

The Standing Senate Committee on Legal and Constitutional Affairs

Evidence

Ottawa, Tuesday, March 6, 1973.

The Standing Senate Committee on Legal and Constitutional Affairs met this day at 10 a.m. to examine the parole system in Canada.

Senator H. Carl Goldenberg (*Chairman*) in the Chair.

The Chairman: Honourable senators, the hearings of the committee were, of course, interrupted by the adjournment of the last Parliament and its subsequent dissolution. We are now resuming with a view to considering some of the remaining briefs.

As you will see from the memorandum prepared by the Executive Director, the purpose of this morning's hearing is to clarify certain matters. There is obviously a good deal of confusion in the public mind with respect to the various forms of release before termination of sentence.

In view of this, we have with us representatives of the Department of Justice and of the Solicitor General to explain the various forms of release. I believe a memorandum has been prepared by each of the three witnesses. With the agreement of the committee, in order to save time I suggest that each memorandum be made part of the record of today's proceedings. May we have such a motion?

Senator Prowse: I so move.

Hon. Senators: Agreed.

For text of memoranda, see Appendices A, B and C.

The Chairman: The first witness this morning will be Mr. Sommerfeld, of the Department of Justice, who has with him Mr. Watson. Mr. Sommerfeld's statement has been distributed to members, and I will ask him to proceed. In view of the fact that the statement will be made part of the record, it may not be necessary for Mr. Sommerfeld to read it in its entirety. I will ask him to proceed as he wishes, after which we shall see how we get along in the light of questions. Mr. Sommerfeld.

Mr. S. F. Sommerfeld, Director, Criminal Law section, Department of Justice: Thank you, Mr. Chairman.

Ladies and gentlemen, as I understand it, the interest of the committee relates to situations in which persons who have been involved in some way in the criminal process are released and permitted to be at large, as distinct from situations to which such processes as parole apply.

The directions, on which I based the paper which has been distributed to you, set out a number of instances which have been broadly designated in Mr. Jubinville's memorandum as instances of conditional release. This is

not strictly true in all cases, and perhaps I might preface my remarks by saying that a number of them are also related one to the other. For example, the first two headings, on bail and remand, are closely related, because a remand takes place in the course of the pre-trial and pre-appeal procedure; and the conditions upon which a person is permitted to go free during the period of a remand involve really the same considerations that apply to him if released in the pre-trial or pre-appeal procedure. Similarly, a suspended sentence, probation, conditional discharge, and intermittent sentences all involve the use of a probation order which have certain consequences for a person bound by one. These four headings are also closely related because of the fact that a probation order applies in all of them and there are certain consequences that follow a breach of a probation order.

Finally I might mention that the question of pardons, while part of the Criminal Code, is really something that is administered by the Solicitor General's Department. I have not really attempted to deal with this in the paper that I have prepared, except to identify it as being in the Criminal Code and as being something that is within that department's jurisdiction.

If I could turn now to the memorandum itself, ladies and gentlemen, the first heading is dealt with in a fairly general way. There is an appendix to the first heading which deals with these matters in considerably more detail. I am not certain to what extent the committee wishes to get into that. In any event, to begin with the first heading:

When a person is accused of committing an offence, he may be compelled to appear in court either by summons, police process or warrant of arrest. The peace officer may also arrest without warrant a person whom he has reasonable and probable grounds to believe has committed an indictable offence.

When the accused is required to appear in court by means of a summons, he is not taken into custody and remains free until the completion of his trial. A person who is arrested and detained before his trial has the right to pre-trial release in certain circumstances. The onus of showing that an accused person should continue in custody until completion of his trial is on the prosecutor. The justice or judge may order the detention of the accused on two grounds only. These are as follows: (a) on the primary ground that his detention is necessary to ensure his attendance in court in order to be dealt with according to law; and (b) on the secondary ground that his detention is necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the