

## HISTORICAL NOTE

### “A member of the prohibited class of persons...”: Or, My

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*Like many members of his generation, John Kyper first became politically active in the late 1960s. Joining the Reserve Officers Training Corps (ROTC) as a freshman at the University of Vermont led him to first question and then oppose the war in Vietnam. From his activity as a conscientious objector, Kyper moved to participation in the gay liberation movement, relocating to Boston in June 1969 and coming out six months later. For many years, John wrote for the city's pioneering weekly Gay Community News, from Boston, San Francisco and Mexico City. During that period he was also a member of the Fort Hill Faggots for Freedom Collective in the Roxbury, MA, neighborhood where he still lives. In recent years he has been active in inner city public transportation issues and as a board member of the Massachusetts Sierra Club.*

*GCN, as it was commonly called, was founded in 1973 as a newsletter to link the diverse segments of the then emerging local gay community. It grew quickly to become a major organ for the movement, providing both news and commentary initially in Boston and New England, and then nationally and abroad. Like many other volunteer operations it led a precarious existence throughout its history, despite the often heroic support from the community, especially after a devastating fire in 1982. It ceased regular publication in 1992. Subsequent sporadic efforts to re-create the paper as a quarterly journal finally dissipated by the end of the decade.*

Noon on a sweltering day, late August 1974. I had just hitched into Niagara Falls from Buffalo, on the final stretch of a trip from Boston to Toronto. I strode through the turnstile and across the ugly, double-decker bridge at Whirlpool Rapids, into the border station on the Canadian side. The Customs inspector, an authoritarian grandfather figure, asked what I had to declare. I replied that I was bringing in a couple dozen copies of *Gay Community News* to give to friends and to other interested people.

Unnecessarily so, as I did not need to declare something I wasn't selling, yet perhaps also foolish as I had heard of incidents of Canadian gay activists being barred from the United States when publications were discovered. Despite having once been closely interrogated as a suspected vagrant and made to fill out a permit form, I had maintained a rather naïve appraisal of Canadian officialdom, since I had declared gay newspapers twice before without problems on trips to Toronto and Montreal. The previous year an immigration guard seemed genuine-

ly interested in a copy of *Fag Rag*, also published in Boston, that he had found in my pack. I almost offered him a copy.

This time the consequences of my candour were to be different. I was ordered to report to Immigration in the adjacent office. I was not especially concerned, as I'd been made to report to Canadian Immigration at least a dozen times before—it comes with the territory of hippie hitchhiking, I suppose. While I was waiting in the hallway, however, my grandfatherly friend informed the Immigration Officer, a young man named Welsh, that I was carrying the papers. When he called me in he asked to see one of them. After I showed him a GCN, he asked me if I was homosexual. I answered that I was.

Welsh explained to me that the Immigration Act prohibited the admission of homosexuals into Canada, even though the country's Criminal Code had been amended in 1969 and no longer outlawed homosexual acts between consenting adults. When asked if I had ever been arrested for moral turpitude or for anything else, I replied that my sole arrest had been for disorderly conduct at an antiwar demonstration in Washington three years before. After establishing that I had no criminal record, Welsh asked various questions about my family and personal background, whom I was planning to see, how much money I had with me, and how long I was going to stay in Toronto. Then, awkwardly, Welsh asked me how long I had "been homosexual." I told him I had come out several years before in my early 20s.

After a lengthy wait in the hallway, I was again called into the office to be interrogated all over again by a superior officer summoned from the regional immigration command, P.J. Borelli. He began by informing me that I was barred from entering Canada due to my acknowledged homosexuality. All the questions were repeated, presumably to trap me for inconsistencies. He kept probing me about my money, which was sufficient for the several days I was planning to stay, and about the purpose of my visit. I sensed he was desperately searching to find additional grounds to use against me. Repeatedly, he pressed me about what I was planning to do with those twenty four copies of GCN, seemingly very concerned that I would try to pass them out on the street to anyone who walked by!

The interrogation finally ended and I asked if I would be deported. Borelli replied that he was recessing the hearing, pending a decision on my status in Canada, though by whom he did not say. This was the first time I was informed that I was the subject of a hearing. I returned to sweat over stale issues of *Time* in the hallway while he proceeded to call someone further up his chain of command.

