

is a drug addict can be transferred to a treatment centre pending trial, as part of a probation order, or to serve his sentence.

- **Pretrial delay** — As a first step towards a speedy trial system, all summary conviction offences must be brought to trial within six months of the accused's first court appearance. In a trial by judge and jury, a judge will be able to make all necessary preliminary rulings on the case before the jury is empanelled.

- **"Wash trading"** — Section 340.1 of the Code deals with the artificial buying and selling of stock to create the false appearance of active trading. This would be amended so that the onus is on the accused to establish that he did not deliberately create a false or misleading impression in order to profit financially from that impression rather than on the Crown to show that he did.

- **Abuse of process** — Complaints have been made that the prosecutorial discretion is open to abuse by reason of stays, dismissals and discharges at preliminary inquiries. To prevent abuse, no proceeding can be reinstated without the written consent of the attorneys general or in some cases, of the deputy attorneys general.

- **Hostage-taking** — The new legislation proposes to double the penalty for hostage-taking from five to ten years.

### Obscenity

In introducing the omnibus bill Mr. Basford pointed out that the changes provided by the new legislation deal with major concerns expressed by members of the Standing Committee on Justice and Legal Affairs and the public without imposing rigid standards or censorship on the Canadian community. To this end, the bill also proposes that the Attorney General may require that a jury make decisions as to obscenity. Mr. Basford noted that he had given an undertaking to provincial attorneys general to offer them full opportunity to consider these proposals before they are implemented.

There are provisions in the bill which markedly increase the penalties for production or circulation of pornography. The maximum fine is set at \$100,000.

### Child pornography

With respect to child pornography, a major addition proposed to the obscenity provisions of the Code would make it an offence to depict a totally or partially nude child (who is or appears to be under

the age of 16) "engaged or participating in an act or a simulated act of masturbation, sexual intercourse, gross indecency, buggery or bestiality, or unduly displaying any portion of his or her body in a sexually suggestive manner". The maximum penalty would be ten years imprisonment or a fine of \$100,000. No person shall be convicted of an obscenity offence if he establishes that the public good was served by his act or acts. This section is designed to protect medical journals or works which have a particular artistic merit, for example.

Distribution of pornographic material involving children would be made a specific indictable offence with the same penalties as are applied to production of such material.



Police seize pornographic material.

Furthermore, Section 166 of the Code which deals with the defilement of a female person procured by her parents or guardians, would be enlarged in scope to provide that anyone who procures the defilement of a child of either sex is guilty of an indictable offence punishable by a maximum penalty of 14 years in prison. Defilement includes such things as procuring a young person to have sexual intercourse and permitting that person to engage in prostitution.

### Indecent assault replaces rape charge

Additional legislation provides for the reform of Criminal Code provisions dealing with rape:

The bill provides that an act of rape will be treated as a form of indecent as-

sault. Rather than restricting the offence to any act of penetration of a female person, the amendments will provide for the protection of both sexes from violent cases of sexual entry or attack. Where severe physical or psychological damage results, the maximum penalty would be a sentence of life imprisonment. In addition, the Code would be amended so that where a sexual assault occurs between spouses living separate and apart, a charge may be laid.

"These measures are designed to ensure that those guilty of sexual attacks do not go free because victims are too afraid or embarrassed to complain," said Mr. Basford. "I am very concerned that many incidents of rape go unreported. Too often the attacker benefits from the victim's fear of the stigma associated with rape as a sexual offence, her fear of publicity, and her concern that she, as much as her attacker, will be 'on trial' in court. To deal with this, I am putting forward for discussion legislation which would emphasize the nature of rape as an act of violence."

At present, the Criminal Code defines rape as sexual intercourse with a woman who is not the accused's wife, without her consent. The maximum penalty is life imprisonment.

The Code will be amended so that a person who commits an act of sexual violence (whether there is penetration or not) will be charged with indecent assault or aggravated indecent assault. The penalty for indecent assault will be increased to a maximum of 14 years imprisonment and for aggravated indecent assault, the maximum would be life imprisonment.

### Victim's secrecy option

The present provision allowing an order prohibiting publication of the identity of the victim and his or her evidence will be strengthened to protect victims from the adverse consequences which sometimes result from publicity. The Criminal Code, which formerly made the granting of such an order subject to the court's discretion, will be changed to make such a non-publicity order mandatory where either the prosecutor or the victim requests it. Furthermore, the court will have to advise the victim of his or her right to make such a request.

"The Law Reform Commission is in the process of preparing a working paper

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