CATHOLIC CIVIL RIGHTS LEAGUE
LA LIGUE CATHOLIQUE DES DROITS DE L'HOMME

2305 Bloor Street West, Toronto, ON, CANADA M6S 1P1

Phone: 416-466-8244

E-mail: ccrl@ccrl.ca

Fax: 416-466-0091

Website: www.ccrl.ca

Toll Free: 1-844-722-2255

Faith + Freedom Alliance

Suite 301 – 120 Carlton Street
Toronto, Ontario M5A 4K2
416 777-9994

SUBMISSIONS ON BILL 163,
PROTECTING A WOMAN'S RIGHT TO ACCESS ABORTION SERVICES ACT, 2017

Presented to:

THE STANDING COMMITTEE ON GENERAL GOVERNMENT

OCTOBER 19, 2017
Presented by:

Philip H. Horgan, B.A. J.D., Barrister and Solicitor
President, Catholic Civil Rights League
Chair, Faith and Freedom Alliance

Christian Elia, PhD.
Assistant Professor and BPS Program Coordinator, Niagara University, Dept. of Ontario Studies
Executive Director, Catholic Civil Rights League

The Catholic Civil Rights League ("CCRL"), formed in 1985, is a national lay Catholic organization committed to working with the media to secure a fair hearing for Catholic or Christian positions on issues of public debate, countering anti-Catholic defamation, and educating decision-makers or intervening in court challenges in support of law and policy compatible with a Christian understanding of human nature and the common good. The CCRL has over 25,000 members drawn from all walks of life and from all parts of the country.

The Faith and Freedom Alliance ("FFA"), established in 2004, is a federally-incorporated, national, non-denominational Christian organization. It seeks to promote freedom of religion, conscience, and expression, under constitutional and human rights legislation across the country. The FFA has a large, nationally dispersed membership base composed of a number of Christian organizations, of various denominations, as well as individuals. In addition, FFA's board of directors is comprised of individuals who hold leadership positions in a number of diverse Christian organizations.

A significant goal of the CCRL and the FFA is to advocate for law and policy that respect, support and encourage a robust understanding of religious beliefs, values and cultures, including Christianity, in the public sphere. The CCRL and FFA view such law and policy as essential elements of a free and democratic, and tolerant and rich multicultural Canadian society. The CCRL and FFA promote their Christian values and objectives through education, conferences, public forums, seminars, publishing newsletters or journals, establishing and supporting local groups and chapters, and various other means of education and advocacy.

We oppose this proposed legislation, for any of the following reasons:

- The government has failed to identify or address any need for the intrusion and limitation into the constitutional right to freedom of expression;
- The bill's penal sanctions are an intrusion into the federal power over criminal law, and present a lowering of the thresholds typically required to constitute the offence of "harassment" under the Criminal Code;
- All parties by their support of the bill are engaging in political suppression of dissenting viewpoints, with the invention of the need for

broad areas of "no go" zones, the total effect of which (conceivably, bubble zones around all pharmacies in urban areas), the bill engages in over-reach to impose its dubious objectives.

Failure of Constitutional Compliance

The leading case on such bubble zones in the Canadian context is *R. v. Spratt*, 2008 BCCA 340 (CanLII), 235 C.C.C. (3d) 521, aff'g *R. v. Watson and Spratt*, 2002 BCSC 786 (CanLII).

Some references:

[25] It is axiomatic that some forms of expression are more important than others. As Mr. Justice LeBel explained for the Court in ***R. v. Guignard***, 2002 SCC 14 (CanLII), [2002] 1 S.C.R. 472 at para. 20:

> [20] This freedom [of expression] plays a critical role in the development of our society (see *Sharpe*, *supra*, at para. 23). The content of that freedom, which is very broad, includes forms of expression the importance and quality of which may vary. Some forms of expression, such as political speech lie at the very heart of freedom of expression. [Citations omitted.]

[91] The right to express opposition to abortion is a constitutionally protected right. The object of the ***Act*** is to protect vulnerable women and those who provide for their care to have safe, unimpeded access to health care services. The question is whether the degree to which the ***Act*** limits the right of those to demonstrate their opposition to abortion and to seek to persuade women to decide against abortion is disproportionate to the purpose of the ***Act***. The purpose or objective of the ***Act*** is sufficiently important to justify a limitation on the way in which freedom of expression is exercised in an area adjacent to the facilities providing abortion services. The impugned provisions of the **Act** are crafted in such a way that the "deleterious" effects do not outstrip the importance of the objective of the legislation. The objective of the ***Act*** justifies the limited infringement of freedom of expression in the circumstances.

