

*Criminal Code*

consenting adults. Now, as the law was inapplicable, the intention was to strike out those provisions of the Criminal Code.

I find, Mr. Speaker, that the amendment proposed here, amendment No. 5, merely re-establishes the facts. I think it is consistent with Beauchesne's Fourth Edition, citation 357, on page 266 which reads as follows, and I quote:

In the preparation of Bills amending existing enactments the amendments shall not ordinarily be made by clauses which add or leave out words or substitute words for others, but by clauses which re-enact the section, sub-section or other minor division, as it is amended.

And I think, Mr. Speaker, that this is consistent with parliamentary precedents, and that this amendment tends only to make more explicit the matter that is dealt with in clauses 147 and 149.

Mr. Speaker, we admit that the sections included in the Criminal Code were very difficult to apply. But, it is not by shortening them that we will make them more easy to apply. The sponsor of this motion thought there might be other means of making the law applicable and, in moving this motion he does not affect clauses 147 and 149.

Therefore, I think, Mr. Speaker, there is nothing new there, it is merely a repetition of what was formerly found in the Criminal Code. We are bringing absolutely nothing new, in terms of going further than clauses 147 and 149; we are simply making them more explicit, thus making them more easy to apply.

Mr. Speaker, I therefore believe that, for the reasons I have indicated, amendment No. 5 is acceptable.

● (4:00 p.m.)

[English]

**Mr. John Gilbert (Broadview):** Mr. Speaker, the nub of the argument by the Minister of Justice (Mr. Turner) is that the amendment is not one of substance but rather one of procedure. At times it is very difficult to distinguish between substance and procedure. What the government is doing in the proposed new section 149A is to change the gravity of the offence. It is saying that certain circumstances which otherwise would have amounted to the committal of an offence are now changed and will not be considered to amount to an offence. I have attempted to read into this amendment a procedure which bears heavily on the substantive part of the offence. There has been a lessening effect as a result

[Mr. Fortin.]

of the proposed new section 149A. My amendment is an attempt to give it a vehicle whereby it can be taken care of, whereby it can be carried out.

**Mr. Speaker:** I am grateful to hon. members for their comments in connection with the amendment moved by the hon. member for Broadview (Mr. Gilbert). I think I should assure hon. members that during the last few hours these amendments have been studied very carefully by the Chair with the assistance of the Table Officers and the Parliamentary Counsel. In the light of the consideration I have given to this amendment previous to coming into the house, and of course in the light of the arguments advanced by the Minister of Justice (Mr. Turner), which were rather pertinent so far as I am concerned, I doubt very much if it is possible for the Chair to accept the amendment.

The hon. member for Edmonton West (Mr. Lambert), the hon. member for Winnipeg North Centre (Mr. Knowles) and others who have spoken in support of their point of view, have put forth an interesting argument as to whether this proposed amendment does go beyond the provisions of the bill, but I must come to the conclusion that it does, and that the citations referred to by the Minister of Justice are applicable.

Clause 7 on page 24 of Bill C-150 will provide certain exceptions to the law as stated in sections 147 and 149 of the Criminal Code. The purport of the amendment is to delete the exceptions provided for in clause 7 of Bill C-150 and to rewrite substantially sections 147, 148 and 149 of the Criminal Code itself. In other words, amendment No. 5 is a new legislative proposal in my very humble view. I hesitate to say this, having heard the strong arguments made by hon. members which perhaps cast a bit of doubt in my mind, but not to the extent that I can change my decision. I do feel that amendment No. 5 is a new legislative proposal and does introduce matters of substance which are not covered in Bill C-150 now before the house.

The minister has referred to citations 402 and 408 of Beauchesne. I think I can also refer hon. members to citation 203(1):

It is an imperative rule that every amendment must be relevant to the question on which the amendment is proposed.

Again, citation 406 of the same authority, Beauchesne's Fourth Edition, reads:

Amendments are out of order if they are  
(a) irrelevant to the bill, or beyond its scope—