

Mr. John Munro, M.P., sponsor of the Bill;

Mr. Barry Swadron, Director, Study Project on Mental Health Legislation;

Dr. M. Boyd, Superintendent, Ontario Mental Hospital at Penetanguishene;

Mr. Gowan T. Guest, National President, and Dr. J. D. Griffin, General Director, The Canadian Mental Health Association and who also represented the Canadian Association for Retarded Children.

A letter from the Attorney General of Ontario approving of the principle of the Bill also forms part of the record.

It is to be noted that the word "Insanity" as used in the proposed amendment covers a much broader field than the cases where an accused may be found not guilty on the ground of insanity. A better word might be "disability" because it includes persons not only suffering from mental illness but also mental retardation and other defects caused by disease or damage to the brain resulting in a lower mental capacity.

The practice in Canada is to resolve the fitness question as soon as the court is satisfied that the matter is placed in doubt. This by custom and practice has meant that the special issue is determined as a preliminary one at the outset of the trial. Where the accused is found unfit to stand trial under such circumstances not only is there no opportunity to present defence but the prosecution has not had to test its case. The main issue at trial—innocence or guilt—is left completely untouched. Detention for an indeterminate time, perhaps for life, follows as a matter of law. While we do not knowingly convict a person who, due to mental disorder, is handicapped in answering a criminal charge, neither are we acquitting him. The possibility of his innocence cannot be excluded. Indeed, his innocence is presumed.

The witnesses, or some of them at least, went beyond the sponsor's proposals and felt that the issue as to fitness to stand trial could be and should be in some cases postponed until after the evidence for both the Crown and the accused had been heard, and the Committee concurs.

The Committee was much impressed with the suggestion made by Mr. McRuer that provision be made in the Bill or elsewhere in the Criminal Code providing for the appointment of a guardian ad litem on behalf of the accused. This would enable the guardian ad litem to instruct counsel regarding the trial and the necessary decisions to be made in order to properly safeguard the interest of the accused.

After hearing the distinguished panel of witnesses above referred to and the other evidence made available, your Committee agrees with the soundness of the principle enunciated in Bill C-176, and recommends that it be carried into law at once.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 9, 22, 25*) is appended.

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(*The Minutes of Proceedings and Evidence accompanying the said Report recorded as Appendix No. 51 to the Journals*).