

Criminal Code

if there is a strong opinion in the house that we should make it ten I would not oppose it, I must say.

Mr. Hansell: Make it ten; it would not be too long.

Mr. Garson: As the hon. member for Winnipeg North Centre said, these are all maximum penalties. Only once in a long while is the maximum penalty imposed, as a matter of fact. If you provided the ten-year penalty it would not necessarily follow that it would be imposed unless circumstances warranted it. If there is a general feeling that it should be ten years, I would not raise any objection at all.

Mr. Shaw: I have very much the same feeling as that expressed by the hon. member for Macleod. This is a most serious thing. Even though it falls short of rape, there is not much difference between the two, and the difference in those maximum penalties which are imposed under sections 136, 137 and 138 is too great. I for one would certainly urge the minister and the committee to give favourable consideration to the imposition of a ten-year maximum under this clause.

Mr. Garson: If either of the hon. members for Macleod or Red Deer would like to move that the penalty be increased I would certainly raise no objection; as a matter of fact I will support it. I think it is a point well taken.

Mr. Shaw: I shall gladly move that clause 140 be amended by deletion of the word "five" in line 26 and the substitution of the word "ten" therefor.

Mr. Enfield: Before this amendment passes I should like to say a word. First, under the old act the maximum penalty was four years. Do we know how often judges have imposed the maximum penalty under the old code? It might be helpful to know that. Second, does the making of the penalty longer or heavier create in the mind of a judge the implication that the crime is more serious? In other words, suppose we do make it ten; will we get any heavier sentences than those we have been getting in the past? It would be some help to know that.

Mr. Garson: I am afraid I could not give my hon. friend any reliable information. These cases are not reported in the law reports, unless some point of law is raised in connection with them. The prosecutions are all conducted by the provincial authorities. They would have the information within their possession and I could not pretend to give any accurate information.

[Mr. Garson.]

With deference, I do not think this is a case where we would need to be too much concerned with the point the hon. member has raised. I think that is a matter of opinion. My opinion is that the maximum penalty which is imposed by parliament is some indication to the judge as to how seriously parliament views the matter, and does influence him to some extent. But judges, being human beings, are affected in different ways by these provisions, and I cannot see that the increase of the penalty to ten years would do any great amount of harm in its effect upon the judge's discretion as to the seriousness of the crime. But it would give the judge a greater discretion in those cases where the crime committed was particularly heinous.

Mr. Nesbitt: I may be of a little assistance in this matter. Several years ago I had occasion to be prosecuting an offence of this nature and had to look up and try to find out what the usual penalties were. As I recall it, the average penalty handed out for this type of offence was between eighteen months and two years.

The Chairman: Is the committee ready for the question?

Mr. MacInnis: I believe that those who were charged with revising and consolidating the Criminal Code did give some considerable thought to the matter of penalties. Perhaps the Minister of Justice would not agree with me on this, but I believe the consensus is that they did revise many of the penalties upward. Where there was a change I believe more were revised upward than downward. After they have given their considered, and perhaps expert, opinion to this matter, I do not think we would be wise in changing it.

I do not believe that we can lessen crimes of this kind by increasing the sentences. The person who would be guilty of a crime of this kind would not be one who would be very likely to consider the law and decide just how far he could go without incurring a penalty. I would imagine that in cases of this kind the imbecility or the lack of normal mental equipment would not differ very much as between the two parties concerned, and that we would be merely punishing a person because nature had not given him the ability to understand right from wrong. I am very much opposed to increasing this penalty.

Mr. Shaw: May I point out two points that arise from the statement of the hon. member for Vancouver-Kingsway. In the first place, I recall that as members of the committee of this house reconsidering this