advantage" was "exercised or held out by a person in authority." Accordingly, the only onus on the prosecution is to show affirmatively that neither of these elements led to the making of the statement. The two elements "fear of prejudice" and "hope of advantage" together are regarded as exhaustively defining those circumstances which would render the statement involuntary. The second definition of "voluntary" takes what may be seen as a "wider" view of what the term encompasses. "Fear of prejudice" and "hope of advantage" are not regarded as exhaustive, but rather merely as illustrative, of those circumstances which would render a statement involuntary. After a consideration of all the surrounding circumstances, it would still be open to the trial judge, under this "wider" definition, to find that the statement was not voluntary, even though he was satisfied that the Crown has discharged the onus of showing affirmatively that no threat was made and no promise held out by a person in authority.

This illustrates the two approaches and concludes as follows:

An approach to the issue of voluntariness based on the "narrow" definition of the term fails to satisfy a "wise rule of policy" in that it impels a limited and mechanistic application of a "special legal definition" and at the same time prohibits the exercise of a suitably wide measure of judicial discretion—a discretion which, as Lord Sumner observes, even predates his discussion of it in *Ibrahim*. It may be, as well, that the "narrow" definition is anachronistic, since it evolved from a set of historical circumstances which no longer obtain. It should be borne in mind that the Board's decision in *Ibrahim* came only two years after the promulgation of the first set of Judges' Rules in 1912. In one sense, the "narrow" reading of Lord Sumner's speech may be said to consider the speech as nothing more than a further exposition of those rules. The import of the "narrow" definition is to place a stricture upon police officers and other comparable "persons in authority" to neither exercise "fear of prejudice" nor hold out "hope of advantage" when obtaining a statement from an accused. The focus of this definition, then, is on the conduct of "persons in authority", and it proceeds from the premise that every statement made by an accused is presumed to be voluntary and true unless "persons in authority" are shown to have engaged in a certain specific course of prohibited conduct, namely, exercising "fear of prejudice" or holding out "hope of advantage". The proper concern of the courts, however, ought to extend beyond a mere review of the conduct of the authorities; moreover, the presumption on which the "narrow" definition is premised is, I submit, no longer warranted—if, indeed, it ever was. The "wide" definition quite properly shifts the focus of the inquiry from determination of whether or not a person in authority engaged in a certain category of prohibited conduct, to the real issue of whether the confession was made in such circumstances that the court may rely on its truthfulness. It is to this latter question that the trial judges in Rasmussen (1934), 62 CCC 217 (NBCA), Washer (1947), 92 CCC 218 (Ont. SC), Murakami (1951), 99 CCC 347, affirmed 100 CCC 177 (SCC), Gillis (1966) 2 CCC 219 (BCCA), and Beaulieu (1968) 1 CCC 143 (Alta. CA) were addressing themselves, and this ought to be, I submit, the true concern of all trial judges faced with questions of voluntariness. The absence of certain prohibited types of conduct on the part of persons in authority does not in itself guarantee the trustworthiness of a confession, although it is certainly some evidence of it. An inquiry into all the circumstances surrounding the making of the confession, including the mental state of the accused at the time, would provide a much greater guarantee of the statement's trustworthiness, since the trial judge would be free to address his mind to the entire question of voluntariness rather than being restricted to examining the conduct of "persons in authority".

It must be borne in mind that the ultimate concern must be to guarantee "the evidentiary trustworthiness of statements". Unfortunately, the present Bill, although intending to enhance the rights of the accused, may in fact inadvertently have the exact opposite result. The Bill reproduces the rule in the Ibrahim case and adds an additional ground of exclusion, oppression.

Is it the intent of the proponent of the Bill that oppression constitute an entirely separate category of exclusion? If so, should not the Bill seek to define that term with more exactitude? Further, while statutorily providing for the definition of "voluntary statement", the Bill has not explicitly provided for judicial discretion to exclude the confession in circumstances which, although not falling within the conduct prohibited to persons in authority, nonetheless places the trustworthiness of the confession in doubt.

The second major deficiency of the present Bill is that it does not seem to take cognizance of Section 10 of the Charter. Under Section 10, any accused has the right on arrest or detention to retain and instruct counsel without delay and to be informed of that right. The ambit of that right is at present under consideration by the courts. Clearly the courts have the power to exclude statements obtained from accused who have not been informed of their right to counsel. The courts will exercise that power when, in the words of Section 24(2) of the Charter which was referred to by the previous speaker, the admission of the confession into the proceedings would, having regard to all of the circumstances, bring the administration of justice into disrepute.

• (1740)

The law surrounding the admissibility of confessions has evolved slowly and carefully through the case law. This long development has attempted to balance the interests of society against the rights of the accused. The law as it presently stands is continuing to evolve, now within the context of the Charter. It may be useful if at sometime in the future police departments experiment with the procedures outlined in the Bill to see whether the number of controversies would, in fact, be reduced. But in the absence of such evidence, it would be a grave mistake to pass this Bill, for its effect may be exactly opposite to what its proponents intend.

Mr. Gordon Taylor (Bow River): Mr. Speaker, I want to speak briefly on the Bill. I would like to commend the Hon. Member for bringing it before the House. I acknowledge the legal arguments which have been made by the Hon. Member speaking for the Government. However, I believe we are discussing people who are not acquainted with the Charter of Rights and Freedoms or acquainted with the law, or learned in the law. Many of them have never had any contact with the law before.

People have come to me time and time again saying that when they were arrested and taken to the police station, they were not even permitted to use the telephone. Some have told me that they did not know they had the right to ask to use the telephone. Many of them, most young people today, for instance, do not have a lawyer. They might not even know a lawyer. Therefore, when one of them is asked whether he wants to phone his lawyer or is told that he may phone his lawyer, it is superfluous because the lad probably does not know a lawyer in the whole city and would not know who to phone.

If there are one or two deficiencies in the Bill, as the Parliamentary Secretary just outlined, they could certainly be corrected in the committee. That is why we have committees. I feel very concerned about the fact that almost every Bill, no matter what its merit, that comes before Private Members is talked out by the Government. Surely some of these Bills have merit and would be worth while. I think that the Government