

Queer Consequences:
Homosexuality and its Penalties in the Canadian Military, 1939-1945

by

Zachary J. Osborne

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Abstract

In the early years of the Second World War, the Canadian military began to enforce discriminatory anti-homosexual policies that had harmful short and long-term effects on the lives of gay personnel. This thesis will address this problem as well as the secondary issue that the military rooted out competent personnel not because they were unqualified for combat or hindered military efficiency, but because of homophobia and the moral self-righteousness of policing investigators, senior officers, and medical professionals.

From de-classified military documents in RG 24 of the Library and Archives of Canada, case studies of homosexual servicemen and their court martial proceedings will be presented to reveal the harsh legal actions taken against gay recruits. These will demonstrate discriminatory and unfair sentencing against men who were discovered as homosexual.

Men who were found guilty of homosexuality were sentenced to various punishments, ranging in severity from detention and hard labour periods to a dishonourable military discharge, but all having powerful psychological, emotional, and financial consequences able to push some men to commit suicide. Ultimately, this thesis attempts to contribute to new military history, gender studies, and the growing focus on gays and lesbians in mainstream histories.

Chapter 1
Historiography: A Report of Persecution

“The study of homosexual subcultures supplies opportunities to address ‘minoritizing’ concerns in the best sense, but it also provides the chance to pursue truly universalizing historical and theoretical questions.”¹

“In our society sex has become the supreme secret and the general substratum of our existence.”²

Studies of queer history in the United States have revealed a complex, vibrant, and visible gay subculture; Canadian queer history has not kept pace, leading to the perceived invisibility of gay subcultures and existence in the nation’s past. The majority of work that has been done in the recent decades concerns the regulation of sexual activity, the rise of homophile movements³ in the 1960s and later, as well as the policing of gays and lesbians in the early Cold War era. Histories of sexuality, which were becoming fashionable and sophisticated in the 1970s, had at last evolved to include (progressively) so-called “deviant” sexual characters who have been hidden throughout traditional mainstream histories. As early as the 1980s, historians began to contribute to the often neglected but emerging field of queer history with more fervor. What began as a small eruption of gay historical studies grew exponentially throughout the nineties and is seen as mainstream today.

Homosexuality had traditionally been a focus of psychologists and medical experts in mid-century, but has become more recently the curiosity and profession of social, cultural, and gender historians.

¹ Margaret Hunt, “Afterword,” in *Queering the Renaissance*, ed. Jonathan Goldberg, (Durham: Duke University Press, 1994): 372.

² Jeffrey Weeks, *Sex, Politics and Society: the Regulation of Sexuality since 1800* (New York: Longman, 1981): 12.

³ “Homophile movements refer to the beginnings of gay and lesbian rights activism, and the struggles of gay normalization in the 1950s. The term “homophile” declined in usage once the Gay Liberation movements of the late 1960s and early 1970s were underway.

The importance of queer history lies in the need for recognition of gays and lesbians, to be identified and discerned in everyday histories. Much like the origins and successful growth of women's history, queer history aims to gain legitimacy, recognition, and of course respectability, not solely as an academic field, but for the subjects of the discipline.

The aim of this chapter is to familiarize the reader with some past works and a general historiography of Canadian queer history. This is important to discuss what has already been studied, and also to reveal where my research is located within the field. Following this, I will introduce a contemporary and meaningful issue surrounding the case of Michelle Douglas, who fought the discriminatory anti-homosexual policies of the Royal Canadian Armed Forces. This matter is significant because it demonstrates the existing relationship between homosexuals and the Canadian military. Finally in this chapter, I will resume an overview of major works in the study of homosexuals in the military, and ultimately discuss the goals and purpose of this thesis.

Although I have emphasized a lack of Canadian content in the growing area of queer history, there has been ample research and publication material to assess. The following accounts are ones which have influenced, or played a significant part in the development of my research, motivation and arguments.

On February 6, 1981 in downtown Toronto 3,000 members of the gay and lesbian community protested in reaction to the police raids on four gay bathhouses. Drawing on this political action, Gary Kinsman attempts to write a history for both

“lesbian and gay oppression and resistance in a historical perspective.”⁴ His book *Regulation of Desire: Sexuality in Canada* delivers varied historical accounts of topics from sodomy laws in early Upper Canada and New France, to heterosexism and the Welfare State, to the efforts for law reforms in the latter 20th century. Overall Kinsman effectively publicizes the “invisible” history of the gay and lesbian community at a time in Canadian history before there was any evidence of a “community” at all. However, Kinsman has been criticized by other Canadian historians for his rudimentary attempts at historical research, and his complete lack of primary evidence. While he relies exclusively on secondary research to construct his accounts, one of his critics writes that “it is somewhat surprising and disheartening to note that Kinsman did not consult any historical sources,” and that “his attempt to develop a ‘queer history’ of Canada is racked with disappointment and failure.”⁵ In his defense, it must be said that Kinsman is first a sociologist, and secondly a historian, and as other more positive reviewers of his work have noted, “it is easy to find fault with a book on such a new, uncharted subject.”⁶ Also, Kinsman declares in his introduction that “this is a limited, partial, and flawed history...It is intended only as a starting point for discussion, debate, and further research.”⁷ So, regardless of his detractors, his “flawed” accounts, and deficient primary research, I find Kinsman’s

⁴ Gary Kinsman, *The Regulation of Desire: Sexuality in Canada* (Montreal: Black Rose Books, 1987) 14. Kinsman published a more extensive collection of gay and lesbian histories in Canada in the revised edition of this book, *Regulation of Desire: Homo and Hetero Sexualities* (Toronto: Black Rose Books, 2nd Ed., June 1997).

⁵ Terry Chapman, Rev. of *The Regulation of Desire: Sexuality in Canada* by Gary Kinsman, *Canadian Historical Review* 69 (1988): 547.

⁶ Steven Maynard, Rev. of *The Regulation of Desire: Sexuality in Canada* by Gary Kinsman, *Journal of Canadian Labour Studies* 23 (1989): 321.

⁷ Kinsman, “The Regulation of Desire,” 18.

work exceptionally beneficial, politically successful and a positive contribution to the visibility of gay and lesbian history in Canada.

Terry Chapman, a Canadian social and legal historian, has published many articles concerning law and sexual practices, primarily on Western Canada from 1890 to 1920.⁸ His investigation of laws relating to same-sex sexual acts is quite intriguing and indeed unique in the spectrum of Canadian history, and especially its legal history. In several of his works attending specifically to homosexual legal treatments, his findings reveal irrational homophobic and intolerant attitudes within a Western-Canadian historical context. Chapman leans to the subject of homosexuals because “although the study of prostitution enables the historian to gain some insights into attitudes towards acceptable and unacceptable sexual behaviour during a specific period of time, it does not provide a complete picture.”⁹ Chapman’s important assessment of 20th century views of morality, family values, and “acceptable sexual activity” is helpful. He outlines several cases where men were caught performing illegal acts of sodomy and buggery (which at this time were interchangeable in common usage and in the courts) and the judicial consequences. From extensive archival studies with police records, gaol reports, criminal statistics, court cases, magistrates’ charge books, and newspapers, he found that “buggery, sodomy, and bestiality or attempts to commit these sex acts were [...] fairly common in Western Canada from 1890 to 1920.”¹⁰ His most beneficial research findings involve the

⁸ “Sex Crimes in the West, 1890-1920,” “Male Homosexuality: Legal Restraints and Social Attitudes in Western Canada, 1890-1920,” and “‘An Oscar Wilde Type’: ‘The Abominable Crime of Buggery’ in Western Canada, 1890-1920,” typify Chapman’s area of concentration.

⁹ Terry Chapman, “‘An Oscar Wilde Type’: ‘The Abominable Crime of Buggery’ in Western Canada, 1890-1920” *Criminal Justice History* vol. IV ed. Henry Cohen (London: Meckler Publishing, 1983): 98.

¹⁰ Chapman, “An Oscar Wilde Type,” 107.

methods and lengths of punishment for those men charged with “gross indecency,” illegal attempted or performed sexual activities. While Chapman concludes that there was indeed a diverse range of penalties, from sentences of hard labour to short jail time, most were rarely given the maximum penalty of life imprisonment: “during the late nineteenth and early twentieth century the penalties for a buggery or sodomy conviction ranged from shorter sentences of six, twelve, eighteen, and twenty months to longer sentences of two, three, five, six, then and fifteen years.”¹¹ The criminal code at the time made no terms for whipping, but Chapman discovered at least one occasion where lashings accompanied a man’s term of confinement.¹² The history of judicial and social attitudes and responses to homosexuality are another area upon which my thesis will concentrate, and Chapman’s findings are certainly ideal in providing a narrowed research into the situation in the early 20th century.

Chapman’s interest in and dedicated pursuit of the judicial treatment of illegal sexual activity is relatively unmatched in Canadian history and it is this sort of account that underlies the drive to present my own findings. Other authors reviewed in this historiography, primarily Gary Kinsman, Steven Maynard and Paul Jackson, share similar goals of revealing the hidden history of legal control of sexual activity. Ultimately Chapman asserts that notwithstanding “the social and legal restraints, homosexual activity did not dissipate,” and further, that “it continued to exist surreptitiously alongside the traditional and prevalent sexual morality.”¹³

In the field of Canadian labour history, Steven Maynard has for over a decade contributed valuable studies of cultural and social histories concerning the lives of

¹¹ Chapman, “An Oscar Wilde Type,” 110.

¹² Chapman, “An Oscar Wilde Type,” 111.

¹³ Chapman, “An Oscar Wilde Type,” 113.

gay men and lesbians in urban centres. He has intended for his work to add to gay social history and generally to the innovative area of the history of sexuality in Canada. Maynard's interests and publications have concerned the fields of queer, gender, and urban histories in Canada, and his work illustrates the existence of queer masculinities, police and judicial persecution of homosexual subcultures in urban centres, and the visibility of these subcultures in the early 20th century. In much of his work he has argued that police operations, and the efforts to eradicate gay enclaves had inadvertently publicized urban homosexual subcultures. In an area such as this where there has been such a lack of research, his work is innovative because of distinctive research methods and his use of police records, court records, and case files of criminal prosecutions as primary source materials.¹⁴

Maynard's research is both striking and admirable in the boldness of his writing style but more so in its historical content. Although often interpreted as crass, he is not afraid to research and openly discuss scandalous and "taboo" topics of the history of gay subcultures. In "'Horrible Temptations': Sex, Men, and Working-Class Male Youth in Urban Ontario" Maynard analyzes the sexual relations between boys and men. Others might not approach such a topic due to its lewd nature, but Maynard tackles the problem and questions why it has not been examined so far. He asserts that it is "surprising given the prominent place the subject occupies on the contemporary political scene. One thinks immediately of the physical and sexual mistreatment of boys by men in state- and church-run orphanages, training schools,

¹⁴ See Steven Maynard, "'Horrible Temptations': Sex, Men, and Working-Class Male Youth in Urban Ontario, 1890-1935," *The Canadian Historical Review* 78.2 (June, 1997): 191-235 and "Through a Hole in the Lavatory Wall: Homosexual Subcultures, Police Surveillance, and the Dialectics of Discovery, Toronto 1890-1930," *Journal of the History of Sexuality* 5.2 (1994): 207-242, as well as "Sex, Court Records, and Labour History," *Labour/Le Travail* 33 (1994): 187-193.

and residential schools.”¹⁵ It is these difficult and perhaps awkward angles of history that should be addressed, and Maynard’s ability to do so contributes to my interest and willingness to write about the persecution of homosexuals in a military setting.

It should be observed that American queer history is more developed than in Canada largely because there are simply more people involved in the field. Gay and lesbian historical narratives can take on very diverse approaches and arrive with different conclusions particularly when more academic and professional interest exists. As the result of more intensive research and a more dynamic academic discourse, American historians have been able, not only to compile social histories about gay and lesbian subcultures, but also to examine these subcultures in prominent urban centres all over the country. In San Francisco, New York, Baltimore, New Orleans and even Chicago, gay and lesbian communities have histories dating back as far as the 1890s.

In *Gay New York*, George Chauncey delivers an extensive and meticulous history of the existence of a visible queer community at the end of the 19th century and demonstrates the public nature of its being, contesting the myths of isolation, invisibility, and internalization among homosexual men.¹⁶ He reveals the strengths of the early gay subcultures through exemplifying their ability to provide members with available resources to effectively “reject the dominant culture’s definition of them as sick, criminal, and unworthy.”¹⁷ He writes that similar to other marginalized groups,

¹⁵ Maynard, “Horrible Temptations,” 192.

¹⁶ George Chauncey, *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994) 2. The myths of the history of gay and lesbian-life before the rise of gay movements is believed to be characterized by isolation, invisibility and internalization because it is commonly assumed that there were no gay communities, so therefore homosexual individuals led private, lonely, self-hateful and confused lives.

¹⁷ Chauncey, *Gay New York*, 5.

gay men, both stereotypically effeminate “fairies” as well as gays who conformed to masculine gender conventions, were able to develop flourishing neighborhoods in the face of repression. While he does discuss policing methods and certain instances of bathhouse raids in passing, Chauncey chooses to concentrate his writing on the social analysis of societal views of homosexuals in urban centres rather than the polemics of early 20th century persecution.

A lively debate in queer history is the argument of whether sexuality is a social construction or an essentialist feature of human life and society. Concerning his views on the theoretical origins of homosexuality, Chauncey is a social constructionist, and he argues that the all-encompassing label of “queer” for men, who had sex with other men, came about only in the middle of the 20th century.¹⁸ Before that time, it was usually exclusively the effeminate “fairy” men who were stigmatized by their apparent “abnormal” gender identity. This thesis will not be overly concerned with the theories of the origins of sexuality, namely essentialist or social constructionist, as their perspectives are not of any concern as to whether men in the Canadian military who participated in homosexual acts were mistreated or discriminated against. Basically, it will be assumed that homosexuality existed, and discussions of “why” or “how” are inconsequential and unrelated to the conclusions.

What has been addressed thus far reveals that studies on the history of homosexual enclaves have experienced growth, but are still in their early stages of development. From what Kinsman, Chapman, and Chauncey have produced it is evident that homosexuality in the eyes of the courts, government, and society before mid-century was something seen as “unnatural,” and the reality that jail terms were

¹⁸ Chauncey, *Gay New York*, 13.

given for sex acts “suggests that law and society possessed little conception of sexual activity due to circumstance or preference.”¹⁹ The widening range of homosexual topics in academic studies since the 1950s should be noted, not merely for their existence, but for their accounts of homophile movements, policing and security measures, gay and lesbian liberation. Queer history is also quite politically alive and topical on many features of contemporary society, and often connected to current debates.

It is now important to address one of these relevant debates, and the topic of this thesis: homosexuality in the Armed Forces. I will begin by outlining one particular issue that earned moderate publicity in the 1990s, this being the legal battle between ex-Air Force Lieutenant, Michelle Douglas and the Canadian Armed Forces.

The Canadian Armed Forces have always maintained a history of stringent discipline and organization, and the recent enlistment of female and openly-gay soldiers was not necessarily welcomed within the military community. In the 1970s, objections to changes in the existing military community were widespread, and it was also generally felt “that any relaxation of military discipline promoted potential disorder and anarchy within the military organization.”²⁰ After an action under the Canadian Human Rights Act prohibited discrimination on the basis of gender, in November 1979 the Canadian Military started to experiment with the inclusion of women in combat units, and its testing demonstrated that the integration of women was feasible.²¹ For many human rights activists, the military’s exclusion of women

¹⁹ Chapman, “An Oscar Wilde Type,” 112.

