The 1942 Same-sex Trials in Edmonton: On the State's Repression of Sexual Minorities, Archives, and Human Rights in Canada*

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RÉSUMÉ En 1942, la GRC et la force constabulaire de la ville d'Edmonton ont organisé une opération coup de filet qui a mené à l'enquête, à l'accusation, au procès et à l'emprisonnement d'au moins six des dix hommes inculpés de rapports sexuels de même sexe dans la ville. Les arrestations et les procès ont généré une publicité étendue, des déclarations d'opprobre de la part des politiciens et une « panique morale » chez le grand public. Dans plusieurs cas, la correspondance privée des hommes accusés a été saisie, on s'en est servi pour extraire des confessions, puis elle a été présentée en cour comme preuve à l'appui des accusations dans le but d'assurer une condamnation. Décrivant la sexualité de même sexe de « bestialité » et de « perversion », des membres du système judiciaire ont nuit à la possibilité pour les accusés d'obtenir un procès impartial à Edmonton à cette époque. L'article se termine par une analyse de la valeur des documents légaux pour faire l'étude de l'histoire des rapports de même sexe au Canada, ainsi que sa marginalisation historique. La répression des minorités sexuelles par l'État, telle que documentée dans les dossiers de cas criminels du District judiciaire d'Edmonton aux Provincial Archives of Alberta, révèle la fragilité des droits humains et des libertés civiles avant l'introduction de la *Charte canadienne des droits et libertés*, enchâssée dans la *Loi constitutionnelle de 1982*. L'auteur soutient que la conservation et la diffusion des documents d'archives de la cour et de

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la police est cruciale pour connaître et être sensibilisé aux abus du passé, contribuant ainsi – de façon assez tangible – à la sauvegarde des droits humains et des libertés civiles au Canada.

ABSTRACT In 1942 the RCMP and Edmonton's municipal constabulary organized a dragnet operation involving the investigation, arraignment, trial, and imprisonment of at least six of ten men charged with same-sex activities in the city. The arrests and trials generated widespread publicity, pronouncements of opprobrium by politicians, and a "moral panic" among the general public. In several cases, the private correspondence of the accused men was seized and used to induce confessions, and then introduced in court as corroborating evidence to secure their convictions. Characterizing same-sex sexuality as "bestiality" and "perversion," members of the judiciary undermined assertions that the defendants could receive a fair trial in Edmonton in that period. The paper concludes with an assessment of the value of legal records for the study of the history of same sex experience and its historical marginalization in this country. The State's repression of sexual minorities as documented in the criminal case files of the Judicial District of Edmonton at the Provincial Archives of Alberta reveals the fragility of human rights and civil liberties prior to the inauguration of the *Charter of Rights and Freedoms* within Canada's *Constitution Act of 1982*. It is argued that preserving and making accessible archival court and police records is a critical step toward maintaining knowledge and awareness of past abuses, thereby making a tangible contribution toward safeguarding human rights and civil liberties in Canada.

Introduction

In 1942, the Royal Canadian Mounted Police (RCMP), Edmonton City Police, Alberta's Attorney General, and Crown prosecutors participated in one of the largest dragnet operations targeting gay men in Western Canadian history. Ultimately, police investigations and/or charges were brought against ten men for same-sex activities in Edmonton, resulting in extensive periods of incarceration imposed on at least six of the defendants.[1] In the 1940s, legal authorities, animated by their own moral values, assiduously applied the letter of the law, while breaking the rules regarding fair treatment of accused persons, and

1 One of the defendants, John E. Hoff of Jasper, was found guilty on four counts of gross indecency but fled his sentencing hearing, and has therefore not been included in the tally of six men charged in this sting operation who were incarcerated following their trials and conviction. See "Man is Guilty of Indecency: Delay Penalty," *Edmonton Bulletin* (7 October 1942), p. 9; "Waits Sentence on Four Charges," *Edmonton Journal* (8 October 1942), p. 11; "Hoff Guilty on 4 Charges of Indecency," *Edmonton Bulletin* (8 October 1942), p. 9; "J.E. Hoff Fails to Attend Court; Case Adjourned," *Edmonton Bulletin* (30 November 1942), p. 9; "Decision Delayed on Hoff Bail Bond," *Edmonton Journal* (4 December 1942), p. 14; "9 Hoff Bondsmen to Lose $3,000," *Edmonton Journal* (9 December 1942), p. 13; and "Rex vs. Hoff, Re: Hoff's Bail," *Dominion Law Reports*, vol. 1 (Toronto, 1943), pp. 482–88.

generally giving short shrift to justice and human rights. As with so many other episodes in the history of Lesbian, Gay, Bisexual, and Transgendered (LGBT) people on the prairies and other regions of Canada, these court cases remain largely shrouded in silence, a silence compounded by the subsequent destruction of important police records. Both the destruction of records and the underutilization of surviving documentary sources underscore the importance of archived legal records to the exercise of democracy and the act of safeguarding the human rights of Canadians.

In focusing on the 1942 trials as a case study, this paper argues the importance of protecting and making accessible court, police, and other related legal records, all critical to documenting the history of same-sex experience and its historical marginalization in the period before the inauguration of the *Charter of Rights and Freedoms* in Canada's *Constitution Act of 1982*. We cannot safeguard our rights without knowing how they have been undermined or disregarded in the past. In this regard, one of the greatest challenges is posed by silence. The silence and denial surrounding past violations of human rights have been compounded by historiographical silence, as represented in both archival and historical practice. Haitian historian Michel-Rolph Trouillot has identified four critical points at which silence enters historical production: "the moment of fact creation (the making of *sources*); the moment of fact assembly (the making of *archives*); the moment of fact retrieval (the making of *narratives*); and the moment of retrospective significance (the making of *history* in the final instance)."[2] To this list we might add two further junctures, one acute and the other chronic: the moment of fact erasure, or the destruction of archival documents; and the more protracted stage of archival neglect, including the refusal to organize records or generate usable inventories, which can be equally effective in silencing historical memory. Through this case study, this paper aspires to help break the prevailing silence surrounding the State's repression of sexual minorities in the period before the Charter – and the sources bearing on this history – so that we might be better positioned to avoid its recurrence in the future.

Public archival institutions have a responsibility to collect and maintain documents having a bearing on the history of all Canadians, including members of historically marginalized minorities, who otherwise would be placed at a great disadvantage in terms of documenting their histories. It is really part of translating Section 15 of the Charter, dealing with Equality Rights, into a dynamic, living document. For the purposes of this article, my use of the term "human rights" derives from the Charter's international antecedent, the *Universal Declaration of Human Rights*, adopted by the

2 Michel-Rolph Trouillot, *Silencing the Past: Power and the Production of History* (Boston, 1995), p. 26.

United Nations General Assembly on 10 December 1948, only six years after the Edmonton trials. Article 1 of the Universal Declaration states: "All human beings are born free and equal in dignity and human rights." Article 2 asserts that "everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status." Article 3 states: "Everyone has the right to life, liberty, and the security of the person." Moreover, Article 12 states that "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."[3] Further guidance is contained in the *International Covenant on Civil and Political Rights*, adopted by the United Nations in accordance with the Universal Declaration, which specifies the following with regard to legal proceedings:

Article 14, Section 1: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."[4]

In 1942, and throughout much of Canadian history, LGBT people experienced the repeated violation of some or all of these rights.

It might be asked whether it is reasonable to speak of human rights with regard to an era before such rights were recognized in Canada's Constitution and jurisprudence. An extensive discourse on human rights has been present in Western countries since at least the seventeenth and eighteenth centuries. In the United States, human rights were integral to the *Declaration of Independence of 1776*; in France, they were enshrined in the *Declaration of the Rights of Man* in 1789.[5] In Canada, human rights have formed part of our political discourse since the nineteenth century. In 1896 Liberal MP David Mills argued that Parliament was obliged to respect "a simple trust to guard the rights and privileges bestowed upon the minority ... and to restore them if they have been impaired or taken away."[6] In another parliamentary debate

3 United Nations, Hundred and Seventy-Seventh Plenary Meeting, 217 (III), *Universal Declaration of Human Rights*, http://www.un.org/en/documents/udhr/ (accessed 28 September 2009).

4 United Nations, *The United Nations International Covenant on Civil and Political Rights*, http://www.hrweb.org/legal/cpr.html (accessed on 28 September 2009).

5 Xiaoqun Xu, "Human Rights and the Discourse on Universality: A Chinese Historical Perspective," in *Negotiating Culture and Human Rights*, eds. Lynda Schafer Bell, Andrew J. Nathan, and Ilan Peleg (New York, 2000), p. 232.

6 Richard C.B. Risk, "Rights Talk in Canada in the Late Nineteenth Century: The Good

of the 1890s over the entrenchment of Sir John Thompson's notorious "gross indecency" amendment to the *Criminal Code of Canada*, Mills was the only member of the House of Commons to speak out against this measure, as he noted that such offences against morality "have crept into the common law from the earlier ecclesiastical law."[7] In the twentieth century a succession of human rights activists in Canada have challenged the periodic repression of minorities by elected bodies.[8] The fact that legislatures were recurrently influenced by majoritarian sentiment to deny the human rights of members of minorities has never justified such measures. The worthy examples of David Mills and his successors remind us that some Canadians have always stood for human rights, whether or not governmental authorities were prepared to respect such principles in law and practice.

Historical Background

To help contextualize the 1942 Edmonton cases, the paper will first outline some of the pertinent legal, social, religious, and political currents of that era. Generally, the legal framework entailed the extensive criminalization of male same-sex sexuality throughout Canadian history, but especially following Parliament's passage of the Conservative government's gross indecency amendment in 1890, which criminalized any sexual activity – or even any proposal to engage in sexual activity – between two men. Combined with the medieval category of "buggery," the gross indecency provision criminalized all forms of male same-sex sexual expression in Canada up to the 1969 legislation of Prime Minister Trudeau's government, which decriminalized sexual activity in private between two consenting males over the age of twenty-one. Despite the general criminal prohibitions, only certain instances of same-sex activity were actually prosecuted. The decision to proceed with prosecution depended on numerous factors, including whether or not a complaint was lodged; whether witnesses to alleged sexual activities were present and were prepared to testify; and whether the police and legal authorities were inclined to pursue these cases.[9]

Sense and Right Feeling of the People," in *A History of Canadian Legal Thought: Collected Essays*, ed. R.C.B. Risk, ed. and intro. by G. Blaine Baker and Jom Phillips (Toronto, 2006), p. 116.

7 Canada, *Official Report of the Debates of the House of Commons*, vol. 35, Second Session – Seventh Parliament 1892 (Ottawa, 1892), p. 2967.

8 Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930–1960* (Toronto, 2004). See also Christopher MacLennan, *Toward the Charter: Canadians and the Demand for a National Bill of Rights, 1929–1960* (Montreal and Kingston, 2003).

