

Criminal Code

More disturbing is the result of surveys that have shown that in some cities well over half of all accused persons did not raise the bail that was set at their first court appearance. I can assure you, Mr. Speaker, that the half who remained in custody were not the rich.

Mr. Nielsen: How about bail for Indians?

Mr. Woolliams: The hon. member for Yukon (Mr. Nielsen) mentions bail for Indians. Not only can they not get bail, but they never have counsel. I have seen Indians in court in the Peace River area. I went up there twice to defend an oilman on an impaired driving charge. The rich do have to come to us fellows who represent the poor, and I will tell you why, Mr. Speaker; it is because we have a knowledge of criminal law. Clarence Darrow's life illustrates that. When the railway companies got into trouble they came to him.

Even when the accused is able to raise his bail there is often an inexcusable delay in releasing him. The rules relating to the security that an accused can use are anomalous and unrealistic. Finally, there is a multitude of problems concerning professional sureties and money lenders.

I have not given an exhaustive outline of the problems, but I trust that it has been sufficient to illustrate that the minister was abundantly right when he said that bail revisions should be included in the omnibus bill. Did the minister do so, Mr. Speaker? No. I heard a member from the New Democratic party ask why not. As long as this discrimination exists it means that there is one law for the rich and another for the poor.

I now want to move to another section. Section 622 of the Code provides the judge with discretion, in cases where the maximum penalty is not more than five years, to impose a fine in lieu of imprisonment or in addition thereto. But in cases where the maximum sentence is more than five years the judge cannot impose a fine in lieu of or in addition to imprisonment.

I had an experience two or three years ago in defending a couple of university students on marijuana charges. We went through the preliminary hearing because we wanted to plead before the high court where we thought we would get fairer justice. Under the Narcotic Control Act the maximum sentence for possession and use of marijuana is seven years. The accused in this case were Americans and counsel for the Crown contended

[Mr. Woolliams.]

they should have been charged with trafficking, which carries a maximum sentence of 14 years.

Let us apply this case to section 622, since we are talking about reform. The maximum sentence was more than five years so the judge could not impose a fine in lieu of imprisonment or in addition thereto. Therefore, what did the lawyers have to do? We went to work in back rooms to devise a method to enable the judge, who wanted to fine these accused, to send them back to the place in the United States whence they came. We found a case that held that the judge can count time spent in jail awaiting trial, although the court of appeal of Alberta disagreed on this point with the court of appeal of British Columbia and held it could not be done. Since it was about this time of day we asked the judge to give them one day in jail and a fine, and that is what he did. We found a House of Lords case which held that since sentence was passed after dinnertime the accused did not have to serve any time in jail. This sort of thing is not good enough and should be the type of reform that the minister should come to grips with. He has a large staff in his department and it would not be too difficult to overhaul the Code.

Some of the offences which fall into the category with which I am dealing are false pretences and theft under \$50. The \$50 limit was set so long ago that it is now ridiculously low as a result of inflation. It is difficult to steal anything worth under \$50 any more, even from Woolworth's. A bit of shoplifting or siphoning gas, involves amounts that are under \$50 as a rule. Therefore I think some consideration ought to be given to changing the figure of \$50 in the same way as in district court, as opposed to the small debt court, the jurisdictional limit has gone up. In addition, under the Narcotic Control Act possession of marijuana carries a sentence of seven years, and this is likewise outdated.

One of the distinguished members of this house, a former Attorney General who is a member of this party, was talking about this very matter the other evening and remarked that we would all be upset if we found our own children using such substances. We would be even more upset to find them being used by professional men and people from certain families. I am going to deal later with the poor people who do not have any chance at all. I think we would all be upset if we found our children charged under this kind of outdated, Victorian law. I think the sentence should be a fine.