

PLACATING THE BRITISH: THE CONTAGIOUS DISEASES ACT IN CANADA

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SUMMARY: The Contagious Diseases Acts were inaugurated throughout the British Empire amidst widespread opposition, except in Canada. Although Canada had its own version of the Act from 1865 to 1870 there was no public outcry. Why were Canadians less concerned about this controversial legislation than their British counterparts?

When the Contagious Diseases Act was passed in Canada there were widespread concerns about the defense of the country against both the United States and Fenian raiders expressed by both Canadians and British administrators. The British went so far as to call Canadians unpatriotic because they did not put more money and resources into fortifying the country to spare the British the expense. Also at this time the Canadian government was attempting to secure funding to construct military fortifications. Hamilton, Ontario, one of the cities where the Act was supposed to be in effect, has no records of the Act ever having been carried out and actually put forward legislation contrary to the Act. Why would the Canadian government have taken the time to pass through the various stages of parliament and the senate a law that was never enacted?

The Canadian government never intended to actually enforce the Contagious Diseases Act and the public were not aware it even existed. The government passed this legislation to show the British that they were serious about the defense of the country in order to get money for military fortifications.

KEYWORDS: Public Health, History of; Medicine, History of; Canada; International Relations; Contagious Diseases; Health Policies, History; Military, History; Commonwealth; Social Revolutions; Politics of Disease

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Introduction

The Contagious Diseases (CD) Acts were instituted amidst widespread opposition throughout the British Empire to protect the health of the army and navy. The Acts were designed to reduce the number of men who incurred sick days or were invalidated by contracting venereal diseases. In effect, the Acts legalized prostitution in certain naval and military towns and required prostitutes to undergo fortnightly medical examinations where they would be checked for signs of venereal disease. If a prostitute was found to be ill of a venereal disease she could be confined in a lock hospital against her will for approximately three months depending on the particular Act (here, the *Bill for Prevention of Contagious Diseases at Naval and Military Stations*),¹ or until she was deemed cured. Implicit in the Acts was the assumption that only women can transmit venereal diseases, as the soldiers and sailors were not required to undergo any such examination.

Wherever these Acts were in place, widespread opposition and controversy was sparked. The opposition came to a height from 1869 to 1871 when the second amendment to the Acts in Britain emerged as public knowledge, which proposed to extend the time of detainment from three months to one year.² The public was largely opposed to the Acts for several reasons: They appeared to condone poor morals in the country's soldiers. Some doctors and health officials were not entirely convinced that the Acts were effective in preventing venereal disease (VD) and women stood up and rebelled against the gender bias inherent in the legislation. Opposition was by no means confined to Britain; the Acts were also in place in India, Malta and many other colonial countries where there was public opposition (see the works of the British historian Philippa Levine). Canada however, seems to be the exception to the rule. Although there was a Contagious Diseases Act passed in parliament, which was in effect from 1865 to 1870, there was a silence amongst the Canadian public with regards to the Act.

¹ Government of Canada, Parliament, Statutes of the Province of Canada, *Bill for Prevention of Contagious Diseases at Naval and Military Stations*, session held in twenty-ninth year of the reign of Her Majesty Queen Victoria, 4th sess., 1865 (Canadian Act of Parliament: 8), 41.

² British Parliament, *Contagious Diseases (H.L.): A Bill Intituled an Act to Amend the Contagious Diseases Act*,” British Parliamentary Bills, sess. 1868-69, no. 255, 1866, 3.

This paper attempts to explain the silence of the Canadian public with regards to the Contagious Diseases legislation through a case study of the city of Hamilton, one of the ports where the Act was supposed to be in effect. Around the time the Act came into effect in Canada, the public was highly concerned about the defense of the nation. The American Civil War was coming to a close and a group of rebellious Irish supporters were seen to be a constant area of concern. The Contagious Diseases Acts were not in effect but merely on the record books to placate the British government in an attempt to secure funding and military personnel for Canada's defense.

