

Criminal Code

Code in order that we might deal with it in another way. If that is legitimate, I should like to follow the same procedure in respect of this contentious matter. It should be dealt with at this time and perhaps it might be considered by removing it from the Code.

Amendment No. 18 is worded in language which I believe is acceptable, and I feel we should be able to deal with the subject of abortion under this amendment in that it seeks to amend the amendment now before us.

At an earlier stage of the proceedings mention was made of the fact that this amendment might possibly be in order as a result of an arrangement which was not agreed upon by the four parties in the house. At that time it was suggested we allow an interval of time to discuss this amendment which deals with the legislation now before us. It was proposed that during that time those who wished to remove this matter entirely from the code could speak on the subject. In this way we would be dealing with any consequential amendments. There seemed to be a disposition on the part of members to follow that course in dealing with that issue.

Apart from the legal arguments, I should like Your Honour to consider seriously the fact that many hon. members feel this is a logical alternative, and that we should deal with this matter in this way because the opportunity to do so is not provided in any other amendment. Perhaps Your Honour might suggest a method of re-wording amendment No. 18 so it would be acceptable. I have in mind something similar to the suggestion that this matter be removed entirely from the Criminal Code.

Mr. David MacDonald (Egmont): Mr. Speaker, I should like to speak briefly in support of this amendment. By the very nature of the change in our rules we find that the majority of members have not had an opportunity to deal with the subject in this fashion. Now that the clause by clause study by the Standing Committee on Justice and Legal Affairs has taken place, the only opportunity for hon. members to discuss this matter and clearly express their opinions would be during the consideration of an amendment such as the one proposed. Therefore I support the argument that we deal with this matter under this proposed amendment in order that all members can express themselves.

Hon. John N. Turner (Minister of Justice): Mr. Speaker, when we were dealing with

amendments concerning gross indecency a problem arose in respect of procedure. Your Honour decided that if a proposed amendment went beyond the scope of the particular clause to which it purported to relate, it was out of order. I do not wish to repeat the citations I put to Your Honour at that time as they have been judicially noted and accepted by you. I do want to broaden that argument to show that in my opinion an amendment at the report stage is out of order not only if it goes beyond the scope of the clause to which it relates but also if it goes beyond the scope of the bill itself and in fact introduces a new clause in the bill.

At that time I referred Your Honour to citations from Beauchesne and the historic source of those citations, which I assumed to be from May, seventeenth edition page 549, where it states under the heading, "Inadmissible amendments".

An amendment is out of order if it is irrelevant to the subject matter or beyond the scope of the bill, or if it is irrelevant to the subject matter or beyond the scope of the clause under consideration.

At page 558 of the same edition of May it is stated that a new clause is out of order for many of the same reasons applicable to an amendment, and will not be entertained if it goes beyond the scope of the bill.

I believe it is evident in the cases we are now discussing that the purpose of the bill to amend the Criminal Code does not consist of an entire revision and consolidation of the Criminal Code, but deals rather with certain parts of the bill being brought up to date in accordance with government policy. That part of an amendment which attempts to introduce a new clause by repealing an existing section in the Code, not just an existing clause in the bill, goes beyond the scope of the policy dictated in the bill and is out of order. If the amendment proposes a new clause by way of deleting an existing section of the Criminal Code, it goes beyond the scope of the bill.

Let me turn now to the four amendments under consideration. Amendment No. 17 attempts to repeal sections 209, 237, 238 and 150 of the Criminal Code. The hon. member for York South (Mr. Lewis) has admitted that sections 238 and 150 are in no way mentioned in the bill. All the bill purports to do in respect of section 209 is to clarify it by the addition of some clarifying words, namely the words "at the time of birth". In this way we are attempting to make perfectly clear the point of time to which a deliberate act within section 209 relates.