9 Canada inherited a series of legal prohibitions from Great Britain, where a 1533 Act of Henry VIII classified "buggery" as an illegal act and prescribed the death penalty for its practitioners, a penalty that was changed to life in prison only in 1861. For a detailed

The legal prohibitions both derived from, and reinforced, long-standing religious and social sanctions. From the thirteenth century, when theologian Thomas Aquinas codified Roman Catholic "natural law" prohibitions against non-procreative sexuality, same-sex activity in predominantly Christian countries was generally proscribed, although its treatment alternated between draconian severity and relative laxity, depending on the time and place.[10] Similarly, North American historiography reveals periodic waxing and waning regarding non-procreative sexuality in different eras,[11] and Canada was no exception. In an article on a same-sex court case in Regina in 1895, I argue that in the prairies' early settlement era before 1900, the sparsely populated frontier fostered a greater forbearance of same-sex relations than the settled society of the succeeding three quarters of a century. In this region, the comparative permissiveness of the frontier society began to change in the 1890s, when social purity activists began in earnest to advocate a prohibitory social order, which subsequently became well entrenched.[12]

As the population of the Prairie provinces increased exponentially after 1900, and as its towns expanded into cities, the face-to-face engagement that characterized rural communities of the early settlement era was superseded by the increasing segregation of people by gender, socio-economic class, ethnicity, and other categories. Where residents of the prairies in the nineteenth century were obliged to draw heavily on direct experience and

analysis of this law and its historical and legal contexts, see Leslie J. Moran, "Making the Sense of Buggery," in *The Homosexual(ity) of Law* (London, 1996), pp. 66–90. In both Britain and its colonies, the 1533 Act was the basis for all prosecutions of same-sex offences until the passage of the British "gross indecency" statute of 1885, which extended criminal sanctions to include any sexual contact, or even attempts or proposals to engage in sexual contact between men. In 1890, Canada amended its own criminal law to incorporate the category of "gross indecency" and adopted a virtually identical wording to the British statute. Canadian parliamentarians opted for more severe penalties, that is, a maximum of five years in prison rather than two, and they added the lash to the prescribed punishment. Canada, *Official Report of the Debates of the House of Commons*, vol. 35, Fourth Session – Sixth Parliament, 1890 (Ottawa, 1890), p. 3162; Canada, *Statutes of Canada* (1890), 53–54 Vict., c. 37, s. 5. On the historical background to the British "gross indecency" legislation, the precursor of the Canadian law, see F.B. Smith, "Labouchere's Amendment to the Criminal Law Amendment," *Historical Studies* 17 (April 1976–October 1977), pp. 165–73.

10 John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (Chicago, 1980), pp. 302–32; and Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago, 1997), pp. 136–58. Regarding the larger, long-term contexts of Christian hostility toward sexuality, see "'Unnatural' Sex," in *Sexual Attitudes: Myths and Realities*, eds. Vern L. Bullough and Bonnie Bullough (New York, 1995), pp. 47–66.

11 See, for example, the discussion in George Chauncey's *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890–1940* (New York, 1994).

12 Lyle Dick, "Same-Sex Intersections of the Prairie Settlement Era: The Case of Regina's Oscar Wilde," *Histoire sociale/Social History*, vol. 43, no. 84 (May 2009), pp. 107–45.

interpersonal dialogue, in the twentieth century the residents of the region relied increasingly on the local, regional, national, and international media for much of their knowledge of the outside world. The ever-increasing reification of knowledge in popular discourse was represented in the classification and marginalization of whole groups of humanity as types, or hypostatized abstractions.[13] Throughout the twentieth century, few citizens were more subject to negative reification on the Canadian prairies than members of sexual minorities. It was a vicious circle; the criminalization and marginalization of LGBT people obliged them to conceal their sexual inclinations and identities, yet the very covertness necessary for survival also reinforced the perpetuation of ignorance and prejudice regarding sexual difference across the region.

By the 1920s and 1930s moral regulation became a preoccupation for civic leaders in Western Canada's urban areas, both on the prairies and in British Columbia, where municipal constabularies established special squads devoted to enforcing laws governing vice and morality.[14] Between 1935 and 1940, a series of sex crime panics, fuelled by sensationalized press coverage, played into the hands of North American politicians and law enforcement officials seeking suitably powerless scapegoats such as gay men, who were easy targets.[15] In 1941, F.A. McHenry commented that in any large American city the press was regularly reporting on alleged "homosexual crimes," sometimes as often as every two weeks.[16] Within Canada's police forces, ideologies equating same-sex sexuality with criminality were commonplace, as in a contemporary publication on police work issued by the RCMP, in which "pimps, prostitutes, and perverts" were conflated alongside other categories of criminals.[17] As well, by the 1930s psychiatric models pathologizing same-

13 For a comparative example of the reification of an entire social group on the prairies, that is, the Métis people, through extensive stereotyping in the media and popular discourse, see Lyle Dick, "Nationalism and Visual Media in Canada: The Case of Thomas Scott's Execution," *Manitoba History* (Autumn/Winter 2004–2005), pp. 2–18. Regarding the reification of the Métis in Western Canadian historiography, see Lyle Dick, "The Seven Oaks Incident and the Construction of a Historical Tradition, 1816 to 1970," in *Making Western Canada: Essays on European Colonization and Settlement*, eds. Catherine Cavanaugh and Jeremy Mouat (Toronto, 1996), pp. 1–30.

14 Greg Marquis, "Vancouver Vice: The Police and the Negotiation of Morality, 1904–1935," in *Essays in the History of Canadian Law*, Hamar Foster and John McLaren, vol. VI (Toronto, 1995), pp. 242–73.

15 Philip Jenkins, *Moral Panic: Changing Concepts of the Child Molester in Modern America* (New Haven, CT, 1998), pp. 50–74.

16 F.A. McHenry, "A Note on Homosexuality, Crime, and the Newspapers," *Journal of Criminal Psychopathology*, vol. 2, no. 4 (1941), pp. 533–48, cited in Jonathon Ned Katz, *Gay/Lesbian Almanac: A New Documentary* (New York, 1983), pp. 569, 717.

17 Royal Canadian Mounted Police, "Causes of Crime," in *Law and Order in Canadian Democracy* (Ottawa, 1949), p. 57.

sex sexuality occupied a prominent place in Canada's criminal justice system. Supposedly derivative of Freudian theory, the emerging psychiatric discourse on the presumed criminality of male homosexuality evinced little of Freud's compassion or insight,[18] and belonged more to pseudo-science than science.[19] In Alberta, and elsewhere in Canada and the United States, sexual minorities were progressively marginalized by the conflation of same-sex sexualities with notions of "deviance," "sexual perversion," and a perceived emerging threat: the sex criminal.[20]

During the interwar period, social and governmental institutions in Alberta placed an emphasis on channelling and controlling the morality of young people.[21] Following the outbreak of World War II, these concerns were heightened by perceived increases in juvenile crime and fears that young people were out of control,[22] part of a developing discourse on youth crime emerging across North America.[23] In Calgary, the police reported an increase

18 Sigmund Freud's own inclination toward greater understanding and acceptance of same-sex sexuality than other practitioners of psychiatry, was evidenced in his famous letter to an American mother of a homosexual man in 1935, as quoted in John Gerassi, *The Boys of Boise: Furor, Vice, and Folly in an American City* (Seattle, 2001), p. 91. For a thoughtful discussion of Freud's more enlightened perspectives on homosexuality than his adherents in North America, see Henry Abelove, "Freud, Male Homosexuality and the Americans," in *The Lesbian and Gay Studies Reader*, eds. Henry Abelove, Michèle Aina Barale, and David M. Halperin (New York, 1993), pp. 381–96.

19 On the mangling of psychiatric theory by social purity, legal, and social reform zealots, see Jennifer Terry, "The United States of Perversion," in *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago, 1999), pp. 74–119. In the 1930s and 1940s some North American psychiatrists, such as the members of the Committee for the Study of Sex Variants, evinced a much more enlightened stance. However, there is little evidence that their research was acknowledged in psychiatric practice accessed by the criminal justice system in this period. See Henry L. Minton, *Departing from Deviance: A History of Homosexual Rights and Emancipatory Science in America* (Chicago, 2002), pp. 36–57.

20 Estelle B. Freedman, "Uncontrolled Desires: The Response to the Sexual Psychopath, 1920–1960," in *Passion and Power: Sexuality in History*, eds. Kathy Peiss and Christina Simmons (Philadelphia, 1989), pp. 199–225. On the complicity of science in the identification and classification of human types, and the application of such abstractions by the criminal justice system, see Mariana Valverde, *Law and Order: Images, Meanings Myths* (New Brunswick, NJ, 2006), pp. 59–76.

21 Rebecca Priegert Coulter, "Patrolling the Passions of Youth," in *Edmonton: The Life of a City*, eds. Bob Hesketh and Frances Swyripa (Edmonton, 1995), pp. 150–60.

22 Jeff Keshen, *Saints, Sinners, and Soldiers: Canada's Second World War* (Vancouver, 2004), pp. 194–227.

23 See, for example, Robert H. Gault, "The War and Juvenile Delinquency," *Journal of Criminal Law and Criminology*, vol. 32, no. 4 (November–December 1941), pp. 387–88; Victor H. Evjen, "Delinquency and Crime in Wartime," *Journal of Criminal Law and Criminology*, vol. 33, no. 2 (July–August 1942), pp. 136–46; Eleanor T. Glueck, "Wartime Delinquency," *Journal of Criminal Law and Criminology*, vol. 33, no. 2 (July–August 1942), pp. 119–35. Regarding juvenile delinquency in Canada in this period, see Kenneth

in youth crime in the early years of the war, including fifty-four of eighty-five reported shop breakings in that city in 1943.[24] Historian Jeff Keshen has reported that, in consequence of rising concerns over juvenile delinquency, social agencies in Toronto, London, Winnipeg, Ottawa, and Vancouver initiated investigations into the issue between 1942 and 1945.[25] In Edmonton in 1942, representatives of twenty social service agencies met "to discuss the problem of a rising rate of juvenile delinquency, characteristic of war periods."[26] By 1944, according to Keshen, a teacher asserted the prevalence of a "panic" in the city owing to juvenile delinquency.[27] Statistics compiled by the Alberta Child Welfare Department seemed to support the public's perception of rising levels of juvenile delinquency. According to the *Edmonton Bulletin*, the Department compiled a list of 563 juvenile delinquency cases across the province in the first six months of 1942, said to be a "substantial increase" since the beginning of the war.[28]

Of comparable concern were reports of rising levels of sexually transmitted diseases in Western Canada and across the country.[29] Widespread concern in British Columbia over rising venereal disease rates was expressed in increased regulation of sexuality, particularly after 1935.[30] The provincial government of Alberta increased its budget to fight venereal disease during this period. Keshen has noted that by 1942, provincially sponsored lectures on VD reached 25,000 people per year, a threefold increase from 1939. The issue was considered so serious that a Second Western Conference on Venereal Disease Control, which met in Edmonton in October 1942, passed a resolution calling on the federal government to provide for the fingerprinting and photographing of both keepers and inmates of bawdy houses.[31] Meanwhile, municipal police forces across Alberta undertook major campaigns against

H. Rogers, *Boys Are Worth It* (Toronto, 1944); and *Street Gangs in Toronto: A Study of the Forgotten Boy* (Toronto, 1945).

24 Margaret Gilkes and Marilyn Symons, *Calgary's Finest: A History of the City Police Force* (Calgary, 1975), p. 82.

25 Keshen, *Saints, Sinners, and Soldiers*, p. 205.

26 "Delinquency is Reviewed at City Meet," *Edmonton Bulletin* (15 September 1942), p. 3.

27 Jeffrey Keshen, "Morale and Morality on the Alberta Home Front," in *For King and Country: Alberta in the Second World War*, ed. Ken Tingley (Edmonton, 1995), p. 155.

28 "Parents Have Onus in Cases of Delinquency," *Edmonton Bulletin* (28 August 1942), p. 11.

29 Jay Cassell, *The Secret Plague: Venereal Disease in Canada, 1838–1939* (Toronto, 1987), pp. 176–245.

30 Dorothy E. Chunn, "A Little Sex Can Be a Dangerous Thing: Regulating Sexuality, Venereal Disease, and Reproduction in British Columbia, 1919–1945," in *Challenging the Public/Private Divide: Feminism, Law, and Public Policy*, ed. Susan Boyd (Toronto, 1997), p. 68.

