

*Criminal Code***GOVERNMENT ORDERS**

[English]

CRIMINAL LAW AMENDMENT ACT, 1977

AMENDMENTS TO CRIMINAL CODE

The House resumed consideration of Bill C-51, to amend the Criminal Code, the Customs Tariff, the Parole Act, the Penitentiary Act and the Prisons and Reformatories Act, as reported (with amendments) from the Standing Committee on Justice and Legal Affairs.

The Acting Speaker (Mr. Turner): Order. Before calling the next item, I should like to remind hon. members that when the bill was last before us at the report stage, the House gave consent to stand certain items standing in the name of the hon. member for Palliser (Mr. Schumacher). I suggest we now turn to those items and then follow our normal practice of taking the motions in numerical order.

Mr. Woolliams: Mr. Speaker, we have had discussion with the hon. member for Palliser (Mr. Schumacher) and there is agreement that, with Your Honour's approval, we might proceed with motions 12, 13 and 14 and then move along the lines of the suggestion you have just made. I have spoken with the minister, and he has no objection to this being done. The amendments of mine which are grouped together fall into line, in chronological order, with the debate which has been taking place with reference to the regulations.

The Acting Speaker (Mr. Turner): Is that agreed?

Some hon. Members: Agreed.

The Acting Speaker (Mr. Turner): Then we shall now move to motions Nos. 12, 13 and 14.

Mr. Eldon M. Woolliams (Calgary North) moved:

Motion No. 12.

That Bill C-51, to amend the Criminal Code, the Customs Tariff, the Parole Act, the Penitentiary Act and the Prisons and Reformatories Act, be amended in clause 3 by striking out lines 24 and 25 at page 24 and substituting the following therefor: "without lawful excuse".

Mr. Gordon Ritchie (Dauphin) moved:

Motion No. 13.

That Bill C-51, to amend the Criminal Code, the Customs Tariff, the Parole Act, the Penitentiary Act and the Prisons and Reformatories Act, be amended in clause 3

(a) by striking out line 27 at page 24 and substituting the following therefor:

"number on a restricted weapon; or"

(b) by striking out line 28 at page 24 and substituting the following therefor:

"(b) has in his possession a restricted weapon".

Mr. Eldon M. Woolliams (Calgary North) moved:

Motion No. 14.

That Bill C-51, to amend the Criminal Code, the Customs Tariff, the Parole Act, the Penitentiary Act and the Prisons and Reformatories Act, be amended in clause 3 by striking out lines 31 to 39 at page 24.

[The Acting Speaker (Mr. Turner):]

He said: Mr. Speaker, I intend to direct my remarks today—

An hon. Member: Oh, no.

Mr. Woolliams: I hear one of my hon. friends across the way say something. I always like to hear from him because he speaks so seldom and I know when I hear his voice that it means so much to his constituency.

Mr. Knowles (Winnipeg North Centre): Which friend is that?

An hon. Member: He did not identify him.

Mr. Woolliams: I never like to identify these people because I want them to retain their deposits even if they cannot hold their constituencies. Seriously, though, in speaking to motions 12 and 14 I wish to deal with what I consider to be another important change in the jurisprudence of our criminal law. The terms of motion 12 will have been recorded in *Hansard*, but I should like to clarify what I have in mind.

Section 102, dealing with offences involving weapons, provides, "Every one who commits an offence without lawful excuse, the proof of which lies with him . . ." Let me say immediately that this is most shocking language to the ears of anyone who has ever done any counsel work as a lawyer particularly in defence of the rights of Canadians.

● (1650)

We all belong to one ethnic group or another, Mr. Speaker, and one thing I think I can say in safety, and indeed with sincerity, is that one contribution that the Anglo-Saxons made to the world was to implement a system of jurisprudence which has not only been appreciated by all Commonwealth nations made up of various ethnic groups, but also by nations that are not members of the Commonwealth. This system of jurisprudence provides that the onus of proof shall always lie upon the state. In the United States a case is referred to as "The State v. Brown," or whoever it is. In Canada it is "The Crown, for example Crown Rex v. Jones," because the Crown is the head of this nation. Whether the charge be murder or a lesser offence, the onus of proof is upon the Crown.

That principle did not evolve easily. If you go back in history and read the law of the Romans, Mr. Speaker, you will find there the beginnings of understanding and appreciation. To adopt any other system would mean that we are trying to adopt—and I say this kindly—the Napoleonic system, which means that everybody is guilty until they prove themselves innocent. Such a system is not acceptable to our party, nor is it acceptable to the lawyers of this nation or to the law-abiding citizens of the nation.

When a person is charged with an offence, it is true he has to sit in the prisoner's dock. The evidence is called by the Crown, whether the evidence lasts for one hour or day after day, as has been my experience in murder trials, and if the Crown fails to prove its case beyond a reasonable doubt, then the jury, if there is a jury, has the right to acquit the accused.