

*Criminal Code*  
**CRIMINAL CODE**

REVISION AND AMENDMENT OF EXISTING STATUTE

The house resumed, from Thursday, April 1, consideration in committee of Bill No. 7, respecting the criminal law—Mr. Garson—Mr. Robinson (Simcoe East) in the chair.

On clause 150—*Obscene matter*.

**The Chairman:** When the committee rose last evening we were considering clause 150 and the amendment which had been proposed by Mr. Fulton. Shall the amendment carry?

**Mr. Fulton:** Mr. Chairman, there were certain remarks made by the minister yesterday in the course of the discussion which, along with remarks made by other hon. members, make me hopeful that if my amendment could be modified it might find more acceptance than it has up to the present.

The minister has pointed out that under section 623 the present provision sets no ceiling upon the fine which can be levied on a corporation which is found guilty of such an offence. My point is, and I made it yesterday in the course of a question to the minister, that there has been no case to my knowledge, or to the minister's knowledge, in which a fine as high as \$25,000 has been imposed on a corporation for an offence of this sort. My object was to place in the bill a provision which would have the effect of providing that where a corporation was guilty of this offence, which I believe most hon. members if not all regard as a most serious one, it should receive a substantial penalty. As regards the case to which the minister referred, the National News case, I have the records in my file somewhere though I have not been able to locate them; but my recollection is that the fine imposed was somewhere in the neighbourhood of \$750, which is not a substantial penalty. In that case action was taken against the local distributor and he is pretty far down in the chain of responsibility. It may be felt that the fine in that case was adequate. But the effect of the amendment which I have placed before the house would not alter that because it would not raise the maximum penalty now provided for the news vendor or the local distributor. The effect of this amendment would be at the printer's and publisher's level, and possibly at the level of the people who first bring offensive articles into Canada.

I wonder if it would be acceptable to alter the amendment, by leave of the committee, so that it would read:

... is guilty of an indictable offence and liable to imprisonment for five years, or if a corporation to a fine of not less than \$10,000.

That changes the fine of \$25,000 to a fine of not less than \$10,000.

[Mr. McCann.]

I want to say a brief word in further support of my position. I would like to have been able to work out an amendment which would have the effect of providing that, in a case where a prosecution is launched against an individual or a corporation in connection with offensive literature, whether it be of an obscene nature or a crime comic, an effort must be made to find the person primarily responsible for the introduction and releasing of the literature in Canada; because in my view no good purpose is served by confining prosecution, as seems to have been done in the past, entirely to the local vendor or the local distributor.

Something was said yesterday by the hon. member for Dauphin, in defence of the local vendor and the distributor, with which in principle I agree, although, as I have said before, I do not think you can totally absolve them from responsibility. They are not the people who are really at fault in this matter. The fault surely lies with those who have injected this stream of poison into the national life or the national system. It therefore seems to me that in every case where an offensive publication is found on a newsstand, while it may be proper to launch a prosecution against the vendor, who has undoubtedly committed an offence, it should not stop there. Surely in every case a strenuous effort should also be made to trace the thing back through the channels of distribution, through the local distributor, to the wholesale distributor and to the publisher. If the publisher is in Canada, or even if he is not in Canada, attempts should be made to find the person who first imported this offensive material in large quantities and then distributed it across Canada. Our prosecution in every case where offensive material is found on local newsstands should also be directed against the people who are primarily responsible.

I could not think of any way of working that out in an amendment. I am not sufficiently expert as a draftsman to attempt to do that, because in addition to the problem of stating the principle there would also be the technical problem of reducing it to legal terminology.

I would ask the minister to consider whether it is not possible to work out some such provision in our Criminal Code so that we will not be going after the small fry, the man who is lowest in the chain of responsibility, but really dealing and dealing effectively with the source of primary responsibility.

I again want to recommend to the committee that they read Dr. Wertham's book

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"Seduction of the Innocent" when it appears. It is one of the finest analyses of the problem that I have seen, and one of the best arguments both as to the seriousness of the problem and as to the necessity of dealing with it. I should like, if I may, to place on the record two or three other excerpts from the book, because they seem to me to establish the case overwhelmingly for action against the publisher.

The following quotation is taken from page 93 of the galley proofs:

From innumerable talks with children I got this image. Picture to yourself a typical American boy—

This might well read "Canadian boy."

—of nine or 10 walking along the street. In his pocket is his spending money, or his weekly allowance, or his lunch money, or his movie money or candy money, or some of his saved money, or part of his earnings from after-school work or from a birthday or Christmas gift. A very small group of men is lurking behind him intent on getting most of that money away from him. They want even more than the money he has. They tempt him, they lure him, they show him how to steal, how to break into houses through the windows and how to sell stolen goods. They even sell him the weapons—guns and knives. The profit from all this runs into tens of millions of dollars. What do the children get in return? The Child Study Association of America says that they get "escape"; but what they really get is entrapment.

Then, as he points out and as I know from my own observations happens here:

Old comic books never die; they just trade away. Just as children were taken advantage of in the field of physical labour, so now they are taken advantage of economically, as a market. In the matter of reading the adults get the best, the children the worst.

Against the child is concentrated the economic power of a large industry. It has been estimated that a third of all cheap pulp made in the United States and Canada is used by comic-book publishers. Even granting that many adults read these comic books, the proportion of adult and child readers is such that over a million dollars a week is taken out of the pockets of children. In other words, children are the main outlet for the industry.

As to the cost of production and the profits made by these publishers, he says this:

The actual cost of production varies. Some books have royalties attached to them. One comic-book publisher told me that "it costs roughly four cents to produce a comic book". A small comic book, such as one that Columbia University Press got out for educational purposes, costs about one and one-half cents, but if done less carefully could be done for three-fourths of a cent. A sixteen-page comic book such as those used for advertising or in politics costs no more than two and one-fourth cents for an average edition of 650,000.

So those are the figures as to the potential profits to be made by the publishers. As to the argument of free speech, some reference was made yesterday to the problem of censorship. I think that reference was made

by the hon. member for Saskatoon. I want to emphasize again that what I am seeking to avoid is the necessity for censorship. The effort being made is to deal with this question adequately and effectively by legislation so that our courts can decide whether an offence is committed and so that it will not be necessary to set up a board of censors which I would detest almost as much as I detest the present stream of poison literature. I should have said I want to deal with the question of responsibility. Dr. Wertham says this:

My associates and I have spoken to many vendors. And very many of them do not like to sell crime comic books. They know they are not good for children and they would rather not handle them. The president of the Atlantic Coast Independent Distributors Association has estimated that three-fourths of comic books are not "worthy of distribution" and the president of the National Association of Retail Druggists said at a convention: "It is a tragic fact that many retail druggists are peddlers of gutter muck. The charge can be held against them with justice; their only defence is that it has never occurred to them to check on the comic books."

When parents critical of comic books have realized how defenceless they are against them they have made two unreasonable demands of vendors in stands or stories. First they have asked them to read the comic books before they sell them! That is of course impossible, just as it is impossible for a busy housewife to read all her children's comic books first, though that has been suggested by some experts.

The second demand is that the small vendor should reject the most bloody and sadistic comics. But is it fair to ask these economically hard-pressed people to eliminate those comic books that sell best, when nothing is done at their source?

So Dr. Wertham agrees with me, the hon. member for Dauphin and others who have spoken in this matter, that the responsibility does not rest on the vendor—certainly not the main responsibility, at any rate—but that it rests back up at the source. That is where the big profits are made. That is where it is easy to know what you are dealing with and to refrain from producing it, and thus not only to save the vendors from the possibility of committing an offence but to save the children from the poison to which they are otherwise exposed.

Finally in connection with this matter of free speech there is in the book, at page 97 of the proofs, a very interesting commentary where Dr. Wertham says this:

I am told that if I were to visit the National Cartoonists Society my reception there would lack chumminess. In fact, collectively they consider me to be a devil with two horns. Actually, when we extended our studies to include artists who make drawings for crime comic books, far from blaming them we found that they are victims too. I doubt whether there are any artists doing this work whose life ambition was to draw for crime comic books. From interviews, telephone calls and letters we found out that they are afraid too. This is the

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kind of thing I was told: "Please don't mention that I even spoke to you! I'd be blackballed; I'd be ruined!" Here I found the comic book industry's conception of freedom of speech again. It is a strange part of the comic book industry that its vendors, writers and artists are so afraid. Maybe they should take the advice of the industry's experts and read horror comics to get rid of their fears.