Ten minutes later I was called back into the office. Borelli showed me Paragraph 5(e) banning the entry of pimps, prostitutes and homosexuals into Canada. He informed me that I was being deported forthwith, banned from Canada for life, and handed me a signed Deportation Order which declared:

You are a member of the prohibited class of persons described in Paragraph 5(e) of the Immigration Act in that you admit that you are a homosexual and your admission to Canada has not been authorized by the Governor-in-Council.

He held out little hope that I could ever enter again, save for possible revision of the Immigration Act. Were I to enter illegally, he stated, I would be subject to deportation and criminal prosecution. For this I could be arrested by any police officer in Canada. Notwithstanding his warnings, Borelli did admit the irony in the discrepancy between the Criminal Code and the Immigration Act.

Borelli then proceeded to carry out the deportation, accompanying me to the U.S.-bound walkway and waiting while I crossed back. I had been held 2-1/2 hours. I had no complaints about the behaviour of the Canadian officers during my detention at the border. They were polite, their manner was correct, and I was subject to no duress. Excepting the initial Customs agent, they appeared to have no feelings towards me personally; they were simply following out orders because a transgressor had been called to their attention—and they had to enforce the law to protect their own positions.

The Immigration officers even seemed to accept my assertions that I was planning to visit for only two days, for which I had produced the necessary funds, that I would be giving away the GCNs (a newspaper legally mailed from south of the border), and that I would give them only to people who would be interested in receiving them. The focus of the investigation was upon my acknowledged homosexuality, which was sufficient to keep me out of the country.

I immediately returned to Buffalo and went directly to the Gay Community Services Center. Surely, I thought, they would know of the existence of other such incidents. But Donald Michaels, the Director, was shocked by my account. Neither he nor anyone else at the Center had ever heard of such a deportation. The following day I wrote friends in Toronto detailing what had happened.

Shortly after the initial letter to my friends, Toronto gay activists Elgin Blair and Gearld Moldenhauer had called to suggest I fly in and then surface, presenting the government with an embarrassing dilemma: Arrest and deport me or ignore my illegal visit. After considering the risks, I decided to go, and I returned to Canada three weeks later.

I spent three days in Toronto as an illegal alien, sponsored by the local Gay Alliance Toward Equality (GATE). The purpose of my visit was to dramatize the injustice and absurdity of the law, especially after a 1966 White Paper on immigration had recommended elimination of all references to homosexuality from the Immigration Act. Perhaps not surprisingly, this suggestion was soon forgotten.

One of the earliest demands of the Canadian gay liberation movement, from its founding in the early 1970s, had been the removal of all bars against gays entering the country. Gays of Ottawa (GO) had repeatedly requested a meeting with

the Minister of Manpower and Immigration, Robert Andras, to obtain official repeal of the offending Paragraphs 5(e) and (f), only to receive the evasive response, “Of course, we *never* enforce these ancient laws any longer.” Such official apathy seemed to assume that gay oppression in Canada had disappeared with decriminalization: “You didn’t thank us in 1969!” Prime Minister Trudeau snapped when confronted by a gay zap during the federal election campaign shortly before my deportation.

But of course, anachronistic laws will occasionally be enforced when it suits someone’s purpose. Victims are understandably reluctant to come forward with evidence of discrimination, and GATE knew of several incidents at the Canadian border. Now it had caught the government with its pants down; it had a victim who was more than willing to talk. GATE distributed a press release, and Toronto’s *Globe and Mail* picked up the story. The *Toronto Star* then followed up, quoting an Immigration official that my deportation was the first he had ever seen on the grounds of homosexuality. The lover of a close friend, a native of New Brunswick, was so incensed that he called Andras’ office from Boston, demanding to know if they considered him an undesirable citizen. *Gay Tide* of Vancouver published my Deportation Order on its back cover.

GATE spokesperson Terry Phillips and I were both interviewed about the inequities of the Immigration Act. We even appeared on CBC Radio with Barbara Frum. “Banned homosexual sneaks into Canada,” the *Star* headlined. Though the article quoted Department spokesperson Ron Bull [sic] that I was subject to arrest (what else could he say?), I was never bothered during my 4-day stay.