31 "Social Disease Meeting to Ask Law Amendment," *Edmonton Bulletin* (9 October 1942), p. 8; "Want Law 'Tough' on Morals Cases," *Edmonton Journal* (10 October 1942), p. 8.

prostitution in this era.[32]

The focus on moral regulation was given impetus by Alberta's election of the Social Credit government under William ("Bible Bill") Aberhart, a teacher and Baptist radio evangelist, in 1935. The new premier formed a government devoted both to securing credit for his depression-ravaged province and implementing Christian fundamentalist principles in its administration.[33] Aberhart also assumed the office of Alberta's attorney general throughout his tenure as leader of the provincial government from 1935 to 1943. His correspondence with senior RCMP officers in 1942 suggests that the investigation of moral offences was a particular concern for this attorney general who was accustomed to mixing the doctrines of Christianity and Social Credit in his radio broadcasts.[34] In early 1942 RCMP Commissioner S.T. Wood wrote Aberhart as well as the attorneys general of the other five provinces for which the Mounties served as the provincial police force. He explained that, since the outbreak of World War II, the duties of the force had increased, owing to the requirements for enforcing various Orders-in-Council under the *War Measures Act*. However, the strength of the force had also recently been increased, and so he wished to consult with the attorneys general as to suggestions "that you consider might assist us in the better enforcement of Criminal Laws or Provincial Statutes within your Province...."[35]

While Aberhart did not make specific suggestions to the Commissioner initially, he pressed his particular concerns regarding moral regulation in correspondence later that spring with Assistant RCMP Commissioner W.F.W. Hancock, then in charge of "K" Division comprising the provincial police force in Alberta.[36] In a series of letters, Aberhart expressed concern over such moral issues as bootlegging and the sexual assault of a girl by soldiers at Red Deer. Repeatedly, he exhorted Hancock to take action to step up the policing of morality in this community.[37] Hancock answered that the Force

32 Keshen, "Morale and Morality on the Alberta Home Front," p. 152. On increasing concern with both VD and the moral regulation of young people across Canada in this era, see Mary Louise Adams, *The Trouble with Normal: Postwar Youth and the Making of Heterosexuality* (Toronto, 1997).

33 On Aberhart's notions of establishing a new social order based on Christian principles, see "New Social Order Must be Established at Once, Premier Aberhart Says," *Edmonton Bulletin* (3 November 1942), p. 17.

34 Harold J. Schults, "Portrait of a Premier: William Aberhart," *Canadian Historical Review*, vol. 45, no. 3 (1964), p. 204.

35 Provincial Archives of Alberta [hereinafter PAA], Premier's Papers, Accession no. 69.289, file 707, "Police, 1940-43," RCMP Commissioner S.T. Wood to the Attorney General of Alberta, 20 January 1942.

36 Ibid., Attorney General William Aberhart, Edmonton, to Commissioner S.T. Wood, Royal Canadian Mounted Police, Ottawa, 29 January 1942.

37 Ibid., Premier William Aberhart to Colonel W.F.W. Hancock, Acting Assistant Commissioner, RCMP, Edmonton, 21 April 1942; Hancock to Aberhart, 22 April 1942;

was not responsible for police work within city limits; in the case of dance halls situated outside the municipality, however, they had undertaken a number of arrests and initiated prosecutions of several soldiers for *Criminal Code* and *Liquor Control Act* offences. In reply, Aberhart insisted: "I should think there should be an increase in the Police Force at Red Deer and a more active and vigorous prosecution of the Liquor traffic should be carried out." Concurrently, concerns were raised in Calgary, where soldiers were observed loitering around high schools and accosting girls during their lunch hour.[38]

Aberhart's correspondence with the RCMP regarding the policing of moral offences at Red Deer occurred in June 1942, the same month in which most of the defendants in the Edmonton same-sex cases were charged in the City's Police Court. The charges followed a joint investigation of the RCMP and the Morality Squad of the Edmonton City Police. Notwithstanding the RCMP's asserted reluctance to intrude on the policing of morality in Red Deer, Edmonton's municipal boundaries proved no impediment to the Force's involvement in the moral regulation of same-sex activities in that city. By 1942, Canada was at war, engaged with its allies in a "total war" against fascist expansionist regimes in Europe and Asia. In Edmonton, the outbreak of war exerted several effects on local policing. The local recruitment of soldiers reportedly drained the constabulary's capacity, as many of its officers departed to enlist with the military or to take better-paying wartime construction jobs.[39] Meanwhile, the resources of the RCMP, then under contract with the Alberta government to provide provincial policing services, were similarly stretched, as thousands of American servicemen with the United States Army Corps of Engineers arrived in Edmonton in 1942 to build the Alaska Highway. The Corps established its administrative headquarters in the city, significantly increasing the number of residents and placing additional pressure on local police forces, notwithstanding the arrival of US Military Police to monitor American servicemen stationed in the vicinity.[40]

In such strained circumstances, the scale of the same-sex investigations in this period in Alberta, and particularly in Edmonton, seems remarkable. Between 1 April 1942 and 31 March 1943, the year in which the Edmonton same-sex charges and trials were pursued, thirty-seven charges for gross indecency and indecent acts were laid in Alberta – more than sixty percent

Hancock to Aberhart, 3 June 1942; and Aberhart to Hancock, 4 June 1942. See also Lorne Askin, Red Deer, to Aberhart, 14 April 1942; Askin to Aberhart, 14 April 1942; Aberhart to Brigadier Harvey, Calgary, 5 June 1942; and Harvey to Aberhart, 6 June 1942.

38 Keshen, "Morale and Morality on the Alberta Home Front," pp. 150–51.

39 Bob Gilmour, "The Homefront in the Second World War," in *Edmonton: The Life of a City*, p. 216.

40 Ken Coates and W.R. Morrison, *The Alaska Highway in World War II: The U.S. Army of Occupation in Canada's Northwest* (Toronto, 1992), p. 51.

of these reported by the RCMP in the six provinces and the Northwest Territories for which it served as the provincial or territorial police force. In the same year, fourteen charges of buggery were laid in Alberta, representing two-thirds of the charges for that offence in the same group of provinces and territories. Between 1942 and 1950, Alberta accounted for thirty-four percent of the charges for gross indecency and indecent acts reported by the Mounties, although this province's residents comprised only twenty-two percent of the total population for the jurisdictions covered in the Force's report.[41] Same-sex investigations also formed part of a larger focus on the containment of "moral offences," as witnessed in the aggregate criminal statistics in the RCMP annual report for 1940–1941. In that year, of 143 suspected moral offences investigated by the Force in six provinces and the Northwest Territories, Alberta accounted for thirty-eight, or more than one-fourth of the investigations, a total exceeded only by Saskatchewan, with fifty-four morality investigations.[42] While more study into the specific circumstances of these investigations is required, these aggregate statistics do suggest a particular preoccupation by legal authorities in Alberta with the policing of "moral offences," and especially same-sex activities in the period during and after World War II.

The 1942 Investigations and Trials of Same-sex Offences in Edmonton

The actions by investigators from the RCMP and Edmonton's municipal constabulary in 1942 comprised a dragnet operation involving the investigation of ten men, trial and conviction of nine of these, and ultimately the imprisonment of at least six persons alleged to have engaged in same-sex sexual activities in the city. Many of the defendants knew one another; some were close friends, and others were acquaintances sharing similar same-sex orientations and identities. The nine defendants who were tried and convicted in Edmonton courts included: Harvey Kagna, the manager of a large bakery business in the city and a former president of the Edmonton Little Theatre; James Richardson, a former railroad employee and one of the troupe's principal actors and singers; Atha Andrewe, the son of a successful hotelier in Jasper and Edmonton, and the music director for several of the Little Theatre's musical productions; James Hart, a local truck driver; Gerald Surette, a music teacher; Donald MacCallum, a commercial artist; John Hoff, a Jasper hotel

41 Canada, *Report of the Royal Canadian Mounted Police for the Year Ended March 31, 1943* (Ottawa, 1943), p. 79. The aggregate data for criminal charges laid by the Mounties in the 1940s was derived from the RCMP annual reports from 1943 to 1950, inclusive. *Report of the Royal Canadian Mounted Police, 1943 to 1950* (Ottawa, 1943–1950).

42 Canada, *Report of the Royal Canadian Mounted Police for the Year Ended March 31, 1941* (Ottawa, 1941), p. 81.

proprietor; Richard Neville Dick, a former provincial government employee; and one Wilfred Collier. When arraigned in the Alberta Supreme Court, Kagna was charged with ten offences; Hoff, with six; Richardson, with three; Dick, with two; and Hart and Collier, with one each.[43] In addition, Harold Lauer, a young salesman, was charged with separate counts of gross indecency and buggery with other consenting adults, although the Crown later stayed the charges against him. Other charges ensued, as MacCallum eventually faced five counts for consenting activities with other adults to which he confessed.[44] Kagna was ultimately charged with twelve criminal counts, although convicted on only one charge. In the cases of three defendants, that is, Dick, Hart, and Lauer, the Crown eventually either stayed or dropped the charges, although Hart was convicted of possession of obscene literature and fined $200. With the exception of Hoff, who fled his sentencing hearing, most were jailed for prison terms ranging between one and a half and three years. Andrewe initially fled his own arraignment proceedings in 1942 and resided in Mexico and the United States for two years before being extradited to Canada to face charges in 1944, when he was tried, convicted, and sentenced to two years in Prince Albert Penitentiary on one count of gross indecency.

It is not yet completely clear what specifically sparked the investigations, but they appear to have been prompted either by a complaint or assigned police surveillance following the placement of a notice in the personal pages of the *Edmonton Journal* in 1941.[45] The ad stated: "Young man from Vancouver, wants friends," and gave a box number for respondents. Wilfred Collier, a married man in Edmonton, answered the advertisement. In a statement to investigators, he related that after answering the ad, Donald MacCallum, an artist from Vancouver who had moved to Edmonton, called him. On several occasions, they went out for walks and to shows. Later, they had intimate relations while Collier visited MacCallum at his apartment. For a single act of consenting intimacy with another adult male in private, Chief Justice W.C. Ives of the Court of Queen's Bench convicted Collier and sentenced him to two years less a day in the Fort Saskatchewan Provincial Gaol. Freely giving a statement to the police – in which he acknowledged this sexual encounter – the defendant's own statement was the basis for his

43 "26 Cases Listed in Supreme Court," *Edmonton Journal* (18 September 1942), p. 10.

44 PAA, Accession no. 83-1, box 22, file 3735, "Rex vs. Donald MacCallum," Supreme Court of Alberta, The King vs. MacCallum, Charge, 21 September 1942. See also Ibid., box 23, file 3800, "Rex vs. Donald MacCallum."

45 In testimony at the trial of Harold Lauer, Detective Val Taylor of the Edmonton Municipal Police also stated that the police had received a complaint about John Hoff, another defendant, around the fall of 1941. Ibid., box 23, file 3799-C, "Rex vs. Harold Lauer"; and box 22, file 3734, "Rex vs. Harold Lauer," Transcript: "In the City Police Court City of Edmonton in the Matter of the King, On the Information of J.W. Stanton vs. Harold Lauer."

conviction.[46] If he had hoped for leniency, this proved to be a mistake, as he had thrown himself on the mercy of a court disinclined to extend mercy to same-sex "offenders."

