitation over the proposed bill.650 “I want to address you on the issue of Bill C-250, which is of grave concern for hundreds of thousands, if not millions, of Canadians who

650 “Mr. Speaker, in my 10 years as a member of Parliament, I have never seen an issue that has led to so many letters, e-mails and phone calls from across Canada. I have heard from hundreds of constituents and close to 10,000 Canadians from across the country, almost all opposed” (Liberal M.P. Murray Calder, HCD, June 6, 2003@ 1445).
are very much afraid of this bill,” stated McVety, “We prayed that we would be defended against the attack that is waged through Bill C-250.”

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And What of Paranoid Scenarios?

I think I am not paranoid, but I can see that [...] With the courts the way they are, you can expect anything nowadays, actually. I do not feel safe at all, I can tell you that.

Fears of persecution took another peculiar form. Two witnesses, Dr Lafrance and Dawn Stefanowicz, gave evidence to the Committee arguing that their rights, differently constituted, would be at risk and their public beliefs about homosexuality would be subject to prosecution if Bill C-250 were to pass. In the case of Dr. Lafrance, a dermatologist representing the Canada Family Action Coalition, he was deeply distressed that his medical views on homosexuality would be subject to criminal sanction under the proposed amendment. In the case of Dawn Stefanowicz, a certified management accountant, her deep concern was the fear that this amendment would prohibit her right to speak out against “LGBT subcultures” and “sexually diverse family units.” For both witnesses, their free expression of homosexuality as a threat to a healthy society was under attack. To remove such a right, in their minds, would open Canadian society to both physical and moral decay. “Should Bill C-250 pass,” stated Stefanowicz, “I would...
not be able to oppose the many dangerous, risky and unhealthy homosexual sexual practices like sodomy, oral-anal sex and sadomasochism and others, and their social consequences for society.\textsuperscript{654} What is particularly interesting are, not only the sustained expressions of anxiety and threat felt by these Committee witnesses, but the descriptions, scenarios and histories of homosexuality that each presented to the Committee. A closer examination of these rich narratives index, I argue, a (mis)perception of threat that may be characterized as paranoid in a classic Freudian sense.

In “Psychoanalytic Notes on an Autobiographical Account of a Case of Paranoia,” Freud theorizes paranoia as a psychic defence mechanism structured upon inversions of affect and syntactical displacements.\textsuperscript{655} By this, Freud means that the unconscious wish of the paranoid – almost always a homosexual wish – is truly unbearable and can only seek expression in an inverted and negated form. This form takes expression in the complex syntactical displacement mapped out by Freud as: “I do not love him – I hate him, because HE PERSECUTES ME.”\textsuperscript{656} Thus, with respect to affective inversions, ‘love’ changes to ‘hate.’ Moreover, Freud claims, the mechanism of symptom-formation in paranoia requires “that internal perceptions – feelings – shall be replaced by external perceptions” projecting outwards onto others what the paranoiac does not wish to recognize in himself.\textsuperscript{657} Consequently, the proposition “I hate him” becomes transformed

\textsuperscript{654} Stefanowicz, Issue 4 - Evidence for March 17, 2004.

\textsuperscript{655} For an in-depth analysis of Freud’s theory of paranoia and homophobia, see Luuny 1997.

\textsuperscript{656} Emphasis in the original text. Freud 1911 [1910]: 201.

\textsuperscript{657} Freud 1911 [1910]: 201.
by projection into another reversal: “He hates (persecutes) me, which will justify me in hating him.” It is strikingly interesting that the extreme racist, homophobe, anti-Semite and others who hate often rationalize their hatred and acts of violence through the justification that the object of hatred poses an a priori threat to the hater. That is to say, the victim of hate crime is often misconstrued as a harm or threat to which the hater must respond. From the hater’s perspective, the victim acts as a threat to his social order. In these cases, violence against the (supposed) originary threat restores or reaffirms social order according to the schema of the hater. Donald Black’s classic piece on self-help similarly introduces the idea of role reversal: “the definition of who is the offender and who is the victim is reversed.” To what extent, though, the homosexual wish is at the unconscious root of paranoia I am sceptical. The logical outcome of such a pursuit may lead to what Kendall Thomas argues is an “interpretive parapraxis [whereby the] homosexual rather than the homophobe [becomes] the subject of mental illness.”

Despite such a caution, the curious preoccupation with the figure of the hyper-sexualized homosexual as threat in the witness testimony of Lafrance and Stefanowicz respectively beckons my attention.

According to Dr. Lafrance, anyone “who employs a scientific hypothesis in objecting to homosexuality [will] be charged with promoting hatred.” At the heart of

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658 Freud 1911 [1910]: 201.
659 See for example Perry, 2001 and Mason, 2002.
661 Thomas 1993: 34.
Lafrance’s testimony was what he argued were “scientific truths” about “homosexual disease,” as he labelled HIV/AIDS.  

