The Dangerous (Sexual) Offender Legislation:

A Call for Abolition

National Gay Rights Coalition

Coalition Nationale pour les Droits des Homosexuels

B. THE HOMOSEXUAL MINORITY AND THE CRIMINAL CODE

> Sexual offences under the Code...in my view are a mess and need revising.[1]
>
> - Justice Minister Ron Basford

The oppression of gay men and gay women in this country manifests itself in myriad forms. Social attitudes of intolerance and misunderstanding are widely prevalent. Homophobia -- the irrational fear of homosexuality -- is perhaps even more deeply rooted in our culture than other forms of prejudice. What is worse, however, is that these prejudices and the resultant discrimination are often sanctioned by the legal system.

The Omnibus Bill of 1969, which affected the Criminal Code sections relating to 'buggery' and 'gross indecency', served only to decriminalize certain private sexual activities between two consenting persons over the age of 21 and between a husband and his wife, whatever their ages. Since these activities had been seldom penalized, the 1969 amendments did little to change the effect of the Criminal Code on the Canadian homosexual.

In fact, the Criminal Code still contains some of the most blatant examples of anti-gay laws.

A wide range of vague and moralistic offences (such as 'buggery', 'indecent assault', 'gross indecency' and 'indecent act') remain in the Code, and they have been used selectively, primarily against homosexual men.

In its recent report to Parliament, the Law Reform Commission pointed out that the Criminal Code "is wedded to a Victorian philosophy which is now inadequate."[2] Nowhere is this more apparent than in the sections of the Code dealing with sexual offences. Until recently, all forms of non-procreative sex were proscribed by the criminal law. Even with the 1969 amendments, the Criminal Code remains essentially anti-sexual in nature.

The National Gay Rights Coalition calls for an overall reform of the Criminal Code in order to put an end to the moralistic concept of 'sexual crimes'. We recommend the removal of all sections referring to 'buggery', 'indecent assault', 'gross indecency' and 'indecent act'. Coercion, clearly defined, should in our opinion be established as the sole criterion for offences of a sexual nature under the Criminal Code.

The sections which we would see deleted constitute laws based on moral judgements of sexual acts rather than on a desire to protect society from injury. Offences involving coercion or

violence of a sexual nature should be dealt with by the same laws which deal with any kind of coercion or violence. The law should not penalize sexual acts per se, but only acts where force has been used. The State must entirely leave the bedrooms of the nation.

C. BILL C-83 AND 'DANGEROUS (SEXUAL) OFFENDERS'

Legislation relating to 'dangerous sexual offenders' is perhaps the most extreme example of the law's anti-sexual bias. Under the existing 'dangerous sexual offender' legislation, when a person is convicted under sections 144 (rape), 146 (sexual intercourse with a female under 14 or between 14 and 16), 149 (indecent assault on a female), 155 (buggery and bestiality), 156 (indecent assault on a male) or 157 (gross indecency), or of attempting to commit one of these offences, he/she may be put away for an indeterminate period.

Bill C-83, the amendments to the Criminal Code now before the House of Commons, changes the terminology, but there is little change in the impact of the Bill as regards 'sexual offenders'. If anything, the proposed legislation, as will be seen later, worsens the position of the 'sexual offender'.

II BILL C-83: THE INJUSTICES CONTINUE

There are many injustices inherent in the 'dangerous sexual offender' legislation.

The Canadian Committee on Corrections recognized many of these injustices in its 1969 Report but, as will be seen later, most of its recommendations have been ignored in Bill C-83.

The existing legislation has received widely varying interpretations in different parts of the country. Of the 57 'dangerous sexual offenders' in Canadian penitentiaries as of 26 February 1968, 20 were in Ontario and another 20 were in British Columbia, while there were only four each in Quebec and Alberta.[4] This geographical disparity should have been a signal to the drafters of Bill C-83 that the legislation is too imprecise and open to subjective interpretation.