Canada. Parl. Senate. Standing Comm.on Banking and Commerce, 1952.

1952

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (205 from the House of Commons), intituled: "An Act to amend The Income Tax Act".

The Honourable SALTER A. HAYDEN, Chairman

TUESDAY, JUNE 10, 1952

WITNESSES:

The Honourable D. C. Abbott, P.C., Minister of Finance.

Mr. Charles Gavsie, Assistant Deputy Minister, Department of National Revenue.

Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY,
OTTAWA, 1952

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 5th June, 1952.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion for the second reading of the Bill (205), intituled: "An Act to amend The Income Tax Act".

After debate and—

The question being put on the motion for the second reading of the Bill,

It was resolved in the affirmative.

The Bill was then read a second time, and—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, Chairman. The Honourable Senators Aseltine, Baird, Beaubien, Bouffard, Buchanan, Burchill, Campbell, Crerar, Daigle, David, Davies, Dessureault, Emmerson, Euler, Fallis, Farris, Fogo, Gershaw, Gouin, *Haig, Hardy, Hawkins, Hayden, Horner, Howard, Howden, Hugessen, King, Kinley, Lambert, MacKinnon, MacLennan, Marcotte, McDonald, McGuire, McIntyre, McKeen, McLean, Nicol, Paterson, Pirie, Pratt, Quinn, Raymond, *Robertson, Roebuck, Taylor, Vaillancourt, Vien, Wilson and Wood.

* Ex officio member.

TUESDAY, June 10, 1952.

The Standing Committee on Banking and Commerce to whom was referred the Bill (205, from the House of Commons), intituled: "An Act to amend The Income Tax Act", beg leave to report, as follows:—

Your Committee recommend that they be authorized to print 500 copies in English and 200 copies in French of its proceedings on the said Bill, and that Rule 100 be suspended in relation to the said printing.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, June 10, 1952.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 4 p.m.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Baird, Burchill, Crerar, Dessureault, Emmerson, Euler, Fogo, Gershaw, Haig, Hardy, Howard, Howden, King, Lambert, McGuire, McIntyre, Robertson, Roebuck, Taylor and Vaillancourt—22.

In attendance:

Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel.

The official reporters of the Senate.

Bill 205, intituled: "An Act to amend The Income Tax Act" was read and considered, clause by clause.

Mr. Charles Gavsie, Assistant Deputy Minister, Taxation Division, Department of National Revenue, and Dr. A. K. Eaton, Assistant Deputy Minister, Department of Finance, were heard in explanation of the Bill.

At 6 p.m. the Committee adjourned.

At 8.30 p.m. the Committee resumed.

Present: The Honourable Senators:—Hayden, Chairman; Aseltine, Burchill, Davies, Dessureault, Euler, Fallis, Farris, Fogo, Gershaw, Haig, Hardy, Hayden, King, Lambert, McDonald, McGuire, McIntyre and Taylor—18.

The consideration of Bill 205 was resumed.

The Honourable D. C. Abbott, P.C., Minister of Finance, was heard in further explanation of the Bill.

The Honourable Senator Haig moved: "That the Bill do lie on the table".

The question having been put on the said motion it was declared passed in the negative.

It was Resolved to report the Bill without any amendment.

Attest.

JAMES D. MacDONALD,
Clerk of the Committee.

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MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Tuesday, June 10, 1952.

The Standing Committee on Banking and Commerce, to whom was referred Bill 205, an Act to amend the Income Tax Act, met this day at 5 p.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Gentlemen, in accordance with the practice of other years we are having a verbatim report made of our proceedings. Senator Roebuck has a motion in connection with the printing.

Hon. Mr. ROEBUCK: I move:

That the Standing Committee on Banking and Commerce be authorized to print 500 copies in English and 200 copies in French of its proceedings on Bill 205 from the House of Commons, entitled an Act to amend the Income Tax Act, and that Rule 100 be suspended in relation to the said printing.

The motion was seconded and carried.

The CHAIRMAN: We have with us this afternoon Dr. A. K. Eaton, an Assistant Deputy Minister of the Department of Finance, and Mr. Charles Gavsie, Deputy Minister (Taxation), Department of National Revenue. Shall we deal with the bill section by section?

Hon. Mr. HAIG: Carried.

The CHAIRMAN: Perhaps we had better leave it to Dr. Eaton and Mr. Gavsie as to who will make the explanations as we go along.

On section 1—Loan to shareholder:

The CHAIRMAN: This section is in some respects relieving. Is any explanation wanted for purposes of the record?

Mr. GAVSIE: I think that the explanation given by Senator Hayden is as good a one as we could give.

Hon. Mr. HAIG: We are all satisfied with section 1.

Hon. Mr. MCDONALD: We had a thorough explanation of it by Senator Hayden.

The section was agreed to.

On section 2—Statutory exemptions:

The CHAIRMAN: This deals with exemption of the income of the Governor General. I do not think we need to spend any time on this.

The section was agreed to.

On section 3—idem:

Hon. Mr. HAIG: I have a question to ask on this. Suppose you have a retiring employee who has been in your service for a good many years and has now reached the age of, say, 60 or 65, and you give him or her a pension of perhaps $50 or $75 a month, would that be allowed?

Mr. GAVSIE: If the practice of the employer is to make payments to employees on retirement in consideration of long and faithful service, and if the amounts paid are reasonable, they will be allowed when paid. If, however, the case is an exceptional one we would have to look at the particular circumstances. In other words, if the person to whom the amount was paid was one

of the senior officials or one of the part owners of the business, we would look at it differently from the way in which we would look at a payment to, say, a stenographer.

Hon. Mr. HAIG: An inquiry was put to me by a firm who have a retiring employee who has been in their service for about forty-five years, and they want to give her a superannuation of $125 a month. Would that item be deductible or not?

Mr. GAVSIE: I think it would be.

Hon. Mr. HAIG: That is what I was informed in Winnipeg, but I wanted to be sure. Section 3 of the bill has nothing to do with a case of that kind?

Mr. GAVSIE: No. This has to do with a plan whereby all the people retiring in a particular year would be covered.

The CHAIRMAN: And the payments under this would be made only on retirement.

Hon. Mr. HAIG: This is one that has been approved?

The CHAIRMAN: Yes.

Hon. Mr. FOGO: Where is the statutory authority for deduction in the case suggested by Senator Haig?

Mr. GAVSIE: I think it would be in the form of deferred remuneration.

Hon. Mr. HAIG: Yes.

Mr. GAVSIE: That is why we would have to look at the case, to see whether the person receiving the money had an interest in the firm or not, because if he did it would really not be an arm's length transaction. As I said, we would look at it differently if the payment were made to a stenographer or person in that class.

The CHAIRMAN: To an employee as against a part owner?

Mr. GAVSIE: Yes.

Hon. Mr. ISNOR: Mr. Chairman, I am not a member of the committee, but I should like to ask a question. You may remember that the same point raised by Senator Haig was raised by me when you were sponsoring the bill. I had in mind a person such as Senator Haig mentioned, who had given long and loyal service, and whom you might consider to be entitled to a pension or retiring allowance, paid in a lump sum or in payments over a period of years. Would an allowance of this kind be deductible?

Mr. GAVSIE: Are you talking of a special case, or of a practice by the employer to deal with employees of the same type in the same way?

Hon. Mr. ISNOR: I am talking of a special case.

Mr. GAVSIE: In that event we would have to take a look at it, and if the payment were made to a person who was purely an employee I do not see any reason why we would not allow it as deferred remuneration. If it is the practice of an employer to make payments to all employees that retire in that way, then there is an established practice under which everybody is being treated in the same way, but if a particular employee is singled out for special treatment we have to take a look at it to see what the actual situation is.

Hon. Mr. ISNOR: My second question has to do with a somewhat similar case where there has been a long period of service, but where the payment is being made on a different ground from that in the other case. In this second case you might consider the person as a liability for future business, and say that you do not wish to let him out of your employ without doing something for him. Perhaps you feel it would be right to make a contribution of four or five or six or ten thousand dollars, with a view to increasing business in the future by disposing of this person.

Mr. GAVSIE: I am afraid you are getting into the realm of a capital expenditure. The theory behind allowing the expense would be that it was deferred remuneration. If you were buying off a potential competitor that might very well be regarded as a capital expense.

Hon. Mr. ISNOR: But it is not a case of buying off a competitor or anything like that; it is a case of increasing your possibilities of doing a larger business and perhaps getting in to a higher bracket.

Hon. Mr. EULER: Getting rid of a liability, or getting rid of a business that injures your business.

Mr. GAVSIE: If you were buying a right or setting up a possibility of increasing your business in the future, that might very well be a capital item.

Hon. Mr. ROEBUCK: Why don't you marry the girl, and be done with it?

Some Hon. SENATORS: Oh, oh.

Hon. Mr. HAIG: I have one other question. The North American Life Insurance Company has brought in a new scheme in Manitoba whereby it offers an insurance plan to the law firms of that province, in cases where the firm has six or more participants. The partners pay the regular fee, and the staff pays half, with the firm contributing the balance. It is a health policy and superannuation combined. I presume that the amount paid by the employer is a deductible expense.

Mr. GAVSIE: Yes, if it is part of the terms of employment.

Hon. Mr. HAIG: It is part of the terms of employment.

Mr. GAVSIE: The amount paid by the employer would be allowed as an expense, but the amount paid by the employee would not necessarily be deductible, unless under an approved superannuation plan.

Hon. Mr. HAIG: I understand that approval had been given, but I was just checking on it.

Mr. GAVSIE: As a matter of fact, if you look at section 5 of the Act, you will see that employees are not taxable on the benefits they get year by year, by the employer's payment to the scheme.

Hon. Mr. HAIG: That is all I want to know, thank you.

The section was agreed to.

On section 4—Chief source of income.

The CHAIRMAN: This is certainly a relieving section, one that I should think we would want to hurry through.

Hon. Mr. HAIG: Yes.

The CHAIRMAN: Is there any further explanation necessary?

Hon. Mr. HAIG: We know what it means.

The section was agreed to.

On section 5—Inadequate considerations.

Mr. GAVSIE: I think Senator Hayden's explanation on that section is about as full as it need be.

The CHAIRMAN: Any questions on section 5?

The section was agreed to.

On section 6—New property deemed substituted.

The CHAIRMAN: Section 6 is a fully technical amendment for the purpose of clarification, as I indicated when I explained the bill. This deals with cases where there are properties or property substituted therefor; it does not stop with the first substitute, but covers any series of property substitutes.

The section was agreed to.

On section 7—Medical expenses.

Hon. Mr. HAIG: I do not think it would do us any good to discuss this section.

Hon. Mr. ASELTINE: Why not cut out the 4 per cent?

Hon. Mr. ROEBUCK: We might as well pass it as waste time discussing it.

The CHAIRMAN: It is relieving, but it does not go as far as we think it should.

The section was agreed to.

On section 8—Dividends not deductible.

Hon. Mr. EULER: Does this apply to foreign corporations?

Mr. GAVSIE: The first subsection is a relieving provision to exclude from taxable income dividends from a foreign business corporation more than 25 per cent of the issued share capital of which belongs to the receiving corporation.

