

Public Order Act, 1970

The hon. member for Matane also moves the addition of the following phase at line 14 of clause 4:

"without justification or legitimate excuse, the burden of the proof bearing on him".

Besides, the hon. member—

Mr. Lewis: Which subclause?

The Deputy Chairman: Line 14, page 3. The first line of subclause 4 ends with the word "who" and the hon. member requests the addition of the following words:

"without justification or legitimate excuse, the burden of proof bearing on him".

Further, in subclause (b)

Mr. Laprise: Mr. Chairman, on a point of order.

I should like to make some remarks on subclause 4. Two amendments have just been introduced. However, they seem to me somewhat dissimilar. I would be inclined to support the first amendment, which I quote:

Is guilty of an indictable offence and liable to a fine of not more than \$5,000 or to imprisonment for a term not exceeding five years—

—while I object to the second one, which adds to the text so that it reads as follows:

without lawful justification or excuse, the onus of which lies on that person.

I cannot see how anyone could justify his membership in the unlawful association, or act as an officer of this unlawful association or violate any other of the sub-clauses of this clause.

I wonder, Mr. Chairman, whether we should not vote separately on these amendments.

The Deputy Chairman: Order. The Chair agrees with the point raised by the hon. member for Abitibi to the effect that the committee will proceed by stages, voting separately on each of the amendments. Therefore, I now read the first amendment moved by the hon. member for Matane, to strike out the first three lines of clause 4 and to substitute the following words:

Is guilty of an indictable offence and liable to a fine of not more than \$5,000 or to imprisonment for a term not exceeding five years or to both, anyone

Is the House ready for the question? I recognize the hon. member for Matane.

Mr. De Bané: I have moved this amendment because of the maximum sentence provided by clause 6 when someone permits at his place a meeting of the FLQ. This is the maximum sentence provided in clause 6. Clause 4 provides a lesser maximum sentence for anyone who uses force to overthrow the government than that provided in clause 6. This is an obvious inconsistency.

[*English*]

Mr. Turner (Ottawa-Carleton): I do not want to go into this matter in too much detail. Clause 6 mentions the

[The Deputy Chairman.]

maximum because of the effect of section 622 of the Criminal Code. Those who compare the clause with this section of the Criminal Code will realize that there is a distinction.

The Deputy Chairman: Is the committee ready for the question?

Some hon. Members: Question.

Amendment (Mr. De Bané) negatived; Yeas, 3; nays, 40.

The Deputy Chairman: I declare the amendment lost. I will now put the second amendment of the hon. member for Matane.

[*Translation*]

The hon. members have heard the amendment moved by the hon. member for Matane. Will those in favour please rise. Will those opposed please rise.

Amendment (Mr. De Bané) negatived; yeas 3; nays 40.

It is moved by Mr. De Bané that line 16 of clause 4 of Bill C-181 be amended by adding, after the word "who", the following words:

—without lawful justification or excuse, the onus of which lies on that person.

Mr. De Bané: Mr. Chairman, I would like to answer to the hon. member who asked me a while ago how one could have a lawful excuse or justification. There is under our law two kinds of offences: for the first one to carry an indictment, there must be an intent apart from the action, and for the other, the mere fact of committing an action, regardless of the intent, is enough to have the accused convicted.

In the second case, the action is sufficient to have the accused convicted, no intent being required.

I gave a while ago the example of going through a red light. Whether the person does it intentionally or by accident or because he was in a hurry, he has gone through a red light and is guilty *ipso facto*.

This is what we call strict liability. And for most of the crimes provided for in the Criminal Code, apart from committing the action, there must be a criminal intent. And I have quoted about ten sections under which even treason or the traffic in counterfeit money is a crime without lawful excuse or justification, the onus of which lies on the person who committed the act.

Therefore, in addition to committing the offence, one must have the intention of doing so. I have quoted some cases which demonstrate that this bill is creating strict responsibility offences. Fortunately those who legislate are not those who interpret the laws. This is indeed the basis of democracy. According to jurisprudence, the war measures regulations must be interpreted as creating offences of strict responsibility.