

SUBMISSIONS TO

The Legislative Committee (House of Commons)
on
Bill C-49

FROM

Canadian Civil Liberties Association
per
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Ottawa

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Introduction

Among the objectives which inspire the activities of the Canadian Civil Liberties Association is the quest for legal safeguards against the unreasonable invasion by public authority of the freedom and dignity of the individual. It is not difficult to appreciate the relationship between this objective and the subject matter of Bill C-49. To the extent that the Bill would prohibit the right to communicate in public places, it could imperil some of our most fundamental freedoms. At the very least, it raises issues about "freedom of expression" under the Canadian Charter of Rights and Freedoms.

The ensuing submissions assume the propriety of some legal restraints over the subject matter at issue. What they do not adequately address is whether such restraints might more appropriately be contained in a regulatory statute at the provincial or municipal level rather than in a criminal statute at the federal level. The brevity of preparation time and complexity of the constitutional issues prevented us from responding adequately to this matter.

In consequence, our submissions are addressed exclusively to the central issue in this Bill - the breadth of prohibitions it would create.

The Scope of the Prohibitions

Bill C-49 is unacceptably draconian. While it is aimed at the reported nuisances accompanying street prostitution, it would prohibit non-nuisance encounters in other places as well.

Prostitution, of course, is not per se unlawful. Thus, it is improper for a democratic society to render unlawful any and all such communications dealing with prostitution. Indeed, this could become the only area in our legal system where it would be unlawful to engage in civil discussion about a lawful transaction. The scenarios of possible illegality stagger the imagination. Under this Bill, it could be unlawful for a passenger in a taxi to ask a driver how to contact a prostitute. It could be similarly unlawful for a hotel guest on an elevator to ask such questions of a bell hop, or a customer of his pharmacist in a drug store. No matter how inconspicuous or discreet such communications might be, this Bill could make them unlawful. Indeed, the Bill could criminalize the quiet conversations of two friends walking down the street or sitting on a park bench.

Moreover, it is hard to imagine any limits on the conduct that could be caught by the words "in any manner communicates or attempts to communicate with any person". On the basis of these words, a wink, a nod, or a smile could trigger a criminal prosecution.

A disquieting feature of such overbreadth is the level of police intrusion which it would be likely to invite. The quest for evidence could well lead the police to investigate and monitor - indeed to eavesdrop upon - a wide variety of normal encounters and lawful communications. Even if charges ultimately were not laid or even if they were dismissed after being laid, law abiding people should not have to face such encroachments. In short, this law has the potential to become a greater nuisance than the street prostitution against which it is aimed.

This is not necessarily to discount the legitimacy of the complaints that gave rise to the Bill. It is simply to urge that the ambit of the law not

be extended beyond the contemplated harm. The essence of whatever nuisance there may be entails, at the very least, characteristics such as persistence of approach, volume of contacts, and/or undue interference with third parties. While more might be necessary to justify legal sanctions, nothing less should be allowed to suffice. Moreover, there is no reason for the Bill to apply in such an infinite number of settings. The same conduct could hardly be a nuisance in all of the places contemplated by this Bill.

Accordingly, the Canadian Civil Liberties Association calls upon this Committee to take whatever action is necessary to ensure that Bill C-49 is not enacted in its present form.