So, Mr. Chairman, I think that all the evidence points to the conclusion that there is nothing to be said in favour of this form of poison and that the problem that confronts us is how to get rid of it. It was to meet that problem that my amendment was framed. It was to try to meet the problem at its source and to try to make it unprofitable for a printer or publisher to engage in this trafficking, so that first, he would realize that he had better stay out of the business and, second, if he goes into it we can get at him and can deal with him in a way which will effectively prevent him from repeating the offence. It is certainly my impression that, up to the present at any rate, the fine which the courts have felt themselves free to impose on wealthy concerns who make enormous profits from the printing and publishing of this material has been little more than a licence fee to continue in business.

I would hope that the minister might feel that the amendment would be acceptable if we put the fine at a minimum which will indicate to the court that this is the amount which parliament feels the courts should take as the minimum measure of their contempt for and of their opinion against this form of activity and that therefore they should impose this amount as a minimum fine, leaving the discretion to increase the top limit. If the minister would indicate that he would find that amendment more acceptable, I would ask leave of the committee to change it accordingly.

**The Chairman:** I understand that the hon. gentleman wishes to alter his amendment by deleting the words "\$25,000" and substituting the words "not less than \$10,000"?

**Mr. Fulton:** Yes.

**The Chairman:** Is it agreed that the hon. member has leave to do this?

**Some hon. Members:** Agreed.

**The Chairman:** Perhaps I should read the amendment. It is moved by the hon. member for Kamloops (Mr. Fulton):

That section 150 be amended by adding thereto the following words as subsection (2):

(2) (a) Every one who commits an offence under this section and who is the person who makes, prints or publishes or has in his possession for the purpose of publishing any of the things enumerated in subsections 1 (a) and 1 (b) of this section is

[Mr. Fulton.]

guilty of an indictable offence and liable to imprisonment for five years, or if a corporation to a fine of not less than \$10,000.

(b) Every one who commits an offence under this section and who is the person who distributes or circulates or has in his possession for the purpose of distribution or circulation any of the things enumerated in subsections 1 (a) and 1 (b) of this section is guilty of (i) an indictable offence and is liable to imprisonment for two years, or (ii) an offence punishable on summary conviction.

**Mr. McIvor:** Mr. Chairman, I am sorry that I have to leave and go to a standing committee, but I have a word to say on this matter. I agree with the hon. member for Kamloops that the individual who initiates the evil thought should be taken care of. But the education of the youth of Canada is not being neglected at the present time. Perhaps the hon. member for Kamloops knows that there is another type of crime comic coming into use. Perhaps he has seen the story of Daniel when he stood up for what was right and won out. Perhaps he has seen that in the form of such comics. Tons of this type of literature are being used in our Sunday schools today. That is taking the place of crime comics, comics that show people being killed. I think our religious education leaders, Protestant, Roman Catholic and Jewish, are to be commended for taking the initiative and not only fighting this evil thing but putting something better in its place.

**The Chairman:** Is the committee ready for the question?

**Mr. Garson:** I think perhaps I should say a word or two concerning the suggestion made by the hon. member for Kamloops. I am all too frequently embarrassed in relation to arguments put forward by the hon. member for Kamloops to have to keep on reiterating that we in this parliament can only enact the criminal law, that the enforcement of it is entirely the responsibility of the provincial authorities, and that the judgment in respect of any prosecutions which are instituted is properly that of the independent judges and magistrates of Canada.

One of the principles of independence which we have tried to emphasize in this new bill is the giving to the courts of wider discretion with regard to penalties. If we have not competent magistrates and judges in Canada, and they cannot be trusted with that discretion, then what we should do is get rid of the ones we have and replace them with ones in whom we have confidence. But in my opinion it is wholly wrong that parliament or a provincial legislature should restrict the discretion vested in a judge or magistrate by imposing minimum penalties, and in the whole of the present Bill No. 7 there are

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only three cases in which minimum penalties are prescribed, with regard to drunken driving, impaired driving and thefts from the mails.

In this present case I should like to suggest today, as I did on the previous occasion last spring when my hon. friend was then making some suggestions with respect to tinkering with the present law, that thanks to his initiative in the first place and to the care with which the present provision has been drafted we know now that we have a law that is quite enforceable. In my view what will prevent effective action more than anything else in the enforcement of this law is divided counsel as to what should be done to deal with this problem from this point on. I say that what we should do from this point on, having achieved an excellent and enforceable law, is to stop tinkering with it and call upon the people whose responsibility it is to enforce it to enforce it. I say there is nothing else we can do in relation to this matter other than enforcing the law that will have one-quarter the effect in stamping out crime comics and obscene literature.

Inasmuch as the publishers of these crime comics, as I believe is the case, have not in one single instance been prosecuted by the law enforcement authorities of the provinces, is any member so naive as to suppose we are going to increase the possibility of enforcement by imposing a minimum penalty of \$10,000? I for one must reject such naiveté. I do think that the present debate, just as the debate last spring, has served a useful purpose in bringing to the attention of public opinion the gravity of this practice and the necessity of stamping it out, and that it will have a good effect in encouraging public opinion in the various communities throughout Canada to insist that the prosecuting authorities take some steps to enforce this law. But I do suggest, Mr. Chairman, that that is the only method by which we will get any effective action in this matter, and that the longer we create the impression by tinkering around with the law that if we just bring in some new amendment, such as the one my hon. friend suggests, that is going to cure the evil, the longer we are going to be deluded into the type of inaction or divided counsels which postpone any effective results.

With regard to everything the hon. member for Kamloops has said today and with what he said yesterday, I find myself in almost complete agreement. The only trouble is he is saying it in the wrong place. He has come to parliament, which only has the power to enact the law, and is making long speeches

concerning the manner in which it should be enforced. I agree with him. I think it should be enforced more than it is. But he should be talking to the attorney general of Ontario, the attorney general of Quebec, the attorney general of Manitoba, the attorney general of British Columbia and the attorneys general of the rest of the provinces. They are the only ones who can bring about the enforcement of this law that he desires.

With an enforceable law upon the statute books, a law which the court of appeal of Ontario has now confirmed is completely enforceable so far as obscenity is concerned, I do suggest that if we have up to date not a single example of prosecution of a publisher of these books I am not so simple myself, and I think there will not be many members of the house so simple, as to think we are going to compel that enforcement by suggesting a minimum penalty of \$10,000. When my hon. friend suggested yesterday that there should be a penalty of \$25,000 I pointed out to him, and he now concedes the fact, that the law as it stands has no limit. If the prosecuting authorities wish to urge it and if they can find a judge who is prepared to give judgment to that effect, a penalty of \$2 million can be imposed upon a publisher of crime comics, and if the evidence in the case warranted such a heavy penalty, that penalty would be perfectly good in law.

That being the case, I think we would be well advised to defeat my hon. friend's amendment and to carry on with the law we have at the present time. If my hon. friend will permit me to say so, I think he would be well advised if he would make these excellent suggestions that he has made in the house to his friends, the provincial attorneys general.

**Mr. Fulton:** May I ask the minister a question? The minister has stated that there has not been a single case of prosecution against a publisher. As a matter of fact, I think most of the publishers are in the United States, but I take it what he has in mind is at the publisher level or the level of the first importer. Would he agree the law is satisfactory if that is the case?

**Mr. Garson:** I would not agree that the law is satisfactory because that implies that my hon. friend thinks it is, and I have just understood him to say that he does not think it is.

