say first of all that all that clause 8 does is to raise an evidentiary presumption or a presumption of evidence and nothing else. Clause 8 does not create an offence. The offence is created under clause 4.

**Mr. Douglas (Nanaimo-Cowichan-The Islands):** Clause 8 raises a presumption of guilt.

**Mr. Turner (Ottawa-Carleton):** There is nothing in clause 4 which creates an offence retroactively and there is nothing in clause 8 which creates a law which has a retroactive effect. In clause 8 we are dealing merely with a presumption of evidence.

**Mr. Douglas (Nanaimo-Cowichan-The Islands):** And of guilt.

**Mr. Turner (Ottawa-Carleton):** It is a presumption of fact.

I want to submit to the committee first of all that there is no retroactive provision in this bill. Clause 8 raises a presumption in relation to one offence only namely an offence under section 4(a) of the bill that of being a member of the unlawful association. So let us put this in the proper perspective. Section 8 does not create a law which has a retroactive effect and the evidentiary presumption relates only to one offence namely the offence under clause 4(a) of the bill dealing with a person who is or professes to be a member of the unlawful association.

I am speaking legally now and I am attempting to interpret the legal effect of this bill. A person cannot be properly charged or convicted of being a member of the unlawful association namely the FLQ prior to October 16, 1970. There is nothing in clause 8 or in clause 4 that says that. When we are talking about retroactive legislation or retrospective criminal legislation this is what it means in the true legal sense. If you had a retroactive piece of legislation a person could be convicted in November of 1970 on a charge specifically referring to conduct in October 1970 which was not unlawful at that time. Now no one can properly be charged or convicted either under the regulations passed pursuant to the proclamation of the War Measures Act or under this bill unless the charge specifically relates to conduct after October 16, 1970.

I have said that the effect of clause 8 is to raise a rebuttable presumption, and lawyers present in the committee will know what I mean. In other words, if the Crown, by adducing evidence of those things enumerated in clause 8, places an accused in the position of being liable to be convicted unless evidence is adduced on his behalf either by himself or through witnesses or through the cross examination of witnesses who testify on behalf of the Crown, which on a balance of probability indicates that on the date specified in the charge he was not a member of the unlawful association, then the benefit of the doubt goes to the accused.

I will go into this in more detail, but the presumption of fact, or what criminal lawyers call a provisional presumption, only sets an initial presumption against the accused which he can rebut or discharge if, on the balance of probability, the doubt is in his favour. The overriding burden of proof, namely the burden of proof on the Crown in every criminal case to prove guilt beyond any reasonable doubt, always exists.

**Mr. Woolliams:** Would the minister permit a question?

**Mr. Turner (Ottawa-Carleton):** I would like to go on with this complicated argument. It may be that if I do not finish it by five o'clock perhaps the committee will give me an extra five minutes or so because it is important that I make my arguments in sequence.

There is nothing new in the concept of placing an onus on the accused in criminal proceedings to adduce evidence on his own behalf once the prosecution has led some evidence pointing toward guilt. As a matter of fact, the hon. member for York South said he was not as concerned about this provision as he was about what he called the retroactive provision, which I deny is a retroactive provision.

By way of illustration I want to refer to section 8 of the Narcotic Control Act which provides that on a charge of being in possession of an illicit drug for the purpose of trafficking, the Crown need only prove beyond a reasonable doubt that the accused was in possession of the drug whereupon an onus is placed upon the accused to adduce evidence that he was not in possession for the purpose of trafficking. Similar provisions appear in the Food and Drugs Act, in the Customs Act when we are dealing with the unlawful possession of smuggled goods, and the Excise Act in the provisions relating to the unlawful possession of spirits.

With respect to these provisions it must be borne in mind that such a provision is necessary if the offence of being in possession for the purpose of trafficking is to be effectively enforced. There is nothing per se objectionable about such a provision. It simply means that when the Crown has proved illegal possession, this gives rise to a presumption which places a burden on the accused to adduce evidence concerning the motive for his being in possession. The Ontario court of appeal has held unanimously in the case of The Queen against Sharp (1961) 35 C.R. 375, that the onus shifting provision in the opium and narcotics drug act, a provision similar to the shifting of onus or shifting of the burden of proof or presumption of fact that we have here, did not violate the Bill of Rights by depriving a person of the right to a fair hearing or by depriving a person charged with an offence of the right to be presumed innocent until proved guilty.

• (4:50 p.m.)

This case in the Ontario Court of Appeal points out that the shifted onus can be discharged upon a balance of probability, and it also draws attention to the fact that the Supreme Court of the United States has held that similar statutory presumptions are not a denial of due process provided there is a rational connection in