

Criminal Code

counsel at a police station he was not prevented from making a full answer and defence at his subsequent trial. An appeal to the Supreme Court of Canada upheld this decision. In other words, the accused has a right to demand a lawyer for his trial but it does not give him the right to obtain a lawyer before the police question him, or under certain procedures that take place at the preliminary hearing. He is entitled to make one telephone call. He calls his lawyer and if the lawyer is out, then that is his call.

It is essential that we bear in mind that the judicial rule is that relevant evidence is admissible regardless of how it is obtained, with the exception of confessions of accused obtained under duress or promise. Consequently, it is relevant for the purposes of the trial whether the method of acquisition contravened the Bill of Rights which states:

—no law of Canada shall be construed or applied so as to... (c) deprive a person who has been arrested or detained (i) of the right to be informed promptly of the reason for his arrest or detention, (ii) of the right to retain and instruct counsel without delay—

Mr. Justice Aylesworth of the Ontario court of appeal stated in *Regina v. Steinberg*:

The appearance of justice is an important element to be considered in criminal matters—

Notwithstanding this statement we still do not have, not even in the so-called just society, adequate provisions to ensure the right of an accused to counsel throughout the period of his detention—and how important that is to a first offender.

I want now to direct my attention to certain matters which, as I have said, affect the conscience of every member of parliament and every Canadian, namely, those sections dealing with abortion and homosexuality.

In reference to abortion the amendment does not change, in my opinion, what has been the general social practice and the basic general judicial interpretation of the Criminal Code at the present time. Section 209 states:

(1) Every one who causes the death of a child that has not become a human being, in such a manner that—

The words “in the act of birth” have since been added.

—if the child were a human being, he would be guilty of murder, is guilty of an indictable offence and is liable to imprisonment for life.

(2) This section does not apply to a person who, by means that, in good faith, he considers necessary to preserve the life of the mother of a child that has not become a human being, causes the death of the child.

In other words, there are exceptions. Today if a doctor in good faith decides that the life of the mother is of prime importance he can perform the operation without the consent of a committee and is exempt from being charged with an offence under the Criminal Code. This has been interpreted by the House of Lords, which decisions are usually followed by the Canadian courts, including the Supreme Court of Canada.

The words, “preserving the life of the mother” are to be construed in a reasonable sense. They are not limited to the case of saving the mother from violent death; they conclude the case where continuance of the pregnancy would make her a physical or mental wreck.

That is *Rex v. Bourne*, House of Lords, 1939. In other words, section 209 is interpreted, without the words in the amendment “in the act of birth”, to include not only preserving the life of the mother but also where her life would be physically or mentally wrecked. Section 195 of the Criminal Code gives the legal interpretation of a human being.

The new section states that a qualified medical practitioner who procures miscarriage of a female person and a female person who permits a qualified medical practitioner to procure her miscarriage will not be guilty of offences if the therapeutic abortion committee of the hospital where the miscarriage was procured has certified that in the opinion of the committee the continuation of pregnancy would be likely to endanger her life or health. What is the difference? Have the legal beagles really suggested this change or has it been in the hands of hanky-panky politicians?

An hon. Member: Oh!

Mr. Woolliams: An hon. member says “Oh”. Mr. Speaker, with the greatest respect to the member who said that—

An hon. Member: Who said it?

Mr. Woolliams: —I have talked to lawyers and if necessary I can quote a professor who claims there is no difference. That is his opinion, but of course the law is the subject of various opinions.

Were the women of the nation consulted? There is only one woman member of this house and perhaps she feels this would have been better left in the halls of injustice waiting for women's emancipation.

The great quarrel, apart from those who are against any kind of abortion or the legalizing of a miscarriage, will likely revolve around the definition of the word “health”. What does health mean? The House of Lords