

Public Order Act, 1970

first, as I did in connection with another amendment last Friday, that even if it is admitted that certain additional powers are needed by the police, such as the right to search without warrant and to detain for a certain number of days without charge, surely members of the committee and the minister himself must be bound by the determination that these extraordinary powers not be extended one iota beyond what is absolutely essential. The minister, it seems to me, simply has not convinced anybody yet that this particular power in the hands of the Attorney General can conceivably be essential to achieving the purposes for which this bill is before the committee.

• (3:20 p.m.)

The question is not whether a charged person is kept in jail or not. I cannot decide that, nor can the minister. The question is who will determine whether that person is to be kept in jail pending trial or whether he is to be let out on bail. A basic principle is involved here, namely, whether or not it is right to leave that determination in the hands of a political officer, who is advised by the police who will always find it more convenient to keep somebody in jail rather than to let him out on bail. I ask the minister: has he so little confidence in the judiciary in Quebec or elsewhere that he has to deprive the judiciary of their normal right to make that decision? All the arguments which the minister gave for making the decision as to whether people charged under clause 4 should or should not be given bail he can make or counsel for the attorney general of Quebec can and would make to the court. Counsel would indicate to the court that the person is likely to escape from the country and that extradition would not apply. Counsel would likely indicate to the court the danger that if the man or woman is let loose he or she will have direct contact with the conspirators and continue committing an offence. Counsel would likely indicate to the court the danger of the intimidation of witnesses, and use all the other arguments which the minister gave. If those arguments are valid, if counsel can present to the court some reason for his assertion, I have no doubt that the court would refuse bail, as courts have done in extreme cases of that sort even when the ordinary law is applied.

The issue that is involved is that the minister gives the attorney general of Quebec the power simply to file a certificate in which he states that in his opinion just cause exists for this man to continue to be detained, or whatever the language may be. The court has no discretion, and counsel for the accused has no possible ground for argument. The attorney general has spoken, and that is it.

May I remind members of the committee that the minister made clear, I think on Friday, that the attorney general would not be required to state the reasons for his assertion that there was just cause. I am right in that, am I not? I am sure I am. The minister said that all the attorney general would be required to do would be to state in the certificate that in his opinion just cause exists. Then, the man would be denied bail on the word of the attorney general without inquiry by an independent

judge and without the counsel for the accused being able to argue against it because there would be no argument. The attorney general has spoken, that is the word of the Lord.

The principle that is involved is one that our law has recognized for centuries, namely, that you cannot leave the question of whether a person charged is to remain in jail or be let out on bail in the hands of a law enforcement officer who will always find it more convenient to have the accused in jail and who will always have an argument for refusing bail. The minister should not reject that principle and throw it out the window without much more reason than he has given us.

I repeat, I am not arguing whether a certain person or a number of people should be in jail or should be freed on bail. I am saying that the decision should be made by the judge and not by the police, because the attorney general does not make that decision on his own but makes it on the recommendation of a police officer. He has even greater difficulty in refusing to take the advice of his police officer than the judge would have in taking or refusing to take the advice of counsel for the attorney general in court. Therefore, in practical terms, it would not even be a decision of the attorney general. That is what our law has always tried to avoid.

I cannot understand the logic of the minister. May I put it in the same terms as I did in respect of another amendment last Friday. The kidnappers and murderers of Mr. Laporte will have the matter of whether or not they receive bail argued in court and decided by the judge, but someone arrested for committing an act prohibited under clause 4—which to my mind is much less reprehensible than the act of kidnapping and murder—will have no say as to whether or not he should obtain bail. The attorney general himself will make that decision. I cannot understand the logic of that. I cannot understand why the murderers of Mr. Laporte should have greater rights in the courts of Quebec than a person charged with being a member or attending meetings of an assembly or group or an association alleged to be *Le Front de Libération du Québec*.

To my mind, it is completely unacceptable that this group of men and women who are not by definition charged with any other offence—because if they were charged with another offence, whether sedition, treason, kidnapping, murder or possession of offensive weapons they would come under the criminal law and all the rights with respect to bail would be theirs in court—but only with the offence of being members of the FLQ, will have less rights than a man who committed murder as part of the criminal conspiracy of the FLQ. That seems to me to be totally illogical. I do not see how the minister can insist on this provision being necessary to achieve the purposes for which the bill has been introduced.

Mr. Turner (Ottawa-Carleton): I want to reply briefly to the additional remarks addressed to the committee by the hon. member for York South. I think I should impress upon the committee that what we are dealing with here is not the automatic suspension of bail but suspension of

[Mr. Lewis.]