²⁰ Chris Madsen, *Another Kind of Justice: Canadian Military Law from Confederation to Somalia*, (Vancouver: UBC Press, 1999): 136.

²¹ Madsen, *Another Kind of Justice*, 136.

was seen as a classic case of equality rights being denied to certain individuals. However, the decision to prohibit women was justified by military authorities as reflecting “the paramount need of the society to maintain an effective military force for wartime.”²² Furthermore, subscribing to old-school conservative attitudes regarding women as an obstruction to operational effectiveness, the military initially took no visible action, though with outside pressures looming, it could not ignore the issue much longer, and on February 20 1989, an external tribunal ruling forced the military authority to open the military fields to women.²³ A short three years later, the Canadian Armed Forces again heard a cry for justice, this time for the removal of the ban on homosexuals in the military.

Michelle Douglas was forced to quit the armed forces and was ceremonially “trumpeted out” in 1992 after she was “outed” as a lesbian. She challenged the military’s exclusionary policies towards the hiring and promotion of lesbians or gay men, arguing these policies violated the Charter of Rights and Freedoms.²⁴ The Department of National Defence admitted the exclusionary policy was unconstitutional, and paid damages of \$100,000 to Douglas to avoid going to trial. As part of the settlement, the military also granted the order from a Federal Court judge to drop anti-gay discriminatory policies.²⁵ This is the first example in Canadian history where a member of the Canadian Armed Forces fought against discrimination

²² Ronald Arthur McDonald, “Equality Issues in the Canadian Forces under the Canadian Charter of Rights and Freedoms: A Study of the Effect of the Canadian Charter of Rights and Freedoms on Certain Policies of the Canadian Forces,” (L.L.M. thesis, Queen’s University, 1986): 326.

²³ Madsen, *Another Kind of Justice*, 137.

²⁴ Stephen Bindman, “Activist Finds Home at Justice,” *Justice Canada* 2.3 (17 October 2006) <<http://www.justice.gc.ca/en/dept/pub/jc/vol2/no3/index.html>>.

²⁵ Stephen Bindman, “Military admits policy wrong, agrees to welcome gays, lesbians; [Final Edition],” *The Ottawa Citizen* pg. A.1 October 28, 1992 [online] <<http://proquest.umi.com/pqdweb?did=180131211&sid=1&Fmt=3&clientId=18852&ROT=309&VName=POD>> 26 October 2006.

based on sexual orientation and won. Civil and military law in Canada finally supported equal opportunity for all its citizens, although whether military officers shared the same glee as Douglas is debatable. The importance of the Armed Forces as “an operational and combat-ready institution” military officials argued, “always took precedence over the individual.”²⁶ Disappointingly, due to the absence of official publications and manuals helping to explain these reforms, the application of changes remained poorly understood among the ranks of the military, and led to misperception and miseducation. The official authorization and support of homosexuals and women in the military was not entirely met by “old die-hards” and the recent changes seemed to only confirm their impressions “that Canada’s once proud military institutions were suffering a slow death.”²⁷

In spite of the existence of a structured policy against openly gay members of the military before 1992 and potentially persistent homophobic attitudes, thousands of men and women have pursued their aspiration of serving, while no doubt facing difficult psychological, emotional, and social obstacles. It is odd that a national defense organization would turn away thousands of able and devoted individuals willing to risk their lives for their country, solely on the grounds of their sexual preference, or for that matter, any negligible perceived “difference.” Such a policy in Canada was introduced in the early years of the Second World War, when the military was encouraging mass recruitment to help support the war overseas.

²⁶ Madsen, *Another Kind of Justice*, 136.

²⁷ Madsen, *Another Kind of Justice*, 137.

What was life like for a young closeted gay man, immersed into “manly” military culture of “hard drinking, brawling, and womanizing”?²⁸ Those who were interested and pursued serving in the Canadian Armed Forces had various motives to enlist, and the same is true for the gay men who decided to join. Whether one found himself drafted under the National Resources Mobilization Act of June 1940, held strong ethical or political convictions, was in financial need, or even felt he had nothing to lose, gay men like straight men, felt the same pressures to sign up.

In *Open Secrets*, a documentary by the National Film Board, several gay servicemen tell their own stories of joining the Canadian Armed Forces during the Second World War. Henri Di Piero was in his final year as student of architecture at McGill University in 1941, and at that time, there was compulsory weekly military training on the campus, in which he, along with his peers, partook. “Every week we marched up and down in these prickly uniforms, and I think that was a bit of brainwashing, because by the time we graduated we were all ready to volunteer to die for King and Country.”²⁹ This is one method which successfully attracted young recruits to enlist, and although Di Piero in all probability could have avoided any further military involvement, pressure to conform was powerful.

Bert Sutcliffe was another young recruit who found himself in the Armed forces at a young age. His father had been killed in the military, and Sutcliffe enlisted for more personal reasons. “In a sense we had a tradition of service, and, what else would I do? Why wouldn’t I join the army when everybody else was joining the

²⁸ Jeffrey A. Keshen, *Saints, Sinners, and Soldiers: Canada’s Second World War* (Vancouver: UBC Press, 2004) 131.

²⁹ *Open Secrets*, dir. Jose Torrealba, DVD, Nation Film Board of Canada, 2006 [2003].

army?” Again, the military seemed like an attractive and practical option for the future. Still others signed up for the desire to support the cause of the nation.

Ralph Wormraleigh was just one of the thousands of men who decided to join after the defeat of the Allied forces at Dunkirk in 1940. “I was sort of torn between pacifist inclinations and wanting to do something about the war. So I decided to apply for the medical corps. I joined the army when I was 19.” Lastly, some gay men joined the army as a vehicle to flee their old lives or communities at home, in hopes of escaping certain realities that would paralyze their futures. As a young recruit from Hamilton Ontario, “Jim” was relieved to be sent to Camp Borden and ultimately overseas after his enlistment, and he declared that it was “probably the only thing that saved me [from marriage.]” Like many others in his situation, Jim’s discomfort with the period’s prescribed sexual roles was at the heart of his decision to enlist.³⁰

There is an indication that some gay men in the United States had heard from their recruited gay friends that people were being apprehended and punished for sexual activity, and so were told, “don’t go in!”³¹ However, there is also the conviction among some historians that a gay soldier, “having left the constraints of family life and watchful neighbours,” would to their surprise “find that military service gave them opportunities to begin a ‘coming out’ process.”³²

While some homosexual men in the 1930s and 40s knew quite early on in their lives that their sexual interests did not fit into accepted sexual roles, others did not realize or understand their sexual preference until they found themselves in an all-

³⁰ Paul Jackson, *One of the Boys: Homosexuality in the Military during World War II* (Montreal: McGill-Queen’s University Press, 2004) 152.

³¹ Allan Berube, *Coming Out under Fire: The History of Gay Men and Women in World War Two* (New York: The Free Press, 1990) 4.

³² Berube, *Coming Out under Fire*, 6.

male atmosphere. In an environment where heteronormative behaviour was a means to bond and establish “manly” reputations, some men, being inexperienced and young, “desperately sought to lose their virginity to affirm their manhood, to shed embarrassment, or to experience sex before going off to face the uncertainties of war.”³³

Sutcliffe, who had lived with his sisters and mother all his life and was suddenly surrounded in a completely male setting, was only beginning to consider his sexual attraction to men. Wormraleigh describes how, growing up in Waterloo Ontario, he had dated a girl for roughly two years before heading off to Camp Borden: “just going along with social pressures, I had to have a girlfriend like everybody else.”³⁴ It is suggestive from his experience in the military that a cautious and clandestine gay subculture was in full-swing, as he realized in retrospect, “people were making advances to me which I didn’t recognize at the time, and didn’t respond to.”³⁵

It is difficult to know for certain if there was a distinct social atmosphere in the military at mid-century. Research into oral histories, photographs, and secondary accounts reveal mixed and often dissimilar assertions of the overall environment. Some accounts report the dominance of “manly” behaviour and pervasive heterosexual “masculine” culture,³⁶ while others describe a time and place where same-sex activity flourished in dark military cinemas.³⁷ One can presume from this that the assortment in military experience is reflected by the diversity of its personnel.

³³ Keshen, *Saints, Sinners, and Soldiers*, 133.

³⁴ *Open Secrets*

³⁵ *Open Secrets*

³⁶ Keshen, *Saints, Sinners, and Soldiers*, 133.

³⁷ *Open Secrets*

Asked whether military service itself was a hindrance or liberating experience, Sutcliffe quickly asserted that “I would say it was liberating! In that it took me out of my little house down in the east end of Toronto. It moved me into areas with people of all kinds of nationalities, and temperaments, and knowledge, and professional skills. And I got to see the world.”³⁸ It will become evident in this thesis that some men felt liberated, while others were severely oppressed by the military environment.

The historical narrative of gays and lesbians in the military has since been a growing interest to both professional historians and the reading public. Reasons for this interest are of course varied, but much of the curiosity could be attributed to questions concerning the creation of discriminatory policies. When did homosexuality become a “problem”? How did military officials “deal” with homosexuality? How did queer men fare in a likely inhospitable or intolerant homophobic atmosphere? How were their sexual orientations discovered? So it can be seen that a myriad of questions arise concerning homosexuals in the military. Some ground-breaking works that addressed these questions and developed exciting and significant conclusions originated in the 1980s by American historian Allan Berube, and in this decade, by Canadian Paul Jackson. Both historians worked towards uncovering the hidden histories of gay men in the twentieth century military, and with their own focus and drive, arrive at important and pioneering conclusions.

Berube’s exemplary work, *Coming Out under Fire: The History of Gay Men and Women in World War Two*, is one of the first of its kind, and remains a base of reference for this area of historical research. From collecting dozens of oral interviews, letters, papers, and photographs, Berube compiled one of the first

³⁸ *Open Secrets*

historical accounts of homosexuality in the military arena. He contends that the homosexual veterans who had been discharged “undesirably” from the Second World War and had fought to upgrade their discharge status began to fight for justice and equal rights. It is then theorized that these veterans “stretched this political meaning even further, so that coming out became a public statement that one was both gay and proud – the cornerstone of a political movement,”³⁹ and ultimately played a significant role in the gay rights movement.

In his work, Berube describes the overall experience for a gay male soldier in the United States Army by depicting the social processes of “fitting in” with hypermasculine and heteronormative settings of the mid-twentieth century. The peacetime United States Army was quite small compared to its size in the war years. In 1939, military service was unpopular, undesirable and a low-paying occupation; army privates earned half the pay of those men in the Civilian Conservation Corps, and recruits were simply hard to come by. Judges even sentenced young male offenders to army service as punishment.⁴⁰ Things changed in September 1940 when Congress passed the first act of conscription, sending the maximum number of troops into the armed forces. In October of 1940, roughly 16 million Americans registered for service, and it was then that administrators were able to exclude particular minorities without reducing enlistment numbers. These groups of banned individuals included women, ethnic minorities, and homosexuals; all were disqualified from the service as it was felt they would disrupt unit discipline and effectiveness. Furthermore, officials believed that “their integration would turn the military into a

³⁹ Berube, *Coming Out under Fire*, 7.

⁴⁰ Berube, *Coming Out under Fire*, 1.

testing ground for radical social experimentation rather than a strong fighting force.”⁴¹

Coming Out under Fire also focuses on the growing legitimacy of psychiatry, as it became a much more influential power of authority and was used in establishing new screening procedures. Psychiatrists viewed the “homosexual as a personality type unfit for military service and combat,” a perception that remained a determinant in military policy for decades to follow.⁴²

Berube’s work covers a very wide spectrum of history concerning the gay and lesbian experience of World War Two, involving the social integration of gays, gender-inverted “drag” entertainment, and the emerging “war” that began after 1945 for equal rights for gays and lesbians, but mostly he focuses on the military’s unfair treatment of soldiers upon discovery of their sexual preferences and the increased testing of homosexuals. He asserts throughout the book that many patriotic men and women felt betrayed by their government when they were subjected to intense psychological testing, thrown into locked wards with violent psychotics and prisoners of war, and basically treated like the enemy.⁴³ One area of military history that he devotes less attention to is the punishment of gay men and women upon their discovery. Since the majority of Berube’s primary sources rely on interviews, letters, and images, it might have been difficult to accurately report the legal military punishments for those individuals who were caught and disciplined. Concerned mainly with the homophile movements in the post-war years, he neglects the immediate economic and social repercussions of a dishonourable military discharge

⁴¹ Berube, *Coming Out under Fire*, 2.

⁴² Berube, *Coming Out under Fire*, 2.

⁴³ Berube, *Coming Out under Fire*, 211.

upon the individual, which was one of the main weapons used by the military authorities to discourage and eliminate homosexuality in its ranks. Paul Jackson tells a similar story in Canadian history, but with a somewhat different focus and arrives at uniquely Canadian conclusions.

So far in Canada, the only historian to publish any sort of record concerning the presence, conduct, and treatment of gays during the Second World War is Paul Jackson. His book, *One of the Boys: Homosexuality in the Military during World War II* discusses the efforts of military authorities to remove homosexuals from service through anti-homosexual policies designed to put men in front of military tribunals for their perceived “disgraceful conduct.” Jackson used an array of sources, from courts martial proceedings, police reports, and psychiatric evaluations, to wartime art and even numerous interviews with persecuted veterans.

As the major and principal influence to the formulation of my own thesis, Paul Jackson’s study of the history of gay men in the military is very important. He accounts for the Canadian military’s discriminatory policies which made gay soldiers susceptible to and defenseless in the face of military discipline and punishments. He outlines the evolution of surveillance techniques, disciplinary procedures, and extensive regulations, finally questioning why homosexuality was considered such a threat to unit cohesion and morale.⁴⁴

Conforming to the methods of other Canadian social historians, Jackson’s approach to uncovering the hidden history of homosexuals has been to investigate law enforcement records and police reports specific to the military, and transcripts of the courts martial. This special court system determines punishments for members of the

⁴⁴ Jackson, *One of the Boys*, 24.

military subject to military law, which is generally outside the laws of Canada, and tries members of the military for infringements of military discipline. By thoroughly examining the open case files of courts martial proceedings available in the National Archives of Canada, Jackson was able to locate and classify dozens of instances of homosexual regulation, and was ultimately able to put together the organization military policies created to deal with the “problem” of homosexuality.

Jackson carefully defines “homosexuality,” as the “ability (or the potential) to derive pleasure with members of their own sex.”⁴⁵ Like me, he places himself above and outside the theoretical debate of social-construction or essentialism concerning the origins of one’s sexual preference. What Jackson does note is that “whatever the biological underpinnings of sexuality, a historical document must address the cultural factors that influence behaviour.”⁴⁶ Jackson’s treatment of terms to describe homosexuals in *One of the Boys* is “queer,” since “gay” and even “homosexual” were used rarely if at all in mid-century. I will be referring to homosexual men as “homosexual” and “gay,” for the reasons that the term “queer” is not commonly practiced today, but also because it denotes the acceptance and conditioning of the belief that homosexuals are “abnormal” and “sick.”⁴⁷

The use of personal interviews in Jackson’s research, twinned with courts martial records, allowed him to compile a remarkable history of military persecution of homosexuals from 1939 until the end of the Second World War. From 1994 to 2002, Jackson interviewed over 50 veterans willing to discuss their experiences of

⁴⁵ Jackson, *One of the Boys*, 148.

