

## **Power without a Patriarch: Compulsory Heterosexuality and the New Ontario Welfare System**

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*En 1995, le premier ministre Mike Harris ordonna, avec « sa révolution du bon sens », une série de changements au système d'aide social afin de réduire les fraudes et pour transformer les « prestataires » en « participants ». Un des buts visés de sa nouvelle politique « l'Ontario au travail » était de réduire le coût de l'aide sociale en diminuant le nombre de personnes seules sur le programme (les prestataires célibataires reçoivent 520\$ par mois mais seulement 450\$ pour un couple). Ainsi, il incita les prestataires à déclarer leurs « conjoints ». L'essai de Rogers met de l'avant une analyse pénétrante et percutante en dévoilant les tactiques gouvernementales utilisées par la politique de « l'Ontario au travail » en contrôlant la vie privée et en renforçant l'hétérosexualité obligatoire. Comment les travailleurs de l'aide sociale déterminent si un prestataire a une « épouse » ne se révèle pas aussi « sans équivoque » que les désirs de Mike Harris.*

In October 1999 Canada's Liberal federal government instituted legislation which compelled the provinces to extend the status of heterosexual common law marriage to same-sex couples, making good on Pierre Elliot Trudeau's famous declaration that the state has no business in the bedrooms of the nation. The provinces were required to incorporate this acknowledgment of same-sex partnerships into all existing policy and legislation. In mid-March 2000, Mike Harris's Progressive Conservative Ontario government responded to this federal imperative, revising its policies concerning the marital status of welfare recipients. This article will suggest that despite its own lip service to the ideal of small government, this administration, since its election in 1995, has instituted one of the most insidiously intrusive social service regimes in Canadian history. If you are poor this government will find a legally questionable and ethically reprehensible way into your bedroom through its reformed welfare policy, renamed "Ontario Works" and widely known as "workfare." Number 14 of the Ontario Works policy directives focused on determining the spousal

status of co-residents of the opposite sex who were receiving social assistance. After the federal bill, the directive was expanded to include the determination of same-sex partnerships.

One could easily look at these new Ontario Works policies and celebrate them as a step towards equality for same-sex partners. Ontario Works administrators themselves may believe that they have moved a step closer to egalitarian social relations by offering the freedom to “choose” homosexuality. In other words, it appears that the compulsory nature of heterosexuality is on the wane. An analysis of the legislation through Adrienne Rich’s category “compulsory heterosexuality” and Michel Foucault’s work on governmental rationality, however, will demonstrate that this appearance is belied.

For feminists, the term “compulsory heterosexuality” came into discourse with Rich’s now canonical 1983 essay “Compulsory Heterosexuality and Lesbian Existence.” Rich challenged feminism to expose the mechanisms within their own work and within the society at large which make heterosexuality compulsory and which simultaneously produce lesbianism as deviant or invisible. While the potential for a more complex conceptualization of power is latent in Rich’s term “compulsory heterosexuality” the figure of the transcendent patriarch hovers over her essay. She outlines what she calls

the methods by which male power is manifested and maintained. Looking at the schema, what surely impresses itself is the fact that we are confronting not a simple maintenance of inequality and property possession, but a pervasive cluster of forces, ranging from physical brutality to control of consciousness, that suggests that an enormous potential counterforce is having to be restrained. (185)

Rich moves towards a broader analysis of power when she discusses the “pervasive cluster of forces” which make heterosexuality compulsory, a cluster of forces which I would like to suggest need not be seen as repressive and which need not require an empowered subject who pulls the strings to see the puppet dance. Unfortunately, Rich ultimately fails to make this leap. Instead, she simplifies her argument by relying on a repressive and adversarial conception of power where men hold power and women’s power is forced into hiding. If we think about the power in which Rich is interested not as repressive but as productive, not as personal but as what Foucault calls “intentional but non-subjective” we could make

better use of the notion of compulsory heterosexuality (though this may be a challenge to feminisms which desire a clear enemy in the form of a sovereign patriarch).