Citing sado-masochistic behaviour and a claim that “homosexual men have become big users of Viagra,” he spoke at great length about the (supposed) “notorious promiscuity” of gay men and the threat to public health that it posed, including the threat to the public health care system. Further, his description of sexual activity was heightened by Senator Anne Cools who invited him to speak further about “rimming” and sado-masochistic activities. His constitution of gay men as disease-carriers was driven home to the Senate Committee in long tracts about “sexual deviancies,” unhealthy risky behaviours and the confluence of disease that gay men exhibited and spread, including HIV/AIDS, syphilis, hepatitis B and C, and tuberculosis.

“Pretending that the risk for a heterosexual man for getting HIV is the same as it is for a homosexual man is a lie that is conveyed by our own medical association and by the medical establishment,” he argued, “That is a lie, as I say, and I am willing to defend that publicly against anyone: the risk is a thousand times.”

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665 Sen. Cools, Issue 4 - Evidence for March 17, 2004: “Would Dr. Lafrance tell us about the medical consequences to individuals who involve themselves in activities such as ‘rimming’ if you know the word, sado-masochism and so on?”
666 Lafrance, Issue 4 - Evidence for March 17, 2004. Senator Lynch-Staunton was particularly frustrated by Lafrance’s claims and continually questioned the relationship between Lafrance’s claims and the bill and the motivation of his anxiety: “What does that have to do with the bill?,” “I do not know what the medical consequences of sexual behaviour have to do with this discussion. I resent the attack on anyone's sexual behaviour [...] To have one group with a certain sexual behaviour or tendency condemned so adamantly, viciously and terribly as we have heard today is mean-spirited and distracts from the purpose of this bill, which is to give protection – if that protection is needed – in an amendment to the Criminal Code;” “My objection to his statistics was not on the validity of them; it was on what they had to do with this
sexual behaviours only to gay men and to all gay men, coupled with the belief that the Canadian medical establishment was propagating a lie about the transmission of disease and at-risk behaviours, signals what Freud would argue is a paranoid posture. Lafrance’s fixation with sexual behaviours which he attributes to gay men exclusively also indexes an (inverted) affective investment with the very thing that he condemns.

In response to Lafrance’s highly charged and sexually descriptive testimony on the medical risk that gay men posed to Canadian society, Senator Lynch-Staunton asked, “I am trying to put myself in your mind, with all due respect, and ask where the strong feeling comes from?” Before moving onto Dawn Stefanowicz’s testimony, I would like to consider this very question. Repeatedly Lafrance stated that he felt under threat by the proposed bill. At one point in his testimony he literally stated, “I do not feel safe at all, I can tell you that.” He also raised the issue of paranoia himself, stating, “I think I am not paranoid, but I can see that.” According to his own testimony, Lafrance perceived gay men as a threat to the health of Canadian society, both in terms of being disease-carriers and as a drain on the health care system. He also thought the proposed bill would limit – that is to say, threaten – his right to speak freely about these issues and

more generally put a chill on the climate of free expression in Canada. His admission, I think, about “not feeling safe” makes the necessary link to Freud’s theory on paranoia with respect to the notion that paranoia’s aetiology is to be found in the unbearable homosexual wish. If we read the signifier ‘safe’ as a linguistic element in the discourse of HIV/AIDS prevention – for example, the discourse of ‘safe sex’ – coupled with Lafrance’s dreaded belief that gay men exclusively bring the threat of HIV/AIDS and other sexually transmitted diseases to Canadian society broadly, I query to what extent Lafrance is reproducing a subject position in relation to the risks of transmission of what he labelled “the homosexual disease.” That is to say, his claims about being unsafe have the fantastic effect of situating him in the high-risk (homo)sexual scenario that he so vehemently warned against. It is at this point that Freud’s unbearable, but irrepressible, homosexual wish makes itself known.

With respect to Dawn Stefanowicz, her concerns seemed even further unconnected to the purpose and effects of the proposed legislation and seemed oddly misplaced. According to her, “Bill C-250 will break down sexual barriers and foster sexually diverse family units that are not good for children.” Speaking before the Committee as an individual who claimed to have special knowledge of “GLBT subcultures,” Stefanowicz described her childhood experiences growing up with her gay father:

I lived with my homosexual father in a highly sexualized environment. My mother and my two brothers and myself lived in this state. I was exposed

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to sexually inappropriate experiences from a young age, including pornography, drugs, alcohol and indecent sexual acts. I was exposed to under-age male recruitment, voyeurism, exhibitionism, sadomasochism, fetishism and group sex — for example, my father with 12 men.\textsuperscript{671}

If her account is indeed accurate and true, the exposure to such an environment by a child may well be constituted as abusive. However, despite this, her claim that such life was “typical of children in the GLBT subcultures” is an absurd and offensive statement. Her inability to distinguish this experience from other non-abusive familial experiences with LGBT parents is troubling.

