

*Criminal Code*

according to judicial interpretations is nevertheless considered to have the vehicle under his care and control. He can be punished by an automatic sentence of 30 days and/or fine, with suspension of driving privileges. In other words, such a driver is punished for having the good sense to drive his car off the road and to stay off the road. In my opinion, that makes no sense.

The provisions of the Code are clear. I feel that the phrase "care and control of a motor vehicle" has been interpreted by the courts very unreasonably. Under the illustration I have just given, whether or not the car is in motion, the driver is guilty of an indictable offence. Originally the judicial interpretation, as I recall it, was that if a person were sitting behind the wheel of a car and had even stopped the motor running he was still considered to have care and control of the vehicle. Then, the courts went one step further and decided that even though the keys were not in the ignition, he could still be charged. Eventually, the point was reached where even a person asleep in the back seat of the car was considered to have care and control of the vehicle, which I suggest makes no sense.

The fact is that instead of helping to keep drivers off the road, judicial interpretations of this kind have hindered this objective. Under these conditions, most people in an intoxicated state would keep on driving and take a chance on the cops not picking them up rather than pull over to the side of the road and stop the vehicle, because if the police look inside the car to see what is wrong they will be picked up anyway. I submit the existing law encourages drunks to keep driving, and I can think of nothing more foolish than that.

What is the situation in Great Britain? That country usually has forward looking laws in this regard. The British parliament changed its law, and the wording of my bill is much the same as that of the bill presented to the British parliament some years ago. I believe in 1965 the British parliament saw the anomaly existing in their law which encouraged drunk drivers to keep on driving, and I understand that the change they made has been of considerable assistance in improving the situation.

I have presented this bill on a number of occasions and the press has been very favourable to it. In fact, I have seen no unfavourable comment. The *Toronto Star*, which is considered a paper that supports the government, printed a very favourable article in 1966, and I have seen others since. I understand that a number of members of the House in all parties feel that this would be a useful amendment to make to the Code. In fact, I have yet to hear any arguments raised in opposition to it. This is why I shall be very interested to hear what government members who oppose the bill—and I understand it is to be opposed—have to say.

I am curious about one aspect, Mr. Speaker. Even if there are reasons, which I am anxious to hear, for opposing the bill, I cannot understand the government's refusal to let the bill be referred to the Standing Committee on Justice and Legal Affairs. The reason, of course, may be due to the usual attitude taken by members on that side of the House. I refer to the attitude that has been taken by the Liberal party since the days of the late

C. D. Howe. Although they have good attributes in other ways, one thing all hon. members opposite have in common—some people might refer to it as arrogance—is the attitude that only the members of the Liberal party have sound ideas; no one else is capable of voicing sound ideas, even people from other countries. The repository of all brains is in members on the government side of the House.

Perhaps that is the reason the bill is being opposed. Another may be that the senior officials, of the Department of Justice, and the minister himself, have decided that this amendment is not a very good idea because it does not fit into the doctrinaire approach to the Criminal Code. In the view of these people we must be made to fit the doctrine, the doctrine must never be altered to fit the people. We must not keep to the doctrinaire approach. There is a type of armchair debate among lawyers about which we often hear. Being a lawyer myself, I have heard of it. A number of lawyers gather around in comfortable armchairs and debate some of the fine principles of law which often are not very relevant. Sometimes they say that to be consistent the law should be one thing or another. That is fine perhaps so far as civil law is concerned. Certainly, I would be the first to admit that the law officers of the Crown and the public servants in the Department of Justice are experts at drafting laws and in constitutional matters, but I doubt if any of them has had much experience in enforcing the criminal law. I am sure the minister himself is in that category. One member of this House, the hon. member for New Westminster (Mr. Hogarth) has had some practical experience as a Crown attorney. In days gone by, I have such experience myself.

• (5:20 p.m.)

I would remind the government that the purpose of the law is not that people should fit into some precise niche in respect of the criminal code. We are dealing with people, and I believe a more practical approach is required. In this amendment the burden of proof is entirely on the accused, and he must prove a number of things which are not easy to prove. This is made clear. A number of quite difficult things must be proven. It is up to the judge or magistrate to decide whether or not he accepts the evidence presented by the accused on his own behalf. The way I read this amendment, and according to the advice I have received, there would not be much opportunity to fool the courts or to misuse the law by reason of the particular wording of the amendment. I believe those persons who have tried to exercise good sense in taking their cars off the road when they feel they are impaired or intoxicated should at least be given credit for this. This would not be easy to prove and I have deliberately phrased the amendment in this manner. I believe, however, that those persons who try to keep off the road in these circumstances should be given appropriate consideration and should not be punished for exercising a little sense.

As I mentioned, this view has been held in other countries. Public opinion would seem to favour this type of amendment. I would hope hon. members who do not

[Mr. Nesbitt.]