Context

In 1865, Canada was not yet an independent nation. In fact, at the time "the province of Canada" referred to the united Upper and Lower Canada.³ Throughout this paper references to Canada are thus referring to the united provinces of Ontario and Quebec. By this point however, the unification of the entire country was being discussed, which would ultimately bring greater independence from Great Britain. Prostitution was an issue in Canada, as can be deduced from the annual report of the Police Commissioner of the City of Hamilton for the years 1865 to 1866.⁴ The report printed for the year 1864 states that 74 women were arrested for street walking, while 34 males and 46 females were arrested for "keeping disorderly houses and being found therein."⁵ The frequency of these arrests can also be deduced from the *Hamilton Spectator's* daily column, which summarized the events at the Police Court during a particular day. Accounts like this one were not uncommon for the time:

DESCENT ON A HOUSE OF ILL FAME

On Sunday night a descent was made by the Police on a house of ill fame, situated on King Street, near the Crystal Palace, and kept by a woman named Ellen Smith. The parties in the house were arrested, and brought this morning before the Police Magistrate. His Worship fined the keeper of

³ Cf. R. Douglas Francis and Donald B. Smith, *Readings in Canadian History – Post-Federation*, (Toronto: Holt, Rinehart and Winston of Canada, 1990), 1-35.

⁴ After this point, the annual reports are not available, as they were no longer printed in the *Hamilton Spectator*.

⁵ John Carruthers, "Annual Report of the Chief of Police," *The Hamilton Spectator*, 21 January 1865, 2.

the house \$80, or six months in jail. May Millar and Flora Jones, two of the inmates of the house, and William Kerr and Edwin Moffat, found on the premises, were each fined \$50 or three months in jail. Two of the parties paid their fines yesterday afternoon.

The report for the year 1866 was structured differently and grouped street walking and vagrancy together, for a total of 365 people arrested for offences of this kind. 106 people were arrested for keeping or frequenting a house of ill fame or disorderly house in 1866.⁶ The City Hospital in Hamilton published figures on admissions for the year 1864, which became broken down by the kind of complaint for which a person was admitted to the hospital. For this year 8 people were treated for gonorrhoea and 20 for syphilis, out of a total of 252 patients admitted during the year.⁷ This amounts to approximately 11 percent of the patients admitted to the hospital for the year. The only other disease listed, which admitted nearly as many as venereal diseases, was pregnancy, with 21 women admitted over the course of the year.⁸ Thus, venereal disease appears to have been an issue in Hamilton. However the legislators and law enforcers seem to have been more concerned with the moral implications of prostitution rather than the disease consequences. The total number of people arrested for prostitution-related offences for 1864 was 154, while the number of people treated for venereal disease was only 28.

The state of the military in Canada at this time was in poor shape. In 1854 and 1855 there were militia reforms in the country, which modeled the volunteer force after the American volunteer corps already in existence and created volunteer battalions of cavalry, field battery, foot, artillery and infantry companies.⁹ Soldiers were divided into Class A (paid soldiers) and Class B (unpaid), but cuts to the budget continually reduced the number of Class A soldiers and caused worry among Canadians. Class A soldiers were generally better trained and had to attend one of the military schools set up around the province in order to receive this rank and receive pay for their duties.¹⁰ In terms of regular soldiers from the *Imperial Army* serving in Canada, the number of men who served is difficult to discern

⁶ William H. Nicolls, "Annual Report of the Chief of Police," *The Hamilton Spectator*, 11 January 1865, 2.

⁷ Dr. Strange, "City Hospital Report," *The Hamilton Spectator*, 13 January 1865, 2.

⁸ *Ibid.*

⁹ Hereward Senior, *The Last Invasion of Canada: The Fenian Raids, 1866-1870* (Toronto: Dundurn Group, 1991), 27.

¹⁰ *Ibid.*, 28.

due to fluctuations, but it is estimated that there were approximately 2,263 regular soldiers of the British army serving in Canada in 1861.¹¹ This was a very small number of soldiers to have stationed in such a large geographic area in the British colonies. According to the Army Medical Department Statistical and Sanitary Report for the year 1864, there were no recorded cases of venereal disease among the soldiers serving in Canada.¹²

The military structure of Canada at this time was not suited for the CD Act to function. The Act is meant to control venereal diseases among the regular army and navy who serve for years at a time and solicit prostitutes for sexual gratification. In Canada however, there were a very small number of regular army soldiers serving, around 2,200 at this time – as described above –, with the rest of the army composed of militia volunteers. The volunteers continued to live and work at home, perhaps training once weekly, but many would only attend roll call once a year. The large majority of volunteers would have been married and as the militia were only called up in the event of a local emergency or crisis they would have spent little if any time away from home, thus reducing the risks of clandestine sexual encounters. Moreover, even if the volunteer militia had contracted venereal diseases, it would have been inconsequential to the government, as the militia was not required to undergo medical examinations before admittance to their ranks. In the improbable case that the entire militia contracted venereal disease it would not have a huge effect as these men were rarely called up and most had never seen active combat.