Her opposition to Bill C-250 was framed thus: “Bill C-250 will remove my right as a child who grew up in this situation to the freedom of speech and freedom of expression to state opposition to particular forms of sexual behaviours, sexual diversity and family diversity […] I fear I could be prosecuted for speaking about the damaging repercussions and severe ramifications of homosexual sexual practices.”\textsuperscript{672} Speaking for the rights of children, Stefanowicz argued that if the bill were to pass no one could speak out against what she perceived as inherently pathological GLBT familial units. Like Lafrance, Stefanowicz’s attribution to varied sexual behaviours and practices singularly to gay men suggests little about a deep understanding of human sexuality. Moreover, her inability to distinguish abusive situations from non-abusive ones in terms of issues of consent, age appropriateness and coherent parent-child boundaries speaks to a larger psychological issue.

\textsuperscript{671} Stefanowicz, Issue 4 - Evidence for March 17, 2004.

\textsuperscript{672} Stefanowicz, Issue 4 - Evidence for March 17, 2004.
Alongside these descriptions of her troubled family history, she repeated her love for her father: “I grew up in Toronto during the 1960s and 1970s with a homosexual father whom I deeply loved.” To suggest that Stefanowicz has “daddy issues” – despite the flippant tone of such a phrase – may well identify a proper connection to Freud’s theory of paranoia. The connection, at best, is theoretical, but is in need of elaboration. If her claim of fear of legal persecution is truncated from “will remove my right as a child who grew up in this situation” to “my right as a child,” the identification with childhood is made apparent. In this way, her vivid descriptions of scenarios involving “sodomy, oral-anal sex and sadomasochism” and their profound affective sensibility can be linked to the memories of a child now speaking as a woman. The childhood exposure to seeing her father engaged in such scenes would be, as Freud argued in his Wolf Man case study, traumatic and neurotic producing. This neurosis takes expression in paranoia, I argue, by way of a thwarted homosexual wish.

According to Freud, all children must pass through the oedipal phase to achieve normal psycho-sexual development. To Freud, this meant a heterosexualizing alignment of object and aim. For the little girl, her struggle is to overcome the love attachment to the original object – the mother – and to realign her desire towards the masculine object thus positioning herself in the feminine. The little girl, like the little

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674 See Freud, “From the History of an Infantile Neurosis,” 1918 [1914]. In Freud’s Wolf Man case study, aetiology of the Wolf Man’s neurosis was a childhood witnessing of his parents engaging in coitus a tergo (Lunny, 1997).

boy, passes through several phases of psycho-sexual development: oral, anal, phallic and oedipal. In the normal development of the phallic phase, the little girl discovers her genital zones and according to Freud, recognizes this as lacking in the face of the “superior [male] counterpart.” This encounter with her “castration,” as Freud termed it, allowed her to position the father as love-object for it would be he who would give her the penis substitute in the form of a baby. With respect to understanding how Stefanowicz’s persecutory beliefs and her obsession with her father’s sexual behaviours align with Freud’s model of paranoia and the homosexual wish, I offer the following as mere theoretical speculation. Insofar as her father’s desire falls outside of the oedipal model taking as his object choice males, this heteronormative violation may have been perceived by his daughter at that critical moment of the phallic stage as rejection of her re-aligned oedipal affections. Second, exposure to her father’s (homo)sexual behaviours may have thwarted her complete abandonment of phallic self-identification, locking her into, at some level, a masculine subject position that would allow her to continue to enjoy her father’s sexual attentions within her fantasy life. With respect to the paranoid position, such desire (love) for the father, as a kind of phallic love, replicates the homosexual wish and at both this level and that of the oedipal are unbearable and find expression in the paranoid defensive position.

Whether the witnesses before the Standing Senate Committee can be said to be

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676 Freud, “Some Psychical Consequences of the Anatomical Distinction Between the Sexes,” 1925: 355. As noted in this dissertation’s introduction, there are elements of Freudian theory that are highly problematic. The imperative of the heterosexualizing normative and the highly rationalized and sexist insistence upon female inferiority are two such problematics.
truly paranoid in the Freudian sense, or merely paranoid in a more vernacular sense, it is significant that such an offensive was launched against Bill C-250. One cannot deny that this offensive took the position of being under attack and expressed itself through fear and anxiety: “We prayed that we would be defended against the attack that is waged through Bill C-250.” One also cannot deny that the concerns raised by the objectors appeared hyperbolic in the face of the evidence used to counter their fears – the built-in defences of the statute, the need for the consent of the Attorney-General in various sections of the law, the high threshold set by Keegstra in order to prove the elements of the case beyond a reasonable doubt and so on. It is also interesting how the oppositional witness testimony constituted themselves as victims of hate subject to harassment by gay and lesbian groups and to a legal violence deemed illegitimate.