Unlike "patriarchy" which is conceived of as a system which underwrites male power over women, compulsory heterosexuality has no clearly empowered or disempowered subject. It is not a system of heterosexual power over homosexuals, for both of these groups feel the effects of compulsory heterosexuality, even if those effects may differ. Likewise, it need not be considered as a system of male power over women, for heterosexuality is just as compulsory for men as it is for women even if some men may benefit from the system. Compulsory heterosexuality, unlike patriarchy, does not require or imply the conceptualizing of an all-powerful subject exercising his power over the powerless for it to function and be effective. Rather than subjects who are stripped of their power to freely act, compulsory heterosexuality requires that people believe that they are freely choosing to be heterosexual. The production of sexuality is thus riddled with coherent contradictions (contradictions which somehow become coherent and as such their contradictory nature becomes unquestioned and invisible): homosexuality is negated and yet it must be ever-present in order for heterosexuality to consolidate its signification (what is heterosexuality if there is no homosexuality?); sexual "preferences" must at the same time appear innate and freely chosen (compulsory heterosexuality produces subjects who believe that they are naturally heterosexual and yet they also believe that they have chosen to be heterosexual). This notion of a power which maintains heterosexuality as simultaneously compulsory and freely chosen is significantly different from the patriarchal form of power which is seen to simply repress its subjects by saying "no" or "do this." After all, Rich was not merely discussing "prohibited homosexuality" but she was outlining "compulsory heterosexuality." Compulsory heterosexuality relies on a productive form of power in which both homosexuality and heterosexuality are discursively produced. As a case in point, I will examine such productive power at work in the policies concerning the spousal status of welfare recipients in contemporary Ontario.

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In 1995 when Premier Mike Harris began to institute his "common sense revolution" welfare reform was on the top of his agenda. With the stated aims of reducing fraud and turning "recipients" into "participants" the

newly elected Progressive Conservative government instituted a number of sweeping changes to the existing welfare system which was renamed "Ontario Works." One such change was a heightened desire within the Ontario Works legislation to compel welfare recipients to identify themselves as spouses. At face value the Ontario Works policies concerning the spousal status of recipients appear to stem from a budgetary concern of the Ontario government; single welfare recipients are entitled to receive up to \$520 per month whereas recipients who have spouses are only entitled to \$450.50 per month, or a combined income of \$901 per month. When the spousal policies of Ontario Works are fully examined, however, it is clear that the concern with the spousal status of recipients transcends economics. Rather, such policies can be understood as tactics which promote and maintain heterosexuality as compulsory and which institute an individualizing functioning of power which relies for its operation on the autonomy of the heterosexual family.

In *Governing the Soul: The Shaping of the Private Self*, Nikolas Rose outlines such a functioning of power in the course of his genealogical study of the state, the private family and the psychological sciences. Rose argues, as does Foucault about the individual, that it is at the moment that the family believes itself to be autonomous and free that it is most intensely governed. The governance of the family, according to Rose, becomes a matter of self governance under the perpetual guidance of expertise as debates on the rights of the family culminate in a lessening of the power of the state to intrude upon the private family. Rose explains that despite this reduction of outright state intervention into the family,

[t]he modern private family remains intensely governed, it is linked in so many ways with social, economic, and political objectives. But government here acts not through mechanisms of social control and subordination of the will, but through the promotion of subjectivities, the construction of pleasures and ambitions, and the activation of guilt, anxiety, envy, and disappointment. The new rational technologies of the family are installed within us, establishing a particular psychological way of viewing our family lives and speaking about them, urging a constant scrutiny of our inherently difficult interactions with our children and each other, a constant judgment of their consequences for health, adjustment, development, and the intellect. The tension generated by the gap between normality and actuality bonds our personal projects inseparably to expertise. No

longer will the mechanisms necessary for the government of the family threaten the principles of an advanced liberal society. The autonomous responsible family stands as the emblem of a new mode of government of the soul. Each normal family will fulfill its political obligations best at the very moment it conscientiously strives to realize its most private dreams. (208-09)

Rose's analysis of the autonomous family provides a point of entry into the policies of Ontario Works which are directed at the family. If the autonomous family is understood to be the site of governance under advanced liberal society then the problem that Ontario Works seeks to address can be understood as one of identity: Ontario Works seeks to ensure that its participants identify themselves as members of responsible and autonomous families who will govern themselves. As such, the Ontario Works policies concerning the spousal status of participants aim to attach participants to the identity of "spouse." The assumption is that there are a great many people on social assistance who are living as spouses but who continue to identify themselves as single, and that as a result, there are a great many people on Ontario Works who are immune to governmental technologies which are aimed at the family. Such a concern necessitates that Ontario Works defines what it means to live as a spouse and that it engages with the identities of those who come within its ken.

