

*Criminal Code*

character of the individual or of his propensity for sexual crimes. But, as the section now stands, no matter whether a person is or is not a sexual pervert, he cannot lead evidence without the consent of the attorney general. The provision that seven days' notice be given is a good and proper one, because, if it were otherwise, evidence might be led that would take the crown by surprise. Let me read the material portions of the section:

When any person is convicted of an offence under . . .

The sections are named.

. . . the court, before passing sentence, may hear evidence as to whether the offender is a criminal sexual psychopath.

Such evidence shall be given by at least two psychiatrists . . . duly qualified.

The court may hear such other evidence as it may deem necessary.

Subsection 4 reads:

Such evidence shall not be submitted . . .

That must refer back to subsection 2.

Mr. ILSLEY: Yes, it does, although it is not too clear.

Mr. DIEFENBAKER: The way it is worded it is not as clear as it might be. I continue:

Such evidence shall not be submitted unless:

(a) the attorney general of the province in which the accused is to be tried consents thereto.

How does the attorney general of the province know what evidence is to be advanced, what the psychiatrists are to say, what the evidence is to be? Before they give the evidence, before they indicate what the evidence will be, the attorney general has to consent to the accused advancing the evidence by which he will endeavour to establish that he is, in fact, a psychopathic sexual offender. I suggest, first, that the attorney general's consent be not required. That in itself might well defeat the purpose for which this is intended. If the attorney general gets seven days' notice, surely that is enough. The accused is convicted of a serious crime. After his conviction, he comes up for sentence. On his behalf a representation is made that he is a pervert and should receive such remedial treatment as is provided for. I say that man should not have to convince the attorney general that he is what he says he is, or his counsel says on his behalf. Those who are to be convinced are the judicial officers. Once the notice is given to the attorney general that evidence will be led, he is in a position to meet it. If you are to require, first, that the sexual pervert has to prove to the attorney general that he is that kind of individual, and convince

[Mr. Diefenbaker.]

him before he convinces the court, you may very well defeat the purpose of this legislation.

I think, too, that the definition of criminal sexual psychopath is rather too confined. It is necessary to define what such a person is, in order to establish some line at which treatment may be given the offender. In my opinion the use of the words "uncontrollable desires" widens the scope to such an extent as practically to defeat the purpose for which this legislation is intended. If the criminal sexual psychopath were defined as a person who, by a course of misconduct in sexual matters, has evidenced a lack of power to control his sexual impulses and who, as a result, is likely to attack or otherwise inflict injury, loss, pain or other evil—stopping there—the definition would be wide enough, without the addition of the words, which are unnecessary, "on the object of his uncontrollable desires".

In my opinion, this provision represents the first action on the part of the parliament of Canada to meet a type of offence that is becoming general, a type of offence that creates fear in the minds of mothers and fathers of children who, by reason of residence in cities, are brought into close contact with strangers. Out of this legislation, with psychiatrists receiving training, ultimately I believe this section will have the effect of punishing wrongdoers and protecting the public at large, and I also believe that eventually it will restore many of these wrongdoers, after treatment, to a place in society wherein they may contribute something to the welfare of the country, instead of being chronic recidivists whose crime ends only with their lives.

Mr. ILSLEY: I am inclined to ask that this section stand until a little more thought has been given to the wording of it. The fact that the section has given rise to some of the observations which the hon. member has made indicates that it is not as clearly drawn as it should be. The scheme of the section was simply this. In the first place, there is prepared a list of offences which are named. The section provides that evidence may be given, on the trial of one or more of these offences, that the offender is a criminal sexual psychopath, and the term "criminal sexual psychopath" is defined. If the court finds that the accused is a criminal sexual psychopath the consequences are serious indeed so far as deprivation of liberty is concerned. It is serious in two ways. In the first place, the minimum sentence is two years, and in the second place, the sentence is indeterminate, which means that the accused, if convicted, may be kept in custody indefinitely.

The section was modelled largely on the sections relating to habitual offenders last year.