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“Pleasing Appearance . . . Only Adds to the Danger”: The 1930 Insanity Hearing of Violet Hypatia Bowyer

Constance Backhouse*

The state’s legal authority to detain individuals within insane asylums in early twentieth-century Canada was deeply influenced by factors of gender, class, and race. Violet Hypatia Bowyer, a working-class, white woman who was just twenty-two years old in 1928, was initially incarcerated in Ontario for leading a “dissolute” life. Wrongly diagnosed as “insane” by prison officials, she tried valiantly, but failed, to secure her release through legal challenge. The expert testimony of the prison officials, the psychiatric “experts,” and the decision of the court all testify to the terrifying coerciveness of law in Canadian history.

Au début du 20^e siècle au Canada, le pouvoir légal permettant à l’État de détenir des personnes dans des asiles d’aliéné-es était profondément influencé par les facteurs du genre, de la classe et de la race. Violet Hypatia Bowyer, une femme blanche de classe ouvrière, n’avait que vingt-deux ans en 1928, au moment où elle a été incarcérée pour la première fois en Ontario parce qu’elle vivait une vie «de débauche». Les autorités carcérales l’ayant faussement diagnostiquée comme «aliénée», elle a tenté avec courage, bien que sans succès, d’obtenir sa liberté par la contestation judiciaire. Le témoignage expert des autorités carcérales, des psychiatres et la décision du tribunal révèlent la coercition terrifiante du droit dans l’histoire du Canada.

It is a wonderful thing to be celebrating twenty years of the *Canadian Journal of Women and the Law*. This is particularly poignant for me, as I was fortunate enough to be the contributor of the first piece published on the first page of the first volume of the *Journal*: an article about Canada’s first white female lawyer, Clara Brett Martin, who was called to

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the bar in 1897.¹ However, the task at hand—to contribute a submission on “a defining moment in feminist engagement with law during the last twenty years”—would leave most historians quavering.² My knowledge about feminism and law begins in the nineteenth century and ends in the first half of the twentieth. The last twenty years seem dauntingly modern indeed. I prevailed upon the editors of this landmark volume to make an exception to the twenty-year catchment period. I asked whether I might be able to locate my “moment” as a historian who has spent the past twenty years poring over yellowing and aged archival records. I wanted to capture the moment in time when I discovered a particularly remarkable case. For there is indeed a case that I unearthed in 2001 that has haunted me ever since. The problem is that it was litigated in Ontario between 1928 and 1930—more than a half century before the *Journal* was even a gleam in the first editor’s eye. Generous to a fault, the current editors graciously agreed to relax the rules to permit me to write about this case in conjunction with this celebratory collage.

The case, which I came across three years ago while reviewing hundreds upon hundreds of historical judgments affecting women, involves a twenty-two-year-old woman named Violet Hypatia Bowyer.³ Ordinarily, I can spend up to several years researching historically important, individual cases. Yet this case was so stark, so shocking that I could not bear to work on it. It has remained riveted in my mind. When the call to write a brief article in this journal came through, it seemed a perfect mechanism for this deeply troubling case. It offered a chance to do something that, for me, is totally different than my previous work: a speculative comment that spins out almost completely from the judicial text, that poses more questions than it answers, and that leaves the mystery of the woman at the centre of the dispute almost completely unresolved.

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1. Constance Backhouse, “To Open the Way for Others of My Sex: Clara Brett Martin’s Career as Canada’s First Woman Lawyer” (1985) 1 *Canadian Journal of Women and the Law* 1–41. This article, written before the discovery of Clara Brett Martin’s anti-Semitism, required some serious rethinking: see Constance Backhouse, “Clara Brett Martin: Canadian Heroine or Not?” and “Response” (1992) 5(2) *Canadian Journal of Women and the Law* 263–79 and 351–4; Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Women’s Press/Osgoode Society, 1991), chapters 10 and conclusion. See also Lita-Rose Betcherman, “Clara Brett Martin’s Anti-Semitism” and “Response” (1992) 5(2) *Canadian Journal of Women and the Law* 280–97; Brenda Cossman and Marlee Kline, “And if not now, when? Feminism and Anti-Semitism beyond Clara Brett Martin” (1992) 5(2) *Canadian Journal of Women and the Law* 298–316; Lynne Pearlman, “Through Jewish Lesbian Eyes: Rethinking Clara Brett Martin” (1992) 5(2) *Canadian Journal of Women and the Law* 317–50.
 2. As indicated in the call for papers circulated in May 2004.
 3. *Re Bowyer* (1930), 66 O.L.R. 378 (Ont. High Court) [*Re Bowyer*].