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Conclusion

This chapter illustrates the questionable positioning of Christian and social conservatives of victims of a repressive ‘hate crime’ law that, according to them, protected the interests of an illegitimate, yet powerful, faction of civil society. In essence, this is one more example of the replication of the queer citizen as undeserving of the protection of law. In this case, as demonstrated by the critical psychoanalytic analysis of the arguments voiced in opposition to Bill C-250, victimization is turned on its head. In this topsy-turvy reality of radical conservatism, social conservatives are inversely

transformed into victims of a hateful “gay agenda,” “activist courts,” and an oppressive government regime bent on their destruction.
Chapter Eight

Conclusion

This dissertation has engaged with a broad range of scholarship on the phenomenon of hate crime, the politics of victimization, and the place of LGBT individuals in the sphere of citizenship and rights. Offering a critical analysis of these issues with respect to anti-LGBT hate crime in Canada, this dissertation has placed itself both within and adjacent to these areas of research and theorization. My interdisciplinary methodology offers a unique way of analyzing narratives of hate crime. My analysis illustrates how the spectre of illegitimate victimization is repeatedly invoked in socio-legal narratives of anti-LGBT hate crime. Pulling from my interdisciplinary training in semiotics and critical theory, I utilize semiotics, critical Freudian psychoanalysis and queer theory to understand how the signifier ‘legitimate (and consequently its abjected other, illegitimate) queer victim of hate crime’ is constituted, denied, rebuked, performed, disavowed, and advocated by various socio-legal discursive agents, including LGBT members and police engaged in anti-violence initiatives, judicial reasons for sentence, news reports of the homicides of two gay men, and federal legislative debates and committee witness testimony. My analysis of these narratives about queer victimization and hate crime suggests that the figure of the responsible, legitimate and undeserving victim of hate crime remains an elusive and unstable identity for the queer victim of hate crime. In this conclusion, I will summarize my observations and findings of each chapter
followed by a discussion of future research and specific limitations of this study.

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My Findings

Chapter 2 focussed exclusively on the news reportage of the homicides of Kenneth Zeller in 1985 and Aaron Webster in 2001. It was a refined and detailed examination of print news reports of two particularly brutal killings of gay men who had been attacked by young men in a cruising park. This chapter more than the others located me deeply within a narrative of anti-LGBT violence and, in a sense, forced me to confront my place within that narrative. By this I mean that my research of media reports of anti-LGBT violence at times literally overwhelmed me. What was particularly disturbing for me was the confrontation with what seemed like countless news accounts, mainstream and gay/lesbian, of Canadian anti-LGBT brutalization and violence from the years 1985 to 2003. The second effect I felt was the way in which I was invested in this violence. I was writing about this violence and in a sense becoming one more vehicle for its dissemination. The balancing of recognizing the importance of my project and the resistance not just to talk about violence vacuously without recognizing that these were real incidents involving real harm and violence to actual people – not just narratives of violence or news stories about hate crime– was most profoundly felt in the writing of this chapter. In this sense, my invested position within the study of anti-LGBT hate-motivated violence was most acutely felt here.

With respect to the findings of the chapter, news stories like any other representation are not a simple presentation of reality. They are productions of cultural
systems that mask their ideological investments. Their description and detailing of events and players within the horror of these homicides are not straightforward, definitive and transparent; rather they are semiotically significant and ideologically invested. For instance, the chapter evidenced that the choice of words used in these news accounts shaped the meanings produced in their consumption. To describe the event of violence in the Zeller homicide as a “moment of insanity,” an “execution,” and a “vigilante attack” has profoundly different effects. In particular, the chapter focussed on the news media’s language choice in their description of Zeller and Webster and their respective assailants. Note the performative power of naming and the tension over signification in the following pairs of terms: “boys” and “killers,” “homosexuals” and “gays,” “a gentle and kind librarian” and a “fucking faggot.” In the analysis of the news reportage of the homicide of Aaron Webster, I make an additional observation: despite the media’s naming of his violent death as a ‘hate crime’ and the open and casual references to Webster’s act of cruising on the night of his death, the mainstream news reports, nevertheless, reinforced the classic victimological trope of the imprudent, sexually risky and participatory victim by drawing the attention of the reader to the ambiguous police position regarding the homicide as a hate crime.

