

the inquisitorial system used in France and Germany. Basically, in Canada it has always been recognized that our criminal system of justice is one which seeks to establish the guilt or innocence of the party brought before the court. In order to achieve that particular end, it was felt that we had to pursue the truth. In the pursuit of the truth there were a number of barriers placed in the way. Those barriers were placed there because we felt that in the pursuit of the truth we were running the danger of creating some injustices. Let me refer to a citation from this working paper, namely, the statement of Vice-Chancellor Knight Bruce in the case of *Pearse v. Pearse* (1846). Vice-Chancellor Knight Bruce said:

● (1720)

Truth, like all the good things, may be loved unwisely—may be pursued too keenly—may cost too much.

In effect, it is clear, as cited in that particular case, that society is not prepared, in its search for truth, to trample on the right to human dignity and privacy. The first concern we have is that when we are trying to establish guilt or innocence we do not trample upon privacy or human dignity. It seems to me that my friend's bill comes within that particular domain. The other concern we have is that we ought not to convict an innocent person while attempting to establish guilt. That has always been recognized. I shall paraphrase an old saying which I am sure has been misquoted on a number of occasions. It is to the effect that it is better that ten guilty persons should be freed than that one innocent person should be convicted. I fully agree with that.

In order to implement particular barriers and implement the pursuit of truth, we have brought into our criminal justice the adversary system. We could, as did the French and Germans, have adopted the system of inquisition where the judge is the one who conducts the investigation. In that system the whole investigation is conducted before a judicial officer and guilt or innocence is established.

However, because of the unfortunate experience with relation to the Star Chamber in the United Kingdom, in the mother of parliaments and the mother of our administrations, we felt it was important, especially after the experiences of the Spanish inquisitorial period, that we ought not to opt for inquisition as the method of establishing guilt or innocence but, instead, should move toward the adversary system. I suppose we based our choice on the system used by the knights, who in order to determine guilt or innocence fought each other and the winner was judged to be the innocent party. We have transferred that system to our criminal courts where on the one hand the Crown prosecutor represents the state and proceeds to bring the criminal to justice and attempts to persuade the court that the individual is guilty, while on the other hand we have the defence, namely the accused, who resists the accusation of the prosecutor and seeks to have the case against him diminished.

As an assistance to the accused we have given him the presumption that he is innocent until proven guilty. In that particular context, in the pursuit of truth we have managed—I suggest this very sincerely—to respect human dignity and to protect to a certain extent against unnecessary conviction. It has been suggested that sometimes

*Canada Evidence Act*

there is public pressure to secure convictions and that when we succumb to that particular pressure the unnecessary conviction of innocents results.

It is in that context I find this bill is timely, because we have now reached a level of sophistication in our investigation of crime. We have created a number of statutes to which Canadian subjects are subjected, if I might use the term twice in one sentence. In effect, it is very difficult for the citizen of Canada to know exactly what action he has committed and how that action could in some way infringe a criminal or quasi-criminal statute either at the federal or provincial level. It is, therefore, essential in this complex society that before an individual performs any action which may be detrimental to his defence before the tribunals, he receives full assistance from legal counsel.

I was fortunate to have practised at the criminal bar for nearly seven years before I became a member of parliament. I must admit that of all the facets of my practice at that time, that was the most interesting and most stimulating. I had occasion, as well, to act as duty counsel under the Ontario duty counsel or legal aid plan. I acted in that capacity in smaller communities of northern Ontario, having gone there from Toronto where I had practised for four years. In these communities I was amazed at the absence of information made available to an accused, not because of any intention to deprive the accused of his rights but simply because there was not a tendency among the constabulary or the prosecuting attorney to furnish an accused with that sort of information which would be beneficial. I therefore found that perhaps I could be of assistance in that regard.

It was with a great deal of pleasure that I found the legal aid plan in the province of Ontario was of tremendous assistance in this regard. I was very pleased, therefore, when I became a member of parliament, to find that the government of which I am a supporter was furnishing substantial sums to the individual provinces in order to permit them to implement their own provincial legal aid plans.

When I say this legislation is timely, I do so because we are now at a stage when legal assistance is available to Canadians from coast to coast. I note with some interest that the hon. member for Winnipeg North has recognized this. I am sure he was mindful of this when he proposed his bill, because in the new section 56 we find this provision:

If, pursuant to section 54 a request for counsel is made, the person in authority shall give the person who made the request an opportunity to contact his counsel or advise the local legal aid office director in the event the person who made the request cannot afford counsel.

I feel any provincial legal aid plan should have the obligation of making counsel available at any time this is required. I say that is so because of the fact that unless there is some mandatory requirement it may be very difficult for the police to continue their investigation as a result of there not being any lawyer available to advise the person accused. We could well find ourselves in a situation where an individual is arrested under suspicious circumstances, brought before the authorities in order to permit them to continue their investigation, and then if this bill were accepted the person would be advised that he has the right to obtain counsel, at which time the police