The published record I stumbled upon opens on 18 November 1930, with Ontario Court of Appeal judge William Edward Middleton sitting in his court chambers, reviewing a motion “for the discharge of Violet Hypatia Bowyer from confinement in the Ontario Hospital for the Insane at Cobourg.” The application alleges that she was being detained “illegally.”⁴ Middleton, the subject of a full-length biography by former Ontario Court of Appeal judge John D. Arnup, was reputed to have been highly learned in the law, diplomatic, and extraordinarily polite towards fellow judges, counsel, and litigants.⁵ Of all the judges that Violet Bowyer could have drawn, he was definitely not one of the worst. Perhaps this fact is what makes the case even more appalling.

Judge Middleton explores how Violet Bowyer arrived at the Cobourg Hospital. Much of the decision has to be “read against the grain,” but at least some of the points Middleton makes are incontrovertible. He notes that Violet Bowyer had been “a public charge” from the age of sixteen, had given birth to a child when she was around seventeen years old, and that her child had become “a ward of the Children’s Aid Society.” Bowyer herself had been detained in a series of institutions, all of which had heavenly sounding names that undoubtedly masked rule-encrusted, mind-numbingly punitive regimens: St. Faith’s Lodge, Humewood House, and the Salvation Army Haven. In September 1928, convicted of vagrancy by Magistrate Margaret Norris Patterson, she was committed to an indeterminate term of two years less a day in the Belmont Industrial Refuge.⁶ Magistrate Patterson, who was also the subject of considerable historical attention, is the first of a series of professional women who figures in Violet Bowyer’s case. A physician and moral reformer who played a pivotal role in the rise and demise of the controversial Toronto Women’s Court in the early twentieth century, Patterson heard almost 2,000 cases before her removal in 1934 and developed a reputation as being somewhat harsher than her male counterparts, lenient with first-time offenders, and strict with repeat offenders and with men who

4. *Re Bowyer*, *supra* note 3 at 378.

5. John D. Arnup, *Middleton: The Beloved Judge* (Toronto: McClelland and Stewart, 1988) at 7, 57, 157. Middleton was born in Toronto in 1860, the son of a bookkeeper. He studied at Toronto Grammar School, was called to the bar in 1884, appointed to the Supreme Court of Ontario in 1910, and to the Ontario Court of Appeal in 1923. His support of Elizabeth Bethune Campbell, who was involved in a widely publicized lawsuit involving a family dispute over a will in 1929, provoked her to describe him as a “gentleman and Jurist” with a “keen sense of justice,” “his mind steeped in the law,” and “his patience inexhaustible.” See Constance Backhouse and Nancy L. Backhouse, *The Heiress versus the Establishment: Mrs. Campbell’s Campaign for Legal Justice* (Vancouver: University of British Columbia Press, 2004) at 108.

