

SUBMISSIONS TO -

The Honourable Ken Keyes  
Solicitor General of Ontario

RE -

Video Surveillance  
By Police  
Of Public Washrooms

FROM -

Canadian Civil Liberties Association

DELEGATION -

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## Introduction

The Canadian Civil Liberties Association is a national organization with more than 6000 individual members, eight affiliated chapters across the country, and some 20 associated group members (churches, synagogues, trade unions, etc.) which themselves represent several thousands of additional people. A wide variety of persons and occupations is represented in the ranks of our membership - lawyers, professors, homemakers, trade unionists, journalists, media performers, minority group leaders, etc.

Among the objectives which inspire the activities of our organization 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 issue of washroom surveillance. A reasonable expectation of privacy generally accompanies resort to the relatively enclosed cubicles in public washrooms. To whatever extent people's excretory activities wind up on police film, it can be said that their privacy and dignity have sustained a significant intrusion. The principles of civil liberties can also be offended in such situations if the punishment imposed upon washroom law-breakers inflicts indignities out of proportion to the seriousness of the offences they may have committed.

### The Use and Impact of Washroom Video Surveillance

Since the fall of 1983, more than 130 men in the Province have been charged with sexual offences arising from the police use of video cameras in public washrooms. In the places at issue - Orillia, Welland, Kitchener, St. Catharines, and Guelph, periods of video surveillance were followed by mass arrests which, in turn, triggered headline news stories. In the main, the charges dealt with homosexual conduct involving allegations of masturbation, fellatio, buggery, etc. While not all of the cases have been finally processed, the courts so far seem to regard the impugned misconduct as something less than a public menace. Not one jail sentence has been imposed. Many of the accused have received either conditional or absolute discharges; in some cases, there have been probation orders; in some cases, there have been monetary fines. But the ensuing publicity has devastated the lives of many of these accused people and their families. Numbers of the men report having lost friends, jobs, and families. In one case, there was a reported suicide.

The circumstances surrounding these cases give rise to irrepressible questions. Why has the conduct at issue warranted this magnitude of police operation? Why did it warrant the humiliation and torment which would inevitably accompany the laying of charges? Perhaps even more significant, how could it justify such intrusive snooping on the completely innocent washroom users? Indeed, to what extent did innocent excretion occupy police surveillance? And what was the effect of all this on police morale? How has the role of voyeur squared with the self-image of the officers involved?

Just what is the evil against which all this snooping has been designed? From the charges and the circumstances, it appears that we are dealing essentially with little more than unorthodox sex acts on the part of willing and consenting adults. There is little indication that the acts in question have involved unwilling participants, unwilling observers, or children. Why, therefore, should they be the subject of such massive police operations? Even if the sex acts at issue might be considered unlawful, they hardly represent a serious threat to the public interest.

When pressed about these matters, police officials often reply that they merely enforce the law as enacted by Parliament. But this argument simply doesn't wash. The police have always enjoyed a considerable discretion as to how they enforce particular laws. It could not be otherwise. Not all offences can command the same attention, priority,

and enforcement strategy. The police have rarely mounted a similar surveillance campaign, for example, to crack down on jay walking or the illegal consumption of alcohol at professional sports events. Enforcement tactics depend, as they must, upon the nature of the threat to the public interest.

Surely, the apprehended misconduct in the targeted washrooms could have been addressed in a far less intrusive and more discreet manner. So long as the object of the exercise was to prevent the acts rather than to torment the actors, it would not have taken much ingenuity to devise a more appropriate response. One possibility, for example, could have involved the posting of warning notices in the washrooms concerned. Even periodic patrolling by uniformed officers or attendants would likely have been just as effective and perhaps ultimately even less expensive.

For all of these reasons, many of these police operations must be seen as exercises in gratuitous voyeurism. Unfortunately, there is inadequate indication that these enforcement tactics will significantly change. When pressed, police officials have tended to justify the disputed operations. Consider, for example, the reported comment of an official of the Niagara Police Force. According to the statement attributed to this officer, video cameras are "the best way to gather evidence...there's no chance for rebuttal".

Such tunnel vision requires redress at the political level. Accordingly, the Canadian Civil Liberties Association calls upon the Solicitor General of Ontario to promulgate publicly a series of guidelines for the police forces of this Province. Such guidelines should try to persuade the police to avoid the overkill of these washroom operations. The emphasis should be on discreet prevention rather than public prosecution. Moreover, the guidelines should attempt to discourage the use of such intrusive techniques as video cameras except in response to the most serious types of offences. In this regard, the Solicitor General should call upon the Federal Minister of Justice to introduce amendments to the Criminal Code in order to bring video equipment under a regime of controls similar to what now obtains in the case of audio equipment.

We believe that the kind of guidelines we are urging would provide elementary fair play not only for our civilians but also for the police themselves. In determining their strategies and tactics, the police may believe that they are simply reflecting the consensus of values in the community. If that perception is wrong, it is important that the police be explicitly told so. Since they have such a wide discretion concerning what to investigate and how to do so, it is crucial that they understand where their conduct deviates from the wishes of the community. For all of these reasons, it would be appropriate for the Solicitor General to take the kind of action indicated.