

\*\*\*\*\*

Submissions To : The Corporation of the Town of Oakville

Re:                   The Anti-loitering By-Law

From:                The Canadian Civil Liberties Association

per A. Alan Borovoy

General Counsel

\*\*\*\*\*

Monday, October 19, 1970

Oakville, Ontario

### Submissions to the Town of Oakville

On behalf of the Canadian Civil Liberties Association and the Oakville and District Labour Council, we are respectfully requesting the repeal of By-law Number 1970-98.

The crucial provision of this by-law is section one which purports to make it an offence to "loiter on any sidewalk...so as to occupy more than half of the width thereof". Unlike the other provisions of the by-law, this section does not require any noise, nuisance, obstruction, or other interference with persons or property in order to constitute an offence. Nothing more than "loitering" on more than half the sidewalk will render a person's conduct illegal.

Significantly, the word "loiter" is nowhere defined in the by-law. What does it mean? Does it involve anything more than standing in one place for a given period of time? How long a period of time? How much movement is required before the conduct can no longer be described as "loitering"? Can the section punish the bird watcher as well as the rowdy? Does the stipulation of more than one half occupancy of a sidewalk discriminate between the stout and the lean?

Significantly, in its present form, the section might make illegal the inoffensive act of sustained sidewalk star-gazing.

Moreover, the section could also endanger some other basic civil rights. Consider the right to picket. The whole idea of picketing is to patrol a small circumscribed area near the property of a person whose behaviour the pickets are trying to influence. To whatever extent "loitering" involves more than being absolutely stationary, it might embrace the act of picketing. It is inconceivable that this Council would wish to interfere with such fundamental freedoms. Yet this is precisely the risk that this by-law creates.

Alternatively, to whatever extent one might argue that some of the provisions of this by-law might withstand a constitutional challenge, it is bad social policy to keep it on the books. The Dominion Parliament has been entrusted with the power to legislate in relation to "criminal Law". It is clear that Parliament has already directed its attention to the kind of social behaviour it wishes to prohibit and to permit on the public streets of this nation. It is not desirable that there be more general freedom on the streets of Moncton than on the streets of Oakville. Local traffic and zoning considerations might justify some distinctions within a municipality but they cannot validate distinctions between municipalities. The civil liberties of Canadians should depend not on the place where they reside, but on the acts which they commit.

For all of the foregoing reasons, the Canadian Civil Liberties Association and the Oakville District Labour Council respectfully petition the Municipal Council of the Corporation of the Town of Oakville to repeal forthwith By-law Number 1970-98.

Respectfully submitted

A. Alan Borovoy  
General Counsel, CCLA  
on behalf of  
The Canadian Civil Liberties Association  
and  
The Oakville District Labour Council