In the meantime GO had again pressed for a meeting with Immigration officials. After a month and no response, even after my illegal visit, they scheduled a picket outside its headquarters, not far from Parliament. Once the press release had gone out, they were quickly called by an Immigration official who invited three GO representatives to a meeting on the morning before the action. The timing was completely coincidental, he insisted. The picket was held, nevertheless, attracting a dozen supporters in one of the city’s first gay demonstrations cited by Ottawa gay activist, Ron Dayman, to be evidence of “a more militant movement.”

At the meeting one of Andras’ assistants assured the three that the minister considered the anti-gay sections of the Act “antiquated” and “medieval,” promising that immigration would press for their repeal in an upcoming revision of the act. He also informed them that I could write for permission to enter Canada, and it would be granted. I immediately wrote, expecting a quick resolution.

My involvement with the immigration bureaucracy, however, had just begun. Autumn led to winter, and only to a continued silence from the ministry. I sent another copy of my letter to Ottawa, via registered mail as before, with cc’s indicating everyone in the movement who was working on my case. It was not until

January that I received a response, nearly three months after my initial request, and it appeared that my entry to Canada was still bound by limitations. Each time I wished to visit I would have to apply to the Minister one month in advance, specifying the date and place of entry and the length of time I desired to stay in Canada. A permit would be presented to me when I entered. “The Minister’s Permit is necessary for two reasons,” the letter explained: “(1) as you have been deported from Canada, you require the Minister’s consent to return, and (2) you still come within the prohibited classes in the Immigration Act.”

Resigned to such limits, I applied to visit Montreal and Ottawa late in March 1975. I was duly informed that the Permit would be waiting for me as requested at Philipsburg, Quebec, the main border crossing north of Burlington, Vermont. After arriving as promised on the specified date and in a Greyhound bus, my presentation of my Deportation Order and letter from Ottawa was met with confusion rather than a Ministry permit. I waited for over an hour at Philipsburg, having missed my bus and pondering the thought of having to hitchhike back to Burlington in a steadily worsening sleet storm. When my permit was located at Blackpool on the other side of Lake Champlain, an Immigration officer had to drive me ten miles back into Vermont, across the Lake and in through Rouses Point where the Northway from New York crosses the border, so that I might achieve legal entry and get to my final destination.

I arrived in Ottawa as a guest of GO shortly after the government had released its long-awaited Green Paper on proposed changes to the Immigration Act. Despite official promises, the sections regarding homosexuality received only the suggestion that they were anachronistic. At the same time GO received a letter from Andras stating that any specific change of these sections would be inappropriate while a new act was pending. As Ron Dayman put it, “He’s afraid changing the rules for gays would cause a public outcry. It would be easier for him to wait until they could be hidden in a large bill where other things would attract people’s attention.”

I continued to visit Canada several times per year. My entry soon settled into a routine pattern, where I would apply and the Permit would (usually) be waiting for me when and where I had specified. And I was determined to test my Permit in as many different ways as I could. I crossed the border a couple of times on the train and once spent three weeks traveling to Vancouver. Two years after acquiring my initial permit, it was again misplaced at Philipsburg. Fortunately, the officer in charge was sensible enough to write out a permit on the spot. Shortly after this incident I informed the minister that I intended to arrive aboard the boat from Bar Harbor to Yarmouth, Nova Scotia, and expressing my mild annoyance with the previous misplaced Permit. Garvin, the Chief of the Non-Immigrant Control and Special Cases Section, replied that the new document would be awaiting me at the Canadian Consulate in Boston, and that I would henceforth apply to that

office. I still wonder why it took them so long to think of such a sensible arrangement?

In the meantime a new Immigration Act had been formed from official proposals and was slowly making its way through Parliament, eliminating the offending Paragraphs 5(e) and (f). During the summer of 1975, gays had testified at a series of hearings held across Canada by a special Parliamentary committee on immigration. The federal government finally introduced the proposed act in early 1977, which passed through both the Commons and the Senate at mid-summer.

