To charge a person with first degree murder after a successful appeal from a conviction of non-capital murder changes the law as known at the time of the trial. Capital murder as first degree murder in 1966 was described as planned and deliberate, identical to the wording in 1976 of section 214(2) of the Criminal Code, and any other murder was non-capital which today would be known as second degree murder. One asks, "So what, the death penalty is abolished?"

The difference in penalty between first degree and second degree murder is substantial. As I said at the beginning, the government is merely classifying murder to change the penalty. Second degree murder calls for 21 years of imprisonment with the right to make an application to the Parole Board in ten years, depending on character, facts, etc. First degree murder is 25 years of imprisonment without the right of parole. One might make an application to the chief justice after 15 years.

One might ask how this mistake occurred. Well, it occurred. I should like to refer to a rather interesting quote from the book entitled "Preparation of Legislation in Canada" by Mr. E. A. Driedger, Q.C. at page 293, which reads as follows:

What is a draftsman or a draftperson's job?

—His function is to prepare the legislation desired by someone else; and it follows that there must be a transfer of ideas to the draftsman. He must understand precisely what the new law is to be. He may draft a perfectly plain amendment but if that amendment is not the desired amendment he has not done his work properly—

Is that not quite a statement coming from a former deputy minister of justice who is now director of legislation?

Over 100 years ago Bentham talked about legislation like this which was retroactive and reached back into the past. For example, as far as I know today, it is legal for me to make this speech in the House of Commons. If parliament, in its insane sense, passed an act tomorrow which indicated that what I did today was illegal, it would be called retroactive legislation. Surely Canadians are supposed to know the law as they run, walk or are involved in their business and social arrangements with their families and other institutions. Bentham said that such legislation is ambiguous, imperfect, redundant, long-winded, entangled and, above all, naked and without any boundaries. That is exactly what we are faced with here.

As I have said over and over again in the House of Commons, and I will never tire of saying it as long as I am here, let us have a new Criminal Code of Canada rather than one made up of amendments or a band-aid deal which causes confusion to jurists and all Canadians.

I ask the House to consider this bill in light of the fact that it affects the freedom of Canadians who have the right to a fair trial and the right to appeal, and when they win their appeals they are penalized for winning them. That is an abuse of the process of law in the worst form.

Some hon. Members: Hear, hear!

Mr. Roger Young (Parliamentary Secretary to Solicitor General): Mr. Speaker, I should like to make a few comments on Bill C-202 which was presented to the House by the hon. member for Calgary North (Mr. Woolliams). Of necessity he requested permission to speak from some extensive notes. I can appreciate why, because the matter is technical in nature. I hope the House will allow me the same courtesy during the course of my reply.

● (1722)

I should like to say at the outset that it is a pleasure to consider measures proposed by the hon. member for Calgary North because he has a reputation as a lawyer and a parliamentarian which I think elicits our respect and our very close attention.

We are considering today a measure which would draw to the attention of this House a specific anomaly which he perceives in respect of the transitional aspects of the Criminal Law Amendment (Capital Punishment) Act (No. 2) 1976, passed by this House on July 14, 1976, and proclaimed as law on July 26 of that year. On behalf of the Solicitor General (Mr. Blais) I would like to congratulate the hon. member for his suggestion, and for the good intentions which so evidently have gone into drawing up the bill before us.

If I understand it correctly, the bill we are considering would amend the transitional provisions of the Criminal Law Amendment Act (No. 2) 1976 in respect of persons who were charged with murder before this act came into effect but who were ordered to stand trial again as a result of a higher court decision. In these cases, the new trial is to be commenced by the preferring of a new indictment, with such new indictment being drawn up in terms of the new act. The effect of this would be that persons originally tried for capital murder would be tried for first degree murder, and that persons originally tried for non-capital murder would be tried either for first degree or second degree murder, depending on whether the facts were such as to support a charge of first degree murder on the grounds that there was planning and deliberation involved, that the murder was a "contract" killing, or that the offence was committed in the course of committing or attempting to commit aircraft hijacking, kidnapping and forcible confinement, rape or attempted rape, or indecent assault on a female or a male.

These latter elements of first degree murder previously would have resulted in a charge of non-capital murder, and the difference in penalty for first degree murder and non-capital murder is, I take it, the point which concerns the hon. member. Under the previous legislation, a person found guilty of non-capital murder was liable to life imprisonment with parole eligibility not available for at least ten, and as many as 20 years, depending on the order of the trial judge having considered any advice the jury may have had to offer. Under the Criminal Law Amendment Act (No. 2) 1976, a person found guilty of first degree murder is now liable to life imprisonment with parole eligibility not available for 25 years, with that eligibility date being reviewable after 15 years.

Mr. Woolliams: By the Chief Justice.