

People may ask why an individual Canadian cannot import material for personal use. That is something which will have to be debated when new legislation is brought forward to address the Fraser report. The Hon. Member for Mount Royal (Mrs. Finestone) eloquently indicated that the Government has no business in the bedrooms of the nation and that people should be free to do as they please in their own homes. With respect to the importation of pornography or hate literature, it may be an area of controversy as to whether people can import that material for their personal use.

We agree that it is a very serious problem when the material is imported for the purposes of distribution and sale in Canada. We in the Liberal Party will support any legislation whatsoever which will deal with this very serious problem of all this smut coming into the country, finding its way into grocery and variety stores, and being available for children and others to see. I can assure the Government on behalf of my Party that we will support legislation which will serve to stop the importation of such material.

● (1150)

The court struck down Tariff Item 99201-1, and said it was too vague and ambiguous. In its decision it also gave some advice to us in this Parliament. It said that if you were to define what constitutes obscene or immoral material and hate propaganda according to the definitions found in the Criminal Code, then that would be sufficient and would not contravene the Canadian Charter of Rights and Freedoms, specifically the right of freedom of expression as found in Section 2 of the Charter.

We commend the Government for bringing in this legislation and have agreed to its speedy passage. Bill C-38 is a very short Bill indeed and simply refers to the definitions found in the Criminal Code of Canada. Whereas the tariff item which was struck down did not define what immoral or indecent meant, this Bill repeals that tariff item and replaces it with another which reads as follows:

Books, printed paper, drawings, paintings, prints, photographs or representations of any kind.

(a) of a treasonable or seditious character;—

There is no problem with respect to what constitutes treasonable or seditious, so there is no need for a reference to the Criminal Code. It continues:

(b) that are deemed to be obscene under subsection 159(8) of the Criminal Code;—

I would like to read that subsection of the Code for the benefit of Hon. Members. We have already heard that this definition does not go far enough and we hope soon to be dealing with recommendations from the Fraser Commission which will address the inadequacies of the definition of obscenity and pornography in the Code. The existing definitions are not good enough. We have to deal with pornography which exploits children and depicts violence. We have to come to grips with child pornography, which is a very serious problem in Canada today. Section 159(8) says:

Customs Tariff

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.

This has been the cause of some concern to the courts. What is obscene? What may be obscene in Nova Scotia may not be considered obscene in Ontario. The courts have grappled with this problem. There was the case of Regina *versus* Brodie and Regina *versus* Dansky where the court dealt with the novel *Lady Chatterley's Lover*. The Supreme Court of Canada held in a split decision that there was no undue exploitation of sex in that novel. To quote Mr. Justice Judson:

It has none of the characteristics that are often described in judgments dealing with obscenity—dirt for dirt's sake, the leer of the sensualist, depravity in the mind of an author with an obsession for dirt, pornography, an appeal to a prurient interest, etc.

Referring to Section 159(8), the court said:

The section recognizes that a serious-minded author must have freedom in the production of a work of genuine artistic and literary merit and the quality of the work, as the witnesses point out and common sense indicates, must have real relevance in determining not only a dominant characteristic but also whether there was undue exploitation.

Another decision was that in the case of Regina *versus* Prairie Schooner News Ltd. It indicated that the test of undue exploitation of sex is to be determined according to contemporary community standards in Canada. In the case of Regina *versus* Goldberg and Reitman, it said that community standards are not those of an individual community, such as a university community, but are those of all segments of the community.

So we have a problem when we talk about community standards. It is that of trying to define what is acceptable in a free and democratic society. We agree that students on university campuses might have a different interpretation of what is obscene and what is immoral as opposed to what senior citizens living in a senior citizens' complex might feel. I have given two extreme examples, but somewhere in between there is a community standard with respect to obscenity. Now, Bill C-38 says that obscene material is as defined in the Criminal Code of Canada. I have indicated that we have problems with the definitions of obscenity in the Criminal Code. Therefore, I certainly encourage Hon. Members opposite on the Government benches to petition the Minister to bring in legislation quickly to deal with the question of child pornography and violence so we can clean up that particular section.

The Bill we are dealing with here today also refers to the definition of hate propaganda. The old tariff item which was declared unconstitutional was too vague and so the court said you had to be more specific. What the Government is doing here, with our approval, is defining what hate propaganda means. The section of the Criminal Code referred to is Section 281.3(8) and I would like to read that section for the benefit of Hon. Members. It defines what hate propaganda means:

"hate propaganda" means any writing, sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under section 281.2:

I will refer to that section for the benefit of Hon. Members. It says that everyone who, by communicating statements in