

*Public Order Act, 1970**[Translation]*

Mr. Laprise: Mr. Chairman, I wonder why the Minister of Justice (Mr. Turner) does not approve straight off the amendment moved by the member for Matane (Mr. De Bané), because, according to my interpretation—and I think that many will be of my opinion—the penalty is much stiffer for the spouse of a FLQ member than for the one who did a kidnapping, or a murder after a kidnapping. In the latter case, the Minister told us, if I am not mistaken, that section 23 of the Criminal Code could intervene in favour of the spouse, while the spouse who only belongs to the FLQ, for example, could be prosecuted.

If this is not the case, Mr. Chairman, I wonder why this provision should not be included in clause 5 in order to clarify the act.

[English]

Mr. Cafik: Mr. Chairman, I have listened with interest to the comments made by the hon. member for York South, and I feel obligated to make known to the House that I believe what he calls questions of fact are not fact, at least in my view. I do not think clause 5 in any way requires a wife to refuse to give food, lodging and shelter or the other things I referred to earlier, to her husband. For that reason, I cannot support this amendment.

I think it is insulting to many of us to suggest that those who would vote otherwise do not recognize the intimate, close and important association between a husband and wife. Certainly, I recognize it and I am sure all hon. members do. It is a matter of judgment as to how we feel this provision applies to that relationship. There is nothing in the bill to obligate her to do any specific act that would in any way interfere with her marital responsibilities. Therefore, I oppose the amendment.

Mr. Barnett: Mr. Chairman, I have listened to the Minister of Justice reiterate two or three times his view that this clause does not mean that the simple act of a husband or wife allowing his or her spouse to remain in the same dwelling will constitute an offence under this provision. A similar view was expressed by the hon. member for Ontario.

I should like to ask the minister what he considers the clause to mean in a situation where, for example, the husband, who may have been a member of the FLQ, has been informed that the police are carrying out a search and can be expected to arrive at his dwelling; the husband decides to leave and informs his wife where he intends to go. The authorities then arrive and she neglects or refuses to inform them of his whereabouts. Would that create an offence under clause 5, according to the minister's understanding of it?

Mr. Turner (Ottawa-Carleton): Mr. Chairman, the operative words are "prevent, hinder or interfere".

Mr. Barnett: It is precisely because those are the words that I put that question to the minister. Would she not be preventing, hindering or interfering with the apprehension of her husband if she neglected or refused to tell the police where he had gone after leaving the house? Do not those words mean exactly that?

[Mr. Lewis.]

Mr. Turner (Ottawa-Carleton): I do not think so, Mr. Chairman, though, as the hon. member for York South said, the courts would have to decide that. However, I do not think so and that is the advice that I have been given.

[Translation]

Mr. De Bané: Mr. Chairman, it seems to me that the Minister of Justice (Mr. Turner) is right when he states that this section allows a woman to allow her husband in her home. However it must be kept in mind that the privileges granted under paragraphs (2) and (3) of section 23...

[English]

These privileges are not granted in the case of crime, whether it be murder, treason or rape. They are concentrated, I would say, in the natural law. Suppose a woman prevents the apprehension of her husband, for example, by lending him her wig or driving him away from the house while concealed under the back seat of the family car. Under the Criminal Code married people are given certain privileges, and in this case it would be difficult to imagine how she could resist pressure brought on her for reasons other than love or pity. I suggest such a privilege would extend to all married people who helped each other, even though he or she is acting wrongly. It is a privilege based on human nature and dates back centuries.

While the minister may be right when he says that mere cohabitation of both married people in the same house does not mean the wife is trying to prevent the husband's apprehension, nevertheless if she does prevent his apprehension then, according to the Criminal Code, she is innocent, whatever the crime be. Love or pity of one spouse for another should not be tantamount to being an accomplice after the fact.

This is what I wanted to say to my friend from Ontario. Although he may be correct in his interpretation, I am really talking about preventing apprehension by a wife lending her husband her wig or driving him away in the trunk of the car. The Criminal Code grants a privilege to either husband or wife in such matters, whatever the crime, a privilege that dates back centuries. I do not think this is the time, when we are making good law to deal with the FLQ, to enact such a provision as this.

• (2:30 p.m.)

Mr. Cafik: Let me point out to the hon. member for Matane that I sympathize with his views. I understand why he feels that in respect of this temporary public order bill, he should concern himself with those protections normally applied to a husband and wife under the Criminal Code. I feel that this particular provision we are looking at in Bill C-181 is of a temporary nature to protect the public against crimes of subversion and violence, and this affects the common good of all people. I believe the common interest of all Canadians supersedes a particular interest such as the hon. member for Matane has in mind. If this were a permanent piece of legislation,