Recipients of Ontario Works are subject to a legal definition of "spouse" which is different than the definition which applies to other citizens of Ontario. For other members of society two individuals are declared to be common law spouses after living together for three years, or less time if they have a child together. Welfare participants, on the other hand, can be declared spouses at the moment that two people of the opposite sex move into the same residence; no time needs to elapse in order for two people to become common law spouses under Ontario Works. Because the definition of spouse is not based on the passing of time, the declaration of spousal status requires the confession of the participant. Ontario Works employs two mechanisms in order to elicit a confession of spousal status, the first of which is the declaration. The declaration can be understood as an illocutionary speech act in which the participant becomes a spouse at the moment that she verbally declares herself spouse. Importantly, however, the declaration of spousal status does not need to be intentional, nor does it depend on the use of the word "spouse." In the Ontario Works policy

directives the following words are also an indication of spousal status: "partner," "companion," "spouse equivalent," or "boyfriend/girlfriend." The indication of spousal status is not limited to these words as they are meant within the directives to be merely a rough guideline for what are called "delivery agents." It is important to note that none of these words necessarily confer a spousal relationship as such a relationship is normally understood. Outside of the welfare office calling someone your boyfriend or girlfriend, companion, or partner does not necessarily mean the same thing as calling someone your spouse. In addition, calling someone your "spouse equivalent" implies that there is some reason why they are not your spouse, but only the equivalent. Yet, within the welfare office the use of any of these words to describe the relationship between an individual and her housemate of the opposite sex counts as a declaration of spousal status. As a result, the declaration can be unintentional; a person may answer "yes" to the question "is he/she your boyfriend/girlfriend?" yet the same person may have answered "no" to the question "is he/she your spouse?" Within Ontario Works, however, the former has come to be synonymous with the latter and the welfare participant is not made aware of this conflation of terms. Thus, through declaration the welfare participant can unintentionally become a spouse.

Importantly, the declaration of spousal status does not need to be verified by evidence while a declaration of being single does. For example, if a participant declares that she is living alone this declaration must be verified by delivery agents who will seek a statement from the landlord, examine the participant's drivers licence history, car registration and employment records, perform credit checks, and look into registry office records, voters' lists or the telephone directory to find out if there is a common phone number. If, on the other hand, a participant declares that she is living with someone of the opposite sex this declaration does not need to be verified. What would need to be verified in this case is a declaration that the participant is both living with someone and single. To prove her single status, such a participant would be required to fill out a questionnaire which can be understood as another mechanism to elicit an unintended confession.

The spousal questionnaire is quite lengthy and it attempts to identify whether the participant and her roommate are financially interdependent and whether they have a social and familial relationship, which are the three criteria that must be met in order for a participant to be declared a

spouse. Questions concerning sexual factors cannot be asked and therefore the determination of spousal status must rely on financial interdependence and social and familial relationships. The definitions of these three criteria are of particular importance for this paper as the definitions ensure that anyone on Ontario Works who is living with someone of the opposite sex is attached to the identity of spouse. Consider the indicators of financial interdependence listed in the Ontario Works policy directives:

1. an existing court order or domestic contract to provide support for the applicant or participant or any of the dependents
2. joint parentage of a natural or adoptive child of the applicant or participant
3. tendering of credit (e.g. one party can purchase goods and services in the name of the other)
4. joint credit cards
5. joint bank accounts and pooling of other financial resources
6. joint assets, investments or ownership of property
7. claims for employee benefits
8. claims for income taxes
9. the assumption of costs for goods and services not associated with shelter costs (e.g. vacations, furniture, car, telephone, cable T.V., regular outings for dinner or movies)
10. jointly rented accommodation
11. joint use or benefit of assets such as car, entertainment equipment, telephone, appliances, furniture etc. owned by both or either one
12. contributions toward shared costs of necessities, shelter and services, e.g. cable
13. gifts and payments made for items not covered by assistance
14. one party assuming total or partial costs of basic needs, shelter and services for the other or both parties share these expenses. (*Ontario Works: Making Welfare Work*, Dir. 14: 8-9)

