

When questioned in committee by myself, the deputy minister of justice claimed that, despite all the time which has passed, his officials still have not prepared any draft legislation. The situation is becoming intolerable in Vancouver's west end. There is a pressing problem in many other cities across Canada; Edmonton and Calgary are two examples. There are no more excuses left for inaction. The government must make changes to the legislation now.

The second issue I should like to address is the issue of sexual assault, although I feel it has been more than adequately covered by the hon. member for Bow River. According to a study commissioned by the Canadian Advisory Council on the Status of Women, the original meaning of the word rape was to steal. The whole idea was that women were the property of men; their chastity was prized because it guaranteed the legitimacy of heirs. In Babylonian times, rape was punished by death and restitution was made to the father of the victim since she would no longer fetch any money as a bride. A married woman who was raped was put to death along with her assailant, on the grounds that she shared in the adultery.

In medieval England, propertied heiresses were sometimes kidnapped and married by unpropertied knights. If the woman in question declined to have him tried, which happened if her family considered the match beneficial and in its interests, he did not face the normal penalty of death. Interestingly enough, rape of non-propertied women such as virgins, nuns, widows and concubines was considered to be a crime but convictions were rare.

The current law is criticized because some of these medieval attitudes remain in it. Critics say that women are still treated as the property of men, and moral judgments regarding the value of virginity and chastity underlie it. The law calls the most serious offence "rape". No crime exists if the woman in question is found to have consented to the act. She must prove that force or threats were used to carry out the act as stated in the charge. Lesser penalties fall under the subject of indecent assault. These are separated into attacks on women and attacks on men. Some sections specify that a woman must be of a previously chaste character for the rape to be considered a crime.

Other criticisms of the law are that assaults on both females and males are not treated equally. The law only deals with the assault of a female by a male. Equal protection under the law is not extended to married women. The law does not recognize sexual assault between marriage partners. Great weight is placed on the issue of consent or the lack thereof on the part of the victim. It has meant that the victim's reaction to the assault has been extremely important. The violent nature of the crime has been downplayed. The attitude is that some men seem to believe that resistance by women is something to be overcome, that it is not to be taken seriously. There is the myth that women want to be overpowered, so sympathy may be evoked for the accused at the expense of the victim in the course of the trial. This concept was reinforced by the infamous Pappajohn case before the Supreme Court in June, 1980, when Mr. Justice Dickson ruled:

Criminal Code

The facts of life not infrequently impede the drawing of a clear line between consensual and non-consensual intercourse... It is easy for a man intent upon his own desires to mistake the intentions of a woman or girl who may herself be in two minds about what to do.

Of course, that was the case and the statement which infuriated women's groups across the country. Critics of this kind of interpretation argue that "no" means "no", and that consent is not possible if force is used.

Other criticisms of the present law are that the previous sexual history of the victim may be introduced as evidence during the trial. The defence may try to prove that the victim has been sexually active in the past because she may then appear to be immoral. Her credibility as a witness is then diminished. Furthermore, if she has consented to sex in the past, it may be argued that she consented in this case.

In 1976 the Criminal Code was amended so that the use of prior sexual conduct on the part of the victim was limited. Prior notice must be given that the defence intends to raise this issue and the judge must decide in camera whether the evidence is germane. Before 1976, judges were required to warn juries about the dangers of convicting someone on the basis of uncorroborated testimony. Since 1976 they have not been required to do so but may continue to do so.

In the time remaining I should like to deal with some of the objectives of Bill C-53 dealing with this aspect. In the new bill, the crime of rape is replaced by sexual assault. Attempted rape and indecent assault are also covered by these categories. The emphasis is on violence and aggression. The sexual aspect is only part of the package. The consent issue is dealt with as in conventional assault cases. Consent is not present if the victim submits in the face of threatened or actual force. Prior sexual conduct is limited in use during the trial. If the victim raises this issue, the defence may pursue it. The accused may be allowed to argue that he honestly believes consent was present and if he can prove it to be reasonable, he may be acquitted.

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Thus, those who make stupid mistakes, if they are honest mistakes, will not be convicted of crimes they were unaware of committing. This obviously is a controversial section since women's groups think that even this is unacceptable—that it may still be used to invoke sympathy for the accused at the expense of the victim.

Further, under the new bill men and women will be treated equally. That is one of the aspects which we would like to have extended to the matter of soliciting. Both may be charged with, and both may be viewed as victims of, sexual assault. Finally, no exemption will be made for husbands. Spousal immunity will be eliminated. As the hon. member for Bow River has indicated, some people view this as an attack on the family.

There are problems with Bill C-53 besides the deficiency that I dealt with in the area of prostitution. Many people criticize it for the vagueness of the term "sexual assault". Some people argue that more than two categories of sexual assault should be specified and some argue that the sexual