

Criminal Code

(b) makes, prints, publishes, distributes, sells or has in possession for any such purpose, any crime comic.

(2) Everyone is guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse

(a) sells, exposes to public view or has in possession for any such purpose any obscene written matter, picture, model or other thing whatsoever;

(b) publicly exhibits any disgusting object or any indecent show; or

Now, that is already in section 207; we are just retaining it.

(c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instructions, medicine, drug or article intended or represented as a means of preventing conception or causing abortion or miscarriage; or advertises or publishes an advertisement of any means, instructions, medicine, drug or article for restoring sexual virility or curing venereal diseases or diseases of the generative organs.

(3) "Crime comics" means in this section any magazine, periodical or book which exclusively or substantially comprises matter depicting pictorially the commission of crimes, real or fictitious.

(4) No one shall be convicted of any offence in this section mentioned if he proves that the public good was served by the acts alleged to have been done, and that there was no excess in the acts alleged beyond what the public good required.

(5) It shall be a question for the judge whether such acts are such as might be for the public good, and whether there is evidence of excess beyond what the public good required; but it shall be a question for the jury whether there is or is not such excess.

(6) The motives of the accused shall in all cases be irrelevant.

(7) It shall be no defence to a charge under subsection one that the accused was ignorant of the nature or presence of the matter, picture, model, crime comic or other thing.

I should like, Mr. Chairman, to comment upon these changes. Subsection 1 makes everyone guilty of an indictable offence and liable to two years' imprisonment who publishes any obscene matter, or who publishes any crime comics. In that connection it is not necessary for the crown to prove that he did it knowingly, or that he did it without lawful justification or excuse. Under subsection 7 the accused cannot raise the defence that he was ignorant of the nature of what he published, or of its presence in his possession.

I think I should clear up a point there which might be overlooked. In order to contravene the act, the possession of this obscene matter by the publisher has to be related to his act of publishing, because the section says: "who makes, prints, publishes, distributes, circulates or has in his possession such material for any such purpose." This section could not be relied upon if someone planted an obscene book in someone's office and then prosecuted him. He would not have it there for the purpose of publication, so he would not be guilty.

[Mr. Garson.]

Subsection 2 makes everyone guilty of an indictable offence and liable to two years' imprisonment who knowingly, without lawful justification or excuse, sells obscene matter. This protects the retailer who does make a sale of that sort innocently.

Then the subsection dealing with exhibiting any disgusting object, and the subsection dealing with these advertisements of means, instructions, medicine, drug or other article intended for the prevention of conception, etc., are in the section now. There is no change in substance at all in that regard.

The definition of crime comic has been changed from that suggested by the hon. member for Kamloops, by striking out from his definition the words which make it necessary for the crown to prove that the crime comic upon which the prosecution is based tends to corrupt the morals of youth, and so on. Our advice from the law enforcement officers is that if that is included in the definition of crime comics, it will be an almost insuperable barrier for the crown to surmount, because it will be exceedingly difficult to prove that the specific crime comic upon which the prosecution was based would necessarily tend to corrupt the morals of youth. The advice that we get from those who have the responsibility for enforcing this legislation is that unless this parliament is prepared to make an outright prohibition of crime comics, it is not likely that we shall be able to enforce this section.

Subsection 4, which is to the effect that no one shall be convicted of any offence under this section if he can prove that the public good was served, and so on, is already in the section, and there is no change in substance in that regard. The same is true of subsection 5, and the same is true of subsection 6, that the motives of the accused shall in all cases be irrelevant.

The only other provision new in substance that is being added is subsection 7, which provides that it shall be no defence to a charge under subsection 1 that the accused was ignorant of the nature or presence of the matter, picture, model, crime comic or other thing. The effect is this: not only does the crown not have to prove knowledge or absence of lawful justification or excuse on the part of the accused as part of the crown's case against him in order to establish a prima facie case, but after the crown has put in its prima facie case the accused cannot come into a court and establish a defence of that kind.

Mr. Fulton: I should like to take the opportunity a little later of saying some words