
CAMPAIGN

AGAINST

CENSORSHIP

(THE DEFENCE OF LITERATURE AND THE ARTS SOCIETY)

PLEASE REPLY TO:-

23 Budgen Drive
Redhill Surrey
RH1 2QB
16th December 1996

To: Stephen Silber QC
Law Commission
Conquest House
37 John Street
Theobalds Roa
London WC1N 2BQ
Ref: 17-384-07

Dear Mr Silber,

CONSENT IN THE CRIMINAL LAW:
LAW COMMISSION CONSULTATIONB PAPER 139

Thank you for your letter of the 12th December. CAC's position is as set out in its comments on Consultation Paper No 134, a copy of which is enclosed. If you would like amplification of any points, please let us know.

Yours sincerely

Clr E Goodman
Chair of CAC

COMMENTS OF CAC (CAMPAIGN AGAINST CENSORSHIP) ON
LAW COMMISSION CONSULTATION PAPER NO 134,
CONSENT & OFFENCES AGAINST THE PERSON

June 1994

Paragraphs 18.3, 19.6, 22.1, 32.5, 38

CAC is particularly concerned at the suggestion that consent should continue to be ineligible for any exclusion from criminal liability if there is infliction of "serious" injury. This is illogical since some recognised sports activities result in such "serious" injury and CAC believes that there should be no distinction between sports and sexual activities, which CAC regards as a type of indoor sport.

CAC does, however, believe that the general defence of consent should be related to the type of injury intended. Thus consent to serious (as opposed to non-serious) injury should be necessary for an effective defence to infliction of serious (as opposed to non-serious) injury.

To adopt this approach would obviate the need for the illogical exceptions referred to in Paragraph 38

Paragraphs 21.1 and 22.1 (6)

CAC supports the abolition of the legal distinction between consent to public and private acts. To have that distinction would introduce the illogical criterion of publicity, when the considerations should be confined to injury, consent and intent.

Paragrah 37.3

Just as a sexual motive should be irrelevant, so should a religious one. Consent should not be impugned by subjective motivation, as the following example will illustrate. The Taziyah is a passion play performed by Shia Muslims (especially in Iran) on the anniversary of the Martyrdom of Husayn ibn Ali (grandson of the Prophet Mohamet). It includes mourning and public self-flagellation, sometimes resulting in death. To outlaw specifically this type of activity would amount to religious discrimination, especially as suicide is lawful. The general law of consent should apply.

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Paragraph 37.4

Dangerous exhibitions should be lawful because of consent by the performers. To legislate otherwise would amount to censorship and could (in the absence of illogical exceptions referred to in Paragraph 38) prohibit popular spectator sports, such as motor-racing and point-to-point races. This is why CAC opposed the banning of the Jim Rose Circus by some local authorities (such as Portsmouth City Council) in 1993.

Paragraphs 41 and 42

CAC's suggestion that consent to serious injury is valid would obviate the necessity for complicated definitions of legal exemptions for sports; see *Pallante v Stadiums Pty Ltd (No 1)* (1976) VR 331. Consent to participate in a seriously dangerous sport or non-seriously dangerous sport, as the case may be, would be all that was necessary. This would provide adequate protection for participants as it would criminalise the infliction of serious injury in a non-seriously dangerous sport. It would also criminalise injury inflicted recklessly during but, completely outside the rules of, a dangerous sport as consent was not given for same by the victim (cf Paragraph 46.1).