Concerning subsection 2, I think the senators will recall that an amendment was put through last year dealing with this particular section 27 (1A). At that time there was some objection to it, and we promised that we would work on it during the year and bring in an amendment. This is it, and it is rather complicated because it applies to a very special situation.

The section was agreed to.

The CHAIRMAN: I wonder if the committee would bear with me for a moment if we went back to subsection 7 of section 5 on page 4. One of the senators who is not in good health has corresponded with me about section 5. I spoke casually to Mr. Abbott when he was here; and as the section in relieving in any event, he would not have the same apathy, as a matter of general statement, making a relieving section retroactive as to making a taxing section retroactive.

The point is that subsection 7 deals with the situation where a subsidiary company might be selling to the parent company some of its property on which depreciation has been taken for several years. If it were not for the operation of this relieving section, the transfer of the property at cost would mean that the parent company would be deemed to have received the fair market value. But this is a relieving section which permits in a case of where parties are not dealing at arms length—such as between a subsidiary and a parent company—the transfer of property from a subsidiary to the parent company at book value then existing in the subsidiary company. The only point is that the limit on it applies to the year 1952 and subsequent years.

Senator Campbell wrote to me with regard to whether this provision would apply to shipping companies, where a ship was transferred from a subsidiary to a parent company in the year 1951. In that case it would not get the benefit of this relief. If the relief is thought to be necessary and fair why should it not go back to the earliest period in which it would apply, namely 1950 and 1951? Why should it not include 1950 and 1951, and subsequent years?

Mr. GAVSIE: I do not know of any case where we have had difficulty. We have managed to deal with each case, as far as I know.

On section 9—Rates.

Hon. Mr. MCDONALD: We can't do anything with that.

The CHAIRMAN: No, we cannot. These are the effective rates on individuals, and combine both defence surtax and existing rates.

Mr. GAVSIE: There is one comment I might make with reference to the explanation. There was a comment, I believe by Senator Euler, on investment

income. Investment income is subject to 4 per cent tax. When adding the 20 per cent defence surtax you total the tax on all income and the tax on investment income, and then apply the 20 per cent defence surtax to that. Under the proposed change you will have integrated rates for the income and 4 per cent tax on investment income, separate. That is the situation as it will apply in 1952.

Hon. Mr. HAIG: That is better.

The CHAIRMAN: It will be noted that on page 8, part of section 9, there is another schedule which contain rates which are a little higher than the earlier rates. These are the rates which will apply particularly to 1952, because the reduction which the Minister announced is only in relation to the last six months of 1952.

Hon. Mr. HAIG: We can't change that, so we may as well pass it.

The CHAIRMAN: But that is the reason for the two sets of rates.

The section was agreed to.

On section 10—Section repealed.

The section was agreed to.

On section 11—

The CHAIRMAN: This is purely a technical section. Would you like to hear Mr. Gavsie's explanation of it?

Mr. GAVSIE: The purpose of this section is to clear up the reference to "taxation year". It deals with the 10 per cent dividend tax credit. An individual may get the credit if he receives dividends from a taxable corporation; and the purpose of the section is to make clear that it was the corporation's tax year, during which it was taxable.

The section was agreed to.

On section 12—Related corporations.

The CHAIRMAN: This section provides for the corporate rate for the year 1952 and succeeding years. Subsection 2 deals with related company rates, and subsection 3 deals with the apportionment, where the fiscal year differs from the calendar year.

Hon. Mr. HAIG: You cannot change it, anyway.

The CHAIRMAN: Any questions? Carried.

Section agreed to.

On section 13—Deductions from corporation tax:

The CHAIRMAN: It is relieving; it deals with the 5 per cent tax credit in relation to non-agreeing provinces.

Hon. Mr. HAIG: That affects Ontario and Quebec.

The CHAIRMAN: At the present time you pay 7 per cent and you get 5 per cent here only in relation to the portion of the earnings that are attributable to operations in non-agreeing provinces. Is not that right?

Mr. GAVSIE: That is right. The 5 per cent in the agreeing provinces is now incorporated in the rates for corporations.

The CHAIRMAN: Shall section carry? There is no other question there, Mr. Gavsie?

Mr. GAVSIE: No, it just covers that.

Section agreed to.

On section 14:

The CHAIRMAN: Section 14 is clarifying the tax credits that you can take in respect of income received from foreign sources and the extent to which you may take a credit in relation to the tax paid on that income in the foreign country.

Hon. Mr. HAIG: Carried!

Hon. Mr. MCDONALD: I would like to ask a question, although I do not think it comes in here. What I have in mind is the position of Royal Bank stock dividends payable to non-residents. Could these not be deducted at the source, at the head office in Montreal, rather than be passed on to people who are acting as secretaries or administrators?

Mr. GAVSIE: Except that the payment made by the Royal Bank is made to the Canadian resident, and the law obliges a Canadian resident who makes payment to a non-resident to withhold the tax. If that dividend were going direct from the Royal Bank to the non-resident, then the Royal Bank would be under the obligation to make the deduction.

Hon. Mr. MCDONALD: I see. Thank you very much.

The CHAIRMAN: Any other questions on section 14, Mr. Gavsie? Subsection (3) deals with a different point, does it not?

Mr. GAVSIE: Well, it is consequential upon the 5 per cent provincial tax credit.

The CHAIRMAN: Section 14 is carried.

Section agreed to.

On section 15—Election, etc.:

The CHAIRMAN: Section 15 is certainly a relieving section. This is in connection with the new method of taking depreciation on the diminishing balance and the recapture when you sell. It enables you to spread out individually and corporation-wise the recapture over a period of five years, instead of having it all come in as income in the year you receive it, so it is certainly relieving; and subsection (3) was formerly dealing with the years up to 1954, before you get your five-year period starting to run. Any questions that any senator wants to ask under this section?

Hon. Mr. HAIG: That is helpful.

The CHAIRMAN: You will never be in as good a position to ask questions as you are at the present time.

Hon. Mr. FOGO: Does the taxpayer have the option of distributing it, or otherwise?

Mr. GAVSIE: I do not think he would take the option of paying a higher tax than he otherwise would.

The CHAIRMAN: Could he take more than one-fifth in a year?

Mr. GAVSIE: The taxpayer may elect to pay. He has the election.

Hon. Mr. FOGO: He may take it in a year, or three years, or five years.

Mr. GAVSIE: No; he would either elect to take it in the year in which he made the recovery, or follow the procedure set out in this section—one or the other. I should say, perhaps, unless he elected to use this method he would bring it in the year in which he made the recovery. He has to elect to come under this section, if he so wishes.

Mr. FOGO: That is an answer to my question. That is what I really wanted to know.

Section agreed to.

On section 16—Paragraph repealed: Application:

The CHAIRMAN: Section 16 goes back to section 2, where we were dealing with the income from the Office of Governor General, and it repeals the provision in the present law which exempts the income of the Governor General.

Hon. Mr. HAIG: Carried.

Section agreed to.

On section 17—Where property owned for non-resident persons:

The CHAIRMAN: Any questions? Section 17 deals with trusts. I explained it once, so I should not have to explain it again. Mr. Gavsie will tell you, this time.

Mr. GAVSIE: Well, under the act, a trustee is taxable on all the income he receives except the income that is payable out to beneficiaries during the year. The purpose of this section is to deal with dividends or interest coming from a non-resident-owned investment company to a trustee. The effect of this section would be to allow the trustee to accumulate the interest and dividends that he receives from a non-resident-owned investment company, without being subject to tax.

The CHAIRMAN: It is the only accumulation, I understand, that a trustee could make in relation to his trust in respect of income without being subject to tax: is that right?

Mr. GAVSIE: Yes.

Hon. Mr. LAMBERT: It covers trust companies, I suppose.

Mr. GAVSIE: Yes. Usually the trust companies act as trustees.

Section agreed to.

On section 18—Armed forces regulations:

The CHAIRMAN: This is a new—I hesitate to call it "code"—a new principle for dealing with pay and the liability to tax of those in the armed services.

Hon. Mr. HAIG: Pass: leave it alone.

The CHAIRMAN: It certainly should provide for an easier method in the administration than the one we had last year.

Mr. GAVSIE: Yes, we hope it will. The problem is to get a system that will be workable in an emergency when you have a large number in the armed forces who are scattered throughout the world and being shifted around.

Section agreed to.

On section 19—If personal corporation's chief source of income neither farming nor combination of, etc.:

The CHAIRMAN: This deals with a personal corporation and provides that a gentleman farmer cannot have his personal corporation cease to be such just because he engages in farming as a hobby. That is really the effect.

Mr. GAVSIE: That is the effect.

Hon. Mr. HAIG: It does not affect anybody around this table.

Hon. Mr. MCDONALD: It has application to the case of a person taking surplus money and putting it into a farm.

Mr. GAVSIE: A person may put all his investments in a personal corporation and avoid the income being deemed to be distributed by reason of the provisions dealing with personal corporations, by saying that he is in an active business, and the only active business that the corporation has would be this hobby farm; and the purpose of this section is to say that merely because you put a hobby farm into a corporation, that does not mean that it is deemed to be an active business.

Hon. Mr. LAMBERT: How would you deal with farm operations?

Mr. GAVSIE: We would deal with that under section 13, and the loss there would be limited to one-half the cash loss or $5,000.

Hon. Mr. ASELTINE: What about a personal corporation that carries on an ordinary farming business?

Mr. GAVSIE: If it is just a hobby farm it does not escape being a personal corporation, because a hobby farm is not deemed to be an active business for the purpose of section 61 of the Act.

The CHAIRMAN: Shall section 19 carry?

The section was agreed to.

On section 20—No deduction for taxes:

The CHAIRMAN: This is a technical amendment consequent upon the provision for a new tax credit for corporations carrying on business in Ontario and Quebec as provided by clause 13. It comes under the new section 37 which provides for a deduction from the federal tax for 5 per cent of the profits of a corporation allocated to Ontario and Quebec.

Some Hon. SENATORS: Pass.

The section was agreed to.

On section 21.

The CHAIRMAN: This is a clarifying section relating to companies known as foreign business corporations. It spells out what they can do in Canada and not lose their status in Canada as a foreign business corporation. We have a telegram in this connection which has been addressed to the Clerk of the Committee, and I think I should read it. Mr. Gavsie has read it and I shall ask him to make a comment on it afterwards. It reads:

> Re Bill 205 tax amendments section twenty-one STOP Instructed make strong representation against STOP Means stoppage fifteen million dollars pulps and paper purchases in Canada of two clients we represent STOP Must be many adversely affected STOP Gains nothing STOP Makes impossible situation to have benefits unless avoid dealing with and in Canada STOP Is discriminatory in favor few large corporations STOP Section ill-considered clients wish us make representations STOP Please bring to attention appropriate committee considering.
>
> DRACHE MATLIN and CO.

Hon. Mr. HAIG: They are located on Portage avenue, Winnipeg.

The CHAIRMAN: Mr. Gavsie, what have you been able to glean from having read this?

Mr. GAVSIE: I just saw that a minute ago, but this foreign business corporation section relieves a resident corporation from the payment of tax in Canada except to the extent of a $100 filing fee if all its business operations are carried on outside of Canada, and it has no property or assets inside of Canada—

The CHAIRMAN: Except.

