

Criminal Code

the provincial appeal court; and if unsuccessful there, if there is one dissenting judge the accused can take a further appeal to the Supreme Court of Canada.

In the great majority of cases—in more than 75 per cent of cases in the last five years—that right of appeal has been exercised. If in all these appeal proceedings the conviction is quashed because of legal irregularity or because there has been a miscarriage of justice, the effect, so far as the accused is concerned, is that he does not undergo capital punishment. While it is true that the appeal judges do not reach their judgments upon the basis of mercy, or anything of that sort—they base their views purely upon legal questions—these judgments if favourable do have the same effect upon the accused as if mercy had been extended to him.

But if the conviction is sustained against the accused, then whether he has any friend and no matter how black his record may be, no matter whether he has a lawyer acting for him, he is not permitted to suffer the supreme penalty of death until his case has come before the whole cabinet and has been considered by it in a regular cabinet meeting, at which it is item No. 1 on the agenda.

When I say that his case is considered I mean that, first, there is before the cabinet a stenographic transcript prepared by the court reporter of the whole trial proceedings, including all the evidence and the judge's charge, as well as trials within the trial. Second, there is also placed before the cabinet the official record of the case, and the judgments of the judges of the court of appeal or of the Supreme Court of Canada, in those cases in which such appeals have been launched. Then, third, there is a complete report by the trial judge of the course of the trial, with his and the jury's recommendation, if any, for mercy, which he is required to submit within 15 days. Fourth, there is also a report from the police, and fifth a report from the warden of the gaol in which the accused has been detained pending execution. Then, whether any applications for commutation have been made or not, this entire case comes before the remissions branch of the Department of Justice and is carefully gone through by its officers, whose report is submitted to the minister who, I can assure you, spends a great deal of time in going through it again before placing it before the cabinet.

So the result is that of all who have been committed in the first place, a very large percentage are either acquitted by the jury or succeed in their appeals, or have their death penalties commuted. In the five-year

[Mr. Garson.]

period from 1946 to 1950 there were 267 murder charges laid in Canada. Of this number 138 were acquitted by the jury. Of those who were convicted, in 39 cases the convictions were set aside by courts of appeal or for reasons of insanity. This leaves 90 as being subject to the death penalty. Of this number the death penalty was commuted in 28 cases and execution was carried out in 62 cases. This was out of a total of 267 who had been charged with murder.

So while a stranger reading the Criminal Code might think there was harshness and rigidity in connection with the death penalty, in actual practice there is a great deal of justice and mercy accorded to accused persons. And it is for this reason that the committee which sat at the time of the last parliament, in considering this matter, felt that without having the matter investigated further in some detail by a committee of parliament, representing both the House of Commons and the Senate, they did not wish to take upon their shoulders the responsibility for changing the present law upon this subject.

Now, concerning the other matters—

Mr. Knowles: Before leaving this matter of capital punishment I wonder if the minister would permit a question—and, in passing, I would say that it would have been helpful if we had had his statement earlier this afternoon. However, I am now concerned about the minister's statement that what this committee will be dealing with will be merely possible changes in the criminal law with respect to capital punishment. Does he imply by that statement that arguments for or against capital punishment itself are not also to be considered by the committee?

Mr. Garson: Oh, no. I do not know whether my hon. friend has in front of him the motion I moved earlier. However, if he will look at page 958 of *Hansard* for December 15 he will see that, in part, my motion is as follows:

Resolved, that a joint committee of both houses of parliament be appointed to inquire into and report upon the questions whether the criminal law of Canada relating to (a) capital punishment, (b) corporal punishment or (c) lotteries should be amended in any respect and, if so, in what manner and to what extent:

There is no limitation there.

Mr. Knowles: It includes the possible abolition of capital punishment, if the committee is so inclined?

Mr. Garson: Yes, because it is a question of amending the law. It is not a reference such as that which formed the basis for the inquiry in Great Britain.