⁴⁶ Jackson, *One of the Boys*, 149.

⁴⁷ Andrew Hutter and David Hodges, *With Downcast Gays: Aspects of Homosexual Self-Oppression* (Toronto: Pink Triangle Press, 1977) 9.

humiliation, persecution, and emotional trauma during their service, as well as others who had been able to conceal their true selves or, to be blunt, had not been caught in the act.

A court martial proceeding would dictate the disciplinary measures to be enacted upon a convicted offender of military law. Such punishment included dismissal from the Armed Forces, dishonourable discharge, discharge with ignominy or cashier and terms of hard labour or detention. All of these penalties had, by and large, dire consequences.

Jackson uses wartime art to demonstrate how some artists, while serving in the military, conceptualized homosexuality within the daily life of the Armed Forces. The drawings and paintings reveal physical intimacy, male nudity, and the ease with which other soldiers accepted these actions. These are meant to help us understand how war artists tried to relate the male body to the bonds they saw forming between men.

Although Jackson uses war art to help support his argument on the prevalence of same-sex activity among male recruits (and while I do not disagree with this statement) he places too much emphasis on the artist's representation as fact. The drawings depict the homosocial bonds and same-sex emotional ties that were established, but Jackson's interpretation of these works could be the product of a gay artist's sexualized depiction of life in an all-male environment. In a nutshell, I do not feel that this war-time art is an overly credible method to study this history.

While most would believe the opposite to be true in a military setting, Jackson's research and interviews have shown there were many instances when peers

as well as high ranking authorities not only turned a blind eye, but did not view homosexual love in a negative way. Jackson states that “while homosexuality had no ideological leg to stand on, not all men judged it negatively,” and that “turning a blind eye was a form of compassion.”⁴⁸ So Jackson reveals on several levels that anti-homosexual attitudes were not as pervasive as is imagined.

Jackson’s work is unique in the field of queer history. Unlike other works concerning the development of gay communities based on geographical circumstances (such as *Gay New York*), Jackson notes that gay soldiers had alternatively “self-identified as gay and created communities based on that social difference.”⁴⁹ Also, in contrast to urban gay communities, homosexual soldiers found romantic and sexual opportunity while on the bases, camps, and prisons which accommodated them.

By and large historians have, whether deliberately or circumstantially, left out any reference to homosexuality or homosexuals in the military, which has only helped shape the image of a single kind of soldier: white, heterosexual, and male. Jackson sums up this point by stating that, “the public has been able to remain comfortable in its belief that queers did not exist among the real men who saved the world from fascism.”⁵⁰ The particular importance of studies such as these, of minority groups and their actions and presence in history, is to display the role that gay men had in everyday and enormous events.

The literature that has been presented in this chapter has an underlying sameness and a unifying theme: the persecution and policing of homosexuality. The

⁴⁸ Jackson, *One of the Boys*, 17.

⁴⁹ Jackson, *One of the Boys*, 147.

⁵⁰ Jackson, *One of the Boys*, 7.

judicial and police regulation of same-sex sexual activity based on moral, religious, and societal “norms,” is evidently something that has been studied in different times and places: pre-confederation Canada, early 20th century Prairie Provinces, major urban centres of North America, and more recently, the Canadian and American armed forces.

Whereas Berube and Jackson have written quite massive histories based on a range of experiences of gay men, this thesis will focus on the short and long term consequences of the application of military law on soldiers accused of homosexual activity. Such disciplinary measures as dishonourable and ignominious discharge, detention, imprisonment and hard labour were indeed severe, some with life-long consequences. A sentence of discharge with ignominy resulted in the forfeit of war service gratuities, medals, awards, and honours, so soldiers would in practice never find work again, at least never with the Crown in any capacity. Detention and hard labour sentences occasionally led to the burgeoning of homosexual activity, since the capture and gathering of alleged homosexuals could produce a supposed “gay Mecca.” Either way, the military court martial had the ability to ruin and end lives, and this thesis will explore the many ways that it effectively did so.

I must note that I will be discussing the experience only of gay men and not lesbians for the reason that there are not very many empirical and quantitative primary sources available. Women were not targeted by courts martial or subjected to psychiatric evaluation in the Canadian military in World War Two based on same-sex acts. There is no doubt that lesbians played an active and necessary role in Canadian wartime efforts, both on the home-front and in the military, but I have

decided to focus solely on the incidents occurring with gay men in Canada. Allan Berube and also John D’Emilio⁵¹ have been more inclusive to the experiences of women in the history of American military persecution, while Jackson has said little on the treatment of lesbians in the Canadian military. He reported that his neglect of the subject was caused by his inability to find lesbians willing to be interviewed for his research.⁵²

This thesis will rely on and submit to court martial reports from the Library and Archives of Canada, of men charged with “disgraceful conduct,” “conduct to the prejudice of good order,” and “attempted sodomy” in their litigation and mitigation proceedings, to discern the reasons for accusations. In the RG-24 area of the National Library, hundreds of microfilms enclose the courts martial records of men in the Second World War, with charges from Absent without Leave (AWL), drunken misconduct, to conduct of the prejudice of good order. The information in these testimonies will demonstrate how the men reacted to the charges and their reported inappropriate behaviour, as well as how they were managed by the military judicial system. An analysis of the sentencing based on their “indecent” sexual activity and how the sentencing affected their lives will also be explored. The aim of this thesis is to present a qualitative summary of military trials and punishments through an analysis of several case studies. Ultimately, these records will demonstrate how military law could weaken, ruin, impoverish, and even end the lives of the men who found themselves sentenced for their perceived or actual homosexual actions.

⁵¹ John D’Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States 1940-1970* (Chicago: The University of Chicago Press, 1983).

⁵² Jackson, *One of the Boys*, 22.

In an overall perspective, this thesis will contribute to queer history and to the study of gays in the military by presenting new research into the immediate social and economic effects of military trial discrimination and punishment on the men, their families, careers, and attitudes after the war.

Chapter 2
Case Studies of Sexual Deviance

*“Visibility is a trap”*⁵³

This chapter is devoted to providing insight into methods of discovery and judicial treatments of homosexual activity among servicemen to illustrate the means by which discriminatory sentences were delivered. To better understand the reality for gay men in the military, it is useful to employ case studies as examples of lived-experiences. Seven separate instances of men accused of partaking in alleged and actual homosexual activity will be explored to demonstrate the range of ways in which gay men were caught and brought to the mercy of courts martial of the Canadian military. Each case was selected to illustrate how trials based on homosexual activity and their resulting sentences were influenced by military rank, age, character, previous allegations, outside support, and obviously the men’s accused actions. Most generally, the subsequent cases aim to demonstrate the anti-homosexual policies and regulations which were established by the military.

The process of locating the primary documents for this thesis began in the Library and Archives of Canada in the RG 24 section of self-serve microfilm reels. This is where Canadian court martial records are held for those individuals who served during the Second World War. However, under Canada’s Privacy Act, personnel files, administrative and medical documents have exclusive accessibility, and are only available to those who can demonstrate proof of an ancestral relationship, or can provide certification that the individual has been dead for longer than twenty years. One Canadian military historian has described the investigative

⁵³ Michel Foucault, *Discipline and Punish: the Birth of the Prison*, translated by Alan Sheridan, (New York: Pantheon Books, 1977) 200.

experience in RG 24 as “panning for gold,”⁵⁴ as there are roughly twenty-thousand court martial proceedings contained in more than three hundred microfilm reels. To find relevant and useable cases, my approach involved scrolling through selected microfilm reels, searching for certain key words, and specific charge section numbers indicating charges based on homosexual activity. Once located, the files were categorized, and I extracted the applicable sections of the proceedings for my research.

Before leaping to the court cases, it is important to discuss and elaborate upon the social climate of the early 1940s within the military with relevance to views toward homosexuals. Exposing the nature and pervasiveness of discourse on the topic of homosexuality within the military ranks is difficult but illuminating. Did people openly discuss sex between men, or the possibility of gays living and fighting with them? Paul Jackson has asserted that while high-ranking officers discussed policies to govern the actions of gay servicemen, lower ranks of soldiers, sailors and airmen used expressive language and slang containing “a built-in bias against homosexual activity.”⁵⁵ This kind of behaviour could be expressed through jovial banter between comrades, but also was used for harmful or threatening intentions. Using derogatory language towards one’s superior officer was regularly an offence punishable by court martial. Remarks such as, “God damned cocksucker,” “I’ll fuck you, you savage,” and “Where is that cocksucking major?” are some of the verbal

⁵⁴ Allan D. English, *The Cream of the Crop: Canadian Aircrew, 1939-1945* (Montreal: McGill-Queen’s University Press, 1996) 218.

⁵⁵ Paul Jackson, *One of the Boys: Homosexuality in the Military during World War II* (Montreal: McGill-Queen’s University Press, 2004) 32.

attacks which actually resulted in some soldiers' court martial charges.⁵⁶ For a gay serviceman, it is quite understandable how hearing heterosexuals insult one another using derogatory names for homosexuals would add to "the stigma and stress of being gay and make gay people feel unwelcome in their own communities."⁵⁷ One gay veteran remembers the "constant talk about homosexuality" within his unit, but considers that "if there were gays among us, our merciless banter about 'queers,' and 'fruits,'" in all probability "kept them permanently in the closet." So to respond to the questions posed earlier, "sex between men was widely invoked every day throughout the ranks" both from heterosexual and homosexual personnel.⁵⁸

The first case to be illustrated in this chapter occurred on April 22, 1943 at Listowel, Ontario, when nineteen-year-old Private Robert Colbert⁵⁹ was discovered by his corporal in a partly naked condition in an upper bunk bed with another private, Christopher Marden. He was brought before District Court Martial in May of the same year to be tried on two charges; one of "disgraceful conduct of an indecent kind" and "conduct to the prejudice of good order and military discipline."⁶⁰

The next case involves Albert Johnson, a married black man and Private of the 4th Canadian Divisional Ordinance Workshop, who had been known for his sexual advances towards fellow servicemen. After a second report of sexual assault, he was tried February 10, 1942 for two charges of "disgraceful conduct." Although his shockingly forward sexual aggression was not tolerable behaviour, the significance of

⁵⁶ Jackson, *One of the Boys*, 32.

⁵⁷ Shawn M. Burn, "Heterosexuals' Use of 'Fag' and 'Queer' to Deride One Another: A Contribution to Heterosexism and Stigma," *Journal of Homosexuality* 12.23 (2000) 4.

⁵⁸ Jackson, *One of the Boys*, 33.

⁵⁹ The names of the men in this thesis have been changed, to respect the individuals and their families, and to protect the confidentiality of their involvement in cases and litigation testimonies.

⁶⁰ Robert Colbert file, Library and Archives of Canada, RG 24 reel T-15583 file H.Q.C. 55-C-559, (28 April 1943).

his ethnicity, the number of witnesses, and previous allegations made about him are noteworthy to his legal treatment, and worth detailed investigation.⁶¹

On three occasions in the summer of 1943, Private Edward Acton of No.42 Company Veterans Guard of Canada was caught performing consensual sexual acts with other military personnel. He was indicted on two charges of “disgraceful conduct,” and one of “conduct to the prejudice of good order,” and was severely reprimanded October 1, 1943 in St. John’s Newfoundland.⁶²

While on duty overseas in April 1944, Private Oliver Ham allegedly attempted to have intercourse with Private L. Mornash. His Court Martial experience differs from many others for two reasons; he willingly admitted to the accusations of his crime, and he was tried under a Field General Court Martial overseas.⁶³

Next, while in his early twenties, Private Marcus Anderson enlisted in September 1939, and was sent overseas the following May to join the Carleton and York Regiment. On July 22, 1944, he was discovered in a severely inebriated state, partaking in homosexual relations with Private M. J. Richard, and was subsequently charged with “disgraceful conduct of an unnatural kind.”⁶⁴ Anderson’s success in the military along with his well-regarded reputation influenced his sentencing in his favour.

Jonathan Joyce, a Private and Acting Sergeant of the West Nova Scotia Regiment has a captivating case because of the steps taken by his peers to disclose his homosexual identity. On the night of June 18, 1940, he attempted to seduce and

⁶¹ Albert Johnson file, LAC, RG 24 reel T-15649 H.Q.C. 55-J-100 (25 February, 1942).

⁶² Edward Acton file, LAC, RG 24 reel T-15546 H.Q.C. 55-A-216 (11 November, 1943).

⁶³ Oliver Ham file, LAC, RG 24 reel T-15648 file 55-H-1362 (20 April, 1944).

⁶⁴ Marcus Anderson file, LAC, RG 24 reel T-15552 file 55-A-942 (12 September, 1944).

perform fellatio upon several other men in his barracks, and when it became clear that no sexual favours would ensue and that instead he would be reported in the morning, he tried without success to bribe the men. Joyce was charged with two accounts of indecency on July 12, 1940 and was found guilty. This instance of entrapment is unique, and particularly out of the ordinary because it witnesses various servicemen deliberately pushing the limits of Joyce's sexuality. What is more, the court martial proceedings present very interesting details of the lengths to which these men went to secure Joyce's guilt in the matter, placing questionable emphasis on their own sexual orientations.⁶⁵

Elmer Carr was a Lieutenant Quartermaster of the No.2 Engineer Service and Works Company of the Royal Canadian Engineers, as well as an Officer placed on Active Service. On April 20 1943, Carr entered a public lavatory in the Robert Simpson Company store in Toronto, and soon encountered an airman of the Royal Canadian Air Force, Special Reserve. The two men were discovered by a store employee in a single-compartment toilet with the airman's head "near the genital organs" of Carr, who was holding his trousers open. This trial's litigation and use of witnesses and evidence is the most extensive of the cases presented, and is interesting chiefly because of its unconventional occurrence, eccentric trial proceedings, and surprising judicial outcomes.⁶⁶

When servicemen were accused of homosexual acts, the court martial trial itself was seen as a severe punishment. These trials tended to produce callous reactions and unsympathetic judgments from both the officers who sat on the tribunal

⁶⁵ Jonathan Joyce file, LAC, RG 24 reel T-15649 H.Q.C. 55-J-89 (12 July, 1940).

⁶⁶ Elmer Carr file, LAC, RG 24 reel T-15583 file C55-C-560, (29 April, 1943).

as well as the defense and prosecution. It was meant to be a humiliating experience, which is still permanently etched in the memory of those queer veterans who endured its scrutiny. The court martial was used to deter others and punish those offenders who defied military law. Paul Jackson's efforts to interview queer veterans led him to an airman who was convicted of "disgraceful conduct of an indecent kind" for having consensual sex with another man in 1943. Even though it had been fifty-seven years since his investigation and trial, "he was unable to discuss the experience" except to assert that: "it was a nightmare." His unwillingness to rehash such a degrading experience demonstrates the severity of trauma that was effectively administered through courtroom discussion of his "unnatural" and "indecent" sexual acts. As with many veterans, the psychological and emotional war wounds never healed, and the repression of these events was necessary in order to carry on in civil life. Nevertheless, unlike most heterosexual Canadian veterans, the pain caused was not from the enemy, "but by the state he had sworn to protect."⁶⁷ It is important, then, to summarize and elaborate on the processes involved in the court martial proceeding, as well as to define and clarify the multiple relevant charge sections and their consequences.

