

Criminal Code

Merely to introduce a section which makes it an offence to loiter or prowl does not by inference or in any other way make it an offence to carry on the act of peeping while you may be loitering or prowling. 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. He may stand on a back street or another lot from which he can obtain a view, or he may stand even further off than that and use a pair of glasses or binoculars.

As I have said, I am not an expert either in the technique of committing the offence or in the law regarding it. That is the note which I have received and it seems to me to have some substance. I shall be glad if the minister will say whether it is considered that this section effectively covers the offence of peeping.

Mr. Garson: It was intended that it should, upon the view that 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 on 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. If he simply crossed the edge of a man's farm or the corner of his lot it would not be an offence under this section.

We gave a good deal of thought to this section. I think it will cover most of the offences at which it is directed; and in those cases where it does not, one wonders whether the offence could be covered without creating more injustice than would result from the offence not being covered. The difficulty in framing a clause of this sort is that of making it apply to the man who is guilty without running the danger of implicating people who are innocent.

Mr. Fulton: What would be the difficulty in defining the offence of peeping and making it an offence rather than the act of loitering or prowling? It is the peeping, the looking in which is offensive. Trespass is something that is punishable quite separately. Surely it is the peeping that is the offence.

Mr. Garson: I am told that one practical difficulty that came up in the committee was that you cannot always get the peeping Tom

[Mr. Fulton.]

in the act of peeping. One may suspect he is there for that purpose, but when one goes out to apprehend him and he hears one coming, he is just loitering when one comes up to him. If possible we want a clause that is effective and that can be administered. We have tried to draft it to apply to the likely facts, which are that one comes up to this chap and he hears a rustle or a noise of the person coming to apprehend him, and he is suddenly just there looking around, smelling the chrysanthemums.

Mr. Knowles: I wonder if the minister would comment on clause 162 on another basis. Do I interpret it correctly, that this is another case where contrary to the usual practice the onus is on the accused? The section reads:

Every one who, without lawful excuse, the proof of which lies upon him—

Mr. Garson: That was put in to protect the accused. The committee spent an amount of time upon this short clause which was really out of proportion to its importance, in some respects, in order to cover this question of peeping Toms. We did not want to adopt a law that would be very unjust to innocent people, and we agreed we would limit its application to those lurking or prowling near a dwelling house, and that it would not even apply if the man found there had a lawful excuse.

Of course, when it comes to giving a lawful excuse the evidence of that is entirely in his possession. If we were to say that the crown had to prove what this lawful excuse was you might as well wipe out the section entirely, because the crown would have no means of proving it. All that would happen in a case of this sort, if a person were found loitering or prowling near a dwelling, he could clear himself by showing that he had a lawful excuse for being where he was.

Mr. Knowles: He would have to produce the chrysanthemums?

Mr. Garson: Yes.

Mr. Hahn: I was wondering if that would not be covered in clause 159, which reads as follows:

- (1) Every one who, without lawful excuse,
 - (a) is nude in a public place, or
 - (b) is nude and exposed to public view while on private property, . . .

That deals with the main purpose of peeping Toms.

Mr. Garson: I believe my hon. friend has got the wrong end of the equation. It is not the peeping Tom who is nude whom he is looking for on private property.