

*Criminal Code*

the Criminal Code would be more effective in dealing with this problem.

The legislation does not attempt to deal with all of the problems that prostitution creates or with the problems of prostitution generally, which of course is the sale of sexual favours or sexual services for pay. It only purports to deal with one aspect of the problems that prostitution can create, which is the nuisance to others created by street soliciting not only by the prostitute but by the customer of the prostitute.

As Members will recall, several years ago the Government of the day appointed a committee to look into the question of pornography and prostitution in Canada. The committee was headed by Mr. Paul Fraser, former President of the Canadian Bar Association. We received the report some months ago.

Let me quote from Volume II of that report because it deals with the same question. At page 540 of Volume II of the report of the Special Committee on Pornography and Prostitution in Canada, the commission said:

Furthermore, it is clear that as long as street prostitution exists, annoyance and interference will accrue to others, whether members of the public using the streets or other public places, or residents or occupants of adjacent properties. The Committee is of the view that those who are adversely affected by street prostitution are entitled both to consideration by the law, but more than that, to forms of legal protection which can be effectively enforced.

I might insert there that that is the problem. The form of legal protection which has been in the Criminal Code since 1972 is not a form of legal protection which can be enforced effectively. It cannot be enforced effectively because, through the interpretation of that provision by the courts and, in particular, by the Supreme Court of Canada, it is no longer possible to secure a conviction under that section for violation of the section. I will explain how that came about in a few moments.

● (1110)

The commissioners went on:

There is to our minds no justification for ignoring the disturbance and interference with the peace and quiet of citizens which is associated with street prostitution.

Let me emphasize, no justification. One has to wonder why our predecessor Government left this matter as it did for so long in view of that. The commissioners went on:

Few, if any, of those who are not currently affected by the nuisance caused by street prostitution would be ready to ignore its negative impact on them, if suddenly and consistently confronted by it. Although doubts were expressed to us in the course of our study about the necessity and merit of using the criminal law to deal with this problem, we have concluded that it must continue to have application.

The committee approved the course of action that we are taking now, and it found that street soliciting must be dealt with because of the nuisance it creates for others.

The commissioners went on in the next paragraph of their report to state:

In the opinion of the Committee, it is the nuisance caused to citizens, whether by harassment or obstruction on the street, or by unreasonable interference with their use and enjoyment of property, which is the ill to be addressed. This means that some perceptible interference with members of the public or neighboring occupiers must be proven. There is no justification, in the minds of Committee

members, for reviving the old status offence of being a streetwalker unable to give a good account of herself.

The committee itself suggested certain amendments to deal with the problem, but we do not think the amendments, which the committee suggested, would be effective in dealing with the problem. Therefore, we have come up with the amendment that we are now proposing to the House.

What do we propose, Mr. Speaker? The wording of the amendment is before you. We have new Section 195.1. It will read:

Every person who in a public place or in any place open to public view

(a) stops or attempts to stop any motor vehicle,

(b) impedes the free flow of pedestrian or vehicular traffic or ingress to or egress from premises adjacent to that place, or

(c) stops or attempts to stop any person or in any manner communicates or attempts to communicate with any person

for the purpose of engaging in prostitution or of obtaining the services of a prostitute is guilty of an offence punishable on summary conviction.

It will be quite clear, if the House passes this amendment, that it will be an offence to propose to engage in prostitution or to propose to obtain the services of a prostitute. Therefore, the customer of a prostitute will be just as liable to conviction under this section as the prostitute herself or himself. We have to realize that prostitutes are male as well as female.

Subsection (2) of the new Section 195.1 deals with the question of "public place". There is some doubt as to what a public place is. It reads:

(2) In this section, "public place" includes any place to which the public have access as of right or by invitation, express or implied, and any motor vehicle located in a public place or in any place open to public view.

This is necessary because it has been held that a motor vehicle located in a public place is not a public place. Any activity taking place in it is not taking place in public, even though anyone passing by can look into the motor vehicle and see what kind of activity is taking place.

You will notice from these provisions that repeated conduct is not a requirement, that one act can be sufficient to violate this section. The weakness of the section we are replacing is that the courts have held—and I will go into that in a little more detail shortly—that repeated conduct is required. The weakness of the amendment suggested by the Fraser Committee is the same weakness which, in the formulation it developed, require repeated conduct. By the way, we must not forget that in any conviction under this section, the Crown would require proof beyond a reasonable doubt, as is the case with respect to any particular criminal conduct.

● (1115)

Another feature of the amendment which we are proposing is that in Subsection (2) we propose that within three years after the Act comes into force there will be a comprehensive review of the operation of the new Section 195.1 by a committee of the House of Commons, designated or established for that purpose. The committee will have a year thereafter to complete its review and to submit a report to the House, including a statement on any changes which the committee