

Criminal Code

land—which I have not read—to the effect that where there is a defence, the accused has to prove that beyond the preponderance of probability. At that point the onus shifts to the Crown to prove its case beyond a reasonable doubt. That is the standard that applies at the beginning of the case and at the end.

To suggest that this is a new concept is wrong. It occurs many times in the Criminal Code. In Section 237, for instance, concerning care and control of a motor vehicle, when the driver's seat is occupied, there is a presumption it is being occupied by the driver who has care and control of the vehicle. Section 254(4), on a charge of bigamy, the accused must establish that the previous marriage was invalid. Section 306(2), in evidence of breaking and entering, where there is prima facie proof of intent to commit an indictable offence; there is a presumption against the accused, as in the case with Section 307(1), relating to entering a dwelling house. Section 197 contains various presumptions against an accused relating to the dependency of women and children where the charge is failure to provide necessities. Section 322(2), fraudulently obtaining food and lodging. Section 233(3), hit and run—failure to stop is prima facie proof of intent to escape liability. Sections 391 and 392, negligently setting of fire. Section 180, relating to disorderly houses and gaming houses—presence of a slot machine leads to a presumption that the place is a common gaming house. Section 195, there is a prima facie presumption relating to living on the avails of prostitution. Section 298(3), the burden of proof is on the accused relating to cattle rustling—and there are many other such sections. They are put into the criminal law where there are matters which are uniquely and peculiarly within the knowledge of the accused.

In each case there is a presumption; in each case there is a defence to be raised by the accused at which time the onus is clearly on the Crown, as it traditionally always is, to prove that the defence is not right and that the accused should be found guilty as charged.

This amendment is not a new concept. All it does is substitute long guns for restricted weapons, for the reason I indicated. Long guns are now made with serial numbers and are used in the commission of crimes, and particularly the crime of murder. In a number of instances the serial number is useful in identification and in the investigation and solution of crime. The concept is not a new one as suggested by the hon. member.

Mr. Doug Neil (Moose Jaw): Mr. Speaker, I should like to associate myself with the remarks of the hon. member for Calgary North (Mr. Woolliams) and the hon. member for Palliser (Mr. Schumacher). I listened with considerable interest to the minister who said that this is not a new concept. There is no question about that, but it is certainly an attempt by the government to extend a concept.

It has always been a basic principle of common law—the law that we use in our courts—that the onus of proof lies upon the Crown and that an individual is considered innocent until proven guilty. A few years ago the concept of reverse onus was

smuggled into our law in order to restrict the rights of individuals. It used to be very rare.

I recall when a reverse onus clause was smuggled into the vehicles act in the province of Saskatchewan a number of years ago. It came as a shock to judges and to solicitors practising law that the basic principle of our common law could be altered to make it a requirement that the person charged should prove his innocence. Over the years more and more reverse onus clauses have been written into the law. The result is that the state has been taking away the basic freedoms of the individual citizen. One of the reasons given for this is that it makes it easier for the police to prove their case in court. There is no doubt that is so, but my understanding is, and always has been, that individual freedom is basic and foremost in a democracy, and that this freedom ought not to be taken away.

In most cases the Crown does not have any difficulty proving a case where the burden of proof rests on it. It is required to prove beyond a reasonable doubt that an accused person is guilty, but with the reverse onus, that is not so. That is what disturbs me so much, not only with this particular amendment but with many of the laws on the books today. There has been an erosion of our basic freedoms and if we, as parliamentarians, allow the government to bring in more and more of this type of legislation then we, especially on this side of the House, are not doing our job if we do not voice our concern and let people know what is happening.

I should like to make a few comments on motion No. 13 to amend Clause 102(3), which extends the offence to include what they call firearms. Previously it referred to restricted weapons.

● (1740)

At present there are several million long guns in the hands of people in this country. Many of them are old, without a serial number. Many of them have been in the owner's possession many years and the serial number has worn off or been obliterated, perhaps when the gun hit the side of the car. Often, if you want to mount a telescopic sight on your long gun, you obliterate the serial number or deface it when you screw the mount on. I venture to say you will find hundreds of thousands of guns in this country on which the serial number is worn off, indistinct, or obliterated, possibly because work was done on the gun.

I foresee this situation arising: one may be hunting in the fall and one of those keen game wardens who check your hunting licence, count the number of ducks or geese you have shot, and so on, will ask to see your gun's serial number. If it is worn off or defaced, I can visualize the gun being seized and possibly a charge being laid. If I could see any reason for extending the section to cover other than restricted weapons I might be prepared to consider supporting it, provided there is no reverse onus.

Guns in this country at present are not registered. There is no record anywhere of their serial numbers. If you could trace by its serial number a gun used in a crime, I could see some