6. *Re Bowyer*, *supra* note 3 at 381, 383.

harmed women.⁷ Determined to use the authority vested in her as an elite feminist to divide “good” women from “bad,” she apparently made little distinction between punishment and protection or treatment and confinement and came down particularly hard on rebellious working-class youths.⁸ The potential for a two-year term that was assessed to Violet Bowyer was the highest Patterson could have pronounced.⁹

Shortly after being sentenced, Violet Bowyer gave birth to her second child, an infant of undisclosed gender who appears to have died at or shortly after the birth.¹⁰ Whether Violet Bowyer perceived this as a relief or an emotional tragedy is unknown. However, she must certainly have been dismayed after serving out her full two years to discover that the authorities “deemed [it] inexpedient to grant her freedom.”¹¹ Instead, she was handed over for diagnosis to two medical practitioners, one of them female,

7. Patterson had a long-standing interest in many aspects of the sexual exploitation of women. She served as convener of the Equal Moral Standards and Prevention of Traffic in Women Committee of the National Council of Women and acted as an adviser to the federal government in 1919 on the *Criminal Code*, with respect to offences against women. In 1922, Patterson became the first woman magistrate to sit in Toronto Women’s Court, established in 1913 due to the lobbying of the Toronto Local Council of Women. The court, which operated on principles of maternal feminism, adjudicated cases of women charged with crime, men who were jointly charged with women, and certain family law matters. See Amanda Glasbeek, “A Justice of Their Own: The Toronto Women’s Court, 1913–1934” (Ph.D. thesis, York University, September 2003); Dorothy E. Chunn, “Maternal Feminism, Legal Professionalism and Political Pragmatism: The Rise and Fall of Magistrate Margaret Patterson, 1922–1934,” in W. Wesley Pue and Barry Wright, eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988). Patterson had particular concern over cases of women designated as “feeble-minded” (see discussion later in this article) and had sat as one of two “Representative Women” on the executive of the Toronto Branch of the Provincial Association for the Care of the Feeble-Minded. Patterson believed that it was improper to jail or send feeble-minded women to houses of refuge and advocated that they be held in segregated “farm colonies, with the cottage system of housing.” See Loraine Gordon, “Doctor Margaret Patterson: First Police Magistrate in Canada” (1984) 10(1) *Atlantis* 95 at 104.

8. Glasbeek, *supra* note 7.

9. Although the reported decision indicates that the conviction was for vagrancy, this must not have been pursuant to section 238 of the *Criminal Code*, R.S.C. 1927, c. 36, which provided that the maximum sentence for vagrancy was six months. However, a finding of vagrancy also warranted committal under *The Female Refuges Act*, S.O. 1919, c.84, ss.3 and 16, which allowed the court to commit “any female between the ages of fifteen and thirty-five years” into an industrial refuge “for an indefinite period not exceeding two years” where found “by reason of . . . vices” to be “leading an idle and dissolute life.” On the history of the latter statute, see Joan Sangster, “Incarcerating ‘Bad Girls’: The Regulation of Sexuality through the Female Refuges Act in Ontario, 1920–1945” (1996) 7(2) *Journal of the History of Sexuality* 239.

10. Bowyer, who was pregnant at the time she appeared before Patterson, was dispatched initially to a maternity hospital, and then subsequently to the refuge. *Re Bowyer*, *supra* note 3 at 381.

11. *Ibid.* at 381.

who pronounced her “insane” and had her shipped over to the Ontario Hospital for the Insane at Cobourg.¹² And here is where the record becomes murky and far more complex.

It is Violet’s father who hires a lawyer and challenges his daughter’s detention for insanity. While one might speculate that his motivation was simple humanity and compassion for his offspring, the facts suggest other impulses may have been in play. Middleton notes that Mr. Bowyer is “said to be erratic” and that Violet Bowyer had lodged “charges” against him. Although Mr. Bowyer had apparently “indignantly denied” it, Middleton elaborates: “What was charged was: ‘One time he took her down to some house where a man was immoral with her. This he said would cure her after she had gone wrong previously.’”¹³ Middleton, it seems, agreed with the indictment that the young woman had “gone wrong.” He chronicles a list of Violet Bowyer’s sexual misdeeds: she had “misconducted herself with many men on many occasions,” she had “stayed out all night with men,” and she had “lived with men in immoral relationships.” In sum, “[t]he girl has been leading an immoral life since she was 12 or 13.”¹⁴ Describing the “details” as “sordid in the extreme,” Middleton appears loath to continue.¹⁵ Yet, in laying much of the blame at the feet of the family, he ventures on:

