

LAW REFORM COMMISSION OF CANADA

EVALUATION OF THE COMMENTS RECEIVED
ON WORKING PAPER 22

"SEXUAL OFFENCES"

1978

Prepared by:

Carole Kennedy

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INTRODUCTION

LAW REFORM COMMISSION OF CANADA

Part I -- Comments on the Commission's

Working Paper 22

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ON WORKING PAPER 22

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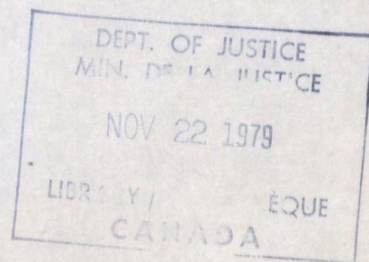


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INTRODUCTION

Before the publication of its working paper on sexual offences, the Law Reform Commission put forward its proposals (in draft form) to various groups and individuals for their suggestions and recommendations. Consultations were set up with such groups as: Rape Crisis Centres, Women's groups, the Clarke Institute of Psychiatry, the police and the Canadian Bar Association. The results of these discussions contributed greatly to the actual drafting of the proposals set out in Working Paper 22.

For this reason we have included in this analysis, not only the comments subsequent to the publication of the Working Paper, but also the suggestions prior to it.

The outline will include the major suggestions made by the above-mentioned groups and individuals in all areas concerning sexual offences. The section will be entitled general.

The second part of the analysis will deal with the specific proposals outlined in the working paper under the

categories of:

1. Rape - reformulation by changing rape to sexual assaults
2. Spouses exemption
3. Incest
4. Assaults against minors
5. Others

Summaries of the comments received in each category will attempt to show the general trend of support on the Commission's proposals for reform.

A point-form list of the letters and reports written to the Commission by individuals and groups will be attached to this analysis as Appendix "B".

The editorials forming part of the press coverage will be listed in Appendix "A".

Part I

Analysis of comments and suggestions received before the
publication of Working Paper 22

GENERAL

This section will deal in general with the written suggestions before the actual publication of Working Paper 22.

1. Rape

Approximately twenty individuals and groups wrote in their suggestions for reform.

A substantial portion of the letters received came from the greater Victoria-Vancouver area where various women's groups and rape crisis centres felt that change was needed in the laws governing sexual offences. The five major points made were:

- 1) that rape be removed from Part IV of the Criminal Code
- 2) that new assault offences be created to prohibit

all acts of forcible contact

- 3) that the concept that should be central in differentiating the specific offence be the nature and degree of risk created; i.e. use of a weapon, the extent and nature of injuries threatened or infliction, not on the basis of whether or not there was vaginal penetration by a penis
- 4) that the inter-spousal exemption be removed
- 5) all evidence as to the past sexual history of the complainant be irrelevant and inadmissible in court.

Although these proposals were made prior to the publication of the working paper, they basically support the Commission's recommendations.

With respect to the question of rape, in general, all persons felt that there was a real need for change. They felt that rape should be replaced with sexual assaults; that sexual assaults extend equally to both sexes; that the spouses exemption and the inquiries into the victim's "previously chaste character" be removed.

A report received from the Advisory Council on the Status of Women had a somewhat different approach to the reformulation of sex offences and warrants special mention. The A.C.S.W. feels that rape should be re-defined as:

- 1) Sexual assault
- 2) Sexual contact
- 3) Sexual penetration

and recommends that:

1. laws against sexual assault should apply to all persons regardless of sex, age, marital status or previous sexual conduct
2. that the Criminal Code have four degrees of sexual assault
 - a) first degree: operationally defined as occurring when there is sexual penetration
 - b) second degree: be defined as sexual contact in any circumstances which would constitute sexual assault in the first degree, but without penetration
 - c) third degree: be defined as sexual penetration in any circumstances described in a) and b) above, but in which the victim does not suffer other bodily harm

