

AFTER RECESS

The house resumed at 8 p.m.

GOVERNMENT ORDERS

CRIMINAL CODE

The house resumed consideration of the motion of Mr. Turner (Ottawa-Carleton) for the second reading and reference to the Standing Committee on Justice and Legal Affairs of Bill C-150, to amend the Criminal Code, the Parole Act, the Penitentiary Act, the Prisons and Reformatories Act and to make certain consequential amendments to the Combines Investigation Act, the Customs Tariff and the National Defence Act.

Mr. Eldon M. Woolliams (Calgary North): At five o'clock I was discussing the definition of health in relation to the amendment on abortion. I said the special committee, under the chairmanship of Dr. Harley, studied many briefs relating to abortion, but were unable to agree to any definition of health.

It is my personal opinion the moment you define words you get into many abstract judicial interpretations of what the legislators meant, while on the other hand the failure to define health forces the high courts, the Courts of Appeal, and the Supreme Court of Canada to legislate. They must, in their capacity and responsibility, arrive at a definition. What is their reaction to this kind of legislation?

Mr. Nielsen: Perhaps you should wait until the minister is present.

Mr. Woolliams: Oh well, he's been pretty good today.

All of these matters must be studied by the committee. Under the said section, causing the death of a child that has not become a human being in the act of birth is not illegal if the doctor causing the death considers it necessary, providing the operation was performed in good faith to preserve the life of the mother. The onus is on the crown to prove the operation was not done in good faith. This is called the Bourne principle. Allowing the medical practitioner to exercise his own judgment in the act of birth is an act separate and apart from the amendment. If, however, the pregnancy is to be terminated prior to the act of birth, the matter indeed becomes very complex.

Criminal Code

I would like to pause here for a few moments. There has been an addition to section 209, and this is what makes it so horrible and is something I think the committee will have to consider very carefully. I have been most serious all the way through this, but I could not be more serious when I refer to this. The old rule said:

Every one who causes the death of any child that has not become a human being, in such a manner that, if the child were a human being, he would be guilty of murder, is guilty of an indictable offence—

What has the minister done by adding the words "in the act of birth"? Under the old rule if a doctor came to the conclusion in good faith that the life of the mother would be impaired and without the operation she would become a mental and physical wreck, then he could proceed to operate. For the moment I am dealing only with the addition of the words "in the act of birth". These words are dealt with by Professor Mewett in the Criminal Law Quarterly, Volume 10, 1967-68 at page 385 which I suggest every hon. member should read. I will not quote the article but will explain the meaning.

A doctor could wait until a woman was in labour before taking the life of a child to save the life of the mother or to prevent her physical or mental wreckage, without regard to the new amendment and without ever having a committee or certificate. That is not my interpretation, it is what the professor says. That is the law. If there is any question of this, then analyse it. When does a person become a human being under the Criminal Code? Section 195 reads:

(1) A child becomes a human being within the meaning of this act when it has completely proceeded, in a living state, from the body of its mother whether or not

- (a) it has breathed,
- (b) it has an independent circulation, or
- (c) the navel string is severed.

That is the legal definition and I leave it at that. I ask in all seriousness that the committee divide its report into separate subjects. We are not dealing with the price of grain or the loss of a market, we are dealing with the beginning of human life.

Mr. Nielsen: And the end of it.

Mr. Woolliams: As the hon. member said, "And the end of it". This is the reason I am so serious. I have pleaded many cases and have never been more serious than I now am. I want to know on what I am voting because this is a very important subject to the faith