Historiography

The historiography of the Contagious Diseases Acts is represented by five historians with largely different perspectives. In her book *Prostitution and Victorian Society: Women Class and the State*, the modern European historian Judith Walkowitz at Johns Hopkins University focuses on the feminist reaction to the domestic CD Acts. There was an incredible amount of public involvement by the Acts supporters and critics. There were many groups founded to further both sides of the cause, including the

¹¹ *Ibid.*, 31.

¹² Army Medical Department Statistical, Sanitary and Medical Reports, *On the Health of the Troops Serving in British North America. Volume VI: British Parliamentary Command Papers: Reports of Commissioners*, 1864, No. 3730, 57.

Ladies National Association for the Repeal of the Contagious Diseases Acts. These groups petitioned government, held demonstrations and wrote letters. The focus of her book is on Josephine Butler (1828-1906) who has been labeled as the first feminist through her work to get the CD Acts repealed. Walkowitz argues that Josephine Butler's republican, feminist and religious sentiments were able to get the attention of the working class and united the population under this cause.¹³ However, Australian cultural historian Mary Spongberg directly challenges the way in which scholars like Walkowitz have analyzed the situation in her book *Feminizing Venereal Disease*. Spongberg argues that based on the fact that most lay-people were interested in furthering the laws used the words "prostitute" and "disease" interchangeably, whereas the medical professionals who were involved in the debate questioned the assumption that prostitutes were contaminated, as well as the way venereal disease was treated, that the role of medical practitioners is the most important when looking at the CD Acts.¹⁴ Bristol theologian and feminist scholar Lisa Severine Nolland also focuses on the domestic Acts and Josephine Butler and offers some explanation as to why legislators felt that the Acts were necessary. She frames her argument in terms of continental military competition, stating that the Acts were not solely for the prevention of venereal disease, but also a way to modernize the British Army. Nolland states that the army was the same in structure to the one that had defeated Napoleon nearly fifty years earlier, and one of the standard features of the continental armies was licensed brothels. As the British were unwilling to use conscription, they attempted to be better equipped, more efficient and more physically and mentally fit than their rivals.¹⁵

In terms of the colonial Acts, Elizabeth B. van Heyningen focuses on one of the only areas of Africa, which instituted the Acts. Van Heyningen argues that the reason for implementation was security and preservation of British rule. The only local requests for the Acts came from the Colonial Medical Committee, and the War Office threatened to withdraw Imperial authorities from the area if the Acts were not instituted. Thus she interprets the Acts in this case as relating not to local conditions but rather to

¹³ Judith R. Walkowitz, *Prostitution and Victorian Society: Women, Class and the State* (Cambridge: Cambridge University Press, 1980), 99.

¹⁴ Mary Spongberg, *Feminizing Venereal Disease: The Body of the Prostitute in Nineteenth-Century Medical Discourse* (New York: New York University Press, 1997), 73.

¹⁵ Lisa Severine Nolland, *A Victorian Feminist Christian: Josephine Butler, the Prostitutes and God* (Carlisle: Paternoster, 2004), 189-191.

Concern for Defence of Canada

More than a year before the CD Act was assented to in Canadian Parliament, there were concerns among both the population at large and the legislative bodies about the defense of the country. This development is important for understanding why exactly the Act was instituted when the conditions were not suited for it. The sentiments of both the general public and the legislative bodies can be deduced from reviewing issues of the *Hamilton Spectator* from 1864 and early 1865, as it carried columns discussing the proceedings of the British and Canadian Parliaments as well as news and general interest pieces.