Mr. GAVSIE: About three years ago an amendment was put into the Act to provide that the management might be carried on in Canada and it might make some purchases of goods in Canada. What has been happening is that you get a company whose business is purchasing in Canada and selling outside of this country. The purchasing is an integral part of that business, and it was never intended that this foreign business corporation provision should allow that type of a corporation to escape. It was never intended

that the foreign business corporation exemption should be allowed to a type of corporation whose business is purchasing goods in Canada and selling them either in Canada or outside of Canada. As I understand it, this is a company purchasing pulp and paper in Canada and presumably selling it outside of Canada, and it wishes to be treated as a foreign business corporation. In that case the purchasing is a very integral part of that company's business.

The CHAIRMAN: This amendment does not make such an operation any more taxable. It was taxable before this amendment was brought in.

Hon. Mr. HAIG: Carried.

Hon. Mr. FOGO: The case you have illustrated would be that of a person who is buying goods here for resale abroad.

Mr. GAVSIE: Yes. If it is taxable in Canada—I do not know whether it is or not—certainly it should not be exempt by virtue of this section.

Some Hon. SENATORS: Carried.

The section was agreed to.

On section 22—Application of subsection (1).

The CHAIRMAN: This section deals with pensions where a company put in a pension plan some years ago and made some provision for past service benefits, and now they want to increase those benefits because of changing times, and they may make a further contribution.

Hon. Mr. HAIG: That is a good idea.

The CHAIRMAN: Shall it carry?

Some Hon. SENATORS: Carry.

The CHAIRMAN: Of course, the limitations in the original section apply. That is, you have to spread the original deductions over ten years.

The section was agreed to.

On section 23:

The CHAIRMAN: I will ask Mr. Gavsie to deal with this one.

Mr. GAVSIE: Subsection (1) relates to the particular type of case covered by section 97, subsection (3), where you are required to withhold 15 per cent in the case of a redemption of bonds under the circumstances referred to in section 97, subsection (3). The purpose of this amendment is to make it clear that the undistributed income is reduced by amounts that were taxed by virtue of section 97(3) so that in effect they will not be taxed twice.

Hon. Mr. HAIG: Carried.

Hon. Mr. KING: Are you giving a reduction there?

Mr. GAVSIE: The undistributed income which would be subject to tax if it were paid out is deemed to have been reduced by the amount which was subject to a 15 per cent wihtholding tax under section 97 (3).

The CHAIRMAN: That is subsection (1). What about subsection (2)?

Mr. GAVSIE: This relates to a company which at one time was a personal corporation and is no longer a personal corporation, or vice versa, a company which at one time was an ordinary corporation and which is now a personal corporation. The purpose of this is to determine what dividends are deductible in arriving at its undistributed income. This rule in effect provides that the devidends that were actually paid out and were not in excess of the deemed to be dividends taxed under section 61 will be deducted, and any actual dividends in excess of the amounts that were taxed under section 61 will not be deductible in arriving at the undistributed income.

The CHAIRMAN: It means to the extent that the earnings were taxed during the period that this company was a personal corporation.

Mr. GAVSIE: Yes, as a personal corporation the earnings would be taxed in each year. The company would then be entitled to pay out actual dividends to that amount.

The CHAIRMAN: Yes.

Mr. GAVSIE: Now, these dividends would be deductible in arriving at its undistributed income. There may be circumstances, however, where the personal corporation would pay out dividends in excess of the amounts that were taxed by virtue of section 61, and those dividends are not deductible in arriving at its undistributed income.

The CHAIRMAN: That is, it might pay out something from a capital surplus?

Mr. GAVSIE: Yes.

Hon. Mr. FOGO: That would be out of some surplus accumulated before the company became a personal corporation?

Mr. GAVSIE: No, unless it was out of a capital surplus.

The CHAIRMAN: Shall that new subsection (8) of section 73A of the Act, as set out in subsection (2) of section 23 of the bill carry?

The new subsection (8) of section 73 of the Act was agreed to.

The CHAIRMAN: Subsection 2 of section 23 of the bill also adds a new subsection (9) to section 73A of the Act.

Mr. GAVSIE: It will be recalled that section 13 states that the maximum loss deductible in respect of a hobby farm is the lesser of one half of the farming loss or $5,000. The purpose of this subsection (9) is to say that in determining the undistributed income of a company the balance of the loss that is not allowable under section 13 shall not be deductible in arriving at undistributed income, except to the extent that that balance may have been carried backwards or forwards under the provisions of section 26 (1) (*d*).

The CHAIRMAN: Of course, if the overall operation produces losses in each year we are not concerned with undistributed income, are we?

Mr. GAVSIE: The company may have income from other sources.

The CHAIRMAN: Yes, but if not?

Mr. GAVSIE: If not, there would be no question.

Hon. Mr. KING: Income from other sources would be taxed, and if there were losses on the operation—

Mr. GAVSIE: The losses would be offset, if they are normal business losses. Have you reference to a hobby farm, sir?

Hon. Mr. KING: No.

Mr. GAVSIE: By virtue of the amendment to section 13 the losses would be offset against any income for the year, so that the taxpayer would pay on the net income.

Hon. Mr. HOWDEN: How would you arrive at the losses on a hobby farm? I am anxious to know, because I have a farm of my own.

Mr. GAVSIE: It is the cash loss, excluding all expenses of a personal nature or living expenses. If you occupy part of the farm with your family you have to make an appropriate reduction for value of the premises. If you have a gardener who cuts the lawn in front of your house and also works on the farm, you have to make some division between what part of your payment to him is a personal expense and what is a farm expense.

Hon. Mr. BAIRD: I run one of those farms that you term hobby farms. My home is on that farm, and I have expenses for painting and shingling the house, and so on. Are those expenses deductible when computing income?

Mr. GAVSIE: No, sir. Those are personal expenses.

Hon. Mr. BAIRD: But I am a farmer.

Mr. GAVSIE: If you were living in the city you would have the same expenses on your private home. You have to reshingle and paint your house when necessary.

Hon. Mr. BAIRD: In other words, any expenses for the maintenance of a personal home are not allowed?

Mr. GAVSIE: No.

Hon. Mr. ASELTINE: I thought that 25 per cent of the costs of repairs on a farm were deductible.

Mr. GAVSIE: That is on a full-time farm.

Hon. Mr. BURCHILL: What about expenses on actual farm buildings, on the barns and so on?

Mr. GAVSIE: They would be allowed, but not depreciation.

Hon. Mr. BURCHILL: What about costs for shingling?

Mr. GAVSIE: There would be a question whether shingling is a capital expense.

The CHAIRMAN: Just do part of the work each year and call it a repair, and you will be all right.

Hon. Mr. BAIRD: I have not been making any deduction at all for these expenses, because I was afraid they would not be allowed.

Mr. GAVSIE: If you have a cash loss the law entitles you to deduct the lesser of one-half the loss for the year or $5,000. But in arriving at a cash loss you cannot include personal or living expenses, money spent to provide yourself a home.

The new subsection (9) of section 73A of the Act was agreed to.

The CHAIRMAN: Subsection (2) of section 23 of the bill also adds a new subsection (10) to section 73A of the Act.

Mr. GAVSIE: That is similar to the new subsection (9). It prevents the indirect deduction of a farming loss if the direct reduction is prohibited by the new subsection (9).

The new subsection (10) of section 73A of the Act was agreed to.

The CHAIRMAN: Subsection (2) of section 23 of the bill also adds a new subsection (11) to section 73A of the Act.

Mr. GAVSIE: In the case of a new mine which has a three-year exemption, the income of which mine is not included in computing the corporation's income, this provides that nevertheless that income is included for the purpose of arriving at the undistributed income of the corporation which would be available to be paid out to the shareholders. In other words, the exemption for new mines relates only to the corporation which owns the new mine and does not extend to the shareholders.

Hon. Mr. KING: The shareholders are taxed?

Mr. GAVSIE: The purpose of this amendment is to make it clear that the income of the new mine, which is exempt in so far as the corporation is concerned, is included in determining the company's undistributed income which is available for distribution to the shareholders.

The new subsection (11) of section 75A of the Act was agreed to.

On section 24—Mining Companies:

Mr. GAVSIE: This extends for another year, namely to 1955, the three-year exemption in respect of new mines. There is an exception made in respect of sylvite, which I understand is potash.

The section was agreed to.

On section 25 (new section 74A of the Act)—Application of Part to Crown corporations:

The CHAIRMAN: This is the new section taxing Crown corporations. Is any explanation of that required?

Section 25 (new section 74A of the Act) was agreed to.

On section 25 (new section 75 of the Act)—Electric, gas or steam corporations:

Hon. Mr. HAIG: Mr. Chairman, I suggest that we adjourn now until 8 o'clock this evening.

The CHAIRMAN: Mr. Gavsie tells me he thinks we can finish in about ten minutes.

Hon. Mr. HAIG: Very well, but I doubt it.

Hon. Mr. BURCHILL: This is something that I do not think we can pass over in ten minutes.

Hon. Mr. HAIG: I suggest that we hear the minister on this section.

Hon. Mr. BURCHILL: I should like to know the reasons why telephone companies are exempted from the benefits given by this section to electric, gas and steam corporations. Thousands of people want to know the reasons.

The CHAIRMAN: Mr. Abbott said he would come back if we needed him. I suggest that we stand this part of section 25 of the bill until 8 o'clock.

Hon. Mr. HAIG: I agree with that. We probably could have the minister here tonight, because the House of Commons will be sitting then.

Mr. GAVSIE: I do not think I could say very much about this particular section, because it has to do with a matter of policy which is handled by the Department of Finance.

Hon. Mr. HAIG: But we may wish to ask you some questions.

Section 25 (new section 75 of the Act) stands.

On section 26—Disposal of Appeal.

The CHAIRMAN: This is purely procedural. I think the explanation given the other day was sufficient.

The section was agreed to.

On section 27.

The CHAIRMAN: Would you give us a brief explanation of that section, Mr. Gavsie?

Mr. GAVSIE: The purpose of this is relieving. Under section 95A: a company having paid its 15 per cent tax on its undistributed income at the end of 1949 may elect to pay 15 per cent tax on an amount equivalent to the dividends it paid out in 1950 and subsequent years.

The present section reads in part:

> . . . dividends declared and paid by it in the taxation years beginning with the 1950 taxation year.

The purpose of this amendment is to change the words to read "dividends declared by it that were paid by it in etc." In other words dividends may have been declared in 1949, but paid in 1950.

The section was agreed to.

Section 28.

The CHAIRMAN: This amendment merely adds the words which are underlined.

Mr. GAVSIE: It gives the Governor in Council authority to make regulations dealing with a non-resident carrying on business in Canada. It sets out these words: ". . . . what amounts are taxable under this part or what portion of the tax under this Part is payable by that person." This relates to the 15 per cent tax payable by non-residents.

The section was agreed to.

On section 29—Service of garnishee.

The CHAIRMAN: That is a procedural section dealing with who may be served with garnishees.

The section was agreed to.

On section 30—Proof of documents.

The CHAIRMAN: This section is a clarifying section where, for instance, a discharge of a mortgage is given and the department has taken security for income tax payable; it recognizes the authority of the signing officers, if signed under certain circumstances and by certain people. It is relieving to the extent that it overcomes a difficulty that has developed.

