

*Criminal Code*

to the amendment to section 150(2)(c). This provision which was proposed by the present Prime Minister is now contained in Bill S-15 which was passed by the Senate on November 19 and is before us. I shall read this clause because we all have correspondence and this is a good way to bring the point to the attention of the dozens of people who are concerned about it. The amendment as set forth in Bill S-15 is as follows:

—offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instructions, medicine, drug or article intended or misrepresented as a method of causing abortion or miscarriage,

The words which are being deleted from the present law are "preventing conception".

Voilà, monsieur l'Orateur, as to the bill before us. I agree with the breathalyzer provision. Probably I would not have a few years back, but I think the menace of drunken or impaired drivers on the highways of Canada has become so great that rather drastic measures must be taken by the House of Commons to cure that evil. So I shall have no wrestling with my conscience when it comes to the breathalyzer proposal, although later I will indicate that I am not in favour of making a criminal of the person who does refuse a breathalyzer test.

I should like to point out to the Minister of Justice (Mr. Turner) however that there will be a question of doubt at the magistrate's court level about the value of the breathalyzer test unless there is an improvement in the breathalyzers themselves or some change in the draftsmanship of the particular clause. The reason I say this is that there is expert evidence available which indicates that a reading on a breathalyzer has a margin of error no more than .01 below the reading. It could be as much as .02 above but since we are dealing with minimums I will deal with the .01 below the reading. So, if we are dealing with a reading of .08 on a breathalyzer and agree that this is the standard we should impose by this legislation then the legislation should read .09 because of that margin of error I have indicated.

● (8:20 p.m.)

In order to put my case before the house in better form, I should like to quote from the transcript of a case that was tried in Nova Scotia. I will not give the name of the accused, since I do not suppose anybody enjoys having his name bandied about in *Hansard*, but I will note that counsel for the

crown was Elmer MacDonald, a very experienced criminal trial lawyer, and that counsel for the defence was G. L. S. Hart, who is now Mr. Justice Hart of the Supreme Court of Nova Scotia. The case was tried before His Honour Martin Haley, who is a magistrate in the Dartmouth courts. The witness whose evidence I am about to quote is Donald Joseph Saturley of the R.C.M.P., stationed at the crime laboratory at Sackville in the province of New Brunswick. Let me quote these questions and answers:

By the Court: Well how did your results, with respect to the direct blood analysis compare to the breathalyzer machine?

A. We found that the breathalyzer machine, essentially, reads lower than direct blood analysis.

By the Court: How much lower?

A. The limited accuracy of the breathalyzer is .01% high or minus .02%. For example, a reading of .15% could be as high as .17 or as low as .14. That is to say the breathalyzer consistently reads low.

Q. It does?

A. Yes, over a large number of—

By the Court: Then how accurate is the breathalyzer?

A. It's accurate to within these limits. In other words a reading of .11% couldn't be distinguished from a reading of .12% because the breathalyzer just isn't that accurate, but it could be distinguished from a reading of .13%.

By the Court: But where are we going to land if Mr. Trudeau's bill C-195 goes through and he says that .10 is going to be prima facie evidence of impairment?

That was the number of the former bill. The answer was:

A. Yes.

By the Court: So the guy could be probably .09 then?

A. That's correct, Your Honour.

By the Court: For my own information, since you're here, what good is that bill to be then if they put in a prima facie .1%?

A. I don't know if that point has been considered in the bill, the accuracy of the instrument used to measure the alcohol level. It's something that will have to be thought about.

I make the point that if we accept as a principle that the reading of .08 is what we are aiming for, and above which an individual should be convicted of impaired driving, then we will probably have to put .09 in our legislation instead of .08 to allow for that margin of error. If we do not make that allowance there will be a class of case which the magistrates will have to dismiss on the grounds of reasonable doubt since they will be seized with the knowledge that the breathalyzer is not absolutely accurate.