Chapter 3 is very much a close and critical psychoanalytic reading of trauma. Springing from the psychological scholarship of hate crime victimization, this chapter positions trauma at the epicentre of hate crime victimization. The chapter, like any psychoanalytic reading, is highly selective, and I make no defense about that. It is an interpretative project in which my semi-structured interviews with LGBT community
leaders and activists who had direct involvement with anti-violence projects and initiatives provided me with rich psychic material. My open-ended questions about hate crime produced interviewee stories, personal and anecdotal, about surviving violent victimization in the narrative construction of a resilient and holistic ‘community.’ Using the theoretical methodology of a critical psychoanalytic reading of these traumatic stories of ‘community,’ I identified this discursive production of ‘community’ as both a psychic attempt at remedying the trauma of homophobic violence and an irrepressible sign that trauma is perpetually wounding and reveals itself in the violence that is a ‘community’ coming together. The invocation to ‘community’ as a site of reparation, I note, is also highly significant. Drawing on the insightful observation of Benedict Anderson that ‘community’ is a purely imagined phenomenon, both excessive and necessarily lacking, this furthers the chapter’s argument that an appeal to ‘community’ is fundamentally an index of a gapping psychic wound. I have stated that stories of hate crime told to me by LGBT activists involved in anti-hate violence projects and initiatives circulated around the discursive production of ‘community’ as a response to violence. And in their stories, the sign ‘community’ stands for reparation, a trauma healed by a ‘community’ coming together. However, Freudian psychoanalysis looks askance at egoistic claims that are defensive or excessive. Insofar as the sign ‘community’ is, as Anderson tells us, an imaginary product wholly excessive and wholly lacking, such egoistic claims call for a closer examination. Upon queries from me about the ‘community’ that was evoked in my interviewees discussion with me, the plentitude of ‘community’ fell away. ‘Community’ as a symptomatic response to anti-LGBT violence revealed itself as a site of rupture and
lack. In particular, the discursive invocation of the imprudent cruiser as a victimized figure undeserving of social empathy and support reproduced not only rupture within the sign of reparation and plentitude – the sign ‘community’ – but made present the ideologically problematic and resilient figure of the illegitimate queer victim.

Chapter 4 analyzes the contested terrain of competing knowledges of gay and lesbian victimhood as played out in the House of Commons debates and committee testimony of Bill C-41's enhanced sentencing provision. Specifically, the chapter examined competing epistemologies of gay and lesbian victimhood as argued in the House of Commons and given as testimony before the Commons’ Standing Committee of Justice and Legal Affairs. One such knowledge positioned gays and lesbians as “innocent law-abiding Canadians who are sadly victimized by violent attacks.” Its counter knowledge argued that gays and lesbians were a special interest group driven by the “homosexualist” agenda whose very claim to victimhood was rebuffed and deemed illegitimate. In the chapter, I trace the logic of four resistant positions held by opponents to the inclusion of sexual orientation to this sentencing provision. These four positions, while distinct, inevitably attempted to weave together a coherent logic of exclusion by which the queer victim of hate-motivated violence is foreclosed from legitimate victimhood. These positions were, in no particular order: remove s. 718.2(a)(i) completely from the bill; remove mention of all enumerated groups; remove the phrase ‘sexual orientation’ from the list; and, set definitional limits to the term ‘sexual orientation.’ These arguments of exclusion did not form a neatly orchestrated narrative. Rather, they were raised at various points in debate, at times contradicting and, at others
informing their mutual rationalities. Insofar as Jenness and Grattet and others argue that the legislative response of hate crime law serves to legitimize minority victim of hate-motivated violence, it is significant and telling that the Canadian political right sought to foreclose enhanced sentencing inclusion for gay men and lesbians marking them by their political rhetoric as undeserving of governmental recognition and legal inclusion in the development of hate crime law in Canada.

In chapter 5, I discuss the symbolic meanings of judicial pronouncements of penalty and examine reported cases of hate-motivated violence against LGBT individuals. My analysis centres on two distinct phases of enhanced sentencing practice in Canada: those common law judgements that considered bias motivation against LGBT in sentencing prior to the enactment of the statute in 1996 and those afterwards. I argue that reported judgements in cases of violence against sexual and gendered minorities offer valuable insights to discussions of citizenship, responsibility, sexuality and violence. For instance, one judge opined in his reasons for sentence, “an assault which is sexually motivated renders the offence more heinous. [...] The danger is even greater [of inviting imitation by others and inciting retaliation] in a multicultural, imperialistic [sic], urban society. The sentence imposed must be one which expresses the public abhorrence for such conduct and their refusal to countenance.”678 This chapter also engaged with critiques of the affective attachment to enhanced penalty as primarily theorized by Moran and Skeggs. However, it positions their observation and warning about such affective attachments next to a particularly Canadian response to sentencing, that of the conditional