- d) fourth degree: be defined as sexual contact but in which the victim does suffer other bodily harm
3. protection from sexual intercourse be provided to all persons under 14 years of age
4. sexual education in schools
5. specific educational programmes be provided for those persons involved in the preventive programmes
6. necessary statutory provisions should be made so that evidence of an accused person's previous sexual offences be admissible (at the discretion of the judge)
7. the judge should be required to give reasons for exclusion of the public
8. responsibility be designated to ensure that victims of sexual offences are advised of the availability of compensation to the victims of sex offences
9. "Life crisis" centres with specially trained staff be established through federal government funding
10. more work be undertaken to prevent violent crimes
11. that sections 144-146 (2)(3) and section 149-157

be deleted when sexual assaults are added

A police officer felt that stronger sentences should be imposed on sex offenders.

2. Incest

An executive of one of the Children's Aid Societies supported the Commission's views on incest and felt that such behaviour should be viewed as social and sexual maladjustment for which the individual ought not be held accountable. He felt that invoking the provision against contributing to juvenile delinquency would be adequate to cover the situation but it should include incest by older siblings or relatives other than the person upon which the child is dependent. He also felt that closed courtrooms would be preferable and that there be no disclosure of names.

3. Minors

A Children's Aid Society felt that sexual assaults against minors should properly be dealt within a Family

Court setting.

4. Prostitution

Prostitution was the subject of concern to both police and the general public.

The general public felt that prostitution should be legalized. One person suggested that legalizing prostitution would be an effective way of dealing with rape by providing an outlet for the male sex drive. He noted that in such countries as Holland, Denmark, Sweden and the State of Nevada, where prostitution is legalized, rape crimes have dropped.

An opposite view was made by a police officer who felt stronger measures should be taken against prostitution. He mentioned that s.5(e) and 181(e)1 of the Immigration Act which will be repealed, should be placed in the Criminal Code thereby prohibiting entry into the country of convicted prostitutes and pimps and should extend further to deporting aliens convicted of such crimes. In his opinion, juveniles with repeated sexual offences should be put on probation and

that "vice courts" might prove a better way of handling these matters.

Part II

Analysis of comments and suggestions received after
publication of Working Paper 22

The following section deals with the comments directed at the specific proposals outlined in Working Paper 22 and are grouped under the headings of:

1. Rape
 - a) Sexual Assaults
 - b) Section 142 -- Restricted Publication
2. Spousal Exemption
3. Incest
4. Assaults against minors
5. Others
 - a) Bestiality
 - b) Prostitution
 - c) Indecent Acts and Nudity

d) Voyeurism

In all, the Commission received 35 letters and reports from the general public and interested groups. There were also 15 editorial comments published in the various newspapers across Canada.

1. Rape

a) Sexual Assault

Of all the letters and reports, nine mentioned their views on the Commission's proposal to take the crime of rape out of the Criminal Code and put sexual offences within the section on assaults. All those who expressed their views primarily agreed, in principle, with the above-mentioned proposal.

A number of groups felt that sexual assaults should be referred to as: a) sexual assault: intentional touching of sexual organs without consent and b) aggravated sexual assault: sexual assault causing grievous bodily harm. A group of sexologists felt that sexual assaults should not only include vaginal penetration, oral and anal sex, but that it also should include sexual acts performed with

certain objects.

Several Rape Crisis Centres were concerned with the issue of consent. They felt that a section on consent should be written in a way that:

- a) consent may not be inferred from a lack of resistance
- b) nor may a doctrine of constructive consent be developed on the principle of voluntary assumption of risk

Some were concerned with section (2): "'sexual contact' includes any touching of the sexual organs of another or the touching of another with one's sexual organs that is not accidental and that is offensive to the sexual dignity of that person". These persons felt that this section was too broad and should be clarified to exclude the touching of sexual organs by e.g. mother bathing her child or a doctor touching his patient for medical reasons.

Objections to the sentence of life imprisonment were voiced on the basis that such severe penalty might be an inducement for the rapist to murder his victim. It was

felt that the issue of sentencing sexual offenders be re-evaluated.

