

Criminal Code

● (2:50 p.m.)

There are no exonerating words of any kind. The Bourne case in England, which established therapeutic abortion in that country, was based on a different statute, different by only one word, unlawful, but it happened to be the word which the court fastened on to uphold therapeutic abortion. The word "unlawful" is not now in section 237. I submit that the law is as stated by Dr. J. J. Lederman, as set out in 1963 *Criminal Law Quarterly*:

The law of Canada contains no provision for lawful abortions in any circumstances... Even where the life of the mother is threatened by the continuation of her pregnancy, and even when consultations are obtained confirming this threat to the mother's life, and even when all consents to the operation are obtained and valid, and even when the operation is performed by a qualified and registered doctor in a recognized hospital—even when all these conditions have been fulfilled, an abortion performed would appear to be, in the present state of the law, as much a crime as any "criminal" abortion.

I believe this clearly states the law as it is now.

The fact that the law now proscribes all abortions makes for a grave situation when probably at least half the people of Canada believe that abortion is morally right, and when abortion is freely carried out by the majority of the members of the medical profession involved in prenatal care. The difficulty is compounded when the Attorney General of the most populous provinces is reportedly on record that he will not prosecute violators of this law. When a conviction for an abortion as presently practised in our hospitals is so repugnant to a large number of Canadians that no prosecution takes place, I think we must admit that the law as it stands is completely unenforceable. If we were to allow this legislation to continue, not only would the law be dead in this area but disrespect for the law would be engendered and might go far toward breaking down respect for the law in general. In some part this has already occurred. The public good is not served by allowing this situation to continue.

I therefore reluctantly come to the conclusion that an absolute prohibition of abortion is no longer feasible. The proposed amendment is not a mere clarification of the present law. It is a reform of great moment. What it does is bring the law into accord with medical practice and popular expectation. For practical reasons I therefore am prepared to accept a limited degree of abortion.

[Mr. MacGuigan.]

I do, however, remain concerned about the language by which the proposed exception is to be recognized. In the light of my theoretical conclusion that there should be no change in the law, which I have varied only because of the impossibility of enforcing the present law, I believe it is incumbent upon us to define the amendment with extreme care. I am not persuaded that the bill now before us defines the exception with sufficient exactitude. I would prefer to see a recommendation that the danger to the mother's health should be a direct and serious threat. I therefore want to recommend in committee the insertion of the words which were in the report of the committee on health and welfare last spring: "seriously and directly impair the health of the mother".

With this qualification I accept the bill with enthusiasm. I believe it marks a great step forward in criminal law. I congratulate the Minister of Justice and his predecessor, the present Prime Minister, for their initiative in bringing it forward and in thus adjusting the law to the conditions of today.

Mr. H. Russell MacEwan (Central Nova): Mr. Speaker, I think the bill before us is a most important one. I have listened to the debate fairly closely. I have agreed with some of the points made and have not agreed with others. May I say first of all that the bill is a far-ranging one. It certainly gives one who has not had too much practical legal experience, at least during the years I have been in the House of Commons, an opportunity to refresh one's memory on various parts of the Criminal Code and criminal law in Canada today.

I was glad to note in the remarks of my friend the hon. member for Calgary North (Mr. Woolliams) that the first code was adopted under Sir John Thompson, a native of my province, an outstanding leader of the Bar, and a parliamentarian who would have contributed even more to his country had he not been struck down after having served for a relatively short time in the parliament of Canada.

Many important points have been made in respect of this bill. Certainly one must look at it from his own point of view. Undoubtedly we will hear many speeches on the bill and will hear questions asked before the Standing Committee on Justice and Legal Affairs. As was pointed out by the hon. member for Calgary North, one's view depends a lot on the person himself, his upbringing, his religious background and his dealings with the public.