

Canada Evidence Act

occasions Crown counsel presents a statement to the accused and asks him to identify his signature.

Again, in determining the voluntary nature of a statement, where does the written aspect come in. It would have to come in with regard to witnesses in a particular criminal case, be they Crown or defence witnesses. In any case I cannot recall the Crown having its witnesses sign statements that they give to police officers. It may be that this is the case in other jurisdictions, but in Toronto I cannot recall detectives requiring crown witnesses to sign statements. One wonders whether this is to be the commencement of a practice by detectives to ask witnesses to a case to sign the statements they have given for the possible purpose of treating them as adverse witnesses if something goes wrong at the trial. Perhaps the minister would look into this.

Another aspect with regard to written statements might arise in negligence cases where you have insurance adjusters interviewing witnesses. If an adjuster speaks to a witness, reduces what he says to a written statement and asks the witness to sign it, one would hope that this type of statement would not be acceptable. Many Canadians are not apprised of the status of insurance adjusters, and we may be placing ourselves in the position of strengthening the position of adjusters. In an advanced country like Canada one would hope that we would eventually get rid of all negligence cases in the courts by taking a forward look and adopting the kind of legislation the province of Saskatchewan has in respect of motor vehicle cases. I ask the minister to be very wary about written statements produced by insurance adjusters.

The third area covered by the minister had reference to affidavit evidence in respect of copies of entries in books of record kept in any financial institution. So far as legal proceedings are concerned, these would be received as prima facie evidence. One appreciates that banks and other financial institutions are so busy these days that they are not anxious to send their bank managers to court to prove a signature on a cheque or any other document. In the past the law has been that banks, by filing an affidavit of the appropriate person, could provide prima facie evidence. This is now being extended to cover financial institutions, the test being that they are institutions which accept money deposits. I think this is a good step forward. There is

no reason that certain officials of these institutions should be put to the bother of attending in court to give this kind of evidence in view of the fact that it is only prima facie evidence. It would allay some of the fears expressed by the hon. member for Calgary North on this problem if he would consider that it is only prima facie evidence. If other evidence comes forth which rebuts the affidavit evidence, that evidence does not stand in a strong position.

• (4:30 p.m.)

The fourth aspect of this bill covered by the minister is new. It is intended to facilitate proof of matters contained in records made in the usual and ordinary course of business. Again this seems reasonable when one realizes that we are in the age of the computer and other modern business techniques, including microfilming, recordings and so on. I think we should update our laws in respect of this type of evidence. As the minister said, one has to look at the probative value of any evidence. Surely we should be up to date with regard to the tendering of such evidence and should not waste a great deal of time on the question of proof, which at times is very difficult. This matter is in the area of statutory declarations. The bill is intended to make uniform a statutory declaration which would remove any doubt about whether the form of the statutory declaration is in conformity with the Canada Evidence Act or any provincial statute. I think this is a step forward.

At one of our committees—I think it was the committee on banking and commerce—the legal representative said that these five areas are those in which the government considers we should take action now. I am inclined to agree with him. I was rather impressed when the minister said there is a great deal of in-depth study to be carried out with regard to problems as between husband and wife and confidential relationships between solicitor and client, accountant and client and doctor and patient. This also applies to evidence given by an accused in other cases. If we embrace all these things—

Mr. Baldwin: What about the member of parliament and his constituent?

Mr. Gilbert: Mr. Speaker, the hon. member has just made a most laudable interjection with regard to the confidentiality that exists as between a constituent and his member of parliament. I am sure the minister will take that matter into account, especially having regard to the hon. member who asked the question.