It appears that the general public during 1864 was very much interested in the defense of the country and the movements of the militia. In June of 1864, there was a review of the volunteer militia at Drummondville, Niagara Falls. Prior to the event, *The Spectator* published a number of articles relating to the coming spectacle. One article made implications about the location of the Review in the Niagara Region, where the militia had last engaged in hostilities during the War of 1812 and had been successful in this attempt. The article went on,

What would be more appropriate, then, than the volunteers of to-day [who] should meet within sight of at least one spot consecrated to the memory of those brave men who rallied at their country's call and rescued it from the possessions of a foreign foe?²⁰

Following the Review, the *Spectator* printed this excerpt from the *Buffalo Express*:

The Canadian Military Review – From all accounts the review of the Canadian Militia, at Drummondville, which it was announced would be a grand military display, proved a dead failure. Some ten thousand spectators were present, to witness the very bungling evolutions of from between two and three thousand troops and a section of a battery, under command of a titled commander who did not make his appearance on the field till near twilight. After the enthusiastic encomiums paid her Majesty's loyal militiamen, by the press of Canada, we looked for better things than a laughable fizzle, bearing much resemblance of a sell.²¹

²⁰ "The Volunteer Review," *The Hamilton Spectator*, 15 June 1864, 2.

²¹ "The Canadian Military Review," *The Buffalo Express*, 23 June 1864, 2.

The Spectator went on to disagree with everything printed in the excerpt, stating that “the review at the Falls, however, we repeat, was a grand affair,” and alluded that the past had influenced the reporter’s depiction of the event by concluding, “he may not have relished the thought of being in such close proximity with the spot where his ancestors were compelled to bite the dust, by the forefathers of every militiamen he has abused and misrepresented.”²² However, despite the very patriotic rebuttal printed by *The Spectator*, perhaps there was some truth in the story printed by the *Buffalo Express* as less than a month later, the British House of Commons entered into some serious discussions about the defense of Canada.

On July 19, 1864 it was reported in *The Spectator* that “an important discussion” had taken place in the British House of Commons with regards to the British troops who were stationed in Canada.²³ The intentions of the British government were to concentrate the regular forces in Quebec and Montreal in an attempt to force the provincial government to organize a large militia force in Upper Canada. *The Spectator* admitted that there had been little done for the defense of the country, saying “it is not to be denied that the Government of this country has been unmindful of its best interests in neglecting to provide means of defense against invasion from our American neighbors.”²⁴ On August 6, 1864 a second report was published in *The Spectator* relating to the defense of Canada. In this article the British Parliament called into question the patriotism of Canadians because they did not take the defense of the country into their own hands and spare Britain the cost of maintaining a standing force. It was suggested that Upper Canada should be raising 100,000 volunteers. According to the article, Canada had approximately 25,000 volunteers at this time, while Britain had 60,110 from a population of 20 million and Ireland had 24,300 and a population nearly twice that of Canada.²⁵

In addition, events, which transpired in October, made military conflict with the American Union government a possibility. In late October 1864, a group of Confederate soldiers who had been living in Canada raided the village of St. Albans, Vermont. These men robbed a bank, set fire to a

²² *Ibid.*

²³ “Canada in England,” *The Hamilton Spectator*, 19 July 1864, 2.

²⁴ *Ibid.*

²⁵ “Our Volunteer Forces,” *The Hamilton Spectator*, 6 August 1864, 2.

number of homes and accidentally shot and killed one citizen.²⁶ The Union reaction to this was incredibly harsh. The Canadian government, wanting to avoid military retribution, called out 2,000 volunteers to patrol the border and prevent similar occurrences from happening again.²⁷

The British obsession with the defense of Canada continued into 1865 with debates, publications and laws. In the March 6th, 1865 issue of *The Hamilton Spectator* a letter to the Secretary of State for War from Lieutenant-Colonel William Jervois (1821-1894), the Deputy Director of Fortifications on the topic of Canadian defenses was published. The letter was dated January 1865, and its purpose was to convey Jervois' ideas for the fortifications in Canada to the War Office after visiting the country in the autumn of 1863. It was by his suggestion that the British government endeavored to construct the fortifications at Montreal and Quebec, although he recommended that the Imperial forces not be withdrawn from Upper Canada completely, as the withdrawal would have a negative impact upon the moral in the area.²⁸ This correspondence was also part of the official documents of the House of Commons in Britain and can be found in the Parliamentary Papers.²⁹ Following the publication of Lieut.-Col. Jervois' report there was a debate in the Imperial Government about the defense of Canada. A correspondent to *The Hamilton Spectator* reported that the only firm decision that the government had taken was to spend £200,000 over four years to construct the fortifications recommended by Jervois at Montreal and Quebec.³⁰

In early January, 1865 the balloting to appoint more members to the militia began eventfully. On January 2, 1865, *The Spectator* contained accounts of a riot in Chateau Richer where some citizens of the county declared that they would not let the government establish a militia in this region and attempted to stop the balloting with force.³¹ While no further reports of refusal to accept places in the militia were reported, there were

²⁶ Wilfried S. Neidhardt, *Fenianism in North America* (University Park: Pennsylvania State University Press, 1975), 19.

