1976, be read the second time and referred to the Standing Committee on Justice and Legal Affairs.

He said: Mr. Speaker, before discussing the details of this bill I should say that this bill relates to preferring indictments respecting retroactive and retrospective legislation. This is a very technical matter. As hon. members know, I usually speak with just a few notes, but because I am limited to only 20 minutes I will speak from a prepared text.

Private member's Bill C-202 would amend the transitional sections of the Criminal Code approved by parliament at the time the death penalty was abolished for all offences under the Criminal Code, particularly treason, piracy and murder. The abolition of the death penalty by the present government was proclaimed on July 16, 1976. In this debate I wish to deal with the question of murder alone.

● (1702)

Prior to July 16, 1976, there were a number of murder cases in which no charges had been laid, or, if a charge had been laid, the process of law had not been completed when the new bill was proclaimed. The rule that was followed was that if the alleged crime had been committed and the process of law commenced prior to July 16, 1976, the charge was continued and the trial proceeded under the former law, except with regard to the penalty, when the charge was either capital or non-capital murder.

Prior to the 1976 law, murder was classified—I want to emphasize the word "classified", instead of defined—as capital and non-capital murder. Conviction of capital murder called for the death penalty, as you will recall, Mr. Speaker, and all murder that was not capital murder was classified as non-capital murder under the Code and the penalty called for imprisonment, meaning 21 years. Under the penal rules, most people, depending on the facts of the case and the character of the accused who was convicted, could make an application for parole to the parole board within the time frame.

This bill deals only with persons who, prior to the abolition of July, 1976, were convicted of non-capital murder and appealed their conviction to the authorized provincial appeal board and the said appeal tribunal quashed the conviction and ordered a new trial. That was after July 16, 1976. Before 1976, that person, under the ordinary rules of jurisprudence would be retried on the charge of capital murder or a lesser inclusive charge of manslaughter, or some such charge.

The section of the code I am proposing to amend is known as the transitional section dealing with pending cases, in other words, the transitional period from the time the murder was defined as capital murder and non-capital murder until the time when it was redefined or reclassified as first and second degree murder. The only change that was made at that time was the nature of the penalty. The section to which I refer, and which has caused great embarrassment to people whom I have already mentioned and to the courts, reads as follows:

Where proceedings in respect of any offence of murder—

I have left out the other two.

—whether punishable by death or not, were commenced before the coming into force of this act, and a new trial of a person for the offence has been ordered and the new trial is commenced after coming into force of this act, the new trial shall be commenced by the preferring of a new indictment before the court before which the accused is to be tried, and thereafter the offence shall be dealt with, inquired into, tried and determined, and any punishment in respect of the offence shall be imposed as if it had been committed after the coming into force of this act.

What it says, in brief, is that if you were convicted of non-capital murder and you went to the court of appeal—such as in the three cases of which I know, one in Ontario and two in Alberta, and there may be others—and your conviction was quashed because you were wrongfully convicted and a new trial was ordered, the Crown, that is the attorney general in the province, may prefer a new indictment. Under the old law, in the case of non-capital murder, if a person is convicted, he received a sentence of life imprisonment or 21 years with the right to parole. But if he was found guilty of capital murder, he was sentenced to the death penalty. What they have done now is not to prefer a charge of second degree murder, which is similar to non-capital murder—I will go into that in a moment—but to up it to first degree murder.

In the three known cases—I will not name the accused because they are still before the court, but let us call them Mr. X, Mr. Y, and Mr. Z, one of which was tried in Ontario and two in Alberta—following a successful appeal by the accused, the charge was upped from non-capital murder to first degree murder, which would be like changing it from non-capital murder to capital murder. Therein lies the injustice.

Let me explain that briefly. Because the accused exercised a right in law to appeal his case, upping the charge is an abuse of the due process of law, because the Crown upped the charge of non-capital murder, by preferring an indictment without the right to a preliminary hearing, to first degree murder which, under the former law, is classified as capital murder and calls for the death penalty.

If this is the law of Canada, it can still reach back to a person who has successfully appealed and charge that person with a new offence calling for a greater penalty. As I said, murder was never redefined in the Criminal Code. It was merely reclassified for the sole purpose of changing the punishment.

My amendment would prevent this abuse of the due process of law by preferring an indictment of first degree murder only if the new trial ordered by an appeal court was from a conviction of capital murder, or of lesser offences, or in the case of a new trial ordered for an offence of non-capital murder to a new indictment no greater than second degree murder, and a lesser offence, if the Crown saw fit, as it has in some cases.

Why do I suggest this? Section 27(2) is retroactive and retrospective legislation. It is against all the principles of justice known to mankind and not in accordance with the principles of British justice. I have found in research that