

Public Order Act, 1970

that the reverse onus be removed because that, in the circumstances of this case, may not be possible. But I do say that this places the accused in an impossible position. He attended some meetings three or four years ago. He made some speeches a year or two ago. He is charged and brought into court. The facts of his attendances and of his speeches are established. These are brought before the court through the witnesses for the Crown. What does the accused then do? He gets to his feet and says he attended those meetings three or four years ago, if he wants to admit this and if it is true, but states that he has not done so since. He states he is not a member of any unlawful association.

What does the court then do? All of us who have had any experience in court would be very worried about this kind of evidence in contradiction of the facts which clause 8 would permit, because the court likely would look on this evidence as self-serving and would not be very impressed by the accused making an assertion to the effect that he is no longer a member of the FLQ or never had been a member of the FLQ. Unless the accused could produce some additional evidence to the court to support his assertion, then the likelihood of his evidence being accepted as contrary evidence is very small indeed. So, the onus placed on the accused in this case is very heavy indeed, even if the act were one which he performed after it became unlawful. But it is an impossible burden if he can be charged with being a member of an unlawful association and convicted of being a member of an unlawful association on the basis of acts which he performed at a time when the association simply was not unlawful and when the acts therefore were entirely lawful so far as the law at the time was concerned.

I have been trying to think why this provision is needed if justice is to be served, and I cannot think of any reason other than the same reason that has seemed to justify in the minister's mind the rejection of every other amendment which so far has been put before this chamber. I want to repeat, Mr. Chairman—and this is the foundation upon which our approach to the bill is based—that right from the outset on October 16 my leader, the hon. member for Nanaimo-Cowichan-The Islands, and I said in the speeches we made on that Friday that we recognized there was a criminal emergency in Quebec, and that at that time perhaps it was necessary—we had to say “perhaps” because we did not have the information to justify even this qualified approach—to extend the powers of the police to search, arrest and detain for limited periods. If those powers would help find the members and ringleaders of the FLQ, help to incarcerate and punish them and break up the criminal conspiracy which the FLQ has been and is, then distasteful though it is, if the government came down with legislation we would consider supporting the extension of those police powers.

This I suggest to you, Mr. Chairman, is the absolute limit to which this bill ought to go. Indeed, I want to say that as the days pass one becomes less and less convinced that the bill is at all necessary. One becomes less and less

[Mr. Lewis.]

convinced that the serious interference with the rights and liberties of the people is justified by the present situation in the province of Quebec. It is becoming increasingly clear that all the dark hints that were given by ministers of the Crown came out of somebody's imagination rather than out of fact. The conspiracy by these people appears not to have been a conspiracy at all. It would appear that Mr. Laporte was kidnapped by a little group of people who were on their way to Texas, heard of the kidnapping of Mr. Cross and came back to do what they had discussed doing earlier. There did not seem to be any plan. There is no evidence of which I know that is absolutely convincing that even the narrow powers to which I have referred are needed at this time.

However, I am taking on trust, if you like, the general attitude of the authorities in Quebec and here that some expansion of police power is needed to destroy the FLQ. But we ought not in this bill to go one step beyond those powers of search, arrest and detention for a very limited period. When we go beyond that we move in a direction which is unjustified by events in Quebec and which is unjustified by any principle of civil liberties or indeed by any principle of decent and just law, civil liberties on the side.

This particular provision in this bill has been criticized by almost every commentator I have heard, and in almost every editorial and article I have read from across this country. It was criticized I believe only last week by the clergy of a Quebec diocese as reported in the French language press. The clergy plead with the government, and particularly with the Minister of Justice to take out the odious provision of retroactivity in this bill.

• (4:40 p.m.)

I want to emphasize again that what we are dealing with here is purely membership in an unlawful association and committing acts which were lawful before a certain date. The conditions for conviction for membership in an unlawful association is entirely contrary to the spirit of our law and not to be permitted by this committee. I suggest that it will not interfere with the police or with the authorities in their search to destroy the FLQ. We should not create a precedent of retroactivity and I plead with the minister—not with great hope in view of his past attitude—and I plead with members of this committee, I must add not with much hope either in view of the past attitude of government members of the committee to support this amendment and remove the retroactivity from this bill.

We feel that this is a crucial and important point and we ask the committee to deal with the amendment as it should be dealt with.

The Deputy Chairman: Is the committee ready for the question?

Mr. Turner (Ottawa-Carleton): I have listened with great interest to the hon. member for York South. We are dealing with an important principle of law. But I want to