

SUBMISSIONS TO -

Neighborhoods Committee
Toronto City Council

RE -

Union Access to the
Eaton Centre

FROM -

Canadian Civil Liberties Association

per A. Alan Borovoy
General Counsel

Erika Abner
Research Director

Toronto

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The Canadian Civil Liberties Association appears before this Committee in response to a request made of us on behalf of the Retail, Wholesale, and Department Store Union. By letter dated September 28th, 1984, a solicitor acting for the Cadillac Fairview Corporation Ltd., managers of the Eaton Centre property, notified the union that its supporters would not be allowed "to congregate or assemble in the Dundas Mall area prior to the opening of the Eaton's Store or after it closes".

For some months, the union has been attempting to organize the employees of the Eaton's Store. This has led to a number of conflicts between Eaton's management and the union involving allegations that union supporters have attempted to solicit employees on store property. These conflicts, of course, are matters to be resolved by other tribunals in the context of labour-management relations.

But what must be of primary concern to the government of this city is not the various fluctuations of the Eaton's-union relationship but rather the role which is being played by the managers of the property in question. The Cadillac Fairview Corporation was permitted by the city to develop the Eaton Centre complex on the basis of the expectation that it would provide a certain kind of facility to the community around it. A 1971 report of the Planning Board says, inter alia, that the project should "emphasize the concept that these places belong to the public and are not simply an adjunct of a commercial operation". The idea was that the Eaton Centre would be a place where people could go "to relax, sit, and pursue a wide range of interests as well as to shop". The report referred further to how "workers, shoppers and visitors (would) feel invited to meet friends".

This theme appears again and again in the documents leading to the operative agreements and by-laws which authorized the building of the Eaton Centre. It's clear that the areas in question were designed to serve a number of public functions, not simply the commercial or property interests of the owners, builders, and tenants. Indeed, a reading of the planning reports conveys the impression that the idea was to render the mall areas, as far as possible, an indoor counterpart of streets and parks.

Thus, there is no reason why these public functions should not include an adequate opportunity for supporters and opponents of various unions to solicit support for their respective views as people enter and leave their places of employment. This is an activity which has traditionally occurred on the public sidewalks adjacent to plant gates. To whatever extent the Eaton Centre is supposed to simulate these public thoroughfares, such activities should be permissible in the mall areas in question.

Indeed, if the Cadillac Fairview position were sustained, the city's role in the creation of the Eaton Centre will have become an instrument for vitiating the rights of key segments of our community. The Canadian Charter of Rights and Freedoms proclaims the right of all Canadians to "freedom of association". The Ontario Labour Relations Act affirms the right of working people to join unions. But the peculiar character of the Eaton Centre will make these rights effectively impossible to exercise for the people who work there.

Freedom of association and the right to join unions necessarily contemplate some kind of reasonable opportunity for people to encounter each other in order to discuss the issue. Usually such encounters occur at business entrances before the beginning and at the end of the working day. But the entrance to Eaton's is part of a mall managed and operated by the Cadillac Fairview Corporation. The greatest number of Eaton's employees do not enter and leave through the street; they do so via the subway. If the union supporters may not assemble in the mall, freedom of association for the people at issue will have to be facilitated through telepathetic communication.

Moreover, it is difficult to appreciate precisely what property interest Cadillac Fairview seeks to vindicate through this restriction on congregating in the mall area. What injury does such congregating cause to the owners' enjoyment of the property? There is no inherent threat of damage to the property or violence to persons. There is no particular reason to apprehend a lowering of the property values. No doubt, it will be argued that if these people are allowed to congregate for their purposes, so might others for other purposes. Whatever arguments there might be in favor of some restrictions and controls over "soliciting" in

the Eaton Centre, they should not operate so as effectively to immunize the tenants of the Centre from the prospect of unionization. Unlike many others who may wish to promote their causes or interests in the Eaton Centre, these people cannot do so elsewhere. The Centre is the only place where they can effectively reach those whose support they seek.

The Canadian Civil Liberties Association makes these submissions neither to support nor to oppose this union's organizing drive among the Eaton's Store employees. The decision whether to support or oppose the union must be made by the employees concerned. What we seek is a reasonable opportunity for the parties to consider and discuss the issue. Indeed, the assembly rights we seek should apply not only to the union which is seeking to organize but also to those who are seeking to prevent it. Subject to the normal rules of proper decorum and behaviour, the mall areas in question should be available for such purposes.

In our view, the prohibition at issue must be seen as an affront to the spirit behind the city's role in building the Eaton Centre. Accordingly, the Canadian Civil Liberties Association calls upon this Committee to recommend that the City Council use its good offices in an attempt to persuade Cadillac Fairview to rescind the restriction it imposed upon this union. Such action on the part of the city would enhance public respect for the city's role as custodian of the public interest and as defender of the most enduring values of our society.