Everyone approved of "de-sexing" rape making it an offence for both sexes equally.

b) Section 142 -- Restricted Publication

Eight letters were received (the majority from Rape Crisis Centres and Women's groups) showing their dissatisfaction of simply restricting publication. They all felt that the past sexual history of the victim should be inadmissible in court and that all past history of the accused be admissible without exceptions. All were of the opinion that the courts be closed to the public and that the accused's name be published only after conviction of the offence.

2. Spousal Exemption

This issue brought out strong opposing views. Two persons supported the Commission's recommendation in its entirety. Of the four that did not, some felt that the section should remain as in its present state in the Code;

while others felt that it should extend to husbands and wives still cohabiting.

A lawyer felt that this type of legislation might well bring about an onslaught of cases where spouses would charge the other on pure "capricious" grounds. Most felt that enforcement might be difficult and one person suggested that maybe the onus of proof should be put on a third party.

3. Incest

Due to the very nature of the subject of incest, recommendations to repeal this section from the Criminal Code generated strong feelings from religious groups as well as the general public.

A petition signed by 300 persons and nine more letters made it a total of 309 against the repeal of incest. Objections were made on moral and religious grounds: although some thought that there would be great danger if people were to procreate through incest.

Eight persons (including Children's Aid Societies)

supported the Commission stating that such acts could best be dealt within a Family Court setting and that this type of action might well encourage parents to report such cases (knowing that there would be no criminal repercussions for their spouse); and, therefore, seek help from qualified persons in such matters.

4. Assaults Against Minors

Only three voiced their views on this matter and they were all supportive of the Commission's recommendations. Some thought that the age of 14 years should be lowered to 10 or 12 years of age in view of the sexual maturity of minors in today's society.

A director of one of the Child Welfare Agencies stated that matters concerning child abuse in his province can be considered either in Provincial Court, Family Court or out of court. He suggests that these alternatives might be a better way of dealing with child abuse in general.

5. Others

a) Bestiality

The petition mentioned under incest also included objections to the repeal of bestiality. These objections were also mainly on a religious or moral ground. There were, however, four persons who objected to the repeal of bestiality on the grounds of cruelty to animals.

b) Prostitution

All persons writing on this subject expressed strong views for legalizing prostitution in Canada. Although they agree with the Commission's recommendation extending prostitution to both males and females, they felt that the Commission should have looked into the matter of legalizing prostitution.

One person reported that in countries where prostitution has been legalized, rape and crime in general have been substantially reduced. Most felt that legalizing prostitution would offer an avenue for those seeking to fulfill certain sexual needs and would deter organized crime in Canada.

c) Indecent Acts and Nudity

Only two comments were made in this area. One opted for the repeal of this section and the other suggested that while he realized that one combats exhibitionism and the other Doukhobors, in both cases, the end result is offending public decency by exposing the genitals to view and it does not really matter what the motivation was; and, therefore, in his opinion, one section should be repealed and the other redrafted to create an offence of wilfully exposing the genitals.

d) Voyeurism

Several persons felt that this offence should not be confined to an accused who is located on private property.

EDITORIALS

Attached is a point-form list and analysis of the editorials published in the various newspapers across the country. A great number of clippings simply listed the

Commission's recommendations and asked for public comments.

It was felt that it would be best to simply attach the editorials separately because quite often the reporters interviewed various interested groups in their communities for their opinions; and, many have already been listed in the preceding parts of this analysis.

