

particularly if they move out of the province or territory. Your Committee does not view this as a convincing argument. As noted above under the section on provincial registries, it is the procedure for the agency which knows the family to forward a statement of the social history and relevant facts to the provincial registry for transmission to the agency in the locality to which the family has moved. This procedure can only apply when the forwarding agency knows of the family's move in advance, or is requested to forward a social history by the authority in the new locality. A federal registry to which provincial registries forward names could be no more up to date than the provincial registries.

It has been suggested that a federal registry would help provincial authorities to check on a family when abuse occurs to see if that family had been previously known in another province. The Committee recognizes the importance of an exchange of information between the provinces and would prefer to see this further expanded at the inter-provincial level rather than at the federal level.

3. AN AMENDMENT TO THE CRIMINAL CODE MAKING CRUELTY TO CHILDREN A CRIMINAL OFFENCE

Your Committee notes that there is now provision in the Criminal Code which would enable prosecution of a parent or other persons against whom there is sufficient evidence to proceed under the provisions relating to homicide, assault, the endangering of the morals of a child, rendering the home an unfit place for the child, the failure to provide the necessities of life, and abandoning or exposing a child under the age of ten years.

Penalties for the neglect or abuse of children are included in provincial and territorial legislation. Quebec's legislation covers situations not covered by the Criminal Code:

"Whosoever wilfully and without valid excuse exposed a child to a serious moral or physical danger or, being responsible for such child, neglects to protect him from such danger in a manner and in circumstances not covered by the Criminal Code, is liable, on summary proceeding,...

(Youth Protection Act, Section 39(2)).

Although not explicitly stated, it is probable that this is also the relationship of other provincial legislation to the Criminal Code, since the provinces cannot legislate in the area of criminal law.

The Committee is aware of the difficulties in proving under provincial law that a child is in need of protection. These difficulties were well outlined in a brief presented to the Committee. The same brief further stated:

"Unless laws are accompanied by provision for preventive and rehabilitative services that the community will pay for and support, all society is doing is to jail the parents. That is not likely to contribute much to human happiness or to the protection of defenceless children".

The excellent pamphlet, "Child Abuse", published by the Manitoba Department of Health and Social Development states as follows:

"Why treatment is preferred to intervention of criminal law?"

"Treatment preserves and enhances the natural rearing milieu for the child.

"Treatment is the most constructive and humanitarian effort made equally on behalf of the abuser caught in the web of tragic forces over which he or she may not have much control.

"In the sphere of irrational forces, the intervention of the criminal law process with its determination of guilt and subsequent imposition of punishment, no doubt, is of little value. Prosecution and jailing will not make better parents nor solve the basic problems which caused abuse. However, in hopeless cases, it becomes the last hope left and in cases resulting in the death of a child, the only possible intervention under the circumstances."

Your Committee is pleased to note the reference in the Brief of the Department of Justice to the effect that the question of the necessity and/or desirability of introducing a "cruelty to children" offence in the Criminal Code is under study by that Department.

4. THE DELETION OF SECTION 43 FROM THE CRIMINAL CODE

Section 43 of the Criminal Code was discussed by several witnesses in the context of child rearing, corporal punishment in the schools, and as a reflection of cultural values. The Committee is aware that some provincial legislation specifically forbids physical punishment of children.

It is felt by many who have experience with the care of children in groups and with the education and training of staff who provide group care, that the elimination of physical punishment encourages staff to develop more creative programs and more sensitive ways of encouraging positive acceptable behaviour in children. The result is an improvement in the relations between staff and child.

The Committee considers that the relationship between parent and child needs to be considered separately from the relationship between a child and a teacher, nurse, child care worker or other person standing in the place of the parent.

The Committee recommends further consideration of Section 43.

Section 43 reads as follows:

Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances. 1953-54, c. 51, s. 43.

The Committee noted the evidence given by one witness who stated that "...use of physical punishment in very young children has to be regarded as a serious cause of child abuse and one needs to think about what society might do in order to provide sanctions against the use of physical punishment in relation to very young children".