

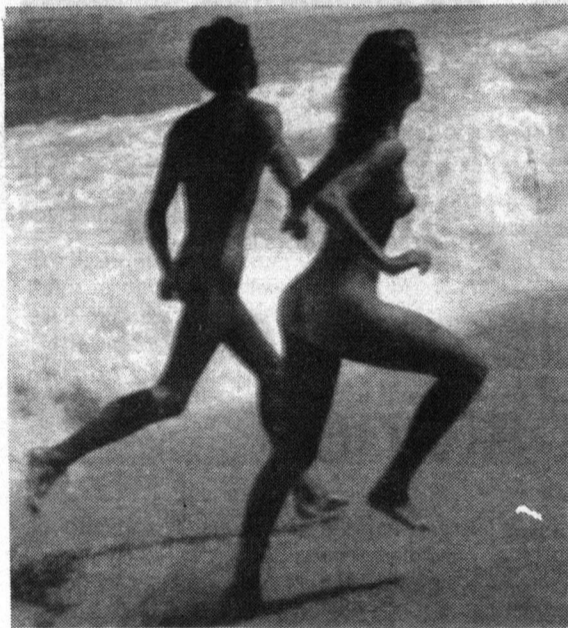
Bill C-54: Commentary

by Dragos Ruiu
Bill C-54...

Your favorite spy novel might have a narrative describing oral sex. No, it doesn't matter whether it's tastefully written. It describes oral sex and it is therefore only permissible if it has "artistic merit or an educational, scientific or medical purpose." But artistic merit according to whom? When was the last time you agreed with a policeman?

Your doctor makes up a pamphlet explaining that teen masturbation is normal and healthy. He is now a criminal because he has distributed a "matter or commercial communication" that "incites, promotes, encourages or advocates" sexual activity by a person under 18. School counselors could be in very hot water indeed if they are asked about teen sexuality. Shhh...

Bill C-54 will be on the floor of our Parliament within coming months to be voted on. It would make sweeping changes to the Criminal Code, dealing with erotica and pornography. Erotica as defined by the bill is depiction "in a sexual context ... of a human sexual organ, a female breast or the human anal region." The bill would require erotica be displayed in such a manner that it is not visible to the public, in a special section with a warning, or behind a barrier or opaque wrapper. This requirement would restrict sculptures or paintings of the human body in art galleries.



Perhaps the most dangerous wording in this bill is the use of the word "degrading." "Degrading" sexual portrayals can bring very severe jail terms. But who will decide whether something is degrading? In Islamic countries, women wearing jeans are "degrading" (and punishable by flogging in Iran). Do you find a bare breasted woman "degrading" or beautiful? Odds are the court would pick "degrading." Hide that copy of *Cosmopolitan*.

When you get down to the meat of this bill, it is not an attempt to restrict pornography but sexuality. It is an attempt to curb and severely control your access to information about sex. If you are a minor this proposed legislation will make it a harsh crime to give you information about sex. It contradicts every idea about learning responsible sexual attitudes.

The bill states that, "Sexual conduct ... that involves or is conducted in the presence of a person who is or is depicted as being or appears to be under the age of 18" is pornography, an offense that can carry jail terms of two, five or ten years in jail. The interesting phraseology is the use of the word "appears." Appears to who? So if a nude model looks younger than she is (or merely appears so to one judge), the photographer is a criminal.

The ubiquitous "appears" appears in another clause defining the criminal offense of pornography, "A person causing, attempting to cause, or appearing to cause in a sexual context ... impairment of the body." Take a hypothetical situation, a film-maker making a police movie is filming a scene where the hero handcuffs the romantic inter-

"School counselors could be in very hot water..."

est to arrest her. If the scene is filmed in a stylistic way, it may be deemed to have a sexual context. The film-maker is now a criminal.

More "apparent" clauses: it will be illegal to depict "Sexually violent conduct, including sexual assault and any conduct in which physical pain is inflicted or apparently inflicted..." *9 and 1/2 Weeks* would have been banned for sure under this clause, and *Blade Runner* too. (Remember the scene where Harrison Ford pins Sean Young to a wall and kisses her...)

According to the bill, it is criminal to depict sexual acts where "one person treats ... any other person as an animal or object, engages in an act of bondage, penetrates with an object the vagina or anus of that person ... or defecates, urinates or ejaculates on the other person, whether or not the other person appears to be consenting ... or lactation or menstruation in a sexual content."

Depiction, or discussion of masturbation, ejaculation, anal or oral intercourse are all pornography under C-54. The only possible defense you might have for this material is to prove to a court that it has "artistic merit" or is "educational, scientific or medical." Again the onus of proof is on you. The defendant must prove himself innocent, the court doesn't have to prove the absence of such merit.

This has particularly nasty implication in light of AIDS. AIDS control groups are trying to popularize safe sex. To get people to consider this, safe sex must be "erotized." People have to want to practice safe sex. So the material regarding it must attempt to make it palatable, but by doing this it stands a real risk of being illegal under C-54. Catch-22.

The merit argument is also completely dismissed if the subject matter "appears" to deal with minors. ANY material dealing with sex and

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minors is criminal and without defences under C-54.

To quote the *Globe and Mail* about C-54, "Seventeen-year-olds may have sex together legally, but if they photograph each other in the nude, they are criminals; and if both are 20 but one looks 17 to the wrong people, the other may be facing 10 years in prison."

Recently in Montreal police seized a painting of an erect penis clasped by a woman's hand from an art show. A book about Native peoples by a noted Canadian author was seized by Customs because it told legends of people having sex with bears. This is before C-54. With the sweeping wording of bill C-54, this would be commonplace.

If sexual repression worries you, you will oppose Bill C-54. So artists won't have to look over their shoulder for men in dark suits...

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