

which appear to fall within this category. One can readily see the difficulty involved in listing these offences. Let me refer to the two pertinent parts of the Code. Section 212 reads:

212. Culpable homicide is murder

(a) where the person who causes the death of a human being

(i) means to cause his death, or

(ii) means to cause him bodily harm that he knows is likely to cause his death, and is reckless whether death ensues or not;

● (1500)

(b) where a person, meaning to cause death to a human being or meaning to cause him bodily harm that he knows is likely to cause his death, and being reckless whether death ensues or not, by accident or mistake causes death to another human being, notwithstanding that he does not mean to cause death or bodily harm to that human being—

There is a very difficult formula or criterion under section 212. Section 213 contains an entirely different definition. I want to emphasize that I am dealing with both sections. Under the other it is a question of knowledge or that death ensues. There are some learned cases on this subject. Section 213 of the Code, at page 168, states:

Culpable homicide is murder where a person causes the death of a human being while committing or attempting to commit treason or an offence mentioned in section 52, piracy, escape or rescue from prison or lawful custody, resisting lawful arrest, rape, indecent assault, forcible abduction, robbery, burglary or arson.

A number of offences are listed. But there is a serious difficulty here. Let us take robbery with violence. Two people go into a bank to rob it. They are armed to the teeth. In the act of robbing the bank and in the act of their violence they shoot somebody or use a weapon by which someone is killed. There are cases in the Supreme Court of Canada which state that once you prove that, that is murder per se. But under the other section the finding of manslaughter is always open.

It is interesting to examine the Trinneer case in which the right hon. gentleman from Prince Albert and Davie Fulton were engaged. The Supreme Court of Canada ruled, in spite of that section, that in a charge of murder manslaughter is always an included offence. Where there is an included offence of manslaughter and you do not list the section which covers or mentions manslaughter, it is possible that after the evidence went in and you obtained a conviction for murder, and then appeared before the appeal court, it would be noted that manslaughter was available and the court might have to declare that evidence inadmissible because of the definition. That is a possible interpretation.

If we are to legislate, let us at least clarify the situation as much as possible. I dealt with this question. In this case there were 13 young men involved. I did not take the trial but I took the appeal. It was alleged that the 13 young men went out to assault, with weapons such as crowbars, tire wrenches, and so on, another group of about the same number. They were cyclists. They were charged under the tougher section 213, under which basically there would be murder proceedings. All 13 were convicted. The court of appeal took the position that it had to be murder or nothing. I alleged that that was wrong. The case referred to by me was that of *Regina v. Trinneer*, 11 C.R. (1970) at pages 116 and 117. This decision can be distinguished, as

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the charge was under section 202, which is now section 213, with section 21(2) being applied, whereas Emkeit et al, the group to which I referred, were charged under section 201, now section 212, and section 21(2). The chief justice now retired, Cartwright, said this:

At the risk of repetition, it is my opinion that on the true construction of sections 202 and 21(2) as applied to the circumstances of this case... It was not necessary for the Crown to establish that the respondent knew or ought to have known that it was probable that Mrs. Vollet's death would ensue.

In brief, the accused can and may be found guilty of murder when sections 202 and 21(2) are applied, whether the Crown establishes that the accused knew or ought to have known or not; whereas when sections 201 and 21(a) are involved, in order to get a verdict of murder the main ingredient, that is, knowledge must be proven to obtain a verdict of murder, otherwise the verdict may be manslaughter or nothing. What I am saying is that I think we must be very careful to include the crime of manslaughter.

There are other anomalies which might be mentioned. In the definition of "offence" it states that "offence" means offences under certain sections. This is followed by the enumeration of specific sections in the Criminal Code including section 247, immediately after which appears the word "Kidnapping".

**The Acting Speaker (Mr. Laniel):** Order, please. I regret to interrupt the hon. member, but if he wishes to continue his remarks he would need the unanimous consent of the House because his time has expired.

**Some hon. Members:** Agreed.

**Mr. Woolliams:** Mr. Speaker, a number of these offences are names in the definition clause in the motion moved by my good and respected friend from St. Paul's. I might give the minister the example of the Narcotics Act where there is the intent to traffic, or the act of trafficking. In both cases there is a penalty of life imprisonment. There could be some ambiguity here. What the hon. member for St. Paul's is trying to do—and I hope the minister considers this in good faith—is to confine public officers or police officers when wiretapping so they will be able to do so after obtaining an order from a judge with all the formulae and criteria laid down where the offence is a serious one.

I would ask the Minister of Justice to consider what the hon. member for St. Paul's is trying to do. He is trying to improve the bill by adding a few words in order to avoid ambiguity. I discussed earlier the ambiguity in respect of the definition of murder under the Code and murder with the possible finding of manslaughter, one being ordinary murder where it is easy for a jury or a judge to find manslaughter. Whether one appears as defence counsel or as Crown counsel, one becomes involved in great difficulty when there is ambiguity. Not only is the private citizen being charged involved in an expense, but there is also an expense to the court. Also, the ambiguity creates anxiety for both counsel and the court.

There are several other cases to which I could refer the minister but I do not wish to take time to place them on the record now. There are several other sections which concern me which might not be included in a definition of "offence". I would hope that this section could be stream-