APPENDIX "A"

EDITORIALS

May 3/78

Cambridge Daily Reporter - "Rape Centre
Against New Legislation" by Diane Wood

- the article starts off by saying that the
Waterloo Regional Rape Distress Centre is
unhappy with the proposed legislation to
remove the word rape from the Criminal Code
and treat it as indecent assault

- they (W.R.R.D.C.) feels it will remove the
uniqueness of the crime

- reports that the Cambridge YWCA Status of
Women Committee supports the Commission whole-
heartedly on the question of rape

May 3/78

Edmonton Journal - "Gov't Moves to Arrest
Rape, Pornography" by Don Sellar (Southam
News)

- an account of the recommendations

June 5/78 The Province -- "Sex Law Reforms Blasted" by
George Oake

- the writer feels that on the question of
spousal exemption, "the Commission dodges the
issue by saying it could not reach concensus
on the question, but would welcome comments
from readers"

June 6/78 Vancouver Sun -- (taken from Canadian Press)
"Steamboat sex?". Bizarre sexual laws still
on books by Gerald McNeil

- objects to the repeal of bestiality and that
if the section prohibiting captains and crew
members from seducing female passengers is
repealed, it would only bring back this type
of crime

June 7/78 The Sault Daily Star -- "Changing Canada's Sex
Laws"

- on incest this reporter feels that the

Commissions's proposal has merit

- on the subject of minors he feels the Commission has dealt with this in a sensible way

June 12/78 Windsor Star -- "Wiping law clean of old cobwebs" by Robert Chamberlain

- he feels that the Commission's stand on sexual offences is great and objects to statements made by the Department of Justice

June 11/78 Toronto Sunday Star -- "Incest" by David Vienneau, Barbara Chisholm interviewed (Child Welfare Consultant)

- reports on the negative views of "legalizing incest"

June 11/78 The Toronto Sun -- "Alarming Surge on Incest" interviewed Dr. J.P. Anderson (pediatrician) by Lee Lester

- Anderson favoured decriminalization of incest
- it would encourage the reporting of cases and enable families where it occurred to be counselled
- however, he added, where violence was involved criminal charges should be laid

June 7/78 The Spectator (Hamilton) -- "Changing Criminal Law"

- the writer showed a more negative view and urged, "Parliament should think twice before writing some of the present sexual offences out of the Criminal Code. Canadian society may not be ready to go as far as the law reformers suggest."

June 6/78 Kitchener-Waterloo Record -- "Defining rape as assault seen as help for courts" by Eugene McCarthy

- spokesman for the Waterloo regional police

and the Rape Distress Centre approve of the new proposed "sexual assault charges"

June 8/78 Globe & Mail (Toronto) -- "Degrees of sexual assault"

- this writer is against the new proposed "sexual assault" changes in the Criminal Code - he says, "If a person was convicted of a trivial offence his record would show "convicted of sexual assault". Would that be fair when the record of a savage rapist would say exactly the same?"

June 6/78 Toronto Star -- "Reform sex laws law group urges" by Mary Janigan

- a report on the Toronto Rape Crisis Centre's views on the Commission's proposals
- the Centre approves of the new assault term instead of rape
- they are disappointed that a women cannot charge her husband with sexual assault while

still living with him

June 6/78 Toronto Star -- "Sex laws proposals" "bold and Innovative"

- reports the proposals as "bold and innovative"

June 7/78 Globe & Mail -- "Proposals would make incest legal between any blood-related adults" by Lawrence Martin

- more or less favours the new approach

June 21/78 Peterborough Examiner -- "Should have waited"

- the paper reports that the LRC has cut through the outdated morals of the Criminal Code

- "The Commission's recommendations in the area of sexual assault are a vast improvement over Justice Minister Basford"

June 24/78 London Free Press -- "There are risks involved

in oversimplifying rape law"

- the paper feels that the Commission has oversimplified rape by bunching it with assault

- the paper favours the Justice Department's approach

APPENDIX "B"

DETAILED ANALYSIS OF LETTERS RECEIVED

1. Before Publication

March 22/78 Rape Relief Group

- this group supported all five major
recommendations made by a number of groups in
the Victoria-Vancouver area

March 22/78 Community Education Services

- same as above

March 28/78 Women's group

- supported the five recommendations named at
the beginning of the analysis made by number
of groups in the Victoria-Vancouver area

April 3/78 Professor of Law

- supports recommendations made by the above groups in the Victoria-Vancouver area