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678 See R. v. Ingram.
sentence. The chapter, by way of case analysis of judicial reasons for sentence, engages with linguistic theories of the performative utterance arguing, one, that legal judgements perform, not only law’s violence in the productive pronouncement of penalty, but law’s attempt at reparative social restitution, and two, that in the judicial utterance of reparation, the utterance has the effect of constituting imagined communities of law-abiding citizens and responsible social actors. This particular production of the judicial pronouncement at the time of sentencing is not without its difficulties in that it has the potential of reinvoking the dichotomous figure of the ‘innocent’ and responsibly prudent queer victim of violence and the imprudent queer victim deserving of anti-LGBT violence.

Chapter 6 analyzes the interviews of police officers and LGBT community activists who had direct experience with anti-hate crime initiatives and policing practices. Little, if no work, of this nature has been done in the Canadian scholarship of the policing of hate crime. These interviews produced two types of narratives on the policing of hate crime in Canada. On the one hand, there was the official narrative of policing expertise, efficacy and professionalism. And on the other, butted against, at times even threaded within, this official narrative was its abject other – the counter narrative. The counter narrative spoke of policing failures, gaffs, gaps and inconsistencies. With respect to the discursive production of legitimate and illegitimate victimization, police, even when pressed, did not raise the figure of the park cruiser as an example of irresponsible risk. Rather, according to the official narrative of professional and efficacious policing of anti-LGBT hate crime, the ‘bad’ victim of hate crime was the disorderly, hysterical, rude and
uncivil victim. A significant aspect of the narrative of the effectiveness and responsibility of the official policing of hate was the disciplining of this unruly hysterical victim recasting him/her into a disciplined, polite and obedient subject of hate crime policing.

Although the police did not raise the figure of the park cruiser as an example of irresponsible risk, the presence of the unruly hysterical victim, I suggest, signals the persistence of the classic victim types of precipitatory and illegitimate victimization through the signifier ‘hysterical.’ Borrowing from critical feminist observations, the notion of the hysteric figure problematically signifies the paradigmatically feminine. Like the ‘homosexual’ of classic victimology, the ‘feminine’ shares a similar provenance being one of several paradigmatic precipitatory victim types. In a curious article by Juditith Howard on the effects of gender stereotypes on reactions to victims, she notes that “[v]ictimization appears to be perceived as a feminine and potentially feminizing experience.” One of her more interesting conclusions suggests that victimization itself is understood to be a feminizing phenomenon. That is to say, victimization not only is attributed to women, but victimization constitutes the stereotypically feminine by signifying weakness, lack of potency, and poor judgement. Thus the transformation of the ‘bad’ victim of hate crime – unruly, hysterical, uncivil – into the ‘good’ victim connotes not only a type of gendered transformation moving from hysterical and uncivil to disciplined, rational and civil, but a shift from illegitimate victimhood to that of legitimate victimhood achieved through obedient adherence to policing directives.

Lastly, chapter 7, returns to the legislative arena. This chapter identifies and

679 See for example the collection of essays in Berheimer and Kahane 1990.
analyzes Senate Committee witness opposition to Bill C-250, the amendment to the hate propaganda statutes that sought to include ‘sexual orientation’ to the list of identifiable groups protected under the legislation. The witness opposition from social and religious conservatives framed its concern, predictably, around the issue of speech censorship and the harms that would stem from such censorship. For example, the arguments of the Christian right displayed what could be characterized as a “fantastical” apprehension of religious persecution by the state by framing harm as a harm to their right of religious expression and religious speech. Using a critical psychoanalytic methodology of interpretation, I analyze the exaggerated claims, inflamed rhetoric, illogical conclusions, and richly overdetermined and fantastical descriptions, scenarios and histories of homosexuality as ‘threat’ as an index of paranoia. This is a speculative interpretation that nevertheless demonstrates the odd ways in which religious and social conservatives turned victimization on its head. This inversion of victimization, articulated through paranoid tropes of harm and threat, has the effect of displacing LGBT individuals as legitimate victims of hate removing them entirely from the sphere of hate crime victimization.

