

Criminal Code

Reference to page 413 of Bourinot's fourth edition and citation 283 of Beauchesne's fourth edition indicates that the consent of the crown is always necessary in matters involving the prerogatives of the crown, and that such consent may be given at any stage of a bill before final passage, though in the Canadian house it is generally signified on the motion for second reading. This consent may be given by a special message or by a verbal statement by a minister, the latter being the usual procedure in such cases.

• (3:10 p.m.)

It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the crown, but if it is not given at the last stage the Speaker will refuse to put the question. It is also stated that if the introducer of a bill finds, from the statements of a minister, that the consent will be withheld, he has no alternative open to him except to withdraw the measure.

I now have had an opportunity to peruse the provisions of the bill in the name of the hon. member for Lotbinière. It would seem to me that the bill purports to amend the Criminal Code by deleting subsection 2 of section 655 and also section 656. This subsection and section give the Governor in Council certain statutory powers with regard to pardon and commutation of sentence which, according to the terms of section 658 of the code, do not affect in any manner Her Majesty's royal prerogative of mercy. If, as stated in the code, subsection 2 of section 655 and section 656 do not in any manner affect Her Majesty's royal prerogative of mercy, I have difficulty in coming to the conclusion that amending them or deleting them would affect such royal prerogative. Section 658 of the Criminal Code reads as follows:

658. Nothing in this act in any manner limits or affects Her Majesty's royal prerogative of mercy.

In my opinion it is reasonable to conclude that the provisions of this section are not affected in any way by the hon. member's bill. In other words, the crown's prerogative of mercy is not affected but only the exercise of the statutory powers of the Governor in Council.

Taking that into consideration and also the fact that it is the passing of a bill rather than the introduction thereof which would constitute an infringement of the royal prerogative, I think I should come to the conclusion to permit the motion for leave to introduce such a bill and to let the house decide by their vote if such a motion should be adopted.

[Mr. Speaker.]

[Translation]

Mr. Auguste Choquette (Lotbinière) moved for leave to introduce Bill No. C-168, to amend the Criminal Code (Repeal of Power to Commute a Sentence of death).

Some hon. Members: Explain.

Mr. Choquette: I understand the deep royalist dissent of the Leader of the Opposition (Mr. Diefenbaker), but I must admit that I am submitting this bill in all good faith.

Let me explain: Since 1963, all death sentences have been commuted by the present government. In addition, when the vote was taken recently on the question of capital punishment, most cabinet members were in favour of its abolition. Therefore, I saw fit to introduce this bill so that a judicial type body might be empowered to commute death sentences, thus withdrawing such power from the cabinet.

[English]

Mr. Speaker: Is it the wish of the house that the hon. member shall have leave to introduce the said bill?

Mr. Diefenbaker: No.

Mr. Churchill: No.

Some hon. Members: No.

Mr. Speaker: All those in favour will please say yea.

Some hon. Members: Yea.

Mr. Speaker: Those opposed will please say nay.

Some hon. Members: Nay.

Mr. Speaker: In my opinion the yeas have it.

And more than five members having risen:

Mr. Speaker: Call in the members.

• (3:30 p.m.)

The house divided on the motion (Mr. Choquette) which was agreed to on the following division:

YEAS

Messrs:

Allmand	Cardin
Badanal	Caron
Barnett	Carter
Batten	Choquette
Béchar	Chrétien
Benson	Clermont
Brewin	Côté (Longueuil)
Brown	Crossman
Cadieux (Terrebonne)	Davis
Cameron (Nanaimo- Cowichan-The Islands)	Deachman
Caouette	Douglas
	Dubé