

imprisonment. Without identifying cases, which I believe would be an abuse of my privilege to speak freely in this House, the requested incarceration, in more than one example of what some refer to as a political crime, has been lenient to the point of being questionable. There is at least the suggestion of political manipulation.

Law reports are devoted to sentencing and judges meet to discuss these reports. In many cases, the judiciary may already find itself limited because of what has transpired in the decision on how and where to prosecute.

In England, a study has been completed on discretion in prosecution. I have been told that the Law Reform Commission is conducting a study. Possibly it deals with the problem under discussion. However, I find it hard to believe that the officials in the Ministry of Justice have not at any time discussed, studied or written any communication dealing with a comparison of the application by the various provincial courts of federal laws.

Before this motion returns to the House for conclusion of the debate, I trust that a more serious examination will be made of departmental records. I hope to hear on some occasion that some studies, documents or papers have been found in the Ministry of Justice dealing with the subject which I find of importance, if only that I honestly find it difficult to concede that we can introduce certain types of bills in this House without first recognizing the manner in which they are likely to be treated in the various provincial courts.

I presume this debate will continue for the full hour this afternoon and that in some weeks ahead this motion may return for its concluding 40 minutes. I hope that before its return to the House there will have been a more thorough examination of the records of the Department of Justice, and that some of the documents to which I have referred and of which I have requested copies will be produced.

Mr. Ron Irwin (Parliamentary Secretary to Minister of Justice and Minister of State for Social Development): Mr. Speaker, the hon. member for Vaudreuil (Mr. Herbert) in motion No. 32 asks:

That an order of the House do issue for copies of all correspondence, minutes of meetings, studies and other communications of the Department of Justice relating to the comparison of the application by the various provincial courts of federal laws.

On February 18 I responded that there were no such documents which fitted that particular description. I commend the hon. member for Vaudreuil for bringing this matter to the attention of the House because variation in the application of justice and the laws of Canada is a serious problem which is continuously under debate and discussion.

● (1720)

I think the hon. member does understand, but I would remind him, that part of the problem goes directly to the British North America Act and the division of powers. For instance, under Section 91(27) the federal government is responsible for criminal law. This reads:

Application of Federal Laws

The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.

That jurisdiction belongs to the federal government.

Penitentiaries, dealt with in the next part, fall within the scope and jurisdiction of the federal government. It states:

The establishment, maintenance and management of penitentiaries.

On the other hand, the provinces have the administration of justice under Section 92(14), which states:

The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

As far as incarceration is concerned, under Section 92(6) the province is responsible for:

The Establishment, Maintenance and Management of Public and Reformatory Prisons in and for the Province.

What it means, and I do not know how this was developed historically, is for terms of imprisonment over two years the federal government is responsible, and for terms of imprisonment under two years the province is responsible.

While the historical documentation surrounding the development of the division of powers at the time of confederation is not clear, there is a general consensus to the effect that the fundamental distinction of constitutional jurisdiction in the field of criminal justice was aimed at developing, on the one hand, a consistent and nationally applicable set of laws and, on the other hand, allowing for the application of those laws in a way sensitive to the variation of conditions in the provinces and regions.

Besides this constitutional distinction there is a distinction periodically in substance and a distinction periodically in procedure. On substance, if I might through you, Mr. Speaker, give an example to the hon. member, in the criminal law on obscenity we refer to what is called the "community standard". Community standards vary from community to community across this country, and if not from community to community, certainly from region to region. Let me give an example in respect of procedure. The use of the grand jury varies from province to province.

As much as we want uniformity, for example, in sentencing, there is a wide discretion on the individual judge, and I suggest rightly so. What happens is that in most sections there is a maximum term in the Criminal Code and the sentencing judge has a discretion to look at the nature of the offence, whether there is a chance of rehabilitation and what should be the deterrent, and then decide whether there should be a conditional discharge, an absolute discharge, a fine, incarceration or several other different types of sentences now under consideration and being actively pursued.

There are certain crimes which are more prevalent in one area than another. This is evident from the month-end reviews by provincial court judges in Ontario. Provincial court judges will indicate that in a particular area there have been so many thefts, so many impaired drivers, and the number varies from region to region. A judge may want to have a specific deterrent in a particular area, so there should be some flexibility.