Pressuring MacCallum to reveal his other sex partners, the police used his informal testimony as the basis for a series of additional investigations. Meanwhile, the police interrogated Donald Sebastien, a teenager who had engaged in acts of prostitution with several men in the city. Threatened with criminal prosecution unless he revealed his clients, he was also promised immunity if he co-operated by testifying against them. Accordingly, he gave testimony of sexual activities implicating Kagna, Hoff, Richardson, and Andrewe. Based in part on Sebastien's evidence, three of these defendants were ultimately convicted of charges of "gross indecency" and sent to Prince Albert Federal Penitentiary to serve terms of between two and three years; the fourth – Hoff – was similarly convicted but fled his sentencing hearing.[47]

In 1942, several other cases involved the prosecution of adult men for consenting activities with other adults in private. The gross indecency law indiscriminately prohibited any sexual contact between males, and investigators from the morality squad of the Edmonton Police and the RCMP assiduously pursued reports of any potential same-sex activities between consenting adults in private, regardless of age.[48] The investigators' approach was simple; they sought to induce each person being interrogated to confess and turn in their partners. The operative assumption was that if an individual could be identified as a putative homosexual, he was by definition a criminal, and a candidate for investigation and prosecution. In the course of their investigations, the police often seized the accused men's correspondence, including romantic or erotic letters, for use in extracting confessions from these individuals. As a same-sex orientation was in itself considered to be incriminating, prosecutors argued that affectionate or amorous expressions of interest in others of the same sex was *prima facie* evidence of criminality. Compounding the violation of the defendants' rights, the Crown prosecutors then proceeded to introduce these private communications in court as corroborating evidence

46 Ibid., box 22, file 3733, "Rex vs. Wilfred Collier," Statement of Wilfred Collier, 9428 – 100A Street, Edmonton, Alberta, 4 June 1942 [Statement by accused, filed by Crown].

47 Ibid., box 27, file 4434, "Rex vs. Atha Andrewe"; box 22, file 3766, "Rex vs. Harvey Kagna"; box no. 22; file 3767, "Rex vs. Harvey Kagna"; box 22, file 3787, "Rex vs. Harvey Kagna"; box 23, file 3798, "Rex vs. Harvey Kagna"; and box 28, file 2788, "Rex vs. Jimmy Richardson."

48 The ardent pursuit by the RCMP and Edmonton Police of the sexual activities of consenting adult males went against the tendency of other contemporary North American police forces in this period to ignore such victimless activities. See Manfred Guttmacher and Henry Weihofen, "Sex Offences," *The Journal of Criminal Law, Criminology, and Political Science*, vol. 43, no. 2 (July–August 1952), p. 156; and Manfred S. Guttmacher, "The Homosexual in Court," *Journal of Psychiatry* 112 (February 1956), pp. 591–98.

to secure their convictions.[49] The ruling by Justice Ives to allow these private letters, which had no actual relationship to the charges, to be introduced as evidence, formed part of the basis of one defendant's appeal,[50] although his conviction was sustained by a higher court.

Intrusions by the police into the private correspondence of individuals extended far beyond Thompson's gross indecency amendment dealing with actual or attempted sexual activity, toward the criminalization of private expressions of feelings. In several of the 1942 cases the investigators refrained from advising the persons being investigated of their right not to answer questions. They failed to do so despite the fact that it was already a well-established police procedure to warn persons being investigated of the consequences of answering their questions.[51] For example, without disclosing to Harold Lauer that he himself was under investigation, the police investigators "asked him to tell us everything he knew concerning these men that would be of great assistance to us."[52] Implying that co-operation in disclosing information would be greeted with leniency, the investigators succeeded in inveigling a full confession from the defendant without advising him of his rights. In another of the Edmonton cases, the duplicitous inducing of a quasi-confession by the police was recognized as improper by Justice Ives and formed part of the basis of his decision to throw out several charges against other defendants, although the Crown reversed these decisions on appeal. Today, such activities

49 A prior same-sex prosecution of the same era, tried in December 1941, entailed the seizure of the correspondence of the defendant, which the Edmonton Police asserted, "will afford evidence on persons which have committed a criminal offence." This investigation also involved the seizure of the private correspondence of an accused person, and its adduction in court to establish his putative sexual orientation and thereby his guilt. Here, the Edmonton Police obtained a warrant to search the defendant's private residence and place of employment, based on the belief "that a quantity of letters and obscene literature which will afford evidence of the commission of the said offence." PAA, Accession no. 83.1, box 20, file no. 3477, "Rex vs. Charles Orton," Affidavit of H.E. Graham, Edmonton City Police, 9 December 1941; and "Warrant to Search," 9 December 1941.

50 "Appeal Filed by Accused in Indecency Case," *Edmonton Bulletin* (26 September 1942), p. 3.

51 According to former RCMP officer William Kelly, in the Second World War era, it was a requirement that such questioning should be prefaced by the following statement by the investigator: "You need not say anything. You have nothing to hope from any promise or favour, and nothing to fear from any threat whether or not you say anything. Anything you say may be used as evidence at your trial." William Kelly and Nora Hickson Kelly, *Policing in Wartime: One Mountie's Story* (Regina, 1999), p. 183. Kelly's account of proper police procedures in advising suspects of their rights was corroborated by the testimony of RCMP and Edmonton City Police investigators in the 1942 trials, even though they often did not follow their own rules in actual practice.

52 PAA, Accession no. 83-1, box 23, file 3799-C, "Rex vs. Harold Lauer," Transcript: "In the City Police Court City of Edmonton in the Matter of the King, On the Information of J.W. Stanton vs. Harold Lauer," Testimony of Detective Val Taylor. See also box 22, file 3734, "Rex vs. Harold Lauer."

would be regarded as abuses of human rights under international conventions as well as the provisions of the *Charter of Rights and Freedoms* pertaining to the rights of the accused. On the prairies in the 1940s, however, awareness of, or respect for, human rights was largely absent from legal and political discourse.[53]

The authorities' representation of the defendants' as having "debauched" or corrupted younger men involved in these cases rang hollow when it emerged that, with one possible exception, all of the 1942 cases related to activities with consenting partners. Notwithstanding the Crown's representation of the younger partners as victims, the Crown proceeded to lay separate charges against some of the same putative "victims" who were willing participants in these activities.[54] One such example was Harold Lauer, who was still a minor when engaging in sexual activity with John Hoff, a Jasper hotel proprietor in 1938. Despite his youth at the time of the encounter, Lauer was charged with gross indecency alongside his sexual partner. The difference in treatment between Donald Sebastien and Lauer, both minors, related to the fact that Sebastien was promised immunity from prosecution in exchange for his testimony against various defendants, while no such commitment was made to Lauer. As well, Lauer was no longer a minor by the time the charges were laid, despite the fact that he was under twenty years old at the time of the alleged offence.

A factor in the 1942 cases, albeit difficult to measure, was the role of the news media, and particularly the *Edmonton Bulletin* and the *Edmonton Journal*, the city's two major daily newspapers in the 1940s. Both papers gave extensive coverage to these cases from the initial laying of charges in June 1942 to the conclusion of the trials two years later, with fairly intense coverage during the first seven months, when most of the trials were adjudicated. Between June 1942 and June 1944, these local newspapers published at least forty-eight news articles on these cases.[55] One such story, carried on the front

53 See Sally Holt, "Family, Private Life, and Cultural Rights," in *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, ed. Marc Weller (Oxford, 2007), p. 213; and David C. McDonald, ed., *Legal Rights in the* Canadian Charter of Rights and Freedoms (Toronto, 1982), Chapter 5, "Unreasonable Search or Seizure," pp. 29–55.

54 See PAA, Accession no. 83-1, box 23, file 3799-C, "Rex vs. Harold Lauer."

55 "Five Accused in Moral Cases, Police Court," *Edmonton Bulletin* (20 June 1942), p. 13; "Indecency Charged Against City Men, *Edmonton Journal* (20 June 1942), p. 13; "Man is Charged Gross Indecency," *Edmonton Bulletin* (24 June 1942), p. 11; "Two More Facing Indecency Counts, *Edmonton Journal* (25 June 1942), p. 11; "Two More Men Are Arrested 'Moral' Charges," *Edmonton Bulletin* (25 June 1942), p. 9; Another Arrested Morality Roundup, *Edmonton Bulletin* (25 June 1942), p. 16; "8th Man is Held on Morals Count," *Edmonton Journal* (27 June 1942), p. 13; "Three Indecency Cases Adjourned," *Edmonton Bulletin* (30 June 1942), p. 11; "Court Remands Man to Stand Trial 2 Counts," *Edmonton Bulletin* (14 July 1942), p. 9; "New Counts Laid in Morals Cases," *Edmonton Journal* (14

two pages of the *Edmonton Journal*, repeated Justice Ives' allegations about the supposed "ring of bestiality," and his lurid phrase was highlighted in both the subtitle to the front-page story and the title of the continuation of the article on the second page.[56] Further, when several men were first arrested in June 1942, the *Edmonton Journal* reported that they were "alleged to be connected with a wide-spread group," suggesting that fearmongering by the arresting police forces fed the news stories, contributing, in turn, to the public's anx-

July 1942), p. 9; "Pair Remanded on Morals Counts," *Edmonton Journal* (15 July 1942), p. 9; "Three Persons Are Remanded Supreme Court," *Edmonton Bulletin* (15 July 1942), p. 9; "Must Face Trial Indecency Counts," *Edmonton Journal* (28 July 1942), p. 9; "Man remanded Three Charges Indecency," *Edmonton Bulletin* (11 September 1942), p. 11; "Two men Remanded Indecency Charges," *Edmonton Bulletin* (12 September 1942), p. 13; "Warrant Issued for Arrest of Atha Andrewe," *Edmonton Bulletin* (16 September 1942), p. 9; "Warrant Is Issued for Atha Andrewe," *Edmonton Journal* (17 September 1942), p. 13; "One Pleads Guilty Indecency Charge," *Edmonton Journal* (21 September 1942), p. 9; "Two Persons Found Guilty of Indecency," *Edmonton Bulletin* (22 September 1942), pp. 9, 13; "Convicts 2 Men Indecency Counts," *Edmonton Journal* (22 September 1942), p. 9; "Court Dismisses Indecency Counts," *Edmonton Journal* (23 September 1942), p. 11; "Dismiss 5 Counts Against H. Kagna," *Edmonton Journal* (23 September 1942), p. 9; "Five Charges of Indecency Are Dismissed," *Edmonton Bulletin* (23 September 1942), p. 9; "One Man is Guilty on One Charge of Indecency," *Edmonton Bulletin* (24 September 1942), p. 9; "Fresh Dismissal Indecency Count," *Edmonton Journal* (24 September 1942), p. 9; "Man Acquitted of Indecency in Supreme Court," *Edmonton Bulletin* (24 September 1942), p. 9; "Convict H. Kagna Indecency Charge," *Edmonton Journal* (24 September 1942), p. 10; "Kagna Given Three Years on Indecent Assault Charge: 'Ring of Bestiality' Revealed by Evidence, Judge Says," *Edmonton Journal* (25 September 1942), pp. 1–2; "Chief Justice Gives Sentence Four City Men," *Edmonton Bulletin* (25 September 1942), p. 11; "Kagna, Richardson Entering Appeals," *Edmonton Journal* (26 September 1942), p. 13; "Appeals Filed by Accused in Indecency Case," *Edmonton Bulletin* (26 September 1942), p. 3; "Crown Appealing Indecency Rulings," *Edmonton Journal* (7 October 1942), p. 9; "Crown Enters Appeals Over Morals Cases," *Edmonton Bulletin* (7 October 1942), p. 9; "Man is Guilty of Indecency: Delay Penalty," *Edmonton Bulletin* (7 October 1942), p. 9; "Hoff Convicted Indecency Count," *Edmonton Journal* (7 October 1942), p. 9; "Surette Sentenced to 18 Months," *Edmonton Journal* (9 October 1942), p. 14; "Awaits Sentence on Four Charges," *Edmonton Journal* (8 October 1942), p. 11; "Hoff Guilty on 4 Charges of Indecency," *Edmonton Bulletin* (8 October 1942), p. 9; "Hoff is Remanded Until November 16," *Edmonton Bulletin* (16 October 1942), p. 13; (30 November 1942), p. 9; "J.E. Hoff Fails to Attend Court; Case Adjourned," *Edmonton Bulletin* (30 November 1942), p. 9; "Kagna Appealing on Court Ruling," *Edmonton Journal* (3 December 1942), p. 11; "Decision Delayed on Hoff Bail Bond," *Edmonton Journal* (4 December 1942), p. 14; "Orders City Venue for Dick Hearing," *Edmonton Journal* (8 December 1942), p. 9; "Hoff Bondsmen to Lose $3,000," *Edmonton Journal* (9 December 1942), p. 13; "Kagna Acquitted in Assault Case," *Edmonton Journal* (8 February 1943), p. 9; "Andrewe Appears, Faces Six Charges," *Edmonton Journal* (12 May 1944), p. 9; "Remand Andrewe on Three Charges," *Edmonton Journal* (15 May 1942), p. 9; "Andrewe Remanded After Guilty Plea," *Edmonton Journal* (17 May 1944), p. 9; "Atha P. Andrewe Jailed Two Years," *Edmonton Journal* (18 May 1944), p. 9.

