the court at least has the discretion to look at all the circumstances and determine whether or not in that instance a voluntary and informed decision was made to make a statement in the absence of counsel.

I suggest that as a result of the confining definitions that exist in this particular Bill, there quite frankly might be a loss of some of the protections that now exist rather than their enhancement. It certainly would in fact require a pro forma. I wonder if that is the end result my friend is seeking by putting forward this Bill. I suspect not.

Mr. Orlikow: It has worked much better in the United States.

Mr. Daudlin: My friend says that it works much better in the United States. I have had the opportunity to discuss this issue with defence counsel, prosecuting attorneys and people from the bench in the United States. It seems to me that the Miranda decision in the United States has fallen onto rather hard times and into disrepute. In fact, while the civil libertarians apparently heralded that decision tremendously when it came in, I think a contrary view of it is being taken now. They rather suspect that by giving at least lip service to the Miranda decision substantial erosion of civil liberties is taking place instead of increasing protection. I think one would want to be very careful that that line of reasoning not be taken here.

Mr. Orlikow: Mr. Speaker, I rise on a point of order. Would the Hon. Member permit a question?

The Acting Speaker (Mr. Corbin): The Hon. Member wishes to put a question to the Hon. Member for Essex-Kent. Is it agreed?

Mr. Daudlin: Mr. Speaker, I would be delighted to entertain a question, but perhaps a little closer to the end of my allotted time.

I wish to indicate to my friend for Winnipeg North that I do in fact have a great deal of sympathy for what he is attempting to accomplish by way of this Bill. I think it would be imprudent if we were to act upon it for the reasons I have indicated and others which I will make now.

I am sure the House is aware that the Senate Legal and Constitutional Affairs Committee has before it Bill S-33, a proposed new Canada Evidence Act. Though not a complete code, it is nevertheless quite comprehensive in its treatment of the law of evidence. The question of admissibility of statements made by an accused to persons in authority is one of the areas dealt with in that Bill.

I understand that we are likely to have Bill S-33 before us in the fall and I think it would be wise to postpone discussion of the important questions raised by the Hon. Member in Bill C-446 until it can be debated in the context of the proposed new Canada Evidence Act. It has been said that the law of evidence is a seamless web. I submit that it would be counterproductive for this House to consider Bill C-446 out of context and without full awareness of the substance of Bill S-33. It is my understanding that we will not have to wait long for this opportunity, as the Minister of Justice (Mr. Lalonde) indicated his intention to proceed with the proposed new Canada Evidence Act as soon as possible.

Members of the House may not be aware of the amount of work that has gone into the preparation of Bill S-33. I think it might be of interest for them to know something of its history.

The law of evidence is, of course, one of the most technical subjects in the entire legal system. I think my hon. friend from Scarborough West demonstrated that in his speech a few moments ago. It is an accumulation of common law rules, exceptions to the rules and exceptions to the exceptions. As a result, it is extremely difficult to state the law with respect to many aspects of evidence and the principles of the law are frequently obscured in a morass of details.

Nor is the present Canada Evidence Act of much assistance in clarifying the law. The core of the Canada Evidence Act dates back to 1893 and represents the social values of that era. Such amendments as there have been occurred on a piecemeal basis, with the result that the Act displays a lack of consistency and, indeed in some instances, actually confusion as to its meaning and application. The law is further complicated by the fact that all Provinces except Quebec also have Evidence Acts to govern civil proceedings in their jurisdictions. There is no uniformity either between the provincial and federal Evidence Acts or between the Evidence Acts of different Provinces.

In an effort to bring some order into this important area of the law, the Minister of Justice in 1971 referred the subject to the Law Reform Commission of Canada for investigation and report. The Law Reform Commission studied the subject extensively over a period of four years, submitting its final report in December, 1975. The Commission recommended the adoption of an evidence code that would have replaced the common law entirely insofar as proceedings within federal jurisdiction were concerned.

Following reception of the Law Reform Commission Report the Department of Justice carried out consultations with the bar and bench across Canada over a period of almost a year. The reaction of the profession was generally unfavourable. The common law lawyers were particularly opposed to the concept of a code that would eliminate further reference to the common law precedents and principles that had become part of their intellectual and professional capital. Likewise, they were opposed to any change that would increase the area of discretion accorded to the judge in deciding whether or not evidence would be admissible. The climate was therefore clearly not favourable to rationalizing the rules of evidence along the lines proposed by the Law Reform Commission.

At about the same time some of the Provinces were showing interest in reform of their own rules of evidence. Indeed, the Law Reform Commission of Ontario published a report a few months after that of the Law Reform Commission of Canada in which it recommended passage of a new Ontario Evidence Act.