April 2/78 Union committed to the organizing of working women

- same as above

April 11/78 Feminist group

- same as above

April 11/78 General Public

- same as above

April 11/78 Teachers (Victoria-Vancouver area)

- same as above

May 8/78 Women's group

- same as above

May 9/78 Women's group

- same as above

June 7/78 General public (student)

- this student wrote in a petition stating her objection to coercion in universities and suggested some legal remedies for such offenders

July 10/78 Children's Aid Society

- supports the Commission's views on incest
- feels that such behaviour should be viewed as social and sexual maladjustment for which the individual need ought not be held accountable
- mentions the omissions of the older siblings or relatives other than the person upon whom the child is dependent

- feels that invoking the provision against contributing to juvenile delinquency would be adequate to cover that situation
- in sum he agrees with the tentative repeal of incest provision
- there should be closed courtrooms and no disclosure of names in sexual assault trials

Sept. 29/77 Police

- supports the Commission's proposal of Section 195(1) - prostitution

July 21/77 General Public

- feels rape should be treated as an assault
- he feels that rape could be substantially reduced if we provided an outlet for the male sex drive through the legalization of commercialized sex such as in Denmark, Sweden, Holland and the State of Nevada
- the laws of prostitution are grossly unfair to the feminine gender by charging the woman

with soliciting and the man might face a
found-in charge but that's all

- the innovation of anti-prostitution laws
results in the punishment of people who are
not true criminals by virtue of the fact that
their "crimes do not produce any victims"

June 27/77 Children's Aid Society

- need to make special provision for the
examination of child witnesses because of the
traumatic effect on the child appearing in
adult criminal court

- strongly support dealing with sexual
assaults and child abuse in Family Courts in
cases which involve family members

Sept. 20/77 Police

- suggests that the Criminal Code be changed
so that the soliciting sections include the
offence of loitering and the procuring
sections include males procuring other males

- section 5(e) and 181(e)(i) of the Immigration Act prohibiting entry of convicted prostitutes and pimps be put in the Criminal Code and to go further as to allow aliens be deported if convicted of prostitution or related offences
- juveniles with repeated offences should be put on probation
- courts would be more effective if a "vice court" was set up much the same as the "drug court"

Oct. 13/76 Advisory Council on Status of Women

- at the beginning of the analysis the 11 proposals brought out in this report were itemized and therefore there is no need to duplicate

May 26/78 Confidential Report

May 30/75 Women's group

- criminal sanction should extend to men as for women
- elimination of the part of this definition which states that a man cannot rape his wife
- they support:
 1. elimination of section 142 of the Criminal Code
 2. removal of inquiries into the victim's previously chaste character
 3. prevention of inquiries into the victim's past habits, morals and private life

2. After Publication

June 12/78 General Public

- in total disagreement with the Commission's stand on incest and bestiality

June 20/78 General Public

- disagrees with repeal of incest on moral grounds

June 26/78 Church group

- "the congregation wishes to record its shock and disappointment that the Government of Canada would contemplate legalizing bestiality and incest ..."

July 11/78 Rape Relief Centre

- inter-spousal exemption - in agreement with Commission's proposal though it may be difficult to prove lack of consent

- s.142 - disagree with retention - they maintain that all sexual history is completely irrelevant to consent to sexual assault and therefore should be inadmissible as evidence with no exceptions

- agree with repeal of sections 142(2), 147, 148, 151, 152, 153(1)(b), 154, 155, 157 and 158

- rape -- sexual assaults should be properly put in the same category as common assault, where consent does not seem to be an issue, the need for proof of consent would be alleviated and the onus placed on the defense instead of the prosecutor to carry this through

- of greater concern to the rape centre is the issue of consent -- on consent it should be written:

- " a) consent may not be inferred from a lack of resistance
- b) nor may a doctrine of constructive consent be developed on the principle of voluntary assumption of risk"

June 12/78 General Public

- against the repeal of incest

petition signed by 300 persons voicing their objections to the repeal of incest and bestiality (majority medical profession)

