

*Government Orders*

In 1982, the Charter of Rights and Freedoms came into force. Five years later, on December 3, 1987, the Supreme Court of Canada gave its reasons for decision in the case of *Regina v. Vaillancourt*. In that case, the accused challenged the constitutional validity of paragraph 230(d). Mr. Justice Antonio Lamer ruled in the *Vaillancourt* case that the presumption of innocence in paragraph 11(d) of the charter is infringed when an accused may be convicted despite the existence of a reasonable doubt as to the presence of an essential element of the offence. Justice Lamer found that where Parliament substituted proof of a different element, as was the case in paragraph 230(d), such substitution is constitutionally valid only upon proof beyond a reasonable doubt of the substituted element in lieu of proof of an essential element.

Speaking for the majority of the court, Mr. Justice Lamer held that an accused cannot be found guilty of murder absent proof beyond a reasonable doubt of at least objective foreseeability. Accordingly, a murder provision such as paragraph 230(d), which allows a conviction in the absence of proof beyond a reasonable doubt of at least that essential element infringes Sections 7 and 11(d) of the charter.

The Supreme Court also found that paragraph 230(d) could not be saved by Section 1 of the charter. The *Vaillancourt* case struck down, therefore, paragraph 230(d) of the Criminal Code. The bill now before us recognizes and responds to the decision of the Supreme Court of Canada by repealing this provision.

The unfortunate fact remains, however, that there are a significant number of cases of murder each year in which a victim is stabbed or shot or beaten to death during the course of the commission of another serious crime, such as sexual assault, robbery or break and enter. The present Section 589 of the Criminal Code presently prohibits the joinder of any other count to a count of murder.

For example, while a person may be charged with murder and also separately charged with sexual assault, the murder and the sexual assault cannot be tried together. As the murder charge must proceed first, and a conviction for murder results in a mandatory sentence of life imprisonment, a prosecution for the other offence does not take place unless there is an acquittal on the

murder charge. A trial for murder usually takes a long time to prepare and conduct and there may be appeals. It is therefore not unusual for a murder case not to be disposed of for several years and it is only at this time that the trial for the related offence may be commenced. By that time, memories may have faded and witnesses may have died or their whereabouts may not be easily ascertained.

One amendment to Section 589 will provide that all offences arising out of the same incident may be tried together. As a result the fact finding process will be much improved and justice will be better served since the possibility of delays will be greatly diminished.

It will interest you to know, I am sure, that this amendment was proposed by the criminal law section of the Uniform Law Conference in 1988. As well, this recommendation received the support of a federal-provincial working group on homicide in its interim report in 1989. Furthermore, the Law Reform Commission of Canada also proposed that Section 589 be amended.

A second amendment proposed to Section 589 will permit the joinder to a charge of murder any other charge of an indictable offence if the accused agrees. This was also recommended by the federal-provincial working group on homicide.

By encouraging the joint trials of charges where an accused consents, the interests of justice as well as those of economy for both the state and the accused will be served.

It is our view that this bill respects the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights.

Finally, these proposals do not affect a judge's right under the general provisions of the Criminal Code to order separate trials for an accused.

In summary, by repealing Section 230(d) and by amending section 589 of the Criminal Code as is proposed, the justice system will be strengthened by reducing unnecessary delays in the administration of justice, modernizing the law in conformity with the decision of the Supreme Court of Canada, allowing for the giving of evidence while witnesses' memories are still fresh, reducing administrative trial costs, and helping to ensure that the constitutional rights of Canadians are safeguarded.