It is only necessary for Ontario Works staff to find that one of these indicators is present in a participant's relationship with her roommate in order for them to be declared financially interdependent. Numbers one through eight of the indicators listed are perhaps what would be expected in terms of proof of spousal or familial financial interdependence; certainly with the exception of a joint bank account which may be used solely for the

purposes of paying rent, none of these indicators would be present within the roommate relationship and would be specific to a spousal or otherwise familial relationship. Numbers nine through thirteen, however, are more problematic and virtually make it impossible for two people of the opposite sex who live together to be considered financially independent. These indicators focus on the assumption of costs and the use of goods. It seems that costs cannot exist without participants being declared financially interdependent; if one person covers all the costs they are financially interdependent, and regarding the sharing of costs the Ontario Works guidelines reminds delivery agents that “The fact that everything is split 50/50 does not in and of itself mean financial independence.” As a result, anyone who rents an accommodation with someone of the opposite sex is necessarily deemed financially interdependent. In addition, it also seems that if roommates share a fridge, or get the same hydro bill (and of course, it is impossible for roommates to receive separate hydro bills) or sit on a couch which is owned either individually or jointly they are considered financially interdependent. The questionnaire aims at eliciting this type of confession from people, without their knowledge that they are in fact confessing to being a spouse. For example, for the welfare recipient who does not want to be declared a spouse the correct answer to the question “Who pays for food ordered in?” seems clear: “We both pay for our own food.” Yet, under the Ontario Works guidelines there is no answer to this question that could prove the participant’s status as financially independent; they are financially interdependent at the moment that they order food, regardless of who pays. This, however, is not in and of itself enough to declare the participant a spouse, for in addition to financial interdependence the participant also needs to be found to have a social or familial relationship with her roommate.

The indicators of social and familial relationships are also problematic, especially when examined alongside the questionnaire. If the participant and her roommate are not legally married, do not identify themselves as Mr. or Mrs. and have not declared themselves to be spouses to Ontario Works, then evidence of social and familial relationships comes predominantly from two indicators: that the two people are known by others as a couple and that the two people spend evenings and weekends together or vacation together. When these indicators of spousal status are translated into questions on the spousal questionnaire two things become clear. First, the relationship between two people which classifies them as a



couple is strikingly similar to a relationship which would, under other circumstances, classify people as friends and roommates. Consider the following questions:

“Do other people invite the two of you over together?”

“Do you and your co-resident have friends in common?”

“Do you and your co-resident entertain together as a couple?”

“Do you go out with your co-resident to dinner, movies, social events or sporting events?”

“Do you and your co-resident spend spare time together?”

“Does he/she buy you holiday presents?”

“Do you ask your co-resident for advice regarding your children?”

“Does your co-resident attend your children’s birthday parties?”

Presumably, answering “yes” to any of these questions would satisfy the social and familial requirements of spousal status. Yet, wouldn’t most roommates answer “yes” to one or more of these questions? And, if the two roommates were the same sex wouldn’t “yes” be considered a normal response to these questions for friends who live together? When the roommates are of the opposite sex, however, an affirmative answer to any of these questions is considered to be a deviation from the friend/roommate relationship. Thus, the second thing that becomes clear is that what is really at issue in the determination of social/familial relationships is not the type of relationship but rather that the relationship is between two people of the opposite sex. Interestingly, same-sex couples cannot declare themselves to be spouses within Ontario Works. It is, in many ways, the disavowal of same-sex couples which allows for spousal status to be made mandatory for people of the opposite sex. Clearly, if spousal status were extended to same-sex couples the spousal questionnaire would cease to function: everyone who lived with anyone else would be considered a spouse and the distinctions between spouse and non-spouse would, as a result, fall apart. After all, if there is no such thing as having a roommate and being single then how can we determine what it means to be a spouse? It is only through the negation of same-sex spousal status within Ontario Works that “spouse” can be defined and the heterosexual family can be extended and made compulsory; same-sex couples cannot declare themselves spouses and couples of the opposite sex are forced to take on the identity of spouse.

