Ontario Court, General Division.[14] At the time of writing, it appears that s. 159 may soon be considered by the Ontario Court of Appeal.[15] Apart from the constitutional question, some witnesses expressed concerns about the fairness of criminalizing a particular kind of sexual activity between persons who could validly consent to other acts.

However, there was no consensus on whether repeal of all or part of s. 159 would necessitate additional or substitute provisions. While s. 159 may ultimately be held to be unconstitutional, the issue has yet to reach a final resolution. In the meantime, the Committee has not heard sufficient evidence to conclude that s. 159 is of no utility in providing children with the protection that Bill C-15 was intended to deliver. For those reasons, it is not prepared to recommend repeal of this section. Rather, the Committee believes that the matter should be allowed to work its way through the courts. In the event that legislative reform is eventually called for, Parliament would be in a better position to respond having had the benefit of judicial reasoning on the issues.

Therefore the Committee recommends:

That section 159 of the *Criminal Code* be retained in its present form.

4. *Section 179(1)(b) — Vagrancy*

Section 179(1)(*b*) applies to those persons who have been convicted of certain listed sexual offences or a "serious personal injury offence," as defined by the Dangerous Offender provisions of the *Criminal Code*.[16] Anyone convicted of such an offence would be guilty of the summary conviction offence of vagrancy, if he or she is "found loitering in or near a school ground, playground, public park or bathing area."

This is another of the Bill C-15 provisions that has come under constitutional attack and a number of witnesses have made suggestions for reform. The Institute for the Prevention of Child Abuse recommended that s. 179 be reworded to better reflect the intention of the legislation. (p. 5) The Metropolitan Toronto Special Committee on Child Abuse also thought that a more specifically worded offence would offer better protection to children. (94:27) Other reform suggestions involve recently introduced legislation which has a similar application and may be intended to replace s. 179(1)(*b*).[17] For example, the Canadian Bar Association recommended repeal of s. 179(1)(*b*), arguing that provisions included in Bill C-126 would be a step in the right direction. (p. 74) The Barreau du Québec argued that s. 179(1)(*b*) does not provide the protection it was expected to provide and that the objectives of the provision would be better served by specific probation orders, as contemplated by Bill C-126. (95:16-17)

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[14] Nicholas Bala, Wendy Harvey, Hilary McCormack, *The Prosecution of Sexual Offences Against Children and Bill C-15: A Case Law Research Project*, Department of Justice, Canada, Ottawa, 1992, p. 20.

[15] See *R.* v. *C.M.* (1992), 75 c.c.c. (3d) 556 (Ont. Ct. Gen. Div.).

[16] Those listed sexual offences include the aforementioned sections 151, 152 and 153, as well as s. 160(3) (bestiality involving a child), s. 173(2) (exposing genitals to a child) and the three levels of sexual assault.

[17] Bill C-126, introduced 27 April 1993, contains a provision that would require a sentencing court to consider making a prohibition order against any offender convicted of specific sexual offences involving persons under 14. The order could prohibit attendance at a school ground or public park where those under 14 are likely to be present, or it could ban the offender from paid or unpaid work involving "a position of trust or authority towards persons under the age of fourteen years."