

Legal Proceedings

Mr. Young: The hon. member argues that a hardship is worked on those individuals—those very few individuals, I might point out—who fall into the category of having originally been convicted of non-capital murder, but have been ordered to stand trial again, this time for first degree murder.

I would like to assure the hon. member that I think his argument is an important one, and it is one which deserves the closest consideration. There are, however, some points which I believe merit examination in the course of considering the bill we have before us, and I would like to turn to some of those points now.

In the short time I had available to review the hon. member's proposal, I found two reported cases bearing on the point at issue. I am not certain whether there are any further appeals outstanding in either of those cases, so will necessarily restrict my remarks somewhat, as I noted the hon. member did too.

In a general sense it seems to me that neither case offers much support for the hon. member's argument that the transitional aspects of the Criminal Law Amendment Act (No. 2) violate the Bill of Rights, or are subject to the interpretational principles which he cites in the explanatory notes to his bill. Again, I would like to make it clear that these are questions which occur to me from a brief perusal of the hon. member's proposal, and I offer them as lines of argument which I think merit further examination in the context of further examination that should be given the proposal. Having said that, let me express the concern I have with the hon. member's point. In arguing that the section in question violates canons of interpretation, I am not sure whether the hon. member had an opportunity to reflect on the finding of the Alberta Supreme Court, Appellate Division, in the case of *Regina v. Budic* (No. 2).

Mr. Woolliams: Mr. Speaker, I rise on a point of order, and I hope you do not deduct the time I take from the time allotted the hon. member. That case has been quoted by me in a court room. I understand the case and it does not apply to hijacking, and does not apply to the other offences the hon. member has mentioned. I know the facts of the case. Under the normal conditions the person would have been charged with non-capital murder, as there was nothing planned or deliberate. In fact the second trial ended up in the court of appeal, from a second appeal, and he was found not guilty because of insanity. In the *Regina v. Pineault* case the attorney general of Ontario repented and preferred an indictment of manslaughter.

Mr. Young: I thank the hon. member for that interjection, Mr. Speaker. He undoubtedly does know about the case. All I was going to say, very briefly, in reference to that particular case, was that in looking at the comments of Mr. Justice Clement, he argued that the transitional section of the Criminal Law Amendment Act (No. 2) which is the subject of the hon. member's amendment "leaves no room for argument, or the application of canons of construction. The language is plain and imperative." Mr. Justice Morrow, in the same case, also found that it was "clear to me that the legislation has

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expressed an intent to have the newly enacted provisions take effective retroactively".

The hon. member for Calgary North referred to the *Pineault* case before the Ontario Court of Appeal. That case considered the provisions we are discussing this afternoon.

Mr. Justice Arnup also referred to the clarity of parliament's statement in respect of the preferring of a new indictment and thus, I would argue, called into question the basis for the hon. member's argument that the canons of construction are required to be brought into effect to the extent to which a clarifying amendment is required.

I must say I am even less certain about the argument made on Bill of Rights grounds by the hon. member. I do not intend to go into a great deal of detail on that argument. I think one of my colleagues may wish to make some comments in that regard a little later on. I would only suggest that we must take into account cases other than *Drybones* in assessing the impact of section 2 of the Bill of Rights on any given provision.

All I am saying here is that the provisions suggested by the hon. member affect a tiny number of persons, and it is not at all clear that an amendment such as that he proposes is required in practice. I have raised some arguments which, at the very least, leave some unresolved doubt in my mind as to the legal basis for the argument advanced by the hon. member, and attempted to tie them in, in a general way, with the two reported cases on the issue of which I am aware. I think we should leave it at that for the time being, and I would like to suggest that further consideration is merited in the areas I have mentioned. Also, I am sure no hon. member would wish to make specific comments which might have prejudicial effects on individual cases which might yet be heard, and I repeat the point that I am not aware of the current standing of the two cases to which I made brief reference.

In examining the proposal put forward by the hon. member, I think we must look at the assumptions which lie behind it in order to see if it can be supported as it stands or if it requires some further thought and study.

I have made very brief reference to the Bill of Rights argument which was advanced in the explanatory notes, and to the argument put forward by the hon. member involving canons of construction. I would like further to mention two other points which I believe also merit consideration. These involve the hon. member's interpretation of the intent of parliament in passing the Criminal Law Amendment Act (No. 2) 1976, and some of the remedies which may be available to individuals who believe themselves to have been unfairly affected—remedies not referred to by the hon. member.

● (1732)

First with respect to the intent of parliament, the hon. member in his explanatory notes appears to be taking the position—I am sure he will correct me if I am not interpreting him accurately—that parliament intended to ameliorate penalties under the terms of the Criminal Law Amendment Act (No. 2), either throughout that act, or in the transitional provisions, or both. To be sure, capital punishment was abol-