Henry of Bracton, under the rule of Henry III between the years 1222 to 1272, said the following in Latin:

Omnis nova constitutio formam futuris imponere debet, non praeteritis.

It means that every statute ought to prescribe a form to the future, not to the past. This principle dates back to the time of Cicero. My pronunciation of the name might be questioned, as it seems to be, but I pronounce it Cicero—with a hard C.

**Mr. Ellis:** Only in Calgary is it pronounced that way.

**Mr. Woolliams:** If you had gone to a Latin school, you would have known the correct pronunciation is Cicero—with a hard C. My friend from the province of Ontario may pronounce that name differently, but I will not get into an argument about that. That was the way they pronounced it in Rome.

Section 27(2) makes a sham out of every successful appeal in that under that section the freedom of the accused is jeopardized for a longer term. Mr. Justice Brooks, in a dissenting judgment of the court, put it succinctly in the recent case of *Regina v. Pineault* 1977, 32 c.c.c., second edition, Appeal Court of Ontario, when the appeal court considered an application under section 613(8) of the Code, which reads as follows:

Where a court of appeal exercises any of the powers conferred by subsection (2), (4), (6) or (7),—

Such as directing a new trial and quashing the conviction, the court may also make an order in addition to what justice requires. In other words, it was argued by Mr. Greenspan in the Court of Appeal in Ontario, and properly so, that the court could have ordered that the accused be charged with the crime of second degree murder. This is what he said:

● (1712)

Having regard to the whole of section 27 of the act, it seems clear that parliament set a cut-off date. It said that after the coming into force of the act all charges of murder would proceed as murder in the first degree or murder in the second degree and an accused not yet tried and one for whom a new trial had been ordered by an appellate court would accordingly be similarly treated. To this extent parliament has declared what is fair and just. However, the important distinction (and really it is a safeguard) is that where a new trial has been ordered the appellate court was under a duty when directing the new trial to make an order that justice requires. It is the presence of this obligation that is perhaps an answer to Mr. Greenspan's submission that this man's successful exercise of his right of appeal from his conviction for non-capital murder is no more than a sham.

In other words, the fact that he was successful in his appeal makes it a sham, because the charge is moved up from non-capital murder to first degree murder where he would be subject to a penalty of 25 years without the right of parole, unless he made an application to the chief justice after 15 years.

In my opinion section 27(2) is ultra vires or inoperative in view of the Bill of Rights. The Bill of Rights provides that every law of Canada enacted before or after the coming into force of the Bill of Rights, unless parliament makes an express declaration to the contrary, is to be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any right so recognized and declared.



At committee stage I examined this and asked questions. There was no express declaration by parliament as to section 27(2) to create a new classification of murder in reference to an alleged crime committed prior to July 16, 1976 and tried under the former classification of murder. In other words, to make it retroactive legislation there was no express declaration that parliament could do that, and if it did not make that declaration, it would be inoperative. This is retroactive legislation of the rankest, most oppressive and tyrannical form.

I should like to refer to section 2 of the Bill of Rights which reads as follows:

Every law of Canada shall, unless it is expressly declared by an act of the parliament that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgement or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations.

How can one say that these three persons, and perhaps others, will receive fair trials under the circumstances? Section 27(2) abridges the Bill of Rights, as it denies a fair and just hearing, and therefore is inoperative.

I do not have to refer to the Drybones case where an Indian off a reservation was charged as being drunk because he was an Indian off a reservation. The Supreme Court of Canada indicated that that discriminated against race, and therefore, that section of the Indian Act was inoperative and ultra vires.

The Interpretation Act of Canada reads in part as follows:

Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

The courts of appeal of two provinces have already ruled that this is retroactive legislation but parliament must have intended it, even though there have been a few dissenting judges. Section 35(b) reads as follows:

Where an enactment is repealed in whole or in part, the repeal does not (b) affect the previous operation of the enactment so repealed or anything duly done or suffered thereunder.

Thus, it runs in full face of the Interpretation Act. Section 36 reads as follows:

Where an enactment (in this section called the "former enactment") is repealed and another enactment (in this section called the "new enactment") is substituted therefor,

(d) the procedure established by the new enactment shall be followed as far as it can be adapted thereto in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights existing or accruing under the former enactment or in a proceeding in relation to matters that have happened before the repeal;

(f) except to the extent the provisions of the new enactment are not in substance the same as those of the former enactment, the new enactment shall not be held to operate as new law, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the former enactment.