

Sustaining Our Resistance to Male Violence

Attacks on Women's Organizing and Vancouver Rape Relief and Women's Shelter

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Dans cet article, l'auteure décrit la longue et difficile bataille juridique menée par le collectif Vancouver Rape Relief et le Women's Shelter depuis une dizaine d'années pour obtenir la reconnaissance légale de leurs propres membres. En décembre 2005, la Cour d'appel de la Colombie-Britannique a enfin accordé à l'unanimité ce droit qui devient un important outil pour les groupes qui visent l'égalité. L'auteure ajoute que les expériences de vie des femmes sont au coeur de notre compréhension du monde et de chacune d'entre nous et sont essentielles à la

On Dec 7, 2005, ten years after the original legal challenge, the B.C. Supreme Court unanimously confirmed that our collective operating Vancouver Rape Relief and Women's Shelter has the legal right to determine our own membership. As Gwendoline Allison, one of our lawyers, remarked then, the event ten years ago "should have been unremarkable. The outcome should have been obvious." Nevertheless, the verdict may yet be appealed and the case has large implications for all equality-seeking groups.

On August 27, 1995 two women shelter workers, privately and respectfully asked Kimberly Nixon, a male to female transsexual to leave the preliminary training programme for volunteer peer counsellors. At that time, one worker took care to explain

the nature of Vancouver Rape Relief (VRR) and invited Kimberly Nixon to support Rape Relief in another capacity. Because Kimberly Nixon had not been born and raised as a girl and a woman, and had experienced what it was like to live in the world as a man, the workers thought Kimberly Nixon lacked the necessary life experience to train as a peer counsellor for women in the collective operating Vancouver Rape Relief's and Women's Shelter.

The next day Kimberly Nixon filed a human rights complaint with the B.C. Human Rights Tribunal. Nixon sued Rape Relief, our woman-only organization that provides a shelter for battered women and a 24-hour rape crisis line, claiming a right to volunteer. This resulted in a long and arduous legal battle.

Nixon's lawyers argued that there is no need to share the lifelong experience of being treated as a girl or woman to join us. But in our opinion, without that shared experience and shared consciousness of our circumstances as girls and women, Nixon cannot facilitate the peer counselling, consciousness raising, mutual aid or group advancing advocacy that logically follows.

Assaulted women call us to receive feminist assistance from other women. Across the country they choose women's services like ours over police, medical facilities, and

de-gendered counselling services. They do so precisely to assure they will be greeted by women, that is: by others who have suffered the same basic life-long conditions and therefore can understand the assaults and resistance in the same way.

Among the women who came forward offering to testify for us were women who had very particular sets of such expectations. One mother had been herself attacked by a police officer in Europe during war, by a husband later in Canada. She brought her adolescent daughter to us after an attack saying very clearly that she did not want to discuss such things with a man or someone who had been a man.

Women told us that they did not want to guess at the door whether or not this was a man. Even deep voices, male insignia like baseball caps and boots can make women nervous. They knew that in the shelter bedrooms were sometimes shared, that very little privacy is possible, and that close quarters were the norm not the exception.

But more often the worry was that someone who had grown up being treated as a male to adulthood simply did not share the references women make in our telling each other about assaults, the objective or subjective experiences of being raised from girlhood to womanhood.

We don't all share exactly the same

experiences but there is a predictable constellation for most of us made of genetics, biology, and social-political conditions, recognizable to us, so that even the exceptions confirm the norms.

We know from the social sciences and from our own work that women speak and act differently when not in the presence of a man or someone

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who has been a man. All of this is vastly more so in the situation where women are trying to escape, discuss, plan about, and change male violence against women.

At Vancouver Rape Relief, we are careful to limit the times when social workers or policemen can come to the house. Rarely do they enter. Usually they are met elsewhere. Always women are warned that they are coming so nerves can be soothed. Men are always chaperoned by one of us if they are in the entry of the shelter. They don't get beyond that into the building normally. The sound of a male voice sends tension through the house. Such care is not because every man will be an attacker but because in this house it is important that women don't have to guess or decide which ones will use the potential to abuse and to get away with it. Women and their children can go "off duty" for a while from the necessary hyper-vigilance in their lives.

There have not been many incidents of women being harmed by husbands and ex-husbands while at

Canadian shelters but there have certainly been some including some deaths. More often men have followed shelter workers or residents and terrorized them.