It is clear that unless a participant lied on the questionnaire she would be declared a spouse regardless of how she would identify the nature of her relationship with her roommate. Thus, single roommates of the opposite sex or couples who may be sexually and/or emotionally involved but who nevertheless struggle to maintain their independence would be forced by Ontario Works to *become* either spouses (if they answered the questionnaire truthfully) or frauds (if they lied on the questionnaire). Either identification (spouse or fraud) ensures that power is able to operate and extend itself further into the lives of Ontario Works participants.

Couples who are deemed spouses under Ontario Works would find it difficult to identify themselves as anything other than spouses. For example, a couple who had always considered themselves to be financially independent of one other because they each paid their share of the expenses and did not intermingle their finances would be forced to become interdependent the moment they went on social assistance. Once they declare roommates to be a spousal couple, Ontario Works pools the couple's resources, which means that the actions of the spouse now directly affect the financial situation of the participant. Further, Ontario Works would no longer issue separate cheques if both people were on assistance. Instead, one cheque would be issued to the person who was deemed "head of the household." This not only erodes feminist efforts to promote the conditions within which women can achieve economic independence but it opens the door to increased intervention by the state in the determination of which spouse should be deemed "head of household." As such, Ontario Works policies not only assign the signifier of "spouse" to participants but such policies ensure that participants will indeed become spouses and identify themselves as such. In this way, Ontario Works policies regarding spousal status can be understood as attaching participants to the identity of spouse and in doing so creating a mechanism through which individualizing power can operate; once a person identifies herself as a spouse, a new narrative of the self is produced and a new route to "fulfilment" is created as the goal of producing the perfect nuclear family, of working on and governing that family. As such, compulsory heterosexuality within Ontario Works functions as a powerful mechanism for the governance of the "private" lives of individuals.

This is perhaps one of the more important reasons why Adrienne Rich's concept of compulsory heterosexuality is crucial to feminism, for both the "pervasive cluster of forces" which make heterosexuality compulsory and

the power effects of compulsory heterosexuality itself have a significant impact on the lives of women (and men). In the case of Ontario Works, the lack of recognition of same-sex couples and the tactics which make heterosexuality compulsory have the effect of producing autonomous self-governing families by attaching individuals to familial, and as such gendered, identities.

Just as power extends itself further into the lives of participants when they are classified as “spouses,” power is extended when participants are made to identify themselves as the alternative to spouses, as “welfare frauds.” Despite the Ontario government’s stated aim of reducing welfare fraud, the legislation concerning the spousal status of Ontario Works recipients serves to increase fraud. The action of living with someone of the opposite sex as roommates and not as spouses has itself become a fraudulent act as the legislation defines “spouse” in such a way that roommates who do not have a sexual relationship or who do but do not consider themselves to be spouses, should still legally be receiving benefits as spouses. Thus, the discourse on welfare extends fraud by extending the meaning of fraud so that everyone on social assistance who is single and who has a roommate becomes implicitly fraudulent. Ontario Works not only extends fraud by extending its definition but also by instituting the spousal questionnaire which can be understood as operating as an incitement to fraud. We have seen how the definition of spouse has been extended to include anyone who lives with someone of the opposite sex through the creation of criteria which are unspecific to the spousal relationship but are nevertheless used as indicators of a spousal relationship. Thus, in order not to be deemed a spouse it would be necessary for the participant to lie on the questionnaire; she would need to insist that they do not watch television together in the evenings or have common friends or buy each other birthday gifts or do any of the things which we would expect friends to do. Thus, as the spousal questionnaire incites people to lie, it incites people to fraud.

The failure of Ontario Works to achieve its stated aim of reducing welfare fraud translates into a political success when power is understood to be intentional but non-subjective. Certainly, those in government who make the legislation and those within the welfare bureaucracy who institute that legislation believe that they will help the welfare participant by rehabilitating her familial relationships. They also certainly believe that their policies will have the effect of decreasing fraud. As we have seen,

however, these policies actually have the effect of increasing fraud. Thus, the effect of power is an increase in the very conditions that Ontario Works seeks to redress. This increase, however, has its own internal logic as it allows power to proliferate and extend itself further into the lives of both welfare participants and members of the wider community. In addition it gives the operation of such power an increased legitimation; the more that fraud can be proven and the more that deficiencies within the welfare participant can be made visible, the more justified is the government program of welfare reform. Thus, the unintentional effect of Ontario Works is that power is self-justified and extended for as more frauds are uncovered more steps can be taken to ensure that welfare participants do indeed identify themselves as heterosexual spouses. In this way, the power which maintains compulsory heterosexuality within Ontario Works perpetuates itself ensuring that ever-increasing numbers of individuals will be attached to heterosexual, familial, and self-governing identities.

