Criminal Code

formula, more liberal in its outlook and more in keeping with the concept of individual freedom than the Cockburn criterion.

Let us bear in mind that in the Hand formula there are two essential requirements for a publication to be labelled as obscene: the consideration of the work as a whole, and the libidinous impulses it arouses.

The New Hampshire State has given this definition of obscenity:

Whatever tends, in its main theme or a large part of it, to impair, corrupt or deprave the moral behaviour of any person who sees it or reads it.

In France are considered as obscene publications of any kind involving a hazard for public morality on account of their obscene, indecent, lewd, licentious, pornographic character or involving detailed recitals of real or imaginary crimes, horror stories where there is a prevalence of sadistic cruelty and sexual perversion.

That definition widens the field of matter that may be considered obscene and also contains two essential elements: the character of the publication and the harm that it might do to public morals.

In Italy, publications which offend the modesty, reserve and restraint which must stand at the basis of sexual relations and publications relating lewd actions or sexual relations in terms such as to provoke excitement or emotion in people lacking modesty and disgust in others.

Before ruling any publication obscene, the Italian court also considers the author's intent.

The Italian concept has the advantage of considering the subjective character of obscenity.

This brief study shows the interest that legislators and lawyers in every country attach to that problem and also reveal how difficult it is to come to a clear definition of the term "obscenity".

That clear definition does not exist in our Criminal Code.

Section 150 which deals with the matter contains a single definition, in subsection 7, that of the term "crime comic", a definition which seems to have remained a dead letter, for never have we seen as many stories of crime, in newspapers and everywhere in our cities, as there are now.

I would suggest that this definition be amended so as to include crime films. How many of the films shown in cinemas and on T.V. are nothing but the glorification of crime, filling our young people with the ambition to become, some day, that strong man who despises established law and imposes his own rules at the point of a gun. How many are the young criminals today who owe their objectionable calling to those films which should be banished.

On the whole, section 150 does not give any intrinsic definition of the term "obscenity". It merely lists actions which the law considers offences tending to corrupt morals.

The amendment proposed in section 11 of bill C-58, suggests a definition of the word "obscene" by adding an 8th subsection to section 150, worded as follows:

For the purposes of this act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene."

As a result of the words "dominant characteristic", that definition is at variance with the Cockburn criterion.

Henceforth, to be deemed obscene, the publication will have to be judged as a whole. Obscenity in an isolated passage of a publication will no longer be sufficient to describe it as obscene.

That definition is therefore closer to the Hand formula.

So as to assess it better, let us anticipate its effects. It will probably enlarge the field of obscenity.

What will its effects be, however, if it is strictly applied?

The summary survey I made earlier of relevant legislation in a few other countries which, no less than ourselves, have been concerned with this problem, shows that in order to determine the obscenity of a publication, the examination must bear both on its character and on its possible effects.

The definition now being submitted to us does consider the nature of the publication as a whole, but completely disregards its effects.

So far, however, jurisprudence established by our courts has always required, for a publication to be deemed obscene, that it be such as to corrupt or deprave morals. Yet the definition contained in section 11 completely ignores that requirement. Is this a practical and desirable omission? Time and experience will decide.

From now on, it will be enough for a publication to be considered obscene, that its dominant characteristic be the undue exploitation of sexual matters, regardless of whether the publication might deprave or corrupt a person considered as normal. That definition would bar—as an instance that comes readily to my mind—Racine's immortal masterpiece: "Britannicus".

Let us consider now the difficulties of interpretation which will follow upon that definition. Just how can the predominant characteristic of a work be determined?