This unfortunate young woman has a very bad family history: “three paternal uncles who are insane; one maternal uncle, unmanageable as a boy, stole and was placed in an industrial school; two paternal aunts who lived immorally, one being the mother of an illegitimate child, coloured.” The mother of this young woman is, to judge from a letter to her daughter . . . unbalanced mentally . . . [and] “the home influences surrounding her have not been helpful but most harmful . . . there has from the beginning been a lack of parental co-operation.”¹⁶

This is the first overt clue that Violet Bowyer was perceived as “white.” Otherwise, why would the paternal aunt’s child’s designation as “coloured” be worth including? Had the Bowyers been Aboriginal or from one of the many other communities perniciously designated as “racially” inferior at the time, the authorities attempting to chronicle their family history would likely

12. *Ibid.* at 381. The physicians were Dr. E.P. Lewis and Dr. Kathleen M. Barthy. No further details regarding their diagnosis are provided in the published report.

13. *Ibid.* at 379, 381–2.

14. *Ibid.* at 381.

15. *Ibid.* at 383.

16. *Ibid.* at 381.

have recorded this fact.¹⁷ Racism penetrated very deeply into the dominant culture's assessment of social categories and behaviour. However, the privilege that customarily attached to "whiteness" did not work in Violet's favour, in part because factors such as class and sexual history seem to have overridden race and in part because her aunt's sexual intimacy with a man perceived as "coloured" appears to have branded the entire family as racially suspect and impure.

The labelling of the paternal uncles as "insane" is, of course, subject to the same questions and critique that we are embarking upon with respect to Violet Bowyer herself. The reasons why the "unmanageable" boy may have been acting rebelliously are conveniently omitted. The precise nature of the mother's lack of balance is unstated, but the disdain for non-marital sexual activity on the part of female family members is palpable. Racism, sexism, and class bias aside, however, there are obvious manifestations of an unconventional, dislocated family in disarray. Taking Violet's word against her father, something the early twentieth-century legal system would have been loath to do regarding sexual allegations,¹⁸ one wonders whether Mr. Bowyer was profiting, financially or otherwise, from the sexual exploitation of his daughter. Certainly, it seems odd that a dysfunctional working-class family would have found it easy to scare up the money to retain counsel and explore the intricacies of writs of *habeas corpus*.¹⁹ Later references suggest that Violet Bowyer was living "a life of prostitution."²⁰ Did her father have some stake in this activity, which prompted him to try to secure her release?

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17. The racial designation of "white-ness" was virtually never articulated during this period. Racial minority designations were also frequently omitted in official records, except where these served as explanatory for unlawful behaviour or negative judgments. "Coloured" was a term commonly used to describe African-Canadian or African-American classification. For a fuller discussion of the racial context during this period, see Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press, 1999).
 18. On the unfairness of the credibility assessments made by lawyers and judges historically, see Constance Backhouse, "The Doctrine of Corroboration in Sexual Assault Trials in Early Twentieth Century Canada and Australia" (Spring 2001) 26(2) *Queen's Law Journal* 297; Constance Backhouse, "The Sexual Abuse of Children: By Psychological Definition... A Disservice to the True End of Justice, The Case of Ovila Soulière, 1951–52" (unpublished manuscript, 2004).
 19. Mr. Bowyer had hired R.B. Gibson to appear as counsel on his behalf, and the lawyer had produced a writ of *habeas corpus* directed to Dr. W.C. Herriman, the superintendent of the Cobourg Hospital, "commanding him to produce the body of the said Violet H. Bowyer and shew the cause of her detention in the said hospital." Middleton notes that "the production of the body has been dispensed with, and a return has been made shewing that the applicant is in his custody, as an inmate of the hospital." *Re Bowyer, supra* note 3 at 278–9. Violet Bowyer did not manage to obtain even the brief release from confinement that attendance at court would have offered.
 20. *Ibid.* at 383.

