

Criminal Code

class. This, then, I would submit to Your Honour is the answer to the question, what do deaths and injuries on the highways have to do with the drinking driver?

• (3:20 p.m.)

The next question which arises is, what assurance is there that the setting of a statutory blood alcohol limit and the compulsion to take a breathalyzer test will have any appreciable effect on drivers who drink and, in turn, on the death and injury rate? Apart from the obvious answer dictated by the figures I recited from the study, and from common sense, the experience in the United Kingdom gives ground to expect that if this legislation passes there will be several hundred Canadians alive next year who would not be alive if there were no compulsory breathalyzer test. There will be several thousand more persons uninjured and several thousand more hospital beds free for people with other illnesses which would otherwise be occupied by patients broken in bone and spirit in traffic accidents.

[Translation]

In addition to showing the part which is played in traffic accidents by drivers who take alcoholic drinks, the study entitled "Grand Rapids" supports the opinion that .08 per cent represents the real danger level. That is why this figure of .08 per cent was proposed by the standing committee on justice and legal affairs, a few years ago, by the Canadian Bar Association, by the British Medical Association and by the Legislature of Manitoba in its resolution of May 1968. It is also the figure which was used in 1967 in the Road Traffic Act in the United Kingdom.

As for the Canadian Medical Association, they recommend a figure of .05 per cent. The present bill recommends the adoption of a figure set—with the support of a number of authorities—at .08 per cent.

An act which would make it an offence for anyone to drive an automobile when the alcohol level in his blood exceeds .08 per cent would be unrealistic, from a practical point of view, if at the same time, it did not provide for compulsory tests.

Consequently, the present bill suggests that, under definite circumstances, a citizen could be requested to provide a sample of his breath to be analyzed. The bill does not request any sample of blood or urine.

[Mr. Turner (Ottawa-Carleton).]

[English]

When the resolution in favour of compulsory breathalyzer tests was passed by the Canadian Bar Association, there were immediate outcries across Canada that such a proposal was a retrograde step and involved compulsory self-incrimination. I want to say that the traditional rules of self-incrimination apply only to statements or declarations made by accused persons. The view I am now expressing is supported by the Supreme Court of Canada. Self-incrimination does not extend to physical or real conditions or to mark such as a man's fingerprints, footprints, the state of his clothing, the state of his behaviour or the state of his breath. Under the bill the driver is not subject to a compulsory breathalyzer test unless at that time, or within the previous two hours, he has conducted himself in such a way that a peace officer, in the words of the bill, "would have reasonable and probable grounds" in arresting him for impaired driving.

The burden would be on the Crown to prove his conduct and if the arrest was not justified the driver would be entitled, with impunity, to refuse the breathalyzer test.

Mr. Woolliams: If he doesn't he is convicted.

Mr. Turner (Ottawa-Carleton): We will discuss that, Mr. Speaker.

As a member of the legal profession and as someone who believes in civil rights I think any type of compulsion is unsavoury in a free society, and any type of compulsion enforced by penal statute or by the state must find its justification not merely in a rule of law but in the needs of the community. I am submitting to the house that the needs of the community more than justify the proposed amendment.

Mr. Woolliams: Don't misrepresent the law.

Mr. Turner (Ottawa-Carleton): With respect, I do not think I am misrepresenting the law, but we can argue that later. As with other provisions of this bill, it is a question of weighing the conflicting interests—the balance of public convenience—that can never be totally reconciled. It is my view and the view of the government that in deciding which is the more vital to social order in Canada and to the benefit of the majority of the people in our country, there should be severe penalties in case of drinking and driving.

I am determined to fight murder on the highways and to combat carnage on the