

Private Members' Business

indecent, immoral or scurrilous, but this section does not apply to a person who makes use of the mails for the purpose of transmitting or delivering anything mentioned in Section 166(4).

Section 166(4) outlines exceptions to the offence created by that section which I just read with respect to the restriction on the publication of various reports of judicial proceedings. If a Crown prosecutor or anybody else was dealing with some obscene material as set out under this section, they would be able to be transmitted through the mail to these individuals. They would not be caught by this section. This is the only restriction that applies to this particular section. I would indicate that the matter has already been dealt with in the Criminal Code.

The hon. member's proposed bill would add another section after the one that I have just cited, basically dealing with unsolicited obscene material.

Mr. Hopkins: "Visually obscene material". You are not on the same subject.

Mr. Atkinson: Visually obscene material, and I grant that that is what is in the bill as proposed. As I indicated, it is already a crime to send obscene, indecent, immoral or scurrilous materials through the mails. If this particular material was considered under that subsection, it would be obviously caught by that particular matter.

• (1330)

What is the definition of obscene? The statutory definition of obscene materials is those in which there is an undue exploitation of sex or of sex and violence.

The exact nature of unacceptable images and written descriptions is not set out in the Criminal Code but has been left to judicial interpretation. The courts have based their interpretation on what is referred to as the community standard of tolerance.

With respect to the community standards test, guidance is provided by the following statement from the judgment of the Supreme Court of Canada in its 1984 decision in *Towne Cinema Theatres Ltd.*:

What matters is not what Canadians think is right for themselves to see. What matters is what Canadians would not abide other Canadians seeing because it would be beyond the contemporary standard of tolerance to allow them to see it.

This is an objective standard that is decided by individuals in the community through a jury trial. They apply this particular standard to what they consider to be

visually obscene material or any obscene material in any other medium.

This has proven to be a good way to deal with the matter, because a jury of the peers in that community are the ones who decide what is tolerated within that particular community.

It is something that shifts, as well, over time. That is the reason that obscene or visually obscene has not been defined in the Criminal Code up to this particular time. I think we can all agree that over the years that line has shifted as standards change within a particular community.

That is the reason that judicial interpretation has been used for this particular definition of obscene. It has proved to be a workable definition relating to each individual community.

If we take a moment to examine what is presented by the hon. member in Bill C-300, we will see that the proposal is an amendment as I mentioned immediately following Section 168. It would introduce a special restriction on the use of the mails for unsolicited, visually obscene material.

Visually obscene material is defined in this bill to include "any matter or thing in or on which is depicted (a) a nude person; (b) a female person who is not nude but whose breasts or any part thereof is not covered by something which is not non-transparent; (c) a person who is not nude but whose (i) genitalia or any part thereof is not covered by something which is not non-transparent, or (ii) buttocks or any part thereof is not covered by something which is not non-transparent."

The bill obviously is based on two concerns. First, that the mails are used to distribute materials which include depictions containing nudity or revealing any part of the buttocks, genitalia, or the female breast. Second, that the mails are used to send such materials when they are unsolicited.

That is more the concern that I would read into this particular bill and also from what the hon. member mentioned as the incident precipitating this particular piece of legislation being brought forward.

We have to think for a moment about how far-reaching such an amendment would be. I will give an example which I think would raise some concern for members of this House.