

Criminal Code

society from the accused or evidence of his tendency to commit or recommit an offence. As a matter of fact, it puts the judge or magistrate in the indelicate position of attempting to predict whether or not a crime will be recommitted or whether or not the accused has a proclivity to crime, and this may again result in a purely mechanically imposed judgment.

The provisions which the government is submitting to Parliament for its approval are based on the belief that the personal freedom of the individual should be interfered with by the state only where such interference can be proven by the state to be necessary to protect the larger interests of society as a collective whole.

Some hon. Members: Hear, hear!

Mr. Turner (Ottawa-Carleton): I believe we must go farther than that. I believe that we have to give the courts and the police reasonable guidance on what we mean by the public interest. I believe that we have to support legislation which will diminish personal freedom only when any restrictive measures will in fact result in protecting the public interest. This balance in any given situation or under any particular law which tests the rights of the individual against the rights of society is the most difficult balance that a legislature has to achieve. Certainly, in individual cases, the most difficult decision that a judge and jury as well as police and magistrates have to make, particularly at the arrest and bail stage is, the rights of the accused and the rights of society. These judgments are human, and the balance between liberty on the one hand and the security of the state or maintenance of public order on the other, requires the most difficult human judgment that men and women are called upon to make. There is no need for me to underline to the House how difficult it is to make such a judgment, but I believe that we have to make it if we are to reconcile authority with freedom.

The objectives of this bill are fourfold: First, to avoid unnecessary pre-trial arrest and detention; second, to ensure that in cases where arrest with or without warrant has taken place, the person accused, whatever his means, is not unnecessarily held in custody until his trial; third, to ensure an early trial for those who have been detained in custody pending trial; fourth, to provide statutory guidelines for decision making in this part of the criminal law process relating to arrest and bail and thereby preclude the possibility of "discretionary injustice".

The provisions of the bill place an onus on police officers not to arrest a person where the public interest can be satisfied by less stringent measures. The other options available to the police officer would be the summons procedure that is already in effect under the Criminal Code as well as a new procedure which will involve the issuance of a new type of summons defined in the bill as an "appearance notice". The appearance notice will instruct an accused where and when to attend court and may be issued on the spot by the police officer on the beat or in the car, or following an arrest if an arrest is in fact made.

[Mr. Turner (Ottawa-Carleton).]

[Translation]

A bill relating to bail reform was previously given first reading on June 8, 1970, just before the last session of Parliament adjourned. At that time, I observed that there was little prospect of its being passed before Parliament adjourned for the summer recess. I said then that I was most anxious that it be made public now in order that the provincial authorities who are charged with the primary responsibility of enforcing the Criminal Code would have a full opportunity to study the proposals before the bill began its passage through Parliament.

I have discussed the bill at the meeting of provincial Attorneys General in Halifax, last July, and with various police organizations including the Canadian Police Association and the Canadian Association of Chiefs of Police.

In addition, the bill has received detailed study by the criminal law section of the Conference of Commissioners on Uniformity of Legislation in Canada.

In September there was a meeting of the Canadian Bar Association. Constructive criticisms were made on the first version of the bill. Also I received many comments from hon. members and I am much obliged to them.

In expressing my thanks for the various observations made on the bill, I must point out that while I have adopted those suggestions that I am satisfied assisted in achieving a clear and workable law, I have maintained intact the basic principles and objectives of the legislation as I enunciated them on June 8, 1970.

So the following is among the most important changes made since the June bill.

Under the June version of the bill, both the officer on the beat and the officer in charge of the police station would have had to rely entirely on their own judgment as to what "the public interest" required in relation to the arrest and the release of accused persons.

The new version of the bill before the House recognizes explicitly that decisions by the police may have to be made under difficult conditions, and spells out guidelines which should be taken into account by them in making their decision. If, for example, a person who is found committing any offence or who is, on reasonable and probable grounds, believed to have committed an indictable offence, exercises his right to refuse to properly identify himself, the officer is justified in arresting him. Similarly, an arrest is justified where the offence involved requires a search of the person or where, if the person were not arrested, evidence would likely be lost or destroyed; and again, where it is clear that, unless the person involved is taken into custody, the crime being committed will be completed or another crime committed.

A main objective of the new amendments to the Criminal Code to avoid unnecessary arrest and, if arrest is necessary, to ensure early release from custody in appropriate cases. To help achieve this aim, new duties are placed on the police to direct their minds to what the public interest requires. However, it is not the intention of the legislation to jeopardize the community by dis-