

It is a perfectly tenable position that the only remedy available to the Crown from an improper acquittal by a jury should be a new trial.

Senator Flynn: He said "may be."

Senator Langlois: To my mind this supports the view I am expressing at the present time. However, the contrary view is also very important, and I again voice the hope that it will be thoroughly discussed by our committee.

I now pass on to the views expressed by my good friend Senator Asselin, and since he spoke in French I shall make my comments in that language.

[Translation]

Senator Asselin expressed ideas which are not always the same as those of his leader, and I think the Leader of the Opposition had anticipated that position and even tried, by anticipation, to explain it by saying that his colleague Senator Asselin was more of a defence lawyer and that his sentiments necessarily led him to sympathize with the accused.

Senator Asselin: No.

Senator Langlois: It is a justifiable and very humane position, I think, and I do not believe my friend Senator Asselin should be offended by this remark.

Senator Bourget: It is not that bad.

Senator Langlois: It is not bad at all, as Senator Bourget says. It is only a humane attitude. However, I recall that in his remarks, Senator Asselin first emphasized the transfer of the burden of proof in the case of bail and if I understood him correctly, he supports the amendment which transfers, in certain specific cases well defined in the legislation, the burden of proof from the Crown to the accused when the accused wants to be released before trial. I believe that, generally, our honourable colleagues of the Senate accept this amendment, as it was accepted in the other place.

He also contradicted the Leader of the Opposition when he quoted, as reported on page 1768, I believe, of *Senate Hansard* for February 17, the following statistics, that is, the result of a public inquiry made by the Canadian Institute of Public Opinion, and I quote:

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 88 per cent are against the precedence of a decision of the court of appeal . . .

Senator Asselin: Forty-eight.

Senator Langlois: Yes, pardon me, 48 per cent.

. . . are against the precedence of a decision of 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 strong opposition before accepting the amendment now being considered.

This is in glaring contradiction, and I trust the honourable Leader of the Opposition will not hold it against me for pointing it out to him, with what he said on page 1745 of *Hansard* for February 11 when he explained the position

[Senator Langlois.]

adopted by the former Minister of Justice, the Honourable Otto Lang on introducing this bill in Parliament. I quote:

● (1430)

[English]

In this particular case what I regret is that the decision of the government, or of the Minister of Justice, was made only because of pressure brought to bear by a certain element of public opinion—and a relatively small element at that, I suggest.

Senator Flynn: But I was speaking only of those who knew something about it.

Senator Langlois: But Senator Asselin also knew something about it.

Senator Flynn: I know, but he quoted the popular opinion.

Senator Langlois: It was a public opinion survey that he quoted.

Senator Flynn: Yes, I know.

Senator Langlois: But my honourable friend will not contend that 48 per cent is a small group.

Senator Flynn: No, I would not say that, but I was speaking of those who knew something about it.

Senator Walker: The honourable senators speak so well in English, why don't they continue in English? They are much more fluent.

Senator Langlois: I thank you, but I am replying to my honourable friend, and out of courtesy to him I am speaking in the language he used in his presentation.

Senator Asselin: And Senator Walker's French is very good.

Senator Langlois: And it will be good practice for you, Senator Walker.

Senator Walker: This is free translation.

Senator Langlois: Yes, it is free translation.

[Translation]

Senator Asselin also added, and I fully endorse his position, that the jury system served Canadian society well. I agree with Senator Flynn, and I think he will completely agree with me when I say that if the jury can make mistakes from time to time, judges can also make mistakes, because the saying *errare humanum est* does not apply only to the jury. It applies to any human being. It is absolutely normal, and it is in our nature to make mistakes now and again.

But I think I can add, with the support of Senator Asselin, that in general the jury system serves our Canadian society well. Moreover, when discussing this bill with Senator Asselin before its introduction in this house—and I hope he will allow me to make this reference—he said to me that the jury system also made a significant contribution to the administration of justice in Canada.

I know that such is the opinion of a counsel for the defence.

Senator Flynn: I agree.