Mr. Bowyer did not stop with the retention of counsel. He hired two “medical men” and prevailed upon the superintendent of the Cobourg Hospital to let them examine Violet. The first diagnosis, summarized by Middleton, provides a vigorous declaration that Violet Bowyer is not insane:

Dr. Howard A. Irwin...found her intelligent and coherent, could carry on conversations in a normal manner and apparently capable of performing domestic work. The condition is “merely subnormal mentality.” He believes her not insane or dangerous to be at large and he could discover no reason why she should be confined as an insane or idiotic patient.²¹

The second diagnosis, couched in the psychiatric terminology of the day, is less than flattering, but, on balance, supports the young woman’s release. Middleton continues:

Dr. William B. Edmonds examined the patient on the 7th October, 1930, and finds her to be a high grade moron; her mental ability is not high—probably that of a normal girl of 12 years. “It is purely a case of sub-normal mental ability, and she has no mental hallucinations and is not in any way dangerous to be at large.” He was informed that her moral control is weak. “As to this I am not prepared to express an opinion.” “Judging solely by her mental capacity,” he would say that she is not insane and quite capable mentally of working outside of an institution, and that she might safely be allowed her freedom under proper supervision.²²

The “high grade moron” terminology was in everyday use at the Toronto Psychiatric Clinic, where the emerging leaders of the mental hygiene movement were bringing social, moral, and economic criteria to bear upon their diagnoses of young working-class women.²³ Their classifications ranged from “idiot” (described as a “low-grade defective”) to “imbecile” (described as a “middle-range defective”) to “feeble-minded” or “moron” (described as a “high-grade borderline defective”).²⁴ Psychiatrists attempting to diagnose “feeble-mindedness” gave painstaking

21. *Ibid.* at 382.

22. *Ibid.* at 382.

23. Jennifer Stephen, “The ‘Incorrigible,’ the ‘Bad,’ and the ‘Immoral’: Toronto’s ‘Factory Girls’ and the Work of the Toronto Psychiatric Clinic,” in Louis A. Knafla and Susan W.S. Binnie, eds., *Law, Society and the State* (Toronto: University of Toronto Press, 1995), 405.

24. *Ibid.* at 422–3.

attention to family history, sexual habits, the age at which the patient began to walk and talk, the onset of menstruation, unstable employment history and low wage levels, evidence of delinquency, unsuitable friends and associates, “affability” or, in stark contradiction, the lack thereof, hyper-suggestibility, the absence of a “sporting spirit,” low IQ, physical markers such as stigmata and cleft palate, and, in the case of young women, physical “good looks.”²⁵ Eugenists and mental hygienists then advocated segregation for “feeble-minded” women of child-bearing age, particularly when their “immoral careers” had resulted in “occupational wanderlust” and “moral misconduct.”²⁶ Dr. Edmonds, himself, resists the call for full segregation, although he advises “proper supervision.”

However, segregation was precisely the prognosis that the authorities at the Cobourg Hospital urged on the court. They filed affidavit upon affidavit from the professional women who had supervised Violet Bowyer from previous institutions, all of whom vigorously opposed her release: Miss Chestnut, superintendent of the Haven, Margaret Hope of St. Faith’s Lodge, Emily H. Hill of Humewood House, and Laura L. Kennedy, superintendent of the Refuge.²⁷ Some, if not all of these women, must have been first-wave feminists like Magistrate Margaret Patterson, who adhered to the philosophy of female equality but were simply unable to cross class boundaries to recognize the incredible harm their actions were wreaking in the dislocated lives of women such as Violet Bowyer.

The women professionals did not stand alone. The Cobourg Hospital introduced evidence from no fewer than five male medical experts, all of whom strenuously supported Violet Bowyer’s continued incarceration for insanity. The authorities were determined to outgun the Bowyers on the number and clout of professional witnesses. In fact, the resources that both sides were prepared to spend on this case seem extraordinary. What was there about the young woman that provoked such litigiousness? Were the Cobourg authorities outraged that Mr. Bowyer had challenged their decision? Did they intend to make a test case out of it? Was there something about Violet Bowyer that made victory over this court challenge essential in the minds of the decision-makers? Had she attained the stature of a leader among the other inmates, such that her success in court might have threatened the equilibrium of the insane asylum? Had she upset the staff in some way? And how did Violet Bowyer feel about the parade of physicians who attended upon her, subjecting her to tests, probing her physical and psychological being, poking into her family history, and waxing eloquent on her future potential?