Workers can go off duty too from the need to protect male egos from the outbursts and generalizations of women escaping male violence and from the rough edged if insightful thinking women do as we try to imagine how to respond to the ongoing situations of danger and harm done to women by sexist violence.

In our defence, Rape Relief argued that the B.C. government had made provision in Human Rights Law for equality-seeking groups to choose our membership consistent with our equality-seeking purposes.

We claim that this provision is consistent with *The Canadian Charter of Rights and Freedoms* and with the United Nation understanding of human rights law and the recognition of women as an historically disadvantaged group.

Men dominate and disadvantage women, pushing us into "otherness." Once so pushed down, we form groups of similarly disadvantaged, to defend ourselves. We assert our freedom of association. Surely it must be we who define the membership in those groups.

We say that for our purposes, our experiences of girlhood and womanhood are the raw material of consciousness-raising. Other feminists joined us in that claim.

At Rape Relief, we operate and make decisions collectively and cooperatively. And we carry that attitude into our crisis work. We are political as opposed to professional: we regard the women who call us as equals. We learn from our callers as they learn from us. We ally with them as equals to make all of us stronger in an ever-growing democratic movement of women determined to end the abuse of women. Consciousness-raising between equals of similar experience we argue is the raw material of our theorizing and strategizing to end vio-

lence against women.

The B.C. Court of Appeal's unanimous decision that Vancouver Rape Relief and Women's Shelter has the legal right to determine our own membership "...is an important victory for equality-seeking groups in British Columbia" said Suzanne Jay, spokesperson for Vancouver Rape Relief on the day of the victory. She added:

We believe it is important for raped and battered women to have the choice of a women-only peer group for support. Now their right is strengthened as is our right to provide that support.

Vancouver Rape Relief shelters over 100 women each year along with those battered women's children. Each year the 24-hour rape crisis line responds to calls from yet another 1,300-1,400 new women dealing with rape, sexual assault, incest, battering and sexual harassment.

"The Court of Appeal relied upon the findings of the Tribunal that Vancouver Rape Relief acted in good faith, and the fact that their volunteer counsellors had to be women born and raised as women was rational, to find that Vancouver Rape Relief has the right to exist as an organization," explained Professor Christine Boyle of the University of British Columbia School of Law. Professor Boyle internationally respected for her work on rape evidence and law, represented Vancouver Rape Relief pro bono for over ten years. "Thus, at every level, Vancouver Rape Relief's understanding of itself as an organization has been acknowledged."

The B.C. Court of Appeal held unanimously that Vancouver Rape Relief has the right to prefer to train and organize women who have always been treated as female, and who have had to cope with that training and unequal treatment in our society. Chief Justice Finch said: "The respondent Society was entitled to give preference to women who are

not post-operative transsexuals, because there is a rational connection between the preference and the respondent's work or purpose" (*Vancouver Rape Relief Society vs Nixon 2005 BCCA*).

As our lawyer Gwendoline Allison said, "I often hear in comments, that people think the case is silly, an unnecessary distraction from the "real work" of Rape Relief: fighting for women's equality. Those assessments are correct, but unfortunately the case is also so much more. The event of August 29, 1995, which should have been unremarkable, and whose result should have been obvious, has led to a challenge to the very right of Rape Relief to exist and a challenge to our understanding of what is a woman."

She knew that other groups in BC have faced similar challenges. "Some, like Women Against Violence Against Women (WAVAW) changed their constituency. Others, such as Vancouver Lesbian Connection disbanded under the pressure. Vancouver Rape Relief made the courageous decision to defend their organization, and all girls and women should be grateful that they have. The defence of this case is vital—it has had consequences for VRR and also for other equality-seekers."

As Gwendoline Allison explains, to Nixon's lawyers, The BC Human Rights Tribunal, and those organizations intervening on behalf of Nixon such as EGALE (Equal Rights for Gays and Lesbians): "Rape Relief is not a group resisting patriarchal/male power. Feminist insistence that women's life experience is at the heart of our understanding of the world and each other, essential ground of our collective resistance, is constructed simply as discrimination against a vulnerable minority. In this scenario, male power disappears and women become the dominant group, the Goliath to Kimberly Nixon's David. Nixon's right as an individual to join a women's group despite lack of life experience as a girl/woman, trumps the right of women's groups to create

the shared personal and political space that is necessary to support each other and essential to our collective movement for change."

