

*Public Order Act, 1970*

This means that if Mr. Justice Lagarde refers to two important court orders, one from Quebec and the other from the Nova Scotia court of appeal, we must come to conclusion that the regulations proclaimed under the War Measures Act are strict liability offences. And since Bill C-181, except for a few alterations, is a mere carbon copy of the regulations proclaimed on October 16 last under the War Measures Act, in the legislation before us it is obviously a strict liability offence.

The regulations did not provide for sentences exceeding five years because the War Measures Act so prescribes. And while this legislation could have gone further, the existing provisions have been retained.

• (5:20 p.m.)

This means that under the very provisions of clauses 4, 5 or 6 of the bill, one might not even wonder about the intellectual apport of the accused, that is to say, his criminal intention or *mens rea*, since the very commission of the act laid down in the legislation requires that he be found guilty by the court and, consequently condemned to a penalty, the length of which is again to be determined by the court, within the stipulated limits.

Doubtless, in some cases, we see ridiculous sentences because the president of the court, perhaps feeling guilty for being unable to acquit the accused because of the law, considers it fair to impose minimal penalties such as an hour in prison or a 50-cent fine. This clause does not provide such penalties. It will probably be a matter of what Pope, a renowned authority in criminal law, called centuries ago, "pious perjuries."

Therefore, I hope I have demonstrated that it is wrong to argue that clause 4, as it now stands, is not a clause of strict responsibility.

Is it possible to imagine that a judge would give different interpretations of section 4 of the regulations and section 4 of the legislation, when a comparative study would reveal to him that the Governor in council and the legislator used the same words, and that even if section 4 of the regulations provided for the maximum penalty under the War Measures Act, the legislator conformed to the point of providing the same sentence, what he was not required to do.

Clause 14 of the bill states that sections 4, 5 and 6 of the regulations are deemed to be found in sections 4, 5 and 6 of the act.

Once again, jurisprudence is consistent. In the field of regulations promulgated under the War Measures Act, the *mens rea* is useless. I refer to the jurisprudence from which I have quoted a few cases.

Can one imagine the legislator in a field as important as that of public order and in legislation directly proceeding once again from the regulations under the War Measures Act deciding that the interpretation of the text should be different from that of the regulations?

Finally, if my proposed addition is useless, how come that section 395 of the Criminal Code provides that it is an undictable offense liable to imprisonment for 14 years

[Mr. De Bané.]

to utter or offer to utter counterfeit money without lawful justification or excuse?

Secondly, section 366 provides that it is an offence to intimidate a person by "threats...or other injury" wrongfully and without lawful authority.

Thirdly, section 352 provides that it is an offence to dispose of an instrument designed to forge a trade mark and subsection (2) of the same section provides that no person shall be convicted of an offence where he proves that he acted in good faith.

Fourthly, section 269 of the Criminal Code provides that committing theft is to take fraudulently and without colour of right.

Section 46 reads as follows:

- (1) Every one who commits treason who in Canada  
(e) without lawful authority communicates or makes available to an agent of a state other than...

Section 86 of the omnibus bill reads:

—everyone who, without lawful excuse, points at another a firearm—

Another example from the omnibus bill, is to be found in subsection (2) of section 223 of the Criminal Code, as follows:

"Every one who, without reasonable excuse, fails or refuses to provide a sample of his breath—"

Section 224 makes it a strict liability offence to drive a car for a person whose breath contains a percentage of alcohol higher than .08 according to the breath analyser test.

I suggest then that it is necessary to add the following: "without lawful justification or excuse, the onus of which lies on that person" to line 16 of clause 4, so that the indicted person may be able to defend himself.

Besides, what is the present situation? Nobody seems to know exactly about certain subsections of section 4 of these regulations.

• (5:30 p.m.)

So, the papers refuse to publish the communiques they receive from the kidnapers of Mr. James Cross and, to crown it all, Saturday night the Quebec police provide all information media not only with the said photos of the hostage, but also with copies of the statement added by the FLQ which reads as follows:

"James Richard Cross learning politics, following the barbarous attitude of Mr. Trudeau—"

And to add to the affront, once again, there appears the signature of Mr. Cross. And it is the Quebec police that distributes such things, and I hope that I have proved that this is a case of strict and objective responsibility, such are the absurd results which could obtain.

First, the spy and the newspaperman could not, except in violation of subclause (a) profess to be members of an unlawful association.

Second, the information media could not transmit such statements, and to this I would agree. Further, anyone