25. *Ibid.* at 409–24.

26. *Ibid.* at 430.

27. *Re Bowyer*, *supra* note 3 at 383.

Dr. W.C. Herriman, superintendent of the Cobourg Hospital, attested without hesitation that Violet Bowyer was “insane,” but he viewed the designation as primarily defensive. He declared Violet Bowyer “to be a high grade feeble-minded person, definitely lacking in moral judgment and unable to protect herself in the community.”²⁸ Dr. Bernard T. McGhie, who stressed that he had had thirteen years in the practice of psychiatry, as well as the superintendency of various hospitals for the insane including the “hospital for defectives at Orillia,” opened his diagnostic opinion with the statement that Violet Bowyer has the “subnormal mentality... of a 12-year old child.”²⁹

This mental classification, which was in line with that of the Bowyers’ own medical witness Dr. Edmonds, who had also described Violet as having the “mental ability of a normal girl of 12 years,” is probably a reference to Violet Bowyer’s score on the Binet-Simon test. The test had been transported from Britain to “measure an individual’s degree of mental development or mental age.”³⁰ Failing to recognize the cultural, linguistic, ethnic, and class biases incorporated in such tests, Canadian psychiatrists enthusiastically seized upon such measurements for universal application. Individuals who tested at or above “a mental age of fifteen” were considered to have achieved “an acceptable level of social maturity.” Those who fell below “a mental age of twelve” were classified as mental write-offs.³¹ Yet the individuals who caused the greatest consternation were “girls... who could do the Binet Simon tests up to twelve or thirteen, but whose failure... to recognize the most obvious moral obligations” clearly bespoke their pernicious influence. These were “women with the minds of children in the bodies of adults... sexually mature but lacking the mental stuff that would compel them to social efficiency and moral conformity.”³²

In a surprising admission for a doctor who was making a diagnosis of “insanity,” Dr. McGhie concedes that Violet Bowyer was “not suffering from a psychosis,” but he does not let this deter him:

Her history shows the results that might be expected when a physically healthy adult with such limited mentality is placed in an undesirable environment. Her mental limitations will prevent her past experience being of any value in preventing a recurrence of her difficulties should she return to her former environment.³³

28. *Ibid.* at 382.

29. *Ibid.* at 383.

30. Stephen, *supra* note 23 at 421–2.

31. *Ibid.* at 422–3.

32. *Ibid.*

33. *Re Bowyer*, *supra* note 3 at 383.

Dr. Donald R. Fletcher, superintendent of the Ontario Hospital at Toronto, a “demonstrator” in psychiatry at the University of Toronto, and a self-professed “specialist in mental cases,” also admits that Violet Bowyer exhibited no symptoms of psychosis. He is more inclined, however, to expand upon the “physically healthy” description that seems to have so impressed Dr. McGhie:

A well-built, well-nourished girl of pleasant appearance and manner. Subnormal mentally...she shewed no active symptoms of any psychotic condition. She admits sexual immorality since the age of 13 and gives no evidence that there is likely to be any change in her habits if she returns to her former environment.³⁴

As historian Jennifer Stephen has stated, to the psychiatrists of the day, “the body” could be “deceptive.” They believed that the “outward appearance, particularly of those women labelled high grade mental defectives, often conformed to physical cultural standards of female attractiveness.” A young woman’s “good looks were a menace to her and society.”³⁵ The obsession with beautiful “high grade morons” that seems to have preoccupied early twentieth-century psychiatrists should set off warning signals to feminists. Recognizing the extent to which psychiatrists, among other professionals, sexually harassed patients, one begins to wonder precisely why “good looks” and premature sexual activity had become defining features of “feeble-mindedness” diagnoses. The vulnerabilities of young inmates detained in institutions such as training schools and insane hospitals, where their former sexual exploitation marked them as “incorrigible,” are glaring. How many of these doctors ogled Violet Bowyer as they jotted down their findings? How many mused about doing more than ogling? How many attempted to act upon such desires?

