

*Criminal Code*

authorities and if moreover this bill really seeks to solve the problem.

The bill provides that a doctor must report within seven days on any physical harm inflicted upon a child.

First of all, I would like to point out to my hon. friends who have supported this bill that it is all very good to express compassionate feelings but still one must seek whatever is practical, and feasible.

If we make it an obligation for the doctor to report any physical harm inflicted upon children who have been brought to him for treatment, then we must advise as to whom his report is to be made. And once this report is filed, what will happen next?

It is a well-known fact that according to the Canada Evidence Act, in criminal cases, the doctor or any other person may not bear witness to acts of which they have no knowledge. What else but a mere diagnosis can a doctor report? This, unquestionably, under the Criminal Code does not constitute satisfactory evidence liable to bring about conviction of a person we would like to see charged with a criminal offence.

If we make it compulsory for a doctor in such sympathetic circumstances to report to the Provincial Attorney General a case that comes to his attention in his medical practice, why not put under a similar obligation any person who is aware or has been made aware of any criminal act? Why impose such an obligation on this group in particular? For instance, would a physician be more competent to give evidence about something he has not witnessed than nurses in a hospital, neighbours or other children or other persons who might have been aware of the fact that some parents were inflicting bodily harm upon their children?

Even if the bill were adopted, even if we gave this responsibility to the physician, the problem would not be solved, because the physician, under the Evidence Act, would find it hard in his deposition to incriminate the person who could eventually be charged. The physician will report the case, but, as our laws require that a charge be laid, one must ask who would lay this charge? It would surely not be the physician, because it would be hard for him to make a deposition. He would only give a diagnosis which would in no way be related to the criminal offense. Furthermore, he may make a mistake.

I have read somewhere that, if a physician takes it upon himself to report to a public institution, either the police or the welfare courts, as are to be found in the United States and in Quebec, his responsibility is at an end because he has, in good faith, and in the practice of his profession reported some actions that he suspects were carried out maliciously.

● (5:50 p.m.)

But if he is required by law to report what he believes to be a criminal offence, I think we are going too far and into a field where we shall find no solution.

I would rather believe that it is within the purview of a provincial law—the law on the medical profession since [Mr. Lafamme.]

we are concerned with doctors—that perhaps we could legislate so as to make clearer still the lack of responsibility of a doctor reporting any action which would have come to his knowledge in the discharge of his profession.

Under the Canada Evidence Act, I repeat that it is impossible for a doctor or for any individual unaware of a fact to be a suitable witness. Therefore, if we were to add a section to the Criminal Code, this would obviously be meant to impose punishment on those likely to be found guilty, and this involves court action.

Conviction entails proof of offence. Now, a physician is not likely to give evidence leading to conviction. Here, his position is not made any better than that of any other citizen, not even that of the ambulance driver called upon to carry a child that was battered by his father or mother or, still, his older brother.

I do not believe that this bill, although introduced open-mindedly and designed to redress the occasional deplorable situation in our society, has its proper place in the Criminal Code, any more at least than other indictable offences under the Criminal Code.

If the Criminal Code called upon any individual to report to police the presumably indictable offences of which he was aware, why should we make a special distinction in this case?

Besides, the medical practitioner, as other members of the learned professions, discharges serious responsibilities towards the individual and, according to our law, his profession also enjoys privileges, including secrecy. The matter is extremely important.

Of course, a member of the medical profession, under the law, must, in certain instances, report the treatment he gave a patient. Now, as this privilege derives from civil rather than criminal law, a legislation in that respect under our constitution should logically be enacted by the provincial government concerned.

The doctor must be free from professional secrecy at all costs. A doctor may report certain things and I sincerely believe that in some cases, one would not take offence at seeing a doctor reveal external facts he is aware of, without being considered for all that as an investigator. If he has enough sense of ethics to do so or to ask investigators to enquire, what evidence can he give?

And even if the doctor were required to report directly to the police facts he could be aware of in the course of his practice, he still has the right under provincial legislation to appear before the court if summoned to do so, but to refuse to give evidence, alleging as reason medical ethics that bind him according to the very nature of his duties.

Unless he is really free from professional secrecy and summoned, under the law, not only to appear but also to give evidence on the treatment he would have given to such or such person in such circumstances, here again, and I repeat, it is by means of provincial legislation and not by an amendment to our Criminal Code that we shall be able to really put more teeth in the law, and call the