

Criminal Code

From this debate I suggest seven points have emerged:

1. The amendment moved by the hon. member for Kamloops (Mr. Fulton), would merely bring crime comics as paragraph (d) under the same section 207 of the code, of which paragraph (a) makes the publication and sale of obscene literature an offence.

2. The prohibition of the publication and sale of obscene literature by section 207(a) of the Criminal Code has not deterred the publication and sale of obscene literature to any significant extent. In all provinces except Quebec there have been a very small number of prosecutions under this paragraph.

3. Therefore, without more determined prosecution the mere adding of crime comics to this section 207 is certainly not likely to be a solution to the problem.

4. In drafting an enforceable amendment, the most valuable suggestions which we could secure would be those from the crown prosecutors and law enforcement officers of the provincial governments whose responsibility it is to enforce the Criminal Code.

5. The federal Department of Justice has received no representations upon this subject from any of the attorney general's departments of the provinces, with the exception of Ontario and British Columbia. Both of these departments say that the presence of the word "knowingly" in the definition of the offence under section 207 makes difficult the prosecution of shopkeepers charged with selling these books.

6. On the other hand, the presence of these words in the definition of the offence does not seem to have deterred the law enforcement officers of Quebec from instituting some hundred prosecutions in that province during the past five years.

Mr. Low: How many prosecutions were successful?

Mr. Garson: We made inquiry on that point but there were no statistics to be had, in a compendious form, and it would take some time to secure them. We would have to go to the localities where the prosecutions were instituted. I would deduce, however, that Quebec must have been successful, because I cannot imagine an attorney general's department going to the expense of having a hundred prosecutions if it were not getting some convictions.

Then, the seventh point is that the elimination from the definition of the offence of the words "knowingly, without lawful justification or excuse" would result in an absolute prohibition of the sale of obscene literature, so that the retail sellers—and that refers to the bookstand, the cigar store, the book

shop, the magazine stand and the like—could not plead, as an excuse, ignorance of the content of the books upon their shelves. I think we must all admit that we would be putting a great hardship upon them.

Therefore the suggestion I would venture to make is that it would seem that these words should not be eliminated until the publishers as the source of this objectionable reading matter shall have been prosecuted, and it shall have been demonstrated in such prosecution that it is impossible to convict the publishers under the law as it now stands, as amended by adding crime comics as material banned by section 207.

In other words the only step which it seems will put some effective teeth in the law, this matter of removing these words, is going to be quite a hardship upon many hundreds if not thousands of honest small dealers throughout the country. Before that step is taken surely some attempt should be made to prosecute the publishers who are for the most part concentrated in two or three cities, with one city having more than all the rest of the country put together.

The second condition to the elimination of these words is that the law officers of the provinces, who are the ones who know, the ones who have the responsibility for prosecution, assure us that section 207 cannot be enforced effectively without the elimination of those words. They have already told us so in Ontario and British Columbia. Thirdly, the provincial law officers should tell us that section 207 can be enforced effectively if these words "knowingly, without lawful justification or excuse" are eliminated. I think the answer to that is likely to be, "yes."

For these reasons I should like to urge upon hon. members that we approve of the principle of this bill on second reading. Then when it gets to committee we should leave it there until we have secured from the attorneys general of the provinces, who have the responsibility of enforcing this section, the invaluable suggestions of their prosecutors as to the form that this amendment should take in order to prohibit crime comics and also make the whole of section 207 more enforceable than it has been.

In addition I should like to get the views of our committee on the revision and consolidation of the Criminal Code. We have already had a subcommittee of that body working on this section but I should like to have the views of the whole committee.

In making this suggestion I want to make it clear that there is no thought that we should delay action in this matter until another session. Nor are we, in seeking advice from those who have the responsibility of enforcement, in any sense abdicating our