

**CRIMINAL INVESTIGATION (IDENTIFYING PEOPLE) BILL 2001**

*Second Reading*

Resumed from 5 December 2001.

**HON DERRICK TOMLINSON** (East Metropolitan) [4.39 pm]: On behalf of the Opposition I support the Bill. I commend the Government for bringing forward the legislation at long last. It was received, and read a first and second time on 5 December by the Minister for Racing and Gaming. It is unfortunate that the Minister for Racing and Gaming is elsewhere on parliamentary business and therefore cannot listen to and participate in the debate. I wonder whether he will be responding on behalf of the Government to the remarks by the Opposition.

Now on 26 March, we are getting onto the second reading debate. I commend the Government for bringing the Bill on at last, because it is an important piece of legislation. However, in commending the Government for bringing the Bill on at this time, I also ask the Government why it would bring on this very important piece of legislation when the minister handling the legislation is not available. We all understand the responsibilities of ministers, particularly in the case of ministerial councils when ministers are unavoidably elsewhere on parliamentary business. In this case I understand that the minister is representing Western Australia at a ministerial council to discuss the problem of public liability insurance. We do not want the minister and the Government to not participate in that.

I understand that the minister is unavoidably elsewhere on parliamentary business. The convention of this place is that when a minister or a member of the Opposition handling a Bill is unavoidably elsewhere on parliamentary business, the matter is deferred until the minister or member is available. I understand the importance of this legislation and I do not want to derogate from its importance. I understand the urgency of progressing the legislation. It has taken until the fifth week of the autumn session for the Government to bring on this all-important piece of legislation, but it was introduced in the second last week of the last spring session. To bring it on when the minister responsible is elsewhere on parliamentary business does not meet the convention of this place. Furthermore, the minister will be absent on parliamentary business again tomorrow. I am leading the argument for the Opposition. Unfortunately, I will be absent tomorrow. I will not claim that my absence will be due to urgent parliamentary business, however I will be unavoidably absent. I would rather be here. It means that, if the Government is to respond, a person other than the minister in charge of the Bill will respond. Is that what the Leader of the House is going to tell me?

Hon Kim Chance: The minister has asked that the House proceed with this part of the second reading debate in his absence. He intends to respond after he has returned and read members' speeches. He wants to do this because he wants the legislation to progress.

Hon DERRICK TOMLINSON: I take it that -

Hon Ljiljanna Ravlich: Take it all back!

Hon DERRICK TOMLINSON: I take nothing back! Am I right to presume that the House will not proceed to the committee stage tomorrow due to the absence of the leading speakers for the Opposition and the Government?

Hon Kim Chance: We will not proceed to the vote at the end of the second reading debate.

Hon DERRICK TOMLINSON: That is encouraging. I look forward to reading what the minister does not say, as he will be absent when I get back.

I think Hon Ljiljanna Ravlich used the word "grumpy" earlier. I confess to being grumpy. I am grumpy. Let me get it out of my system. The second reading debate of this legislation has been brought on in the absence of the responsible minister. I accept the explanation given by the Leader of the House, but I am not satisfied with it. The convention is quite clear: the House does not proceed with legislation when the lead speaker or the minister responsible is absent on unavoidable parliamentary business. Another convention of this House has been disregarded. I am grumpy about that.

I am also grumpy because the Government introduced this Bill in this place on 5 December 2001. Today is 26 March and we are only now proceeding to the second reading debate. During the Christmas recess the Press had the temerity to report the words of the inept Minister for Police, who made a statement to the effect that the DNA legislation was being held up in the upper House because the Opposition was blocking its progress. The Opposition! The legislation was introduced into this place on 5 December during the second last week of the spring session. It had not been proceeded with; it was not even on the Notice Paper. It did not get onto the Notice Paper until Thursday last week. Who is responsible for the Notice Paper? According to the inept

Minister for Police, the Opposition is. I tell the inept Minister for Police something: the person responsible for the order of business of this House is the Leader of the House. The Leader of the House holds a business committee meeting every Thursday evening when the House sits in order to expedite the business of the House. Even with that process of consultation the legislation was not brought forward until today. It did not reappear on the Notice Paper until last Thursday. It is entirely the responsibility of the Leader of the House. It was not the responsibility of the Opposition that this legislation was not brought forward earlier. It is entirely the responsibility of the Government.

Hon BRUCE DONALDSON: I draw the attention of the President to the state of the House.

Hon DERRICK TOMLINSON: Do not worry about that; members can hear me all around the building.

The PRESIDENT: We require a quorum so that the member can be heard in this House.

[Quorum formed.]

Hon DERRICK TOMLINSON: I thank the opposition Whip for giving me time to pause. Now that I have got things out of my system and am no longer grumpy, I will get on to the substance of the Bill.