The section was agreed to.

Section 31—Exempt income.

The CHAIRMAN: Have you something to say about this section, Mr. Gavsie?

Mr. GAVSIE: The purpose of the section is to bring under the term "exempt income" amounts that would be deductible if it were not for subsection 1A of section 27. That is the subsection that deals with the case of controlled companies, where the "designated surplus" is blocked. The purpose of this section is to include in "exempt income" the "designated surplus" mentioned in that subsection.

The CHAIRMAN: Then there is a definition of "farming".

Mr. GAVSIE: The purpose of that is to include persons who exhibit or maintain horses for racing purposes; the effect is to include them as hobby farmers and to limit the losses which they would otherwise be allowed to deduct.

The CHAIRMAN: Subsection 2 defines "relationships".

Mr. GAVSIE: It defines relationship by blood, marriage and adoption. It narrows what would otherwise be blood relationship. There is an English case which says that as long as some common ancestry can be traced there is blood relationship. The purpose of this section is to limit the relationship to direct descendants, ascendants, brothers and sisters.

The section was agreed to.

On section 32—Application of s. 1 para. (*j*) of Interpretation Act.

The CHAIRMAN: This is a simple clarification section wherein "one person" is corrected to read "a person".

Mr. GAVSIE: That would permit the plural to be applicable also.

The section was agreed to.

On section 33.

Mr. GAVSIE: That section would extend to 1955 the provisions for exploration and development expenses being written off for oil well ventures. Subsection 2 deals with deep test wells, in which the provision is also extended for another year.

The section was agreed to.

On section 34—Mining or exploring for minerals.

Mr. GAVSIE: Subsection 1 of that section uses the same language in respect of mining as is set up for oil and natural gas purposes. Heretofore, it has been

a question of deducting these expenses in one year, even if it caused the operations to show a loss. The purpose of this amendment is to allow the balance to be carried forward until there is some income to offset the expenses, without any limit as to the number of years.

Hon. Mr. HAIG: That is a relieving section.

Mr. GAVSIE: A relieving section.

Clause 4 (A) on page 22 of the bill is beneficial. Under the provincial corporation tax Acts which existed in the agreeing provinces, provision was made for a tax credit against the provincial tax, for exploration and development expenses. That provincial tax has now disappeared, and there are companies which have unused tax credits. The purpose of this clause is to allow such companies to apply those unused tax credits against the Dominion tax.

The section was agreed to.

Hon. Mr. HAIG: I move that we adjourn until 8.30 in order to give the Minister an opportunity to appear for a short time in the other house when it meets at 8 o'clock.

The Committee adjourned.

The Committee resumed at 8.30 p.m.

On Section 25 (new section 75 of the act):

The CHAIRMAN: Gentlemen, we have delayed at the request of Senator Burchill section 25, which enacts section 75. The minister is here now, and Senator Burchill. Now you have the floor, senator.

Hon. Mr. BURCHILL: I would like to know what you have against the telephone companies: that is all.

Hon. DOUGLAS C. ABBOTT, M.P. (Minister of Finance): That is a fair question, Senator. Quite frankly there is not any logic nor any particular principle in this special discriminatory tax rate, because that is what it is. We are giving a small group of companies a special rate of tax. I did that very reluctantly. I only made up my mind about the last week before the Budget to do it.

First, there was the precedent that the group of companies which were included in this section are the ones for which we refund to the provinces one-half of our income tax receipts. It is the companies engaged more than 50 per cent in the generation of electricity, gas and steam; and under the Federal-Provincial Tax Agreements Act with respect to those companies we pay to the provinces, whether they come into tax agreements with us or not, half of our income tax revenues. Needless to say, half of the concession I give here is coming out of the pockets of the provincial governments, not out of our revenues. There was a precedent for that group.

The second point, I think, was this, that in the case of these companies, particularly the power companies, their rates are fixed by local rate-fixing bodies, provincial bodies chiefly, and it seems to be a little more difficult to convince provincial rate-fixing bodies that federal taxes should be taken into account in establishing rates for public services than it is to convince the federal boards. The telephone companies—virtually all, I think, including your own company—have their rates established by the Board of Transport Commissioners.

Hon. Mr. BURCHILL: No; our own provincial body.

Hon. Mr. ABBOTT: I understood they were. Well, that is an exception. I had to tell the president of the Bell Telephone Company, who came to see me the day after the budget, very much the same thing that I am telling you

now. One has to admit that it is singling out a special small group of companies for a special tax rate, but they are companies which have very substantial capital requirements for expansion, in order to provide service, and to obtain a reasonable proportion of their capital requirements in equity capital they have to show a reasonable earnings position. And certainly in the case of companies which have their rates fixed by federal rate-fixing bodies, federal taxes are recognized as an element of cost which has to be included in establishing the rates. I must confess I look upon the thing as essentially a temporary sort of provision. We had a precedent in the Federal-Provincial Tax Agreement Act, where we are giving back half the revenues. The companies included in this provision are perhaps more exposed to socialization than some others. That has been the historical background.

Hon. Mr. BURCHILL: Last year, you remember, we discussed this matter here.

Hon. Mr. ABBOTT: Yes, I know.

Hon. Mr. BURCHILL: And we asked that the public utilities companies whose rates were regulated and fixed by boards should have some lenient treatment, because it just means—at least in our particular case it just means that we have got to go to the Public Utilities Board and ask them to give us a new rate, and increase our rate in order to take care of this 20 per cent tax; and we have to ask them for double what we want.

Hon. Mr. ABBOTT: Yes. At present, to maintain your income position and pay the tax you have to charge a dollar in order to get 50 cents.

Hon. Mr. BURCHILL: We took you at your word, and you said "We will think about it for another year." Now we wonder how we can go down to the people in New Brunswick, Nova Scotia and British Columbia and justify the giving of it to certain companies and not giving it to others.

Hon. Mr. ABBOTT: Well, the only reason you can justify it is the reason I have given you. It may not be too good a reason, and that perhaps, is why it should be extended to railway companies, bus companies and lots of others. I personally hate special tax rates for any taxpayer, and as I told you, it was only with the greatest reluctance that I decided to give this special tax treatment to this group, and it was a close thing whether I did it or not. But I came to the conclusion that the only way it could be done would be by singling out a named group of companies for the special rate, and I selected the group on which we were already refunding half of our take to the provincial governments.

Hon. Mr. EULER: May I ask what are the revenues you receive by reason of this discrimination?

Hon. Mr. ABBOTT: I could not tell you offhand, Senator. It does not mean a great deal to these companies, that is in relation to their revenues; but it is something.

Hon. Mr. EULER: I was wondering whether it meant still less in relation to the revenues of the companies discriminated against.

Hon. Mr. ABBOTT: It will be somewhat less, but it will not be a very large item.

Hon. Mr. EULER: It might mean more to them relatively than it does to the government.

Hon. Mr. ABBOTT: That is right. It should enable some of them to show a reasonable earnings position for the purpose of raising equity capital.

Hon. Mr. FARRIS: Is there any principle involved as between the companies to which you give this benefit, and the ones to which you refuse it?

Hon. Mr. ABBOTT: I would not think so, Senator. I think it is indefensible logically. On principle, I think any differentiation in tax is. On practical

grounds, I think, it is justified here, and particularly for certain types of those companies in the East that are working alongside competitors who are socialized.

Hon. Mr. FARRIS: If there is no logic in it, what harm would there be in making it logical?

Hon. Mr. ABBOTT: I think you might as well have revised your rates right across the piece to give everybody the 43 per cent rate—which I cannot afford to do. Perhaps it would have been better to let them "sweat it out". It is a dog-in-the-manger argument in a sense. I came to the conclusion that on practical grounds this was justified, but I have found it very hard to answer my friend Fred Johnston or Senator Burchill here when they say "Why don't you give the same thing to the telephone companies?"

Hon. Mr. FARRIS: Supposing we would amend the bill on that ground?

Hon. Mr. ABBOTT: I would not accept it—to be quite frank with you. As a matter of fact—I am not going into the constitutional position on it, but I have been quite frank with you.

The CHAIRMAN: I don't think we could add. We could strike out.

Hon. Mr. HAIG: We could hold up the whole bill.

Hon. Mr. ABBOTT: That is right. I don't know whether it would have the effect of holding up the bill. I certainly would not extend the benefit beyond what is in it now.

Hon. Mr. HAIG: We could not do that, but we could just hold up the bill; say "The title has not been passed".

Hon. Mr. ABBOTT: You could do that.

Hon. Mr. HAIG: I appreciate your arguments, and see your difficulties, but here is what troubles me about an amendment of this kind. In the province of Saskatchewan all the rural phone lines are owned by the people. In the province of Ontario quite a few are owned by the people; one of our senators said, about three hundred. But it has been the same proposition all over, where you had a tax on the privately-owned companies and no tax on the publicly-owned companies. As far as I am concerned this is a direct tax on private enterprise—absolutely. That is what puzzles me. I can understand your argument but honestly I cannot follow the logic of it.

Hon. Mr. ABBOTT: I told you there wasn't much logic in it.

Some Hon. SENATORS: Oh, oh.

Hon. Mr. ABBOTT: I started off by saying that, didn't I? I conceded you that point at once.

Hon. Mr. BURCHILL: Mr. Chairman, there is not much sense in talking about this any more. The minister says that he will not extend the same privilege to the telephone companies, and we do not want to hurt his treatment of the other companies, so why not stop talking about it?

Hon. Mr. ABBOTT: I do not want to appear dogmatic, but this thing worried me tremendously. I introduced this measure last year, thinking we could find a formula. We tried our best but we just could not find one, so we dropped it. This year we have been thinking and working on it and the conclusion we have reached is that the only way it could be done would be to single out certain named classes of companies and discriminate in their favour. I took the ones already in the statute where we were kicking back half our income tax to the provincial governments, and we decided that that was as far as we could possibly go. Perhaps it was a mistake to go that far.

Hon. Mr. EULER: How about passing that discrimination around?

Hon. Mr. ABBOTT: Everything is a question of degree. I do not like discrimination in any form. I am quite frank to say I did feel there were grounds

here that justified doing this, but that may have been a mistake in judgment. I do not know.

Hon. Mr. HAIG: I should like to ask a question, not necessarily of the minister. Perhaps Dr. Eaton could answer this. What reduction are you giving to these companies?

Dr. EATON: It amounts to 7 percentage points in the rate, the standard rate being 50 per cent on profits in excess of $10,000, and the rate on profits from these sources would be 43 per cent.

Hon. Mr. ABBOTT: Plus the 2 per cent for old age security tax. It is from 52 to 45.

Hon. Mr. HAIG: I like the minister personally and I do not want to insult him—

Hon. Mr. ABBOTT: I am a hard man to insult.

Hon. Mr. HAIG: I do not think we are fighting over very much if it is only 5 per cent.

Hon. Mr. ABBOTT: I said in my budget speech that it was not a very significant reduction in taxation.

Hon. Mr. HAIG: If you keep this up you will ultimately drive all these companies into public corporations. You will drive private enterprise out.

Hon. Mr. ABBOTT: That, of course, was the principal reason which prompted us to offer relinquishing half of our revenues from these companies to the provincial government. There are no conditions attached to that. They do not have to make a tax-rental agreement with us or anything. We just hand back half of that revenue from the privately owned companies to the provinces.

