PRIVATE MEMBERS' PUBLIC BILLS

[*English*]

CANADA EVIDENCE ACT

MEASURE TO ASSURE PERSON'S RIGHTS CONSIDERED WHEN MAKING INCRIMINATING STATEMENT TO POLICE

Mr. David Orlikow (Winnipeg North) moved that Bill C-233, to amend the Canada Evidence Act (incriminating statements), be read the second time and referred to the Standing Committee on Justice and Legal Affairs.

● (1700)

He said: Mr. Speaker, the purpose of this bill is to amend the Canada Evidence Act to guarantee people being interrogated or accused by the police the right to refuse to answer questions in the absence of a lawyer, if they so desire to have legal counsel, in order to obtain evidence from them which may be used against them in court proceedings. The bill follows very closely decisions handed down by the United States Supreme Court in a number of cases. The amendments to the Canada Evidence Act that I am proposing spell out the rights of such people.

Let me put on the record three sections that I propose to add to the Canada Evidence Act under the provisions of this bill. My proposed section 54 would read as follows:

No statement shall be admissible in evidence against its author in any criminal proceeding unless it is a voluntary statement.

Proposed section 55 would read:

No statement shall be admissible in evidence against its author in any criminal proceeding if such statement was made while its author was in the custody of a person in authority unless prior to making such statement its author was duly warned by a person in authority that

(i) he was not obliged to make any statement, and

(ii) if he voluntary chose to make a statement, it would be taken down in writing and may be given in evidence and,

(iii) he was entitled to counsel and that if he could not afford counsel, one would be assigned to act on his behalf if he so desired.

Proposed section 56 would provide:

If, pursuant to section 54 a request for counsel is made, the person in authority shall give the person who made the request an opportunity to contact his counsel or advise the local legal aid office director in the event the person who made the request cannot afford counsel.

I bring this bill forward as a result of a number of cases which were heard by the United States Supreme Court in which they found that the defendant had not received a fair trial. The Supreme Court set aside the decision of the lower court because they had not permitted the accused to be represented by counsel at a very early stage of the case. I refer hon. members to the case of Gideon, which was dealt with by the U.S. Supreme Court in the early 1960s, and to the Miranda case, which was dealt with in 1966. I should like to quote from the New York *Times* of June 14, 1966, which reported on the Miranda case as follows:

The Supreme Court announced today sweeping limitations on the power of the police to question suspects in their custody . . .

The majority opinion, by Chief Justice Earl Warren, broke new constitutional ground by declaring that the Fifth Amendment's privilege against self-incrimination comes into play as soon as a person is within police custody . . .

The suspect, the court said, must have been clearly warned that he may remain silent, that anything he says may be held against him and that he has a right to have a lawyer present during interrogation.

In dealing with the case, the Chief Justice of the United States Supreme Court, Chief Justice Warren, said as follows, if I may quote a few sentences from his decision:

We dealt with certain phases of this problem recently in *Escobedo v. Illinois*. There, as in the four cases before us, law enforcement officials took the defendant into custody and interrogated him in a police station for the purpose of obtaining a confession. The police did not effectively advise him of his right to remain silent or of his right to consult with his attorney. Rather they confronted him with an alleged accomplice who accused him of having perpetrated a murder.

I would like to refer hon. members to a case that was heard in 1959. I am not going to give the name of the case, but I am sure that those members of the House who are lawyers will recall it. It was a case in which a boy of 14 years of age was interrogated by the police and then charged. He was convicted of murder, served a number of years, and was then granted a pardon. I do not want to discuss the case in any detail except to say that in the year 1959 the police were able to question this boy at the police station for five or six hours without a lawyer being present, without even his father being present. His father was outside the room in the courthouse asking to see his son, but was not permitted to do so. Neither was a lawyer permitted to be with this 14-year old boy while this interrogation lasting five or six hours was continuing.

That is the kind of situation that my bill, if enacted by parliament, would prohibit. I am not asking for something that is not now the law of the United States. Nor am I asking for anything that has not been supported by a number of very experienced and distinguished lawyers in Canada. In this regard, may I refer hon. members to an issue of the Criminal Law Quarterly which I think is published in Toronto. This issue appeared in the late 1960s, I believe, and contains an article by Brian Donnelly entitled "Right to Counsel". Let me put on the record some of what Mr. Donnelly said in his article:

In Canada, the courts have tended to uphold police powers unless there has been a flagrant violation of rights which will result in the production of unreliable evidence . . .

In sharp contrast, the United States Supreme Court has become a champion of the rights of the individual. It has enumerated certain basic rights, the violation of which will result in the exclusion of evidence obtained as a result of the violation and in proper cases acquittal. The privilege against self-incrimination has been applied to pre-trial events.

In the case I referred to, this young boy would have been entitled to counsel from the moment the police began to interrogate him. Let me just put on the record what the Supreme Court of the United States found. This is what they held in one case:

(1) the investigation has ceased to be a general inquiry and has begun to focus on a particular suspect;

(2) that suspect has been taken into police custody;

(3) the police carry on an interrogation that is directed towards eliciting incriminating statements;

(4) the suspect has requested and been denied an opportunity to consult with his lawyers; and

(5) the police have not warned him of his absolute right to remain silent.

There are literally thousands of cases in Canada, most of which are dealt with at the lowest level of our courts, which used to be called magistrate's courts, where people are apprehended and never told they have a right to counsel. Frequently, when they ask to make a phone call