²⁷ *Ibid.*

²⁸ Lt. Colonel Jervois, "The Defense of Canada," *The Hamilton Spectator*, 6 March 1865, 2.

²⁹ Lt. Colonel Jervois, *Letter to the Secretary of State for War with Reference to the Defence of Canada*, British Parliamentary Papers: Command Papers 1865, 37, no. 3434, 429.

³⁰ "Our London Letter: Debate on Canadian Defences," *The Hamilton Spectator*, 13 March 1865, 2.

³¹ "Militia Riot on Friday," *The Hamilton Spectator*, 2 January 1865, 2.

numerous reports of the inadequacy of the current Militia Laws. There were a number of Letters to the Editor of *The Hamilton Spectator* in January of 1865 opposing the law and offering suggestions for its improvement. This particular letter is signed “Tyro” and gives no other indication of who the author was or their position in society. Tyro’s letter points out that the current system of balloting men for the volunteers is entirely inadequate and states “... our Militia System is a downright farce, and any official who has the interest of the country at heart should notice it.”³² This is only one of many letters printed, which express many of the same sentiments. Thus, it was clearly not just the Imperial Government in Britain that was worried about the defense of Canada; it was a widespread concern throughout the country.

Canadian Delegation and Bid for Freedom

Clearly the Contagious Disease Act was instituted during a time of concern over the defense of the country, but the real question of why the Act was instituted cannot simply be answered by this fact alone. In order to better understand the situation, an examination of a Canadian delegation sent to Britain to discuss the provisions of Confederation and the issue of defense in May, 1865 is necessary. *The Hamilton Spectator* printed reports from *The Toronto Leader* that the intentions of the delegates to Britain were to ask for a guarantee for the proposed fortifications as well as the entire debt of the country on the condition that the works of defense were undertaken and an efficient militia was maintained.³³ Just over a month later, a correspondent was quoted in *The Spectator* stating that the defense negotiations were going quite well.

The Question of the defenses is now before the Commission charged with that subject, who are preparing to state to the Government *the measures necessary to be taken* (emphasis added) with an approximate idea of what the cost would in all probability be, and as soon as this question has been fully considered, it will be discussed between the Imperial Government and the Canadian delegates.³⁴

³² “The Militia Law,” Letter to the Editor, *The Hamilton Spectator*, 7 January, 1865, 2.

³³ “An Imperial Guarantee,” *The Hamilton Spectator*, 1 May 1865, 2.

³⁴ “The Mission to England,” *The Hamilton Spectator*, 3 June 1865, 2.

This report indicated the Commission was establishing necessary steps to be taken by the Canadian government in order to secure funding for the defenses. There are no records of these discussions and we are left to speculate. Perhaps one of these steps was the establishment of a Contagious Diseases Act to further protect the valuable Imperial forces stationed in Canada. Even if the Imperial government did not suggest or require this legislation, promising to institute an Act would have made a favourable impression upon British politicians and demonstrated the willingness of Canadians to protect Imperial soldiers with fortifications and legislation.

Fenian Threat to Canada

Amidst the concerns for the defense of Canada from the Union government another threat was just beginning to take shape.³⁵ As the Fenian threat developed the need for Canada to defend it greatly increased. November of 1864 was when the first signs of violence from the Fenian Brotherhood were recorded. The Fenians were connected with the Irish Revolutionary Brotherhood (I.R.B.) in Ireland, and both groups were determined to secure Ireland's freedom from British rule through armed insurrection.³⁶ The Fenians hoped that tensions between Britain and the US would continue to grow in the early 1860's embroiling the countries in a war and allowing the group to strike from Ireland at a weakened Britain.³⁷ Many members of the Fenian Brotherhood had been in support of invading Canada to further the Irish cause and their plans finally began to solidify in the autumn of 1865.³⁸ The Irish population of Toronto was largely in support of the Fenian goals but elsewhere in Canada there was little support for the Brotherhood, specifically due to their desire to invade Canada.³⁹

On November 11 1864, the *Spectator* reprinted an article published in the *Toronto Leader* discussing police investigations into the group who "paraded the streets on Saturday night, armed with pikes and other murderous weapons."⁴⁰ By early January, it appeared that the whole

³⁵ Hereward Senior, *The Last Invasion of Canada: The Fenian Raids, 1866-1870* (Toronto: Dundurn Press, 1991), p. 7-10.