June 15/78 Lawyer

- "touching sexual organs ... not accidental"
could infer parents, doctors - should be
clarified

July 15/78 General public

- against repeal of incest
- he feels that basic Christian morals will
suffer

July 20/78. General Public

- suggested that we add by a definition or
other means, to ensure that the concept of
consent used in these new indecent assault
offences is the same concept as that employed
for other non-sexual assaults
- suggests that section 142 be removed and
placed in the Evidence Act and that all past
history be inadmissible

- right to charge a spouse (currently sharing domicile) with indecent assault
- reduce indecent assault maximum penalty to 7 years and aggravated indecent assault to 14 years

July 20/78 Lawyer

- he felt that spousal exemption should be kept in the Criminal Code even for separated spouses
- he feels that if repealed it will lead to spouses charging the other spouse with sexual assault by "caprice" if and when she/he feels like it

July 9/78 General Public

- in general agreement with the recommendations except for repeal of incest

Aug. 4/78 Child Welfare Agency

- "in dealing with child abuse in this province, we have the opportunity to consider a child abuse case in provincial judges court (Crim. Div.), Family Court, or not in court at all ... with these alternatives available and the required consultation between Child Welfare, the police, the medical profession, the Crown Attorney ..."

- he sees no reason why incest could not be looked at in the same general way

June 20/78 General Public

- against the repeal of incest

Aug. 18/78 Children's Aid Society

- against the repeal of incest

- they are of the opinion that agencies such as theirs can deal with such matters under legal provincial mandate

July 17/78 General Public

- agrees with all recommendations including incest
- found the Commission's aims both fair and well written

July 17/78 General Public

- on the question of incest and its genetic consequences he feels that the Commission's recommendations are dangerously wrong

July 21/78 General Public

- for clarity - the word organs should include not only the genitals but to extend to any organs which can be used for sexual purposes such as anus or female breasts
- "touching of organs" too general what of mother with child, doctor and nurse with patient

July 27/78 General Public

- against repeal of incest

Aug. 2/78 General Public

- against the repeal of incest

Aug. 2/78 Student

- essay on prostitution

- "the public good is defeated by the
criminalization attached to the operation of
every possible kind of eros centre"

- "human sexual needs come to be served not by
legitimate business but the underworld of
criminal activities"

Aug. 3/78 General Public

- rape -- only objects to life imprisonment

- he feels that life imprisonment might be an
inducement to murder the rape victim

- disturbed that there is no mention of

protecting against conviction of individuals who get accused of rape, but who are in fact innocent

- prostitution: in his opinion should be decriminalized in order to fulfill the needs of people (such as divorcess) who are different from those of the "nuclear family".

Aug. 20/78 General Public

- repeal of incest would be unchristian

Aug. 23/78 General Public

- feels the removal of incest from the Criminal Code could only add fuel to the present decay of morals within our society
- also objects because of it being an inappropriate way for procreation to occur

June 28/78 General Public

- against proposal on incest

June 27/78 Professor

- he feels the Commission is to be congratulated on the general approach of "de-sexing" sexual offences
- he agrees that incest should be repealed but suggests this offence should not be transferred to provincial law e.g. Child Welfare Act because sentencing provisions under this type of legislation are not always adequate
- indecent acts and nudity -- no need for both
- he realizes that one combats exhibitionism and the other Doukhobors but in both cases, the end result is offending public decency by exposing the genitals to view and it does not really matter what the motivation was therefore one section should be repealed and the other re-drafted to create an offence of wilfully exposing the genitals
- voyeurism - should not confine the offence to an accused who is located on private

property

- generally in agreement with all other recommendations

June 26/78 Humane Society

- against removal of bestiality from Criminal Code
- society's repugnance to such behaviour is best reflected by a statute declaring it a crime

June 26/78 Judge

- in general terms agrees with recommendation
- objects to restricted publication