And what of Violet Bowyer herself? How did she respond to the gaze and attention of so many medical experts? We catch only a few fascinating glimpses from the reports of the medical men. She seems to have clashed a bit with Dr. W.A. Caldwell, who as a member of the Cobourg Hospital staff had had Violet Bowyer “under observation daily since admission.” Caldwell’s affidavit reads:

She is a high grade moron with a mental age of 12, of very sullen morose disposition with temper tantrums, but can make her manner very pleasing when occasion requires. This is superficial and not

34. *Ibid.* at 383.

35. Stephen, *supra* note 23 at 409.

a true picture of her daily life. As soon as opportunity offers she will revert to a life of prostitution.³⁶

Dr. Charlton A. Cleland, also on the Cobourg staff, appears to have been shocked at Violet Bowyer's intransigence and lack of shame:

[She is] a high grade moron mentally deficient, especially in the moral sphere—superficial in thought and of defective judgment. In speaking of her past sexual misdemeanours she says she is sorry but feels it is no disgrace and will not definitely promise to do otherwise in the future. It is nobody's business but her own if she has been a vagrant and has had two illegitimate children. [She is] not capable of properly protecting herself in society.³⁷

“Sullen,” “morose,” “temper tantrums,” rejecting “disgrace,” warning the professionals to stay out of her “business,” all of these descriptions offer clear evidence of what Violet Bowyer herself felt.³⁸ Surely, it suggests anything but “superficiality.” Does it also help to explain why she was diagnosed as “insane” despite her documented lack of hallucinations or psychoses? Does it help us understand why her case attracted such firepower from institutional authorities?

And what does Judge Middleton make of the evidence before him? He begins by setting an astonishingly high burden of proof for the Bowyers' counsel: “It may well be that the writ of *habeas corpus* is available to discharge a person who is sane, yet is confined in an asylum. On the other hand, there is much to indicate that the decisions of the authorities under the statute ought not to be interfered with by the Courts. In any case, to invoke the power of the Court to discharge, there must be satisfactory evidence of the sanity of the patient.”³⁹ It is not a question of the medical experts having to justify their diagnosis of insanity but, rather, the opposite. And all of this presented before a judge who has suggested that he intends to show them the greatest of deference.

The Bowyers' lawyer did his best nonetheless. He fashioned his argument around the premise that “mere immorality is not insanity and does not

36. *Re Bowyer, supra* note 3 at 383.

37. *Ibid.* at 382.

38. For some discussion of other incarcerated young women whose resistance was recorded in official historical records, see Tamara Myers and Joan Sangster, “Retorts, Runaways and Riots: Patterns of Resistance in Canadian Reform Schools for Girls, 1930-60” (2001) 34(3) *Journal of Social History* 669.

39. *Re Bowyer, supra* note 3 at 380.

justify detention in an asylum.”⁴⁰ Middleton feigns agreement and then side-steps the issue:

I agree with the latter statement, but here I find the immorality is merely a symptom of the insanity which, in my view, undoubtedly exists. A woman who, in the language of one of the reports, is very much oversexed, and has only the mentality and will-power of a child of tender years to control her appetites and passions, is insane, and not only insane but also a danger to herself and to the community. That she is physically well-developed and of pleasing appearance, and when not in a psychosis can make herself attractive, only adds to the danger.⁴¹

He then addresses directly the argument that Violet Bowyer herself had made to the Cobourg psychiatric staff:

The argument here presented, that this girl is her own master and her body is her own to use and to abuse as she sees fit, belongs to another and past age. The community as a whole is concerned. For six years this woman has been a charge upon the public funds, her child is a ward of the Children’s Aid Society, and liberty to resume her reckless life will mean further disaster.⁴²

