

Criminal Code

recommends. I think this is an extremely healthy provision. I am sure concerns will be raised as to what effect this section might have and what dangers there might be in how it is interpreted by the courts or how the police act in connection with enforcing it. Within three years, if the Bill is accepted, we will have a committee of the House review the experience during that three-year period to see how the section has worked and to see whether or not any amendments are needed.

The problems with the present Section 195.1 really commenced in 1978 as a result of interpretations of that section by our courts, the Supreme Court of Canada and the appellate courts across the country. As I mentioned earlier, that section was passed in 1972 to replace the old vagrancy offence of being a street-walker unable to give a good account of herself. That was a status offence, and it was recommended by the Royal Commission on the Status of Women that that section be removed. However, court decisions since Section 195.1 was enacted limited the effectiveness of the section and of course the instances of street soliciting in Canada have increased dramatically since 1978. In that year the Supreme Court of Canada held that behaviour must be "pressing or persistent" to constitute soliciting.

As you know, Mr. Speaker, with your encyclopaedic knowledge of legislation passed by the House, the present section reads as follows:

Every person who solicits any person in a public place for the purpose of prostitution is guilty of an offence punishable on summary conviction.

Thus, the courts had to determine what the word "solicit" meant. The courts decided that to be guilty of an offence under that section, the behaviour of the prostitute had to be pressing or persistent. In other words, the prostitute involved had to accost someone or a series of persons in a pressing or persistent way to constitute soliciting. Then, in later judgment, the court held that there had to be not just pressing or persistent conduct but repeated solicitations with respect to one individual, that it was not an offence if one person was accosted by a prostitute once with an invitation to engage in a sexual act for payment. There had to be repeated solicitations of this one individual by the prostitute concerned. Therefore, if there was a sequence of non-pressing approaches by a single prostitute to a series of individuals, it did not constitute the act or offence of soliciting. The result of these decisions was that it became impossible to enforce this particular section of the Criminal Code. We have really had that problem since 1978.

In addition, the Supreme Court indicated in what is known by the lawyers as *obiter dicta* that the interior of a motor vehicle was not a public place but was a private place for the purposes of the section. That caused confusion as to whether or not soliciting which takes place in a car parked in a public place or in a place open to public view fell within the soliciting provision.

● (1120)

There was a third problem with the present legislation, Mr. Speaker. There were conflicting decisions at the level of the provincial appellate courts. Some of those decisions held that a

customer who accosts a person while looking for the services of a prostitute in a public place could be prosecuted while in other provinces, decisions held that the customer was not liable to prosecution. That, of course, is an imbalance in the application of the law, an imbalance that we do not wish to allow to continue. Therefore, in the proposed legislation, it will be an offence for either a prostitute or a customer to seek one another out in a public place.

The problems that arise with soliciting do not arise only from the presence of prostitutes and customers in public locations but from the conduct in which they engage while they are there. Our proposals are intended to remove the opportunity for them to carry out their business in public and to prevent such conduct from occurring in public. Therefore, in addition to making it clear that customers as well as prostitutes are liable to criminal sanctions for negotiating sex in a public place, the amendment specifies that if the activity takes place inside a motor vehicle in any public place or place open to public view, it is still an offence. The penalties that we are attaching to this new offence are identical to those that can be imposed at the present time under Section 195.1 of the Code. The court can impose a fine of not more than \$500 or imprisonment for six months or both. When Bill C-18 which was enacted by this House earlier in the year becomes law, the maximum fine for a summary conviction offence will be increased to \$2,000.

What are some of the problems the public feels that we must resolve for them in connection with street soliciting? These problems range from the slowing down or blockage of motor vehicle traffic as can be observed in Halifax, Vancouver, Calgary, Niagara Falls and Toronto as well as the slowing down or blockage of pedestrian movement on the sidewalks to active behaviour in connection with the selling of drugs, with pimping and with being accosted while walking down the street by persons who ask if a pedestrian wants sex or is prepared to sell sex. The residents of neighbourhoods into which street soliciting has moved complain that their property values are lowered, they are harassed by prostitutes or customers, there is noise and confusion and their children are exposed to the practice of the buying and selling of sex as part of their daily routine. These are the incidents of nuisance from which we must protect the public and this is why we are asking the House to deal with this Bill. As I indicated earlier, the Fraser Report verified the proportions of the problem which this behaviour has caused in some communities and it recommended that action be taken to correct this.

In interpreting the present provision, when the courts in effect emasculated the provision as an effective piece of enforcement machinery to deal with this problem—of course, we do not ascribe any blame to the courts in doing that as they are there to interpret the laws that this House enacts—municipalities attempted to get around what appeared to be a lacuna in the law, and they attempted to deal with street soliciting by initiating approaches of their own. They passed by-laws prohibiting street soliciting for the purposes of prostitution. However, in 1983, the Calgary by-law was struck down