

# Pornography in Canada

- Tolerance versus Taste
- Defining Vulnerable Groups
- Test Cases
- International Role
- Digital Sex Traffic
- Concluding Thoughts

# Tolerance versus Taste

- Early definitions of obscenity concerned with moral corruption of impressionable groups
  - R. v. Hicklin, 1868
- Modern definitions concerned with “undue exploitation” of vulnerable groups
  - 163(8) of Criminal Code, 1959

# Tolerance versus Taste

- Is obscenity a criminal violation or a civil violation?
- Federal Criminal Code 163(8) defines obscenity
- Provinces are charged with its oversight

# Tolerance versus Taste

- Testing the Charter of Rights and Freedom
  - 1<sup>st</sup> Step: Does the government action limit one's guaranteed rights
  - 2<sup>nd</sup> Step: If there is a government action that limits this right, is this action a *reasonable limitation* that can be demonstrably justified in a free and democratic society?

# Vulnerable Groups

- Women
- Children
- Gay / Lesbian Community

# Vulnerable Groups

- Children
  - Badgley Committee on Sexual Offenses against Children and Youth (1981)
  - Fraser Committee on Pornography and Prostitution (1983)
  - Bill C-128, amendments to Criminal Code and Customs Tariff (1993)

# Vulnerable Groups

- Women
  - R. v. Butler, 1992
  - Clearly determines that the existence of pornography is harmful to women and children

# Vulnerable Groups

- Gay / Lesbian Community become targets
- Glad Day Bookstore, Toronto (1993)
  - Charged with distributing obscene material for *Bad Attitudes*
- Little Sisters v. Canada
  - Canada Customs seizes material, Little Sisters sue

# Vulnerable Groups

- R. v. Mercer Union (1993)
  - First Criminal Charge under Bill C-128
  - Local Toronto artist Eli Langer
  - “artistic merit” subsequently replaced with “legitimate purpose” (C-2, 2004)

# International Role

- International Protocol on Civil and Political Rights
- UN Optional Protocol to the Convention on the Rights of the Child

# International Role

- Vulnerable group reduced to children
- Protection for sex trade workers?
  - Expedited visas for exotic dancers
- Protection for sexually oppressed?
  - Refugee status

# Digital Sex Traffic

- Regulating Internet domestically and globally
- CRTC determines that it won't / can't regulate Internet (1999)
- Self-regulation of child pornography among major ISP

# Concluding Thoughts

- Pornography a Cultural Industry
  - Most successful global and digital cultural industry
  - Least understood, scrutinized

# Concluding Thoughts

- Consuming Pornography
  - harm, private property, rights and freedom
- Producing Pornography
  - diasporic labour force, transference of community standards, “off-shore exploitation”?