

“LESBIANS FIGHT TO KEEP KIDS”

TORONTO, 1977²⁶

Case One

A lesbian mother in the Toronto area is engaged in a court battle with her ex-husband for custody of two of her three children, now aged 15, 13 and 12 years. The former husband claims that the woman's lesbianism makes her unfit to raise the children.

The woman, whom we will call Mrs. Davis, must remain anonymous because of the risk of losing her home and her job.

Mrs. Davis was divorced in May 1976. Her husband retained custody of the children, who had been living with him since their parent's separation in 1972. In June, after her 13-year-old daughter told Mrs. Davis that the man had been indecently assaulting her for several years, the two younger children joined their mother and her lover, with whom Mrs. Davis has been living for four years. Both women have had steady jobs for a number of years.

Because of the criminal charges pending against the husband, the court granted temporary custody to Mrs. Davis. Given the circumstances, her lesbianism did not bar her from obtaining custody. The outlook for permanent custody is now good.

But Mrs. Davis' situation is in many ways unusual. Every year in Canada hundreds of lesbian mothers lose their children. Most of these cases never reach the courtroom. To begin with, a woman must consider whether she can support herself and her children. Often she gives them up without a fight because she can't afford to raise them on 'women's wages' or welfare.

Even if she can and manages to gain access to an experienced lawyer, she can expect an ugly courtroom battle. She will have to answer many questions in court to satisfy the judge that she is indeed 'fit' to be a mother.

- Can she provide a more stable home environment than her husband or the Children's Aid Society can? If he is a convicted criminal, an alcoholic, or a drug-user, her chances are better,
- Did she take the children with her when she left her husband? Even if her circumstances were desperate, she is better off to have taken them with her. The courts prefer to leave children with the parent who has them.

- Does she have a stable relationship and a job?
- Has she organized openly in lesbian, women's, or gay organizations? This may mean to the court that she is 'crusading' for homosexuality.

The threat of losing their children prevents many lesbians from leaving marriages. Others, lesbian mothers trying to raise children without a man's higher wages, have to live with the continual dread of having their lesbianism becoming known, because a *custody decision is never final*. It can be challenged at any time until the child is 16 (in Ontario), particularly if the woman hid her lesbianism in the original case.

In the United States, lesbian mothers have won unconditional custody in fewer than a dozen cases. In Canada there has been only one such award. That was in Alberta in 1975. Sometimes the courts have given the children to their mother on the condition that she never associate with other lesbians or that she live apart from her lover. But more often than not, custody is given to the father.

The question of child custody is a mounting concern, and not just for lesbian women. Increasingly, whether they are living with men or not, the price which women have to pay for refusing to stay in marriages is the loss of their children. Under the guise of equal rights, men are more often being awarded custody. The investment of women's lives in those children counts for less and less.

Now the courts look at the question of who has the greater financial resources and possibility of obtaining the services of a wife to raise the children. Men are much more likely to come up the winners. In the precedent-setting case in Alberta, the woman won because her husband was a drug-user, had an unstable job history, and *had no wife to look after the kids while he was at work*.

In the last few years, lesbian women in North America and England have begun fighting openly for the right to custody of their children. They are setting up defence funds, such as the one recently set up in Ottawa, to help each other cover court costs, publishing newsletters, and circulating information to lessen the isolation and vulnerability of fighting a case alone. But their scope has usually been limited to lesbian women only.

Toronto's Wages Due Lesbians, a group of lesbian women, is organizing to win wages for housework from the government for all women, so we will not be forced into the corners of poverty and hiding that now go along with being a lesbian and a mother. We are fighting against

our disadvantage when we enter a courtroom fearful of being exposed or destined to lose because we haven't the means to provide a good home for our children.

On October 28, Wages Due Lesbians co-sponsored with women from the Community Homophile Association of Toronto a benefit for Mrs. Davis. We raised \$300. The advertising for this benefit was as far-reaching as possible. We assumed that there are lesbian women everywhere, not just in the gay clubs and women's bars; we assumed that this benefit would be of interest to many women, not only lesbians and not only mothers, that we all have a stake in winning these cases, and not being punished when we step out of line as lesbians, as women who want to raise children on our own, as women who want to put our needs first for a change ...

The organizing of the benefit and the scope of publicity sought are part of the fight being waged by women to win the right to choose for ourselves our sexuality without facing the loss of our children. It is especially crucial now that we organize, as more of us are being pushed back into the closet or relationships with men just to survive.

Wages Due Lesbians is about to publish the first pamphlet on lesbian mothers and child custody available in North America. It can be ordered from Wages Due Lesbians ... and is entitled *Motherhood, Lesbianism, and Child Custody*. Any woman interested in sharing her experience or discussing the activities of WDL, should call [us] ...

²⁶ Ellen Agger, *Body Politic*, December 1976/January 1977, 3.