

Criminal Code

Where could we draw the line between what is undue exploitation of sexual matters and that which is not? Will that amendment contribute efficiently to check immorality? Is it the practical definition the Minister of Justice (Mr. Fulton) has been promising to us for more than a year and, in particular, in the resounding speech he made on June 15, 1958 at St. Joseph's Oratory on Mount Royal?

How will that definition help the judge, the jury, the law enforcement officer and allow them to decide if this or that publication or entertainment or play is obscene?

As in the past, the judge or the jury will have to ponder at length before ruling a publication obscene because on their lone judgment will fall the difficult task of determining the predominant characteristic of the publication and drawing the line between what constitute undue exploitation of sexual matters and what does not.

In short, we are no further ahead in our fight against obscenity, if indeed an explicit definition of the word "obscene" is an essential weapon in this fight.

It seems that the Minister of Justice, in introducing this bill to the house, was anxious to keep the promises made in his many speeches when, echoing the leagues and committees dedicated to the fight against immorality, he alarmed the population about the havoc wrought by obscene literature, especially among young people.

His department, he said repeatedly, considers that fight against obscenity from four different angles:

- (1) first, a practical definition of obscenity;
- (2) seizure of all obscene matter, without formal charges, so as to get an order from a court for the confiscation of such matter;
- (3) prohibition of the special conditional sales or, in other words, of the compulsory mass sale of publications in order to force the buyer to accept delivery of certain obscene publications;
- (4) finally, to make the law stricter for the printers of obscene matters.

Clause 12 of this bill adds to the criminal code sections 150 (a) and 150 (b), covering the second and third aspects considered by the Minister of Justice in the fight against obscenity, and I think the minister is to be commended in this regard.

Bill C-58, however, makes no amendment to the present act with regard to printers.

Under subsection (1) of section 150, in the present act, everyone commits an offence who:

(a) makes, prints, publishes, distributes, circulates, or has in his possession for the purpose of publica-

[Mr. Eudes.]

tion, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatsoever, or

(b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation, a crime comic.

I do not know what the Minister of Justice had in mind when he thought of making the act stricter for printers. In any event, the bill now before us makes absolutely no change to this section 150 in regard to printers.

As regards section 11 of this bill, which defines obscenity, I will only say that the Minister of Justice, in undertaking an extremely difficult task, overestimated his capabilities.

On the whole, however, while the minister has failed to give us the clear, precise and practical definition of obscenity he led us to expect, I think this bill should receive the support of the house, subject to certain amendments to be put forward when the matter reaches the committee stage.

(Text):

Mr. D. M. Fisher (Port Arthur): Mr. Speaker, I should begin these remarks by bringing to the attention of the house a resolution passed at the annual meeting of the Canadian Library Association as reported in the *Edmonton Journal* of Friday, June 26, 1959. The article reads in part:

The Canadian Library Association Thursday passed a resolution asking the Canadian Minister of Justice to delay action on a proposed bill to amend the definition of obscene literature and regulations of its sale and distribution.

The association asked for the delay so that interested groups might have the opportunity to study the amendments and present their views to parliament.

The resolution stated the association was in accord with the intention of the amendment but feared the definition of obscenity may serve to impede freedom of expression and free access to works of value and literary merit. Control of undesirable literature should require that judgment be based on the merits of a work as a whole.

I think the last part of the sentence "of the merits of a work as a whole" underlines the worry that the librarians have in this regard, which I suggest is of interest in dealing with this particular matter.

Mr. Fulton: Mr. Speaker, with reluctance I raise a point of order. I wonder whether my hon. friend would not have his purpose well served if we discussed the matter, which I understand he wants discussed, on the amending clause itself. I recognize that earlier it was suggested we have some general discussion on the provisions of the bill with Your Honour in the chair. If, as I understand it now my hon. friend from Port Arthur wishes to discuss exclusively the provision relating to obscenity. I suggest that we might be well served if we went into committee and discussed it on the clause when I can deal