**Mr. Fulton:** Does he really think the law is satisfactory?

**Mr. Garson:** I most assuredly do, but I would point out to my friend, I think for about the tenth time, what seems to me to be

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a very simple and elementary principle, namely, that the most excellent law, if not enforced is no better than no law at all. That is all there is to this matter, that and nothing else. I suggest further as another elementary principle that you will not secure one atom more enforcement by putting in this provision about the penalty, either the one moved yesterday or the one moved today, because it seems to me to be a most elementary principle of logic, that if these publishers are not prosecuted with the present penalty, there is no greater likelihood of their being prosecuted with a minimum penalty of \$10,000.

**Mr. Fulton:** What is the present penalty?

**Mr. Garson:** The present penalty—

**Mr. Fulton:** Not under the new code but under the code as it exists. What is the present maximum penalty?

**Mr. Garson:** The present maximum penalty under the code as it exists—I am speaking from memory and I hope my assistant will correct me if I am wrong—is two years' imprisonment for an indictable offence in the case of a person accused, and in the case of a corporate accused the court is empowered, under the analogue to section 623 to which my hon. friend was referred, to impose a fine without any limit whatsoever. That being the case, unless we regard all our judges and magistrates as being incompetent to judge as to the facts of cases before them, what is there more that we can provide, in the matter of penalty, than what we have had on the statute books ever since my hon. friend from Kamloops brought in his bill, and we coopered it up and enacted it?

**Mr. Fulton:** What does the minister ascribe as the reason why, since 1949, the prosecutions have all been against individual vendors, and none against those higher up in the chain?

**Mr. Garson:** Oh, my hon. friend is wrong in that. If he will look at the law report in his hand he will see that that is against a corporation.

**Mr. Fulton:** Oh, no, the case I have in my hand is one that was before the Manitoba court of appeal. It is the case of *Regina v. Rother*, an individual news vendor who was fined \$5 in respect of crime comics.

**Mr. Garson:** I am sorry; I thought my hon. friend had before him the report of the Ontario court of appeal against the National News Company Limited.

[Mr. Garson.]

**Mr. Fulton:** My question related to crime comics, and the minister will not forget that the case he mentioned related to obscene literature.

**Mr. Garson:** That is right.

**Mr. Fulton:** My point is that the only prosecutions in respect of crime comics I have been able to find have been one against an individual vendor, and another against a local distributor. Neither was against anyone higher up. To what does the minister ascribe that fact?

**Mr. Garson:** Well, not being in the confidence of the provincial prosecuting officers concerned, I am unable to answer my hon. friend's question.

**Mr. Ellis:** Mr. Chairman, this discussion indicates the basic weakness in the section. Here we have a law which the minister tells us has not been enforced, so far as any publisher is concerned. There have been a number of cases where vendors have been charged—and I do not know whether the minister has the number of those cases. But during all the discussion it has been made clear that the real and basic weakness has not been pointed out sufficiently.

Last night the hon. member for Dauphin, speaking as one who has had practical experience in the sale of comics, brought out a point which has not been given the consideration it deserves by this committee.

I know in my own constituency a good many news vendors operate restaurants, barber shops and various other businesses, in which they sell magazines only as a sideline. Under the terms of this law they are held responsible for the magazines sold. Yet I suggest they are not always in a position to exercise judgment. As the hon. member for Dauphin pointed out last night, he had turned over a number of these magazines to a police magistrate and, in another instance, to a crown prosecutor, inviting them to check them over and decide whether or not they were crime comics. They did not undertake that responsibility, claiming that the only person who was able to judge whether or not they were crime comics was the attorney general of the province.

In all the discussion that has gone on we have heard no mention of that basic fact; because, as the law reads now, the people who are most likely to run foul of the law are not those who publish the comics at all, but rather the small news vendors who sell them. That is the weakness that should be given serious consideration.

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**Mr. Garson:** May I ask the hon. member a question?

**Mr. Ellis:** Yes.

**Mr. Garson:** Has he read the section?

**Mr. Ellis:** I have read it, yes. But I am now referring to the statement made a moment ago by the minister to the effect that publishers have not been convicted under this section. Is that correct?

**Mr. Garson:** Yes, but that is not necessarily an indication of any fault in the section. It means they have not been prosecuted.

**Mr. Ellis:** And it indicates a basic weakness in the law.

**Mr. Garson:** Certainly not.

**Mr. Ellis:** If a law is on the statute books and is never enforced, would the minister call it a good law?

**Mr. Garson:** I would suggest to my hon. friend again, as an elementary principle, that, whether or not over any given period of time the law enforcement officers for one reason or another do not choose to prosecute, the point as to whether they do or do not prosecute has nothing whatever to do with the merits of the law. The law may be an excellent law; but if you do not invoke it I suggest it is no less excellent because of that fact that you do not invoke it. That has to do with enforcement; and I suggest that is just as simple as two plus two equals four.

**Mr. Ellis:** But that is not my point. What I am saying is that at the present time there is a section in the Criminal Code which the provincial attorneys general have not seen fit to use in order to prosecute publishers. In other words, we will take it either that there are no crimes being committed under the section—and I think the minister will agree with what I am saying in this connection—or that the various provinces consider it is not important enough to undertake prosecutions.

In either case, we have spent a great deal of time in this committee discussing the section and an amendment. This section is either unnecessary, because there have been no prosecutions under it, or it is not considered serious enough for the law enforcement officers to take any action under it.

The point I want to draw to the minister's attention is this: Is it not possible under this section to place the blame and responsibility where it should rest, namely on the publishers of these magazines? In other words, when these publications appear on the newsstands they bear the names of publishers.

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If law enforcement officers go into a news vendor's store and pick up a magazine, and feel that that magazine is being circulated in violation of the section, why could they not prosecute the publisher direct? Why hold the news vendor responsible when, after all, he sells many hundreds of books and magazines and, under the conditions described last night by the hon. member for Dauphin, is not in a position to judge whether they contravene the law.

As I see it the basic issue is that this law should be directed, not against individual news vendors but solely against the publishers. Would the minister tell the committee whether in his opinion direct prosecution of the publishers would not put a stop to the publication of magazines and comic books that we consider offensive under the terms of the act?

**Mr. Garson:** Well, Mr. Chairman, I have some modest claim to being a lawyer—but not to being a prophet. Therefore I would not like to prophesy what the results would be in prosecuting publishers. But I think that having regard to the fact that our responsibility here is to recognize an abuse and then to draw an effective law which can be invoked by those whose responsibility it is to prevent that abuse, it is on that feature of the matter we should focus our attention. That is what we are here for. One might move toward answering my hon. friend's question by putting it in this form: Is it possible to prosecute a publisher of crime comics?

The reason I asked my hon. friend whether he had read the section was that I thought if he had he would have found the answer to his question in that section. It reads in this way:

Every one commits an offence who (a) makes, prints, publishes—

The publisher is guilty. I continue:

—distributes, circulates, or has in his possession for the purpose of publication, distribution or circulation any obscene written matter, picture, model, phonograph record or other thing whatsoever, or

(b) makes, prints, publishes, distributes, sells or has in his possession for the purpose of publication, distribution or circulation, a crime comic.

I would ask my hon. friend to tell me how in the English language the meaning could be made more clear than that, as to whether the publisher could be prosecuted?

**Mr. Ellis:** I have read the bill; I know full well the publisher can be prosecuted; but my question is this: Is it not possible to prevent the circulation of crime comics in Canada by prosecuting the publisher, period? In other words, should it be necessary to go beyond

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that point? After all, there are relatively few publishers of comics in this country. Is it not possible, by applying sanctions at the level of publication, to make it unnecessary for the small newsstand owner throughout the country—and there are many thousands of them, at least 10,000 of them—to be perpetually in danger of running foul of the law, under the terms of this act? My question to the minister was not whether publishers could be prosecuted. I know quite well they can be prosecuted, although none has been; as the minister pointed out to my hon. friend. I repeat: Is it not possible to put a stop to the publication of crime comics in Canada by applying the law at the publication level only?

**Mr. Garson:** I think that I might give a fairly cautious answer to that question by saying that the prosecution of the publishers would undoubtedly tend in that direction. I am not sufficiently familiar with all of the details of this business to know whether that would constitute an entire solution, because there may be sources that I do not know other than Canadian publishers. But I would certainly agree with what I take to be the view of my hon. friend, namely, that prosecution of the Canadian publishers would certainly tend to stamp out the practice.