56 "Kagna Given Three Years on Indecent Assault Charge: 'Ring of Bestiality' Revealed by Evidence, Judge Says," *Edmonton Journal* (25 September 1942), pp. 1–2.

ieties over these cases.[57] The negative publicity was such that in the appeal case of the defendant Richard Dick, his counsel A.W. Miller applied to have his case moved to another jurisdiction, as he explained to the court:

> Your Lordship is perhaps not aware of the situation that has existed in the City of Edmonton since sometime last summer. A number of persons were charged with acts of indecency, a great deal of which was made in the newspapers, and a great deal of talk. It was a matter of conversation on the highways and by-ways and in the home and elsewhere; so much so that the *Bulletin*, one of the newspapers published in Edmonton, was forced – I used the term "forced" advisedly – to publish in a column of one Mr. Weir, a warning to people to desist from continuing statements that were made involving any number of people. I propose on behalf of the accused to advise him to elect for trial by Jury, and I do not think he can get a fair trial before a Jury in the City of Edmonton.[58]

Referring to the alleged crimes as "serious" and "revolting," Crown Prosecutor J.W. McClung opposed this motion, and countered that the defence counsel would have an opportunity to challenge individual jurors if he so desired. Justice Colin Campbell McLaurin of the Alberta Supreme Court, who refused to move the trial sustained the prosecution's argument.[59]

Miller's reference to a *Bulletin* columnist's admonishment of the public to "desist from continuing statements that were made involving any number of people" apparently referred to Harold L. Weir's column in the 6 July 1942 issue of the newspaper. A well-known local broadcaster, Weir at that time published a regular column replicating his daily radio address on Edmonton Radio Station CFRN. In this column, Weir took the general public to task for "vicious" and "malicious" gossip arising from the same-sex cases, as he alleged:

> Unfortunately, a good many of our people – and ordinarily, good, kind, fair-minded people too – have apparently found themselves unable to refrain from this interference. The natural and commendable loathing of the situation, as it has been revealed, has caused many of them to indulge in wild conjectures that are as ridiculous as they are malicious. While probably not more than thirty persons at the outside, residents of Edmonton and otherwise, are implicated in this scandal, reckless and savage rumour

57 "Two More Men Facing Indecency Counts," *Edmonton Journal* (25 June 1942), p. 11.

58 PAA, Accession no. 83-1, box 22, file 3775, "Rex vs. Richard Neville Dick," In the Supreme Court of Alberta, Judicial District of Edmonton, Rex vs. Richard Neville Dick, Proceedings before the Honourable Mr. Justice McLaurin, "Reasons for Judgment of the Honourable Mr. Justice McLaurin," 8 December 1942, pp. 5–6.

59 PAA, Accession no. 83-1, box 22, file 3775, "Rex vs. Richard Neville Dick," In the Supreme Court of Alberta, Judicial District of Edmonton, Rex vs. Richard Neville Dick, 7 December 1942, pp. 1–2, 16.

has drawn in the names of three or four hundred absolutely innocent people.[60]

While little corroborating evidence of gossipmongering has survived from the period of the 1942 trials, a master's thesis on theatre history in Edmonton, based in part on oral history, suggested that the same-sex cases sparked a major scandal in Edmonton with far-reaching impacts on the theatrical community of that period.[61] Curiously, no other editorials or letters to the editor regarding these cases could be found in either of these newspapers, nor apparently was there any news coverage or commentary in the pages of the *Calgary Herald* in the heart of the province's Bible Belt. While the reasons for the lack of published commentary are not clear, it might be noted that the Edmonton cases were brought to trial at the height of several momentous battles between Allied and German or Japanese forces at a critical stage of World War II. In this period, the great majority of news items on the front pages of these newspapers were war stories. Even so, the same-sex trials were accorded prominent coverage in the local Edmonton news sections of both newspapers, and occasionally also on the front pages. Weir's column provided compelling evidence of public hysteria surrounding these cases, albeit unintentionally abetted by his own references to "despicable offences," the "grave and revolting nature of these outbreaks," and the need to "clear this abomination out of Edmonton." His depiction of the local rumour mill might have aptly characterized a predominant attitude on the prairies toward same-sex expression in that period: "This dark and muddy flood of rumour simply invites ill-willed persons to dig back into their prejudices and to crucify anyone they dislike upon the cross of unkind and unthinking public opinion."[62] In 1942, the liberal and recurrent display of the defendants' full names in the press almost certainly compounded the difficulties of the men charged with same-sex activities; to be exposed publicly as a putative homosexual at that time on the prairies carried the strong likelihood of ensuing social ostracism.

The response of several judges trying these cases was revealing of the values and attitudes of the judiciary of that period. For example, based solely on the involvement of a defendant who had moved from British Columbia and participated in several consenting adult affairs in Edmonton, and the West Coast address of an acquaintance who placed a personal notice in an Edmonton newspaper on his behalf, Justice Ives asserted: "It must be obvious to one who has heard the evidence in the four trials this week, that there is an

60 "Saturday Night Radio Review," by Harold L. Weir, *Edmonton Bulletin* (6 July 1942), p. 4.

61 Mary Ross Glenfield, "The Growth of Theatre in Edmonton: From the early 1920s to 1965" (Master's thesis, University of Alberta, 2001), pp. 23–25 and 31–32.

62 "Saturday Night Radio Review," p. 4.

organization at least between here and Vancouver devoted to the purposes of this bestiality."[63] In another case, Justice McLaurin used even more extravagant language:

> The bare possibility that more than one or two were guilty of the offence and the shocking bestiality and perversion thereof would naturally make all decent people in Edmonton apprehensive and disgusted, and no doubt many may have volunteered their ideas of adequate punishment; but, because of a natural and violent loathing of the alleged acts and spontaneous outbursts of repugnance for the alleged depraved individuals, in my view, it scarcely follows that any one of the accused would be in critical danger of not receiving fair treatment before a jury selected from residents of the Edmonton district.[64]

Whether or not this judge was right about the jury pool, the homophobia evident in his own words undermined his assertion that the defendants could receive a fair trial in Edmonton in that period. It should be emphasized that none of the reported activities or charges involved sex with animals. References to "bestiality" by Justices Ives and McLaurin derived entirely from the judges' prejudices equating male same-sex sexuality with bestiality, and not from any evidence presented before these courts.

Notwithstanding Ives's alarmist inferences regarding the supposed "ring of bestiality," a sense of judicial responsibility obliged him to dismiss several of the charges against Harvey Kagna and other defendants, partly on the ground that it would be inappropriate to convict solely on the arising from the uncorroborated testimony of "an accomplice," meaning a consenting partner.[65]

63 "Kagna Given Three Years on Indecent Assault Count," *Edmonton Journal* (25 September 1942), pp. 1–2. On the basis of this defendant's own testimony, inveigled by the RCMP without advising him of his right to remain silent, Ives convicted Donald MacCallum of charges relating to a series of intimate affairs with other consenting adults, and sentenced him to eighteen months in the Fort Saskatchewan provincial gaol. "Chief Justice Gives Sentence Four City Men," *Edmonton Bulletin* (25 September 1942), p. 11; PAA, Accession no. 83-1, box 23, file 3800, "Rex vs. Donald MacCallum." See also Ives's own notes on this and other cases of the Edmonton 1942 trials, in Legal Archives Society of Alberta [hereinafter LASA], William Carlos Ives Fonds, Accession no. 10-00-01, vol. 1, file 2, Judge's notebooks, Judge's notebook 36, 1941–1943, pp. 110–17, including notes on Rex vs. Collier, Rex vs. Richardson, Rex vs. Dick, Rex vs. Kagna, and Rex vs. MacCallum.

64 PAA, Accession no. 83-1, box 22, file 3775, "Rex vs. Richard Neville Dick," "In the Supreme Court of Alberta, Judicial District of Edmonton, Rex vs. Richard Neville Dick, 7 December 1942, Reasons for Judgement of the Hon. Mr. Justice McLaurin," pp. 5–6.

65 In his judgement, Ives stated to the court: "It is obvious to those who heard the evidence that the verdicts rendered in the majority of the charges, and the more serious ones, were what we term 'Scotch verdicts', not proven, because I feel bound by the rule of law, which I think is a good one, that the accused must not be convicted on the uncorroborated evidence of an accomplice. That was what occurred here on each occasion. The charges were necessarily dismissed." "Chief Justice Gives Sentence Four City Men," *Edmonton Bulletin* (25 September 1942), p. 11.

Ives's dismissal of the charges was also prompted by contradictory evidence given by several police officers concerning their highly irregular arrest and removal of Kagna from a local hospital on 26 June 1942, while he was still said to be suffering from pneumonia. In court, the arresting police officers, including RCMP Corporal Gair, and Edmonton Police Constable Smith, testified that they received clearance from the consulting physician at the hospital to remove the defendant from this facility. The police then arrested and removed Kagna from the hospital, only a day after he had been admitted as a patient with a temperature of 105°F. At trial, the defendant's co-counsel grilled the medical doctor who had approved the patient's early release. A.W. Miller demanded an explanation from this physician: "The reason you let him go was because the police wanted him. Isn't that true?" In response, the doctor seemed to acknowledge tacitly having acceded to pressure to release his patient prematurely: "It's hard to say. The patient had been suffering from a very bad case of grippe. It might not have done him any harm to go out a day earlier."[66] In his own testimony before the court, RCMP Corporal Stanton acknowledged that the defendant "looked sickly" when he moved him to the RCMP barracks and took a statement from him that same afternoon.[67] Following this admission, among other revelations of manipulative treatment of the accused, Justice Ives observed: "This man was sick. To what extent it may have affected his mind I do not know."

When cross-examined by Kagna's co-counsel, Corporal Gair acknowledged having denied Miller's request that a magistrate be brought to the hospital so that bail could be arranged for his client. Gair stated: "I informed you that is not done. The accused had to be taken down to the police station." However, the police clearly intended to do more than lay charges; immediately after booking Kagna on only one charge at the Edmonton Police Station, they turned him over to the RCMP, who escorted him to a cell at the Mounties' guardroom in order to question him without access to his counsel. At this time the investigators with both Police forces were aware that more charges were pending, but they delayed laying these charges until after the defendant could be surreptitiously grilled in a RCMP cell, thereby obviating the mandatory warning. Deliberately concealing this plan from Kagna's co-counsel A.W. Miller when removing his client from the hospital, the two police forces evidently colluded to circumvent their legal obligations regarding the prisoner's right to counsel and privilege against self-incrimination.[68]

66 "Dismiss 5 Counts Against H. Kagna," *Edmonton Journal* (23 September 1942), p. 9.

67 PAA, Accession no. 83-1, box 22, file 3767, "Rex. vs. Harvey Kagna," "In the City Police Court City of Edmonton in the Matter of the King vs. Harvey Kagna, On the Information of Corp. J.W. Stanton," 14 July 1942, p. 10.

68 Ibid., "In the City Police Court City of Edmonton in the Matter of the King vs. Harvey Kagna, On the Information of Corp. J.W. Stanton," 14 July 1942, p. 12.

