

MEMORANDUM/NOTE DE SERVICE

Security Classification - Cote de sécurité

CONFIDENTIAL - BY HAND

File number - numéro de dossier

Date

December 2, 1980

TO/A: DEPUTY MINISTER

FROM/DE: SENIOR COUNSEL
(PUBLIC LAW)

SUBJECT/OBJET: CHARTER OF RIGHTS AND RIGHT AGAINST
SELF-CRIMINATION

Comments/Remarques

Further to my memorandum to you on the CBA's submission respecting section 13 of the Charter, I have spoken with Mr. Tollefson on the question of protection against self-crimination.

We are agreed that provision should be made (a) to protect the right of an accused not to be compelled to testify against himself and (b) to protect a witness who testifies (including an accused) against use of incriminating evidence in subsequent proceedings.

As presently worded, section 13 speaks only of witnesses compelled to testify. This does not address itself to an accused (who cannot be compelled to testify), nor does it address the real issue in protection of incriminating statements which are not directed to witnesses being compelled to testify but rather to witnesses being compelled to give incriminating evidence when testifying.

To accommodate these two aspects of protection against self-crimination the following amendments to sections 11 and 13 are suggested:

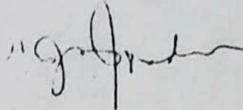
1. Amend section 11 to include as (c) "not to be compelled to testify against oneself".
2. Amend section 13 to read:
"A witness testifying in any proceeding has the right not to have any incriminating evidence so given used against that person in any other proceeding, except a prosecution for perjury or for the giving of contradictory evidence."

This would ensure that an accused, as well as any other witness, giving testimony whether voluntarily or under compulsion (ie. one who is obliged to answer under

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Comments/Remarques

the Evidence Act) would have automatic protection against incriminating evidence being used against him in other proceedings.



F.J.E. Jordan

cc Mr. Strayer
Mr. Bertrand
Miss MacDonald