

## INADEQUATE OBSCENITY LAW PUTS WOMEN AT RISK

Toronto, Ontario, February 13, 2005: The federal government must amend the *Criminal Code* obscenity law to capture material that features extreme violence against women without explicit sexual content. A case heard last week by the Ontario Court of Appeal illustrates how fragile our protection is under the current law.

In 2002, a northern Ontario man, Donald Smith, was convicted of making, possessing and distributing obscene material through a sexual sadism website. Approximately 2,000 subscribers paid about \$50 to be members of the site where they could view films showing "woman-hating snipers executing victims, with blood gushing and flesh ripping in slow motion". The films typically showed a killer surprising a woman showering or sun-bathing. The victim was knifed or shot at close range in the breast or genitals, with special effects used to heighten the blood and gore. One of the major issues in the case was whether the combination of nudity and violence depicted in the films met the *Criminal Code* definition of obscenity. A jury in Fort Frances believed it did, and Smith was fined \$100,000, put on probation for three years and prohibited from using his websites or the Internet.

Smith appealed his conviction and the case was heard on February 8 by the Ontario Court of Appeal. The defence factum presented to the Appeal Court acknowledged that the videos displayed images of "nude or partially clad women who were subjected to violence by shootings with guns, or arrows, or inflicted by knives or sword". Defence counsel, Brian Greenspan, argued, however, that Smith's films did not meet the legal definition of obscenity because they featured "an abundance of violence", but sexual activity was virtually absent. "You don't have obscenity unless you have explicit sex coupled with violence," Greenspan told the Court. His client, he said, took care to research landmark obscenity decisions before he began making films. While Donald Smith was convicted by a jury -- and good on them -- it's entirely possible the Appeal Court will take a different view, strike down his conviction due to the lack of explicit sexual activity in the material, and Smith could be back in business.

Section 163(8) of the *Criminal Code* states, "...any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene". This leaves people free to distribute extremely graphic and sadistic material, provided that sex is not a dominant characteristic.

Recommendations that would close this dangerous loophole have been made by the federal Minister of Justice (1983), the Special Committee on Pornography and

Prostitution (*Pornography and Prostitution in Canada*, 1985), the Standing Committee on Communications and Culture (*Television Violence: Fraying Our Social Fabric*, 1993), and the Standing Committee on Justice and Legal Affairs (*Report on Crime Cards and Board Games*, 1994). The Department of Justice released a discussion paper on the issue in 1996, but, to date, the law remains unchanged. As a result of this failure to act, graphic violence against women has become a staple of popular culture.

At Smith's trial, the Crown called expert witnesses to testify regarding the harm caused by his products. Psychologist, Dr. Neil Malamuth, said such media images could lead men to a greater possibility of violence, desensitization to violence, and greater acceptance of myths about violence against women, while women can be affected with lowered self-esteem and enhanced fear of violence. Psychiatrist, Dr. Peter Collins, said the materials would "be of great interest to a sexual sadist", helping them fantasize through a medium which validates that fantasy due to the fact others are doing the same as they are. The Crown stated that such materials, being available on the Internet, would be of most risk to adolescents, who are most impressionable when developing psychosexual behaviour.

The Ontario Provincial Police also looked at the possibility of laying hate crime charges against Smith because of the way women were depicted in the material. "Unfortunately", said the OPP's Wayne Harrison, "the hate laws in Canada do not include gender as a group that can be the victim of a hate crime". This is another *Criminal Code* law the federal government has refused to amend, although they changed it recently to protect those identified by their sexual orientation.

The OPP and Crown should be commended for being vigorous in their prosecution of Smith, having done their best to use the inadequate laws available to try and protect women from his unethical business endeavours. The situation should have been addressed years ago by the federal government, but changes to the *Criminal Code* have become even more critical with rapid advances in entertainment technology. Sadistic violence against women is also featured in video games, where a person doesn't passively watch, but actively participates in perpetrating the violence. With over thirty years of research proving that exposure to violent media can increase violent behaviour, this is a recipe for disaster.

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### **Sources**

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