RCMP Corporal Stanton admitted under cross-examination that he did not formally read the charges to the accused when interrogating him at the RCMP guardroom. Indeed he could not have done so as most charges had not yet been laid. Instead, according to Stanton, he "explained" the charges that were in the offing and took notes of the defendant's statements that he later sought to read into the court record as evidence.[69] Stanton's rather contradictory testimony regarding his communications with the accused indicated to the presiding judge that, when arresting the defendant, this investigator did not properly issue the required warning to the prisoner of his right to remain silent.[70] Testimony by both Gair and Stanton confirmed their having undertaken a series of actions, which even in the 1940s would be considered improper criminal procedure and would today be regarded as violations of the rights of accused persons under Canada's constitutional and common law.[71] Their actions included: failing to advise the accused of his right to remain silent, failing to advise his defence counsel of their intention to interrogate the accused, removing him from his counsel's presence so that he could be interrogated without counsel, and enlisting the prospective defendant to give potentially self-incriminating evidence prior to being formally charged.[72] Owing to the inadmissibility of statements reportedly made by Kagna while being interrogated in the guardroom, the uncorroborated character of other testimony, and probably also the coercive circumstances of the interrogation, Ives dismissed several charges against this defendant although he convicted him on one charge and imposed a gaol term of three years, which Kagna appealed.[73] The newspapers incorrectly reported the charge as "indecent

69 Ibid.

70 Ibid., pp. 11–12; and "Five Charges of Indecency Are Dismissed," *Edmonton Bulletin* (23 September 1942), p. 9.

71 The right to remain silent and the legal requirement that any statements by the accused must be voluntary to be considered admissible at trial have now been confirmed in Canada's constitutional jurisprudence. See Sherrie Barnhorst and Richard Barnhorst, *Criminal Law and the Canadian Criminal Code*, 3rd ed. (Toronto, 1996), pp. 112–15; and Donald A. MacIntosh, *Fundamentals of the Criminal Justice System*, 2nd ed. (Toronto, 1995), pp. 101–107. The denial of these rights also constituted the violation of a defendant's civil liberties, as subsequently enshrined in the *International Covenant on Civil and Political Rights*. *International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification, and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, http://www.hrcr.org/docs/Civil&Political/intlcivpol.html (accessed 28 September 2009)

72 See PAA, Accession 83-1, box 22, file 3767, Rex. vs. Harvey Kagna," "In the City Police Court City of Edmonton in the Matter of the King vs. Harvey Kagna, On the Information of Corp. J.W. Stanton," 14 July 1942, pp. 7–30.

73 "Dismiss 5 Counts Against H. Kagna," *Edmonton Journal* (23 September 1942), p. 9; Kagna Given Three Years on Indecent Assault Count," *Edmonton Journal* (25 September 1942), p. 1; "Appeal Filed By Accused in Indecency Case," *Edmonton Bulletin* (26 September 1942), p. 3.

assault," but court documents indicate that Charge no. 8, for which he was convicted, was a charge of gross indecency.[74]

Meanwhile, the Crown quickly proceeded to appeal Ives's dismissals.[75] Ives's judgements were overturned by a three-member panel of judges in the Appellate Division of the Alberta Supreme Court, which ordered new trials. In its ruling the Appellate Court stated:

> ... while the rules in question are intended as a safeguard in favour of a person charged with crime, to avoid the risk of the conviction of an innocent person, it must also be kept in mind that society is also entitled to be safeguarded against crime and it would be unfortunate if it could be thought that crimes of this character, which can only be committed by the participation of two persons and are committed almost always in secret, could be so committed with impunity and without fear of punishment, which appears to be the most effective way to prevent their repetition, simply because there could be no conviction on the evidence of one of them without any possibility of it being corroborated.[76]

Effectively, the appeal court justified its decision on the ground that safeguarding society from "crimes of this character" required the application of a lower threshold of evidence than in other criminal cases. This appeared to be a ruling driven as much by moral considerations as legal precedent, whereby the judges' own words implicated the judiciary in the crackdown on victimless, same-sex activities. The appeal court judges did not substantively address the other reason for the dismissals, namely the inadmissibility of statements coerced from the defendant following his arrest in hospital and interrogation in an RCMP cell prior to the laying of charges. Whether or not the appeal court judges' stated objective of safeguarding society from "crimes of this character" actually served to inhibit same-sex sexuality in the province, they succeeded in further denying the human rights of the defendant in order that society might be "safeguarded against crime." In the event, the ensuing new trials resulted in an acquittal and stay of other charges for this defendant, who nevertheless remained incarcerated due to his earlier conviction.[77]

Owing to the present inaccessibility of the Crown prosecutors' files in the records of the Attorney General's Department at the Provincial Archives of Alberta (PAA), we do not have all potential data bearing on decisions in these

74 PAA, Accession no. 83-1, box 22, file 3767, "Rex vs. Harvey Kagna," List entitled "Said Harvey Kagna stands charged" attached to memorandum of J.W. McClung, Solicitor, Attorney General's Department to Clerk of the Court, Court House, Edmonton, 26 February 1943.

75 "Crown Enters Appeals Over Morals Cases," *Edmonton Bulletin* (7 October 1942), p. 9.

76 "Rex vs. Kagna. Rex vs. Dick," *Canadian Criminal Cases*, vol. 78 (1942), Judgement of Alberta Supreme Court, Appelate Division, Harvey, C.J.A., 30 November 1942, pp. 349–50.

77 "Kagna Acquitted In Assault Case," *Edmonton Journal* (8 February 1943), p. 9.

cases. However, one revealing piece of evidence suggests that the decision to appeal the dismissals came directly from Attorney General and Premier William Aberhart. When it was announced in October 1942 that the Crown would appeal the dismissal of several gross indecency charges that had been thrown out by Justice Ives, William C. Collier, General Secretary of the Associated Temperance Forces of Alberta, wrote the premier to congratulate him on pursuing these cases. Collier asserted that he had spoken with "quite a number of influential people" who had reacted in the same way: "… all feel that you have taken the proper course in that this thing should be completely uncovered. I am sure that you have the support of all the decent people of the Province in this move. Sincerely yours for clean social conditions." In reply, Aberhart wrote: "I want to assure you that we want to do everything we can to curb the forces of evil."[78] The premier's letter did more than acknowledge his involvement in the decision to appeal Ives's dismissal of the charges; his characterization of the defendants in terms of "evil" tended to confirm the role of traditional religious morality in influencing his decision to take the cases to the appeal court.[79]

Throughout the extensive discourse generated by legal authorities and the press on these cases, few words of the defendants themselves were reported, which might give us an insight into their own perspectives regarding the charges that were laid against them. One exception was a letter from actor James Richardson to the premier after he was convicted on gross indecency charges and sentenced to two years in Prince Albert Penitentiary. Noting that his widowed mother and sister depended on him for financial support, Richardson asked the premier to consider permitting him to serve his sentence by employment in government defence work, specifically in the Vancouver shipyards. In his letter he asserted: "I do not deserve this lengthy sentence, and feel that the judges have been deliberately prejudiced by rumours and newspaper publicity about a 'vice ring' to which I was presumed to belong. This is not the case. I never heard of such a ring and was certainly not a member of it, if such existed." While Richardson realized that little could be done at this point about his conviction, he appealed for the premier's help in finding a way for him to undertake wartime service in lieu of prison time. In reply, Premier Aberhart asserted that "no provincial authority can interfere in any way with the sentence imposed in respect of a conviction under the Criminal Code of Canada," and suggested that he take up his request with the Department of Justice in Ottawa. The premier made

78 PAA, Premier's Papers, Accession no. 69.289, file 702B, "Fines and Sentences," William G. Collier to Hon. William Aberhart, 9 October 1942; and Premier Aberhart to Rev. William G. Collier, 14 October 1942.

79 "New Social Order Must Be Established at Once, Premier Aberhart Says," *Edmonton Bulletin* (3 November 1942), p. 17.

no comment on Richardson's denial of the existence of the supposed "vice ring," but in any case little compassion or leniency could be expected from a premier devoted to curbing "the forces of evil."[80]

Generally, the Edmonton same-sex investigations and trials fall into the category of "moral regulation," as elaborated by historians of Canada and other countries. As discussed by Carolyn Strange and Tina Loo, moral regulation marks a shift from religious to secular authority – and specifically the State – as the arbiter of a society's morality.[81] Further, historian Alan Hunt has characterized moral regulation as "an interesting and significant form of politics in which some people act to problematise the conduct, values or culture of others and seek to impose regulation on them."[82] With regard to sexuality in particular, Jeffrey Weeks has observed that throughout the nineteenth century, the State, prompted by moral reformers, assumed a progressively intrusive role in regulating nonconforming sexualities, setting the stage for the State's repression of sexual minorities in the twentieth century.[83] These studies help explain both the motivations and debates leading to the passage of Canada's gross indecency legislation in 1890 and the prosecution of men for same-sex activities over the succeeding eighty years, of which the Edmonton prosecutions form a part. However, as suggested by Hunt, "moral regulation" was neither fundamentally a moral nor a religious undertaking – it was a succession of political actions by public officials engaged in promoting and implementing criminal sanctions targeting minorities while imposing majoritarian notions of morality advanced by powerful constituents. Beyond everyday moral regulation, the zealousness displayed in the Edmonton cases recalls the "moral panics" discussed in the work of such sociologists as Stanley Cohen, Philip Jenkins, and Erich Goode and Nachman Ben-Yehuda in separate studies.[84] During moral panics various players, including the media, law enforcement officials, politicians, actions groups, and the general public react in a manner disproportionate to the actual danger represented in a putative threat to society. In a moral panic, deviance is attributed to behaviour that is

80 PAA, Premier's Papers, Accession no. 69.289, file 702B, "Fines and Sentences," James Richardson, Calgary, to Premier Aberhart, Edmonton, 19 November 1942; and Premier Aberhart to James Richardson, 28 November 1942.

81 Carolyn Strange and Tina Loo, *Making Good: Law and Moral Regulation in Canada, 1867–1939* (Toronto, 1997).

82 Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (Cambridge, 1999), p. 1.

83 Jeffrey Weeks, *Sex, Politics, and Society: The Regulation of Sexuality Since 1800* (Harlow, Essex, U.K., 1981), pp. 81–93.

84 Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers*, 3rd ed. (New York, 1980); Jenkins, *Moral Panic*; and Erich Goode and Nachman Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," *Annual Review of Sociology* 20 (1994), pp. 149–71.

routinely ignored in more conventional times, and society's response typically incorporates at least five common elements: a heightened level of concern; increased hostility toward the category of people considered to be engaging in the threatening behaviour; a consensus within key segments of society that the threat is real and serious; a disproportionate level of concern; and an element of volatility, that is, the panic can erupt rapidly and may just as quickly subside. Generally, the intensity of such reactions cannot be sustained at a fever pitch, and after the panic dies down, it may or may not exert lasting consequences.[85] While various explanations, including elite-engineered and grassroots models, have been offered in explaining moral panics, Goode and Ben-Yehuda suggest that the most compelling analyses hold that moral panics are usually rooted in a combination of grassroots concern and interest-group manipulation. That is to say, most moral panics occur in a situation of pre-existing fear among the general public, which interest groups, such as law enforcement officials, religious groups, and the media, exploit to mobilize and intensify action against the putatively threatening group.

