

Public Order Act, 1970

There are two exceptions in the Criminal Code, and these are outlined in section 23(2) and (3) as follows:

No married person whose spouse has been a party to an offence is an accessory after the fact to that offence by receiving, comforting or assisting the spouse for the purpose of enabling the spouse to escape.

And:

No married woman whose husband has been a party to an offence is an accessory after the fact to that offence by receiving, comforting or assisting in his presence and by his authority any other person who has been a party to that offence for the purpose of enabling her husband or that other person to escape.

[Translation]

I consider inadmissible the rejection of those two exceptions, since they are based, I should say almost in their proper sense—on natural law. This amounts clearly to setting aside principles issuing from the British law. We no longer even make the distinction established by the Criminal Code in cases of murder or rape allowing the wife to receive her husband because he is part of her own flesh.

Then, the wife who will receive her husband at her home, help him escape and hide him shall be guilty. This is absolutely contrary to the basis of our criminal law according to which a wife is not obliged to give evidence against her husband. A wife is one with her husband as a husband is one with his wife.

Against our own will, with legislations of this kind designed to rid us of terrorist people attempting to destroy freedom in our country, we might ruin our society. Let us try at least not to break our families, for it is painful to think that we are reaching such a notion.

I wish also to point out—and I think I have already proved it—that this law interferes with the principle of strict responsibility, or that at least it is possible that it be interpreted in that sense.

This clause in its wording, particularly in French, could prohibit preventing a lawyer from defending his client or, for example, from taking exceptional procedures like a brief of prohibition to prevent the sentence to be passed.

But in any event, Mr. Chairman, I move one amendment only, which reads as follows: That the following words be added at the beginning of clause 5 on line 1 before the words "A person who,":

"Subject to subsections (2) and (3) of section 23 of the Criminal Code,".

The Deputy Chairman: Order please. It is proposed by the hon. member for Matane to add the following words to clause 5:

"Subject to subsections (2) and (3) of section 23 of the Criminal Code,"—

—and to insert them at the beginning of the clause, on line 1, before the words:

"A person who,"—

[English]

Mr. Lewis: Mr. Chairman, I rose earlier, but you recognized the hon. member for Abitibi, to ask the minister a

[Mr. De Bané.]

question precisely on the point which is dealt with by the amendment which is now before the committee. I have had a number of letters and phone calls drawing attention to the fact that clause 5 does not have the exceptions which section 23 of the Criminal Code has, so that the wife of an arrested man would be unable to feed her husband or to stay with him in her house, nor would the husband of a woman be able to do so.

• (12:50 p.m.)

Before moving an amendment, I should like to ask the minister why this exception was left out of clause 5. Does he have any objection to the hon. member's amendment? It sounds an almost obviously sensible one in the circumstances. There is no reason why criminals in this situation or their wives should be treated differently from criminals covered by the Code generally.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, the clause certainly does not mean that the wife of an unapprehended person otherwise caught within the provisions of the bill and who continues to live with her husband, is guilty of any offence. As I said, the gravamen of the offence is that any assistance must be given "with intent thereby to prevent, hinder or interfere with the apprehension, trial or punishment..."

With regard to the point raised in section 23(2) of the Criminal Code, perhaps we can stand that over the lunch period and I will think about it.

Mr. Lewis: Mr. Chairman, perhaps the minister misunderstood—

Mr. Turner (Ottawa-Carleton): The difficulty is that the hon. member for Matane gave us no notice of the amendments he intends to bring forward.

[Translation]

Mr. De Bané: Mr. Chairman, I rise on a question of privilege.

Last week, a private talk was to be arranged for me with the minister but, because of his duties in the House, the minister was not able to meet me. He was represented by high-ranking officials who have taken note of everything I said. I cannot admit what has just been said, Mr. Chairman, anymore than the accusation directed at me a few days ago for having submitted three different versions of the expression "unlawful association". I was glad to see that *Hansard* was in complete contradiction with the accusation made by the minister.

[English]

Mr. Turner (Ottawa-Carleton): On the point raised by the hon. member for York South, Mr. Chairman, the intention was quite deliberately to exclude section 23(2) of the Criminal Code, because of the nature of the conspiracy we are dealing with and in order to dissuade anyone from assisting in the escape of persons in this particular conspiracy of the FLQ. The clause is put in the terms that any person who gives any assistance with intent thereby to prevent, hinder or interfere with the apprehension, trial or punishment, is guilty. There is