

Criminal Code

both different in time and in circumstances. With regard to the allegation that homosexuality damages family life, no doubt there have been cases where homosexual conduct has broken up marriages and the family unit; but again, as the Minister of Justice said, so have adultery, fornication and lesbian behaviour.

I think that people who express themselves in a high moral tone should exercise compassion, understanding and patience with regard to the problem and should not want to treat these people as criminals. But it seems there is involved in this question an almost Old Testament-time vengeance that pervades their minds and souls and they invoke the wrath of the old gods.

• (4:20 p.m.)

Mr. Dinsdale: We want therapy.

Mr. Gilbert: The next problem is that of age. The age set forth in the bill is 21. The question of age is very difficult. At what age is a man to be regarded as an adult? Is it 16, 18, 21, 25 or possibly 30? Let us look at it. There are certain requirements with regard to determining the age at which a person becomes an adult. First, it is necessary to protect young and immature persons. Is a person at the age of 16 or 18 really able to stand on his own feet, or do we have to wait until he becomes 21? It is a rather difficult question. It differs from person to person, as the hon. member for York South (Mr. Lewis) said. But we all assume that at the age of 16 a person is still quite young and immature.

The second standard is the age at which a man's sexual development can be said to be formed. Medical evidence, according to the Wolfenden report, indicated that there may be a stabilization period at the age of 16 in the sexual development of a person.

The third standard is the definition of an adult as a person responsible for his or her own actions. As we know, we consider a person 21 years of age or over legally able to enter into a binding contract.

The fourth aspect is the consequences which follow the fixing of a particular age. The Minister of Justice, in his wisdom, fixed the age of 21 quite arbitrarily, probably because it is the legal age of contractual responsibility, and this may be the best possible age at which the maturity of a person is established. One would hesitate to say that a person is mature at the age of 16 or 18. There is greater possibility of that at the age of 21. These are the factors that have been taken

into account by the minister, and I think he is to be commended for choosing the age of 21.

I could not help but smile when I heard some members of the Progressive Conservative party trying to make a distinction between a person 21 years of age and a person 20 years, 11 months and 30 days of age. A person who is 21 years of age or over commits no offence, while a person under that age commits an offence. The same rule would apply if the age was fixed at 16 or 18. If we fixed the age at 18, a person 18 or over would not be guilty of an offence but a person 17 years, 11 months and 30 days of age would be guilty of an offence. The minister arbitrarily chose the age of 21, I assume, on the basis that it is the age of contractual responsibility and also a likely age at which young people reach a stage of mature judgment.

The function of the law is to safeguard those persons who need protection by reason of their youth or some mental defect. Homosexuals who tamper with young persons under 21 years of age should be considered criminals. It is also a function of the law to preserve public order and decency, and therefore homosexual behaviour which takes place in public should continue to be dealt with by the criminal law. Let us make no mistake about the fact that new section 149A deals with consenting adults over the age of 21 who commit sexual acts in private.

I had hoped that the Minister of Justice would bring forward other procedural amendments concerning prosecution by way of indictment or by summary conviction and would have toned down some of the provisions so that they would be more in keeping with the practice and experience of the courts of the day. But I am satisfied that when we proceed to a total revision of the Criminal Code the minister will take these other factors, as suggested in my amendment which was ruled out of order, into consideration and that at that time he will make the necessary changes.

I hope that we as mature Canadians will be able to develop the idea expressed by the hon. member for Brandon-Souris that these people should have all the psychiatric help which can be provided. We must remember that many of them are very reluctant and sometimes not willing to accept psychotherapy as a treatment for this problem.

May I say in conclusion that I am opposed to the amendment put forward by the hon. member for Sainte-Marie (Mr. Valade). I am