Regarding the 1942 trials, the long-standing opprobrium of same-sex sexuality as reified in popular discourse, heightened by the sex crime panics of the late 1930s and apprehensions of increasing juvenile delinquency in the early 1940s, contributed favourable conditions for the concerted campaign against gay men in Edmonton in that year. As revealed in Harold L. Weir's *Edmonton Bulletin* column of 6 July 1942, Edmonton was then in the grip of a moral panic precipitated by the arrests and prosecutions of the same-sex defendants, and fuelled by widespread media coverage and reportedly indiscriminate gossip across the city. Adding to this volatile mixture was the Christian fundamentalist morality of Attorney General Aberhart, echoed, in turn, by the prohibitory creed of prosecutor J.W. McClung, Justices Ives and McLaurin, and the justices of the Alberta Court of Appeal. With the conviction and incarceration of eight of the defendants, the panic subsided, to be revived with a new round of arrests of twelve men, comprising a different cast of characters in 1947.[86] As a result of this later dragnet operation the principal defendant was sentenced to seven years in federal penitentiary, comprising three consecutive terms of two years for sexual activities with other consenting adults, and an additional year's imprisonment for contributing to the

85 Cohen, "Introduction to the Third Edition," *Folk Devils and Moral Panics*, p. xxii; and Goode and Ben-Yehuda, "Moral Panics," pp. 156–59. See also Erich Goode and Nachman Ben-Yehuda, *Moral Panics: The Social Construction of Deviance* (Oxford, 1994).

86 "4 Await sentence on Serious Charge," *Edmonton Journal* (14 November 1947), Second section, p. 13; "Draws Two years in Indecency Case," *Edmonton Journal* (21 November 1947), p. 18; "Gets 7-Year Total On Four Charges," *Edmonton Journal* (15 December 1947), Second section, p. 11.

delinquency of a juvenile.[87] Several of his associates were also convicted of consenting activities with other adults and sent to gaol.[88] The staging of dragnet investigations targeting same-sex sexuality in this era was not confined to Edmonton and the Province of Alberta. Two contemporary examples from other regions of Canada included a covert sting operation carried out by the municipal constabulary of Victoria, British Columbia in 1943,[89] and a co-ordinated police probe targeting men for same-sex activities in Ottawa in 1944.[90]

In 1942, the words and actions of the premier, justices, and Crown prosecutor, combined with the zealous activities of the Edmonton Police and the RCMP, afforded evidence of a pervasive homophobia in the culture of Edmonton's legal establishment in that era. While the larger contexts of homophobic sentiment on the prairies in this era are also relevant, we should be careful not to overlook the responsibility of the particular individuals who took concerted action against the defendants in Edmonton. Notwithstanding the archaic provisions of the *Criminal Code*, in 1942 the authorities were still bound by common law precedent to respect the defendants' civil rights – rights that they often disregarded for the sake of expediency. Further, Attorney General Aberhart and his staff were not obliged to prosecute men involved in victimless, sexual activities with other consenting individuals in private. Rather, these authorities chose to target and pursue members of a reviled minority with little power to fight back.[91]

87 "City Man Admits Indecency Charges," *Edmonton Journal* (5 November 1947), Second section, p. 9; and PAA, Accession no. 83-1, box 36, file 5898, "Rex vs. Charles Orton."

88 PAA Accession no. 83-1, box 43, file 7240, "Rex vs. James Hall"; box 48, file 7130, "Rex vs. Fred Brunn"; box 7132, file 7132, "Rex vs. John Gawlicki"; and box 43, file 7208, "Rex vs. J.H. McDonald." The 1947 cases were largely pursued on the basis of the admission made by one man, Charles Orton, to having engaged in consenting sex with several partners, for which he received seven years in prison. Various partners of Orton were sentenced to shorter terms of confinement. A decade later, in the Alberta Supreme Court, two men convicted of engaging in consenting sexual activity were remanded for sentence for two years and then ordered to report to a Probation Officer and undergo mandatory psychiatric treatment. The judge ruled: "If, at the end of two years the accused's conduct was reported to have been exemplary, the accused men were assured their sentence would not be 'harsh'. If their conduct was not of that character the sentences would be 'severe'." "*Regina v. K. and H.*, Alberta Supreme Court, Criminal Side, Edbert, J., May 1957," in Cecil A. Wright, ed., *Canadian Criminal Cases, Annotated* (Toronto, 1957), pp. 317–19.

89 See British Columbia Archives [hereinafter BC Archives], GR 419, British Columbia, Attorney General, Documents Series, box 523, file nos. 60/1943, 61/1943; 62/1943; 63/1943; 64/1943; 65/1943; 66/1943; 67/1943; and "Four Face Charges of Gross Indecency," *Victoria Daily Times* (3 August 1943), p. 11; "Two More Face Charges of Gross Indecency," *Victoria Daily Times* (4 August 1943), p. 11; "8 Now Charged with Indecency," *Victoria Daily Times* (5 August 1943), p. 11; "New Arrest Makes 9 Indecency Cases," *Victoria Daily Times* (6 August 1943), p. 11.

90 "Sentence Officer on Morals Count," *Edmonton Journal* (30 May 1944), p. 1.

91 It is sobering to note that the homophobia evident in Alberta's legal establishment in the 1940s was not an anomaly in Canada, nor was it confined to the mid-twentieth-century

Records Bearing on the 1942 Cases and Same-Sex History in Alberta

Owing to the criminalization of male same-sex sexuality over Canada's first century, and its presumed inhibiting effects on the generation and retention of personal records documenting same-sex experience, the most extensive archival collections containing data on this history are collections of governmental legal documents, especially court, police, and gaol records, many of which are still extant, albeit of variable access for research. Of course, such records must be used very carefully, given that they unavoidably skew historical enquiries to criminalized situations. In Alberta the most substantial, readily accessible collection documenting male same-sex experience in the period before the decriminalization in 1969, is apparently Accession 83-1 at the PAA in Edmonton, comprising the criminal case files of the Supreme Court of Alberta, Judicial District of Edmonton, contained within the records of the Attorney General's Department. Copies of all surviving documents generated by the 1942 same-sex trials are contained in this collection, which in addition includes hundreds of other surviving files of criminal cases heard by this court from 1881 to ca. 1950.

A key finding aid for this collection is a series of indexes to the cases, organized in chronological sequence, in which the date of the trial, the charge, the name of the defendant, and the file number for each case is indicated. The index is a valuable asset to researchers, as it enables them to narrow their searches to cases according to the specific charges or chronological periods they are studying. For example, research on cases relating to male same-sex sexuality can readily be carried out by searching the index for instances of such categories of same-sex offences as "gross indecency" and "buggery." As well, the Province of Alberta has determined that court records are public documents and open to researchers, so the imposed restrictions of access in neighbouring British Columbia, for example, do not apply here.

era. Legal historian Bruce MacDougall, undertook a detailed analysis of the Canadian judiciary's reception of cases involving the human rights of lesbian and gay people between 1960 and 1997, which revealed extensive homophobia in jurisprudence across the country. See Bruce MacDougall, *Queer Judgements: Homosexuality, Expression, and the Courts in Canada* (Toronto, 2000). We still await studies comprehensively covering the period since 1997 although several recent momentous decisions by senior courts in several provinces and the Supreme Court of Canada in favour of same-sex rights, appear to provide grounds for optimism that systemic prejudice against sexual minorities within Canada's justice system is finally on the wane. Against this, former Justice Thomas Berger recently reflected on the recent unwillingness of the Supreme Court of Canada to affirm the rights of LGBT people in the Trinity Western University case, wherein the university had obliged faculty and students to sign a contract requiring them to uphold "community standards," incorporating prohibitions of same-sex sexuality. See Thomas R. Berger, *One Man's Justice: A Life in the Law* (Vancouver and Seattle, 2002), pp. 299–332.

In most instances, the case files contain copies of transcripts from the initial trials and related proceedings, the Charges, Information and Complaint forms prepared by the police investigators, as well as documents on arraignments, affidavits relating to the posting of sureties on behalf of the defendants, the disposition of cases, the full text of the judgements and sentences specifying imposed penalties, documents indicating whether or not the convicted defendants appealed their verdicts, and occasionally other items of correspondence. A shortcoming is that not all sworn testimonies at these trials have been retained, so the court records are incomplete. Among the most interesting documents contained in some of these files are personal letters from friends or acquaintances of the accused persons, which were seized by the police and introduced as evidence against them in court. While not related to any of the specific charges in the 1942 cases, these letters were taken to provide evidence of affectionate or erotic attraction between the correspondents, and thereby adduced in court in an effort to confirm the defendants' putative homosexual orientations, considered instrumental to securing convictions in the absence of definitive proof of their alleged sexual activities. The court transcripts are also extremely interesting, as they contain the testimony of the RCMP and Edmonton Police investigators, as examined by the prosecutors and cross-examined by defence counsel. These testimonies provide insights into the motivations of the authorities in these criminal prosecutions, the investigators' avid pursuit of the defendants, and the role of homophobia as a contributing factor in the infringements of these citizens' rights.[92] For social historians, the adduced evidence in these cases is also indispensable to the reconstruction of same-sex social networks already in place in Western Canadian cities by the period of World War II. The words of the defendants enable rare and valuable glimpses into their lives and relationships in that period, enabling us to see them as three-dimensional persons, very different from the caricatured abstractions or reifications of "perverts" and practitioners of "bestiality," as depicted by legal authorities of the period.

The transcripts of sworn testimony before the Edmonton Police Court are especially valuable in documenting human rights abuses in this period, as rigorous cross examinations sometimes tripped up the rehearsed narratives

92 A recent survey suggests that in their jurisprudence, Alberta's courts have shown a historical reluctance to affirming the human rights of minorities in relation to majoritarian sentiment. Comparing the record of the Alberta Supreme Court vis-à-vis the Supreme Court of Canada, legal historian Dale Gibson, found that "a case could be made that the Alberta decisions – particularly those of the court of appeal, exhibited a somewhat different character than those of the Supreme Court of Canada: less ardour for the Charter, and a tendency to favour majoritarian values and considerations over those of minorities." Dale Gibson, "The Supreme Court of Alberta Meets the Supreme Court of Canada," in *The Alberta Supreme Court at 100: History and Authority*, ed. Jonathan Swainger (Edmonton, 2007), p. 125.

of police investigators, contributing to a more accurate and complete picture of the actual circumstances of their interrogations of suspects.[93] For example, cross-examinations of the police by defence attorneys documented the investigators' repeated failure to advise persons being investigated of their right to remain silent and that their responses to questions could be used against them. The investigators' testimony under cross examination also revealed their crossing of various ethical lines in arresting Harvey Kagna while he was still admitted to hospital, in hopes of inducing him to give self-incriminating evidence prior to the laying of charges. Such evidence of improper investigation practices in the 1940s constitutes important data for understanding Canada's legal history and its relevance to current public policy debates regarding civil liberties and human rights in this country. The official judgements contained in these records of the trials also afford glimpses into the process of reasoning, values, and attitudes of several presiding judges, indicating the presence of homophobic prejudice on the bench. Justice, in these instances, was not blind. While disturbing to read, the intemperate words in some of these judgements help document the historical progression of homophobia within the legal system in Alberta in the first half of the twentieth century, and its role in further marginalizing sexual minorities in Western Canada.

Apart from the Judicial District of Edmonton collection, and another earlier accession comprising an indexed collection of criminal case files from the Calgary Provincial Court between 1912 and 1944,[94] Alberta has apparently made very little progress in organizing or facilitating access by researchers to other documentary collections potentially bearing on criminalization or indeed other aspects of same-sex experience over the past twenty-five years.[95] The indexing of the Judicial District of Edmonton criminal cases was

93 Under cross-examination, both Edmonton City Police Constable William Smith and RCMP Corporal J.W. Stanton recited warnings they claimed to have given when arresting Harvey Kagna and again when taking him into a cell to "explain" the charges against him. Their lengthy quotations of their supposed verbal warnings to the defendant exhibited the character of rote recitals of procedure, rehearsed for courtroom testimony but contradicted by their other testimony suggesting an intent to exploit the defendant's weakened condition to secure self-incriminating evidence from him. PAA, Accession no. 83-1, box 22, file 3767, "Rex vs. Harvey Kagna," "In the City Police Court City of Edmonton in the Matter of the King vs. Harvey Kagna, On the Information of Corp. J.W. Stanton," 14 July 1942, pp. 8, 19.