**Mr. Fulton:** A most useful purpose has been served here. I do not agree with everything the minister has said, but the fact that attention has been drawn, as a result of this discussion, to the importance of the desirability of proceeding against the printer and publisher rather than against the vendor will certainly serve a potentially useful purpose. I think it will have an effect on our enforcement officers. I do suggest to the minister, notwithstanding that, that some purpose would be served by adopting the amendment, because I suggest that one of the reasons why vendors almost exclusively, and in some cases the local distributor, have been prosecuted under this section is that they are easier to get at. That is the place where the offensive material is found, and so the law enforcement officers, in some cases being pressed or prodded by an active public-minded organization such as the Parent-Teacher's Association, find most of the information against the local vendor and they lay charges. No one thinks of going beyond that. I do not know for what reason they do not think of it, but they do not appear to think of it or to be prepared to take the trouble to go back through the chain to find out who it was that was responsible for first placing this matter in circulation. I suggest that is why the vendor is usually prosecuted. It is easier to get at him. Admittedly he is usually fined \$5

[Mr. Ellis.]

and hardly ever more than \$50. The records of the cases show that he is not harshly treated by the courts. If an amendment such as I have suggested were adopted, drawing attention to the fact that the man who should be heavily punished, singling him out for attention, if you like, is the printer or publisher, the person who first puts it into circulation, singling him out and marking him for attention by way of a much heavier penalty than the other, it would serve a useful purpose, and it would be a practical factor in the legislation itself. It is for that reason that I put the amendment forward, and for that reason that I continue to support it.

**Mr. Nesbitt:** I have a brief comment or two and I should like to ask a question as well. First of all, numerous remarks have been made during the course of the debate on this clause to the effect that very few prosecutions have been laid under the existing section in the code. I should like to suggest, and the minister has pointed out repeatedly, that it is a question of enforcement and not so much a question of the law. The two are related. This whole question of crime comics is a relatively new idea in the law. Unless a local crown attorney or police officer receives complaints from people he simply does not do anything about it. The thing to do to help enforcement is to show the people of the country that this House of Commons means business. A very good way to do that would be to put in a penalty of \$10,000.

In addition to that, when magistrates and judges are applying the law and the penalty, and if they have no precedent or example before them—and it is admitted that there are very few under the existing sections of the present code—they have to look at the code to try to find the proper term, or the intention of the legislature. They might have some difficulty in that regard, if they read the proceedings of this debate, to find out what the intention was. But they would have to look at the wording of the statute itself.

Now, a judge or magistrate making a decision and deciding on a penalty would look at section 150. He would then turn to section 154, and he would find that prosecution could be taken either by indictment or on summary conviction, which could not help but indicate to the judge or magistrate that since that was the intention of parliament in passing this law, it was a relatively minor offence, because when a person has the choice of proceeding by way of indictment or on summary conviction—the choice is up to the crown prosecutor—the offence is a relatively minor one. The minister is not going to

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agree with me when I say this is a minor offence, but one would certainly not get the impression that it is as severe an offence as murder or robbery, where proceedings are taken by indictment alone.

A person could be punished on summary conviction for committing a relatively small offence under clause 150. If there was a minimum penalty of \$10,000 it would clearly indicate to any judge who had to give a decision that the House of Commons meant business in so far as the publishers were concerned when this clause was passed.

We can look at other clauses and we see that there is no amount mentioned. There is no limit to the amount that you can fine a corporation. The minister said you could fine it \$2 million. That is true, but no judge is going to do that. He will look back at the section and the method of proceeding against the accused, and then he will have to form some conclusion. Any judge would be loath to inflict a very heavy penalty of \$10,000 to \$25,000 unless he had some precedent or could get some indication from the statute. As Bill No. 7 now stands, the clauses relating to crime comics certainly do not indicate that the intention of the House of Commons is to have very heavy penalties inflicted.

**Mr. Zaplitny:** I have a question to ask at this point. Can the minister give us information as to the number of prosecutions and also the number of convictions, if any, in the three categories covered, namely, publishers, distributors and vendors, since the amendment was passed in 1949?

**Mr. Garson:** No, I could not. In order to give reliable figures on that we would have to make an inquiry to all the provinces of Canada; for it is of course provincial prosecutions which are involved. We can only get these figures from the provinces. There are cases, of course, like the ones that have appeared in the law reports, but by no means all the prosecutions involving the point at issue here have been reported in the law reports. There must be quite a number of cases that do not appear in the law reports, and the only way one could get them would be to write to the provinces for them.

**Mr. Zaplitny:** As I understand it, unless I did not hear correctly the statement that was made, there have been no prosecutions so far as publishers are concerned. Is that correct?

**Mr. Garson:** No, my hon. friend is quite right in what he heard. Perhaps I was at fault in stating what after all was just a deduction on my part. I formed the judgment that the prosecution of a publisher

would be a rather big-scale affair and probably a defended case, so it would be recorded in the newspapers and I would have read about it if it had occurred.

My hon. friend will recall the prosecution of the company in Ottawa, and they took the case to the court of appeals. It appeared in the newspapers a number of times, both during the trial and when it was in the court of appeal. I have deduced, from not having read any reference in the newspaper to a prosecution of a publisher, that there had been no such prosecution. I suppose I perhaps should not state that as a fact, it is more a deduction.

**Mr. Zaplitny:** The point I am getting at, Mr. Chairman, is this. If there have been prosecutions of vendors or distributors, then it would appear rather strange if there were no prosecutions of publishers. As has been pointed out by my colleague, the hon. member for Regina, it should be a simple matter to trace back from the vendor to the distributor and so to the publisher from whom the material emanated. If that is the situation it would indicate, to a certain extent, what the minister has said is quite correct, in that we can only make the law but the enforcement of it is elsewhere. If the provinces do not see fit to prosecute the publisher, then the penalty is not of great importance until such prosecution is begun.

On that point, I wonder if the minister could perhaps enlighten the committee any further. Does he know of any reason, in cases where there has been prosecution of the vendor or distributor, why it was not followed by prosecution of the publisher?

**Mr. Garson:** Yes, I can state one case, the case the hon. member for Kamloops mentioned concerning the prosecution of a retail vendor in Manitoba. This case could not be followed up by prosecution of the publisher because I believe there are no publishers in Manitoba. The Manitoba authorities could not prosecute because they can only prosecute for offences which occur in the province. The only prosecution of publishers that could take place would be prosecutions in provinces in which there are publishers.

**Mr. Shaw:** It was not possible for me to be in the house last night during much of the discussion, and I have not felt equal to the task of reading the whole debate. Possibly the question I desire to ask has been asked. When these publications or the plates from which the publications are printed reach the border are they simply passed through without any examination whatever by the customs officials? Is the gate wide open? Certain crime comics appear here week by



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week or month by month under the same name each time. They are known to be crime comics, so would the minister see any merit in the suggestion that the appropriate authority simply ban the importation into Canada of certain specified publications?

So far as these little pocket editions are concerned, I realize that they appear under different names, and I would not for a moment advise putting a ban on them. They are not all crime comics, nor is it a type of literature which, in all cases, would be bad. It would seem to me that when so many of these publications—I am speaking of crime comics particularly because they are the ones about which we are most concerned and which get into the hands of the children—are known, the appropriate authorities could simply say that those publications are undesirable and therefore are not permitted entry into Canada, nor are the plates. Would the minister see any merit in a suggestion of that kind?

**Mr. Garson:** This is not recent knowledge on my part, and as I have not made a point of checking it I may be wrong. My impression is that there is a long list of publications including comics which are banned, that is the documents or the magazines themselves, and the plates for making them are also completely banned at the border.

**Mr. Shaw:** I would suggest that, since this has become such a serious problem, the authority which presently has the right to ban simply take upon itself the responsibility of extending that list. I think if you could curb the action at that point we would not have such a serious problem as that which has been brought up this afternoon, namely the prosecution of the responsible person.

