CANADA REVIEWS ITS BAIL SYSTEM

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procedure which will involve the issuance of a new type of summons defined in the bill as an "appearance notice". The appearance notice will instruct an accused where and when to attend court and may be issued on the spot by the police officer on the beat or in the car, or following an arrest if an arrest is in fact made.

ADVANTAGES OF NEW PROPOSALS

The Criminal Code does not at present offer any real direction to magistrates or justices of the peace on whether to admit an accused to bail. The new proposals, I believe, remedy the defects of the existing law in the following respects. First, the new general rule is that an accused person should be released simply upon giving his written undertaking to attend court as required for the purposes of his trial. Second, the burden is expressly placed on the prosecutor to justify either any more onerous form of release than a mere undertaking, or the detention of the accused in custody pending his trial. Third, the detention of the accused in custody pending his trial is justified only on the following grounds:

(a) on the primary ground that his detention is necessary to ensure his attendance in court in order to be dealt with according to law; and,

(b) on the secondary ground that his detention is necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence involving serious harm or an interference with the administration of justice.

I want to make it perfectly clear that the primary ground is whether or not the accused will show up at his trial, and that the secondary ground will be whether the public interest will be protected, focusing the mind of the magistrate first on the rights of the individual, and secondly, on the rights of society.

The second ground takes proper account, I believe, of the need to protect the public interest, but at the same time it affords the courts guidance against too broad an interpretation of the provision of protection for the safety of the public by using terms like "substantial likelihood" and a "criminal offence involving serious harm".

ONUS ON POLICE

It is significant that in their practical operation, the provisions of the bill place an onus on the police to initiate action in the first instance to grant bail. No application by the accused is necessary. I believe this is important because the average citizen, the average layman, does not really know what his rights may be, and the obligation under the bill is on the police, the law enforcement authorities, to institute the procedures for bail. The Bail Reform Bill will require officials to make a first assessment as to whether or not an accused should be held in custody, and this will not require any initiative on the part of the accused, who, as I have said, may be unaware of the procedures available to him.

The British system of justice upon which our own is based, holds that a person is presumed innocent until proven guilty, and yet, many of those being held in local or county jails awaiting trial are innocent. In many cases, there is no segregation between those already convicted of an offence and those awaiting trial. The shortage of adequate pre-trial custodial facilities for women is of particular importance. The provisions of the new bill will eliminate, to a great extent, detention before trial and the inherent injustice of identical treatment of innocent and guilty.

I wish to stress that because the bill will bring about major changes in the law of arrest and bail, extensive education will be necessary to train the police of this country in the new procedures. It will be necessary to provide guidance for judges, magistrates, crown prosecutors, and defence counsel in the practical implementation of these new procedures....

POSSIBILITIES UNDER STUDY

The Department of Justice is now studying the possibility of eliminating some of the custodial and rehabilitation problems inherent in the present law by adopting conceptions of absolute and conditional discharge of an accused person. The procedure would be to dispose of a criminal case without entering a formal conviction against the accused even though his or her guilt has been established. This option was supported by the Canadian Committee on Corrections and would be another step in making the criminal law more flexible and responsive to the personal background and the character traits of the accused – that is, more responsive to the individual involved.

An acquaintance of mine once asked an inmate at Kingston to give his opinion of "the system". Back came the reply: "I don't think very much of it. I only got off twice and both those times I was innocent."

That was a facetious reply and a superficial response. We have come a great distance in Canada in reforming our law, but there remain many tasks before us; as these are eliminated new ones will take their places as the norms and value systems of society undergo rapid change....