³⁶ Neidhardt, *Fenianism in North America*, 5.

³⁷ *Ibid.*, 10.

³⁸ *Ibid.*, 29.

³⁹ Senior, *The Last Invasion of Canada*, 33-34.

⁴⁰ "The Fenians," *The Toronto Leader* in *The Hamilton Spectator*, 11 November 1864, 2.

province was alarmed with the Fenians and feared an attack. On January 4th, *The Spectator* published the account of an easterly county, stating

quite an excitement here in regard to the Fenians. Pikes are said to be deposited at various points ready for use. ... An attack is expected at any moment.⁴¹

Whether or not this was a dramatic exaggeration, there must have been at least some truth to these sentiments for the public to identify with. Ultimately the fears of the population were realized in 1866 when the Fenians launched an attack on Canada in the Niagara region.⁴²

Instatement of the Contagious Diseases Acts in Canada

Following the return of its delegates to Britain, Canadian Parliament began sessions again on August 8, 1865 and by the end of the month the House of Parliament began discussing the defense question. A parliamentarian suggested on August 23 that the militia should be organized on a permanent basis. Sir John A. Macdonald (1815-1891) replied “that the government were now anxiously considering the question of Militia in connection with the defense of the country, and were endeavoring vigorously to carry out the militia system...⁴³ On September 8, Macdonald gave a lengthy speech on the provisions for the militia which included the running of military schools, the number of volunteers estimated to be available and proposed changes to the balloting or conscription organization.⁴⁴ On September 9, a bill was introduced to alter the Militia and Volunteer Forces Act with amendments for better instruction and a change in the balloting system.⁴⁵ A few days later on September 13, Sir John A. Macdonald proposed a Bill for the Prevention of Contagious Diseases in Certain Naval and Military Stations. The bill was read for a third time on September 15 and passed through the Legislative Assembly after which it was presented to the Legislative Council and read for the first, second and third time on September 17, right before the end of the session.⁴⁶ The Canadian CD Act was rushed

⁴¹ “Fenians,” *The Hamilton Spectator*, 2 January 1865, 2.

⁴² Niedhardt, *Fenianism in North America*, 8.

⁴³ “Legislative Assembly,” *The Hamilton Spectator*, 24 August 1865, 2.

⁴⁴ “Legislative Assembly,” *The Hamilton Spectator*, 9 September 1865, 2.

⁴⁵ “Legislative Assembly,” *The Hamilton Spectator*, 13 September 1865, 2.

⁴⁶ “Legislative Council,” *The Hamilton Spectator*, 17 September 1865, 2.

through legislation rather more quickly than what appears to be the norm as it was slipped in at the end of a session.

Why would the Canadian parliament and Sir John A. Macdonald in particular, have seen the CD Act as a necessary or worthwhile piece of legislation to introduce? The detailed ledgers of all House business do not exist for this time period for us to see the exact transcripts of parliamentary sessions, and there was no debate published in *The Hamilton Spectator*. The *Canada Gazette* was published on a weekly basis to educate the public as to the proceedings of the government, but there is no mention of the Act in this medium either, thus the Act most likely aroused little opposition in parliament. In order to fully understand this predicament it is necessary to look back on the delegation sent to Britain earlier in 1865. One of the main objectives of the mission was to secure the defense of Canada. *The Hamilton Spectator* printed reports from *The Toronto Leader* that the intentions of the delegates to Britain were to ask for a guarantee for the proposed fortifications as well as the entire debt of the country on the condition that the works of defense were undertaken and an efficient militia was maintained.⁴⁷

It is clear from the report of *The Spectator's* correspondent that there were certain conditions, which the British government was going to impose upon the Canadian government concerning the management of the militia; these were clearly conditions that the Canadian government would have had to meet in order to be guaranteed the funding which they required. It will be recalled, from above, that the Canadian population lived mostly in sparsely populated rural areas and there were relatively few regular soldiers versus the number of militia volunteers. Therefore it did not make sense for the CD Act to be implemented in Canada. The legislation was better designed to function in a large urban area. Furthermore, a comparison of the Canadian Act of 1865 and the British Act of 1864 show the similarity of the two pieces of legislation. The Canadian Act is almost exactly the same as the British one. The only differences noted are the divergent phrasing in some clauses or different stipulations based on the particular hierarchy of officials in Canada versus Britain.⁴⁸

⁴⁷ "An Imperial Guarantee," *The Hamilton Spectator*, 1 May 1865, 2.