**Mr. Fulton:** I just want to say now, lest I should otherwise by association appear to be recommending, as a solution to this problem, the extension of any ban or censorship, that all my effort has been towards working out a method of dealing with this under the law and not by resorting to censorship. Even granted that there is a list of those things which the Department of National Revenue, under existing authority, has listed as being prohibited entry into Canada, if we are going to make the department discharge the function of censors, for which they are not really qualified in the first place, I should imagine we would have to add tens of thousands to the staff of the department in order to cope with the enormous volume of this stuff crossing the border. The answer, I say, is to make the penalty sufficiently severe against

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the people who bring the material into Canada and put it into circulation. We should deal with it that way rather than by enlarging the staff of quasi-censors.

**Mr. Garson:** If the hon. member proposes not to censor the entry of the magazines from the United States, which are published in the United States, how is he going to prosecute the publisher?

**Mr. Fulton:** I do not know what the minister means.

**Mr. Garson:** How is the hon. member going to prosecute the publisher in the United States?

**Mr. Fulton:** You cannot prosecute the publisher in the United States, whether there is censorship of the material or not.

**Mr. Garson:** My hon. friend has been saying that the publisher should be prosecuted. Then he says, I am not in favour of censoring the merchandise coming in from the United States. If it comes in from United States publishers, and there is no censorship—

**Mr. Fulton:** But I did not say that—

**Mr. Garson:** Let me finish my sentence.

**Mr. Fulton:** Well, let the minister be accurate in his interpretation of what I said. I did not say what he has suggested I said.

**Mr. Garson:** I understood my hon. friend to say he did not wish the Department of National Revenue to exercise any discretion over the entry—

**Mr. Fulton:** I said I did not wish to extend the functions of the Department of National Revenue as that is not the answer to this problem.

**Mr. Garson:** But you do not object to the exercise of the function as it has been exercised in the past.

**Mr. Fulton:** No. I said that if you are going to make censorship your answer you would have to increase your staff to something in the neighbourhood of tens of thousands because of the enormous volume of this material that comes into the country. The duty of these people is not to make themselves censors of mail or parcels or things that cross the border. Their job is to levy tariffs and duties and see that the appropriate customs tariffs are paid. As I say, censorship is a job that has been thrust upon them. I am not suggesting it be withdrawn, but I do not think the answer to this problem lies in extending the quasi-censorship powers of the Department of National Revenue.

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**Mr. Garson:** My hon. friend will agree we cannot in Canada prosecute publishers in the United States.

**Mr. Fulton:** No; but you can prosecute those who print books after the plates are brought over. You can prosecute those who bring in and circulate within Canada things which are an offence within Canada.

**Mr. Shaw:** Mr. Chairman, I should like to make one thing perfectly clear. I did not suggest that customs officers should act as censors. I said we know that certain publications which appear regularly under certain names are undesirable. As far as I am concerned, I make no apology whatsoever for stating that when that fact becomes known we should ban that publication from Canada. We have no hesitation in passing a law respecting sawed-off shotguns or certain other weapons when we are trying to prevent instances of crime within this country. I make no apology whatsoever for taking this position. I believe we could probably go a long way towards solving this problem if we just simply said: "We know that publication and we do not want it in Canada." I did not suggest it should be the individual customs officer who should determine whether a publication is desirable. We should have an appropriate authority for making that decision.

**The Chairman:** Is the committee ready for the question?

**Some hon. Members:** Yes.

Amendment negatived: Yeas, 16; nays, 35.

**Mr. Zaplitny:** Mr. Chairman, before this clause is carried I have another amendment I want to submit which is in line with what I had to say last evening as regards the possibility of unjust treatment of vendors and distributors. I hope that the gate will not be closed in this regard and that they will be able to plead ignorance in accordance with the law as it now stands. Subclause 6 of clause 150 reads:

Where an accused is charged with an offence under subsection (1) the fact that the accused was ignorant of the nature or presence of the matter, picture, model, phonograph record, crime comic or other thing by means of or in relation to which the offence was committed is not a defence to the charge.

I believe that if that subclause were removed it would not absolve the vendor or the distributor from liability as regards crime comics, but it would at least not bar them from pleading ignorance. I want to assure the committee that I anticipate the argument that such a provision might easily be extended to cover publishers, but I cannot conceive of any difficulty in proving in court

that a publisher knew the content of what he was publishing. The same is not the case when it comes to the vendor or the distributor. I therefore move, seconded by hon. member for Regina City, that subclause 6 of clause 150 be deleted.

**Mr. Garson:** Mr. Chairman, I think I should comment briefly on this amendment. It may appear upon the surface to be a bit harsh upon the accused to deny him the plea of ignorance, but, when an amendment was introduced by the hon. member for Kamloops in 1949, and we in the federal government submitted this to the provincial law enforcement officers, we were told among other things that, unless we had a clause like this in the section, almost any of those who were involved, either in retail or wholesale distribution, would be able to say in relation to the charge in respect of any specific book: "Oh, my goodness, I am shocked to find in page 25 of this book something that is terribly repugnant to my moral nature. But I did not know anything about it. I thank you for bringing it to my attention and I will strike it off my list."

One can easily see that in a situation of that kind we would have a law which was not very readily enforceable, and for that reason we have included this subclause in the bill. The hon. member who moved this amendment told us yesterday about his own experience as a retail distributor. Knowing his reputation for accuracy in all matters, I expected that he would explain that when he received books from the distributor he was able to send any back he wished, because quite contrary to the popular impression none of the retail vendors are under the necessity of selling these books if they do not wish to sell them. As my hon. friend from Dauphin said, the distributor who has a large volume of titles to sell cannot be bothered making up parcels individually for each of their retail vendors. The wholesale distributor sends out in the first instance, as the hon. gentleman from Dauphin correctly stated, a package of books which the wholesaler believes the retailer's community will absorb. If the retailer cannot sell some of these books he may return them. The wholesaler then simply modifies his selection of titles in the next parcel he sends out for no more complex reason than that this is the simple, easy, automatic way to keep the retailer supplied with books which his community will buy. If the retail vendor, with the concern for the morals of the young people in this community to which my hon. friend from Dauphin laid claim, sees amongst the books in his possession something that is clearly a crime comic or obscene, he can send it back

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to the wholesale distributor. He is required to do nothing more complicated than that to avoid committing the offence of selling these things to the public. That being the case, I do not think there is any reason for an amendment of this sort.

**Mr. Ellis:** Would the minister tell us how the vendor is going to decide what to send back. The hon. member last night pointed out that in his experience certain local people in his own community would not undertake the task of deciding which magazines should be sent back and which should be kept on the shelf. I would like the minister to tell the committee how the individual vendor is going to accurately sort out good material from bad.

**Mr. Garson:** I do not know how familiar the hon. member is with these pocket books, but I would suggest to him that if he goes to the average stand and casually goes through the books there he will not have too much trouble in selecting some of the more prominently obscene ones, and in pretty short order. The identification of crime comics might be even easier than that. I must say for my part that this difficulty which has been alleged in separating the wheat from the chaff never impressed me very much. It may be that in the odd case an innocent dealer might be caught, but I do not believe there would be very many such hardships. So far as I know, none have occurred so far under this present section of the code as it now stands.

**Mr. Ellis:** If it is that easy to decide on the part of the vendor, would it not be just as easy for the appropriate authorities to examine the material as it leaves the publishers, or as has been suggested this afternoon, for the material to be looked over and to be decided on before ever reaching the vendor's hands? In other words, the hon. member for Kamloops spoke of his aversion to censorship. There are two types of censorship. There is the direct type of censorship and there is the more indirect type.

**Mr. Fulton:** There is the obligation of self-censorship that everybody has to accept.

**Mr. Ellis:** The point I tried to make this afternoon was this: Why have we got these publications floating around the country?

**Mr. Fulton:** Because there are profits to be made from them.

**Mr. Ellis:** Because the publishers of crime comics find that they can make money out of selling crime comics. Consequently, if the job were done properly, and if the responsibility were placed on the shoulders

[Mr. Garson.]

of those who publish the offending periodicals—if it were done at that level—it would not be necessary for the vendor to have to be under the obligation of deciding whether or not he was within the law.