Generally, the court martial is a judicial court that determines the punishment and sentence of members of the Canadian military subject to military laws. Its purpose is to try members of the military for breaches of military discipline. In the 1940s there were four categories of Courts Martial: District, General, Field, and Militia.

⁶⁷ Jackson, *One of the Boys*, 78.

The District Court Martial was the most commonly used and was composed of no fewer than three officers sitting in judgment, each of whom had to have held a commission for no less than two years. During complicated or doubtful cases, District Courts Martial would have consisted of five officers. This level of court could not try officers, nor could it impose severe punishments or sentences. Its authority extended only to enlisted personnel, privates, non-commissioned officers, or a warrant officer.⁶⁸

Next, the General Courts Martial were elevated in importance since they could try both officers and enlisted personnel, although this type was generally only employed for serious offences. Like its jurisdiction, its sentencing powers were unlimited and included death and penal servitude, as well as lesser punishments distributed by District Court Martial.⁶⁹

A rarer type of Court Martial, the Field General, “is not frequently encountered in practice.” The purpose of its continuation was to try offences committed overseas against the foreign civilian population, or more commonly, for offences committed while on active service in circumstances when a quick trial was needed, and when it was not practical to try the offence through a regular General or District Court Martial. A Field General Court Martial could try anyone under the jurisdiction of military law who was under the command of a convening officer.⁷⁰

The last class of military trial was the Militia General Court Martial, which had the jurisdiction to “try persons not otherwise subject to military law.” This

⁶⁸ Burrell M. Singer, and Lieut.-Colonel R.J.S. Langford, *Handbook of Canadian Military Law* (Toronto: The Copp Clark Company Limited, 1941) 72.

⁶⁹ Singer & Langford, *Handbook of Canadian Military Law*, 76.

⁷⁰ Singer & Langford, *Handbook of Canadian Military Law*, 76-77.

usually pertained to Canadian civilians and foreigners who acted violently towards the crown.⁷¹ There are no cases of this structure of trial used in this thesis, as they would rarely or never have been utilized relating to crimes of sexual indecency for servicemen.

Like other types of legal codes, military law and its legislation is all-embracing in coverage and intricate in its use of language. Minute detail is given to the most extreme particulars of laws, and it is evident that almost every area of illegal activity is accounted for. In the case of homosexual activity, the crime was originally lumped together with bestiality and other irregular and deviant sexual acts. It is interesting that although the military found ways to police and sentence punishments for same-sex activity, there is no specific mention or terms-used for “homosexuality,” “queer,” or “gay,” in any of the court martial proceedings or military laws. While it could be argued that this kind of slang and terminology was not popularly used, the fact that no label was given is intriguing. The term “sodomy” is applied in one charge that specified, “When on Active Service, committing a civil offence, that is to say attempted sodomy”⁷² but otherwise, any kind of direct reference is seldom observed. This can be understood as a means for the military to conceal the “shameful secret” that homosexuals were present within the ranks of the armed forces. The military’s repression of homosexuality began long before the Second World War; “Canada entered the war with the legal machinery in place to combat sex between men.”⁷³ It is now imperative to discuss the forms of legal artillery loaded in

⁷¹ Singer & Langford, *Handbook of Canadian Military Law*, 78.

⁷² Oliver Ham file, Charge Sheet.

⁷³ Jackson, *One of the Boys*, 79.

constant readiness for battle against the “sexual abnormalities” which were evidently present in all ranks of the military body.⁷⁴

Each branch of the Canadian military was subject to the corresponding judicial provisions: the Naval Discipline Act, the Air Force Act, or the Army Act. The Army Act was endorsed originally by the British Parliament in 1881 and was compiled of offences which were punishable by court martial. It specified the appropriate and acceptable punishment for each offence. All of the seven cases illustrated in this chapter were tried under the crimes officiated by the Army Act, since every serviceman was a combatant with the Canadian Army. There are a range of crimes included in this Act, but the overwhelming majority of the offences relate to breaching discipline, the military’s concern being that failure to comply with disciplinary measures would have “compromised the ability of the army to prosecute the war.”⁷⁵ Some examples of this breach of discipline include attempting suicide, neglecting medical treatment, or willfully harming oneself rendering one’s body unfit for service, and these matters were sometimes harshly punished.

Relating to this idea of compromising war aims and breaching discipline, the United States military faced the unique dilemma following the Second World War of heterosexual men claiming to be gay in the effort of being removed from service. Until 1974, the United States maintained a draft policy, often resulting in some servicemen being enlisted against their will. Since homosexual behaviour was viewed by military authorities as both detrimental to military effectiveness and a sign

⁷⁴ Gary Kinsman, “‘Character Weaknesses’ and ‘Fruit Machines’: Towards an Analysis of the Anti-Homosexual Security Campaign in the Canadian Civil Service,” *Journal of Canadian Labour Studies* 35 (Spring 1995): 133.

⁷⁵ Jackson, *One of the Boys*, 80.

of psychological illness, if a soldier claimed to be gay, the military would thoroughly investigate his sexual history. Men who were discontented as soldiers recognized and understood the significance and delinquency that homosexuality symbolized, and used this claim to their advantage. In the late 1960s an article on this topic was published, and it outlines some of the details of the process, stating that the military's investigation into one's sexual history would take several weeks. Basically if the inductee could prove that he was neither heterosexual nor homosexual, with insufficient evidence, he was "free to go"⁷⁶ from military service, often with an honourable discharge. It can be presumed that if a soldier's claim was found to be untruthful, then he would have been punished for disrupting his service and breaching military discipline. This activity did not occur in the Canadian military in any branch, largely because Canada has interminably maintained a volunteer recruitment policy.

In the Canadian military, there were five sections of the Army Act which directly or loosely related to the alleged or genuine "crime" of homosexuality: sections 45, 16, 18 (subsection) 5, 41 and 40. Section 45 of the Army Act declared every person subject to the act: "If he shall be guilty of Sodomy with Man or Beast he shall suffer penal Servitude" and "If he shall be guilty of indecent Assault he shall suffer Penal Servitude or such other Punishment as is herein-after mentioned." It was felt that penal servitude (confinement within a prison) was almost as stern a punishment as death, although Jackson's research of the general outcomes of such charges reveals that the punishments for indecent assault of this nature resulted in

⁷⁶ Name Withheld, "How Faked Faggotry Can Lead To Your Honorable Discharge," *The Realist* 76 (August, 1967): 12.

imprisonment followed by dismissal from His Majesty's Service.⁷⁷ There will be no cases of men charged with Section 45 in this case study, simply because it was not one which was present in my research findings.

Section 16 was a charge which would have been used in various circumstances, but was adopted on many occasions to refer to "unnatural" or questionable behaviour. It was laid against one who "behaves in a scandalous manner, unbecoming the character of an officer and a gentleman" and this description could certainly lend itself to countless types of activity, though "scandalous" behaviour could be of a military or social premise. This charge of "Disgraceful Conduct" was applicable only to officers, and was punishable "upon conviction by Court Martial, (to) be cashiered."⁷⁸ To be "cashiered" was to be discharged in disgrace from the force. Once an officer was cashiered, they lost "various rights of citizenship for life, including the eligibility to work in any capacity for the crown."⁷⁹

Next, the most frequent charge for sex between men was Section 18(5), to which all ranks were subjected. This charge was defined as "Every person subject to military law who commits any of the following offences; that is to say," "disgraceful conduct of a cruel, indecent or unnatural kind."⁸⁰ This charge did not directly imply homosexual acts, but in practice, was most generally applied to such accusations. Jackson's meticulous research into the quantitative aspects of these charges reveals that in practice "forty percent of the charges laid under Section 18(5) referred to fraud, two percent to cruelty, one percent to heterosexual indecent assault, and fifty-

⁷⁷ Jackson, *One of the Boys*, 80.

⁷⁸ Singer & Langford, *Handbook of Canadian Military Law*, 240.

⁷⁹ Jackson, *One of the Boys*, 80-81.

⁸⁰ Singer & Langford, *Handbook of Canadian Military Law*, 241.

five percent to homosexual acts.” Evidently, this charge was overwhelmingly applied in cases of consensual homosexual acts, and the men convicted of this charge were liable to serve prison sentences occasionally with hard labour.⁸¹

Furthermore, Section 41 of the Army and Air Force Act was understood as a loophole through which civil laws were imposed and prosecuted with the Court Martial. Any crime under the Criminal Code of Canada if committed by a member of the military, while under military law could be tried under Section 41. The rate of Section 41 charges relating to homosexuality is relatively low, and my research supports this conclusion. There is only one case in this thesis where a soldier was charged under Section 41, and this was likely because the offence took place while on Active Service in Italy.

The final charge under Section 40 was regularly utilized as an alternative charge in cases of homosexual activity. Under this section, an Officer “guilty of any act, conduct, disorder, or neglect to the prejudice of good order and military discipline”⁸² could, in the worst case scenario, be cashiered. For a soldier or airman, the punishment could be as dire as imprisonment with hard labour. An example, unrelated to sexuality, is described by the *Handbook of Military Law* which states that:

Any Officer or Soldier, who, when in the presence of the enemy, displays a white flag or other symbol in anticipation or in token of surrender, will be tried by a district court martial. In cases where the evidence is not sufficient to justify the charge under sections 4 or 5 of the Army Act, the charge will be laid under Section 40 of that Act.⁸³

⁸¹ Jackson, *One of the Boys*, 81.

⁸² Jackson, *One of the Boys*, 84.

⁸³ Singer & Langford, *Handbook of Canadian Military Law*, 71.

Alternative charges were used for a majority of the charges consulted in researching this thesis, and Section 40 was commonly employed because of its ambiguity of meaning. In every case encountered throughout my research, men were charged with at least one section of the Army Act, but the bulk of the cases had additional alternative charges. These allowed courts more opportunity to sentence accused servicemen by “specifying different particulars or offering another offence” in situations where “the evidence did not support the original offence.”⁸⁴ A court could not convict an accused for both charges, but could find the accused guilty of an alternative charge. The use of alternative charges is explained by the *Handbook of Canadian Military Law* as an “omnibus Section enacted, therefore, to enable charges to be brought for all offences, (not civil offences) which are not made substantive offences by any other section of the Army Act.” It is later explained that “it is neither possible nor practical to make provisions for the punishment of every specific act, conduct, disorder or neglect to the prejudice of good order and military discipline.”⁸⁵ As will subsequently be explored, alternative charges were as apt to secure a guilty verdict for men charged for homosexual involvement, as was their primary charge.

The following case studies do not follow a chronological pattern but are arranged in categories of charges to illustrate some patterns of military law and punishment, and are meant to express the various occurrences and degree of punishments of court martial proceedings.

Robert Colbert, a nineteen-year-old private, was charged under Section 18(5) (disgraceful conduct of an indecent or unnatural kind) as well as Section 40 as an

⁸⁴ Jackson, *One of the Boys*, 85.

⁸⁵ Singer & Langford, *Handbook of Canadian Military Law*, 207-208.

alternative charge for his questionable actions with Private Chris Marden on the night of April 22, 1943. The events of the evening began at a dance on the military base at Listowel, Ontario, attended by both males and females. During his questioning by District Court Martial, Colbert claimed that he was drinking alcohol and that he left the dance with a girlfriend after being there a short time, then proceeded down a road and through some fields, “had a little intercourse” and then returned to the dance. After the dance had ended, Colbert spent about fifteen minutes in the Listowel restaurant, *Diana Sweets* with Private Marden. Colbert asked Marden if he would share his bed, since it was so late and Colbert did not think it was possible to get into his own barracks without a late pass. Marden said “he guessed so” as it was not the first time this had happened, so the two men returned to Marden’s barracks to retire for the evening. At approximately 0100 hours, Private acting Corporal Ralph Folger, who was responsible for the Officer’s Mess, found the two men “lying in the upper bunk or bed, in the rear of the Officers quarters.” When asked to tell the court in his own language and in fairly complete detail everything he saw at that time, Folger responded:

A. 17 I entered the room and turned the light on; Pte Colbert was lying in the upper bunk, in the front of the bunk on his left side, with his head to the south, with Pte Marden’s arms around his middle part, just under the ribs.

Q. 18 Where was Pte Marden?

A. 18 He was behind him; lying behind him with both arms around him. He was wearing an army issue cotton undershirt, and the blanket was up around his hips. I immediately ordered them out of bed.

Q. 19 What, if anything else, did you observe before...?

A. 19 Pte Marden was lying with both arms around his middle... and Pte Marden’s hips were moving back and forward.⁸⁶

⁸⁶ Robert Colbert file, Proceedings on Plea of Not Guilty, C-3.

The defense questioned Folger regarding the height of the bunk, as well as Folger's distance from the accused, and the possibility that his memory and ability to see could be mistaken. The officer defending Colbert stated that "the accused admits being in bed with this other soldier; the other soldier was naked. According to the evidence of the accused and Pte Marden, Pte Marden did not have his arms about Pte Colbert's body." Furthermore, Colbert's declaration that he had had heterosexual intercourse earlier in the evening provided the indication to the court that he practiced "normal sexual attitudes."⁸⁷ The defense argued that since the accused was only nineteen years of age, "it is evident that it might quite easily happen that in the period he has been in the army he is ignorant to the fact that it is not right for one soldier to be in bed with another."⁸⁸ Whether or not the two recruits were moving their hips and bodies, or one's arms were around the waist of the other, these testimonies reveal the harshness and stern views against "abnormal" sexuality activity, staunchly homophobic fears held by military authorities and the fear of sex between men. On June 2 1943, Albert Colbert was sentenced to sixty days of detention under the alternative charge of "Conduct to the Prejudice of Good Order and military Discipline" for his deviant behaviour of sleeping with a partly naked man.

The next case involves Private Albert Johnson, whose multiple persistent sexual advances led to two charges under Section 18(5) (disgraceful conduct of indecent or unnatural kind), both tried at Debert, Nova Scotia on February 10, 1942. The first accusation arose from the events on January 18, 1942 at Debert Military Camp, whereby Private D.L. MacDonald awoke at 0130 hours to find Johnson sitting

⁸⁷ Robert Colbert file, Closing Address by Defending Officer, 1.

⁸⁸ Robert Colbert file, Closing Address by Defending Officer, 2.

on his bunk, with his mouth on MacDonald's penis. Johnson was promptly shoved away and told by MacDonald "to get the Hell out of my bed." According to MacDonald, Johnson appeared sober, and he never made any further efforts to molest MacDonald that night or ever again.⁸⁹ The second charge under Section 18(5) stemmed from an earlier unwanted sexual advance by Johnson on Private F.E. Oscar. On this occasion, December 13, 1941, at 2300 hours in Hut 11 where they both slept, F.E. Oscar was awakened by the accused, who was partially on his bed, and had his hand on Oscar's penis. After being pushed off the bed, Johnson said "You don't like me, do you," Oscar replied "no." At this time, Johnson's activity was noticed by acting Corporal Sergeant W. Patton, who told Oscar that he would report the incident to the Sergeant Major in the morning. These events were witnessed by several other servicemen awake at the time of the attempted sexual assault, and were presented as witnesses for the prosecution in the District Court Martial. One of these witnesses, Private Campbell, claimed to have been molested earlier by Johnson, but had never reported the incident because there was no proof or witness. When Campbell was questioned by the prosecution, inquiries were made to the extent that he was to specify how he knew Johnson was the individual who had assaulted Oscar.

