

Criminal Code

absence of a preliminary hearing. I think it hamstring a prosecutor. I am deeply concerned also about a number of other substantive measures which have been referred to in the house in the last few days. All the same, I think the bill ought to pass. We must not forget the pledge we made to the Canadian public on June 25. The Canadian people voted this government in with a majority, and we are duty bound to bring in the provisions of this bill. If we do not, we shall have broken our pledge to the people. And keeping our pledge to the people is as much a matter for the individual conscience as the way we vote on any one of the provisions of the bill.

Some hon. Members: Hear, hear.

Mr. Hogarth: I was interested in the comments of several hon. members. I shall take up what they said in greater detail when the bill goes to committee. The hon. member for Halifax-East Hants (Mr. McCleave) today, and the hon. member for Yukon (Mr. Nielsen) by implication, pleaded for a more enlightened attitude towards alcoholics. The hon. member for Yukon was concerned about the native peoples of the Yukon Territory who are afflicted with the all too prevalent malady of alcoholism. The malady is not confined to native people only. It is prevalent in British Columbia as it is in the rest of Canada. Yet in the metropolitan areas of British Columbia, alcoholics are not considered criminals any more. We consider they are afflicted by a malady over which they have no control. We recognize that and deal with them accordingly.

If we deal with alcoholics that way, should we not also deal with homosexuals in a similar way? Should we treat the homosexual as a criminal? Although the homosexual's affliction is not the same as the alcoholics in kind, it is in substance. The homosexual has no control over his behaviour. He is either born that way or develops his sickness at an early age. He cannot change apparently; so why put him in jail. If anyone were to say about homosexuals, "Put them in jail" they would be advocating taking a step back into the dark ages. Although we have talked a great deal about the homosexual's perversions, no one so far as I am aware has spoken about perversions in sexual conduct between males and females. The only case of sodomy in which I was involved during my 20 years of practice concerned a relationship between a male and female.

[Mr. Hogarth.]

Mr. Lewis: Will the hon. member permit a question. May we take it the hon. member was involved as the lawyer?

Mr. Hogarth: I was involved as a lawyer. I will tell the hon. member about the case later. It was fascinating. In any event, I wish to say that immoral as these private relationships may be, I do not see why any statute should classify them as crimes.

There is one aspect of the bill in which hon. members may be interested and about which I am concerned. I am wondering whether amendments to the Criminal Code dealing with prostitution contain provisions which apply to systems of homosexual prostitution. In my own mind I am not satisfied that the soliciting and vagrancy clauses, as well as living off the avails sections of the act, will be found in our courts to have application to systems of male homosexual prostitution. This is something we ought to bring to the minister's attention when the bill goes to committee.

• (9:10 p.m.)

A great deal has been said about the changes to our abortion laws. I concur heartily with the remarks of the hon. member for Windsor-Walkerville (Mr. MacGuigan), that the amendment is not merely clarifying the existing law. On the other hand, I have never accepted reasons for the amendment as put forward by Jack Lederman in the *Law Quarterly Review*. Neither do I accept some of the reasons for the amendment as advanced by the Minister of Justice. A doctor or, for that matter, anyone else who is accused, can always say, "I had to operate on this woman so that she would not die. I had to preserve her health." That defence is still preserved under section 7 subsection 2 of the code. In other words, all common law defences are preserved. It must be remembered that the indictment would read, "Did unlawfully procure the miscarriage," etc. It would therefore be up to the court and jury to decide whether the abortion was necessary under the circumstances. The judge will decide whether or not an offence has been committed. In addition, I find it impossible to accept the idea that hospitals in the country should perform these operations under a diagnostic title, such as diagnostic curetage. Some of the hospitals are ridiculous enough to suggest that they are fertility examinations. Hospitals are performing these operations, and they should be stopped. I cannot see any justification for