

Criminal Law Amendments

Mr. Waddell: Mr. Speaker, I rise on a point of order. I hesitate to interrupt the Minister, but this is a very important debate, with 2,500 people dying per year. Rather than supercilious heckling from both sides, we should get on with the matter. If the Minister wants to read his speech, it is fine with us. It is a very technical and very important area, and we should get on with it.

Some Hon. Members: Hear, hear!

Mr. Deputy Speaker: I would invite all Hon. Members to listen to the Minister, especially one Member who has been interrupting him.

Mr. Crosbie: Mr. Speaker, I am quite prepared to wing it, but the information would not be as accurate as the House is getting at the moment. When I finish with these notes, I intend to speak for another couple of hours. I will wing it for a few hours. The Member should put his mind at ease. I can give a speech without notes. I can give a speech for two hours. If he aggravates me, I will do it until the end of the session on Friday.

Mr. Ouellet: That is what we want.

Mr. Crosbie: To get back to breath samples, there are cases where the present sample is not adequate. What are some of the examples? Sometimes there has been an accident and the driver is unconscious and cannot provide a breath sample. Perhaps the Hon. Member could; he seems to be able to blow on all occasions, conscious or unconscious. Another situation would be where the driver is conscious but has sustained injuries which make it impossible for him to comply with the demand for a breath sample. Or the driver may be conscious but pretends to be seriously injured in order to avoid a breath test. He may be conscious but incapable of comprehending the nature of the demand for a breath sample, or he might be conscious but incapable of providing a breath sample because of his medical condition. He may be suffering from emphysema, asthma, brown lung disease or some other disease which renders him incapable of giving a breath sample. Breath samples are not always satisfactory.

One solution is a blood sample from people suspected of impaired driving. However, we have to balance certain interests, civil liberties or rights, such as the right not to have one's person interfered with. That right has to be balanced against the right of the public to be secure and people to be protected from injuries when on public highways, the rights of society as a whole. One has to be balanced against the other.

● (1140)

What can we do with respect to blood samples? The balancing process has produced the provisions we have included in this Bill. In respect of people who are conscious and can consent to giving a blood sample, we are proposing that a blood sample be taken only if there is consent. Suppose there has been an accident and someone is suspected of drinking. That person will be asked for his or her consent to give a blood sample. If he or she says no to giving a blood sample, then he

or she will not have to give a blood sample. However, if that person does not give the blood sample after having been asked to and is conscious and can make a choice, he or she can be charged with the offence of refusing to give a blood sample and the penalty would be the same as if that person were charged with impaired driving. In other words, that is the same provision that now applies with respect to breath samples.

Mr. Marchi: What page is he on in the MacGuigan speech?

Mr. Crosbie: Mr. Speaker, that is how it works when a person is conscious.

Some Hon. Members: Oh, oh!

Mr. Crosbie: If the hon. gentlemen are interested—

Mr. Waddell: The Liberals are not interested in this Bill.

Some Hon. Members: Hear, hear!

Mr. Crosbie: Mr. Speaker, what about a situation in which an individual cannot give his consent for reasons that I have mentioned? We are then proposing that acquisition of a blood sample be mandatory. We are proposing that if a person is not conscious, we will be able to take blood sample under certain circumstances through the use of a judicial warrant which might be obtained by means of a telephone or other telephonic instrument. This is to be limited to cases where death or injury has occurred at the scene of an accident. We believe that if death or injury has occurred at the scene of an accident, then the rights of society justify the potential infringement on the civil liberties of the unconscious person. This, of course, can only occur if the person is unconscious.

All of the blood samples, if they are taken, will be taken by licensed medical practitioners or other qualified persons who are authorized by, or working under the direction of, a licensed medical practitioner. A blood sample will not be taken in these circumstances unless a medical practitioner is satisfied that taking a blood sample will not endanger the life or health of the person involved.

In addition, the legislation proposes that the accused be given a sample of his own blood for independent analysis. There are many safeguards in connection with the taking of blood samples. As I recall, the laws of Saskatchewan and British Columbia already provide for the taking of blood samples in similar circumstances.

What, then, is this telephonic warrant or telewarrant? As you know, Mr. Speaker, the legislation will remove writs of assistance. Under previous Governments, the writ of assistance has existed for many years. That writ permits a certain number of RCMP officers who are enforcing the drug or customs and excise laws to enter homes without a search warrant. Many have considered the writ of assistance to endanger basic individual rights of Canadians. A writ of assistance continues to run, has no time limit and can be used by the RCMP member who has it. New writs have not been issued since 1976, I believe.