Q.77 Is there any way that you can make clear to the Court that it was Pte Johnson you saw that night?

A.77 I am sure of it. I saw him very plainly coming down the hut.

Q.78 Could you tell from Pte Johnson's colour?

A.78 Yes. The white underwear seemed a lot whiter.

The prosecution asked next, "Are you afraid of Pte Johnson yourself?" to which Campbell answered, "Yes sir."⁹⁰ Also, the same evening that Oscar was approached,

⁸⁹ Albert Johnson file, Proceedings on Plea of Not Guilty, C-1.

⁹⁰ Albert Johnson file, Proceedings on Plea of Not Guilty, C-4.

Johnson had also been to two other men's beds, which resulted in them laughing at him. These men claimed to have been drinking hefty amounts of alcohol with Johnson earlier in the evening, and could attest to a probability of his inebriated state, which was contested by other witnesses.

During the testimony of the accused, Johnson declared that he had no memory of either event, and could only say that he was too drunk to remember any details:

Q.196 Do you remember leaving the canteen that night?

A.196 No I don't remember when I left or how I left.

Q.197 Do you remember returning to the hut?

A.197 Yes I returned to the hut but don't know how I got in sir.

Q.198 Do you remember going to bed?

A.198 No sir. I don't remember that.⁹¹

As a result of the multiple witnesses presented to account for Johnson's actions on the second charge, but the unavailability of any proof for the first, Johnson was found guilty on the second charge, and sentenced to sixty days detention. His marital status and claim that his wife would be giving birth to his child in the coming April no doubt contributed to the lenience of the court; we can only speculate what role his ethnicity as an African-Canadian played in his trial proceeding and the efforts to produce a guilty sentence.

The next case that will be explored surrounds the actions of Edward Acton, a sixty-two-year-old Private of No.42 Company Veterans Guard of Canada stationed in St. John's Newfoundland. Acton faced two charges under Section 18(5) and one charge of Section 40, each a separate incident. The first charge related to Acton's involvement with another Private, Henry Drummer of the same Veterans Company, in July 1943. The charge form outlines that Acton permitted Drummer, "to take in

⁹¹ Albert Johnson file, Testimony of the Accused, Cross-Examination of the Witness.

his mouth and suck the penis of the said” Private Acton. This action was reportedly witnessed by another soldier, Private Reid, in which he watched the two accused men for six minutes through a crack of a blackout shutter. This charge was largely discredited as a result of Reid’s questionable testimony, the impossibility of his story, and by the Defense’s belief that “these acts as witnessed by Pte Reid are more or less active imagination on his part.”⁹² Yet it is quite probable that Acton and Drummer were in fact fooling around, since Drummer was the other man involved in Acton’s third charge.

The second charge involved Acton and a different man, Private T. Miller of the Royal Rifles of Canada, wherein Acton reportedly “took in his hand the penis of Pte T. Miller.” This incident took place while both men claimed to have been drinking, and in the Defending Officer’s closing address, he stated that [sic] “it could easily have been the act of a drunken man to find himself holding the penis of the man above him (to) steady himself.”⁹³ It is not entirely clear what the Defense meant by this, but he seems to have felt that this behaviour was commonplace or at least, “acceptable” for men who were drinking heavily and quite intoxicated.

The final accusation, charged under Section 40, occurred in June 1943 in the Veterans Guard barrack after lights out. Acton, clad only in his underwear, got into bed with Private Drummer “in such a position that the head of each was close and approximately opposite the privates of the other with a blanket covering all but the feet and legs of each and permitted a sucking sound to issue from under the

⁹² Edward Acton file, Address by the Defending Officer.

⁹³ Edward Acton file, Address by the Defending Officer.

blanket.”⁹⁴ The insufficient and contradictory witness evidence of the first and third charge did not hold up, and Acton was found guilty only for the second charge. His intoxicated incident with Private T. Miller was punished by imprisonment with hard labour, and discharge with ignominy.⁹⁵ This sentence was a very serious matter with extremely solemn repercussions. An ignominious discharge excluded veterans from employment by the Crown “in any capacity.”⁹⁶ These ramifications will be elaborated upon in the third chapter.

The case of Edward Acton is especially interesting for the reason that the Defense invited a Medical Officer to stand witness. The purpose of this was an attempt to comprehend the medical or psychological nature of Acton’s “perversion” and sexual attraction to younger men. The proceedings reveal the uninformed attitudes and naivety held by military authorities and society alike towards homosexuality. The prosecution and defense attempted to establish the perverted nature of Acton’s identity. The struggle for understanding is pronounced, and the educated oration of the Medical Officer, while not far off from our contemporary views of homosexuality, were still relatively uninformed and backwards. Although the Officer’s conviction held that homosexuality was not out of the ordinary, he displays predictable terminology that homosexuals conform to ways of “sexual perversions.”⁹⁷ Further investigation into the details of this medical authority will also be addressed in the third chapter.

⁹⁴ Edward Acton file, Charge Sheet.

⁹⁵ Edward Acton file, Memorandum of District Court-Martial.

⁹⁶ Jackson, *One of the Boys*, 63.

⁹⁷ Edward Acton file, Second Witness For the Defense, D5.

The fourth case study focuses on the account of 48th Highlander Private Oliver Ham, who was tried by Field General Court Martial for his “attempted sodomy” while on Active Service in Italy. Ham’s case is the only charge under Section 41 in this thesis, and unfortunately his file is unexpectedly brief.

While in the San Vito rest area at approximately 0030 hours on February 21 1944, Private Mattson and Lieutenant M.H. Clarke were talking to one another in the kitchen when they overheard groans coming from another part of the house. Lieutenant Clarke went to investigate, first venturing to a bedroom nearby finding nothing, and then investigated the room adjoining the kitchen. As the first witness for the prosecution, Lieutenant Clarke duly swore that,

By the light of my flashlight I saw Pte Ham laying face downward. I walked over and kicked his foot, he immediately rolled over on his right side and at the same time tucked his penis in the front of his trousers, when he rolled over, it exposed the bare buttocks of Pte Mornash.⁹⁸

Immediately upon this discovery, Clarke called in Private Mattson from the kitchen and instructed him to call another sergeant into the room. After separating Ham and Mornash, Clarke asked the nude Ham if he knew what he had just been doing, or what had just been done to him. He also asked if Ham knew and understood what it would mean and what would happen to him. To both questions Ham answered, “Yes sir.” Again during his Field General Court Martial, upon being read the charge against him, Ham was asked, “Are you guilty or not guilty of the charge against you?” Ham responded, “Guilty.”⁹⁹

⁹⁸ Oliver Ham file, Summary of Evidence.

⁹⁹ Oliver Ham file, Summary of Evidence.

This case demonstrates of the humiliation which accused gay soldiers experienced. While most homosexual servicemen blamed their guilt on the influence of alcohol or merely played dumb to the evidence presented against them, some unlucky men were simply caught in the act of lust or love, and were forced to face the consequences. Private Oliver Ham was first discharged with ignominy from His Majesty's service, and sentenced to suffer penal servitude for the term of three years.

Private Marcus Anderson, like Private Ham, was also accused of "disgraceful conduct" when on Active Service overseas. A soldier of the Special Employment Company of the Canadian Army, he was found on July 22 1944 partaking in "an act of gross indecency with Pte M.J. Richard" in a severely intoxicated state. The two servicemen who discovered Anderson having sex with Richard, Privates Claremont and McKay, relayed their detailed accounts of the evening at Anderson's trial. At approximately 2314 hours, Claremont and McKay were returning to their tents from a show at the Knights of Columbus grounds when they heard groaning nearby. Claremont approached the area where it was coming from and lit a match, finding the accused on top of Private Richard with a blanket over them. Claremont stated that "the movements of the blanket strongly indicated that unnatural intercourse was taking place." Richard told the men to "put that light out" and they did and walked away. The two witnesses discussed their plan of action and decided to report the two soldiers to their Duty Officer. Claremont's testimony concluded with the following:

The Regimental Provost (R.P.) talked to them in French and Pte Anderson got up, pulling his shorts up, which were down to his knees. We then reported to the Duty Officer and the R.P asked what should be done. The Duty Officer answered, "Put them in the Guard Room." Both men were under the influence of liquor.¹⁰⁰

¹⁰⁰ Marcus Anderson file, Summary of Evidence.

By these witness testimonies, it was quite apparent that the two men were in fact behaving in a sexual manner with each other, and that they were rather inebriated. In summing up the trial of Private Anderson, the Judge Advocate (J.A.) utilized a unique and strategic tactic to help save him.¹⁰¹

It is a principle of English Law that drunkenness is no excuse for crime. But where intention is of the essence of the offence, drunkenness may justify a court-martial in awarding a less punishment than the offence would otherwise have deserved or reduce the offence to one of a less serious character.¹⁰²

The J.A. used Anderson's intoxicated state and frame of mind as a mitigating factor, arguing that Anderson had no intent to commit this offence under the influence of alcohol.¹⁰³

Temporary intoxication (from liquor or drugs) – as distinct from mental disease, which alcoholism, etc may bring on – is not (if voluntary) in itself any excuse for crime; but evidence of drunkenness which rendered the accused incapable of forming the specific intent essential to constitute the crime must be taken into consideration.¹⁰⁴

Overall, the attempts to normalize or explain Anderson's drunken activity were extensive when compared to most other cases, but his sentencing is vague and it is only clear from his file that he was sentenced to a term of detention as well as "heavy punishment."¹⁰⁵

Another method whereby homosexual servicemen were discovered, though its occurrence was probably quite seldom, was entrapment by fellow soldiers. The case of Jonathan Joyce is an example, and the court martial proceedings for his trial take

¹⁰¹ The Judge Advocate employed the defense of drunkenness from the *Manual of Military Law* and invited the Court to refer to page twenty-five, paragraph forty-eight for the paragraph cited.

¹⁰² Marcus Anderson file, Summing Up by Judge Advocate.

¹⁰³ The Judge Advocate subsequently made reference to page 106, paragraph nine of the *Manual of Military Law*.

¹⁰⁴ Marcus Anderson file, Summing Up by Judge Advocate.

¹⁰⁵ Marcus Anderson file, Charge Sheet.

on a seemingly contradictory and hypocritical character. He was charged under Sections 18(5) and 40 as an alternative charge. Joyce was a private and acting sergeant of the West Nova Scotia Regiment, and soldier of the Canadian Active Service Force. While stationed at Guillemont Barracks in the County of Hants, England, on June 18 1940, around 2245 hours, Joyce was met by three of his colleagues on the side of the road en route to his billets; Joyce was leaning against a tree with his head down. The three men, Privates Skillen, Vale, and Waltz, approached Joyce and found that he needed help to return to his bed because he was too drunk to walk there on his own. Sergeant Joyce said to Private Skillen, “come on down to my room with me” and Skillen encouraged the two other men to join him, “just to see what Sergeant Joyce would do.”¹⁰⁶ The four men continued to Joyce’s room, and when they arrived, everyone entered and Joyce locked the door. He said that whoever stayed with him “would be given a good time.” He also stated that he would “blow” the three men if they “would keep it in the dark.” The details of subsequent events are imprecise in terms of a uniform story by the witnesses, but the commonality of the three is that Joyce took Skillen’s penis out of his trousers and touched it with his lips, and at that moment, Skillen pushed him away and said “That is all I wanted to find out, just to see what you would do.” At that point, Joyce offered the men ten shillings to keep it to themselves, and that he would give them each another ten later-on. The men told him they did not want his money, and that they would report him in the morning.¹⁰⁷ Joyce was sentenced to six months imprisonment at Wandsworth in south-west London.

¹⁰⁶ Jonathan Joyce file, 3rd Witness for the Prosecution

¹⁰⁷ Jonathan Joyce file, Summary of Evidence, 1-3.

This case is bothersome, not only because Joyce's guilt depended on the deliberate efforts of others to disclose his sexual preference, but also because Skillen's own strangely homoerotic acts went unnoticed by the Court and by the other witnesses at the time it occurred. Private Waltz, the third witness for the prosecution testified that Joyce "started fooling around Pte Skillen's crotch, Pte Skillen never said anything but let him go so he pulled Pte Skillen over towards him and he moved his head towards Pte Skillen's penis."¹⁰⁸ Would not Skillen's compliance with such "disgraceful conduct" be contradictory to military laws? The point here is not that every homosexual deserves to be punished, but it should be noted that Skillen's actions were comparatively as "guilty" as Joyce's, considering the number of cases mentioned where alcohol was taken to be the primary agent causing the accused to act that way. Joyce's sentencing, and the manner of his treatment in detention is will be explored in the following chapter.

The final case study to be explored in this chapter is the trial of Elmer Carr, the Lieutenant Quartermaster of the No.2 Engineer Service and Works Company, and Officer of the Canadian Army. His case is certainly the most peculiar, both in its accusation as well as its sentencing. Carr was charged under three sections of the Army Act, 18(5), 16, and 40, and was tried by General Court Martial. The incident occurred on April 20 1943, in a public lavatory of the Robert Simpson Company store in Toronto.

Carr was seen entering the men's washroom by Mr. Hewitt, an employee of the Company store, and shortly after witnessed Dennis Soone-Young, a Canadian of Chinese-descent from the Royal Canadian Air Force, also enter the washroom.

¹⁰⁸ Jonathan Joyce file, 3rd Witness for the Prosecution, 14.

Hewitt mentioned to Harry Wilcox, the store's manager, that the two men had entered the bathroom, and Wilcox promptly entered the lavatory and stooped down to look under the toilet-doors. He immediately saw two pairs of feet, one facing west and the other facing east. Next, Wilcox went to the toilet to the right of the one occupied, got up on the seat, and looked over the partition into the toilet where the two men were.

As the fifth witness for the prosecution, Wilcox testified to what he encountered:

A.647 I saw two men, one in khaki bent down with his back to the west wall of the lavatory and a man in the uniform of the Royal Air Force, he had his back to me, his back to the east partition and when I looked I saw the soldier in the khaki uniform looking down and after a second or two he looked up.

Q.648 What was going on in there, if anything?

A.648 The man in the airforce uniform was standing in a crouched position, stooped over, and his head against the officer's smack or legs.

Wilcox declared that Carr looked up into his face and at that point brushed Soone-Young aside and pulled his pants together, at which point, Wilcox "immediately got down and went to the door and hammered on the door and asked to be admitted."¹⁰⁹ It was then that Soone-Young was apprehended, while Carr briskly left the lavatory and tried to flee from security, but was caught and detained at the stairwell. The two men were taken to the police headquarters downtown for further questioning while the proper military authorities were contacted.

It is not discernable through the testimony whether or not this incident was premeditated by either Carr or Soone-Young, but under oath Carr claimed to have never seen nor met the other man prior to the incident.