The case has distorted what natural alliances might have developed between feminists and transgendered males to females. Supporting Nixon against the airline bosses who refused employment after Nixon began dressing as a woman would have suited us well. Both sides agree that most violence in intimate relationships like that suffered by Nixon is committed by men and serves heterosexual male power enforcing sex and gender hierarchies. Everyone seems to be saying that transgendered people and transsexual people have a need for services, political organizations and human rights legislation. We have said so too, to all levels of government. But court processes are adversarial demanding and injurious to most never mind such fragile potential political alliances.

Where are we now?

Kimberley Nixon, the losing party, may seek leave from the Supreme Court of Canada to appeal. We can be sure that if leave is granted, we will see applications by EGALE, and others, to intervene against Vancouver Rape Relief. It is crucial to keep going, and to preserve our energy and re-invigorate ourselves for what is to come. The case remains a threat to women's groups, indeed, all equality-seeking groups.

This threat was made explicit in an article in the *University of British Columbia Law Review*, where Nixon's lawyer argued the principle that all persons must be assessed individually in relation to the service or employment being offered (findlay). The Nixon case claimed that these principles of individual rights override or trump the rights of equality-seeking groups. But equality-seeking groups have rights under British Columbia's Human Rights Code to limit their membership, in this case to women.

The feminist legal opinion given to VRR is that once that door is open, there is no closing it. Men could

successfully argue (as Nixon has argued) that their individual qualifications (such as empathy, counselling training, participation in counselling, experience of being assaulted by men) should be considered as qualifying criteria in their applications to join women's groups.

Our lawyer tells us that one thing we must keep in mind is that since December 2003, our decision from the BC Supreme Court has remained and still remains the law. Our case has been cited in some 42 decisions of the Tribunal and BC Supreme Court. It is important, not only for women's groups but for all equality-seeking groups and programs.

So what has happened?

A man, Mr. Johnson, has in fact challenged the "no-men" hiring policy of a women's shelter. At the Human Rights Tribunal level, he won. The women's group failed to show, by objective, reliable, social scientific evidence, that it was reasonably necessary to have a no-men policy for a transition house. As in our case, the evidence of front-line workers apparently does not count.

On review, the women were suc-

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cessful, relying on our case. The judge found that our case decided the point in favour of the women's group. (*St. James Community Service Society vs Brent E. Johnston and The British Columbia Human Rights Tribunal 2004*). The matter did not end there—it was remitted back to the

Tribunal for reconsideration, but a reconsideration that accepted the authority of our case. Fortunately, Mr. Johnson did not pursue the matter further and so, the Tribunal closed the file. Our case made a difference.

In turn, that case was used by the United Native Nations Society (UNNS) to defend itself. A non-Aboriginal man applied for a position as Executive Director of the organization. UNNS defended its decision not to hire him on the basis that it is a non-profit society whose objects, broadly speaking, are the advancement of the interests of Aboriginal people (*Gillis v. United Native Nations Society 2005*). The decision is actually an interesting read: although not specifically mentioned, our case is obviously the blueprint, both for how the evidence was led in the case by the UNNS, and for the decision itself. It is clear to me anyway that the Society learned from Vancouver Rape Relief how to de-

fend itself. The decision of the Tribunal reaffirmed the rights of groups to form and grant preferences to members of that group. Although the decision did not refer directly to our case, it is clear that our decision influenced the outcome.

The Newfoundland Sexual Assault Centre has received a human rights complaint from a man wanting access to their centre. They have called for our help and are awaiting results.

So far, our case has become a positive tool for equality-seeking groups. It remains under threat, so we must continue to defend it. Rape Relief unlike other pressured groups has not crumbled and it has not compromised its very nature: it is still here. Vancouver Rape Relief's success thus far has enabled two other equality-seeking organizations to defend themselves from attacks to their group integrity. That is worth celebrating.

Lee Lakeman is a member of the 30-

woman collective at Vancouver Rape Relief and Women's Shelter. She recently authored Obsession with Intent: Violence Against Women (Black Rose, 2005). Although not present the night of these events, Lee was a witness in this case, testifying as to the purposes and methods of her feminist collective.

References

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- Vancouver Rape Relief Society vs Nixon 2005 BCCA.*