

*Capital Punishment*

Progressive Conservative, and one NDP. It was agreed that the resolution, moved in a non-partisan way, would be decided on a free vote. The resolution read as follows:

Resolved that it is expedient to introduce a measure to amend the Criminal Code for the purposes of

- (a) Abolishing the death penalty in respect of all offences under that act
- (b) Substituting a mandatory sentence of life imprisonment in those cases where the death penalty is now mandatory
- (c) Providing that no person upon whom a mandatory sentence of life imprisonment is imposed shall be released from imprisonment without prior approval of the governor in council.

An amendment to the motion whereby the death penalty would be abolished on a five-year basis only was rejected on April 5 by a vote of 138 to 113 and, at the end of the debate, the main motion was rejected by a vote of 143 to 112.

In 1967 the government of Prime Minister Lester Pearson introduced, and parliament enacted, Bill C-168 to abolish the death penalty for a five-year trial period, except in cases of capital murder which, as defined under Bill C-168, related to murder of policemen and custodial staff. Bill C-168 did not amend the sections of the Criminal Code relating to treason and piracy, so that these two offences continued to be punishable by death.

Bill C-168 differed from the resolution of 1966 in that it allowed for the retention of the death penalty for capital murder, and that the period of partial abolition would be limited to a trial span of five years. Debate on second reading concluded November 30, 1967, and the bill was referred to committee by a vote of 105 to 70. Among the amendments introduced during consideration in committee of the whole was one to abolish capital punishment completely and replace it by mandatory life imprisonment; this was defeated by a vote of 106 to 37. Bill C-168 received Royal Assent in December, 1967, thus abolishing the death penalty for five years except for treason, piracy, and murders of police and custodial staff.

With expiration of the partial moratorium on capital punishment in 1972 parliament was faced with the options of extending the partial moratorium or returning to the death penalty.

On January 26, 1973, the hon. Solicitor General (Mr. Allmand) introduced Bill C-2 providing for a further five year extension of the trial period for the abolition of the death penalty, except for cases of capital murder. This debate was again conducted on a non-partisan basis.

On May 29, 1973, Bill C-2 was given second reading and was sent to the Justice and Legal Affairs Committee. The vote was 138 to 114. A proposed amendment to eliminate the death penalty entirely was ruled out of order in the committee on June 21, 1973. Parliament gave the bill final approval in October of 1973 by a vote of 111 to 106. This legislation abolished the death penalty in all cases except those dealing with capital murder—murder of police and prison guards—for a trial period until 1977. The bill did not amend the sections of the Criminal Code dealing with piracy and treason, two crimes which still carry a maximum sentence of death.

[Miss Nicholson.]

● (2030)

Since December of 1962 there have been no executions in Canada. It is difficult to understand the position of those who have criticized the five commutations of the death penalty which have taken place since 1968 as "breaking the law" or "flouting the will of parliament". The authority to commute sentences, including sentences of death, has existed since Confederation in two ways: first, the ancient right of the Crown to grant mercy, a right which was transferred to the Governor General by letters patent in 1947; and second, the statutory power of the Government of Canada.

The statutes of Canada in 1869 contained provisions for statutory commutation of sentences. Section 129 of the statute of 1869 reads, and I quote:

Nothing in this Act shall or doth in any manner limit or affect Her Majesty's royal prerogative of mercy.

Section 684 of our present Criminal Code deals with statutory commutation and section 686 with royal prerogative. Section 684(1) reads as follows:

The Governor in Council may commute a sentence of death to imprisonment in the penitentiary for life, or for any term of years not less than two years, or to imprisonment in a prison other than a penitentiary for a period of less than two years.

Section 686 reads as follows:

Nothing in this Act in any manner limits or affects Her Majesty's royal prerogative of mercy.

For a description of the royal prerogative of mercy I am indebted to the report published in 1956 of a committee which was appointed under the chairmanship of Mr. Justice Fauteux to inquire into the principles and procedures followed in the remission service of the Department of Justice of Canada, part of which reads as follows:

The prerogative powers consist of all the special dignities, liberties, privileges, powers and royalties allowed by the common law to the Crown, which have not been taken away by statute. One of the important prerogatives that remains vested in Her Majesty in right of Canada is the royal prerogative of mercy. Under it a pardon may be granted to any person convicted of a criminal offence or the punishment imposed by the court in respect of the offence may be commuted or remitted.

In Canada the power is exercised by the Governor General on behalf of the Queen. The Letters Patent that constitute the office of Governor General of Canada direct, in effect, that the Governor General shall not exercise the royal prerogative of mercy without first receiving the advice of the Privy Council for Canada in capital cases . . .

In addition to this all-embracing prerogative power, there are several Acts of Parliament that authorize the granting of similar relief to offenders . . .

. . . this combination of prerogative and statutory powers provides a useful flexibility which assures that relief can be granted in all deserving cases. Such a combination of sources of relief existing under the British system of government is also to be found in other countries.

Senator Neiman pointed out in her speech on May 20, 1975, that:

The government's rights to commute a sentence of death, as well as the ancient prerogative of mercy, have been part of the statute law of Canada at least since we became a nation. They reflect the will of parliament as much as any other federal statute or enactment, including those which empower the government to direct that a person shall be sentenced to death for certain offences.

As one looks at the history of capital punishment in our country, one is impressed with the procedural safeguards which exist all through the process of charging an