

*Administration of Justice*

Kennedy, a study was undertaken by Professor Allen of Northwestern University which resulted in a report entitled "Poverty and the Administration of Federal Criminal Justice" which, in a definitive way, set out the views of the reporter as to the changes that should be effected in Federal law. I would suggest that this could well serve as a model not only for ourselves, but for all other common law jurisdictions, not only in respect of the type of inquiry we should have, but in respect of some of the basic principles that should be followed.

I point out to hon. Members that the question received broader consideration in the *International And Comparative Law Quarterly* of October, 1963. That article is a study of the question in respect of the Malaysian and Indian constitutions which is of particular interest since, of course, those constitutions came into effect since the war and it was intended that they should take advantage of the accumulated jurisprudence of the United States. The conclusion of the writer on this particular question was that despite the obvious importance of the question, the constitutions did not seem to have clearly provided any right of an accused to counsel, which only goes to indicate how comparatively recent, in many areas of the common law system, has been the recognition of the importance of this question.

We have also observed a great deal of study on this question within Canada in recent years. There was an Ontario study, the report of which has recently been delivered to the Attorney General of Ontario, copies of which we hope will soon be made available to the public. The Province of British Columbia carried out a very considerable study of this question, and the Province of Alberta, after a very successful pilot scheme in the City of Edmonton, guided by Mr. William Morrow and Mr. David McDonald, extended the legal aid system throughout the whole province.

• (5:20 p.m.)

Historically the responsibility for criminal jurisdiction in Canada has been divided between two levels of Government. The Federal Government has under the British North America Act, our constitution, been given responsibility for enacting criminal law including, in that sense, criminal procedure, while pursuant to section 92 (14) the duty of administering justice within the provinces has fallen to the Provincial Governments. In particular in this connection the provinces have the responsibility for maintaining the

criminal courts, including provision of the offices of Crown Attorneys who are responsible for conducting prosecutions of criminal matters. The provinces also have the responsibility for providing the structure of justices of the peace to administer those provisions of the Criminal Code with respect to laying informations by which prosecutions are started and for granting bail. The provinces equally have the responsibility for retaining custody of prisoners pending and during trial. Equally, it has been and is the responsibility of the Provincial Governments to legislate for the status and functions of the legal profession in general.

The motion which the hon. Member has brought before the House can, I think, be analysed in the light of that particular division of authority. In my view the proposition which he has put forward should really be subsumed under two headings: First, what changes, if any, should be made in the Criminal Code so as to be certain that justice will be assured in the trial of all charges, but more particularly those involving loss of liberty of the subject, by requiring that the accused have the opportunity of representation by legal counsel. In other words, are changes desirable in the Criminal Code to make the retention of counsel not only a right of the accused but also an obligation of the prosecution? The second point has to do with whether or not the provinces have the financial means of carrying out the requirements of legal representation which this Parliament might set out in the Code.

I would submit that logically the first of the two questions comes first in time and therefore should also be the first for decision. We must take the responsibility first in this Parliament of determining what changes, if any, must be made to the Criminal Code for the purpose of assuring equal rights to indigents before our courts.

In order to inform Parliament's decision on this question as on the many other disputed questions of criminal procedure, the Government has taken the responsibility of convening a committee of persons expert in the fields of criminal procedure and corrections to consider and report to the Government on the entire correctional process extending from the first apprehension of the offender right up to the moment of his final release back into society. May I say here, Mr. Speaker, that I think all Canadians should consider themselves fortunate in the quality of the personnel who have agreed to devote their time and