

*Criminal Code*

situation. The peeper was apprehended, and subsequently the peeper sued for damages for false imprisonment on the grounds that he was stalked and imprisoned by the police, but that he did not commit any criminal offence, therefore he could not be held. The court had to reluctantly agree and allowed him to recover damages. That is why the section was put in our present Criminal Code.

I gather that the incident that the Hon. Member for Glengarry—Prescott—Russell spoke about took place in Orleans. It involved some construction workers looking into a woman's window during the daytime. There is some concern that even if there were this amendment and this section were in place it may not capture or render the day conduct of the construction workers illegal.

The substantive wrong complained of was that of invading the woman's privacy by looking through her windows, which is known as "voyeurism". The section does not, however, make it an offence to commit an act of voyeurism. The offence deals with "loitering" or "prowling" on private property "without lawful excuse".

● (1720)

The act of prowling involves very specific conduct. You have to move around in a stealthy manner seeking an opportunity to commit a criminal offence. The workers' acts may not fall within the meaning of prowling. Loitering, on the other hand, involves no more than lingering in one area. This simple act was made a criminal offence in these circumstances because when it occurs on private property at night, it is presumed that the person is trespassing for the purpose of invading the owner's privacy. Indeed, it has been called trespassing at night. It is a presumption of what a person is doing around someone's property at night. Normally people are not around property and maybe a person has a bad purpose, to wit, voyeurism.

The workers who were alleged to have invaded the Orleans woman's privacy may not have been trespassing at all. The newspaper reports of the incidents are not clear, but it would appear that they may have been working on the building in which the woman lived. If that is the case, they would have had a lawful excuse for being on the property. They were there to carry out certain work, presumably at the owner's request. So long as the work required them to be within the vicinity of the woman's dwelling house, their conduct would not be punishable under Section 173, even if it were amended.

I heard the Hon. Member say that those are not exactly the facts. I think it is debatable that the facts may have been different. One has to be careful, I was going to say, construction workers being construction workers. Construction workers often have certain elements of conduct whereby they make sly remarks or do things. It is sort of accepted as part of the culture, if you like, of a construction worker. I do agree it does go too far when workers or anyone else peers purposely into someone's private house for a voyeuristic purpose. It is not fair

to the woman involved. People are quite rightly frightened, and I do not blame them.

I think the Bill is an interesting Bill and I commend the Hon. Member for bringing it forward. He is a Member who always tackles many interesting subjects, some of which are controversial. I am not going to take any longer in speaking to the Bill. I have flagged some of the problems with it. To quote that great Tory criminal lawyer, who is a bit a hero of mine, Sir John A. Macdonald, he said, "Maybe the Bill is worth looking at further". I will sit down and let the Bill go to committee—I believe it will go to committee—the Member is nodding, then we can look at some of these concerns raised and at the whole topic. A Member asked how many cases and complaints there are and is there really a big difference between night and day cases. Are there incidents in other parts of the country. Those things need to be looked into, and this can be done in committee.

**Mr. Bill Gottselig (Moose Jaw):** Madam Speaker, I am pleased to have the opportunity to respond to the proposal put forward in Bill C-278 to amend Section 173 of the Criminal Code of Canada which prohibits trespassing at night.

The purpose of the Bill, which would strike down the words "at night" is set out in the explanatory note as follows:

The proposed change would extend the offence to acts of voyeurism committed during the day.

Bill C-278 would extend the prohibition contained in Section 173 of the Code to apply at any time of the day or night. Section 173 now reads as follows:

Every one who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling-house situated on that property is guilty of an offence punishable on summary conviction.

Before commenting on the merits of the proposed amendment, and to appreciate fully the potential consequences of such an amendment, it is important to explain for history the rationale underlying Section 173, which is commonly referred to as the "peeping-Tom" provision of the Code.

The enactment of Section 173 in 1954 resulted from the 1950 decision of the Supreme Court of Canada in the case of *Frey v. Fedoruk (1950)* S.C.R. 517. I will therefore rely to a great extent on that judgment to trace the history of Section 173. The facts of the case are outlined in the judgment of Mr. Justice Cartwright as follows:

About 11.15 p.m. the 4th March 1947, the mother of the defendant, Fedoruk, while standing in her nightgown in her lighted bedroom in her son's house saw the plaintiff peeping into her window, the curtains of which were only partially drawn. She was frightened and called to her son who seized a butcher knife and ran outside. He shouted at the plaintiff who was then just leaving Fedoruk's property. The plaintiff (Frey) started to run; Fedoruk chased him about 100 yards to a point where the plaintiff was trying to unlock and get into his truck. The lights of the truck were out. Fedoruk took the plaintiff back to his House, threatening him with the knife. Fedoruk's mother identified the plaintiff as the man whom she had seen at her window and the police were called.

The defendant Stone, a police constable, arrived accompanied by another police officer, and after some investigation, as a result of which he formed the