

*Criminal Code*

● (1550)

What is obvious, as I mentioned, to those who have been in the practice of law is that in the adversarial system there is no one set up to represent the victim, the victim's family or the witnesses. Indeed, one can rightfully say that there is no victim until there is in fact a conviction. That side of the justice system has to continue unaltered, in a sense, because one cannot assume that, because an allegation has been made, there is indeed a victim from the beginning of the trial process. What there is, I suppose, is a complaint from the beginning. Once a conviction is entered there is a person who is a criminal and a person who is a victim.

While we all have compassion for the victims of crime, we have to understand that the process takes place in the context of a trial, a process which attempts to discover whether indeed a crime has been committed and whether the person charged with the crime is the person who is guilty of it. Inevitably, that process has left out complainants, the ones who are the victims of crimes proven to have been committed. We see them every day as witnesses in courts. We see them being told, quite often after the fact, why it is that they have to come back another day, or why it is that the trial has not gone ahead on the particular day on which they have been called, often without explanation as to what is going on. Frankly, it is often difficult to explain in detail why a particular trial has to be postponed, or why a trial cannot continue to its completion on a particular day. However, that effort has to be made. It is important that there be a concentration of effort by, in particular, Crown counsel to ensure that the victims of crime, the witnesses who are called before the courts, are aware of the role that they play and of their importance in co-operating with the authorities.

Prior to my election I saw an awareness by the courts and by the judges of that concern. They took the time to explain to witnesses and to complainants how the court system works and the importance of their co-operation. They are told about the fact that sometimes it is an inconvenience to come back and forth. They suffer the loss of property which may be used in evidence for a period of time. These are difficult matters to explain to someone who does not know the intricacies of proof and the requirements of proof in a criminal case.

I welcome the streamlining of some of the activities contained in this Bill. For example, with respect to a theft, if someone broke into your home, Mr. Speaker, and stole a stereo, a TV set or a VCR, there is no reason why that item ought to remain in police custody for six months or longer to prove that, yes, it is the VCR that was stolen from your house. However, that has been a factor in numerous cases in which property was stolen and the evidence happens to be or has to be kept by the justice system in order to be used as evidence to prove that in fact it was stolen.

The ability in this legislation to streamline that process and to allow the return of those goods makes the process more reasonable. It is now possible for a photograph to be taken of

the goods and to allow that photograph to be used in evidence. All these matters streamline the process and make it more reasonable and practical. Yet it still preserves the rights of an accused person to be able to know what evidence there is against him. That has not been lost in this particular provision of the Bill.

Further, there are provisions for the taking of affidavits to verify ownership and requirements for reasonable notice to be given to an accused or to the counsel of the accused with respect to the contents of an affidavit. For example, if a victim of a break-in loses a video tape recorder and wants to make wild claims that he also lost a TV set, a valuable diamond watch and some other things, particularly if he wants to claim compensation for them under other parts of the Bill, then that can be brought to the attention of an accused person. Further, that person can be brought before the court, be cross-examined and be required to prove in the ordinary way that the goods as indicated were stolen. Again, I am commenting on some favourable aspects of the Bill.

With respect to determining restitution, the Bill requires that there be an ability to pay on behalf of an accused. If someone in the Chamber wanted to go out to commit a crime for the sake of committing a crime, for the sake of stealing something to which they were not entitled, for example, they could quite properly be considered to be a pure criminal. They can be treated with the type of serious and unequivocal breach of the law that would require them to compensate totally what they had stolen. Anyone who has practised criminal law in Canada knows that many of the people who perpetrate and commit crimes, particularly petty property crimes, break-ins and thefts, are themselves somehow victims of society. On quite a number of occasions it is not possible for them to make any form of restitution at all.

I give one example of a 12 or 13 year old boy who was a client of mine and who was charged and convicted of stealing a bicycle. The bicycle was stolen from a well-to-do family. The young boy eventually pleaded guilty in youth court. As part of the sentencing process the boy was required to make restitution. The criminal justice system, in this case under the Young Offenders Act, was used to require a young boy, who had no money and who came from a broken home, a single-parent family, who, along with a couple of other lads had been lured into grabbing kids' bikes, to make restitution. As a result of being convicted of his crime he was required, as part of the court restitution, to pay money which he did not have to this wealthy family who lived several blocks away across a street that separated their two neighbourhoods.

One can argue in many ways about this matter. However, to me it seems that this boy, who himself was a victim of a broken home, perhaps a victim of inadequate parental guidance and inadequate support from the school system, was somehow failed by us as well. To say to him that he should compensate someone to whom the loss was not particularly great and who was perhaps covered by insurance is not necessarily the route that we have to go. This is not of course the case in all cases.