

## CRIMINAL CODE

AMENDMENT TO CHANGE RULE RESPECTING  
INSANITY

**Mr. Andrew Brewin (Greenwood)** moved the second reading of Bill No. C-14, to amend the Criminal Code (insanity).

He said: I had not expected I would have an opportunity of introducing this bill during this week. I think perhaps it is a very appropriate week in which to introduce a bill dealing with the subject of insanity. The purpose of the bill which I am introducing is to amend the Criminal Code so as to abolish what is known as the M'Naghten rules in respect to criminal insanity and substitute an up to date modern rule in its place.

One man is responsible for this bill being presented before the house. He is a young man by the name of Ronald Markle, who is a constituent of mine, now serving a sentence at Kingston penitentiary. He is 33 years of age, married, with seven children.

Markle suffered from a strange malady. In the course of two or three years he set fire to schools, churches and apartment houses. He was undetected by the police, and there was no rational purpose in his actions. Some time in 1962 he gave himself up to the police and asked for treatment. He pleaded guilty to nine charges of arson in a magistrate's court. He was not represented by counsel, and was convicted and sentenced to a total of 24 years in the penitentiary.

On appeal, the court of appeal saw nothing wrong with this sentence. However the public were more sensitive and a committee of citizens was formed to aid Markle. The press became interested and eventually the former minister of justice, the Hon. Mr. Fleming, directed a new hearing, and on this new hearing the sentence was reduced to 12 years.

Under the laws of Canada in regard to criminal insanity as they presently stand, there is no doubt that Markle was not insane. He appreciated the nature and quality of his actions; he knew that they were wrong. Indeed that was the very reason he gave himself up to the police and asked for treatment. He was, therefore, under our law criminally responsible for his actions. But it is equally clear that his acts were irrational and were the product of mental illness. What Markle needed, and needs, was not punishment but treatment.

The purpose of the bill before the house is designed to amend the inadequate provisions of the Criminal Code in regard to criminal insanity, and bring them up to date and in line with enlightened, modern medical opinion. The purpose of the bill is to ensure that where acts are committed by reason of

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mental illness, the persons involved are considered as sick persons requiring treatment, and not as criminals requiring punishment.

To use the language of a famous American judge, Judge Jerome Frank:

A society that punishes the sick is not wholly civilized; a society that does not restrain the dangerous madman, lacks common sense.

The present bill is designed to abolish the M'Naghten rule of criminal insanity and substitute for it a modern test adopted by the United States court of appeals in 1954.

The M'Naghten rule was framed by English judges in 1843, more than 120 years ago. M'Naghten fatally shot Edward Drummond, secretary to the prime minister, Sir Robert Peel, in an attempt to kill the latter. M'Naghten explained that he had made a mistake; that he desired to kill the prime minister. He gave this further explanation:

The Tories in my native city have compelled me to do this; they follow and persecute me wherever I go and have entirely destroyed my peace of mind.

There is no doubt that M'Naghten suffered from insane delusions. Nine physicians and surgeons called to the witness stand testified that he was insane, and the presiding lord chief justice directed a verdict of not guilty. M'Naghten spent the rest of his life in a mental institution.

The public, however, were indignant at the crime, ascribing it to a political plot. The House of Lords put questions to the 15 English judges who laid down what has since been known as the M'Naghten rules. The basic rule is that to establish a defence on the ground of insanity, it must be proved that the accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know that what he was doing was wrong. This test, slightly altered, remains the law of Canada today. It is contained in section 16 of the Criminal Code, part of which is sought to be repealed by the bill before the house.

The Criminal Code provides that no person shall be convicted of a criminal offence in respect of an act or omission on his part while he was insane, and it goes on to define insanity as follows, in subsection 2:

For the purposes of this section, a person is insane when he is in a state of natural imbecility or has disease of the mind to an extent that renders him incapable of appreciating the nature and quality of an act or omission, or of knowing that an act or omission is wrong.

Subsection 3, which I need not read, goes on to deal with specific delusions. It will be noted that the key phrase is the word "appreciated" and this is used rather than the word "know" in the original M'Naghten