The denotative definition of “illegitimate,” according to the Oxford English Dictionary, is “not legitimate, not in accordance with or authorized by law; unauthorized, unwarranted; spurious; irregular, improper.” If we interrogate this denotative definition by focusing, for instance, on one of its meanings, we find that the queer subject occupies a precarious place in the constitution of the legitimate victim of hate crime. Looking at “spurious,” we see that it is a synonym for “counterfeit,” which is itself a synonym for
“queer.” The metonymic and syntagmatic relationship of illegitimacy to the queer subject seems to have a long and etymologically developed provenance, one that extends beyond that of classic victimology. For queer theorists, it is an enviable position. That is, to be outside of law suggests a particular kind of liberation from social regulation and law’s violence. But one is never wholly outside of law or its violence, as queers can attest, and as critical legal theorists and Lacanians have argued. At best, the queer subject is a liminal subject, a borderline subject, radically straddling the legitimate and the illegitimate. At worst, the queer subject is wholly displaced, in a state of radical exclusion.

This dissertation has argued that the queer victim of hate-motivated violence occupies a position within the Canadian constitution of victimhood that is liminal and in-between. It is both an enviable and problematic position. For example, as the chapter on enhanced sentencing has demonstrated, the judicial pronouncement that gay men and lesbians are rightful citizens deserving of the symbolic expressions and material protections of law and are undeserving of hate-motivated violence may produce beneficial effects for queer subjects. Nevertheless, as Robert Cover and Judith Butler have differently argued, to speak as law and to evoke its power is to a large extent an expression of violence. Further, as Moran and Skeggs caution, for LGBT individuals to call upon law, then, is consequentially and fundamentally to call upon its violence. On the other hand, to foreclose queer subjects to legitimacy may foreclose them to the benefits of rights and citizenship which is another kind of violence, the violence of radical exclusion. This too though, psychoanalytic theory tells us, betrays yet another
paradoxical state, that of the abject for which radical exclusion is merely a sign of its symbolically insistent presence.

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Limitations

To my mind, the add-on quality that the use of LGBT indexes is, at times in my dissertation, apparent. I struggled with a nomination to describe subjects who could have been described as ‘sexual and gendered minorities.’ I found this a bit too stale and thus attempted, in my use of LGBT, to be clear when the context required a more specific nomination. Multiple times throughout the dissertation I identified ‘gay men’ to the exclusion of lesbians, bisexuals and transgendered individuals. At other places, I wrote of gay men and lesbians; and at others, just of transgendered and transsexual individuals. For the most part, it was bisexuals who were not specifically addressed. In places where I desired to identify a political or radical quality, I used the nomination ‘queer.’ To that end, I could have sought out subjects who identified as bisexuals who had experience in anti-LGBT hate crime initiatives.

Another possible limitation may be my interview sample sizes which are relatively small. For the type of analysis that I perform, however, this issue of sample size of the interviews is inconsequential. I make no claim that my analysis of these interviews is generalizable. My sample sizes are too small to be considered statistically reliable. However, this dissertation is not a quantitative study. Rather, its methodologies are qualitative.
Despite interviewing key socio-legal players involved in anti-LGBT hate crime initiatives from 1985-2003, there were at least three police officers and one LGBT community worker who were unavailable to be interviewed. One officer and the LGBT community worker had retired; another officer could not meet given my interview schedule; and another officer never responded to my emails. At the beginning of my research, I also attempted to interview Crowns, but I generally found them as a group reluctant to be interviewed. Two agreed to be interviewed, but they refused to be tape-recorded and our meetings lasted no more than ten minutes each. I decided to omit them from my study. One judge also spoke with me briefly about a case she had just adjudicated; but again the meeting was extremely brief and I was not allowed to tape-record it. It also was omitted from my data collection. If Crowns and judges could be interviewed thoroughly, their perspective and perceptions would further develop the legal narrative of the good queer victim of anti-LGBT violence beyond the written record of the judicial reason for sentence and the Crown’s public perspective on major hate crime cases as reported in the media.

I also only studied two cities, Toronto and Vancouver. Both had established LGBT communities with a history of anti-queer violence, including major homicides. Both had operating hate crime policing units. Both had a gay/lesbian local newspaper. Using these same criteria, I could have added Ottawa-Carleton to my list of cities as it too shared these things in common. However, no other Canadian city shares these characteristics.

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Future Research

This next point that I make could have been seen as a limitation but I would rather position it as a site of potential research. I think it would be fascinating to interview offenders about their perceptions of legitimate and illegitimate victimhood with respect to hate crimes motivated by sexual and/or gender identity orientation. I know of only one similar project. In the documentary film, *Licensed to Kill* (1997), Arthur Dong conducted six prison interviews with men who had killed gay men. A research study of Canadian offenders who were convicted of homicide or who were sentenced under s.718.2(a) (i) would yield critical data in this field. I would imagine their stories of violence and victimization would contain a plethora of rich semiotic and psychic materials.
Works Cited


Bernheimer, Charles and Claire Kahane (eds). *In Dora’s Case: Freud - Hysteria -


Routledge.


College English 36.3: 272-290.