The witnesses for this trial were comprised firstly of store employees able to attest to the events involving Carr and the "chinaman" Dennis Soone-Young, and

¹⁰⁹ Elmer Carr file, Proceedings on Plea of Not Guilty.

secondly, Carr's military colleagues, who were asked to demonstrate and attest to his moral and good character. Since Carr was a noncommissioned Officer for twenty six years, he had many acquaintances and colleagues who stood trial to defend his honour as an upright and diligent man. Each witness of military origin attested to enjoyable past experiences they shared, his flawless character, their surprise at learning of the charges, and most of all, the culpable influence of the "chinaman" in the alleged actions of their colleague.

In the closing address of the counsel for the defense, there is mention of Carr's activity as partially the fault of his own poor judgment, but more so the persuasion of Soone-Young.

As I say that I think you will agree that Lieut. Carr's story is accepted in full, that his action in going to investigate that Chinaman and then allowing himself to be drawn into that compartment and compromising position, while it was a mistake in judgment no doubt, it was an innocent mistake that an experienced Officer of many years' experience and accustomed to the standard of conduct between officers and NCOs would not have made.¹¹⁰

When the trial finally ended on June 3 1943, Lieutenant Elmer Carr was found guilty on the third charge, under Section 40 (conduct to the prejudice of good order and military discipline) for his being in a single-compartment public toilet with Dennis Soone-Young. He was sentenced to detention, but as will be explored in the next chapter, complications arose, and several weeks after his trial, Carr's sentence was reduced, and all charges against him were dropped.

The purpose of these case studies is to illuminate the diverse charges and repercussions which gay servicemen experienced if caught while engaged in criminal sexual activity with other men. Though the entire process of rooting out gays in the

¹¹⁰ Elmer Carr file, Closing Address of Counsel for the Defense.

military is now viewed as shocking, inhumane, and cruel, a comparison of the circumstances between the cases' results reveals a level of inequality in terms of sentencing and punishments. While some men got off of worse "crimes" because of their connections, others had to suffer heavier punishments because of their lack of agency or mere bad luck in obtaining a better sentence.

It is important in conclusion to highlight the commonalities and important details of the case study findings. The involvement of alcohol in the majority of the cases is quite obvious, and it is evident that most of these instances presumably provoked inhibited sexual desires, which might have been uncontrollable or invited under the influence of alcohol. In five of the seven cases presented, alcohol was blamed as the causal factor in the actions of the accused.

In terms of court martial trials, four of the seven were District Courts Martial, two were Field District Courts Martial, and one case was tried by General Court Martial. The difference in these court structures merely reflects the military rank of the accused as well as the geographical circumstances regarding their alleged activity.

Another interesting point that is drawn from these case studies is that only two of the men accused, Oliver Ham and Jonathan Joyce, admitted guilt to the charges laid against them. However, Jonathan Joyce responded in mitigation that he only pled guilty because it was recommended to him by a military lawyer, who ultimately was never present during his trial. This issue will be explored further in chapter three. Oliver Ham on the other hand felt he had nothing to lose but to tell the truth about his sexual preference.

A main issue that crops up surrounding these cases is the question of the judicial treatment of the partners of the men discussed in these cases. Were active or passive sexual partners treated differently in the eyes of the court martial? Was one sexual role viewed as more deviant than the other? Did they receive equal sentencing? It is difficult to uncover accurate responses to these inquiries, since my research did not uncover any court proceedings of the other party involved. As a result of the sheer quantity of courts martial records, it would be especially difficult and time consuming to locate specific individuals, as metaphorically similar to finding a needle in a haystack. However, it is possible to assume that society and probably the military community alike viewed the passive homosexual role during sex as “worse” or deserving of harsher punishment. The meaning attributed to penetration in heterosexual sex would associate the passive partner as “the woman” and presumably, that this sexual role was more feminine and “queer,” and was additionally strange to the heterosexual norm.

Moreover, in my research it has not been common to encounter the sexual partners having a role in the trials of their accused sex partners. From my findings, the only men who stood witness against accused homosexuals were the soldiers in the entrapment case against Sergeant Jonathan Joyce, as well as the several victims of Private Albert Johnson’s unwanted sexual advances. Otherwise, there were no other cases where partners (presumably involved in consensual sex) testified against their accused sexual partner.

The method of discovery whereby accused servicemen found themselves at the mercy of the court martial varied greatly within the seven case studies. Three

cases were discovered by means of an outside party or of higher military ranking personnel, in which case, reporting the incident was probably mandatory. One man, Private Edward Acton, accused of three separate charges, included discovery by a higher ranking official as well as two incidents reported by privates. Jonathan Joyce, a Sergeant, had the rare experience of being entrapped by lower ranking privates, and then two other files are categorized as reported cases, since they were discovered by servicemen of the same rank, who made the decision to report the “indecent” activity. A final method of discovery known to occur in the United States military, was that some homosexuals would often agree to “provide the names of other homosexual servicemen” when their own sexuality was exposed.¹¹¹

Lastly, there is only one instance of a serviceman “dating” or becoming intimate with another man outside their military rank. The case of Elmer Carr witnessed the sexual encounter of Army and Air Force, as well as officer and airman, which in a way answers the curious question of whether or not this was a prevalent occurrence. Jackson’s research led him to conclude that “men did indeed have dates with each other at all levels of command in all of the services,”¹¹² as he discovered a few examples of officers being known to coax young privates to join them in their sleeping quarters.

As a qualitative account of the experiences of homosexual servicemen brought to trial for their inherent sexual behaviour, this thesis does not aim to make broad claims or assumptions about the activities of homosexuals in the military. However, it can be thought of as a peephole to the various ways in which some men, of different

¹¹¹ Colin J. Williams, and Martin S. Weinberg, “Being Discovered: A Study of Homosexuals in the Military,” *Social Problems* 18.2 (1970): 220.

¹¹² Jackson, *One of the Boys*, 70.

ages, ethnicities, geographical locations, and degrees of pronounced “deviant” sexual orientation were liable to be victims of the Canadian military’s anti-homosexual policies. The following chapter will explore the short and long-term social, financial and personal impacts of these sentences.

Chapter 3
Queer Consequences

*But I,
I never felt so much life
Than tonight
Huddled in the trenches,
Gazing on the battle field,
Our rifles blaze away;
We blaze away.*

*But you,
My brother in arms,
I'd rather I'd lose my limbs
Than let you come to harm.¹¹³*

This final chapter will address and discuss the short- and some of the long-term consequences for the servicemen who were discovered participating in homosexual activity, and subsequently put on trial for their sexually “deviant” behaviour. The objective of this chapter is to demonstrate, through evidence from the case studies and the implementations of military laws, that the effects of the military’s judicial system were exceptionally unfair to homosexual soldiers as well as counterproductive to Canada’s responsibilities in war. Strict and irrational sentences not only placed gay men in temporary hard labour and detention camps, but left lifelong psychological, financial, and social damage, leading some men to commit suicide.

The organization of this chapter will first track the changes in the military’s response to the crime of homosexuality, revealing the shifts of influence and authority over the years of the Second World War. Next, and most importantly, I will review the sentence in each of the seven cases illustrating the harsh consequences that homosexual servicemen faced after their court martial trial.

¹¹³ Colin Meloy, “The Soldiering Life,” *The Decemberists: Her Majesty*, Capitol, 2003.

From 1939 to the end of the Second World War, all three branches of the Canadian Armed Forces practiced progressively intrusive means of acquiring information about their recruits. This activity began with the adoption of fingerprinting, leading to investigative procedures into criminal histories and civilian lives. Men who passed medical examinations were then automatically channeled into basic training without much other assessment or inspection. In September 1941 the Directorate of Personnel Selection (DPS) was founded to assign new recruits to areas where they could be most useful. The process was facilitated with the support of Medical Services in the “handling of personality problems which [...] may adversely affect training, discipline, morale, efficiency and advancement.” The process of deciding a recruit’s station or occupation involved personal interviews to record information about height, weight, physical fitness, appearance, family background, childhood experiences, educational and professional development, and many other questions regarding the individual’s motivation for enlistment. Unlike the United States at the same period, the Canadian military did not directly inquire into the sexual orientation or preference of the applicant upon inspection. Over the course of the Second World War, the number of officers employed with the DPS to conduct these interviews increased from 43 in 1941, to 870 in 1945.¹¹⁴ These statistics are indicative of both the military’s increasing wartime needs, as well as its growing fear of the kind of men who were admitted.

In November 1942, the Royal Canadian Army Medical Corps (RCAMC) was established, and became the first military organization to make mention of

¹¹⁴ Paul Jackson, *One of the Boys: Homosexuality in the Military during World War II* (Montreal: McGill-Queen’s University Press, 2004) 35.

homosexuality as a distinct problem group “requiring special attention.” The RCAMC recognized a system of psychiatric disorders, identifying homosexuals as “psychopathic and a threat to the military.”¹¹⁵ Like the DPS, the RCAMC interviewed recruits in search of these said “psychopathic” characteristics, but few recruits were ever denied entrance under the classification of homosexuality. After 1942, this administrative procedure was rarely applied.

These early efforts were followed by more rigorous screening mechanisms to regulate homosexuality. Nationwide censorship regulations were implemented near the beginning of the war, and were adjusted to satisfy the needs of the Canadian state during times of high alert. Women’s Royal Canadian Naval Service (WRCNS, or more popularly, “Wrens”) examined and censored all outgoing mail from Canadian servicemen, representing a form of “soft policing.” Soon after 1942, military police would assume a more direct and stern approach in the war to eliminate homosexuality in the ranks. Their purpose was to check into and resolve complaints against servicemen; homosexuality and “indecent assault on a male” were crimes which they would have investigated. These highly trained professional investigators were often relentless in their drive to apprehend suspected homosexuals. Special investigators gathered evidence against servicemen, which would accumulate to become the basis of a court martial proceeding. Paul Jackson has noted from his research that “other military authorities sometimes harshly criticized the police for their overzealous and inhumane tactics.”¹¹⁶ As a result of these increased security and policing measures, by 1943 the number of homosexual courts martial cases rose significantly.

¹¹⁵ Jackson, *One of the Boys*, 35.

¹¹⁶ Jackson, *One of the Boys*, 45.

In the eyes of military authorities, the “problem” of homosexual activity was evidently a growing epidemic. Beginning in 1943, several different branches made concerted attempts to both understand, and control homosexuality in the military. The closest military authorities got to a coherent policy, however, was the suggestion to merely discharge suspected gay servicemen on the grounds that their “services [were] no longer required.”¹¹⁷

It was at this time that Medical Services began to assert its authority in such cases, arguing that it was only psychiatry and its practitioners who could determine whether someone was truly a homosexual. In the case of Edward Acton, the sixty-two year old private who was found guilty of “disgraceful conduct of an indecent kind,” the defense called a medical officer to testify at the court martial. When asked by the defending officer if from his medical standpoint he could make any generalizations as to Acton’s mental or physical condition, the medical officer could say only that he was a controlled alcoholic, and had a noticeable absence of female companionship. The defense pushed the Medical professional further, asking, “Are you able to form any opinion as to his sexual inclinations or as to his perverted nature?” The medical officer then was able to begin a very lengthy address as to the specifics of Acton’s probable homosexuality, and concluded with his medical opinion that “the individual is extremely vulnerable” and that a “cure, as far as is known, cannot be obtained with the institution of punishment.”¹¹⁸ This defense tactic was meant to instill sympathy as well as a lighter punishment for Acton. Since men who were unyielding and shameless of their gay identity faced harsher punishment, it is

¹¹⁷ Jackson, *One of the Boys*, 54.

¹¹⁸ Edward Acton file, LAC, RG 24 reel T-15546 H.Q.C. 55-A-216 (11 November, 1943).

interesting that Acton's lawyer took this defense, though his tactic is demonstrable of the rising influence and legitimacy of medicine and psychiatry in court martial proceedings.

This trend, led mostly by the authority of medical officers, was followed by the directive in the spring of 1944 that soldiers in the army would no longer be court-martialled for homosexual offences, with the conviction that homosexuality was both a personal and legal issue. Controversy ensued surrounding the legitimacy of these claims to a higher authority in this subject, and the reinstatement of the court martial in matters concerning homosexuals resumed in August 1944. Paul Jackson believes that "the RCAF doctors did not try to replace the courts, but merely asserted themselves as the authorities" in determining the authenticity of the claims to sexual "abnormalities."¹¹⁹

As has been demonstrated, the sequence of events in controlling sexuality in the military began with fairly harmless DPS interviews to assess the suitability of recruits. It ended in disorganization and arguments over which implementation, punishment or rehabilitation, to employ.

A chief question which remains at the forefront of this thesis concerns the philosophy of the Canadian military's exclusionary decisions. What drove the army to remove homosexual servicemen? Efforts to discourage homosexual activity were implemented through court martial procedures as a means of deterring others, but this truth merely reinforces the primary question of military philosophy: Why?

Jackson argues that the Canadian Forces' justification for the exclusion of homosexual men during the Second World War and up until the 1990s was that their

¹¹⁹ Jackson, *One of the Boys*, 55.

presence threatened unit cohesion.¹²⁰ This was the perceived inability of openly homosexual and heterosexual men to co-exist without affecting the vital bonds which hold a group of soldiers together. Jackson also asserts that the belief in homosexuality as a sin had contributed to the creation of anti-homosexual policies, and this commonly held assumption was held by Canadian Military authorities for the duration, and decades after World War Two.¹²¹ While quite illuminating, this explanation does not help to illustrate the deeper motives of the Canadian Armed Forces; therefore a further goal of this chapter is to address the issue of the military's anti-homosexual philosophy.

But first, the outcomes of the cases discussed in chapter two deserve some closure. What happened to each of the men after their sentencing? It is imperative at this stage to respond to this question.

Each of the seven men had to face consequences for what the military and medical authorities deemed as indecent and unnatural activity. Unfortunately, in some of these cases the court martial proceedings leave only limited and sometimes incomplete details of the scheduled arrangements for guilty sentences. However, there is enough secondary material to fill in the blanks of the probable treatment they would have endured. Confidential military files, which include court martial proceedings, usually contain information that pertain to the soldier's medical examination and history, previous disciplinary cases, relevant mitigating factors relating to their sentence plus any correspondence between the Department of National Defense and military bases. This information is valuable, but can also be

¹²⁰ Paul Jackson, "The Enemy Within the Enemy Within: The Canadian Army and Internment Operations During the Second World War," *Left History* 9.2 (2004): 48.

¹²¹ Jackson, *One of the Boys*, 222.

frustrating to compile in a chronological and coherent sequence, since there are typically breaks in the chain of correspondence. For the most part, these extra documents can expose new truths as to the whereabouts and punishments for the servicemen, which may not have been stated on their final charge sheet.