I wrote to Immigration several times to clarify my status under the new act, but found it difficult to obtain a satisfactory response. In August, H.J. Johnson of the Non-Immigrant Control and Special Cases section wrote to me that “the new Immigration Act has been passed...but the effective date that it becomes law and operative, has not yet been announced. It is expected that the implementation will be likely sometime between January and April 1, 1978, however, this is not definite.” It continued:

The particular clause under which your deportation was issued will no longer be part of our new legislation and it is debatable at this point as to whether or not, when the Act becomes effective, you will continue to require the Minister’s consent to enter Canada. It is not felt that you will need such consent and at the time of the Act becoming law, which will be advertised, and at your request, steps will be taken on your behalf to cancel the present requirement, which will remain during the transition period.

April 10<sup>th</sup> was finally declared the date, eight months after its enactment in Parliament.

Closer to the appointed date I again wrote to Ottawa only to hear back several weeks later from G.P. Schroh who assured me, “You will receive a reply shortly.” His title was almost as long as the text; I was now in the domain of the Western Hemisphere Bureau, Foreign Branch. A brief but verbose insert informed me that Manpower and Immigration had shed its sexist name in bureaucratic consolidation, and was now the Canada Employment and Immigration Commission.

My reply arrived, at last, at the end of May to reveal that: “A person who has been ordered deported from Canada may not reenter Canada without the consent of the Minister. This consent is a requirement even though the reason for deportation under the prohibited classes of the Immigration Act (1952) is not included in the inadmissible classes of the Immigration Act (1976). This consent may be applied for at any Canadian Embassy or Consulate outside of Canada or to the Manager of any Canada Immigration Centre, including immigration posts at Canadian ports of entry.” Seemingly, there was no change in my status, after all

the hassle.

I then applied to visit Canada during the first week of July, to attend the National Gay Conference in Halifax. Instead of the Minister's Permit, however, the Consulate issued me a new form regarding the “Minister's Consent pursuant to section 57 of the Immigration Act, 1976.” “Consent is hereby granted,” it read, “from time to time, subject to compliance with the Immigration Act and Regulations.” I was told I no longer needed to apply for the permit, and I could enter whenever I wanted. The person at the Boston Consulate was not certain, however, whether I would ever need to renew it.

Upon entering via the St. John, New Brunswick, airport I presented the Minister's Consent to the Immigration officer, as instructed. After a brief series of questions—how long was I visiting Canada, where was I staying, etc.—he made out a Visitor Record, Form 1097. He had me sign it, then gave me a copy to keep.

In response to my letter of inquiry seeking to clear up the remaining ambiguities, I was informed that “the prohibition imposed when the deportation order was made against you has been removed insofar as visiting privileges are concerned. There is no need to apply for such a form each time you wish to visit Canada; you should carry the one you have with you, however.” Evidently the form was permanent. Resolution, of a sort.

The anti-gay sections were removed from the Immigration Act, but such action was, at best, a victory qualified by the more restrictive nature of the new law. As before, an alien arrested in a raid on a bathhouse or a cruising area could still be barred from the country. As a regular bathhouse habitué while traveling, I was more than aware that the police in Canadian cities were periodically raiding the baths during this period. The most infamous of these incidents was “Operation Soap” when Toronto's finest raided all of the city's bathhouses on one night, arresting hundreds of patrons, leading to massive protests the following night. Even more troubling, Section 14(3) allowed an Immigration Officer discretion to exclude a visitor for no reason at all, and Section 19(1)(d) empowered the government to exclude anyone it *suspects* may commit a criminal offense, even if it possesses no evidence that a crime is to take place. Thus while gays might no longer be barred merely for their homosexuality, the new Act allowed for added prejudice and capriciousness on the part of individual officers to ban individuals whose looks or lifestyles they might not approve; and the possibilities for appeal were correspondingly diminished.

I visited Canada half a dozen times over the ensuing decade, including trips to Montreal, Toronto and Vancouver. Once while driving from my mother's home in northern Vermont through the Eastern Townships of Quebec with my then lover, a Puerto Rican, we were detained at U.S. Customs on reentry for half an hour, until officials were finally satisfied he wasn't the smuggler of the same name

who was listed on their rolls. Initially, of course, I made a point of bringing the Minister's Consent and other documents with me when I entered Canada. But as time passed and the memory of my deportation receded, I wouldn't always remember—an oversight that would ultimately create more than just a minor inconvenience.