Cloaking himself as a progressive modernist, Middleton also falls prey to the reputed physical beauty of Violet Bowyer, at the same time as he castigates her for having cost the public money for her upkeep in the very institutions in which she has been interred against her will. Liberty is to continue to elude her. Congratulating the Cobourg administrators for their “patience and consideration” in executing a “difficult and delicate” task, Middleton issues an order “remanding” Violet Bowyer “to custody.”⁴³

Violet Bowyer, who according to all of the medical evidence arrayed for and against her suffered from no hallucinations, no psychoses, indeed no active symptoms of any psychotic condition, who carried on intelligent conversations in which she clearly held her own against distrusting and suspicious psychiatrists, was consigned for an indeterminate time to an insane asylum and left to the mercies of physicians such as Drs. Herriman, Caldwell, and Cleland. How did she feel about the lamentable verdict? How did she fare in the frightening environment of an insane asylum?

40. *Ibid.* at 383.

41. *Ibid.* at 383–4.

42. *Ibid.* at 384–5.

43. *Ibid.* at 384.

Did she ever secure her release? What lasting effect did such unjust incarceration have upon her emotional well being and her future life? And what can one conclude from the fact that one of the Ontario High Court's most respected judges could have so solidly supported this sordid, discriminatory, and flagrantly punitive agenda of the state?

To return to the present, why does this case—of all the tragic and heart-rending cases that the historical record presents—fill me with such dismay? Perhaps it is because I suspect that Violet Bowyer was anything but “insane.” In fact, given the nonsensical diagnostic tools the psychiatrists were using, I also wonder whether the “twelve-year-old” mentality affixed to her was accurate. This was not a case of a woman so mentally challenged that she could not read, write, work for pay, or function in the world. The diagnosis seems based primarily upon her gender, class, and sexual history. Violet Bowyer had, without doubt, been sexually abused and exploited, probably within her family and certainly outside of it. She may as well have reaped benefits from her sexuality occasionally. Her confinement in an industrial refuge, and then in an insane asylum, was based on the moral judgments of elite professionals, none of whom could have hoped to comprehend the realities that had shaped Violet Bowyer's life. They treated her like an infectious disease and sacrificed her liberty in the aim of preventing the spread of what they perceived to be contagion. Had they truly been concerned about her sexual exploitation at the hands of men, they should have taken steps to reform the appallingly misogynistic law of sexual assault: the discriminatory evidence rules that demanded corroboration for women and children but not for men; the techniques of cross-examination that intimidated and shamed rape victims; and the incredibly low conviction rates.⁴⁴ Can you imagine psychiatrists, lawyers, and judges calling for preventive detention for potential rapists? The mere asking of the question strips bare the gender-biased assumptions that permeate this decision. Reading this case so many decades after it occurred, I find myself overwhelmed with sadness at how Violet Bowyer, and countless other women like her, paid the price for the spiteful and malevolent prejudices of early twentieth-century Canadian legal authorities.

44. I am writing a book on the history of sexual assault law in Canada that will focus in greater detail on these, and other, discriminatory rules affecting women and children who made allegations of rape and indecent assault. For preliminary results, see Constance Backhouse, “Don't You Bully Me...Justice I Want If There Is Justice to Be Had: The Rape of Mary Ann Burton, London, Ontario, 1907,” in Jonathan Swainger and Constance Backhouse, eds., *People and Place: Historical Influences on Legal Culture* (Vancouver: University of British Columbia Press, 2003) at 60; Constance Backhouse, “Attentat à la dignité du Parlement: Viol dans l'enceinte de la Chambre des communes, Ottawa 1929” (2001–02) 33(1) *Ottawa Law Review* 95; Constance Backhouse, “The Doctrine of Corroboration in Sexual Assault Trials in Early Twentieth Century Canada and Australia” (Spring 2001) 26(2) *Queen's Law Journal* 297.