

Customs Tariff

supposed to guarantee freedom and equality to Canadian women, should be used in the defence of pornography, which degrades, humiliates and encourages violence against women. It is ironic that the Charter of Rights, which is supposed to guarantee equality to people regardless of ethnic origin and religion, should be used as a defence for the attack on the Jewish community and the people who have lived through the experience and have been survivors of the physical assault known as the Holocaust.

● (1140)

I am one of the people who takes the Charter of Rights and Freedoms seriously. The Charter is supposed to be a guarantor of freedom and equality. If it is to mean anything, the Charter must mean that the groups which are victimized because of religious or ethnic origin, and the females of our society, receive dignity and equality. There will not be equality and liberty when people can be degraded through pornography and attacked through anti-semitic literature.

I view Bill C-38 as a very necessary piece of legislation which is entirely within the spirit of the Charter. It is legislation which is necessary to promote freedom, liberty and security for members of our community. However, I am sorry that the legislation does not go further and address the substantive issues which remain in order to provide the protection from pornography which women need and the protection which other groups require who are being victimized by hate literature. At least it is a first step. I hope the Government will give us the assurance that there will be very speedy action taken to address the substantive issues and that it will provide good and workable definitions which will be upheld by the courts in actual cases.

Mr. John Nunziata (York South-Weston): Mr. Speaker, it is with pleasure that I rise to speak on Bill C-38, an Act to amend the Customs Tariff. As previous speakers have indicated, the legislation was necessitated by a recent decision of the Federal Court of Appeal which struck down a particular section of the Customs Tariff Act. The court indicated that the section was too vague and uncertain and that it contravened the Canadian Charter of Rights and Freedoms.

The tariff item which is in question is Tariff Item 99201-1. It reads as follows:

Books, printed paper, drawings, paintings, prints, photographs or representations of any kind of a treasonable or seditious, or of an immoral or indecent character.

Any publications or documents which feel within that particular definition could be seized by Customs officials at the border before they were allowed to enter Canada.

Unlike the previous speaker, I applaud the decision of the Federal Court of Appeal, not because of the result, which would allow individuals to import pornography and hate literature into Canada, but because the court has given tremendous weight to the Charter which is the supreme law of the country. The court did not indicate in any way that it agreed with the importation of pornography or hate literature into Canada. It said that there must be some restrictions with respect to the

arbitrary decisions which are made by Customs officials at the border in confiscating certain material. The court indicated that that tremendous authority could not be given to Customs officials without providing a concrete definition.

Why did the court strike down that particular section of the Customs Tariff Act? It indicated that the section offended the Canadian Charter of Rights and Freedoms. Section 2 of the Charter delineates the freedoms which Canadians have come to respect and expect in Canada. They are freedoms which make this country truly democratic. Those freedoms make us proud of our heritage and the values which our society holds. Section 2 reads as follows:

Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

The Court was specifically concerned about Section 2(B) which refers to freedom of expression. The court felt that it was an ultimate freedom and could only be restricted under certain circumstances. Section 1 of the Charter reads as follows:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The court looked at the freedom of expression and felt that in the case of the Customs Tariff Act, which is 117 years old, the definition of pornography and the authority which is given to Customs officials was not a reasonable infringement on freedom of expression. Therefore, the court struck down the legislation and told Parliament to amend the Act and provide a better definition of what is obscene, immoral or hate literature.

I disagree with the NDP Member who criticized the decision and said that it was ironic that it should assist the hatemongers and those who import pornography into Canada. In fairness, the Court of Appeal said that the Charter was important; it did not say that we would open the floodgates so that pornography and hate literature could be imported into Canada. The decision was a victory for the Charter. The unfortunate side effect is that it will allow the importation of pornography and hate literature into Canada. However, it will only allow importation for personal use, which is an important distinction.

Once the decision was rendered, there was hysteria in certain circles across the country. Some people felt that all of a sudden the country would be inundated with obscene or immoral materials and hate literature. But under the Criminal Code of Canada, Customs officials still have the jurisdiction to confiscate immoral or indecent material if it is meant for distribution to Canadians. Even though this particular tariff provision was struck down, it does not leave Canadians powerless to deal with the importation of undesirable material. The legislation does allow people to import that material for personal use, and that as well could be a subject for controversy or debate.