

*Criminal Code*

The recommended clause could of course be expressly excluded by subsequent legislation—

That is not good enough, because that is what we are facing today in the House. What are the authorities? What do they say the burden of proof is? It is a question of probability, when dealing with civil rights in civil matters. When dealing with the freedom of an individual on a charge as serious as a criminal charge, where your car or your weapon can be confiscated, as law-abiding citizens the onus is upon you. No member of parliament in this House has not had arguments and confrontations with people in departments who say, "That is the law".

If I may digress for a few moments, one of the most difficult cases I had is when I sued the Queen on behalf of a little settler in Lake Louise, Alberta, because the parks authorities took over his land and he was deprived of his rights. They can expropriate without money and without reason. The hon. member for Palliser (Mr. Schumacher) was in my office at that time and recalls the case. It took ten years to fight it. We dragged them back into court to get them to answer questions on discovery and to get them to produce documents, some of which were never produced. We finally succeeded, after ten years of fighting the state. I have always been proud of the RCMP, but when fighting a criminal case one must remember the sophistication they have in order to turn all their powers and all their technical know-how on a person who must rise in his place and say, "I am not guilty; I will have to defend myself".

Previously I said it cost \$500 a day. *Hansard* reported it as \$5,000 a day, and I corrected it. You need a psychiatrist to prove you are insane in a murder trial. Try to hire one at less than \$500 a day. Because of the law of insanity, the onus is on the accused to prove he is innocent. In a murder trial, the onus is on them. How many people across this nation can afford that technical know-how? The state can afford it. If the state makes up its mind that it is going to lick Mr. Brown, Mr. Brown had better hustle, because he will be faced with counsel who is fearless. He must have the finances in order to afford a transcript of the evidence.

I received a bill the other day for a transcript of the evidence of a murder trial which is being appealed. It consisted of three books. What did it cost? The evidence cost \$2,500. That is why I do not want the onus put upon the accused. I hope I have the support of hon. friends to my left, and I say that in the kindest manner. I hope they will support this motion on the ground that we must always protect the people to whom I have referred. It is the weak against the strong, the weak against the all-powerful state, the weak against the executive. Yet we have this legislation.

Some will say that we are paranoid about guns. I am not talking about guns today. I am talking about legislation which happens to be in the gun section of the bill. I will have a lot to say about the invasion of privacy. Today the Prime Minister (Mr. Trudeau) said he did not know when the Queen could open parliament, because he did not know when it will close.

[Mr. Woolliams.]

All the Minister of Justice has to do is follow the rules of jurisprudence and he will see how fast this party will move to co-operate in every regard. It is unacceptable to put in a section indicating that innocence has to be proven. I see my friend who knows something about income tax has just sat down. That same trick is contained in the Income Tax Act. As soon as they walk in on the fellow, he is guilty. They steal all his books. He cannot get them back. He cannot even give them to his accountant. He is told he has to prove himself innocent.

While I am on this point I should like to refer to a case that is going on in Calgary against a lawyer who happens to be very tenacious. He is a Liberal, and he has taken on the government by making it his life's work. I hope these words do not fall, like the parable in the Bible of the sower of seeds, on rock. I am referring to the fundamental principle of jurisprudence—a man should not be found guilty unless the evidence suggests beyond a reasonable doubt that he is guilty. What do we mean by reasonable doubt? We mean the type of doubt that the average man and woman has in everyday life, and not some airy-fairy thing.

This afternoon I was asked what this is all about. It is about freedom, and it is about liberty. If I have done anything in my life, I am proud to stand here in the House, and sometimes in courtrooms, defending people where unusual things have been going on. The truth is not always created by putting on a uniform. Human behaviour does not change with stripes or pips. Honesty exists with the little people as it does with the authorities. That has to be weighed. When the state moves in, it has an advantage because of the tendency to believe the state over other things unless you have some documentation or very strong evidence.

• (1710)

Putting the onus on the accused is beyond my comprehension. I do not think the Minister of Justice put that in the bill. With the greatest respect to him, I think the bill was drafted by somebody in his department. That was done with the Income Tax Act and it is done with the liquor acts of the provinces. If you have ten bottles of whisky in your cupboard and you are charged with bootlegging, you have to prove that you were not selling that whisky. That goes on, and that is because people became all tied up over prohibition. This law evolved over centuries of trial and error; it has not been worked out overnight. Lately we have been in the habit of making changes, but some things have stood the test of time. Some things are like rocks; they do not melt away like the stones in the story I told. They last. Human behaviour has tested the law. "Cross, on Evidence" says:

Several judgments delivered in the course of the second half of the nineteenth century indicate the existence of two standards of proof recognised by the law. They are proof on a preponderance of probabilities, the standard appropriate to civil cases and proof beyond reasonable doubt, the proper standard on a criminal charge.

How did all this come about? As "Cross, on Evidence", and "Wigmore, on Evidence" say, this did not happen one morning; it happened after centuries of testing the law as it relates to the freedom and civil rights of the individual. Anything