



The Federation of Canadian Naturists

Position Statement on Section 174 of the Criminal Code

Part One: A Law that is overly broad

Lawyer Andrew Porter, the founder of Petition e-3999, described the current version of Section 174 as overly broad. We agree that the wording is so broad that it cannot be enforced with any consistency. Phrases such as “without lawful excuse” and “so clad as to offend against public decency” are especially ambiguous and leave this Law at risk of personal bias.

There are three significant factors that contribute to the overly broad aspect of this Section. These are:

1. Intention – The current wording of this law does not recognize the intention of the individuals who are nude. It does not distinguish between those seeking peace and relaxation with those seeking confrontation or spectacle. Even a naked toddler playing on a beach could be considered “guilty of an offence punishable on summary conviction.”
2. Context – This section does not recognize situations where nudity may be considered socially acceptable. Its wording appears to apply to all situations, regardless of location or circumstances. For example, it does not recognize Wreck Beach or Hanlan’s Point, which have both been sanctioned for nude use.
3. Unfounded Premise - The wording of this section appears to be based on a single, ethnocentric assumption that the human body in its natural state is offensive. This is a culturally biased premise that harkens back to the Victorian era and morality police.

Part Two: A Law that is socially outdated

It is worth noting that the Federal Government’s online introduction of the Criminal Code (<https://justice.gc.ca/eng/csj-sjc/ccc/index.html>) includes the following phrase:

While the Criminal Code became law over 100 years ago, updates to the Code are made regularly, including to reflect changes in society.

When we discuss the Criminal Code and other aspects of legal advocacy with our fellow members of the Federation of Canadian Naturists, we sometimes hear the phrase “Politics is downstream from culture.” Indeed, sections of the Criminal Code have, for the most part, been amended from time to time to reflect changes in our prevailing culture, particularly as it relates to social perspectives. However, in terms of keeping pace with the evolving state of our social outlook, Section 174 lags far behind.

The majority of Sections in Part V of the Criminal Code, Sexual Offences, Public Morals and Disorderly Conduct, have been subject to committee review and amendment over the years. Of the nine sections that remain in force in this Part of the Code, six of these have been reviewed and amended at least once within the past ten years. Two of these, Sections 172.1 and 173, have each been reviewed and updated at least four times in the past fifteen years. In contrast, Section 174 has not been given a comprehensive review in at least 60 years.

Another legal development in which Section 174 has not kept pace is the Canadian Charter of Rights & Freedoms. It was introduced in 1982 and came into force in 1985. The wording of the present nudity laws is, in our view, not fully in keeping with the Charter. This includes, at a minimum, the following rights and freedoms:

- Freedom of thought, belief, opinion and expression.
- Right to life, liberty and security of the person and the right not to be deprived thereof.
- The preservation and enhancement of the multicultural heritage of Canadians

Overall, Section 174 in its present form simply has not kept pace with our basic rights and freedoms or our changing social attitudes. It remains a holdover from the mid-twentieth century and is at least half a century out of date with our modern-day sensibilities.

Part Three: A Law that does not recognize cultural diversity

The current nudity law is also out of step with our shared identity as a multicultural society. The practice of naturism, as well as general nudity, is an integral part of some cultures. This includes European and African cultures, and historically, many indigenous cultures throughout North America. However, Section 174 takes a narrow, conformist approach that does not recognize cultural diversity, nor does it make any reasonable accommodations for it.

While naturism itself intersects many aspects of cultural heritage, it is also regarded as a distinct way of life, complete with its own principles and values. It has been practiced by thousands of Canadians for decades, and as reported in a 2014 survey, over 20 percent of Canadians take part in naturist activities.* Many regard the founding of the Van Tan Club in 1939 as the origin of Canadian naturism and since then, has been part of our national heritage for over 80 years. Whether Section 174 will be modified or repealed altogether, we want laws that will recognize us as naturists and respect our way of life.

Conclusion

In summary, we feel that the current version of Section 174 does not serve Canadians, particularly for the following reasons:

1. It is overly broad.
2. It includes terms that are ambiguous and cannot be interpreted or enforced consistently.
3. It does not recognize intention or context.
4. It is based on an unfounded premise that the human body in its natural form is objectionable.
5. It has not had a formal review in at least 60 years and subsequently does not reflect our modern social attitudes.
6. It is not in accordance with the Canadian Charter of Rights & Freedoms.
7. It does not adequately recognize or accommodate multiculturalism.
8. It does not acknowledge naturism, or its principles, shared beliefs and values.

In closing, we call on the Federal Government to commit to a comprehensive committee review of Section 174.

The Federation of Canadian Naturists
October 2, 2022
fcn.ca

Appendix

Citation

* Canadians' Experience and Attitudes Toward Nudity and Naturism - Research Report. Mark Wilkens Communications, 2014

Section 174, Nudity

- **174 (1)** Every one who, without lawful excuse,
 - **(a)** is nude in a public place, or
 - **(b)** is nude and exposed to public view while on private property, whether or not the property is his own,

is guilty of an offence punishable on summary conviction.

(2) For the purposes of this section, a person is nude who is so clad as to offend against public decency or order.

(3) No proceedings shall be commenced under this section without the consent of the Attorney General.