In mid-April 1988, ten years to the week after the new Immigration Act had finally gone into effect, I was driving to Montreal for the weekend. Once again, I went through the border at Philipsburg. This time I was driving a battered old station wagon whose tailgate and rear bumper were festooned with stickers including "Dump Reagan," "The Moral Majority is Neither," and "El Salvador is Spanish for Vietnam." I arrived at the border on a Friday evening at about 10:00 p.m. and was directed to report to Immigration. I parked, entered the building and presented my passport at the front desk. After a brief wait I was called in to see the supervisor on duty, who informed me that a computer check had revealed the Deportation Order, and that I could not be admitted to Canada without the consent of the minister. I replied that I had been deported under a section of the law that had been subsequently repealed several years later when the new Immigration Act went into effect.

The officer stated that, the new law notwithstanding, I still needed a Minister's Permit or a waiver of the Deportation Order to enter the country. I stated that I had applied for and received a Minister's Permit on various occasions prior to the change of the law, and that I had been issued a Minister's Consent once the law had been changed. Unfortunately, I had left the latter document at home, and he said they no longer had any record at Philipsburg of my being allowed to enter. I could not come into Canada.

Before returning to the United States, I requested and received a copy of the written report of my exclusion, which included the statement:

He is a member of the inadmissible class of persons described in Paragraph 19(1)(i) of the Act in that at Niagara Falls, on August 28, 1974, a deportation order was made against him, he was removed from Canada, and is seeking to come into Canada without the consent of the Minister as required by subsection 57(1) of the Act.

Once again, I found myself in the anomalous situation of being excludable from Canada solely because I had previously been excluded—but now for an incident that had occurred many years ago and under a statute that had not been in force for a decade.

I immediately wrote Barbara McDougall, the Immigration Minister, to clarify my status under Canadian law. Was the 1978 Minister's Consent still in effect, or had my exclusion affected its validity? If the latter were the case, how could I rectify the situation? To avoid any future misunderstanding, would it be possible



to add notice of the Minister's Consent to the computer record of my deportation? As with my initial correspondence with the Ottawa bureaucracy back in 1974, the return of the registered return receipt would for a while be my only acknowledgement that the letter had been received, while I awaited a response. Five weeks later I followed up with a second query to McDougall, again via registered mail. Folks in the movement, joined by several members of Commons from across the country, had been prodding Immigration to address the issue. At least one gay activist, Denis LeBlanc of GO, had worked on my case the first time around; another, Christine Donald of the Coalition for Lesbian & Gay Rights in Ontario (CLGRO), lived in McDougall's Toronto riding and wrote her to request a meeting about my case. At long last, just a couple of days after the Fourth of July, I received the reply I'd been waiting for:

A temporary notice regarding the Minister's Consent has been entered on our computer records. A permanent entry will be made shortly. Notwithstanding, it is recommended that you carry your copy of the IMM 1204 (Minister's Consent) each time you seek entry to Canada, as there are times when examining officers at ports of entry are unable to gain access to computer records and those held at this office.

I would like to point out that the Minister's Consent issued to you is valid for temporary entry to Canada only. The deportation order issued to you in 1974 still bars your admission to Canada as a permanent resident. If you applied to live in Canada, Minister's Consent would have to be sought to overcome this barrier.

Although you were reported at Philipsburg on April 15, 1988, the matter did not proceed to an immigration inquiry and the issuance of an exclusion order. You were simply allowed to withdraw your application for temporary entry and allowed to leave Canada. There is no exclusion order against you....

M.J. Light, who signed my letter, was identified as the Acting Chief, Western Hemisphere Bureau, Case Review Directorate, Immigration Program Management Branch. In response to his stated hope “that the above information will clarify the situation for you,” I had at last found out what I needed to know. I was apparently free of border-crossing constrictions.

