

Senator LEONARD: Should it not go further than merely the use—promoting the sale or trafficking?

Senator PROWSE: Yes.

The CHAIRMAN: Promote, in the sense in which Senator Molson raised the question, was much broader. He was tying it into trafficking as well.

Mr. HOPKINS: Yes, "or trafficking in".

Senator LEONARD: There may be some difficulty with respect to the actual wording.

The CHAIRMAN: That is why I wanted to leave it to the department, by regulation.

Senator PROWSE: How about "use or possession". This would include all of your definition of possession under the Code. That would be taken care of.

Mr. MCCARTHY: If the substance of what is intended by the committee were settled, probably this wording is something on which Mr. Thurm might have a word as to how it could be done.

The CHAIRMAN: Do you want to have a little time? We will be sitting in the Senate later this morning, but we can come back at 2 o'clock and deal with this particular paragraph.

Senator PROWSE: There is a meeting of the Committee on Finance at 2 o'clock.

The CHAIRMAN: It looks as though we are locked in for time.

Mr. MCCARTHY: I might add that this would probably entail an addition to the regulation-making section which would enable the governor in council to define this as well as the other things mentioned.

Senator CROLL: We will be through at 1.30 and we could finish by 2 o'clock.

The CHAIRMAN: See what you can do in the way of drafting in the meantime.

As to the other sections of the bill, there is actually only one section which gives me concern. That is the section which, in my view, puts the onus on the accused of proving that he is innocent. I know that Senator McDonald (Moosomin), the sponsor of the bill, made reference to the Ontario Court of Appeal decision in 1961. Justice Minister Fulton used this case at that time to support the introduction of this very provision in the Narcotics Control Act of 1961. I think it was a misapplication of the case, because that case was under the provision which prohibited, without lawful excuse, the possession of an explosive. The accused's lawyer pleaded the Bill of Rights, which says you cannot be deprived of your right, that you are innocent until proven guilty. The magistrate gave effect to it. The case went to the Court of Appeal in Ontario and the Court of Appeal in Ontario, by some sort of reasoning—I will not comment on it but I will take what they said. They said that the Crown proved evidence of possession and therefore the accused had a case to meet and this was different from saying that he was guilty unless he proved his innocence.

I have difficulty, in the circumstances, in following that reasoning. However, let us assume that it is sound and logical. It has to do with the question of possession—only.

What we have here is that a man may be charged with possession for the purpose of trafficking. Then the procedures following that are outlined here. It says when that comes to trial the court shall proceed first as though the man was charged with possession only, which is under another section in respect of which he has not been charged at all. The evidence is heard and the Crown adduces evidence. The accused has an opportunity to adduce evidence. If he does not adduce evidence, at that stage the magistrate says: "I convict this man of possession"—under the possession section, in respect of which he has not been charged. Then, if he makes that conviction, you hear the evidence as to whether it is for the purpose of trafficking. At this stage the accused will be called on to prove he was not trafficking. Let us assume that the accused at no time offers any evidence. Then what happens is, first of all, the Crown establishes possession, *prima facie*; the magistrate convicts him under the section under which he