

Government Orders

The majority of women who find themselves before the bench are unemployed, on welfare, or possibly working part time. Most judges are unfamiliar with the conditions in which the women appearing before them live. Ninety per cent of women serving a prison sentence have been found guilty of minor property offences, such as shoplifting. They are also sent to jail for non-payment of fines.

It is clear that women in the prison system are a particular clientele. They are not usually there for violent crimes, which brings me to one of the great weaknesses in this bill. Clause 718 identifies one of the main purposes of sentencing as the maintenance of a just, peaceful and safe society. This is a very worthy goal but may be difficult to achieve. And in order to achieve it, we will have to get rid of the gender and class bias of some of our judges. Our magistrates will need some very clear guidelines.

It is surprising that those who drafted the bill did not bother to consider the characteristics of the accused at the time of sentencing. In fact, except in the case of aggravating circumstances associated with crimes motivated by hate or involving abuse of trust, nowhere does Bill C-41 oblige the judge to consider the degree of indigence or the gender of the accused.

Women who come before the courts tend to be different as a group from male offenders, one factor being the type of offences women commit. Their behaviour is not the same and their goals are different as well.

If, at the time of sentencing, the judge makes no allowance for these differences, his decision will inevitably be unfair. Equity does not mean equal treatment. Two identical sentences for the same offences do not carry the same stigma for men and women.

Many women who have been in trouble with the police have already experienced very serious problems as a result of poverty, spousal abuse, family breakup and the fact that in most cases, women end up with the responsibility for a family.

Judges must be made aware of these factors. This problem will be solved when we have as many women as men on the benches of our courts of justice. It is up to the Minister of Justice to administer the remedy.

• (1550)

One of the cornerstones of the bill is the alternative measures for adult offenders. If the province provides for a system of alternative measures, instead of being prosecuted, the adult offender would be ordered to participate in a training program or authorized community services. The conditions and restrictions that apply to the

alternative measures program proposed in the bill are almost identical to those in section 4 of the Young Offenders Act.

For instance, offenders will have to accept responsibility for the act or omission and fully and freely consent to participate in such a program. The Crown has full discretion to proceed with prosecution of the offence if it feels there is sufficient evidence and the interests of society so justify.

However, and as usual in the case of federal legislation, it will be up to the provinces to implement these alternative measures. In fact, it will be up to the attorney general of the province to set up a system of alternative measures. Provincial legislation from coast to coast does not necessarily guarantee uniform implementation across the country.

There is no provision for implementation in this bill. Because the federal government conveniently chooses to ignore the need for mechanisms to implement its own legislation, the onus will be on the provinces to implement the system, and they will have to deal with all the start up problems.

This kind of implementation will create provincial and territorial disparities which may cause other provisions of the bill as well as the bill's philosophy to be ignored. In fact, how can we expect to have sentencing parity across the country, if some regions have no alternative sentencing system or are unable to put one in place? Someone who commits an offence in a region where there is no alternative sentencing will not be able to use it, and this part of the bill then becomes ineffective.

Offenders who happen to be in the wrong province will have different sentences. For similar offences committed in similar circumstances, some people will get different sentences, which goes against the principle set forth in clause 718.2.

The range of sentencing available to the judge includes the suspended sentence. Under this system, it is possible to grant individuals a stay of sentence and to allow them to do their time within the community, provided they respect the conditions imposed by the court. Such a stay will only be available to individuals declared guilty of a crime for which no minimum prison sentence is set and sentenced to less than two years.

Suspended sentences only confuse matters more. Judges already have the discretion to suspend the passing of a sentence and to put someone on probation for a specific period. A suspended sentence will have the same effect as suspending the passing of a sentence and putting someone on probation. Same difference. The Minister of Justice would have been better advised not to waste his time reinventing the wheel.