Hon. Mr. EULER: Why do you do that?

Hon. Mr. ABBOTT: To ward off socialism, which would mean losing revenue. That was the purpose of our doing that. There was no secret about it. Mr. Ilsley announced that in his 1946 budget speech.

The CHAIRMAN: Do the provinces pass on the benefits to the companies concerned?

Hon. Mr. ABBOTT: I have no way of knowing.

Hon. Mr. HAIG: I am afraid they do not.

The CHAIRMAN: I do not think so.

Hon. Mr. HAIG: I know about one that does not. I sat too long on one of them not to know what goes on.

The CHAIRMAN: So the gift does not go far enough?

Hon. Mr. HAIG: Oh, no.

Hon. Mr. EULER: Since the general objector has more or less thrown up his hands, what is the use of discussing this any longer?

Hon. Mr. BURCHILL: I have thrown up my hands because the minister says he will not extend the treatment, and I do not want to get in the way of these other companies.

Hon. Mr. ABBOTT: Senator Burchill has been very fair about this. We discussed it at great length a short time before the budget.

Hon. Mr. HAIG: I am not satisfied. I am going to move that this bill be put on the table, the object of my motion being to hold it up in committee. I am opposed to the principle of this bill and I am going to fight it here and I am going to fight it on the floor of our house when it comes back to us there. I make this motion with all due respect for the minister. I understand his explanation and I know that it is genuine, but I do not agree with the principle contained in the bill and I am not going to vote for legislation when I do not

agree with its principle. The effect of it will be to endeavour to drive out private enterprise altogether and give us a purely socialistic state, and I do not intend to vote for that.

Hon. Mr. ABBOTT: In so far as it tends to do anything, it tends to minimize the danger of socialism.

Hon. Mr. HAIG: I think not.

Hon. Mr. ABBOTT: It may not go far enough, but it at least reduces the danger of public ownership.

Hon. Mr. HAIG: That is my motion.

Hon. Mr. ABBOTT: Your motion, if it were accepted, would increase the the incentive to socialize these companies.

Hon. Mr. HAIG: Well, it will be on the table and I think the government wants this legislation.

Hon. Mr. ABBOTT: It is not my legislation. I am here to raise moneys for the government.

Hon. Mr. HAIG: It does not affect your money raising.

Hon. Mr. ABBOTT: Yes, it does.

Hon. Mr. HAIG: No, you are cutting down here.

The CHAIRMAN: The effect of tabling this bill would be to continue the rates presently in force, and they are higher than the rates here.

Hon. Mr. HAIG: That may be so.

The CHAIRMAN: You are penalizing all the people in Canada.

Hon. Mr. HAIG: This is the only instrument I have got to use, and I must use the instrument I have.

The CHAIRMAN: As long as the honourable senators understand the effect of tabling the bill is to inflict a higher rate than the government thinks is necessary for raising the revenues for this country this year. Are you ready for the question?

Some Hon. SENATORS: Question.

The CHAIRMAN: Those in favour of Senator Haig's motion to table the bill please raise their hands. Those opposed? I declare the motion lost. Shall I report the bill without amendment?

Some Hon. SENATORS: Carried.

The committee thereupon adjourned.

1952

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (H-8), intituled:
An Act respecting the Criminal Law.

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, JUNE 11, 1952

APPENDICES

"A" Clauses where corroboration is now required and where the requirement of corroboration has been dropped, replaced or added.
"B" Disposition of Sections of the Criminal Code in the Bill.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1952

BANKING AND COMMERCE

THE HONOURABLE SALTER ADRIAN HAYDEN, CHAIRMAN

The Honourable Senators

Aseltine	Gershaw	McGuire
Baird	Gouin	McIntyre
Beaubien	*Haig	McKeen
Bouffard	Hardy	McLean
Buchanan	Hawkins	Nicol
Burchill	Hayden	Paterson
Campbell	Horner	Pirie
Crerar	Howard	Pratt
Daigle	Howden	Quinn
David	Hugessen	Raymond
Davies	King	*Robertson
Dessureault	Kinley	Roebuck
Emmerson	Lambert	Taylor
Euler	MacKinnon	Vaillancourt
Fallis	MacLennan	Vien
Farris	Marcotte	Wilson
Fogo	McDonald	Wood

* *ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 15th May, 1952.

"Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion for the second reading of the Bill (H-8), intituled: "An Act respecting the Criminal Law".

The question being put on the said motion,

It was resolved in the affirmative.

The said Bill was then read the second time, and—

After further debate, it was—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, June 11, 1952.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 4.15 p.m.

Present: The Honourable Senators:—Hayden, Chairman; Beaubien, Davies, Dessureault, Emmerson, Farris, Fogo, Gouin, Howard, McDonald, McIntyre, Robertson, Vaillancourt, Vien and Wilson. 15.

Mr. John F. MacNeill, Q.C., Law Clerk and Parliamentary Counsel, and the official reporters of the Senate, were in attendance.

The Chairman presented to the Committee an interim report of the sub-committee appointed to consider Bill H-8, intituled: "An Act respecting the Criminal Law".

It was ordered that the interim Report be incorporated in the printed proceedings of the Committee.

At 6.15 p.m. the committee adjourned to the call of the chairman.

Attest.

JAMES D. MACDONALD,
Clerk of the Committee.

59664—1½

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Wednesday, June 11, 1952.

The Standing Committee on Banking and Commerce, to whom was referred Bill H-8, an Act respecting the Criminal Law, met this day at 4.30 p.m.

Hon. Mr. HAYDEN in the Chair.

The CHAIRMAN: Gentlemen, some weeks ago when the Criminal Code came before us we tried our hand at it in committee for half a day, and we did not get very far. Then we appointed a subcommittee, and this subcommittee has been sitting fairly steadily in the interim, and it was felt at this time, as the session is getting to a close, that we should make an interim report on the work that we have done. That is the purpose for calling together the general committee today. When the subcommittee started in on this work it was provided with a number of lists. We were provided with a list prepared by the Department of Justice purporting to be a list of the sections in the bill incorporated without any change other than a change in form from the present Code; then a second list purporting to relate to the sections in the bill which were brought in from the Code, but in respect of which there were changes not only in form but in substance. Then we had a third list of sections which were dropped, and we had a fourth list of what we called "New Sections Added". Now, then, when we got that material in the first place it was incomplete, and it was only a week ago that we got the balance of the lists brought right down to section 748, which is the last section in the bill.

When we started out in committee we took a run at the first 124 sections in the bill, just to see what procedure we should follow, and to make a check on these various lists that were given to us. In the course of the first 124 sections we ran into sections which were in our list as having been changed in substance, and into sections which were in our list as having been changed in form, but not changed in substance and we ran into some new sections. We found in connection with some of the sections where our list had been changed in form only, that they had been changed in substance as well. So we immediately concluded that if we were going to do a proper job in dealing with the Criminal Code, that ultimately we would have to examine every section of the bill. Now, that is a terrific job, so we decided next to deal first with the list containing the sections sought to be changed in substance as well as in form, and we have covered that list to the extent of the original list supplied us. We have not as yet dealt with the list supplied us a few days ago.

During part of our hearings as a subcommittee we had officials from the Department of Justice sitting in with us, and we discussed these sections with them. You can understand how laborious it was because the bill is not annotated, and therefore we had to open up the bill, consider a section, open up the Code, look at the section from which it was taken, and then look at these lists to see what categories they came under and then ultimately we got hold of an annotation—which was prepared for the purposes of the Minister—of the sections of the bill, giving some reasons in some of the cases why the changes were made or why a section was dropped or why a new section was added. This annotation is just a simple-sized document like this, as you can see, of about 160 pages. When we got this annotation we were able to move a little more quickly on some of the sections because we got some idea of the reasons impelling them to make the changes.

There seemed to be some pressure about getting this Code into the Senate and out of committee and over to the Commons for them to deal with it this year. As we applied ourselves to this job we felt more and more convinced that it was impossible for us to give proper consideration to this, and to finish it in time for any accepted conclusion of the sittings of the house this session. As a result of that, we had several sessions with the minister. First of all the members of the subcommittee, together with the leader, went over and had a session with Mr. Garson. We pointed out to him some of the difficulties which we were running into, and the revisions we had to make, as a result of which we felt we could not do a good job unless we took the time and examined every section. In order to make doubly sure I went back to see the Minister the next day, because there seemed to be a feeling in some quarters, as it was communicated to me, that if we were to apply ourselves diligently we could do this job within a reasonable time. I went back and dispelled that notion, and his final answer to me as Chairman of the subcommittee was that what he wanted first was a good bill, the best he could get, and secondly, that if that required carrying over from this session, then that was all right as far as he was concerned. The first thing he wanted was to be able to tell the House of Commons that it was the best bill that could be drawn, and that it carried the best judgment of the Senate. We told him very strongly that we were not prepared to put our recommendation on anything that we had not looked at in the light of what we had found when we checked the various sections. That is the background of the report which you have before you.

I think this report should be incorporated into the Minutes of our Proceedings today. There are some appendices referred to, which may also be printed, because in that way the House of Commons will have available the work that has been done. We have not finalized all the sections. As a matter of fact we have left a number of them for the consideration of this main committee. With this in mind, possibly the best procedure would be to read this report. It will not take very long, even though it may look formidable, and explain some of the things we ran into so that you will appreciate some of the difficulties we encountered. It is proposed that we shall continue, within the limits of our time, to review additional sections of the Code, but so far as this subcommittee is concerned we are satisfied now that it is just physically impossible to do this job in time for consideration by the Commons at this session. The report reads:

Your subcommittee was appointed by resolution of the 20th day of May, 1952, and consisted of the following members of the Committee appointed by the Chairman pursuant to the said resolution:—

The Honourable Senators:—Bouffard, Hayden, Farris, Hugessen, Fogo, Roebuck, Haig, Vien, *Robertson.

The members of your subcommittee have individually given considerable study to the bill in detail and have held several sittings of the subcommittee at which officers of the Department of Justice were present and have given explanations of some of the changes made by the bill in the Criminal law as at present existing under the Criminal Code.

The lack of satisfactory explanatory notes appended to the bill has made the task of your subcommittee most tedious and difficult, and has delayed the Committee's progress. A great deal of time has been spent checking the clauses of the new bill as against the corresponding sections of the present Criminal Code.

The bill would enact what would be in many respects a new Criminal law for Canada. It proposes many changes in the law which call for most serious and thoughtful consideration by members of the Senate and House of Commons who are under our constitution responsible for the enactment of the Criminal law.

* Ex officio member.

In the course of its work on Bill H8, your subcommittee has considered the report of the Royal Commission on the Revision of the Criminal Code, submitted to the Minister of Justice on February 22nd, 1952, and noted the observations contained therein. We have been impressed by the work done by the Commission and feel that it has made a valuable contribution to the study of Criminal law.

Your subcommittee notes, however, the concluding paragraph of the said report which reads as follows:—

> Your Commissioners desire to state that as to some of the provisions of the draft bill there was a difference of opinion. While the draft bill presented reflects in some respects the view of the majority only, no useful purpose can be served by indicating specifically the matters in which differences of opinion were not fully resolved.