**Mr. MacInnis:** Mr. Chairman, I think I should say a word or two on this matter because I shall feel constrained to vote against the amendment and I should not like to vote against it without letting my friend the hon. member for Dauphin know why. I would be opposed to the deletion of this subsection because I do not believe we should give anyone the excuse to say that he was selling something the nature of which he did not know. I think that is making it too easy altogether for people to sell salacious literature and to clear their consciences by the fact that they did not take the trouble to know what they were distributing throughout the community. I cannot accept this excuse at all. I think we shall have to keep this subsection in the law in order to make it enforceable to some extent at least.

**Mr. Fulton:** I rise mainly for the purpose of commenting. While I agree with the minister that the evidence seems to establish that as between the local distributor and the vendor, the vendor is free to return titles which he does not wish to sell, and he gets a credit for them when he returns them, other evidence, particularly the evidence in the recent contempt case at Cornwall, is to the effect that as between a local distributor and his wholesale supplier there is a term in the contract which compels the local distributor to accept all the titles which he is offered. He is not allowed to exercise his discretion; he is not allowed to go through his block parcels and to return direct the titles which he thinks are undesirable. I think the process is that he has to pass those on to his local retailers and that if then they are returned to him by his local retailers, he in turn can return them to the wholesale supplier. I do not know what the correct term for that individual is, but he would be on a bigger scale than the local distributor.

The minister and I have had some discussion of that feature in connection with another provision of the law. Even if the minister is not satisfied that the combines law should be invoked against that practice, I think it should be made clear that it is not a practice to which approval should be given and that everyone who receives goods to sell or distribute, which he does not think it is desirable to distribute, should have the right to return them and should not be bound by a contract to accept them and to pass them on where they may continue to poison the

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minds of young children. However, for the reasons that I have indicated previously, I do not think that anyone concerned in this process can be absolved from that responsibility, whether he be the vendor, the local distributor, the wholesale distributor, the man who prints the book or the man who publishes it. I therefore think that this subsection should be left in.

**Mr. Zaplitny:** I should like to repeat something I said when I moved the amendment. I thought I had made it quite clear then, but in view of what has just been said by the hon. member for Kamloops I think it should be repeated. The removal of this subsection will not absolve from responsibility the vendor or the distributor. Its removal will simply have the effect of giving him the opportunity in court of pleading ignorance. That in itself does not mean that by the very fact that he pleads ignorance he is automatically acquitted. There may be plenty of other evidence to show that he is responsible, and that he was not ignorant of the contents. But this section arbitrarily states that he cannot even plead ignorance. It closes that door.

As to what has just been said by my colleague the hon. member for Vancouver-Kingsway, for whom I have great admiration, I am afraid there is some misapprehension about this matter. Some people are under the impression that this law forbids what is known or has been referred to as salacious literature. It does nothing of the sort. It refers to the commission of crime. The only description of a crime comic—

**Mr. Fulton:** It refers to obscene literature.

**Mr. Zaplitny:** Yes; to obscene literature.

**Mr. MacInnis:** That is the same thing.

**Mr. Zaplitny:** There is a difference. The only definition I can find here that would act as a guide to what is a crime comic is in subsection 7 of section 150, which reads as follows:

In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

(a) the commission of crimes, real or fictitious, or  
(b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

As I pointed out yesterday, that language is extremely wide, hazy and vague. May I also ask why we pick on comics exclusively? When it comes to pictures or stories depicting crime, the matter goes a great deal further than comics. You have, for example, your radio programs and even your television. You have other methods by which crime is depicted, both pictorially and in words; yet

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you seem to get all excited and hysterical about one particular phase of it. When it comes to some of that lurid literature to which the hon. member for Macleod referred yesterday, I submit that I have not read anything that contains stronger language than do some of the proceedings of the divorce committee that is handled by this very house. Certainly if that was contrary to law, some of the members of this house might find themselves in difficulties.

**Mr. Fulton:** Parliamentary privilege.

**Mr. Zaplitny:** But to be serious about the matter, there is not much doubt that the average vendor or—I will not even say the "average vendor"—that the great majority of vendors, even if the wording of this section were brought to their attention, would have great difficulty in deciding what is a crime comic. Not only would vendors have difficulty, but as I have pointed out, even crown prosecutors and police magistrates have found great difficulty in deciding what is a crime comic. For that reason I believe that, without absolving the vendor entirely from responsibility, certainly the removal of this subsection would provide some little measure of leniency by giving him an opportunity to prove that he was in fact innocent.

**Mr. Ellis:** May I make a comment regarding the difficulty of the vendor? Yesterday the hon. member for Macleod sent across to the minister a copy of a pocket book and pointed out that, while on the whole the book was not too bad, he had found one paragraph in it which he did not like. I suggest that the vendor who sold the book might not have read the entire book or might not have read the offending paragraph. Apparently the hon. member for Macleod feels that the book is not the type of book which should be sold in spite of the fact that the book as a whole was all right.

What the hon. member for Dauphin has just pointed out is quite correct. There is a great deal of difference in the case of the vendor who has on his rack something that he knows, and that anyone can tell at a glance, is obscene or salacious or a crime comic. But a great many publications and books appear on the shelves of a vendor and unless he was prepared to read the entire book from cover to cover, in fact, even after having read the book, he might find it very difficult to decide whether or not the book was salacious in its effect.

The book to which the hon. member for Macleod referred had one offending paragraph. Does one offending paragraph make the book undesirable? This opens up a tremendous field so far as the vendor is

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concerned. I should like to reiterate what the hon. member for Dauphin has pointed out. The amendment is not going to absolve vendors who knowingly place on their shelves for sale material which they know or have every reason to know offends against this section, but it does protect the vendor who unknowingly places books on his shelves, perhaps because of the fact he has not had time to read the material in its entirety, from being subject to a charge.

Amendment (Mr. Zaplitny) negatived.

Clause agreed to.

Clauses 151 to 153 inclusive agreed to.

**The Deputy Chairman:** The next group of clauses is under the general heading "defamatory libel" and commences with clause 247.

Clause 247 agreed to.

On clause 248—*Definition*.

**Mr. Nesbitt:** There is a question I should like to ask the minister which I think may clear up the matter very quickly as far as I am concerned. In the city of Toronto, as the minister is no doubt well aware in his capacity as Minister of Justice, certain weekly publications are issued which deal almost exclusively and substantially in lurid crimes, sex offences and that kind of thing. It is quite clear of course that if the material in these periodicals contravenes this section so far as any particular person is concerned a prosecution can be instituted. However, very unusual situations may arise. I know of at least one occasion, and I am quite sure it has occurred fairly often. Apparently many of the articles and stories purporting to be news in these weekly publications are not news at all. They are fictitious, although they appear to be news.

I realize there are other sections of the code dealing with the publication and spreading of false news but the matter of defamatory libel does enter into the picture. Fairly recently an article was published as a news item in one of these weekly publications which referred to a person in the city of Woodstock. It was stated that this person had been convicted of having improper relations with his secretary. As a matter of fact, it stated that he had been tried and convicted. It so happened that the person referred to in the article was non-existent. In addition, no such case had ever been heard in the city of Woodstock in the previous forty years.

Nevertheless, by pure accident a quite prominent and highly respected businessman in the town happened to have similar initials plus the same last name as the person referred

[Mr. Ellis.]

to in the fictitious news article. He was caused a great deal of embarrassment, possible loss of business and everything else. I should like to ask the minister whether, in his opinion, this section would cover such a situation. I see that it says:

A defamatory libel is matter published, without lawful justification or excuse, that is likely to injure the reputation of any person . . .

What I am particularly curious about is whether the term "any person" would include anybody who happened to be embarrassed by such publication in view of the fact that further on in the definition of defamatory libel it says:

. . . or that is designed to insult the person of or concerning whom it is published.

In other words, does this particular section of the code envisage that the publisher must have some particular person in mind when he makes the publication or does it envisage that if the publisher happens to hit someone of whom the publisher knew nothing a prosecution for defamatory libel could be instituted?

