

*Young Offenders Act*

Persons Act." If the terminology, "The Children and Young Persons Act" is offensive to the Solicitor General, let us call it the "Young Persons Act." The reason for suggesting the change is that when you call it the "Young Offenders Act" this has a condemnatory aspect. But if we call it "The Young Persons Act" this expresses concern rather than condemnation. I would ask the Solicitor General to give full thought to changing the title of the bill.

The Solicitor General went into detail on the outlines of the bill and deftly attempted to demonstrate what a great improvement it is over the Juvenile Delinquents Act. Mr. Speaker, I would direct your attention to the philosophy of the bill, which is contained in clause 4, which reads:

This Act shall be liberally construed to the end that where a young person is found under section 29 to have committed an offence, he will be dealt with as a misdirected and misguided young person requiring help, guidance, encouragement, treatment and supervision and to the end that the care, custody and discipline of that young person will approximate as nearly as may be that which should be given by such a young person's parents.

On the face of it, that looks quite laudatory, but it is a shortchanging of the philosophy which is contained in the Juvenile Delinquents Act. In effect, it includes most of the words in section 38 and section 3(2) of the Juvenile Delinquents Act, with two important, major exceptions. Section 38 of the Juvenile Delinquents Act reads:

This Act shall be liberally construed—

In fact, it contains most of the words in clause 4, but it has this one important exception:

—every juvenile delinquent shall be treated, not as a criminal—

The inference in this bill, because the words "not as criminal" are missing, seems to be that we are going to deal with young people as criminals. Is that the case?

Section 3(2) of the Juvenile Delinquents Act indicates how the child shall be dealt with. It provides that where the child is adjudged a juvenile delinquent:

—he shall be dealt with, not as an offender, but as one in a condition of delinquency—

So, Mr. Speaker, section 38 of the Juvenile Delinquents Act provides that we shall not deal with a person as a criminal, and section 3(2) indicates we shall not deal with a person as an offender. Now, this bill, the Young Offenders Act, tags a person as an offender. In actual fact, it is the Young Offenders Act, and we are to treat the offender like a criminal.

As the minister said, Mr. Speaker, the Juvenile Delinquents Act was passed in 1929 and 40 years have passed with no major amendments to it. It could be said that the Juvenile Delinquents Act of 1929 was an advanced and enlightened document. Now, it can be said that the Young Offenders Act of 1971 is retrogressive, unenlightened, and strikes right at the principles and philosophy set forth in the Juvenile Delinquents Act.

May I direct the attention of hon. members to what was said by the commissioners who prepared the report

[Mr. Gilbert.]

with regard to juvenile delinquency which was tabled in February, 1966? They said that criminal law has as its purposes deterrence, rehabilitation, incapacitation, and retribution. The goal of juvenile court judges should be to assist the young offender to become a law-abiding citizen. The treatment, therefore, should be disposed to further his education and re-adjustment. The treatment or punishment should not be determined on what he has done but rather on what is necessary and useful for him. Deterrence must also enter into the judge's decision. Therefore there is a difficult distinction between treatment and punishment.

Let me point out the difficulty that the juvenile court judge has. If making an offender a law-abiding citizen is the objective, and rehabilitation is the goal, is the sending of an offender to a training school the answer? Is the imposition of a fine the answer? Should the judge be meting out treatment or punishment? Are the feelings of the child relevant? For example, if one child is sent to a training school, another child is placed on probation, another one is fined, and still another one under this bill can be absolutely discharged, all of whom have committed exactly the same offence, where is the treatment and where is the punishment? These are the words contained in the report, and they sum up the problem in one paragraph.

The difficulty is not in the basic philosophy of the Juvenile Delinquents Act, but in the failure of society to give to the juvenile court adequate resources to fulfil the aims of the philosophy, the philosophy of wanting young people to become law-abiding citizens and directing treatment with regard to their rehabilitation.

I have mentioned that the English act is called the "Children and Young Persons Act, 1969," and it behooves me to direct the attention of hon. members to the philosophy set forth in it. It sets forth the care and other treatment through court proceedings with regard to children and young persons. Section 70 defines a child as a person under 14 years of age. A young person is defined as one who has attained the age 14 but is under the age of 17. Section 4 of the act provides that no person shall be charged with an offence, except homicide, by reason of anything done or omitted while he was a child. In other words, if he is a child, and therefore under 14 years old, he cannot be charged with an offence.

• (4:50 p.m.)

In Canada, we say that a child ten years old or older can be charged with an offence. Mr. Speaker, why is there this gap between the 10 years of age provision in Canada and the 14 years of age provision in Great Britain? Are the English that much more civilized than we are in determining who is a child and who is a young person? In another section of the English act the conditions are set out under which a young person may be brought to court. Subparagraph (a) of subsection (2) of that section lays down these conditions: "his proper development is being avoidably prevented or neglected or his health is avoidably impaired or neglected or he is being ill-treated." It goes on to say in subparagraph (b),