

reading of Bill C-71, to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act.

**Hon. Martial Asselin:** Honourable senators, I would ask your indulgence for my being not too well prepared, having been stuck in the snow this afternoon for four hours. However, I will do my best and offer a few opinions with respect to Bill C-71, which is now before the Senate.

● (2040)

[Translation]

Honourable senators, Bill C-71 now before the Senate is an omnibus piece of legislation. It includes amendments to the Criminal Code proposed for our consideration. As the Leader of the Official Opposition said during the debate, I regret that such omnibus bills include a number of provisions, and often confront Parliament with difficulties. Although some of the provisions may be acceptable to us, others may not be in accord with our convictions, our conscience, our experience. We are nonetheless asked to accept the principle of such a bill composed of a variety of provisions. We are asked to approve the principle of the bill.

I feel that such a procedure does not benefit our society. Parliament cannot give a sensible opinion on each and every one of the provisions of the bill, when it is asked to decide in principle.

Bill C-71 comprises a number of provisions. It is not my intention to go into every detail of all the clauses of the bill. I would simply stress certain features raising certain questions in my mind. I would first refer to the part concerning bail.

We know that flexibility was introduced some years ago in the matter of release on bail. This was of course at the request of a number of law experts, who urged that certain parts of the Criminal Code be liberalized in order to provide for more humane conditions when it comes to bail. Unfortunately, that experiment was in my view harmful to society. It has not been understood by those who could benefit, and God only knows that in Quebec we were in for it. We paid the price of easier parole introduced some years ago. We saw parolees committing crimes, coming back before the courts, and getting away on bail even though they were under parole. They were again released because of the new bail clauses passed here in Parliament. In many cases these paroles were violated. People did not appear at their trial. They tried to escape justice. Unfortunately, in many cases the people who were released on bail because of the generosity of the court committed other crimes a few weeks later.

This is why all provincial attorneys general protested and asked the federal government to introduce more restrictive provisions in the bail legislation.

I believe that in today's society people would like to give medals to those who commit the greatest number of crimes. Of course, I have great respect for the magistrates, but I believe that in the past some of our judges have shown weakness in applying certain provisions of the Criminal Code.

It is time for Parliament to think first of all of protecting society while recognizing the weaknesses of those who commit more or less serious offenses, before giving them a

chance to rehabilitate themselves. However, society will be glad to learn that we have been firmer, that we have corrected the mistakes embodied in the old bail legislation and that it will be more difficult for someone who goes before a court to be released on bail since the burden of proof will rest on the accused. The accused will have to show proof to the court, whereas in the past it was up to the Crown to show the court that the accused should not be released because of its belief that he would not appear for his trial and that it would be dangerous for society to release the accused because he could commit other crimes. But now the burden of proof has been reversed; it will be up to the criminal to prove that he deserves to be released on bail. I believe that this is an improvement and, even though I am a defence attorney, I applaud loudly these provisions because I think that they will afford better protection to our society.

The bill also contains a provision concerning the verdict of a jury. I would like honourable senators to understand what I want to say.

The other day the Leader of the Opposition explained this problem in depth. I must say that on that occasion he made one of the best speeches he has ever made in the Senate, since he showed once again his great knowledge of jurisprudence and of the law and his experience in court.

The problem raised by the jury's verdict stems, of course, from Morgentaler's trial. The question at issue has nothing to do with abortion, but the fact that a court of appeal reversed a verdict of not guilty brought down by a jury. You know the strong opposition that was raised by jurists as well as people involved with civil liberties in Canada who opposed that decision by the court of appeal, suggesting that the jury principle had been sabotaged. It must be pointed out that the then Minister of Justice described the situation of the dismissal of the verdict of acquittal by a court of appeal as a great hysteria raised by people wanting to spread disorder in society.

**Senator Flynn:** That was Otto Lang?

**Senator Asselin:** Otto Lang. However, I think that under the law the jury epitomizes the common sense of the Canadian people. The main instruction a jury is given at the beginning of a trial, for those who practised criminal law, is as follows: the accused "hath put himself upon his country, which country ye are." From there on the jury has the exclusive right to decide whether an accused is innocent or guilty.

In that respect, it will be recalled that the Criminal Lawyers Association of Ontario stated that the Supreme Court had destroyed a basic principle of democracy by maintaining the precedence of a verdict brought down by a jury. In return, that association wants a new federal law to prevent a court of appeal from reversing a decision made by a jury.

At the time of the *Morgentaler* verdict, the Canadian Institute of Public Opinion made a public survey to determine whether or not a decision by a court of appeal could reverse the verdict of a jury, without a new trial taking place. The results at the national level showed that 48 per cent are against the precedence of a decision by the court of appeal over the verdict of a jury without there being a new trial. That is why the minister, Otto Lang, had to face