**Mr. Garson:** Mr. Chairman, this is a point of order that I think I probably should have raised earlier in the proceedings. As Minister of Justice my responsibility is to advise the various departments of the government in matters of law but never the House of Commons or its members. I am afraid if I were to rest upon that point of order in piloting a bill of this sort through the house I would hold up proceedings unduly, and that is why I have not done so. But one would think—this is not an opinion because, as my hon. friend who is himself a lawyer knows, I would have to give the matter much more mature consideration than I have had time to do now—from a reading of section 248 as applied to the facts which he has stated, providing they could be proven, there might be defamatory libel which is defined as "matter published, without lawful justification or excuse, that is likely to injure the reputation of any person." It is any person at all, and in this particular case, through the unhappy coincidence of the man whose name had been published in this sort of scandal mongering type of magazine, I suppose, is it—was that the type of magazine?

**Mr. Nesbitt:** One of those weekly periodicals in Toronto.

**Mr. Garson:** That is right. He happened to live in the same town designated, have the same name and the same initials, and I should think the accused would have a very interesting time indeed proving that he did

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not intend to prejudice that man by merely pleading the coincidence of the two names being identical.

**Mr. Nesbitt:** Excuse me; in this particular case the initials were not exactly identical. They were almost identical and the impression created with the public was that it was that person.

**Mr. Garson:** I took that to be the case. But what I would think would be a more serious difficulty in his invoking this particular provision is the essential difference between ordinary libel, which is the foundation for a civil action in damages on the one hand, and on the other hand the defamatory libel under the code which we are discussing. If my hon. friend will refer to Tremear, fifth edition, page 372, he will find this:

The essential difference between civil and criminal libel is not in the matter published, but in its tendency. "It is the policy of the law to leave the care of men's reputations to themselves, and no damage therefore done simply to the reputation of anyone by an individual is foundation for a criminal prosecution. There are two remedies for the wrong caused by a libel; one, where the offence is of a public nature as tending to a breach of peace, by indictment, and the other, when the injury is of a private nature, and merely causes damage to the libelled party, by action.

In this case, if the question ever arose as to its applying to this one man, and his reputation was in fact injured, offhand I should think he might have to seek his recourse by a civil action for damages.

Clause agreed to.

Clause 253 agreed to.

On clause 163—*Offensive volatile substance*.

**Mr. Diefenbaker:** Mr. Chairman, this clause was dealt with at some length when the matter originally came before the committee. I wish now to deal with it for only a few moments.

On the last occasion the matter was under discussion I referred to the very serious situation in the town of Battleford, to which reference has been made on a number of occasions by the hon. member for The Battlefords, and in the city of Prince Albert where, since November 7 last, the people have been unable to drink water from the Saskatchewan river because of pollution caused through the dumping into the river at Edmonton by the Canadian Chemical Company of certain chemical substances in the effluent from their industry at that point.

I am not here to discuss the responsibility of the federal or provincial authorities, or to criticize either of them for its lack of action. But assuredly the people in Prince Albert and in Battleford as well as in The

Pas, Manitoba, to a lesser degree, have been most critical of a situation that has placed them in a position where they have been unable to drink the waters of a river as important to the domestic and industrial uses in the western provinces as is the North Saskatchewan river.

For a considerable period of time the serious question before both the federal and provincial authorities was, first, to have an analysis of the waters, and then to determine the responsibility of one or other industries in respect of the condition of affairs prevailing in the cities and towns I have mentioned.

Finally, as a result of a co-operative effort between federal and provincial authorities an analysis was made of the water, and it was found to have a taste that would prevent any human being from consuming it—unless that human were equipped, as were the locomotive boilers at Prince Albert, the flues of which were de-scaled by the use of this water without any further treatment. In short, the situation was nothing less than terrible.

The analysis showed that the water has in it formaldehyde, methanol and acetaldehyde, all of which suggested that the river was being contaminated by waste from a plant which produced pentaerythritol. Full analysis was made, and it was found finally that Canadian Chemical Company was responsible. There is no desire to have legislation brought in that in any way is retroactive in effect. At no time was there a suggestion to that effect. But it does seem passing strange that under the law as it now exists counsel advising the corporations I have mentioned have concluded that there is no right of action under the Criminal Code as at present worded.

The city of Prince Albert and the town of Battleford, as well as other municipal corporations, have petitioned the government to make provision against the continuance of a situation similar to that, consequent upon the contamination of water necessary for domestic and industrial uses. They have asked for an amendment to the Criminal Code.

The federal government has taken the constitutional position that despite the fact that the Saskatchewan river traverses more than two provinces, the responsibility is a provincial one. It has been pointed out before that there is very little a province can do to punish contamination without the assistance of the government in the province in which the contamination arises.

The government of Alberta has given considerable co-operation and has secured from Canadian Chemicals Limited a promise that the practice heretofore followed will

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not be continued. The chemical corporation has stopped the course it was following of dumping the effluent into the river. Not only have the various municipalities asked that action be taken, but I am informed that the municipal associations in Saskatchewan have indicated the impossibility of that province doing anything to protect its citizens under the law as it now stands. For, after all, any action that could be taken must be in Alberta.

They have asked for an amendment to the Criminal Code so that certain punishment will follow a repetition of the circumstances in this instance, and for the provision of a law to protect other parts of this country from pollution, which is becoming a problem in almost every province. Pollution of rivers flowing from one province to another is today an offence without adequate punishment and, indeed, without any machinery under the law for the punishment of the wrongdoers.

The home and school association in Prince Albert, with the support of similar organizations in other provinces, has sent in a resolution. The one from Prince Albert is an emergency appeal to all home and school associations, and is signed by Joseph Johnson, president, and Mrs. A. E. Rawlinson, secretary, in the following words:

We believe that all possible avenues must be explored by municipal, provincial and federal governments, in order to prevent, by adequate legislative action and strict and impartial enforcement of same, any similar situation arising in future within our land.

That would seem to be a reasonable request. The council of the city of Prince Albert, through the health committee of that council, of which the chairman is Alderman Marion Sherman, called upon the federal government to introduce an amendment to the Criminal Code making the discharge of chemicals into an interprovincial river an offence.

I am not going to recapitulate what I said previously, but it is a matter of interest that this condition of affairs has continued for five months. Fifty thousand people have been placed in a position where they have had to secure water supplies from wells, springs, and indeed from other rivers adjacent to the municipalities in question. It was because the law provided for no punishment and no offence that when the Criminal Code, clause 163, was before the committee on an earlier occasion I suggested that the clause might be amended. Since then on a number of occasions I have asked the government whether it proposed to take action to amend the Fisheries Act to make it an offence under the particular circumstances. Interest was shown in the question when it began to

[Mr. Diefenbaker.]

be apparent that the fish in the river were being destroyed, but action has not yet been taken.

In so far as the Criminal Code is concerned, I asked on one occasion whether the government had given consideration to an amendment to make it an offence to dump deleterious substance into streams upon which people depend for water for domestic and industrial purposes. The answer was that the matter was receiving consideration and that in due course the government policy would be announced. There is no way in which the municipalities in Saskatchewan can meet the problem themselves. The city of Prince Albert has tried to treat the water chemically, but after all formaldehyde may be all right as an embalming fluid, but it is not very good for human beings while still living. They ask for action. People asked for action on the part of the city, but nothing that could be done, according to chemists, would rid the water of the chemicals to which I have made reference, and in particular the formaldehyde and the acetates.

Historically the prevention of pollution under law is founded upon the principle that only bacteria-carrying agencies in the water gave rise to any action. This is not a problem peculiar to Saskatchewan, Manitoba, and Alberta. It is becoming a problem everywhere in this country, but it has been brought to a head there. If I could transmit to hon. members the feelings of the people affected by what they have passed through during the past five months in the areas of Prince Albert, Battleford and surrounding areas, the language that I would use would be ruled out as unparliamentary almost before I started to detail what people have said. They are aroused as I have never seen them aroused. They are not asking for an amendment to the Criminal Code to cover what happened in the past.

Today with that optimism that he reveals on all occasions, the Minister of National Health and Welfare stated that a week or so from now conditions would be so materially improved in Prince Albert—

Mr. Martin: He hoped.