Men who were sentenced to a number of weeks, months, or years in detention had a variety of possible futures awaiting them. It is difficult to know the precise objectives and practices of Canadian detention centres (now termed Canadian Forces Service Prison and Detention Barracks or, CFSPDB) in wartime Canada. It is reasonably safe to presume that mainstream goals of rehabilitation and of discipline, rather than harsh punishment were practiced. The Department of National Defense asserts that the institution of detention has “traditionally been considered to be a disciplinary form of punishment that emphasizes the objective of returning a member to military service as an effective soldier.” The general purpose of such treatment being, to re-instill “the habit of obedience in a structured, military setting, through a regime of training that emphasizes the institutional values and skills that distinguish [soldier] from other members of society.”¹²² The CFSPDB in Edmonton Alberta was established in 1949 and is now the only service prison remaining in the country. Its facility is distinct and not like civilian jails. Service prisoners “do not have an easy lifestyle; they are busy performing drills, training and receiving counseling from dawn to dusk.”¹²³

¹²² Canadian Department of National Defense, “Canadian Forces Service Prison and Detention Barracks Rehabilitation Policy,” 10 July 2000, Ottawa: Federal Government of Canada, 5 February 2007 <http://www.dnd.ca/hr/instructions/engraph/5000-1_admhrmil_e.asp>.

¹²³ Mary Ellen Lamb, “Prison Rehabilitates Soldiers Gone Astray,” 7 August 2006, Edmonton, AB: Federal Government of Canada, 5 February 2007, <http://www.army.forces.gc.ca/lf/English/6_1_1.asp?id=1190>.

In most circumstances, soldiers who were deemed “unfit” for service by the court martial based on their sexual activity could be sent to Canadian detention barracks either overseas or at home. These centres were the recipients of countless other criminals, including those charged with absence without leave (AWL) or desertion, drunkenness, failure to report venereal disease, disgraceful conduct including embezzlement and damage of property, and numerous other petty charges.¹²⁴

The irony of this matter is twofold. While the military and Medical authorities deemed these soldiers “unfit for service in any capacity,”¹²⁵ they were sending them directly to detention, imprisonment, or hard labour camps, which are themselves forms of military service. Secondly, punishing a gay serviceman for his same-sex desires and actions by placing him among men in an all-male setting could invite further homosexual relations; especially if this was where most of the discovered gay men were being sent. From my own research, five of the seven case studies presented resulted in sentences of detention or hard labour.

The first of these men was Robert Colbert, who was sentenced on May 13 1943 to sixty days of detention because of his “conduct to the prejudice of good order and military discipline” for being caught partly naked in bed with Private Chris Marden. Unfortunately for this study it is unclear where Private Colbert served his detention. Nevertheless, based on the “abnormal” nature his actions as well as a

¹²⁴ Burrell M. Singer, and Lieut.-Colonel R.J.S. Langford, *Handbook of Canadian Military Law* (Toronto: The Copp Clark Company Limited, 1941) 240.

¹²⁵ Jackson, *One of the Boys*, 56.

previous offense of AWL,¹²⁶ it is almost definite that he would not have been released from incarceration any earlier than the days sentenced before being returned to his unit.

Next is Private Albert Johnson, who was found guilty under section 18(5), “disgraceful conduct of an indecent kind” for his attempts to molest another private in his barracks at night time, and was also sentenced to sixty days of detention. In accordance with Canadian Military Law, a soldier convicted of any offence under Section 18(5) of the Army Act “ought, unless in the opinion of the court there are special reasons to the contrary, to be sentenced to imprisonment and undergo his sentence in a civil prison.” However, subsequent laws append that “but in cases where the confirming officer does not consider the soldier should be discharged as a consequence of his conviction, he may commute the sentence of imprisonment to one of detention.”¹²⁷ It can therefore be speculated that some special or convenient circumstances influenced the decision to save him from imprisonment and discharge. From his trial defense, it became clear to the court that he was both married, and expecting a child in the spring, but also that the defending officer’s “knowledge of the man is that he is a hard and willing worker.”¹²⁸ It was likely these endearing personal details which swayed the court to send him to detention barracks instead of discharging him to civilian life.

A similar experience occurred with Private Marcus Anderson. While overseas stationed in England, Anderson was discovered having sex with another serviceman

¹²⁶ Robert Colbert file, Library and Archives of Canada, RG 24 reel T-15583 file H.Q.C. 55-C-559, (26 February, 1943).

¹²⁷ Singer & Langford, *Handbook of Canadian Military Law*, 256.

¹²⁸ Albert Johnson file, LAC, RG 24 reel T-15649 H.Q.C. 55-J-100 (25 February, 1942), Defending Officer’s Closing Address.

after a concert on July 22, 1944. Both Anderson and his sexual partner were quite intoxicated, and his Defending Officer made great efforts to prove innocence through the clause of drunkenness. Anderson was sentenced to undergo ninety days of detention, and it is likely that he served his time and resumed his position as a soldier of the #17 Special Employment Company.¹²⁹

The fourth serviceman sentenced to detention was private and acting sergeant Jonathan Joyce of the West Nova Scotia Regiment. While overseas in England in June 1940, an inebriated Joyce invited three privates to his billets, and unbeknownst to him, these men had the deliberate intent to disclose his sexual preference for men, of which they had heard rumors. As a form of entrapment, one of the men, Private Skillen, entertained Joyce's interest in "sucking him off" until the moment when his penis touched Joyce's mouth. Sergeant Joyce was sentenced to six months detention at Wandsworth in southwest London. His post-trial circumstances are quite unique, as while he was in detention, he made at least four attempts to contact previous acquaintances, military connections, as well as the Minister of National Defense in the hope of being freed from incarceration. His letters of appeal all contain the same insistent plea; that he was unfairly treated and his rights denied throughout the court martial and while in custody. His overall complaint surrounded his ill-advised legal instructions:

At the Summary of Evidence I was asked if I wanted to make a statement, I said No, on the understanding that I could make a statement at the Court Martial, where I was never asked to say anything. My charge was read out to me, and I pleaded guilty as I was

¹²⁹ Marcus Anderson file, LAC, RG 24 reel T-15552 file 55-A-942 (12 September, 1944), Schedule. Part 1 – Plea(s), Finding(s), & Sentence.

told, [sic] and understand I would of pleaded not guilty had it been for the lawyer who told me to plead guilty.¹³⁰

Joyce spent six months in a Canadian-military detention camp in England for a “crime” that he could have potentially defended himself against had he been given the fair opportunity. His initial court martial trial took place on July 16, 1940, and it was not until a full year later, July 1941, that he was given a fair re-trial. Following the grueling, unwarranted and frustrating ordeal, Sergeant Joyce was acquitted and returned to his regiment to resume his position.

Finally, Oliver Ham was caught having consensual sex with another man while stationed overseas in Italy on February 21, 1944, charged under section 41 “when on active service, committing a civil offense, that is to say attempted sodomy.” Ham’s case is tragic because upon discovery he was not under the influence of liquor or drugs, and this information in a way compounded his guilt as a homosexual “pervert.” Being in a sober disposition, it is clear that his sexual desires for men were known to him and perhaps premeditated, therefore rendering him guiltier in the eyes of military authorities. Despite Ham’s significant and vital role in a combat unit at the Italian front,¹³¹ military authorities continued in their pursuit of punishing homosexual activity. Ham was initially sentenced to be discharged with ignominy, but first to suffer penal servitude for the term of three years; essentially, but metaphorically, a military death sentence. Months after his trial, in August 1944, Ham’s Commanding Officer K. MacDonald, wrote to the Department of National Defense and insisted that Ham’s sentence be reconsidered. MacDonald’s letter noted

¹³⁰ Jonathan Joyce file, LAC, RG 24 reel T-15649 H.Q.C. 55-J-89 (5 February, 1941).

¹³¹ At this time on the European front, Canadian combat units were stationed in Italy to force back Axis troops. This war objective was considered crucial and proved a successful push for the Allies.

his personal view that the case “was not one that demanded severe disciplinary action” and that he recommended “the sentence as commuted should be considerably reduced.” MacDonald suggested that instead of discharging Ham with ignominy, that he not be returned to his same unit after his term of hard labour. MacDonald argued that it would be best if Ham “resume his service in surroundings where his mind will NOT be troubled by unpleasant associations and by the fear of ill will of his comrades.”¹³² Ham’s sentence was ultimately changed to read “to undergo detention for one year,” and although detention was not pleasant, his future was effectively saved by his compassionate commanding officer.¹³³

Jackson has demonstrated that detention camps were often sites where homosexual activity could, and did flourish, both among prisoners and between prisoners and guards. This can be confirmed through instances when venereal disease appeared while a soldier was in detention. In an all-male setting such as these, there was only one possible method of transmitting these infections. There were also claims from prisoners of sexual abuse from detention guards, and this complaint was heard frequently in Canadian facilities at home and overseas. Reports consisted of verbal, physical, and sexual abuse, while one guard figuratively asserted that he would ejaculate on detainees if they stepped out of line. All sectors of the Canadian Forces “were forced to court martial guards for having consensual or forced sex with soldiers.”¹³⁴

Canada’s World War Two role as a “jailer” for the Allies is relevant in this vein concerning homosexuality in detention centres. Prisoner of War (POW) as well

¹³² Oliver Ham file, LAC, RG 24 reel T-15648 file 55-H-1362 (20 April, 1944).

¹³³ Oliver Ham file, F: Sentence.

¹³⁴ Jackson, *One of the Boys*, 58.

as refugee detention camps were set up all over Canada in the 1940s to accommodate the arrival of POWs from Axis countries being transported from England. POWs were detained in same-sex environments, and were grouped according to their rank and category, relatively similar to Canadian Forces detention centres for soldiers under sentence. Erich Koch, a Jewish refugee who spent numerous years in Ontario and Quebec camps, witnessed first-hand the “pervasiveness of homosexuality among his comrades” stating that “we were surrounded by potential male love-objects.”¹³⁵ Koch reveals that while homosexuality was not viewed as socially threatening to him or his incarcerated peers, there was a fearful and concerned response by camp directors. Koch remembers that “on one occasion they held a *much publicized* trial that ended in the condemnation of two boys. As punishment they were ordered to fight each other ‘until there was a bloody mess’ [emphasis added].”¹³⁶ This kind of treatment is shocking and barbaric; it was probably believed by the camp’s authorities that forcing the accused men to physically harm each other would effectively damage their emotional and physical affection. It was probably also felt that through forcing violent “manly” behaviour, their “queer” sexual identities would be “cured” and replaced with pervasive societal gender and sex norms.

Patterns and incidents of homosexuality in incarceration facilities is itself a complex but intriguing topic and its occurrence is believed to be quite widespread. Efforts to understand this trend have been ongoing since the 1940s and possibly earlier, and it is felt by some that “more has been written about this topic than about

¹³⁵ Jackson, “Enemy Within the Enemy Within” 50.

¹³⁶ Jackson, “Enemy Within the Enemy Within” 51.

any other aspect of inmate subculture.”¹³⁷ In 1947, an American study was conducted into this feature of prison relationships at a disciplinary barracks of the United States military. The initial belief was that “the presence of a small group of sexual psychopaths tends to augment abnormal sex conduct in a prison population” while the “impressionable young male” is “dominated and easily influenced by the few who are habitually abnormal in their sex behaviour.”¹³⁸ The study included the application of dated and inconsistent psychological tests to determine mental and sexual abnormalities in groups of men suspected of homosexual activity. The conclusions did not produce any significant or exceptional findings, apart from the result that “prisoners in this study suspected of homosexual activities do not differ essentially from those in the prison population not so suspected.”¹³⁹ The significance of this kind of study merely reflects the observation and concern by military authorities of the prevalence of homosexuality in military prisons.

Hard labour was another form of punishment which court martialled servicemen encountered following a guilty verdict. Only one man from the case studies was sentenced to undergo hard labour; sixty-two-year-old Edward Acton. Acton was brought to court martial for two charges of “disgraceful conduct” and a third charge of “conduct the prejudice of good order and military discipline,” all for involving himself sexually with other servicemen in a consensual manner. On October 2, 1943 he was found guilty on the second charge of disgraceful conduct, and sentenced to be imprisoned with hard labour for six months, and to be discharged

¹³⁷ Alice M. Propper, *Prison Homosexuality: Myth and Reality* (Toronto: Lexington Books, 1981) 1.

¹³⁸ Capt. David M. Wayne, Lt. M. Adams and L. A. Rowe, “A Study of Military Prisoners at a Disciplinary Barracks Suspected of Homosexual Activities,” *Military Surgeon* 101 (1947): 499.

¹³⁹ Capt. Wayne, Lt. Adams & L. Rowe, “A Study of Military Prisoners,” 504.

with ignominy.¹⁴⁰ After his sentence was declared, Acton underwent mandatory medical examinations. The medical opinion was expressed that perhaps Acton's age and physical condition were indicators that hard labour may not be a suitable punishment. Regardless of these warnings, in November 1943, Acton underwent his labour sentence at St. John's Newfoundland. January 28 1944, Acton's major-general sent a letter to the Department of National Defense, which included several adamant statements concerning Acton's condition and punishment. The major-general felt that Acton's sentence of hard labour should be repealed, and that he be discharged with ignominy immediately. "As the principle disability of Pte Acton is hypertension, and as his age is 62, the Senior Medical Officer of this Force has stated that it would be dangerous for him to indulge in hard labour." Acton's file reveals that he was released from incarceration on Valentine's Day without an escort, and given "written orders" as to what he could do next.¹⁴¹

From this discussion of detention and hard labour punishments, it can be acknowledged that consequences varied greatly depending on circumstance and court martial sentence. The experience for sentenced gay servicemen may have been filled with sexual pleasure and excitement, or potentially racked with abuse and degradation.

The next significant outcomes to be explored are the sentences of "discharge with ignominy," being "cashiered," and "dismissed". These rulings generally have the same meaning, and their implications are quite similar. They required that when a serviceman was discharged under any of these titles, he had to forfeit his war service

¹⁴⁰ Edward Acton file, Form for Remission of Sentence by Court Martial.

¹⁴¹ Edward Acton file, Confidential: Department of National Defense, (February 6, 1944).

gratuity (WSG), in addition to any medals, honours, and awards that he may have been granted, and finally, leave the military. This discharge title held further disadvantages for ex-soldiers, as first and foremost, these men would be at a financial loss, as they would not earn their WSG, and could be at least temporarily impoverished. Secondly, this lack of income in combination with their dishonourable discharge could affect their ability to secure employment in later life. Not only were veterans discharged with ignominy, but were blacklisted from “employment from the Crown in any capacity,”¹⁴² they also could be turned down from a job if an employer requested to see a discharge certificate. In fact, on April 23 1943, the *Globe & Mail* published a front page news article titled “Job-Seekers Must Prove Military Laws Obeyed,” which emphasized the requirement for veterans and discharged recruits to demonstrate that throughout their service they “behaved as required by [military] law.” The article quotes Labour Minister Mitchell Humphrey by stating that: “it is not intended that the new regulations shall interfere with the worker speedily securing employment nor with employers securing the workers they need, so long as we have reason to believe that the applicant is in good standing.”¹⁴³ It is clear then that demonstrating adherence to military laws was important in civilian life when locating work. Overall, servicemen in this position of unemployment faced incredible difficulties and inconvenience.

In 1944, before the creation of the War Service Gratuity policy, a typical soldier with at least six months of service would receive, in terms of monetary aid at the time of discharge, a “clothing allowance of \$65, transportation home, and a

¹⁴² Jackson, *One of the Boys*, 63.

¹⁴³ “Job-Seekers Must Prove Military Laws Obeyed,” *Globe & Mail* [Toronto] 23 Apr. 1943, metro ed.: A1.

rehabilitation grant equal to one month's pay and dependant's allowances." Within a certain period of time, if he was still unable to find work, he was then entitled to receive "an 'out-of-work' allowance at the rate of \$50 a month in the case of a single man, \$70 a month in the case of man and wife, with additional amounts for each child."¹⁴⁴ These benefits and opportunities would simply not be available for gay (or heterosexual) servicemen discharged undesirably.