This analysis by the courts in B.C. went through a thorough examination of the *Oakes* test on what could be demonstrably justified in a free and democratic society.

What is being proposed in Bill 163 does not pass that test.

Courts typically require a rigorous presentation of the background and need for any law which infringes on fundamental constitutional freedoms.

A significant peer reviewed study was recently published in Canadian Family Physician 2016; 62; e209-217, published in 2016 from a national survey performed in 2012. The survey summarized that “Canadian abortion facilities reported rare harassment”. The report was authored by abortion industry advocates.

According to Table 4 from the report, tracking survey results from Ontario, where significant numbers of abortions occur, even in circumstances where picketing occurred, it was done without any interference. The survey found no interference complaints, no reports of vandalism or even threatening emails or telephone calls.

The promoters of this bill have failed to assert the purported need for this legislation, or the apparent justification for the scope of its intrusion into the constitutional protection of freedom of expression.

According to these abortion advocates, Bill 163 is a solution to a non-existing problem.

The bill makes no allowance for educational or counselling options, and lumps any and all engagements within the “no go” zones as subject of prosecution. The recent American authorities on such issues draw distinctions on the work of “counselling” on the one hand as compared to “protests” on the other.

The bill makes no allowance for prayerful protests, such as vigils which have occurred in the vicinity of abortion facilities without incident for roughly 15 years.

The bill is anti-science. The advances in neo-natal research and studies are far different today than even a generation ago. We know that the DNA code of the unborn child is different than that of the mother or father. We know that the unborn child is able to live outside of the womb at 22-23 weeks of gestation. However, the bill will prevent

access to such information for women and children seeking options at a vulnerable state of their lives.

Bill 163 Intrudes into the Federal Power over Criminal Law

The bill provides extensive penal sanctions for areas which are already covered by provisions of the Criminal Code.

We submit that Bill 163 is an over-reach of the province into the area of criminal law, as seen by the extreme sanctions being imposed, and in comparison to existing Criminal Code provisions for harassment, intimidation (s. 423) or mischief (s. 430).

We submit that the province does not have jurisdiction to fill in purported “gaps” or areas of extension of matters already the subject of the criminal law.

Political Suppression of Dissent

It is clear that the government is engaging in political gamesmanship. Media reports suggested that the government refused a motion of unanimous passage of this bill on October 5.

The rushed nature of this bill, together with all party support and a rushed one day of hearings, without serious analysis, are further examples of the suppression of dissenting viewpoints.

The bill is opposed to a meaningful process of authentic pluralism. Canada allows different viewpoints, for which expression of opposition to abortion is recognized as a constitutional right.

The government is engaged in advancing the interests of private abortion businesses, without any evidence of serious problems that cannot be addressed through other means, such as laying charges under existing provisions of the Criminal Code.

The entire exercise of this bill, including the consultations which occurred in the summer months, have all been in response to the demise of the previous civil injunction from 1995 in *Dieleman*, which lapsed as of January of 2017, owing to the failure of the Attorney General to take steps to preserve that injunction prior to the enactment of the new Rules on civil actions.

Within the same timeframe that this bill has been introduced, the Attorney General is seeking to restore the previous injunction in court proceedings that are ongoing.

Who is minding the interests of the taxpayer in this exercise?

Given the acknowledgement that these provisions are recognized by appellate courts to be in breach of the provisions of s. 2(a) of the Charter, is it the intention of all parties to introduce the notwithstanding clause of the Charter in the event that courts strike down its provisions?

There have been other more notable instances of interruption of peaceful advocacy, such as Black Lives Matter protests at gay pride parades, without proposals for regulation of such activity by the government. The government sees more protests in front of embassies or consulates for human rights abuses, than any evidence of abuse at abortion facilities. Will the government soon interfere with protests on public sidewalks in front of corporations on environmental abuses?

Political protest is a hallmark of democracy. Dissent is a feature of authentic pluralism. Courts take a dim view of limitations of such measures intended to stifle free speech.

We hear politicians seeking to make abortion safe, but rare, in various political campaigns. The reality is that between one in every three or four pregnancies in this province end in abortion. This bill will serve to increase abortions, by seeking to avoid presentation of options to women.

The government has already been overruled by the Superior Court in June of this year (*ARPA and Maloney v. Her Majesty*, 2017, ONSC 3285) on the issue of access to abortion related statistics. A similar outcome awaits this bill.

Respectfully submitted,

Philip Horgan, President, Catholic Civil Rights League, and Chair, Faith and Freedom Alliance

Dr. Christian Elia, Executive Director, Catholic Civil Rights League, Assistant Professor and BPS Program Coordinator, Niagara University, Dept. of Ontario Studies