

Public Order Act, 1970

secondary consideration whether a serious offence would be committed while he is out on bail. The minister will probably implement these criteria in his bail bill. He well knows the provisions of this clause which give the attorney general discretionary power in the matter of bail.

• (3:00 p.m.)

I would remind the minister of his press release in which it is stated that the objectives of the arrest and reform bail bill are fourfold. The first objective is to avoid unnecessary pre-trial arrest and detention, for the initial decision to arrest is the decision which activates the criminal law process. It sets the administrative machinery in motion and is the citizen's first confrontation with the criminal law process. This initial confrontation may well have a determining influence on that citizen's reaction to the law generally and the criminal law sanction in particular. I cannot agree more, but I am just wondering what happened to the attitude and interest that has prevailed so far in respect of the 283 who have been arrested and released and the 61 who are still being detained.

The second criterion is to insure that in cases where arrest, with or without warrant, has taken place the person accused, whatever his means, is not unnecessarily held in custody until his trial. Again, when you read that it indicates the necessity of having someone present both on behalf of the accused and the Attorney General in respect of the determination of bail, rather than giving the Attorney General the right to determine for a period of time whether or not a person should be released.

The third criterion is to insure an early trial for those who have been detained in custody pending trial. Again, I am sure the Minister of Justice must cringe at times when he thinks of the way these people have not only been arrested but been retained in custody and, in many cases, refused permission by the authorities to contact relatives, friends and counsel. I appeal to his instincts of justice in respect of this particular amendment.

The fourth criterion the minister suggests is to provide statutory guidelines for decision making in this part of the criminal law process and thereby mitigate against the possibilities for discriminatory injustice in the decision to arrest, hold for custody, admit to bail, etc. He probably has summed it up beautifully with that phrase "the possibilities for discretionary injustice". I think we have had an example of discretionary injustice with regard to arrest and holding. Now, the minister wants to continue this discretionary injustice with regard to the matter of bail.

The minister said that the bail reform bill will continue to humanize the administration of criminal law in Canada. The right to bail should not be the prerogative of the rich and detention the plight of the poor. He further observed that an accused person should not be subjected to detention without good reason. When we talk about humanizing the law and not subjecting a person to custody without good reason, we are reminded of Section 2 (12) of the Bill of Rights which the minister is now incorporating as part of Bill C-181. Yet, at the

same time he deprives a person of the right to reasonable bail without just cause, even though this provision is contained in the Canadian Bill of Rights.

I find it very difficult to criticize the Minister of Justice, who has had the reputation of being so progressive and humane in the past in respect of this particular matter, but I think events and facts have clearly shown that there has been a great deal of injustice in respect of the arrest and holding of persons. The Minister of Justice could show this tendency to humanize the law by accepting the amendment regarding determination of bail.

If the criterion for bail relates to the appearance of the accused at trial and also the possibility that a serious crime might be committed, surely that determination could be made by a trial judge on the representations of Crown Counsel, speaking on behalf of the Attorney General, and defence counsel speaking on behalf of the accused. This is one way the minister could show some compassion for people who are detained in jail, by not having the Attorney General impose discretionary injustice but rather by having the trial judge impose discretionary justice.

It is for these reasons we move the amendment. I have always thought the Minister of Justice earned his title in the full sense and I would hope he will not quickly earn the title of minister of injustice. If he continues with his attitude concerning amendments to this bill, it may be that he will be suitably tagged with the name of minister of injustice.

Mr. Turner (Ottawa-Carleton): Mr. Chairman, the hon. member has recited my words on the introduction of the bail reform bill which we hope to re-introduce in this House shortly. I stand by those words. I think no one seeks a more contemporary and compassionate, human and flexible criminal law process in this country than I. I have been encouraged by the support I have received over the last two and a half years from the hon. member on the standing committee, as well as from hon. members on both sides of the House.

We are dealing with an extraordinary situation. Insofar as the particular threat to which this bill addresses itself, namely the FLQ, we are not dealing with the ordinary tenor of the criminal law. I tried to explain at the second reading stage of this bill why it was that existing provisions of the criminal law were inadequate to deal with this politically organized criminal conspiracy. I also tried to describe to the House why it was that we sought for a specific purpose, and for a limited period of time only, certain extended powers to be exercised by law enforcement officers in this country under the direction of provincial attorneys general, namely increased powers to arrest and to detain for a limited time, of search and of suspension of bail.

I continue to think that in dealing, in ordinary circumstances, with crime in this country, bail should be considered to be an inalienable right if sought for just cause, and that the primary purpose of bail is to insure that an accused shows up for his trial. The secondary purpose is to insure that releasing an accused on bail will not

[Mr. Gilbert.]