

Criminal Code

At page 24 of the bill section 102(3) provides:

Every one commits an offence who, without lawful excuse, the proof of which lies on him—

It behooves the minister, in fulfilling the commission which has been placed upon him, to bring in legislation which will be beneficial, not detrimental, to the Canadian people. I hope the minister will take a second look at this question. I do not think he has been at all convincing this afternoon; indeed I do not think he even convinced himself. He simply used a little rhetoric in trying to make a case. I urge the minister to stand in his place and accept the amendment put forward by my colleague.

The Acting Speaker (Mr. Ethier): Is the House ready for the question?

Some hon. Members: Question.

Mr. Bob Brisco (Kootenay West): Mr. Speaker, I am sorry I was not in my seat at the time. I would not like the House to think—

The Acting Speaker (Mr. Ethier): Order. Is the hon. member rising on a point of order or to debate the motion?

Mr. Brisco: To debate the motion, Mr. Speaker. I am sorry I was not in my seat at the appropriate moment, and I would not want the Speaker to think for one moment that I was receiving tuition or coaching from my expert and knowledgeable friend, the hon. member for Calgary North (Mr. Williams). However, there are a couple of issues I want to clear up.

The concerns being expressed by members on this side of the House in regard to this amendment, or more appropriately these amendments taken together, are virtually the same as those previously expressed on an earlier amendment wherein the question arose of government by regulation. On the one hand we have government by regulation; on the other hand we have, in effect, not government by regulation but guilt by association. A person has to prove his innocence.

Under Canadian and British criminal law, as opposed to the Napoleonic code and as opposed to civil law, there must be guilt beyond reasonable doubt. In terms of reasonable doubt this means that the clinician in reaching a diagnosis bases it on a multitude of facts, signs and symptoms, laboratory tests and so on. In reaching the conclusion that a particular project can proceed, an engineer bases his conclusion on sound engineering principles, the laws of physics and so on.

However, according to this bill a person is guilty first and must prove his innocence second. Regardless of the rhetoric in which this provision is couched, that is clearly the antithesis of what we consider to be proper criminal law according to the British system. If the government is interested in adopting Napoleonic law, as we are to infer from this particular clause, then I suggest that it openly declare that that is where it stands. But as it stands now this is wrong.

[Mr. Towers.]

In addition, the government has, by accident or design, tied in this provision with the firearms legislation or the regulations that follow in subsequent clauses. However, the term "firearm" is very broad. If one takes the trouble to go to the beginning of the bill and reads the broad definition that now applies, we are surely sweeping with a very broad brush; and I suggest that someone who in all innocence may be walking the streets at 11.30 at night will suddenly find himself assumed to be guilty of some offence.

In terms of Napoleonic law, Mr. Speaker, I am reminded of a circumstance that occurred some years ago when W. A. C. Bennett was premier of British Columbia. A deputy minister of one of the government departments had the inclination to walk down a street in Quebec City, minding his own business, out for an evening's stroll. All of a sudden he was set upon by a couple of policemen. In the first instance there was, unfortunately at that very moment, a language barrier, and let us hope that that barrier has been reduced. At that time that barrier was very clearly there. The man had proper identification which proved beyond any reasonable doubt that he was a senior official of the government of the province of British Columbia. Yet, because he had some vague resemblance to a wanted criminal, he was dragged bodily into a police car.

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He was beaten, harassed, questioned, and received all kinds of maltreatment and held in jail over night. Finally, he was released some 24 hours later. That is the kind of law I abhor. Whether it is the province of Quebec, British Columbia, Prince Edward Island or any other province in Canada, or any city in Canada, I abhor the manner in which that whole case was ultimately dealt with. The police department did not want to apologize for their conduct. They did not want to acknowledge that they had made a mistake. An apology was dragged out of them. Is that the kind of law we want in this country?

I realize I have digressed, but I have demonstrated a point. If the government is interested in Napoleonic law, let it go on the record and say so and change a few other clauses in this bill to further demonstrate its concern and its desire. Otherwise, let us see the minister develop some common sense and good judgment. Let his officials advise him that he is not going to get anywhere with this bill, with this kind of nonsense.

Before I sit down, I should like to say that similarly this minister is not going to get anywhere with this bill until he sees some reason with reference to wiretapping legislation.

Some hon. Members: Hear, hear!

Mr. Elmer M. MacKay (Central Nova): Mr. Speaker, I just wish to add my voice to those of my colleagues on this side of the House in regard to this particular motion by expressing a great amount of dismay concerning the language used by the people who drafted this clause. Subclause (3) reads as follows:

Every one commits an offence who, without lawful excuse, the proof of which lies on him

(a) alters, defaces or removes a serial number on a firearm; or