This is exceedingly important legislation affecting criminal investigation procedures in this State. It is so important that it was introduced by the previous Government. I will leave it to members to refer to the previous Bill to determine whether this Bill has many changes. People will find that they are comparable Bills. In 2000 the then Opposition prevented the passage of the legislation. It blocked the Bill through its intransigence.

This legislation is frequently referred to as the DNA Bill. Let us be clear that the title of the Bill is the Criminal Investigation (Identifying People) Bill 2001. While DNA profiling and developing a DNA database form a very important part of this Bill, it is not entirely what the Bill is about. I understand why the Bill is commonly referred to as the DNA Bill. It is due to the singular importance of DNA profiling and a DNA database in the criminal identification of people.

DNA is a very new forensic procedure. The first time that DNA profiling was used in a criminal prosecution was in 1986 in the United Kingdom. Colin Pitchfork was convicted of the sexual assault and murder of two teenage girls. Because of the nature of that crime, the police responsible for the investigation undertook to have all of the males in a town in the United Kingdom give voluntary samples of blood for DNA analysis and DNA profile.

Mr President, I draw your attention to the rules of the House that do not allow you to read edifying literature other than that which is necessary for the preparation of debate.

Colin Pitchfork avoided the DNA screening by arranging for an acquaintance to give a sample of blood in his place; therefore, the initial DNA screening did not identify him. He was arrested and charged with the sexual assault and murder of the two teenage girls as a result of conventional police investigation. A sample of his blood was taken when he was arrested and charged and the DNA analysis and profile of that sample confirmed his guilt. There are two important points to note about that case. The DNA profile was not, and never should be, the basis of a conviction, even in that case of sexual assault by Colin Pitchfork. In sexual assaults, a guilty party unavoidably leaves behind a sample of tissue that can be used for DNA profiling, whether that sample be saliva on the clothing or body of the victim or semen on the clothing, the body or within the body of the victim that unavoidably puts the perpetrator at the scene of the crime. It is virtually impossible for people accused of sexual assaults to say that they were not at the scene and it is not their semen or that somebody else put it there.

However, DNA profiling of sexual assault cases cannot alone be used to convict a person when the link between that person at the scene of the crime and the nature of the crime unavoidably indicates that he or she is the guilty party. That is illustrated in the case of Colin Pitchfork because the DNA profiling was able only to confirm the other evidence gathered by standard criminal procedures. I will return to that very important point later in the debate.

DNA profiling has been characterised as the twentieth century equivalent of the nineteenth century innovation of fingerprinting. In technological terms it is more than a century ahead of fingerprinting but it is nothing more than a tool of investigation. Conventional police investigations brought Colin Pitchfork to trial and led to his conviction. Colin Pitchfork is in prison in the UK serving several concurrent sentences, including two life sentences for murder. In 1986 - 16 years ago - his was the first case in which DNA profiling was used. The technology has undergone exponential progress since then.

The next case to illustrate the significance of DNA testing is from Ontario, where a gentleman by the name of Guy Paul Morin was arrested and charged with the murder of a nine-year-old girl called Christine Jessop. Mr Morin was found not guilty in his first trial in 1986. He was tried again in 1992 and found guilty. After 15

months in prison, he was exonerated on the basis of DNA testing. DNA profiling can be used not only as an instrument to identify a guilty party or to put a person at the scene of a crime, but also to exonerate persons who are not guilty of a crime. The significance of the Morin case lies in the passage of time. The forensic technology of DNA analysis was not available in 1986 when Morin was first tried or in 1992 when he was tried again. By 1995, the stains from the clothing of the victim were so degraded that an advanced form of the technology was used to extract a sufficiently robust DNA profile. That indicates the progress in the technology that had taken place between 1986 and 1995. Morin was exonerated after having spent 15 months in prison as a result of the DNA profile extracted from the stains on the degraded clothing.

A third case involved a David Milgaard, who was convicted in 1969 of the rape and murder of Gail Miller in Saskatoon. He was wrongly found guilty and spent 23 years in prison. It was not until 1992, when DNA analysis was carried out on the semen stains on the clothing of the victim that Milgaard was exonerated and released from prison. That is a different case from the case involving Guy Paul Morin in two respects. In the Morin case, a stain on the degraded clothing was used to create DNA profiling only because of the advance in technology between 1986, the first time that DNA analysis was used in a criminal prosecution, and 1995. That indicates the rate of exponential change that I am talking about. There were ample semen stains on the victim and the victim's clothing in Milgaard's case. However, in 1969, when Milgaard was investigated, charged and found guilty, the DNA procedure and technology were not available. That technology was available in 1992 and he was exonerated. The interesting point - this is the second difference from the Morin case - was that once the police investigators had the DNA profile from the 1992 appeal against the 1969 conviction, they were able to use it to link one of the original suspects with the scene of the murder. That person was subsequently charged and found guilty of the rape and murder of Gail Miller in Saskatoon, the offences for which David Milgaard had been convicted in 1969.

Debate interrupted, pursuant to standing orders.

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