Mr. Diefenbaker: —that the immediate cause for complaint would be removed. Well, as I read the file that was brought down in the house in sessional paper No. 190-A on Monday, March 8, I find there, sir, that spirit of optimism, that assured hope that all is well, has not been uncharacteristic of the minister since he first undertook to give assistance, with his officials, to the solution of this problem, and that goes back to January 8 last.

## Criminal Code

What we are asking for is that conduct such as characterized the industry in question will become an offence under the law. As I said a moment ago, the province of Saskatchewan can take no action with respect to the pollution of a stream or river when that pollution takes place in another province. I therefore wish to suggest an amendment to the minister. He has submitted the matter to his law officers and he may have one that is more effective than the one I have in mind. As a tentative amendment to be considered by the committee I wish to move as follows. I will first read material portions of the clause and then I will place before you, sir, the amendment.

**Mr. Garson:** Which clause?

**Mr. Diefenbaker:** Clause 163:

Every one other than a peace officer engaged in the discharge of his duty who has in his possession in a public place—

Now, we come to the material parts:

—or who deposits, throws or injects or causes to be deposited, thrown or injected in, into or near any place,

(a) an offensive volatile substance that is likely to alarm, inconvenience, discommode or cause discomfort to any person.—

And so on:

—is guilty of an offence.

I said a moment ago that that clause does not cover the situation because the substances which are being poured into the river do not come within the ambit of the word "volatile". I therefore suggest, sir, that after the word "place" in line 36 the words:

or in any river or stream whose waters are used for domestic or industrial purposes—

—be inserted, and after the word "substance" in subclause (a) the following words be added: or any chemical or synthetic chemical or any other substance.

The effective portion of the section in so far as the pertinent facts of this question are concerned would then read:

Every one . . . who deposits, throws or injects or causes to be deposited, thrown or injected in, into or near any place, or in any river or stream whose waters are used for domestic or industrial purposes,

(a) an offensive volatile substance or any chemical or synthetic chemical or any other substance that is likely to alarm, inconvenience, discommode or cause discomfort to any person

And so forth:

—is guilty of an offence punishable on summary conviction.

And so on. That is the submission I make. I feel that the minister might want to go farther or there might be a suggestion that the matter should be proceeded with by way

of indictment. Such an alteration might be made in the section. However, the purport of the amendment that I wish to place before the committee is incorporated in the words that I have just placed before the committee. I bespeak the co-operation of members in all parts of the house to assist us so that power will be placed in the hands of the people, where it belongs, to resist the action of any corporation or individual who, for its own ends, interferes with or destroys the use of our rivers and streams. Unless this problem of the pollution of streams upon which human beings depend for their water supply is met, this water supply will be endangered more and more as the years go by and these chemical industries are being established, particularly within the western provinces.

**Mr. Garson:** Has my hon. friend copies of his amendment?

**Mr. Diefenbaker:** Yes.

**Mr. Campbell:** I have a great deal of sympathy for the amendment that has been moved. I am not particularly interested in what kind of legislation is to be put on the statute books, provided it does the job. After the Minister of National Health and Welfare made his report to the house some time ago, I wrote to the people in my constituency and to the people of North Battleford, sending them copies of the report and asking them if they felt that was sufficient or did they wish me to continue trying to have something done by way of the Criminal Code. All the answers I received, from practically the same organizations as those mentioned by the hon. member for Prince Albert, the city councils, boards of trade, home and school organizations as well as individual farmers, asked me to try to get legislation passed that would prevent this sort of thing happening in the future. The individual farmers were affected because their cattle would not drink the river water.

I want to say a word about the set-up in Edmonton. I thought the hon. member for Prince Albert was rather mild in what he said along that line. Here we have an industry that commenced operation last September. It is a wealthy organization and requires the best chemists in the land in order to produce this material. Why did the company select Edmonton as a site? These people are rather astute and they have hired the best brains available. They said, here is the river which flows for two hundred miles without passing any city. We could set up our factory here and empty the kind of chemicals we want into this river and probably by the time the



*Private Bills*

river flows past the first town these objectionable odours will have disappeared.

In addition to that, there is no federal law which will give protection to the people residing within the first two hundred mile area. There is a law in Alberta, it is true, that says orders can be given to stop dumping chemicals or waste into the rivers if they cause pollution. It seems to me that is taking action after the crime has taken place. So far as I can ascertain there is no law in Alberta requiring a company to obtain permission before dumping chemical wastes into the river. I have been writing back and forth attempting to get as much information and advice as possible about this problem. I believe that we need a provision in the Criminal Code concerning the pollution of our rivers.

Another suggestion which I believe has merit is that the federal department of health should have jurisdiction over these inter-provincial rivers for the purpose of preventing the pollution of the water. I believe that is what we need. We need the federal department of health to decide whether or not they are going to permit these chemical plants to dump waste material in a certain manner. These chemical plants should give an undertaking before they can get a permit to set up the plants.

**The Deputy Chairman:** I am sorry to have to interrupt the hon. member, but it is five o'clock. The house will proceed with the consideration of private and public bills.

**PRIVATE BILLS****CONSIDERED IN COMMITTEE—THIRD READINGS**

Bill No. 169, respecting Victorian Order of Nurses for Canada.—Mr. McIlraith.

Bill No. 340, respecting Canadian Nurses' Association.—Mr. Stick.

**NORTH AMERICAN BAPTISTS INC., (CANADA)**

The house in committee on Bill No. 378, to incorporate North American Baptists Inc., (Canada)—Mr. James—Mr. Applewhaite in the chair.

On clause 1—*Incorporation.*

**Mr. Knowles:** Mr. Chairman, there is just one question which I am prompted to ask by the manner in which Your Honour read the title of this bill. It seems to me you read the title in the form in which it should be printed, for in this house we are used to things being spelled out.

**The Deputy Chairman:** I do not quite understand the hon. gentleman.

[Mr. Campbell.]

**Mr. Knowles:** I am asking if it would not be more proper to have "Inc." spelled out.

Clause agreed to.

Clauses 2 to 18 inclusive agreed to.

Preamble agreed to.

Title agreed to.

Bill reported, read the third time and passed.

**CONSIDERED IN COMMITTEE**

**The Deputy Chairman:** There are a number of divorce bills which might well be taken together.

**Mr. Knowles:** Mr. Chairman, I suggest that today you might follow the correct procedure and call these bills one at a time. I am not suggesting there is going to be discussion on all of these bills, but I believe some of them have been the subject of contention when before the committee on miscellaneous private bills and there may be members of the committee who will wish to say something on some of these bills. Perhaps you might call them one at a time, Mr. Chairman.

Bill No. 298, for the relief of Alfred Rubens.—Mr. Hunter.

Bill No. 299, for the relief of Clara Stein Rosenberg.—Mr. Hunter.

Bill No. 301, for the relief of Lilli Schwab Barber.—Mr. Hunter.

Bill No. 302, for the relief of Laura Fanny Hoddinott Peckford.—Mr. Hunter.

Bill No. 304, for the relief of Natalie Wynogradnyk Wolcovitch.—Mr. Hunter.

Bill No. 305, for the relief of Joan Bechard Tutty Copeland.—Mr. Hunter.

Bill No. 306, for the relief of Georgette Mertens Herscovitch.—Mr. Hunter.

Bill No. 307, for the relief of Mary Veronica Carmichael Mosher.—Mr. Hunter.

Bill No. 308, for the relief of George Thomas LeGrow.—Mr. Hunter.

Bill No. 309, for the relief of Marie-Reine Roy Lafamme.—Mr. Hunter.

Bill No. 310, for the relief of Gabrielle Gagne Nantel.—Mr. Hunter.

Bill No. 311, for the relief of Velma Mackland Giles Boyer.—Mr. Hunter.

Bill No. 314, for the relief of John Wright Sinclair.—Mr. Hunter.

Bill No. 315, for the relief of Florence Jean Moffatt Tucker Johnston.—Mr. Hunter.

Bill No. 316, for the relief of Margaret Hilda Popper Parker.—Mr. Hunter.