First, a non-resident or foreign accused will bear the onus of establishing that he is a fit candidate for release pending trial. The present law with regard to foreign accused persons provides that a court may require the accused to deposit cash or some other valuable security to ensure his appearance at trial. If accused persons, in cases where this type of deposit is required, are prepared to lose that deposit—and may have done exactly that—the result is that those accused are never brought to trial. This proposed amendment in no way affects the presumption of innocence in the trial process. The principle of consistent and equal application of the law designed to ensure that all accused, Canadian and foreign, are brought to trial requires this change.

The second situation where the accused person has the onus of establishing that he should be released pending trial occurs where that person is awaiting trial on a previous indictable offence. I am certain that each senator has been made aware of some outrageous situations that have developed where a person awaiting trial on two, three or four charges has been granted bail after a subsequent charge has been laid against him. This provision does not remove all possibility of release, but would place upon the accused the responsibility for showing that the public interest will not suffer if release is granted. This situation has developed because the courts have placed undue emphasis on the primary grounds for retaining an accused in custody, which is to ensure his appearance at the trial, to the detriment oftentimes of the secondary ground, which deals with the public interest and the protection of the public.

The third situation concerns an accused who had previously breached the release provisions which he had undertaken to obey. The ordinary lesson of human experience tells us that this person must now demonstrate that he is a suitable candidate for release pending trial. We are already asking too much of our police officers if we expect them to apprehend someone for having committed an offence, and then to apprehend him again so that he may be made to appear at his trial. The present law is that the police may have to go through this exercise time and time again with regard to the same accused. This amendment would have them do it once and at that point the accused bears the onus of convincing a court that he may be released pending his trial.

The fourth situation which shifts the onus to the accused occurs when the offence with which he is charged is one of the following: murder, conspiracy to commit murder, trafficking in or importing narcotics, and conspiracy to traffic in or import narcotics. The obvious seriousness of these offences dictates this deviation from the general principle.

In a further effort to bring the interests of society and those of accused persons in balance, this bill proposes that the words "involving serious harm" be deleted from the paragraph dealing with the secondary ground.

Here, honourable senators, I refer to clause 57 of the bill, amending section 47(7)(b) of the code. This measure does not affect the usual onus which remains with the Crown. It does lighten the burden so that if the Crown establishes a substantial likelihood of the commission of a criminal offence, as opposed to the present test of a "criminal offence involving serious harm," the courts would detain the accused. In effect, this proposal would have the law state "any criminal offence resulting in serious harm" rather than leaving the courts to make a highly questionable and subjective distinction.



The amendment which I want to discuss at this time is one which deals with appeals from decisions on summary conviction charges. Here, honourable senators, I refer to clauses 89, 94 and 95 of the bill. At present, one method of appeal is by way of trial *de novo* before a judge of a county or district court, or, in the province of Quebec, a judge of the superior court. This method is a relic from the days when most summary conviction matters were heard by lay magistrates—magistrates with no legal training—and it was then considered proper to provide for a means of placing that same evidence before a judge with a proper legal background.

The original proposal of the government was to abolish appeals by way of trial *de novo* altogether. This was amended in the committee of the other place to grant such appeals with the permission of the judge of the court that would hear the trial *de novo*. This amendment retains the general principle of original proposal and yet gives it a sophistication and flexibility which is also desirable.

These are the aspects of this bill which are considered the most important.

There is, of course, another matter which I should mention because it is a rather new occurrence, and one which has been the subject of a great deal of publicity. The amendment has been called the Morgentaler amendment. This amendment has the effect of preventing our courts of appeal from changing an acquittal verdict given by a jury in a lower court. Honourable senators will recall that important trial which received a great deal of publicity when an appeal court reversed the "not guilty" verdict of the jury to a "guilty" verdict, and ordered the judge of the lower court to pass sentence.

It was stated in the judgment handed down by the Supreme Court of Canada, especially in the remarks of the Honourable Mr. Justice Louis-Philippe Pigeon, that this was without precedent in Canadian jurisprudence. Everyone became aware of the consequence of this judgment when the Minister of Justice ordered a new trial for Dr. Morgentaler.

The present law is amended to prevent repetition of such an occurence in the future.

**Senator Flynn:** Why?

**Senator Langlois:** I believe the reason is quite evident.

**Senator Flynn:** I don't think so.

**Senator Langlois:** As the former Prime Minister of Canada, the Right Honourable John G. Diefenbaker, said in the other place, it leads to the destruction of the jury system.

**Senator Flynn:** Not so.

**Senator Langlois:** I am only repeating what he said in the other place.

**Senator Flynn:** Don't be a mere repeater.

**Senator Langlois:** He was your former leader.

**Senator Flynn:** That doesn't matter. I always think for myself.