couraging proper and efficient law enforcement by the police. For this reason, the new bill expressly provides that an arrested person who contends either that the criminal proceedings against him should have been commenced in some other way, such as by summons, or that he should have been released earlier by the police, must demonstrate that the police did not carry out their new duties properly if he is to recover damages against them in civil proceedings.

• (12:40 p.m.)

[*English*]

Turning now to bail, Mr. Speaker, the Criminal Code itself does not at present, as I have already said, offer any real direction on the approach to be taken by justices of the peace in admitting an accused to bail or as to the burden of proof on the matter of bail. The new proposals, I believe, remedy the defects of the existing law in the following respects: first, the new general rule is that an accused person should be released simply upon giving his written undertaking to attend court as required for the purposes of his trial. Second, the burden is expressly placed on the prosecutor to justify either any more onerous form of release than a mere undertaking, or the detention of the accused in custody pending his trial. Third, the detention of the accused in custody pending his trial is justified only on the following grounds, and without wishing to trespass on the rules of the House here I would like to refer to the proposed new section 445A(7) which is to be found at page 24 of the bill:

—the detention of an accused in custody is justified only on either of the following grounds, namely:

(a) on the primary ground that his detention is necessary to ensure his attendance in court in order to be dealt with according to law; and

(b) on the secondary ground...that his detention is necessary in the public interest or for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that the accused will, if he is released from custody, commit a criminal offence involving serious harm or an interference with the administration of justice.

This drafting is different from the drafting of any bail law, seeking reform, in the United States. It is also different from the bail reform act of the United Kingdom. I wanted to make it perfectly clear that the primary ground was whether or not the accused would show up at his trial, and that the secondary ground would be whether the public interest would be protected, focussing the mind of the magistrate first on the rights of the individual and secondly, but only secondly, on the rights of society.

The second ground takes proper account, I believe, of the need to protect the public interest, but at the same time it affords the courts guidance against too broad an interpretation of the provision of protection for the safety of the public by using terms like "substantial likelihood" and a "criminal offence involving serious harm."

The proposals in the bill permitting a justice to impose reasonable conditions on the person released are an additional encouragement to pre-trial release. Moreover, under the new proposals where the accused is released by the justice, the terms of his release continue right up to the conclusion of his trial. They do not have to be renewed. Of course, they can be varied if the conduct of the accused so militates in favour of their being varied, but they do not have to be automatically renewed.

Finally, there is a review procedure at every stage of the proceedings whereby the action of a sergeant at the desk, the action of a justice, and the action of a judge can be reviewed right up to the court of appeal.

Moreover there are important new proposals in the bill which provide that where an accused does not achieve bail after an arrest, there are methods for expediting his trial. These are not found in the present Code. There are full measures for appeal. The basic test in a case of bail is that if an accused on bail has lost his trial at first instance and then appeals, he is entitled to have his bail renewed if he is able to establish that his appeal is not frivolous, that he will surrender himself into custody as required, and his detention is not necessary in the public interest.

It is significant that in their practical operation, the provisions of the bill place an onus on the police to initiate action in the first instance to grant bail. No application by the accused is necessary. I believe this is important because the average citizen, the average layman, does not really know what his rights may be, and the obligation under the bill is on the police, the law enforcement authorities, to institute the procedures for bail. The bail reform bill will require police officials to make a first assessment as to whether or not an accused should be held in custody, and this will not require any initiative on the part of the accused who, as I have said, may be unaware of the procedures available to him.

The provisions of the bill also ensure that where an accused is being held in custody pending his trial, or pending an appeal of his conviction, the situation must be reviewed by the courts within set periods of time, and directions may be given by the courts for getting the case on to trial, or for review proceedings by way of appeal. Corresponding, of course, to the right of the citizen to receive fair treatment and respect in the legal process, it is his duty reciprocally to honour that same process. A good deal of what we are trying to do in bail reform requires the voluntary appearance of an accused at trial. Correspondingly, I believe that if this undertaking to appear voluntarily is not met by the accused, without just cause, that ought to be an offence. There has to be an obligation placed upon the citizen in return for the added scope that we are giving individual rights and therefore failure, without lawful excuse, to comply with process issued by the courts or issued by the police, and confirmed by the justice, is an offence under this bill.

• (12:50 p.m.)

Under the June version of the bill, failure to attend court when required to do so would simply have been a