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To remain silent

The protection against self-incrimination in the Charter of Rights and Freedoms is next to worthless if the Crown can force two people charged separately with the same offence to testify against each other. The charter's wording may be technically honored — that a person has the right on arrest "not to be compelled to be a witness in proceedings against that person in respect of the offence" — but its spirit is violated.

The point was made succinctly the other day by Mr. Justice Willard Estey of the Supreme Court of Canada. He and two colleagues were considering an application for leave to appeal by a man charged with "rescuing" a woman from an Immi-

gration Department detention centre. The man had subsequently been subpoenaed as a Crown witness at the preliminary hearing and trial of a second man charged with the same offence.

Wouldn't the end result be that the Crown would gather evidence against the man testifying, Judge Estey asked rhetorically. "That might be the result," the Ontario prosecutor replied. It might indeed; and if the right to remain silent is infringed in the process, the judge said, the Charter of Rights would have a very hollow ring. We are encouraged to see Judge Estey taking such a dim view of the matter, and hope his point impresses the Crown and the lower courts.