

Criminal Code

criminal law acts of gross indecency between consenting adults in private. In other words, it changes the substance of one particular offence under the criminal law.

The hon. member's amendment would not, I submit to Your Honour, affect the offence, relate to the conditions to be attached to the offence, relate to the fact that it should be in private or to the age of the persons concerned, nor relate to that factual situation at all. Instead it goes back to the original sections and says, we want the Crown to have an option to proceed—in a procedural way—either by way of indictment or summary proceeding.

I submit that brings into play a traditional rule of the house. It has not been affected by new Standing Order 75(5) or 75(8). They relate to the type of proceeding that can be adopted at the report stage. Subsection (5) reads:

If, not later than twenty-four hours prior to the consideration of a report stage, written notice is given of any motion to amend, delete, insert or restore any clause in a bill, it shall be printed on a notice paper.

Subsection (8) reads:

When the order of the day for the consideration of a report stage is called, any amendment of which notice has been given in accordance with section (5) of this order shall be open to debate and amendment.

In other words, we are not told anything about the relevancy or the scope of amendment. We have to assume with these new Standing Orders the traditional rules of admissibility apply. The question is, Your Honour, that under the rules of the house as interpreted by the precedents, no new amendment can be offered which is irrelevant or which goes beyond the scope of the bill or beyond the scope of the particular clause to which it relates. I believe this is made clear in citation 402(2) of Beauchesne's Fourth Edition, which reads:

A new clause will not be entertained if it is beyond the scope of a bill, inconsistent with clauses agreed to by the Committee, or substantially the same as a clause previously negatived.

Citation 406 reads in part:

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

These citations appear to be taken from May's Parliamentary Practice. For instance at page 549 of the seventeenth edition under the

heading "Inadmissible Amendments" it is stated:

An amendment is out of order if it is irrelevant to the subject matter or beyond the scope of the bill, or if it is irrelevant to the subject matter or beyond the scope of the clause under consideration.

I submit to Your Honour that this amendment does not attack the substance of the clause which it purports to amend. It does not relate to the offence itself. It goes beyond the scope of the clause to the original sections of the Code and suggests that those original sections ought to be opened up by allowing the Crown the option to proceed by way of indictment or summary proceeding. This bill is not a general revision or consolidation of the Criminal Code. It is not a completely new act or code. This omnibus bill relates to specific policy decisions relating to specific offences dealt with or amended in a specific way.

With the greatest respect I submit to Your Honour that the hon. gentleman's amendment goes beyond the scope of the clause which he attempts to affect.

Hon. Marcel Lambert (Edmonton West): My intervention will be very brief. I suggest the Minister of Justice (Mr. Turner) has missed the point. The amendment as proposed deals with clauses 147 and 149 because 149A as proposed is a delegation of penalties normally imposed under 147 and 149. The proposed amendment by the hon. member for Broadview (Mr. Gilbert) does not affect the determination of guilt but will change the form of proceeding to determine guilt and affix punishment. Therefore, there is relevancy. There is no new crime introduced. It is entirely relevant to clauses 147 and 149. I submit there is every reason to accept this amendment.

[Translation]

Mr. Fortin: Mr. Speaker, in our opinion, the amendment moved by the hon. member should be agreed to for certain reasons that I shall try to outline briefly.

We intend to amend sections 147, 148 and 149 of the Criminal Code, which bear on a particular subject.

Those sections, being difficult to enforce, give rise to many complications. It was said in a speech in the house that sections 147 and 149 of the Criminal Code had become inapplicable when acts were being committed in private between husband and wife or any two