While your subcommittee is of the opinion that members of Parliament must always seriously study legislation, it feels that, in view of the paragraph quoted in the Commissioner's Report, it must examine this bill most carefully and take the time necessary to consider thoroughly the many alterations in the present law which it proposes.

Your subcommittee discussed some features of the bill with the Minister of Justice who agreed that the bill should not be dealt with hastily, for as he said "I want to have a job done thoroughly; I want the best possible law to be the final result of your efforts."

During the course of our examination of the bill, we secured from the officials of the Department of Justice several explanatory memoranda, giving in some cases the reasons for changes made in the present law. The memoranda are appended to this report and we recommend that they be printed in the proceedings of the main Committee for the information of the members of the Senate and of the House of Commons. The labours of your subcommittee members would have been considerably lightened and more progress could have been made if these and other notes had been printed with the bill when it was originally submitted to Parliament.

We are of the opinion that, when important measures are submitted to Parliament, the fullest possible explanations should be printed opposite the clauses of a bill, to enable members of both Houses to appreciate readily their effect and the reasons for their enactment. It is impossible for members with limited time and research facilities to deal satisfactorily with complicated legislative measures without full explanations readily available by those responsible for the drafting of the legislation.

Your subcommittee, at the beginning of its work, considered the clauses of the bill in numerical order but, after considering the first 124 clauses, realized how much time had been expended in comparing proposed clauses with the relevant sections of the present Code, and how long it would take to so complete the full 748 clauses of the bill. The attending officials were asked to prepare a memorandum showing the clauses in which substantive changes had been made in the law, and so from clause 124 on the subcommittee has dealt with the clauses which the officials considered embodied substantial alterations in the law now in force, leaving for later consideration the remainder of the bill.

The CHAIRMAN: You will recall we dealt with the definition section, and I think it took us several hours to deal with about forty-four definitions that were in the definitions section. We have incorporated here the changes which we made in that section.

Hon. Mr. DAVIES: In all cases of contempt of court?

The CHAIRMAN: Yes. I might just pause for a moment. There is no provision for appeal from contempt of court proceedings—the decision of the judge who determines that there has been contempt and imposes a penalty, is final and the feeling of the committee was that there should be an appeal.

Hon. Mr. DAVIES: Has there not been an appeal in the case of the Windsor "Star"?

The CHAIRMAN: I have been wondering as much as you have how they hope to carry their appeal.

Hon. Mr. DAVIES: They were fined $1,000 and $100, and they have appealed.

Hon. Mr. ROEBUCK: I don't know how they have appealed. There is no appeal given.

Hon. Mr. DAVIES: They are reported in the press to have appealed the case.

Hon. Mr. ROEBUCK: There is no appeal in the civil law that I know of. There has been much comment on arbitrary powers exercised by a judge to call somebody before him in court and be judge, jury, executioner—all combined. He levies the fine, if it is a fine, or imposes imprisonment; and that is that.

The CHAIRMAN: We felt that that was an important question, but it was not one on which the subcommittee thought it should make the final decision. We have expressed our views to this general committee; that is, we think there should be an appeal in such cases to the appropriate appellate court. It is up to the main body of the committee to decide (i) whether there should be an appeal, and (ii) the extent and the circumstances and conditions under which an appeal should be given. It may be that, having raised the question, we could consider the rest of the report and then you could make your decision. Possibly that would be the better way to deal with it. Do you think we should deal with these matters as we go along, or go through the whole report and then come back and deal with them?

Hon. Mr. VIEN: Can I have a copy of the report? I am a member of the subcommittee.

The CHAIRMAN: Well, we have so referred to you.

Hon. Mr. VIEN: Why cannot we have enough of these things to go around?

The CHAIRMAN: Because we did not have time to prepare them.

Hon. Mr. VIEN: It is not reasonable that the committee should have to deal with the report before having a copy of the report before them.

The CHAIRMAN: It will be printed in the proceedings of today.

Hon. Mr. VIEN: Well, then, is there any very great urgency?

The CHAIRMAN: Not to deal with it, but there is urgency in reporting to the general committee the work that has been done.

Hon. Mr. VIEN: That is what we are doing now?

The CHAIRMAN: That is what we are doing now.

Hon. Mr. ROEBUCK: I suggest we go ahead and read the report and not attempt to deal with it in detail as we go along. Then perhaps we will have time to go over it and pass it or deal with it one way or the other. But the important thing this afternoon is to get it on record and give the members of the committee some notice of what the problems are, and then perhaps they may send us back to continue our work.

Hon. Mr. VIEN: But I understand that the Prime Minister has announced that this bill will not be passed at this session.

Hon. Mr. ROEBUCK: Oh, no, he did not go so far as that. Pardon me; you may be better informed than I am; but I read in the papers that he said that unless the bill was reported by us two weeks prior to the date of prorogation it would not be dealt with this session. You may be perfectly sure that we will not report this within two weeks of the end of the session.

Hon. Mr. VIEN: Then would it not be preferable to have this subcommittee's report printed and distributed and taken into account by this committee next week?

The CHAIRMAN: That is exactly what we are doing, only we think that we could not just hand this report to the *Hansard* reporter and tell him to write up a set of minutes of the meeting of the general committee; we felt we had to gather the committee and present the report to them, and whatever comment there is in the course of the meeting can go in the record. Then everybody will have a copy of the printed record to study by himself.

Hon. Mr. VIEN: When this report goes to the House of Commons, do they then appoint a committee to go over it all again?

The CHAIRMAN: They can.

Hon. Mr. VIEN: They have to.

Hon. Mr. ROBERTSON: Up to the moment this is a report of the subcommittee.

The CHAIRMAN: The bill was introduced in the Senate. It still will have to be dealt with in committee by the Commons.

Hon. Mr. ROEBUCK: That all depends. It might go to committee in the Commons and it might not. It is government legislation.

Hon. Mr. VIEN: A bill of this importance could not be dealt with by the house without being referred to a special committee or a standing committee.

The CHAIRMAN: Well, that is their problem when they get it. We have enough problems of our own in dealing with this.

Hon. Mr. ROEBUCK: I suggest the Chairman proceed.

The CHAIRMAN: (reading):

Clauses 1 and 2 of the bill were amended in the Main Committee and agreed to as amended:—

Page 3, line 47: Delete "or" and substitute "and".

Page 4, lines 35 to 39, both inclusive: Delete sub-clause (25) and substitute:

> (25) 'motor vehicle' means a vehicle that is drawn, propelled or driven by any means other than by muscular power but does not include a vehicle of a railway that operates on rails:

Your subcommittee took over at this point, and has dealt with the following clauses of the bill as set out hereunder:—

Clauses 3, 4, 5, 6 and 7 were passed.

Clause 8 stands for consideration of the whole Committee. The subcommittee understands that the summary power of punishment for contempt of court has been given to courts to prevent any attempt to interfere with the administration of justice and that it is primarily for the protection of the public. Nevertheless it is felt that there should be an appeal in such cases to the appropriate appellate courts.

Clauses 9 to 38 inclusive, are passed. Clause 15 on page 10—should be reconsidered. De facto law is made a complete defence and it was pointed out would have protected Riel in the west and Mackenzie on Navy Island. The need for such an enactment is open to question.

Clause 39, page 17, line 8: After "or" insert "does not"—clause as amended, passed.

Clause 40—passed.

Clauses 41 and 42. We recommend changes as follows:—

Page 17, line 20: Delete "land" and substitute "real property".
Page 17, line 23: Delete "land" and substitute "real property".
Page 17, line 26: Delete "land" and substitute "real property".
Page 17, line 31: Delete "land" and substitute "real property".
Page 17, line 36: Delete "land" and substitute "real property".
Page 17, line 38: Delete "land" and substitute "real property".
Page 17, line 47: Delete "land" and substitute "real property".
Page 18, line 2: Delete "land" and substitute "real property".

Clause 43, amended as follows:—

Page 18, line 9: Delete "master".
Page 18, line 11: Delete "apprentice".

This clause protects persons in authority when inflicting punishment, such as school teachers, parents, etc. We recommend deletions above mentioned as obsolete.

Hon. Mr. ROEBUCK: It gives the master or officer in command of a vessel on a voyage the power to strike an apprentice, just as a school teacher does a child.

The CHAIRMAN: Yes.

Clauses 44 and 45. Passed.

Clauses 46 to 50, both inclusive, which deal with treason and treasonable offences are to stand for consideration by the Main Committee together with clause 55.

The CHAIRMAN: We felt that this was a very important section. I omitted to state earlier that we have received a considerable number of briefs from various organizations in Canada. Since this is being reported verbatim I shall make no other comment about it, other than to say that this is one of the subjects they raised for discussion—the offence of treason as contained in the Code at the present time.

Hon. Mr. VIEN: Has the subcommittee any recommendation?

The CHAIRMAN: We have certain recommendations to make in this regard, but we thought it would be advisable to make them later.

Hon. Mr. ROEBUCK: When we come to discuss it later we shall have opinions to express and recommendations to make.

Clauses 51, 52, 53 and 54. Passed.

Clause 56. Passed.

Clause 57 is to stand for consideration of the Main Committee.

The CHAIRMAN: This clause deals with offences in relation to members of the R.C.M. Police. Generally the section sought to place the R.C.M. Police on the same basis as members of the military forces, and we felt that this should be reflected upon and considered further. We did not feel that the R.C.M. Police should be regarded in the same position as the members of the armed forces.

Hon. Mr. ROEBUCK: It is a civilian organization and not a military organization.

The CHAIRMAN: Yes.

Clauses 58 to 61, both inclusive. Passed.

Clause 62 is to stand for consideration by the Main Committee.

Clause 63 is to stand for consideration by the Main Committee.

This clause 63 deals with offences in relation to military forces and the R.C.M.P.

The CHAIRMAN: The reason for having this clause 63 stand for the consideration of the Main Committee was that it is a question of policy. We think

the Main Committee should decide whether they are going to group the members of the military forces and of the R.C.M.Police in relation to these offences, or whether they are going to consider the R.C.M. Police as a civilian organization to be put on a different level from the military.

Clauses 64 to 71, both inclusive. Passed.

Clause 72. We recommend that it be deleted as being archaic. In the event of our suggestion being approved, clause 73 should be divided into two clauses to preserve subsequent numbering of clauses.

Hon. Mr. ROEBUCK: Clause 72 deals with duelling. According to the bill any person who challenges or attempts by any means to provoke another person to fight a duel, or attempts to provoke a person to challenge another person to fight a duel, is guilty of an indictable offence and is liable to imprisonment for two years.

The CHAIRMAN: Yes, a duel under the bill is not made an offence, but if you provoke some person to a duel or if you attempt to provoke a person to challenge another person to fight a duel, that is an offence. We thought that this did not make sense, and we suggest it be struck out.

Hon. Mr. DAVIES: The whole clause?

The CHAIRMAN: Yes, the clause dealing with any person who challenges or attempts by any means to provoke another person to fight a duel, or attempts to provoke a person to challenge another person to fight a duel. We think it is archaic.

Hon. Mr. VIEN: Even though it is archaic it may be well to leave it in the Act. I think a duel should remain a criminal offence.

The CHAIRMAN: Duels are not criminal offences, but the act of provoking a duel is a criminal offence. That does not seem to make sense to us, but that is a matter for the Main Committee to decide later. We have made our recommendation.