94 PAA, Accession no. 74.38, Department of Attorney General, Files from the Calgary Provincial Court, including statements of Crimes and Offences, 1912–1944.

95 In fairness, it might be noted that the activity of most other provincial archives in Western Canada on collecting and providing access to archival materials pertaining to same-sex experience is similarly uneven and most initiatives in this area have been both recent and sporadic. In 1990 the Manitoba Archives funded a community-based oral history project, entitled "Manitoba Gay Lesbian Oral History Project," Collection C1861-C1903, which included interviews with lesbian and gay people and addressed aspects of their personal

a project carried out in the 1980s at the instigation of a group of legal history scholars including Professor Louis Knafla of the University of Calgary. Since those promising beginnings, few other initiatives have been undertaken to index or generally to enable research in legal history collections. For example, within the records of the Attorney General, the PAA also houses extensive records of the province's Crown prosecutors, which might potentially contain important correspondence relating to the decisions to lay charges, the planning and execution of criminal prosecutions, the motivations and methods of prosecutors, their relationships to the police forces and the Attorney General's office, and valuable contextual information on these assorted criminal actions.[96] Access to these files is currently restricted under the terms of the province's *Freedom of Information and Protection of Privacy Act* pertaining to privacy rights and possibly also arising from legal privilege.[97] However,

experiences in and around Winnipeg up to ca. 1970. Apparently it was the only such oral history project ever carried out by a provincial archives in Western Canada, and necessarily focused largely on the period after the Second World War, owing to the ages of the surviving witnesses. As well, the Saskatoon Branch of the Saskatchewan Archives Board has accepted a large collection of records from Neil Richards relating to individuals and organizations of the LGBT community in Saskatchewan after 1962. Another collection at the Provincial Archives of Alberta relating in part to same-sex experience is PR1297, The Mary Imrie and Jean Wallbridge Fonds. The Administrative History/Biographical Sketch for this collection references both the professional and the personal relationship of these two women architects, referring to the fact that they "lived as a lesbian couple" in Edmonton. The archival institution in Western Canada that has demonstrated by far the greatest commitment to collecting and making accessible documentary collections bearing upon the history of LGBT people is the University of Saskatchewan Archives. See http://library2.usask.ca/srsd/links.php (accessed 28 September 2009). The Canadian Lesbian and Gay Archives in Toronto has also collected a number of materials relating to LGBT history in the West. The City of Edmonton Archives has archived the Edmonton Gay Alliance Toward Equality Papers as well as the Gay and Lesbian Awareness Society Fonds, while the Rare Books and Special Collections Branch of the University of British Columbia Library houses the Vancouver Alliance Toward Equality Papers. Most of these collections focus on the second half of the twentieth century, and in particular on aspects connected to, or prompted by, the inauguration of the LGBT liberation movement after 1970. In general, provincial archives in Western Canada have not placed a priority on acquiring or making accessible records documenting LGBT history, and much remains to be done to redress a continuing imbalance in coverage regarding the diverse aspects of past experience of members of an important minority population within the region.

96 These collections include the following: Accession no. F83.442, Attorney General, Department of Criminal Justice Division, Criminal Prosecution Files, 1928–1972 (128 metres); Accession no. F84.67, Case Files on Criminal Prosecutions Undertaken Throughout Alberta, 1927–71 (260 metres); and Accession no. F96.99, Criminal Prosecution Files Containing Correspondence, Policy, and Information Relating to various Sections of the Criminal Code, 1927–1975 (13.2 metres). Accession no. F83.442 has no file list, while the other two accessions have numbered file lists but no other indexed references that could enable a researcher to identify the type of case and date of the respective cases to which the numbers refer, effectively making these indexes unusable.

97 Government of Alberta, *Freedom of Information and Protection of Privacy Act*,

even if researchers were able to obtain permission to research these files, they currently could not viably do so as no usable indexes have been prepared. The only "indexes" consist of unusable numbered file lists. Researchers and archivists alike are thereby poorly positioned to identify the records that might be accessed for research on sexual minority history, as researchers seeking access to these vast collections have no way of identifying the contents in advance of an access request. This is an issue deserving of greater discussion among historians, archivists and privacy commissioners, and awaits a satisfactory resolution. As well, staff members of the Edmonton Police have indicated that the Police have destroyed its older case files relating to the 1940s. My own Access to Information request for access to any extant RCMP files of "K" Division pertaining to the 1942 investigations, made to Library and Archives Canada in 2008, yielded the response that the RCMP had similarly destroyed its older files relating to Alberta in this period. The only substantial extant sources on these trials, then, are the criminal case files of the Judicial District of Edmonton, supplemented by newspaper stories in the two Edmonton newspapers of the period. Another collection, housed at the Legal Archives Society of Alberta (LASA), is the Judges' Notebooks of William Carlos Ives, which includes Justice Ives's annotations on several of the 1942 cases discussed in this article. While interesting in their own right, these notebooks do not substantially illuminate this judge's legal philosophy or attitudes as they relate to the 1942 cases.[98]

In light of the destruction of police records and the lack of viable access to the Crown prosecutors' records, the Edmonton criminal court cases constitute indispensable sources of data on the history of male same-sex experience in the city and province. In documenting such major events as the 1942 investigations and trials, these files are even more instructive when researched in composite than if treated as individual cases in isolation. Linking the data between and among these records confirms that these cases were part of a coordinated dragnet operation involving both municipal and provincial authorities, a sweeping operation into which both the Edmonton Police and the RCMP poured extensive resources, the scale of which is remarkable on the prairies in that period. In composite, these records provide evidence that the assiduous pursuit, prosecution, and punishment of same-sex sexuality were preoccupations for legal authorities as far back as World War II. This was long before the well-documented national security purges targeting sexual minorities commencing in 1959.[99] The archived legal records relating to the

http://foip.alberta.ca/legislation/act/section17.cfm; and http://foip.alberta.ca/legislation/act/section27.cfm (accessed 28 September 2009).

98 LASA, William Carlos Ives Fonds, Judge's Notebooks, Judge's Note Book 35, 1941–1943, pp. 110–17.

99 Gary Kinsman and Patrizia Gentile, *"In the Interests of the State": The Anti-gay,*

1942 trials therefore command the attention of all archivists and historians seeking to understand how and why the State – a modern liberal democracy – could have authorized and carried out such a draconian campaign of repression against its own citizens.

Conclusion

The 1942 same-sex case files, housed in the court records of the Judicial District of Edmonton at the PAA, relate to important issues of public policy in Canada. The criminalization of male same-sex sexuality over the course of Canadian history was central to its marginalization and achieved through the application and, more generally, through the threat of judicial sanctions arising from criminal prosecutions. There can be little doubt that the widespread legal and social ostracism of sexual minorities on the prairies in the twentieth century served to inhibit the retention and deposit of records bearing on their historical experience. As a result, much if not most surviving documentation of male same-sex experience is limited to governmental legal documents such as court, police, and gaol records. It follows that the history of such experience can only be written with reasonable and extensive access to such records.

Within different archival institutions, there remains considerable unevenness of coverage in the acquisition, inventory, accessibility, and use of archival collections as they pertain to the historical experience of minorities. Notwithstanding the notable leadership of the University of Saskatchewan Archives, the Canadian Lesbian and Gay Archives, and a few others, archival institutions could do much more to encourage this necessary research to happen. Reconstructing a comprehensive history of sexual minorities in Canada – especially for earlier periods lacking a base of oral testimony – will probably only be feasible through direct and extensive access to archived legal records. Public archival institutions are responsible for ensuring that records documenting the history of minority constituencies are given due regard in their policies and programs. Most recent initiatives to process and make accessible archival records at public repositories, including digitiza-

Anti-lesbian National Security Campaign in Canada: A Preliminary Research Report (Sudbury, 1998). See also and Daniel J. Robinson and David Kimmel, "The Queer Career of Homosexual Security Vetting in Cold War Canada," *Canadian Historical Review*, vol. 75, no. 3 (1994), pp. 319–45. For further context concerning the post-war sex crime panics in the United States and Canada, see George Chauncey, "The Postwar Sex Crime Panic," in *True Stories from the American Past*, ed. William Graebner (New York, 1993), pp. 170–71; Elise Chenier, *Strangers in Our Midst: Sexual Deviancy in Post-war Ontario* (Toronto, 2008), pp. 43–78; and Carolyn Strange and Tina Loo, *True Crime, True North: The Golden Age of Canadian Pulp Magazines* (Vancouver, 2004), p. 92.

tion programs, have focused on conventional, unthreatening documentary collections appealing to an imaginary mainstream, thereby avoiding controversy but also bypassing the needs of emerging minority constituencies. Yet, Canada's communities also include sexual minorities, who, notwithstanding recurrent institutional barriers, have always participated in, and contributed to, Canadian society alongside other citizens. In the last five to ten years, the courts, including the Supreme Court of Canada, have consistently ruled that the *Charter of Rights and Freedoms* applies to LGBT people as much as to other Canadians, and that all Canadians are entitled to the same rights and responsibilities. Perhaps it is time for all public archival institutions to acknowledge this fact of Canadian constitutional jurisprudence in their professional practice.

As we know, the establishment of rights in law does not automatically translate into the effective exercise of such rights in practice. To be meaningful and effective, democracy depends on wide-ranging participation and dialogue in the public sphere. Conversely, the omission, censorship, or self-censorship by members of a group in terms of civic dialogue and discourse bearing on their human rights and civil liberties can impede the exercise of democracy. Archivists and historians alike share a responsibility to do more to disseminate information on the existence of legal and other documents bearing on these matters, and in particular their value in documenting the history of sexual minorities. Such initiatives might help demystify and even remove any vestigial stigma attached to working with such documents and writing the history of sexual minorities. It could be a small but important step in affirming and maintaining the health and vibrancy of our liberal democracy.

The safeguarding of legal documents documenting the history of private life also embodies a public trust. Public archival documents bearing on the historical experience of minorities hold a collective importance extending beyond the privacy rights of individuals. Protecting individual privacy is essential, but this principle should not negate the equally valid principle that the common good must be served through appropriate access to records bearing on human rights and other important issues of public policy. In *Archivaria* a strong case was made recently for the importance of records documenting the expulsion, internment, and dispossession of Japanese Canadians in the 1940s.[100] Similarly, archival resources documenting the history of sexual minorities are a public trust integral to the exercise of rights by LGBT people in the present. As Tim Cook cogently framed the issue: "Deny a citizenry its history, even parts of it, and you begin to deny them the chance to make

100 Judith Roberts-Moore, "Establishing Recognition of Past Injustices: Uses of Archival Records in Documenting the Experience of Japanese Canadians During the Second World War," *Archivaria* 53 (Spring 2002), pp. 64–75.

informed choices, to understand themselves, and to question the government, now and in the future."[101]

For archivists and researchers, awareness of the abuses of the Edmonton trials of the 1940s obliges us to shine the light of history on these dark corners of our past, recover the words of the protagonists, debate their decisions and actions, and reflect on the significance of these events. For archival practice, this obliges an attitude favouring openness rather than secrecy, developing useful inventories and descriptive finding aids rather than unusable numbered file lists, working with minority constituencies to disseminate the presence and value of legal and other records for sexual minority research, and generally facilitating research into this important but neglected area. Then we might be better positioned to write a comprehensive history of same-sex experience in Canada, and more fully come to terms with our past and its manifold meanings for human rights, civil liberties, and our collective future.

101 Tim Cook, "Archives and Privacy in a Wired World: The Impact of the *Personal Information Act* (Bill C-6) on Archives," *Archivaria* 53 (Spring 2002), p. 112.