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In mid-March 2000 the Ontario Works policy directives regarding the spousal status of recipients underwent a significant change as a result of the federal government's requirement that the provinces extend common law status to same-sex couples. Interestingly, the term "spouse" in Ontario has been reserved for couples of the opposite sex as gay or lesbian couples are not considered "spouses" but "same-sex partners." Until the latter half of 1999 the term "spouse" in Ontario signified that two people of the opposite sex were legally married or that, after living together for three years, they were married according to the common law. Thus, the terms "spouse" and "common law marriage" were interchangeable; if two people were married according to the common law then they were spouses. When the federal government required the provinces to recognize same-sex couples the symmetry between common law marriage and the identity of "spouse" was eradicated in Ontario. Rather than simply extending spousal status to same-sex couples the Ontario legislature chose to reserve the term "spouse" for married or common law couples of the opposite sex. Like the Alberta legislature which found it necessary to reserve marriage for people of the opposite sex while extending the legal rights and responsibilities of marriage to people of the same-sex, the Ontario government found it necessary to give heterosexuality a sanctuary in the term "spouse." Within Ontario Works, every step which was made to

recognize same-sex couples was matched by a similarly defensive move to protect heterosexuality from being subsumed within a category which would negate its significance. As such, the reforms made to the Ontario Works policies regarding the spousal and same-sex partner status of recipients can be understood as more defensive than offensive.

In deciding how the inclusion of same-sex partnerships would be implemented within Ontario Works the Ontario government was faced with a choice: it could either make heterosexuality *and* homosexuality compulsory (which would in fact threaten compulsory heterosexuality) or they could protect heterosexuality by giving up some of its ability to make heterosexual spousal relationships compulsory for recipients. The first option would entail keeping the old spousal policies intact and merely extending them to same-sex couples. In this case, anyone who was on social assistance and who had a roommate would be considered a spouse regardless of whether the two actually had a sexual relationship. This option would certainly be economically beneficial to the Ontario government. It is almost impossible to live alone on \$520 per month so almost all Ontario Works recipients would have roommates, be considered spouses and be entitled to fewer benefits if the old spousal policies were merely extended to same-sex couples. This option, however, would be a semiotic nightmare since the terms "spouse" and "same-sex partner" would cease to have a meaning if there were no way for two people to be co-residents and single. This problem was previously avoided by negating the possibility of same-sex couples; roommates/friends were of the same sex, spouses were of the opposite sex, and the meaning of "spouse" was secured through this difference. Without this binary opposition the signifier "spouse" would lose its signified. Furthermore, compulsory heterosexuality would cease to function in the same way. Ontario Works co-residents of the opposite sex would continue to be forced into spousal relationships but so would co-residents of the same sex and how can heterosexuality be wholly compulsory when homosexuality is compulsory as well? This policy choice would, therefore, threaten the institution of heterosexuality even as it continued to force heterosexual spousal status on Ontario Works recipients. Clearly, if the Ontario government's primary concern was budgetary then it would choose this option, but if it was more concerned with preserving heterosexuality then it would seek an alternative method of introducing same-sex couples into the Ontario Works legislation.

The second option open to the Ontario government protects heterosexuality by changing the legislation to make spousal relationships, of the same or opposite sex, less compulsory for Ontario Works recipients, thereby escaping the need to make homosexuality compulsory. The Ontario government, which justifies cuts to government expenditures and social services based on its prodigious concern for fiscally conservative policies, chose to protect heterosexuality in this way despite the financial losses that the government would incur since, not only would it not save money by making all recipients spouses, but it would lose money by diminishing the number of future heterosexual spouses on Ontario Works. It is thus willing to sacrifice financial gain and the spousal identification of some heterosexual couples in order to avoid authorizing homosexual couples en masse.

