

SUBMISSIONS TO-

The Honourable R. Roy McMurtry  
Solicitor General of Ontario

RE-

The Toronto Bathhouse Raids

FROM-

Canadian Civil Liberties Association

DELEGATION

Professor Harry W. Arthurs  
(Past President)

A. Alan Borovoy  
(General Counsel)

Jane Callwood  
(Vice-President)

Allan Strader  
(Research Director)

Mary Eberts  
(Vice-President)

Professor Donald Smiley  
(Vice-President)

Terry Meagher  
(Secretary)

Douglas Trowell  
(Treasurer)

Toronto

February 24, 1981

The Canadian Civil Liberties Association has requested this meeting in order to urge the Solicitor General to reconsider the establishment of an independent inquiry into this matter. In our opinion, your letter to us of February 12th does not justify the refusal of the inquiry.

As might be expected, the police version of the events differs in a number of respects from the accounts of other witnesses. According to the press reports, "many" of the police officers were armed with crowbars and hammers. According to the police report, only one hammer and one crowbar were used. Your letter creates the impression that there were very few forcible entries during the raid and those that did occur were necessitated by the refusal of some patrons to cooperate. Yet, it has been alleged on the other side that in at least one of the places a pass-key was offered to the police and they refused, preferring instead to kick and knock the doors down.

You will note the fact that our letter did not assert the truth of any of these allegations. We simply indicated to you that the allegations had been made and that they were of a serious character. Indeed, it was the anticipation of conflicting stories that prompted us to recommend an independent inquiry. Just as we declined to assert the truth of the allegations, so, we submit, it would be improper to assert the truth of the replies. No matter how fair police reports may be in fact, they cannot appear fair. Since they represent the investigations and evaluations of those with interests to protect, they lack the kind of objectivity that can adequately command the confidence of the public. For the same reason, it will not suffice to indicate, as you did, that some of the matters "will be thoroughly investigated" by the Citizens Complaint Bureau. As an internal agency of the police department, the Bureau also lacks the requisite credibility. Indeed, your late Bill 201 reflected a recognition of these defects. It would be inappropriate, therefore, to rely on an internal police investigation or to derive any consolation from the shortage of complainants who are prepared to rely on it.

We note also that your letter did not directly confront our concerns about the policies and priorities which lay behind the raid. One of the most disquieting of the issues is why was it necessary to go after so many found-ins. In the circumstances, it appears that the only infraction which can arguably be attributed to them is participation in certain taboo sexual activity. In this connection, your letter disputes our characterization of what was involved as being confined to consenting adults in a relatively private setting. All that we intended to convey by this terminology was that in the main the activity of the found-ins was not inflicted upon any unwilling participants or observers. There is nothing in the charges to indicate that there was anything further involved as far as the found-ins are concerned. Even if their sexual activity might be designated as unlawful, we questioned whether it was sufficiently serious to justify the size and scope of the police operation.

It was in this connection that we also questioned the propriety of deploying one hundred and fifty police officers for the task at issue. You will appreciate, therefore, that this submission is not answered by your assurance that additional police officers were necessary to minimize possible injuries and to expedite the early release of so many arrested people. What we have been questioning is the necessity of arresting so many people in the first place. If the primary object of the exercise was to discourage the operation of common bawdy houses, why did it need the arrest of more than two hundred and fifty found-ins? We have been told that there were police informants on the premises and that this matter had been the subject of a six month investigation. This creates the possibility that evidence concerning the character of the premises could have been acquired in a much less massive and intrusive fashion. With great respect, your letter nowhere deals with this point.

There is a suggestion in your letter that the public trial process might lead to a moderation of many of the anxieties which have been expressed. We are afraid that there is no basis for such expectations. The court cases will deal essentially

with the guilt or innocence of those who have been charged as a consequence of the raids. But the public concern has been directed at the law enforcement policies which gave rise to the raids. In view of the mandate of the courts, it is very unlikely that such issues will receive an adequate airing during the forthcoming trials.

For all of these reasons, we respectfully request that there be an independent inquiry along the lines indicated in our first letter. This request has ample precedent in the experience of this province. Following a number of Globe and Mail stories alleging police misconduct a few years ago, the then Mr. Justice Morand was appointed an independent inquiry to look into the matter. Following a number of altercations between the police and anti-Kosygin demonstrators from the Ukrainian community, an independent inquiry was appointed to conduct a probe. On those occasions, the inquiries reflected the government's understanding that nothing less was likely to allay the considerable anxiety which the incidents had caused. For such purposes, it is not necessary to agree with the perceptions of the aggrieved parties. It would suffice to recognize that the grievances are genuinely felt and that, right or wrong, there is some reasonable basis for them. Indeed, the whole point of an inquiry is that it is needed to produce an account of the events which can command an acceptable level of public confidence.