

We are now in a different position. We do need an appeal now, but we do not need an appeal against the issue of the writ. So, honourable senators, I am moving the following amendment to Bill C35:

Strike out clause 1 and substitute therefor the following:

"1. Subsection (2) of Section 691 of the Criminal Code is repealed and the following subsections substituted therefor:

'(2) Except as hereinafter in this section provided, the provisions of part XVIII apply, *mutatis mutandis*, to appeals under this section.

There is nothing new in that.

(3) Where an application for a writ of *habeas corpus ad subjiciendum* is refused by a judge of a court having jurisdiction therein, no application may again be made on the same grounds whether to the same or to another court or judge, unless fresh evidence is adduced, but an appeal from such refusal shall lie to the Court of Appeal, and where on such appeal the application is refused a further appeal shall lie to the Supreme Court of Canada.

I wish to add there the words "with leave".

The CHAIRMAN: Wait a minute. You mean, on the original application for the writ.

Senator ROEBUCK: "Supreme Court of Canada".

The CHAIRMAN: In relation to the original application for the writ, as distinct from the decision on the merits?

Senator ROEBUCK: It is on the merits chiefly that I would like to proceed.

The CHAIRMAN: This paragraph (3) deals with appeals from a decision where the writ will issue in the first instance.

Senator LEONARD: I think you ought to leave that alone.

Senator ROEBUCK: Very well. There you have abolished in the law the shopping from judge to judge. I think we are all agreed on that. Then we give an appeal, against a refusal of the writ, to the applicant and to the applicant only:

(4) Where a writ of *habeas corpus ad subjiciendum* is granted by any judge no appeal therefrom shall lie at the instance of any party including the Crown.

(5) Where a judgment is issued on the return of a writ of *habeas corpus ad subjiciendum*, an appeal therefrom lies to the Court of Appeal, and from a judgment of the Court of Appeal to the Supreme Court of Canada, at the instance of the applicant but not at the instance of any other party with the exception of the Crown.

The CHAIRMAN: This is where you wish to add those words "with leave".

Senator ROEBUCK: This is where I want to add the words "with leave". That is a suggestion made by Mr. MacDonald, the Assistant Deputy Minister of Justice, in a conversation with me only this afternoon. He thought it would be better to make the application "by leave," rather than as a right.

The CHAIRMAN: Where would you insert the words "with leave" in paragraph (5)?

Senator ROEBUCK: In the fourth line, after the words "Court of Appeal", so that it would read:

Court of Appeal, with leave, to the Supreme Court of Canada.

Really, the difference is not great.

The CHAIRMAN: I think it would come in after the words "of the Supreme Court of Canada"—"with leave of that court".