In order to preserve heterosexuality by precluding the possibility of compulsory homosexuality, the Ontario government scrapped the old spousal policies and instituted a new set of policies which make it more difficult for it to force spousal status on recipients. The so-called “reverse onus clause” which in many ways formed the foundation of the state’s ability to make heterosexual spousal status compulsory for Ontario Works recipients was rescinded which re-opened the possibility of recipients living together as roommates. The “reverse onus clause” stated that,

For the purpose of clause (d) in the definition of “spouse”, unless the applicant or recipient provides evidence to satisfy the Administrator to the contrary, it is presumed that if a person of the opposite sex to the applicant or recipient is residing in the same dwelling place as the applicant or recipient, the person is the spouse of the applicant or recipient. (*Ontario Works Transition Directive*, Dir. 14: subsection 1(3))

This directive put the burden of proof on the recipient rather than on the Ontario Works delivery agent as the recipient was presumed to be guilty (a spouse) until proven innocent (single). As an explanation of why this regulation was revoked, the *Ontario Works Transition Directive 2000-01* states that

In effect, this subsection meant that any two co-residents of the opposite sex were assumed to be *wives* unless they provided satisfactory evidence to the contrary. Such an assumption is not

reasonable in the case of any two co-residents of the same sex. As the process for determination of *spouse* and *same-sex partner* status should be the same, this provision is no longer appropriate.

There seems to be a hint of regret in this statement about the fact that Ontario Works could not institute one set of rules for co-residents of the opposite sex (which would continue to make heterosexuality compulsory) and another set of rules for co-residents of the same sex (which would preclude compulsory homosexuality). Since such a two tiered system would never stand up in front of the Supreme Court of Canada (which is a concern since the Supreme Court is already hearing arguments from Ontario Works recipients that various Ontario Works policies are unconstitutional), Ontario Works is forced to declare that the reverse onus clause “is no longer appropriate” on the basis that it is “unreasonable in the case of *any* two co-residents of the same sex” (emphasis added). Not only does this statement include a hint of regret but it appears to contain a touch of denial that “any” two co-residents of the same sex could possibly be same-sex partners. The reverse onus clause worked when the Ontario government assumed that most (or all) co-residents of the opposite sex were spouses but it ceases to function now because Ontario Works cannot bring itself to assume that “any” two co-residents of the same sex could in fact be partners. Such a denial of same-sex partnerships allows Ontario Works to avoid policies which would make homosexuality as compulsory as heterosexuality had previously been. Instead it can protect heterosexuality by instituting policies which ensure that the same-sex partner status does not apply to “any” Ontario Works participants.

Since there is a financial penalty for participants who openly declare themselves to be spouses or same-sex partners one would assume, as does Ontario Works, that such relationships would have to be proven through other means. As we have seen, one mechanism for proving spousal status was the unintentional confession; participants could declare themselves to be spouses by using the terms “partner,” “companion,” “spouse equivalent,” or “boyfriend / girlfriend.” Importantly, the unintentional confession does not seem to apply to same-sex partners. Where the spousal policies made it clear that the use of any of the above terms was tantamount to calling someone your spouse the same-sex partner policy guidelines do not include a similar conflation of terms. It seems, then, that Ontario Works is not looking to procure an unintended confession of same-sex partner status. Rather, such a declaration must be intentional as

participants must use the words “same sex partner” to describe their relationship. In the case of the declaration, therefore, Ontario Works is able to institute a two-tiered system: one which elicits an unintended confession of spousal status from co-residents of the opposite sex and one which limits the ability for co-residents of the same sex to declare themselves to be a couple.

The former set of Ontario Works spousal policies looked to the spousal questionnaire as a determinant of spousal status when the declaration failed. We have seen how in the course of proving financial interdependence and social and familial relationships between the participant and her roommate the spousal questionnaire forced a participant to either become a spouse by answering truthfully or a fraud by lying on the questionnaire, regardless of the nature of her relationship with her roommate. If this questionnaire was given to co-residents of the same sex it would certainly make homosexuality just as compulsory as it made heterosexuality. It would, therefore, significantly transform the meaning of “family” in Ontario as friends who did not have a sexual relationship would take on the rights and responsibilities of marriage and the traditional concept of marriage would lose its meaning. Rather than instituting such a sweeping change Ontario Works chose to give heterosexuality a sanctuary by introducing a new questionnaire which would preclude the possibility of compulsory homosexuality. Unfortunately for Ontario Works the new questionnaire and the guidelines which accompany it have the additional effect of making heterosexuality more difficult to enforce.