The WSG was a bonus, "paid to service people calculated as a percentage of the number of days of qualifying service under the war."¹⁴⁵ It was proposed mostly to help honourably discharged soldiers make the transition back into their civilian lives, and the inability to acquire one's WSG was probably the most significant loss incurred resulting from a dishonourable discharge. Soldiers applied for their WSG through the Department of Veterans' Affairs, and applicants with less than honourable discharges had their forms reviewed by a separate Discharge Review Board, who would then decide whether or not the applicant should receive their gratuity, but also, if their terms of discharge could be re-worded. This latter process could help the individual acquire superior work and thus better income, but also remove the stigma of being dishonourably discharged for "indecent" or "unnatural" homosexual activity. Still, the board rejected almost every case involving sexual "abnormalities," on the basis that the review board "considers that acts of sexual perversion should be categorized in such a manner that they can be kept track of in civilian life."¹⁴⁶

¹⁴⁴ C.N. Senior, *When the Boys Come Home: Their Post-War Opportunities in Canada* (Toronto: Collins, 1944) 14.

¹⁴⁵ Jackson, *One of the Boys*, 63.

¹⁴⁶ Jackson, *One of the Boys*, 64.

Knowing this, it is interesting to inquire as to what kind of options Edward Acton would have had on his return to civilian life. Being sixty-two, and having recently been dishonourably discharged from the Canadian Military, who would have employed him and how would he have supported himself financially? It is known from his case file that before he enlisted in November 1940, he worked as a painter, he was unmarried and without children, and also that his brother Stefan was still alive, living in Toronto. So it is possible that he may have continued to work as a painter, and if need be, reside with his brother temporarily. But again, we can only speculate as to his real actions.

In 1971, the Institute for Sex Research¹⁴⁷ produced a study on homosexuals in the American military. The study was conducted to determine and observe through comparison the difference between receiving an honourable discharge and a less than honourable discharge among two groups of homosexual men. Such a study is intriguing and certainly relevant to this discussion of the various consequences of a dishonourable discharge in the immediate period and later life. Some of the central questions which guided the study are quite appropriate to this thesis. “What are the consequences of being officially labeled [as a homosexual],” and “of leaving the military with a less than honourable discharge?” “What are the effects upon a person’s perception of himself and others now that he has been adjudged ‘undesirable’?” and “what are the consequences regarding his life chances, [...] career, and his relationship to the conventional world?”¹⁴⁸ Although these

¹⁴⁷ The same research organization that published Alfred C. Kinsey’s *Sexual Behaviour in the Human Male*, 1948 and *Sexual Behaviour in the Human Female*, 1953

¹⁴⁸ Colin J. Williams and M.S. Weinberg, *Homosexuals and the Military: A Study of Less Than Honorable Discharge* (New York: Harper & Row, Publishers, 1971) 177.

experiments and studies were directed toward members of the American military from the 1940s to 1970s, the conclusions and findings remain relevant to the Canadian experience since the United States military, like Canada, made deliberate and successful efforts to exclude homosexuals from their ranks.

The conclusions of this study are illuminating and may reveal the same realities faced by Canadian homosexuals dishonourably discharged from service. To start, when asked how they had been affected by their less than honourable discharge, in most cases the men replied that the “effects were short-lived” and also, that they centered “mainly on employment difficulties.”¹⁴⁹ In terms of upper tier occupations, and white collar work, it was found that “persons who by their qualifications or experience had to have security clearances and/or desired employment in federal or local government jobs” had much more difficulty both in the short and long-term. For this group, “the effects of discharge were more enduring in that they could not take advantage of their skills or experience and often were working in jobs they disliked.”¹⁵⁰ It is therefore probable that Canadian men who had been discharged dishonourably figuratively struck a “glass ceiling” concerning employment opportunities and prospects for career growth.

Allan Berube’s investigative research into the history of gays and lesbians returning home to the United States after the Second World War reveals what he considers a humiliating experience for those with undesirable discharges. A recruit was “stripped of his service awards, medals, rank, and uniform and taken by bus or truck to a discount men’s clothing shop where, sometimes still wearing his hospital

¹⁴⁹ Williams and Weinberg, *Homosexuals and the Military*, 179.

¹⁵⁰ Williams and Weinberg, *Homosexuals and the Military*, 180.

pajamas and robe, he was allowed to buy a cheap suit of clothes.”¹⁵¹ From there, he would have to report to the nearest draft board to confirm his discharge papers.

Berube outlines the experience of Stan Carlow, a homosexual serviceman who was stripped of his Coral Sea badge and instructed “that if he ever tried to serve his country in uniform again, he would be put in federal prison.”¹⁵²

By and large, the short term consequences for dishonourably discharged soldiers figured much worse than long-term for the reason that these soldiers typically faced immediate financial obstacles of unemployment and perhaps poverty, if without supportive family connections. Perhaps the most significant result discovered by the Institute for Sex Research, was that between the two groups of homosexuals, the group of less than honourable discharges considered and attempted suicide more frequently.¹⁵³ This extreme consequence of dishonourable military discharge will be the final focus of this chapter.

In summary of the outcomes of the case sentences, all seven men were found guilty of their homosexual charge, but only one of the seven was ultimately sentenced to ignominious discharge. Six of the seven faced a period of incarceration, and four of these six were permitted to continue their service, while one man, Private Ham was relocated to a new unit. Finally, one man faced a term of penal servitude followed by a dishonourable discharge.

Being unemployed, perhaps without family support, and having experienced the humiliation and stigma of being discovered a homosexual while serving, must

¹⁵¹ Allan Berube, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (New York: The Free Press, 1990) 228-229.

¹⁵² Berube, *Coming Out Under Fire*, 229.

¹⁵³ Williams and Weinberg, *Homosexuals and the Military*, ix.

have been cumbersome for gay men in civilian life. Compounding this awful reality might have been an ongoing reminder that such sexual actions were considered so criminal “that it was serious enough [...] to be let out of the Army.”¹⁵⁴

Bert Sutcliffe, regimental Sergeant Major of the 7th Field Security Sector mentioned in the first chapter, experienced this kind of rejection from his military family and contemplated ending his life. On a trip to the Pentagon in Washington, Sutcliffe made advances on an undercover police officer in a men’s washroom, and was arrested. The next morning, he received a phone call that his director wanted to speak with him when he returned to his post in Ottawa. When they met days later, the director looked at him and said “you’re not going to be promoted to lieutenant colonel; you’re not doing a goddamn thing. The RCMP tells us that you’re queer and homosexual, and you’ll be out of the army tomorrow. Go back to your apartment.” Sutcliffe states that he was “desiccated.” “The military had been my life... and also, how was I going to explain it to my sister and brother, all of my close personal friends?” Sutcliffe felt betrayed, frustrated, and helpless in his situation. He went home after his meeting, poured himself a scotch, retrieved his luger and loaded it with two nine-millimeter bullets. He had two or three drinks and suddenly felt a surge of purpose and agency, he thought, “Fuck them! They’re not going to kill me!” Sutcliffe returned the gun to its drawer. He was committed to get on with his life, but he asserts that “I very seriously considered blowing my brains out.”¹⁵⁵ Sutcliffe’s story is one of survival and perseverance, but as the following case will show, not every man was so brave.

¹⁵⁴ Senior, *When the Boys Come Home*, 138.

¹⁵⁵ *Open Secrets*, dir. Jose Torrealba, DVD, Nation Film Board of Canada, 2006 [2003].

Elmer Carr was a lieutenant quartermaster who was discovered in the men's washroom in the Robert Simpson Company Store in the same toilet-compartment as a male airman, in an incriminating and unquestionably sexual situation. Carr was charged under three sections of the Army Act, and after a very long trial, involving over thirteen witnesses attesting to the upstanding nature of Carr's character and military record, he was found guilty on his third charge, which was that he was in a single-compartment of a public toilet with another man. Following his sentence of "severe reprimand", there was much discussion concerning the credibility and in turn, the fairness and legitimacy of Carr's trial. He had requested that his trial take place in closed-court because of his level of military seniority and the fear of damage to his reputation. Since the court martial had not taken place "in camera," it was asserted by the Judge Advocate-General (JAG) that without jurisdiction, the Court had acted "so irregularly that the finding and sentence should not be confirmed."¹⁵⁶ Ultimately, because of this malpractice, Carr's sentence was thrown out, and he was "released from arrest entirely" on July 24, 1943.¹⁵⁷

One might expect that this extremely remarkable and uncommon series of events would have sparked hope and joy in Elmer Carr, in that he would not be jailed or have his career derailed by a severe reprimand. However, a stamp with large bold-letters on Carr's case file reveals that on September 2 1943, he was confirmed "DEAD"¹⁵⁸

¹⁵⁶ Elmer Carr file, LAC, RG 24 reel T-15583 file C55-C-560, Memorandum to Minister of National Defence (July 3, 1943).

¹⁵⁷ Elmer Carr file, District Officer Commanding Radiotelegraph.

¹⁵⁸ Elmer Carr file, Case Sheet.

Although he was a free man, Carr could not return to his military life after such an emotionally shameful and psychologically exhausting experience. As Carr was never married nor ever had children, his only family was the military organization; the family which had made public his secret and hidden sexual identity, after being prodded, questioned, and defiled in open-court. It is almost certain that Elmer Carr committed suicide following his return to civilian life.

The terrible reality for many homosexual soldiers was that the general public and the nation they fought for saw them as sinful, degenerative, an abomination to society, but worst of all, it was this nation that pursued efforts to eliminate their rights and freedoms as equal human beings. Stripped of medals, awards, honours, and last of all their dignity, discharged soldiers also faced ostracism, many kinds of abuse, and other difficult hardships. Life as they knew it was over, and for some, they took matters into their own hands.

Not only was this discrimination unjust to those men whom it targeted, but quite obviously, the aim of removing homosexual servicemen was counterproductive to Canada's role in the Second World War. The best American estimate from military records is that approximately two thousand men per year between 1940 and 1970 were discharged for homosexuality.¹⁵⁹ In wartime, it does not make rational sense to expel so many men willing to fight for a nation's cause. It was therefore a proven waste of manpower, as well as time to train so many recruits only to have forced them out.

Returning to the question of philosophy, *what* was so threatening about homosexuality to the military that required its gay servicemen to be "forced out or

¹⁵⁹ Williams and Weinberg, *Homosexuals and the Military*, viii.

silenced within?”¹⁶⁰ Some conclusions may be drawn from the evidence produced in this chapter regarding the consequences of being labeled as a sexual “deviant” by the military court martial. The Canadian Armed Forces have always maintained the traditions of stringent discipline and masculine customs, by the virtue of their nature as a defense organization. Violent and aggressive behaviour, bravery, strength, and fearlessness typify the stereotypical hypermasculine and “male” behavior practiced there, projecting an image of its institution as exclusively heterosexual. It is these traits which have been synonymous with each branch of the Canadian Military, and in a time when gender and socio-sexual codes were highly valued and adhered to, any deviations to this “normal” behaviour could be called out and reprimanded. In a military atmosphere, as in other parts of society at mid-century, homosexual men were believed to embody and personify un-manly and typically feminine characteristics, contradicting the tradition of masculinity within the Armed Forces. Military service came to symbolize manhood, and even today the military continues to denote “a bastion of masculinity,”¹⁶¹ similar to most combative North American sports such as hockey, wrestling, and football. The social and cultural institution of the Armed Forces attempted to coercively, but legally and psychologically enforce heterosexist norms controlling the image of its masculinity as a “straight” feature.

Anti-homosexual policies were therefore devised as a means to control and stop the different and “unnatural” sexual activity that was occurring throughout the ranks for the reason that homosexuality was misunderstood, foreign and unexplored,

¹⁶⁰ Jackson, *One of the Boys*, 7.

¹⁶¹ Paul Jackson, *Courting Homosexuals in the Military: The Management of Homosexuality in the Canadian Military 1939-1945*, PhD thesis, Queen’s University, 2002 (Ottawa: Canadian Theses on Microfiche, 2003) 69379, 5.

and feared for its rebelling challenge to the prevalent heterosexual and heteronormative image of the military.

Conclusion

*“From sin to sickness to life-style”*¹⁶²

This thesis has attempted to illuminate the controversial and nearly hidden history of the existence of homosexuality in the Canadian Military, and to reveal its legal treatment during the period of the Second World War. As has been shown, the penalties for discovery among gay personnel were comparable to punishments for very serious crimes, often leaving gay servicemen humiliated, incarcerated, unemployed, abandoned from their military family, and with nowhere to turn.

Did experienced officers and other high-ranking officials share the same negative views of homosexuality that were produced by court martial sentencing? In some of the cases studies presented it was one's Commanding Officer who came to the rescue for soldiers who had been sentenced to detention, hard labour, ignominious discharge, and severe reprimand, requesting that sentences be lessened, lighter, and even removed. This reveals the probability that such authority figures, present in the daily lives of gay personnel in their unit, likely saw beyond sexual difference, and understood the irrelevance of such matters to the success and efficiency of military activities.

The first major closing message of this thesis concerns the awareness that cruel and immoral treatment met homosexuals whose actions did not conform to the standard heterosexual and hypermasculine image of the military. For the men who decided to act on their sexual urges and were caught by disapproving peers or authorities, their futures had to be decided through a series of rigid and homophobic

¹⁶² P. Conrad and J.W. Schneider, *Deviance and Medicalization: From Badness to Sickness*, (St. Louis: Mosby, 1980): 172.

military laws. Whether consensual or unwanted, same-sex sexual activity was pronounced as “indecent”, “unnatural,” “immoral”, “sinful”, and “perverted.” The fear and worry that closeted homosexual men endured would no doubt have been uncomfortable and tiresome. From the case studies presented, it is apparent that alcohol played a significant role in the discovery of many of these soldiers, as a result of lowered inhibitions, and their inebriated state, the efforts of personnel to engage in sexual activity mounted.

Being discovered and removed from the military for one’s perceived “perverted” or “unnatural” sexual preference would have been mortifying. In such an intolerant time in Canadian society, it is clear that homosexual men would have had difficulty “coming out” to prejudiced or narrow-minded family members, employers, and peers. Even for those gay men who embraced their homosexual identity and did not subscribe to society’s belief that they were “sick” or “immoral,” the reality still remained that they were left at a severe disadvantage in civilian life as a result of the military’s anti-homosexual policies.

The persecution and oppression of sexual difference is the overarching theme of this thesis, and its prevalence is ongoing in countless arenas outside the military in Canadian history. Under the umbrella of Cold War paranoid attitudes, homosexuals became a “National Security Threat” following the Second World War, with the conviction that they could not be trusted, and had an inherent “character weakness.” The Boy Scouts of America continue to promote homophobic and heteronormative behaviour and teachings, refusing, as a result of the religious and moral convictions, to make changes. Educational institutions have denied basic equality rights to gay

and lesbian students, and lastly, the belief that gay men have the capability of “converting” heterosexual men is still overheard and read in anti-homosexual propaganda today. The case of homosexual discrimination within a military setting is but only one example of the hardships facing gays and lesbians as a minority group.

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