June 23/78 General Public

- rape -- agrees with new assault charges
- relations with children under 14 -- good, except too broad a definition - e.g. role of mother, father, doctor -- no regard for intent

with respect to "touching of organs"

- relations with persons 14 to 18
- good except too broad a definition of sexual assaults
- nudity -- should be under public nuisances

June 23/78 Student's Committee

1. Rape: rape and incedent assault should be referred to as "sexual assault" or "aggravated sexual assault"

a) sexual assault -- intentional touching of the sexual organs without consent

b) aggravated sexual assault -- sexual assault causing grievous bodily harm

re consent:

- lack of resistance on the part of the victim to a sexual attack should not be enough to constitute consent

2. Spouse exemption: whether or not they are cohabiting should not be exempt from prosecution from sexual assault

3. Restricted Publication -- agree

4. Minors -- agree

5. Incest -- agree

June 10/78 General Public

- strong feelings against the repeal of
bestiality and felt that there should be a
"Bill of Rights for Animals"

June 20/78 Provincial Court Judge

- on sexual offences suggests

1. for the purpose of this section "sexual
contact" means any intentional physical
contact by one person with the person of
another which is engaged in for the purpose
of sexual gratification

2. "sexual gratification" means any physical
or psychological gratification arising out of
the fulfillment or partial fulfillment of the
sexual drive

June 16/78 General Public

- prostitution should be legalized
- it should be thought of as a human need

June 15/78 General Public

- against proposal on incest

June 12/78 General Public

- against repeal of incest

June 11/78 General Public

- feels that the age for minors should be 10 years

June 8/78 General Public

- against repeal of incest

June 6/78 General Public

- approves of all recommendations and feels that it was well written (in laymen's terms)

Oct. 13/78

Gay Movement

suggestions

1. Sexual Assault

a) every one who has sexual contact with a person

i) without that person's consent or

ii) where that person is dependent upon him or her or under his or her

authority and the exercise of such authority or dependency is

instrumental in effecting the sexual contact, or

iii) where that person is coerced or

induced to have sexual contact with

him or her by means of threats,

fraudulent representations, or unfair

influence or advantage, is guilty of

an offence of sexual assault

2. For the purposes of this section, "sexual

contact" includes any purposeful touching of another with one's sexual organs.

3. In determining the presence of authority or dependency within the meaning of subsection 1(b), or threats, fraudulent representations or unfair influence section 1(c), the judge shall consider all the circumstances and consequences of the act, including the age, and mental competency of persons involved, their relationship, and the psychological pressures and other factors that may reasonably be supposed to have been present at the time.
4. In determining the sentence of a person convicted under this section the judge shall consider all the circumstances and consequences of the offence including whether there has been penetration or violence
5. They feel the offence of indecent acts

should be repealed.

6. They strongly urge that the definition of the term "public place" in sections 170-171 be clearly drawn in a way to prevent the application of these criminal laws in situations where a person's presence might reasonably be taken to imply condonation of, or consent to, genital displays or sexual behaviour which would otherwise be proscribed in the interest of safeguarding public decency

Oct. 23/78

Quebec Sexologists

- first, they congratulate the Commission on its courage in undertaking reform in this sensitive area

1. agree with "de-sexing" sexual offences
2. they feel it might be better when referring to "the integrity of the person" to call it the corporal integrity "intégrité corporelle"
3. although they approve of the Commission's

reformualtion of sexual assaults to include not only vaginal penetration by a penis but also oral and anal, they felt the Commission should also have included acts where the sexual organs are used (touching another person) without consent and also when certain objects are used for sexual acts

4. with respect to spousal exemption they agree but feel it will be difficult to prove and therefore, it might be better to act only when there is a third party corroborating

5. all trials should be within closed court

6. feel that previous history of accused should be admissible and that the victim be examined by a sexologist

7. Minors -- disagree -- they felt age should not be a criteria here -- 12 years old might be better -- feel a sexologist should be in attendance to evaluate the traumatic effect on the child

8. sentencing -- all sex offenders should be given a chance for rehabilitation