

*Status of Women Study*

man could read and act upon it, because really it is the bible for Canadian women: it outlines some of the rights to which they are entitled.

As I was saying, if Freud had been here today he would have heard the hon. member for Greenwood (Mr. Brewin) say that it had been enunciated in the Declaration of Human Rights that all human beings are born free and equal in dignity and rights. It is really our attitudes as Canadians which determine whether we are civilized in making women equal in dignity and in rights with men. The hon. member for Greenwood dealt in a broad sweep with the recommendations contained in the report on the status of women. The speech by the hon. member for Vancouver-Kingsway (Mrs. MacInnis) centred upon day-care centres and touched lightly on abortion. The hon. member for Winnipeg North Centre (Mr. Knowles) dealt with pensions and employment of public servants. I would like to deal with chapter 9 of the report which sets forth recommendations regarding criminal law and women offenders. These number 13, running from Nos. 150 to 163, and most of them concern federal jurisdiction. In this chapter it is set forth as follows:

The criminal law of Canada is built upon a nineteenth century philosophy of the role of punishment in the control of antisocial behaviour... Canadian criminal law also reflects a nineteenth century view of the status of women.

It points out that women as criminal offenders have a very low ratio with regard to the number who are apprehended and convicted. It points out that only 12.5 per cent of all persons convicted of indictable offences constitute women, a ratio of one to eight. It says that women are rarely convicted of violent offences and that convictions for possession of drugs, vagrancy and attempted suicide involve a higher proportion of women than other offences committed by women. It says that offences by female juveniles usually involve behaviour associated with disorderly conduct and not the violent behaviour often found among male juvenile offenders. This chapter also points out some of the grave injustices which women have suffered under the Criminal Code. With regard to criminal sexual behaviour of women, it says that women involved in criminal sexual behaviour have been either victims of men's assaults, or sexually exploited by men for material gain. This has been clearly shown in the Criminal Code. The best example is prostitution. Prostitution appears to apply only to the female. Prostitution itself is not a crime. Prostitutes are controlled by the vagrancy provisions of the Criminal Code. Section 164(1)(c) provides:

Every one commits vagrancy who being a common prostitute or night walker is found in a public place and does not, when required, give a good account of herself.

Thus, the law prohibits not prostitution but being unable, it found in a public place, to give a good account of oneself. Prostitutes are ordinarily charged with vagrancy, not prostitution. The man who accepts the solicitation of a prostitute is not prosecuted. A man commits an offence only if he is found in or keeps a bawdy house. Convictions for prostitution open the door to arbitrary application of the law by the police and the setting

[Mr. Gilbert.]

up of traps to arrest the so-called prostitutes. Under the Canadian Criminal Code, prostitutes are charged, not for what they do but for what they are considered to be: "Once a prostitute, always a prostitute" appears to be the rationale of the law.

● (9:20 p.m.)

Prostitution is fundamentally a social not a criminal problem, and a criminal conviction makes a prostitute's rehabilitation more difficult. Therefore, it is recommended that the section dealing with prostitution under the vagrancy section of the Criminal Code should be repealed. The report also states that if there is evidence that prostitutes are disturbing the peace as defined by the code, they should be charged under that section and not the vagrancy section. Any modification of the law should be followed up with facilities and programs designed to rehabilitate adult female prostitutes. The establishment of halfway homes and training for work which will enhance their dignity are methods of rehabilitation. Section 164 (1) (a) of the Criminal Code also adversely affects women. It provides as follows:

Everyone commits vagrancy who not having any apparent means of support is found wandering abroad or trespassing and does not, when required, justify his presence in the place where he is found.

This provision is directed to the homeless and transient male and female in need of shelter. Most charges of vagrancy are not contested, and once convicted these people have criminal records it makes their rehabilitation and reformation much more difficult. Therefore, they recommend that section 164 (1) (a) be repealed. This deals with vagrancy.

Another section in the report concerning the Criminal Code is that which differentiates sharply between male and female in many sexual offences. It is very discriminatory. In four sections of the code the presumption of "chaste character" of a girl—up to 21 years of age—forms one of the basic elements of the offence. The onus of proving that the girl was not previously chaste rests upon the accused. This does not mean that the girl has to be *virgo intacta* but, rather, points to "those acts and disposition of mind which constitute an unmarried woman's virtue or morals".

It is unjust to define a crime on the basis of the moral character of the victim. A girl's reputation, her physical purity, her conduct in the past, her conduct on the occasion, do not determine, although they may influence, the matter. It encourages the accused to manufacture evidence and force her to defend her virtue. Whether she is chaste or not, she should be entitled to the protection of the law. Therefore, they recommend that the words "of previously chaste character" be deleted from all sections of the Criminal Code.

Age raises problems because the criminal responsibility of the offender often depends upon whether or not the victim was under age. For example, a child under 14 cannot give valid consent to sexual intercourse or indecent assault. Age is important in seduction cases. The law states that only men or boys can seduce women or girls,