⁴⁸ Government of Canada, Library and Archives Canada: Government Publications Collection, *Bill for Prevention of Contagious Diseases at Naval and Military Stations: (as amended by Select Committee)*, 4th sess. of the Eighth Parliament of

What Happened after the Act was Assented to?

Following the instatement of the Contagious Diseases Act, it seems to fade from the public's view. There are no further references to the Act in the Parliamentary Journals or minutes with the exception of the repeal Act in 1870. Although the minutes of the Hamilton City Council do not exist for this time period, the minutes were published in the *Spectator* and there are no references to instituting the Act or making budget allotments for Medical Officers of Health, despite the fact that Hamilton was one of the towns in which the Act was to be enforced.⁴⁹ In fact, in 1869 the City of Hamilton enacted a by-law, which contradicted the Contagious Diseases Act. The by-law stated,

That no person shall keep, inhabit or frequent, any house of ill fame in said city. That all common prostitutes or night-walkers wondering in the streets or highways of the said city, not giving a satisfactory account of themselves, shall be deemed vagrants, vagabonds, and disorderly persons.⁵⁰

The terms of this bylaw would also seem to indicate that the Act was not enforced if one of the principle cities mentioned in the Act enacted a bylaw which outlawed prostitution where the Act semi-legalized it.

It is also a possibility that the general public were not aware that the CD Act was in place. The *Hamilton Spectator* published the proceedings of the Canadian Parliament and when the Act came up in House business there was no protracted discussion of its implications. Also, the *Canada Gazette*, which continues to be published by the government, is a periodical, which outlines the debates and new bills brought up in the government. Although in somewhat of a different format from what we are familiar with now, the *Canada Gazette* was published on a weekly basis while Parliament was in session throughout the 1860's. In the 1865 issues of the *Canada Gazette* there is no mention of the readings of the Contagious Diseases Acts in Parliament.⁵¹ Despite the fact it appears that the content

Canada, Statutes of the Province of Canada Passed in the Session held in the 29th Year of the Reign of Her Majesty Queen Victoria, 1865. 1864: 212 (L481), 38.

⁴⁹ All issues of *The Hamilton Spectator* were checked from January 1st, 1865 to December 31st, 1870.

⁵⁰ City of Hamilton, Bylaws Hamilton, *Bylaw No. 8* (R352.071H179), CESH, Hamilton Public Library Archives, 1869, 23-25.

⁵¹ All issues of the *Canada Gazette* were checked from January 1st to December 31st, 1865.

of other bills was published in the *Gazette* the content of the Contagious Diseases Act was not present. The only place where the Act is mentioned is in a list of bills, which were given the Royal Assent at the end of the session.⁵²

Conclusions

There were widespread concerns between both the people of Canada, as well as the British Parliament in London, England, that Canada was not well prepared to defend itself. There were few Imperial soldiers serving in Canada at this time and the majority of the country's defenses relied on local militia volunteers. At this time the Fenian threat was rising, the chance of conflict seemed imminent and the military in Canada was in shambles. Canada's population distribution was largely rural with serving militiamen remaining fairly close to their wives and homes. Instituting the CD Act in Canada at this time did not make sense given the population distribution, militia-style structure of the military and the small number of regular soldiers serving in the country.

Meanwhile, the British government had recommended that fortifications be constructed at a few key military sites and the Canadian government was trying to impress Imperial Parliament with their plans for the future in an attempt to secure funding for the project. The only logical explanation for the institution of the Contagious Diseases Act in Canada is that the legislation was never in effect but merely placed on the record books in an attempt to placate British authorities concerned about the defense of the country. As Elizabeth Van Heyningen has argued that the CD Act was only instituted in the Cape Colony due to pressures from the British government not the local conditions, similar pressures were felt in Canada. Although the Act was not suited to local conditions the British put pressure on the Canadian government to which they succumbed in order to obtain Canada's independence.

⁵² "Bills Receiving the Royal Assent," in *The Canada Gazette* June-September 1865, 876.