

Private Members' Business

The Criminal Code has been with us for 100 years. It can do many things. I say to the hon. member to exhaust every avenue, do everything possible to solve these problems before we resort to legislation.

This is a nuisance. Obviously I disagree with the bill, and I urge the House to turn thumbs down on the suggestion of the hon. member for Thunder Bay—Atikokan.

Mr. Derek Lee (Scarborough—Rouge River): Mr. Speaker, I am pleased to address this private member's bill dealing with the paper burden and inconvenience that has arisen from the unauthorized use or the overuse of facsimile machines in Canada and perhaps around the world.

I commend the member on his initiative in taking note of a problem area in the business world, one where there have been many complaints. I think it is fair to say that there has been a great deal of waste of facsimile paper. However sympathetic I am to the problem, I see that there are two or three items in the bill that should be addressed here in the House before it continues to committee, if that is to take place.

The first item I would like to address is the issue of the burden of proof, if I may put it that way. This is a Criminal Code amendment. If passed, this will become a criminal law. What it actually requires, if there is to be a conviction, is that a prosecutor or complainant must show beyond a reasonable doubt what is basically a conceptual negative, because the wording refers to everyone who sends an unrequested facsimile communication.

When the prosecutor goes to charge and present the evidence, the prosecutor or the complainant must show that the facsimile was unrequested. It may be alleged in defence that the fax transmission was impliedly or specifically requested. That is a difficult thing for a prosecutor to prove. It is impossible to prove a negative. In most circumstances, at a minimum, it is very difficult and therefore procedurally the challenge on the prosecution to prove this negative should be addressed. There might be another way of stating the burden of proof within the section to preclude that problem.

Another one is that we are dealing with a machine, not a person. The bill suggests that a facsimile must be sent

to a person or an organization through a fax machine. Yet, the whole focus of the offence is the receipt by a fax machine. That is a fairly innocuous event. Fax machines are made to receive communications.

It is actually similar to an unsolicited telephone communication. There are telephone solicitation techniques being used now where those doing the solicitation simply program into a computer a pre-recorded message. It runs through the phone bank and makes all the phone calls. The same thing could happen with a fax machine. It is an area that is not easy to address in the criminal law. The fact is that this is not a very good way of advertising. Perhaps if you are advertising fax paper it might be, but because these machines are very impersonal a lot of this stuff is simply trashed upon receipt. An item in this debate that was addressed earlier is that the receipt of this unsolicited material is an annoyance. It might be a waste of paper as well, but it is merely an annoyance. I do not believe it may be something we want to address with the Criminal Code provision. I suspect it is not significant enough that we must resort to the Criminal Code.

For that reason, if the matter is to go on to committee I really think that that issue should receive some scrutiny.

One thing that is not within the bill is a definition of a facsimile transmission. We have to recall, as the hon. member who introduced the bill pointed out, that times are moving quickly technologically and while his proposal to the House is very much in keeping with that, it is an appropriate, timely response to a perceived problem, and we have to always be prepared to do that in this House, I am not so sure that the technology will not pass up and we will have a new generation of communications on our doorstep in another few years.

Therefore, the reference in the bill to facsimile may quickly become outmoded. I recall the House passing an amendment to the Criminal Code dealing with arson a few months ago and we managed to purge from the Criminal Code phrases referring to grain store houses and ammunition arsenals, terms that are just not used any more. I think the committee, if it is to go to committee, must look at the way in which the member has addressed the technology here as facsimile transmission.