I didn't get to go to Canada again for another five years. By then I had long since junked my old car, and the shiny rental I was driving up the Northway in upstate New York for a weekend in Montreal would seem less likely to attract the attention of a Customs officer. This time my documents turned out to be redundant, and I was let into the country after only a few perfunctory questions.

But I had learned my lesson and a year and a half later in March 1995, was thankful that I did. Passing through the I-91 crossing at Rock Island, Quebec, I was again instructed to report to Immigration. Upon presenting my passport to

the officer, I again found myself handing him the Deportation Order and Minister's Consent. Incredibly, there was still no record in Immigration's database of my being allowed to enter the country. He placed a notice of the consent into my passport and stated that he would have the computer system updated to reflect my correct status.

A year later my partner and I decided to visit Cuba, traveling via Montreal. Because we were determined to go without requesting permission from the U.S. government, we had to face down a ham-handed effort by Customs officials to confiscate our tickets before we even left town, leaving us just two working days to find political and legal assistance. We flew north as scheduled, without any further problems. When we arrived at Dorval Airport and Canadian Customs asked the purpose of our trip, we replied that we were taking a connecting flight out of the country from Mirabel Airport and they let us through without stamping our passports. I had recently renewed my passport but I had to bring along the expired one since it contained the notice.

We returned to Mirabel Airport a week later as planned. When we went through Customs again, our passports were scanned and stamped (the first time they had been stamped during the journey, as the Cubans had placed their visa on a separate piece of paper), and I was instructed to report to Immigration. I presented my passport to the officer, who entered my name and data into the computer. Several seconds later, responding to what had appeared on the screen, he remarked, "You have a long history with us!" I handed him the relevant documents. After he had inspected these, he gave them back, advising me, "You should keep this (the Minister's Consent) close to your heart." Believe me, I told him, I know.

It took one final misadventure to confirm that Immigration had indeed updated its database. I'd traveled to Detroit on the October 2004 Columbus Day weekend to attend my niece's wedding, planning to visit Toronto for several days afterwards while en route back to Boston. On Monday morning my brother and his friend dropped me off at the tunnel entrance to take the bus to Windsor. I realized, too late, that I had left my backpack with documents, passport, and reading glasses on the back seat of his car. I decided my best option was to continue on; the worst Canadian officials could do would be to turn me back, and then I'd have to head home from Detroit.

At Customs the only identification I could produce was my Massachusetts driver's license and my credit cards—this time I'd forgotten to put copies of my passport picture page into my luggage. I was, however, easily able to answer all the officer's questions, including the location of my bed & breakfast in Toronto since I'd stayed there three years before. I had the sense that he felt I was telling him the truth.

He then had me report to Immigration, where I handed that officer the interrogation report plus my license, informing him what had happened with my

pack. He put me into the computer and a minute later asked me if I'd ever had any trouble getting into Canada. I of course told him about the 1974 deportation and the subsequent waiver allowing me to enter once the law had been changed. He confirmed the Minister's Consent and allowed me to enter, confirming that finally they had updated my status in their system.

My next concern was getting back into the United States three days later, despite being (temporarily) *indocumentado*. Fortunately, I had happened to bring along a t-shirt from a Montpelier, Vermont, bookstore, which I put on before I set out early Thursday morning. I then boarded Amtrak's "Maple Leaf" Toronto-New York train for Rochester, which VIA Rail Canada runs and staffs up until the border—before it rumbles over the upper deck of the Whirlpool Rapids Bridge into Niagara Falls, New York. I completed the Customs form, leaving blank only my passport number which of course I didn't know, and handed it along with my driver's license to the Customs agent when she came down the aisle. She only asked me how long I'd been in Canada (three days) and where I was born (Vermont), and that was that.

Whether I would fare quite so well again, now that passports are required for entry to the United States and given the vagaries of the Homeland Security apparatus, is an open question.

As it's turned out, I have not had occasion to visit Canada in the four years since that last incident, though I expect to drive up to Montreal in the very near future—especially since I've recently started dating a retired middle school French teacher. But I trust the consequences of my original hapless adventure will likely continue to pop up from time to time, to remind me yet again of my inadvertent, if modest, contribution to the queering of Canada.