Hon. Mr. ROEBUCK: It should be pointed out too that a duel may be attempted murder. It is certainly a breach of the peace. It is an assault, and it is covered in other sections of the Code.

Hon. Mr. VIEN: Why should it not be a criminal offence to provoke a person to fight a duel? Why should it not be a criminal offence? We do not wish to return to the ages when a duel was considered to be a noble gesture.

Hon. Mr. FOGO: If this is to be discussed later, perhaps we could save time by moving along now.

Hon. Mr. VIEN: Yes.

The CHAIRMAN (Reading):

Clauses 73 to 75, both inclusive. Passed.

Clause 76 is to be redrafted to read as follows:

Page 26, delete lines 33 to 37, both inclusive, and substitute:

76. Every one who, while in or out of Canada,

(*a*) steals a Canadian ship, or

(*b*) steals, or without lawful authority throws overboard, damages or destroys anything that is part of the cargo, supplies or fittings in a Canadian ship,

Hon. Mr. ROEBUCK: This has not changed the substance of the clause in the bill, but it has made a clumsy expression into a more businesslike expression.

The CHAIRMAN (Reading):

Clauses 77 to 80, both inclusive, are to stand for redrafting and discussion of the policy of the law in the Main Committee. Redraft of the clauses is submitted for purposes of discussion, as follows:

77. Every one who unlawfully

(*a*) causes an explosion of an explosive substance that does bodily harm to any person, or

(*b*) causes an explosion of an explosive substance that is likely to endanger life or to cause serious damage to property, whether or not life is endangered or property is damaged thereby,

is guilty of an indictable offence and is liable to imprisonment for life.

Hon. Mr. ROEBUCK: I am not satisfied with this clause even as it has been redrafted. It does not satisfy the objections made in the subcommittee. For instance, what about mining people who are using explosives all the time? Then there are explosives used in construction work on streets, and used in vast quantities to dig canals for hydro-electric power. Here we say, "Everyone who unlawfully causes an explosion . . .". That is to say, if he did not have a licence to use explosives and is likely to endanger life, it constitutes an indictable offence and he is liable to be imprisoned for life. What is hit at, of course, is such an action as that of the MacNamara's when they blew up the Times Building in Los Angeles.

Hon. Mr. FOGO: Bombs.

The CHAIRMAN (Reading):

78. Every one who

(*a*) with intent to do bodily harm to any person,

(i) causes an explosive substance to explode,

(ii) sends or delivers to a person or causes a person to take or receive an explosive substance or other dangerous substance or thing, or

(iii) places or throws anywhere or at or upon a person a corrosive fluid, explosive substance or any other dangerous substance or thing; or

(*b*) wilfully does anything to cause an explosion of an explosive substance that is likely to endanger life,

(*c*) makes or has in his possession or under his control an explosive substance with intent thereby to endanger life or to enable another person thereby to endanger life,

is guilty of an indictable offence and is liable to imprisonment for life.

79. Every one who

(*a*) with intent to destroy or damage property, places or throws an explosive substance anywhere,

(*b*) does anything with intent to cause an explosion of an explosive substance that is likely to cause serious damage to property, or

(*c*) makes or has in his possession or under his control an explosive substance with intent thereby

(i) to cause serious damage to property, or

(ii) to enable another person thereby to cause serious damage to property,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Clause 80. This clause stands for consideration of the Main Committee.

The CHAIRMAN: This deals with persons possessing explosives without lawful excuse.

Clauses 81 to 89, both inclusive. Passed.

Clause 90. This clause stands for discussion in the Main Committee. We are of opinion that as worded in the bill it is too sweeping as motor vehicle

has been defined and that the obligation on the accused is oppressive and unjust. The following redraft of subclause (3) has been prepared for purposes of discussion:

> 90. (3) Every one who is an occupant of a motor vehicle in which he knows there is a firearm commits an offence unless some occupant of the motor vehicle has a valid permit in Form 42 or Form 44 relating to that firearm, but no person shall be convicted of an offence under this subsection where he establishes that he had no reasonable means of ascertaining whether an occupant of the motor vehicle had a valid permit relating to the firearm.

The CHAIRMAN: As it was drawn there was not that protection in it at all, and we have recommended this change.

Hon. Mr. DAVIES: What did they say about that permit?

The CHAIRMAN: This is the redraft we have made.

The original section 90, subsection (3) simply said:

> Every one who is an occupant of a motor vehicle in which he knows there is a firearm commits an offence unless some occupant of the motor vehicle has a valid permit in Form 42 or Form 44 relating to that firearm.

We have felt there should be some basis of knowledge. What ability or opportunity did the occupant of the motor-car have to know that there was a permit? There might be a firearm in the glove compartment of the car, and if you sat in the car, unless you catechized the person when you got in the car and said, "Mister, is there a gun in this car, and if so, have you a permit?" you might be liable. That was the way the law was drafted, and the only way you could protect yourself. So we have drafted this to make it more reasonable.

Hon. Mr. EMMERSON: Does that mean a permit is necessary to carry a gun?

The CHAIRMAN: Yes.

Hon. Mr. EMMERSON: What about an ordinary hunting licence? Is that a permit to carry a gun in a car?

The CHAIRMAN: Your hunting permit is a permit to hunt.

Mr. MACNEILL: This is a firearm as defined for the purpose of the Code.

Hon. Mr. MCINTYRE: Does that include anybody who goes out for sport and has a gun of his own? Can he not take that without a permit?

The CHAIRMAN: No, this section does not deal with that. This section deals with an attempt to create a series of offences in relation to unregistered firearms; and the police apparently have difficulties at times: there will be firearms in a car and no person owns them or knows anything about them. So they were attempting to make it an offence that "Every occupant of a motor-car in which he knows there is a firearm commits an offence unless there is a permit". We felt that that is too sweeping, so we have cut it down in section 3 by saying that no person shall be convicted of an offence under this subsection where he establishes that he had no reasonable means of ascertaining whether an occupant of the motor vehicle had a valid permit relating to the firearm.

Hon. Mr. DAVIES: But would he not have a means of ascertaining? In the majority of cases where you think there would be a gun carried in the car you would be suspicious. I mean, anybody might carry a gun in the glove compartment of a car, but it would be very seldom that a law-abiding citizen would do so.

The CHAIRMAN: Without such a change as we have made, in order to protect myself I would have to say to the man, "Have you a valid permit?" if I saw a gun there, and if he did not answer me I would have to get out of the car right away, otherwise I would be guilty of an offence.

Hon. Mr. ROEBUCK: The purpose of the legislation was to help the police in the case of these bandits who are picked up and firearms are found in their motor-car, but nobody admits ownership. In order to get over that difficulty they make a sweeping provision of this kind. The result is that if you get into a motor-bus or into a railroad train—I think railroads are included here—and you see a gun, you had better get out just as fast as you can, or else go around and find out whether there was a permit for that gun—which of course you could not do.

The CHAIRMAN: A "firearm" is defined as meaning a pistol, revolver, or firearm that is capable of firing bullets in repeated succession during one pressure of the trigger; so you can say it is limited to a certain type and situation. A hunting rifle would not come in that category.

Hon. Mr. FOGO: An automatic shot-gun or an automatic rifle.

The CHAIRMAN: Yes.

Hon. Mr. EMMERSON: There are no guns made with one pressure of the trigger. There used to be one, but I don't think there is now.

The CHAIRMAN: (Reading)

Clauses 91 to 103, both inclusive. Passed. The way I use the word "pass" only means that we pass them. The general committee is entitled to review any of this.

Clause 104 is amended as follows:—
Page 38, line 4, after "deceit" insert "unlawful"
Page 38, line 5, after "other" insert "unlawful".

The clause as it appears in the bill would prohibit any influencing by perfectly lawful means.

This clause deals with municipal corruption.

The subsection reads:

> "Every one who by threats, deceit, suppression of the truth or other means, influences or attempts to influence a municipal official to do anything mentioned in paragraphs (c) to (f) of subsection (1) is guilty of an indictable offence and is liable to imprisonment for two years."

We have suggested that after the word "deceit" in line 4 on page 38 the word "unlawful" be inserted, and that after "other" we insert the word "unlawful". As I have said, the clause as it appears in the bill would prohibit any influencing by perfectly lawful means, so we thought the element of "unlawful" should be inserted before you create an offence of this kind.

Clauses 105 and 106. It was objected that "office" should be defined.

These sections deal with selling and purchasing offices.

Hon. Mr. Roebuck: Anyone who "purports to sell or agrees to sell an appointment to or resignation from an office".

The CHAIRMAN: We don't know what kind of office they are talking about. We thought that "office" should be defined.

Clause 107. Passed. We point out that the offence of disobeying a provincial statute, which is included in the present section 164 of the Code, has been dropped.

That section 164 is the section that provided the sting in the legislation that we passed at a special session when the railways stopped running, a couple of years ago. The meat of that section provided that where no penalty was

otherwise provided in any federal or provincial statute the penalty was—either one or two years, I have forgotten. In the bill they have taken out any reference to a provincial statute. If you have a federal statute which enacts an offence and no penalty is provided in the statute, the penalty will be under section 164. The feeling of the departmental officers and the committee was that when a province passes a statute it should be able to provide its own penalties or have a manifest provision which will show what the particular penalties are when the provincial statute does not say so.

Hon. Mr. ROEBUCK: Most of them do.

The CHAIRMAN: (Reading)

Clause 108. Passed.

Clause 109 is amended as follows:—

Page 39, line 10, delete paragraph (*a*) as "misconduct" is undefined.

What is misconduct?

Section 109 provides:

> Every peace officer or coroner who, being entrusted with the execution of a process, wilfully
>
> (*a*) misconducts himself in the execution of the process, or
>
> (*b*) makes a false return to the process, is guilty of an indictable offence and is liable to imprisonment for two years.

We suggest the deletion of paragraph (*a*), because "misconduct" is undefined and we did not know what it meant. We asked the officials, "What does it mean? Give us some kind of an example of that", and they were powerless to give us an example. They said they didn't know what it means and were powerless to give us an example, so it has no business to be there.

Hon. Mr. GOUIN: I would suggest that if his conduct amounts to a criminal offence he would be punishable under the section.

The CHAIRMAN: They have not defined the word "misconduct". The report continues:

Clauses 110 to 116, both inclusive. Passed.

Clause 117. This clause speaks of fabricating evidence for a proposed proceeding. It is a question whether anything is evidence until it is used as such, and the subcommittee amended the clause to read:

> 117. Every one who with intent to mislead, fabricates anything with intent that it shall be used as evidence in a judicial proceeding, by any means other than perjury or incitement to perjury is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Hon. Mr. DAVIES: How would that work?

The CHAIRMAN: The wording of the paragraph as set out in the Code is this:

"Every one who, with intent to mislead, fabricates evidence for the purpose of a judicial proceeding, existing or proposed, by any means other than perjury or incitement to perjury is guilty of an indictable offence and is liable to imprisonment for fourteen years."

Hon. Mr. DAVIES: Do you mean physically fabricating something that is going to be put in as evidence?

The CHAIRMAN: Yes.

Hon. Mr. DAVIES: Fabricating would constitute perjury, would it not?

