

*Application of Federal Laws*

laws. In the case of family law, many women have expressed strenuous objection to a proposed transfer which would see the federal government passing jurisdictional responsibility to the provinces. The federal government has indicated its willingness to hand over these powers, and at least the two provinces of Quebec and Ontario have indicated their desire to take over this responsibility.

As the law applies to divorce, this could create a wide variation in treatment from province to province. Even today, with only the one federal law, there is room for a great deal of variation. It is not clear just how much variation there has been because no attempt has been made to quantify cases on a provincial basis.

Although our judges are guided by a doctrine of precedents, consistency is generally maintained only within a given jurisdiction. No province is bound by the case law of another province.

The difference in the manner in which a province proceeds in certain cases can accentuate the difference in treatment between provinces of what are essentially similar cases. The interpretation of the Divorce Act is an example. First, there has to be a case in order to be able to proceed. The making of a case often requires the co-operation and assistance of provincial law enforcement authorities. The degree of willingness of the provincial police forces to allocate personnel will, therefore, be a factor in the ability of a person to establish a reasonable case in court.

At the present time discussions are continuing in an effort to regulate some disagreement in the various provinces which use the Royal Canadian Mounted Police as their police force. At least in those provinces, there is one police force which, presumably, acts in a reasonably consistent fashion. Of course, each of the two largest provinces of Ontario and Quebec, which contain two-thirds of the population of this country, has its own provincial police force. Each of those two police forces is under the control of the provincial authority in those respective provinces.

● (1710)

We must not forget that expenditure of money is almost always necessary in order to proceed by legal process. Once again, the willingness or unwillingness of the provincial authorities to allocate funds at the political level has a big influence on the ratio of successful cases, certainly for poorer persons. Apparently the differing attitudes of the provincial governments toward their responsibility for law enforcement will establish a variety of standards of enforcement, prosecution and sentencing from coast to coast in Canada.

Let me be clear. I am not arguing against variations of provincial treatment. Likewise, I am not arguing for regional variations. I am only pointing out this afternoon that they do exist, are not tabulated—at least according to the response I got to my motion—and most surely should be considered in the formulation of federal legislation.

This week, for example, proposed changes to the Narcotic Control Act have been reported in the press. Apparently

introduction of an amending bill was delayed until after the March 19 Ontario provincial election because of fears the Conservative government might turn it into a campaign issue. The only strong opposition to reduction of penalties has come from the Ontario government.

Under the Narcotic Control Act a person can get a maximum seven-year sentence if possession is treated as an indictable offence. Most of the 27,000 individuals convicted of possession in 1979 were given absolute or conditional discharges or light fines. Jail sentences are still imposed occasionally. Note that in the case of marijuana, the intention will be to limit the penalty for possession.

The federal government recognizes its responsibilities and its powers to ensure that the punishment for a transgression can be limited. Whether one agrees or disagrees with the subject matter and its handling, there is an inherent feature of equalization in this measure in that it would establish a far more moderate maximum penalty. The argument cannot, however, be applied to the minimum penalty with the same assurance of equality of treatment.

If I can speak briefly on the abortion issue as an example of inequality of application of federal legislation, it is abundantly apparent that in the province of Quebec the attitude of the Quebec government towards abortion on demand can be cited as very liberal, many will say far too liberal.

One can argue that it is a problem caused by the refusal of hospitals to establish abortion committees. However, that does not, or at least theoretically should not, give provincial law enforcement authorities the permission or the right to shut their eyes to what many people believe to be widespread illegal activity.

Let me reiterate that the raising of this particular issue is not an attempt by me to argue in this debate the pros and cons of the abortion issue, but simply to point out that one piece of federal legislation is viewed and treated in a completely different fashion in two neighbouring provinces. Such variation in treatment was never envisaged in the original legislation.

It is also appropriate to cite as an example today the decision of the dissenting provinces to proceed first in the Manitoba court. This had nothing whatever to do with its central location. It was, however, believed to be the court most likely to produce a favourable decision for the provinces that were fighting the constitutional proposal.

Then the dissenting provinces chose to proceed in Newfoundland and achieved a result which they would readily admit, I am sure, might not apply in the other provincial courts. Once again, what is accented is regional disparity in the administration of justice. I should reiterate, and I think it is important to keep saying this, that I am not arguing for or against such regional disparity. I am only asking in this motion that these differences, which I am trying to illustrate do exist, should be quantified.

A provincial prosecutor has certain discretion to decide whether to charge, at what level to charge and, in the event of conviction, to suggest to the judge conditional release, a fine or