

Canada Evidence Act

to their family or their lawyer they are told they cannot do so until the police have finished questioning them. In no case, to my knowledge, are the police required by law or by the custom of the city or the province to instruct the person being interrogated, or who will be or has been charged, that he has the right to remain silent until counsel is present; that he has the right to have counsel present whenever he feels that if he does not have counsel he may get into difficulty.

● (1710)

It is because we do not have the protection which the United States Supreme Court has, by its decision, given the citizens of the United States that I feel the Canada Evidence Act needs to be amended along the lines suggested in my bill. This is necessary in order to give Canadian citizens, those people who rightly or wrongly are being interrogated and who will be later charged by the police of the city or the province with a criminal act, their necessary rights and protection. I believe they have this right, and without it there can be, and have been, occasions of miscarriage of justice. For that reason I propose this bill.

Let me take a few moments to summarize very briefly the recommendations of Mr. Donnelly who is a very experienced and distinguished lawyer in the province of Ontario. At the end of his article in the Criminal Law Quarterly, entitled "Right to Counsel", he makes several recommendations. I should like to put them on the record. They are as follows:

- (1) All rights and freedoms accrue as of "arrest or detention".

In other words, the right to counsel accrues when the person is first detained or arrested. The other recommendations are as follows:

- (2) Immediately upon arrest the accused should be told that he is under arrest and informed of the charge against him.
- (3) Immediately upon arrest or detention the suspect should be warned of his right to remain silent.
- (4) The suspect should be warned that anything he does say may be used as evidence against him.
- (5) The suspect should be informed that he has the right to the presence of counsel during interrogation.
- (6) The right to presence of counsel, retained or appointed—the establishment of a public defender system.
- (7) Non-compliance with this procedure should be grounds for exclusion of evidence obtained after the non-compliance. Where this is the only evidence against the accused, he should be acquitted.
- (8) Warnings. There will be a problem as to what constitutes a warning.

Mr. Donnelly goes on to specify that the accused should be warned of his rights. The next recommendation is:

- (9) Waiver of rights. Law enforcement authorities should be free to use voluntary statements made by an accused.

The final recommendation is:

- (10) Tangible evidence procured through the prohibited statement. This problem should be covered by the proposed legislation.

I am sure that if the government were to agree to this bill in principle, the difficulties which Mr. Donnelly foresees—which he is much more able to evaluate than I am—would be worked out by the committee. I do not have time to put on the record one of the arguments that Mr. Donnelly makes very effectively to the effect that the passage of legislation spelling out the right of an accused to counsel

[Mr. Orlikow.]

would go a long way toward making the Canadian Bill of Rights, which was enacted by parliament when the right hon. gentleman from Prince Albert (Mr. Diefenbaker) was prime minister, a living piece of Canadian law, giving the people of Canada all the rights which the right hon. gentleman believed he was extending when he brought the Canadian Bill of Rights to parliament for its approval.

I urge all members of parliament to support my bill, let it be given second reading and sent to the committee where it can be studied in detail and where representatives of the Department of Justice and the legal profession can make recommendations and suggestions on the details which have not been covered by the bill, and where they can spell out in more precise legal terms the rights people in this country ought to have, those rights which I suggest have been provided the citizens of the United States by the decisions of the United States Supreme Court.

Mr. Blais: Mr. Speaker, might I ask the hon. member for Winnipeg North (Mr. Orlikow) a question?

Mr. Orlikow: Certainly.

Mr. Blais: The hon. member referred to Mr. Donnelly as the author of this article. I wonder if he would identify Mr. Donnelly further for me.

Mr. Orlikow: Mr. Speaker, at the bottom of the first page there is an indication that Mr. Donnelly is a B.A., a Bachelor of Commerce and an LL.B. of Osgoode Hall. Unfortunately, I did not make a note of the date of the article. As I said in the course of my remarks, this is from Criminal Law Quarterly. I am sure I could get the date by going through back issues. At the time the article was written, he was under articles with the Toronto firm of Wahn, Mayer, Smith, Creber, Lyons, Torrence and Stevenson.

Mr. J.-J. Blais (Nipissing): Mr. Speaker, I am very pleased to have this opportunity to speak on this most interesting bill both directly and indirectly, if hon. members will bear with me. First of all, I should like to indicate to the hon. member for Winnipeg North (Mr. Orlikow) that I have read his bill with attention and think it is properly drafted. I might indicate, as well, that I agree with it in principle.

I find at this particular juncture in time that it is essential in the criminal process that there be adequate representation afforded an accused. In order to support my position I will not be referring to legal cases. Since being elected I have attempted to refrain from citing legal jurisprudence. I would, however, like to refer to a document I have found most interesting. It is entitled "Criminal Procedure Discovery" and is the fourth working paper of the Law Reform Commission of Canada. It is a document which in effect would support this particular bill as it indicates that in order to achieve a proper balance and equilibrium in our legal process, there has to be an equilibrium between the two antagonists, namely, the Crown on the one hand and the defence on the other.

Perhaps I might indicate, for members who are not thoroughly familiar with our criminal system of justice, that in fact we have what is referred to in Canada as an accusatorial or adversary system. It is to be compared to