

I think those are enough examples to prove what I am trying to say.

I think I will leave section 13(2) for the time being and wait for some questions.

In regard to the other section to which I referred, section 70, I am aware that there are representatives of the Canadian Legion here today and any of you who have their briefs for the past number of years will see that they have continually objected to section 70. I am also aware that the Canadian Legion as an organization is not supporting this bill that I have proposed. I have a good idea why they are not supporting it as an organization. However, I do not think they disagree with the bill in principle.

I would like to say a few words about section 70. I do not think it is necessary to read what the Canadian Legion has said continually in their briefs; any of you who have their briefs can look up what they have said with regard to this section.

Mr. ROCK: May I interrupt? Can you give us the gist of the section?

Mr. McINTOSH: It reads as follows, and it is normally called the benefit of the doubt clause:

Notwithstanding anything in this Act, on any application for pension the applicant is entitled to the benefit of the doubt, which means that it is not necessary for him to adduce conclusive proof of his right to the pension applied for, but the body adjudicating on the claim shall draw from all the circumstances of the case, the evidence adduced and medical opinions, all reasonable inferences and presumptions in favour of the applicant.

Not being a lawyer, I went to a lawyer and asked him to give me his interpretation of that clause. I would like to read it to you and ask those of you who are lawyers if you agree with his interpretation. He says this:

The benefit of the doubt means that doubt that might exist in the mind of a reasonable man, the average man on the street. A judge does not apply a doubt that exists in his mind; he applies that which he considers would exist in the mind of a reasonable man if a reasonable man was sitting on the bench. The judge interprets the law to the best of his ability as a man learned in law; he looks at the facts and weighs them, tests them and doubts them, and he, the judge, imagines what a reasonable man sitting in the jury would do. In other words he applies the law as a learned man and considers the facts as a reasonable man. The conception that a reasonable man as a judge is a conception of British justice that is drilled into all law students, I understand. It is not unusual for a judge to say to an accused 'I have no doubt of your guilt; nevertheless, there is an element of doubt and under the law I must give you the benefit of it.' The judge here refers to the doubt an average man might have, a doubt that exists in the mind of a man in the street, not the doubt that exists in the mind of the judge?

Now I understand that such a statement and such an understanding of a section such as that is basic to lawyers and I would ask you, Mr. Pennell, if that is right under British justice?

Mr. PENNELL: I would say that in my humble opinion they are dealing with reasonable doubt as applied in criminal cases.

Mr. McINTOSH: Right. The interpretation put on clause 70 by the commission is directly opposite to the interpretation of the courts, and opposite to the intent of the court and the intent of parliament, I would suggest.

This statement is verified by the evidence of the deputy chairman again as recorded in the minutes of proceedings of this committee dated April 9, 1959.