The new co-resident questionnaire is separated into two parts. The first part consists of eight financial questions which are meant as a screen to allow delivery agents to decide if additional information is required. If the co-residents are found to be financially interdependent on the first part of the questionnaire then they are required to answer an additional twenty-three questions in order to determine if there is a social and familial relationship also present.

Although the questions used to indicate financial interdependence on the new questionnaire are fairly similar to the previous questionnaire the guidelines for their interpretation have altered significantly. Recall that the guidelines for the interpretation of the old questionnaire left no way for participants to prove their financial independence: if they shared a couch, or a refrigerator, or a television set, owned either jointly or individually, then they were financially interdependent; if they had one cable bill or



hydro bill then they were interdependent; if one person covered all the costs or if they shared the costs, they were interdependent. The new guidelines for the interpretation of markedly similar financial questions reopen the possibility of two people living together as single roommates. Consider how the following statements from the new guidelines differ in tone from the old guidelines which argued that “The fact that everything is split 50/50 does not in and of itself mean financial independence” (*Ontario Works: Making Welfare Work*, Dir. 14: 9):

The new definitions of spouse and same-sex partner require that the Administrator determines that ... there is more than trivial economic interdependency between two co-residents, including some provision of financial support or a mutual agreement or arrangement regarding their financial affairs.

For financial factors to support a determination of spousal or same-sex partner status there should be a pattern of mutual support or interdependence. The circumstances surrounding how rent and utilities are divided may be satisfactorily explained, however, the provision of financial support or joint ownership of assets and/or liabilities are strong indicators of financial interdependence. (*Ontario Works Transition Directive*)

It seems that “trivial economic interdependency” marked by the sharing of rental or utility costs no longer indicates a spousal relationship between two roommates. Rather, there must be “a pattern of mutual support” that is indicated when one person provides financial support to the other or when the two roommates jointly own their assets or liabilities. Since participants only need to fill out the second part of the questionnaire, if they are found to be financially interdependent on the first part of the questionnaire, these changes to the guidelines have a profound impact on the state’s ability to attach participants to familial identities. By re-opening the possibility of financial independence for co-residents the Ontario government has reopened the possibility of co-residents being single. Thus, the response of Ontario Works to the need to incorporate same-sex couples into its policy guidelines is a reduction in its ability to enforce familial identities; in order to avoid attaching participants to same-sex partner identities the state has diminished its ability to attach participants to spousal identities.

In fact, Ontario Works has resisted such identifications even after co-residents have been found to be part of the same benefit unit. Again the new Ontario Works policy can be understood as more defensive than offensive as it institutes policy guidelines which sacrifice compulsory heterosexuality in order to prevent compulsory homosexuality. Where the previous policy gained its effectiveness by ensuring that the term “spouse” was clearly marked on the participant the new policy aims to blur the mark of “same-sex partner.” Under the guise of sensitivity to the participants, Ontario Works argues that if

the co-residents meet the criteria [on the questionnaire] for being in the same benefit unit, they are either spouses or same-sex partners as defined in the regulations. However, the new forms do not attach those labels to co-residents. This approach is taken in order to be sensitive to how co-residents may characterize their relationships and to be sensitive to privacy concerns. (*Ontario Works Transition Directive*)

The old policy sought to attach the label and – identity – of “spouse” to participants regardless of how those participants may have characterized their relationships. The new policy sacrifices this ability in order to prevent participants from becoming attached to the identity of “same-sex partner.” The discourse of compulsory heterosexuality works through policy makers and delivery agents in a way that is intentional but non-subjective. There are no patriarchs enforcing rules of sexuality, and in fact the legal legitimation of same-sex partnerships actually makes the repressive patriarch counterproductive to compulsory heterosexuality. Rather, the way to preserve compulsory heterosexuality is to erode the state’s ability to enforce it.

### Works Cited

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