

RECOMMENDATION 19

The Committee recommends that legislation adopted by Parliament which is designed to enhance the equality of women and to stop violence against women contain strong Preambles acknowledging women's inequality in Canadian society and invoking the constitutional equality guarantees as the purpose of the law.

M. SECTIONS 276 AND 277 OF THE *CRIMINAL CODE OF CANADA*

The Committee is concerned with the preservation of sections 276 and 277 of the *Criminal Code*, one existing legislative initiative to combat violence against women. The striking down of these provisions by the Supreme Court of Canada would represent the perpetuation in legal doctrine and institutions of the social inequality which underlies violence against women. If women who are sexually assaulted must face brutal interrogation about their sexual history and reputation, they will be discouraged from reporting this type of offence and will be denied the measure of protection that could be afforded by our legal system.

Section 276 of the *Criminal Code* prohibits the leading of evidence regarding the sexual activity of the complainant with anyone other than the accused person, except in limited circumstances. The effect of the Ontario Court of Appeal decision in *Seaboyer* and *Gaymes* is to preserve section 276, but to allow trial judges discretion to set it aside in some cases, and to hear the evidence and decide when questions about the complainant's past sexual history will be allowed. The Committee is certain that Parliament had already considered all of the instances when such evidence should be allowed, and those instances are listed in section 276 of the *Criminal Code*. There should be no discretion left to trial judges to go beyond the list provided in that section.

Section 277 of the *Criminal Code* makes any evidence of the sexual reputation of the complainant inadmissible for the purpose of challenging or supporting her credibility. This provision has also been constitutionally challenged, but the courts have been more divided in their responses. Witnesses before this Committee advised that the courts, in striking down sections 276 or 277, have failed to weigh properly the value which is served by these provisions, that of promoting the personal security of women and their right to legal protection. The Committee feels that this objective formed the basis for the enactment of both these provisions and justifies Parliament's continued support for them.