

Criminal Code

The present provision has withstood constitutional attack until the present time because of all of the conditions that must be proved by the prosecution before the reverse onus applies. One of these conditions is that the suspicious conduct must take place at night. If the provision is expanded to apply during the day, then I am concerned that the courts would no longer feel that the reverse onus is a reasonable limit under Section 1 of the Charter. This would potentially place the entire section in jeopardy and, for this reason, I cannot support the proposed legislation.

Mr. Morrissey Johnson (Bonavista—Trinity—Conception): Madam Speaker—

Mr. Boudria: Another spontaneous speech.

Mr. Johnson: Do you want to make it?

The Hon. Member proposes that there be an amendment to Section 173 of the Criminal Code. The effect of this amendment would be to make it an offence to loiter or prowl upon the property of another person adjacent to a dwelling house at any time of day. In my view, the amendment he advances, the deletion of the words "at night", does not achieve this purpose. In making—

Mr. Boudria: Do you mean there are times other than day or night?

Mr. Johnson: Madam Speaker, I know that the Hon. Member is rude, but I wish he would let me get on with my speech.

Mr. Boudria: I'll try.

Mr. Johnson: I would like to share some of my concerns on this proposed amendment, which I hope will prove not to be as effective as suggested by my hon. colleague.

It behooves us, whenever we consider a legislative initiative such as the present one, to ask ourselves how the present legislation came into being and what it was initially intended to achieve. I have found it most instructive to review the exchange of views which took place at the time Section 173 of the Criminal Code was first introduced in our law.

I found it very interesting to read some of the debates that took place back in 1953 and 1954. An exchange took place between the then Minister of Justice, the Hon. Stuart Garson, and the then Hon. Member for Kamloops, Mr. E. D. Fulton. I see that they found it difficult to define just exactly what a peeping-Tom was.

In one part of Mr. Fulton's remarks, he said:

It seems to me that if it is intended to cover the offence of peeping we must be far more specific than we are in this section, particularly since the peeper may not stand on the lot on which the dwelling house into which he is peeping is situated.

Some Hon. Members: Oh, oh!

Mr. Johnson: Madam Speaker, I find this amusing as well. Mr. Fulton went on to say that he could stand far away from a building and use a pair of binoculars to observe what was going on, and people still do that today. It is funny that things have not changed very much since 1953.

I am sure that during the debate at the time, people were laughing at some of the remarks that were made. I suppose the hon. gentlemen of that day tried to bring out their feelings toward certain things that were taking place in debate, and people found it amusing. Sometimes, in order to get their point across, they had to be amusing.

I, like Mr. Fulton, am not an expert either in the technique of committing the offence or in the law regarding it. I would like to reiterate that.

The Hon. Minister of Justice at the time, in his response, said:

—in most cases it would not be possible for the peeping Tom to look into a window or that sort of thing unless he had come onto the ground of another and was loitering or prowling there near a dwelling house. In the special committee of the House of Commons, the majority, which were concerned that they should not create a new offence that would make a criminal out of every petty trespasser, said that the man had to be loitering or prowling near the dwelling house.

He would have to be doing that in order to be considered to be committing an offence. If he simply crossed the edge of a man's farm or the corner of his building lot it would not be an offence under this section.

● (1740)

I could go on and quote a lot more of what those gentlemen said in 1953. However, as we consider the Hon. Member's proposed amendment to the Criminal Code, let us, in addition to considering the views expressed over 30 years ago, consider the more recent report of the Law Reform Commission of Canada.

In Volume I of its report entitled *Recodifying the Criminal Law* published in 1986, the Law Reform Commission looked at Section 173 of the Criminal Code in conjunction with two other provisions in the law which addressed the protection of one's property rights. In Chapter 12 entitled "Criminal Intrusion", the authors did not address their minds to the time of day aspect of Section 173 and appear prepared to leave it as is. I suppose, Madam Speaker, that they were trying to say that you could commit the offence regardless of whether it was day or night.

Basically our present law, found in Sections 173, 306, and 308 of the Code, says that the statutes extended the latter, that is burglary and house breaking, to cover shops, warehouses, and other types of buildings in addition to only dwelling houses.

As a couple of my colleagues have said, Madam Speaker, I am unable to support the Hon. Member's Bill which, in my view, will have little beneficial impact on the mischief caused by peeping Toms. I would suggest that in the absence of any