

Criminal Code

legislation, in curbing this rash of break-ins without using so much public funds.

I conclude, Madam Speaker, for I know that other Members want to contribute to this debate. I suggest that the Hon. Member for Glengarry—Prescott—Russell had very good intentions when he introduced this bill, but he will agree with me, I am sure, that without any legislation, we could come to an agreement and stop this rash of break-ins and vandalism.

• (1750)

[*English*]

Mr. Jim Fulton (Skeena): Madam Speaker, I am pleased to have an opportunity to speak on Private Member's Bill C-278. The Hon. Member has introduced an interesting and easily understandable amendment to the trespassing section of the Criminal Code.

Section 173 as it now stands states:

Everyone who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling house situated on that property is guilty of an offence punishable on summary conviction.

In 1985 across Canada there were over 12,000 charges laid and an even more substantial number in 1986. In the case of someone loitering around one's dwelling house during the daytime, my friend advises me that the police can be summoned to see what is happening but cannot lay any charges because the section of the Criminal Code states very clearly that charges can only be laid if that person has been prowling at night.

The House will know that there are many types of prowling infractions that take place at times other than during the night. The proposal being made by my hon. friend is very logical. I was a probation and parole officer before being elected to this House and I believe laws must provide the kind of definition that allow for charges to be laid when someone is being bothered. For example, what would happen at this time of the day in Ottawa to someone waiting outside a dwelling house with no lawful excuse? That person may be peeking in windows or simply bothering the property owner and making one nervous.

It seems to me that we should clarify the laws. My friend is proposing to cut some red tape. It is a logical proposal that could even be included in an omnibus Bill, sent to committee, or even voted on now.

The Hon. Member's proposal is logical, and would only require the deletion of the two words "at night", so the section would apply 24-hours a day, all year long. It would provide a greater sense of security for Canadians across the country so that they would know that if someone was prowling or loitering around their property they could call the local police, who could not only ask whether or not the person had a lawful excuse for being there, but could lay charges if that person was loitering.

Perhaps we can allow for a vote on this Bill so that it could pass through all stages or go to committee. I believe this is a good opportunity to vote on a very logical and understandable proposal.

Mr. Patrick Crofton (Esquimalt—Saanich): Mr. Speaker, this is indeed a most interesting Private Member's Bill. Unlike the Member who just spoke, I do not agree that it is a simple, straightforward amendment. It has quite a dramatic effect on the present reading of the Criminal Code.

Trespassing is not, in itself, a criminal offence. Under provincial law, however, it may give rise to a cause of action that would provide compensation for damages.

Some provinces have also enacted provincial statutory offences for trespass if certain conditions are fulfilled. In Ontario, for example, the Trespass to Property Act provides that a person is guilty of trespass and liable to a fine if he or she, without the express permission of the occupier and without a lawful right or authority, enters onto or engages in an activity on the property of another person when such is prohibited by the Act, or does not immediately leave the premises when requested to do so. Other provinces have similar offences. It should be noted, however, that these provincial offences do not create crimes, but are merely regulatory offences. Mere trespass to property is not a crime.

Furthermore, neither is mere trespass a crime under the Criminal Code. Section 173 of the Criminal Code, although entitled "Trespassing at Night" in the heading, does not create a general offence of trespass. It prohibits, without lawful excuse, loitering or prowling at night upon the property of another person near a dwelling house. The term "prowls" has been held by the courts to mean conduct that consists of hunting around in a stealthy manner for an opportunity to commit an offence. Clearly, this term connotes a serious type of conduct, one deserving of the criminal sanction.

However, the term "loitering" has been held by the courts to mean "hanging around" or "lingering". Hanging around or lingering is not the type of conduct that justifies the imposition of the criminal sanction.

The Acting Speaker (Mrs. Champagne): Order.

Mr. Gauthier: On a point of order. before you call it six o'clock, Madam Speaker, and proceed to the vote, may I ask if the Government will tell us if it wants to work tomorrow? What is the agenda for tomorrow so that we can prepare, if anyone over there knows the answer?

Mr. Gottselig: Come tomorrow morning at 11.00 o'clock and you will find out.

• (1800)

[*Translation*]

The Acting Speaker (Mrs. Champagne): The time provided for the consideration of Private Members' Business has now