

*Criminal Code*

reference to hypothetical explanations of the history of other peoples in ages distant in time and different in circumstances from our own.

With respect to the second contention that this type of conduct has damaging effects on family life, that homosexual behaviour between males has a damaging effect on family life, the committee found—and I quote:

—this may well be true, and deplored “this damage to what we regard as the basic unit of society”.

I deplore it too. However, the committee went on to say:

We have no reasons shown to us which would lead us to believe that homosexual behaviour between males inflicts any greater damage on family life than adultery, fornication or lesbian behaviour. These practices are all reprehensible from the point of view of harm to the family, but it is difficult to see why on this ground male homosexual behaviour alone among them should be a criminal offence.

Here we get down to the relationship between law and morals again. We do not condone adultery, yet it is not a crime. We do not condone fornication, yet it is not a crime. This type of private diversion from what we would consider moral behaviour has remained outside the purview of the criminal law, and I do not believe that the imposition of the criminal law against this type of behaviour would cure it. Neither do I believe that the imposition of the criminal law against the type of behaviour contemplated in this clause, however reprehensible it may be to most people in this house and in this country, would cure the illness or conduct about which we are talking.

I want to deal briefly with the arguments of the hon. member for Calgary North (Mr. Woolliams). The hon. member used to support his contention an opinion written by Dr. Alan Mewett, a very respected professor from the University of Toronto school of law, whose testimony we had the advantage of hearing before the committee, thanks to the intervention of the hon. member. The hon. member suggested that under the proposed amendment bestiality could be lawful. I should just like to read the clause to Your Honour.

Sections 147 and 149 do not apply to any act committed in private between

- (a) a husband and his wife, or
- (b) any two persons—

I agree with the hon. member that there is no certainty in the law. I agree with the hon. member that he does not have to take my opinion of the law. As a matter of fact, I am appointed to this post not to interpret the law

but to try to administer justice, and I take my views from as wide a selection of legal authority as I can, particularly from the law officers of the Crown.

I suggest to the hon. member that the opinion he advances, supported as he is by Professor Mewett, is not widely shared. As the hon. member for Cochrane (Mr. Stewart) suggested to us yesterday, it really does not take a lawyer to distinguish between the word “person” and the concept of bestiality. Therefore I would say to him, with all the respect that I have for him as a result of our friendship over the years, that new section 149A must be construed as referring to those acts that are mentioned in sections 147 to 149 other than bestiality. To construe clause 7 in any other way would be to reduce the ordinary use of language to an absurdity.

May I thank you for your indulgence, Mr. Speaker. I appreciate that hon. members opposite have suggested in rather strong terms that law and morality ought, where possible, to be synonymous, public law and strictly private morality. However, I cannot accept that. I suppose that in a perfect society where one would have unanimous opinion as to what is morality and what are standards of good behaviour this might be so. But the problem of trying to render synonymous law and morality is that we then come down to the question: Whose morality? Whose standards of behaviour? Whose sense of morality? Who is to determine the standard? Who is to attribute blame? Who is to say what is moral and what is immoral? Who is to decide when moral responsibility exists in terms of freedom of will, and when it has to be diluted in human terms because of environmental or physical causes?

The nub of the matter is: Who is to decide what moral behaviour or conduct is to be reflected in the code? That is the point. In a pluralistic society there may be different standards, differing attitudes, and the law cannot reflect them all. Public order, in this situation of a pluralistic society, cannot substitute for private conduct.

We believe that morality is a matter for private conscience. Criminal law should reflect the public order only. Despite the fact that most of us in our personal convictions have a complete repugnance to the conduct from which we are lifting the taint of criminal law, this does not to my mind interfere with the validity of the principles that we are trying to submit to the house.