

Criminal Law Amendment Act, 1985

Mr. Robinson: Mr. Speaker, with respect, it is not clear to me at all. Is the Speaker saying—

Mr. Speaker: Order, please. Then the Hon. Member might come to see me in chambers and I will try to explain it.

Mr. Speyer: Mr. Speaker, I rise on a point of order. As a consequence of your ruling, the substance of the war crimes amendments which are being proposed in the different groupings is derivative and makes no sense.

Mr. Speaker: Could the Hon. Member please tell me to what amendments he is referring?

Mr. Speyer: The other motions—

Mr. Speaker: The Hon. Member is aware that Motions Nos. 1 to 4 and Motions Nos. 9 to 12 have been ruled out of order.

Mr. Speyer: Mr. Speaker, you have ruled Motions Nos. 1 to 4 out of order, if I understood your ruling.

Mr. Speaker: And the other four.

Mr. Speyer: And the other four.

● (1540)

Mr. Speaker: I take it the Hon. Member is now making a case that Motions Nos. 5 to 8 ought to be ruled out of order as well?

Mr. Speyer: Yes.

Mr. Speaker: I am in some difficulty. Shall we move back to Motions Nos. 5 to 8? I have already ruled them in.

Mr. Speyer: Mr. Speaker, I wonder if I could have the opportunity of making my argument. I asked for the opportunity to make an argument. I understood that what we were doing initially was debating in groups Motions No. 1 to 4, Nos. 5 to 8, Nos. 9 to 12 and Nos. 13 to 15 and there were different considerations.

Mr. Speaker: Order. What I indicated in the beginning was that I had procedural difficulties with Nos. 1 through 4 and Nos. 9 through 12, that I found Nos. 5 to 8 in order. I indicated I would hear procedural argument on the matters that I thought were out of order. Is the Hon. Member now asking me to go back and hear the admissibility question on Nos. 5 to 8, because if he is doing that, I will be happy—

Mr. Speyer: Mr. Speaker, I asked for it initially. I had understood that you were going to—

Mr. Speaker: With respect, I did indicate that I thought Nos. 5 to 8 were in order. I saw the Member rise to deal with the question that I asked on Nos. 9 to 12. The "blues" will bear me out. If the Member is now wanting to revert to Nos. 5 to 8, I will be perfectly happy to hear him on Nos. 5 to 8. Can I now hear him on Nos. 5 to 8?

Mr. Speyer: Mr. Speaker, on this point of order I asked for the opportunity, and I thought that it was given, to debate all procedural matters that were relevant to the motions that are on hand. My understanding was that pursuant to my request, I was going to have that opportunity to debate Nos. 5 to 8.

I make the first point, the threshold point that the core of Motions Nos. 1 to 4 goes to setting up a new offence that deals with the prosecution of Nazi war criminals retrospectively. Your Honour has ruled that to be out of order. That is Motions Nos. 1 to 4.

From Motions Nos. 5 through to the end of the motions, No. 15, they are totally derivative of the first four and make no sense whatsoever. I think probably the critic for the Liberal Party would agree with that. In other words, having ruled out of order Nos. 1 to 4, the rest of the motions make absolutely no sense on their face. Second, even if we can deal specifically with respect to Motions Nos. 5 through 8, Motions Nos. 5 through 8 say:

That Bill C-18, be amended in Clause 5 by striking out line 2 at page 9 and substituting the following therefor:

"Canada.

(4.1) For greater certainty, it is hereby declared that a person who has been found guilty in absentia outside Canada, but who has not yet been punished, shall not be entitled to plead *autrefois* convict on account of that finding of guilt."

That is what Motions Nos. 5 through 8 say. In terms of the Bill itself, I am at page 8, line 36, and I quote:

Where a person is alleged to have committed an act or omission that is an offence by virtue of this section—

I ask that you pay particular attention to the restricting clause in this subsection:

Where a person is alleged to have committed an act or omission that is an offence by virtue of this section and that person has been tried and dealt with outside Canada in respect of the offence in such a manner that, if he had been tried and dealt with in Canada, he would be able to plead *autrefois* acquit, *autrefois* convict or pardon, he shall be deemed to have been so tried and dealt with in Canada."

The point I am making is this. *Autrefois acquit* and *autrefois convict* are special pleas. They are pleas like guilty or not guilty, but they really in essence form the thrust of the law as it deals with double jeopardy. These go through all of the Criminal Code. If you notice the amendment that is submitted in Motions Nos. 5 through 8, there is absolutely no limitation with respect to the pleas of *autrefois*. In other words, Motions Nos. 5 through 8, and each one is similar, contain absolutely no restriction whatsoever, whereas the clause itself only applies to matters that are within Clause 5. The amendments that are being made or the motions being brought before you on Clauses 5 to 8 are absolutely unlimited in their scope. They would apply to any Sections of the Criminal Code whereas the actual amendment in the Bill itself on page 8, commencing at line 36, states that the limitation of *autrefois acquit* and *autrefois convict* only applies by virtue of this Section. We are dealing with international terrorism and hijacking. In my view, it is clear on the face of it that there is a conflict between the motions and the Bill. The one is far broader than the other, and inconsistent.