

Canada Evidence Act

subject to the ordinary search and seizure provisions contained in section 429 of the Criminal Code. The amendment proposed in this bill will authorize search and seizure, provided the warrant is expressly endorsed as not being limited by this section.

Another significant amendment is designed to unfetter the law from some of the unrealistic technicalities which have resulted from the hearsay rule. Traditionally, the general rule has been that assertions of a fact or opinion can only be presented by the person or witness having direct knowledge of that fact in order that the soundness of the presentation and the credibility of the witness can be tested by the court and the adverse party by way of cross-examination. I have stated the general rule broadly in layman's terms and I hope that my definition will meet with the approval of learned counsel in this chamber. There are many exceptions to it which grew up under the common law or were created by statute, and this would provide another exception to the hearsay rule.

A few years ago in England it was held that the court has no power to create or recognize further exceptions to the hearsay rule. This decision, which resulted in legislation in 1965 in England, has been followed in at least two reported cases in Canada. It is therefore apparent that the law in this country has fallen far behind the major changes which the computer age has brought to business methods.

Frequently records are kept either entirely or almost entirely by mechanical means, and in such cases it may be difficult and perhaps impossible to produce a witness to testify to the facts of a particular case, as distinct from testifying about the mechanical system under which transactions or events are recorded. Even in the case of records kept manually it is frequently impossible to trace the person, assuming he is still alive, who made the entries originally in the business records. A useful source of evidence is thereby excluded from the courts. It is little wonder that intelligent laymen conclude that, far from being blind, the goddess of justice is looking the wrong way.

I consider that, in general, the law of evidence should be moving away from the rigid rules of admissibility toward assessment of the cogency of logically relevant facts. If the facts are relevant, what is the best way to introduce those facts without there being any unfairness to either side? Accordingly, Mr. Speaker, this bill would, subject to certain

[Mr. Turner (Ottawa-Carleton).]

safeguards, render business records as defined in the bill generally admissible and would entrust the courts with the discretion of assessing the probative value of those documents.

Finally, Mr. Speaker, the bill provides also a minor but useful amendment which it is hoped will avoid the present confusion and uncertainty that arises where an affidavit on a purely provincial matter is taken in the form provided by the Canada Evidence Act.

The only feature which these amendments have in common is that they would modernize the law by removing outdated, awkward and unjustifiable impediments to the full and convenient disclosure of relevant facts in legal proceedings. I emphasize again that these are only first steps in dealing with the many problems in the field of the law of evidence which I will be considering in the review I have discussed.

Mr. Eldon M. Woolliams (Calgary North): Mr. Speaker, under the new rules we are really discussing a bill which, after the second reading stage, will go to a standing committee to be examined. In that committee we shall have the opportunity to study the proposed changes. I thank the minister for outlining briefly the contents of the bill which are to be studied in committee.

The minister may have some reason for saying a second time that, "I will do certain things in future, one of them being that I shall review the Canada Evidence Act." He has made similar remarks about the Criminal Code. From my reading of a certain article in *Maclean's* it is evident what changes he contemplates making in the Criminal Code. The changes in the Canada Evidence Act in many ways are analogous to the proposed changes in the code. It seems to me that the best procedure would have been to allow the Standing Committee on Justice and Legal Affairs to examine the proposed changes in order that the entire Canada Evidence Act could be considered.

Unless the minister has not disclosed everything he ought to disclose I fail to see, after having heard his speech, what the urgency is in bringing about these changes. One amendment deals with hostile witnesses. I will not repeat the minister's definition of a hostile witness, nor will I repeat in what circumstances the court can rule a witness hostile. Yet what will the proposed amendment really do? I think we should look at it carefully. Certainly it will not help the accused. Will it