— (1979 [1926]). “Inhibitions, Symptoms and Anxiety,” in Angela Richards (ed)


Wing's Attack on Gay Men and Lesbians,” in A. Gluckman and B. Reed (eds) 


Janhevich, Derek (2001). Hate Crime in Canada: An Overview of Issues and Data Sources (85-551-XIE). Ottawa: Canadian Centre for Justice Studies, Minister of Industry Canada.


University of Toronto Press.


Heath.


Suffredini, Kara (2000). “Which Bodies Count When They Are Bashed?: An Argument


Weeks, Jeffrey (1985). *Sexuality and Its Discontents: Meanings, Myths and Modern*


Legal Cases

R. v. Ahenakew 2009 SKPC 10 (CanLII)


R. v. Atkinson, Ing and Roberts (1978), 43 CCC (2d) 342 (Ont. CA)

R. v. Buzzanga and Durocher (1979), 49 C.C.C. (2d) 369 (Ont. C.A.)

Canada v. Taylor, [1990] 3 SCR 892


R. v. Cvetan and Iacozza, [1999] OJ No. 250 (QL) (Ont. CA)
R. v. D.M. (1990), 61 CCC (3d) 129 (Ont. C.A.)


R. v. Gallant, [1994], MJ No. 354 (QL) (Man. CA)

Haig and Birch v. Canada (1992), 9 O.R. (3d) 495 (Ont. CA).


R. v. Harding 2001 CANLII 21272 (Ont. CA).


R. v. Ingram and Grimsdale (1977), 35 CCC (2d) 376 (Ont. CA)


R. v. Lelas (1990), 58 CCC (3d) 568 (Ont. CA)


Owens v. Saskatchewan (Human Rights Commission), 2002 SKQB 506 (CANLII)

Owens v Saskatchewan (Human Rights Commission), 2006 SKCA 41 (CANLII)

R. v. Peers (Unreported, 30 September 1999, B.C. Prov. Ct., Vancouver File No. 2040)

R. v. Priddle (2003), the British Columbia Court of Appeal


Vriend et al. v. Alberta, 1996 CANLII 7288 (Alta. CA)


**Government**


*Bill C-250 (previously Bill C-415), An Act to Amend the Criminal Code (hate propaganda).* Assented to 29<sup>th</sup> April 2004.


Assented to March 29th, 1982.


  Ottawa: Supply and Services Canada.

House of Commons, *Debates (Hansard) respecting Bill C-41, An Act to Amend the Criminal Code (sentencing) and Other Acts in consequence thereof,* (1\textsuperscript{st} Session, 35\textsuperscript{th} Parliament, 1994-1995).

House of Commons, *Debates (Hansard) respecting Bill C-250, An Act to Amend the Criminal Code (hate propaganda),* (2\textsuperscript{nd} Session, 37\textsuperscript{th} Parliament, 2002-2003).

House of Commons, *Debates (Hansard) respecting Bill C-415, An Act to Amend the Criminal Code (hate propaganda),* (1\textsuperscript{st} Session, 37\textsuperscript{th} Parliament, 2001-2002).

House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Justice and Legal Affairs respecting Bill C-41, An Act to Amend the Criminal Code (sentencing) and Other Acts in consequence thereof,* (1\textsuperscript{st} Session, 35\textsuperscript{th} Parliament, 1994-1995).


*Report to the Minister of Justice of the Special Committee on Hate Propaganda in Canada (Cohen Report)* (1966). Ottawa: Queen’s Printer and Controller of Stationary.


Senate, Debates (Hansard) respecting Bill C-250, An Act to Amend the Criminal Code (hate propaganda), (3rd Session, 37th Parliament, 2004).


Newspaper Articles


Lesk, Andrew, Ken Popert and Ric Taylor. “Boys will be boys,” The Body Politic, Jan.


N.A. “Youths under ‘peer pressure’ in librarian’s slaying 5 teens called a ‘gang of predators,’” The Toronto Star, Nov. 26, 1985, p.A2


Zacharias, Yvonne. “Rally unites community in anger, tears,” The Vancouver Sun, Nov.

**Websites**

http://www.bclaws.ca/Recon/document/freeside/-%20H%20--/Human%20Rights%20Code%20RSBC%201996%20c.%20210/00_96210_01.xml#section7


http://www.lc.org/radiotv/nlj/nlj1002.htm

http://www.nationmaster.com/encyclopedia/Rose-is-a-rose-is-a-rose-is-a-rose

http://www.parl.gc.ca/information/about/process/house/Prorogation/prorogation-e.htm

http://www.qrd.org/QRD/www/RRR/cameron.html


http://www.xtra.ca

http://www.xtra.ca/site/toronto2/html/about.shtm