The CHAIRMAN: Not necessarily.

Hon. Mr. ROEBUCK: It might frequently be perjury.

The CHAIRMAN: That would be so if the person who fabricates and who tells the story is the same person, but somebody might do the fabricating and have a series of witnesses to unfold the tale.

Hon. Mr. ROEBUCK: Or leave it in such a way that an innocent witness will use it in a court.

The CHAIRMAN: We thought that the words, "Everyone who, with intent to mislead, fabricates evidence for the purpose of a judicial proceedings, existing or proposed. . . ." was too indefinite. The possibility of speculating there is teriffic, and so we have revised the section in the Code so as to make it clear.

Clause 118. Passed.

Clause 119. Sub-clause (d) to be inserted after sub-clause (c) of clause 125.

Hon. Mr. ROEBUCK: That is merely re-arranged, and it is unimportant.

Clause 120. Passed.

Clause 121 standing for consideration of the Main Committee.

The CHAIRMAN: We left this for the consideration of the Main Committee, and the section in the bill reads:

> Everyone who asks or obtains or agrees to receive or obtain any valuable consideration for himself or any other person by agreeing to compound or conceal an indictable offence is guilty of an indictable offence and is liable to imprisonment for two years.

Hon. Mr. VIEN: There is no change there?

Hon. Mr. ROEBUCK: It is new. Anyone who agrees to compound or conceal an indictable offence is himself guilty of an indictable offence.

Mr. MACNEILL: Concealing is somewhat analogous to compounding. It consists in concealing or permitting the concealment of felony. Concealing is the common law offence of misprision of felony. That offence is obsolete at the present time. That is the note in *Tremeear*.

The CHAIRMAN: We thought that we would bring this section to your attention. The report continues:

Clauses 122 and 123. Passed.

Your sub-committee dealt with the following clauses of the Bill which were reported by officials of the Department of Justice to change in substance the provisions of the present Criminal Code, as follows:

Clauses 124, 125, 129 and 130. Passed.

Clause 131. The provisions with regard to corroboration in charges of sexual offences were ordered to stand pending preparation of a memorandum on the subject by the departmental officials. The memorandum is attached as Appendix "A" to this report.

The CHAIRMAN: You will have a memorandum which will show all the offences and the provisions with regard to corroboration in respect to them. The report continues:

Clauses 132 and 133. Passed.

Clauses 135 to 137, both inclusive. Passed.

Clause 138. Stands.

The CHAIRMAN: I do not recall what clause 138 stands for. What was the purpose of having that stand?

Hon. Mr. ROEBUCK: I do not know why we stood it. It reads:

> Every male person who has sexual intercourse with a female person who
>
> (*a*) is not his wife, and
>
> (*b*) is under the age of fourteen years,
>
> whether or not he believes that she is fourteen years of age or more, is guilty of an indictable offence and is liable to imprisonment for life and to be whipped.

When this was being discussed there was some question with regard to the duty of the judge to warn the jury of the necessity for corroboration, and it may be that it was on that ground that we stood this.

The CHAIRMAN: It relates back to section 131, and I think we stood it on the basis of the requirement of corroboration.

Hon. Mr. DAVIES: According to the Criminal Code as it now reads, is it necessary that the evidence in connection with an offence against a girl, let us say rape, be corroborated in court?

Hon. Mr. ROEBUCK: There have been changes made under the bill and they are very important ones. Under the Act the judge must warn the jury that it is unsafe to convict in an event of non-corroboration of the plaintiff's story, but they may convict if they feel like doing so under the bill. They could not under the old Code.

The CHAIRMAN: I would refer the committee to subsection (3) of section 131 of the bill, which reads:

> In proceedings for an offence under subsection (2) of section 138 or section 143, 144 or paragraph (*b*) of section 145 the burden of proving that the female person in respect of whom the offence is alleged to have been committed was not of previously chaste character is upon the accused.

We decided that this clause under discussion should stand so that the Main Committee could consider the question of corroboration. That is a matter which the Main Committee will have to decide upon. We hesitated when dealing with it because we felt that possibly there should be corroboration required. The report continues:

Clause 139 is amended as follows:—

Page 46, line 16, after "137" delete "or" and after "138" insert "140 or 142".

The clause as amended is passed. It provides that no male person shall be deemed to commit the offence of rape, attempted rape or having sexual intercourse with a female under fourteen years of age, if he himself is under fourteen years of age. The subcommittee is of opinion that if this exemption is to remain at all, to be consistent it should also cover clauses 140 and 142, indecent assault and incest.

Clause 140. Passed.

Clause 145. In offences of intercourse with a female employee, the present Code, section 213 subsection (2), permits the judge to instruct the jury that if the accused is not wholly or chiefly to blame for the commission of the offence, they may find a verdict of acquittal.

This safeguard is dropped in the Bill. The subcommittee is of opinion that it should be restored. It accordingly recommends that present subsection (2) of section 213 be added as subclause (2) of clause 145, to read as follows:

> (2) On the trial of any offence against paragraph (*b*) of this section, the trial judge may instruct the jury that if in their view the evidence does not show that the accused is wholly or chiefly to blame for the commission of the offence, they may find a verdict of acquittal.

The CHAIRMAN: That is the offence created by section 145(*b*), and section 145(*b*) creates this offence:

> Every male person who has illicit sexual intercourse with a female person of previously chaste character and under the age of twenty-one years who
>
> (i) is in his employment,
>
> (ii) is in a common, but not necessarily similar, employment with him and is, in respect of her employment or work, under or in any way subject to his control or direction, or

(iii) receives her wages or salary directly or indirectly from him,

is guilty of an indictable offence and is liable to imprisonment for two years.

Now we feel that there may be all kinds of compensating factors connected with the commission of an offence under these circumstances, and therefore the safeguard which is in the present section of the Code should remain. If the judge forms the opinion that the man is not wholly or chiefly to blame for the commission of the offence, he should instruct the jury that they may find a verdict of acquittal.

Hon. Mr. DAVIES: But a judge very often instructs a jury and then they do not pay attention to his instructions.

The CHAIRMAN: We cannot say it is not an offence, because it becomes a question of fact for the jury to decide whether it is so or not.

Hon. Mr. DAVIES: I should be inclined to leave it the way it is.

The CHAIRMAN: In the Code, yes, but the bill changes it, so we say that the Code section should be put back; that is our recommendation.

Clause 149 is amended as follows:—

Page 48, line 5, delete "act or gross indecency" and substitute "unnatural sexual act".

As drafted, 149 is a sweeping section. It reads:

> Every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years.

Section 206 of the Code relates to gross indecency with a male person. This has been carried into the bill omitting any reference to sex, and so may cover anything which the Court may in its opinion deem indecent, which is much too unguarded. Evidently it is sexual indecency that is in mind and the subcommittee is of opinion that the clause should be amended as set out above.

Hon. Mr. DAVIES: What is the difference between "gross indecency" and "indecent assault"?

Hon. Mr. ROEBUCK: Well, you get the definition of "assault", to begin with. It is the application of force or the threat of force on the person of somebody else when the person threatening is in the position to carry it out. That is in substance the definition of "assault".

The CHAIRMAN: "Indecent assault" might proceed quite involuntarily as far as one of the parties is concerned.

Hon. Mr. ROEBUCK: Yes. There are two parties to an indecent assault, the person assaulting and the person assaulted. But an act of gross indecency may be perhaps by only one party.

Hon. Mr. DAVIES: Something like indecent exposure.

Hon. Mr. ROEBUCK: But what is "gross indecency"? I don't know, because it has never been defined. It was not defined in the old Code, because the term was always used in connection with the act of a male person which imported the sexual idea. They dropped that out, but left "gross indecency" in the open, so anything which you or I might think indecent is covered by this clause as we now find it in the bill.

Hon. Mr. DAVIES: But to constitute indecent assault there must be some assault on a person.

Hon. Mr. ROEBUCK: Yes, there must have been some person assaulted.

The CHAIRMAN: We come now to "offences tending to corrupt morals":

Clause 150 is amended as follows:—

Page 48, line 10, delete "such a purpose" and substitute "the purpose of publication, distribution or circulation".

Page 48, line 14, delete "such a purpose" and substitute "the purpose of publication, distribution or sale".

Clause 154. Passed.

Clause 157. This clause refers to endangering the morals of a child and is a greatly condensed version of Code section 215 (2) to (6). The subcommittee feels that this clause should stand for full discussion and consideration by the main committee.

All you have to do is to read the section to appreciate the broadness of it, and the question whether it should be enacted in the form in which it is, or whether we should safeguard it. It says:

> 157. (1) Every one who, in the home of a child, participates in adultery or sexual immorality or indulges in habitual drunkenness or any other form of vice, and thereby endangers or is likely to endanger the morals of the child or renders or is likely to render the home an unfit place for the child to be in, is guilty of an indictable offence and is liable to imprisonment for two years.
>
> (2) In proceedings under subsection (1) is it not a defence that a child is not old enough to understand or appreciate the nature of the conditions that prevail in the home or the nature of the acts that are alleged to have taken place in the home, or to be immediately affected thereby.
>
> (3) For the purpose of this section, "child" means a person who is or appears to be under the age of eighteen years.
>
> (4) No proceedings shall be commenced under subsection (1) without the consent of the Attorney General, unless they are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court.

Of course there is an infinite variety of situations you can imagine under 157, and whether every one should be swept into this section or not is a matter which should be debated. The purpose of the section is perfectly good, but whether it is too sweeping or not is something which has to be considered.

Clause 159. Nudity. It is a question whether the clause as presently worded is not wide enough to cover, for example, the shower-room of a golf club. In the corresponding section of the Code, section 205A, this possibility was protected against by requiring the consent of the Attorney-General before a charge was laid but this protection was dropped in the bill. The omission was thought to be more serious in view of the fact that the section has been used with respect to the Doukhobors, and the subcommittee is of opinion that the subsection requiring consent should be restored as sub-clause (3) of clause 159 to read as follows:—

> (3) No action or prosecution for a violation of this section shall be commenced without the leave of the Attorney-General for the province in which the offence is alleged to have been committed.

Hon. Mr. FOGO: Do the Doukhobors play golf?

Hon. Mr. VIEN: Or take showers?

The CHAIRMAN: I cannot say whether they take showers, or play golf, either. There are political considerations involved in handling the Doukhobors, and the provincial authorities are better acquainted with these political implications than the federal authority. Therefore we feel that in that regard, and also having regard to how broad the language of the section is, there should be some limitation so that people could not go "haywire" in preferring charges of nudity. For instance, section 159 reads:

(1) Every one who, without lawful excuse, (*a*) is nude in a public place, or (*b*) is nude and exposed to public view while on private property, whether or not the property is his own, is guilty of an offence punishable on summary conviction.

(2) For the purposes of this section a person is nude who is so clad as to offend against public decency or order.

We feel that when you use such broad language to lay the limits of the offence of nudity there should be some saving clause where somebody should show a little sense or discretion in a situation which would lend itself to abuse.

Hon. Mr. DAVIES: No one is nude unless they are completely nude.

Hon. Mr. ROEBUCK: They might be, under this:

For the purposes of this section a person is nude who is so clad as to offend against public decency or order.

There is the low neckline!

The CHAIRMAN: (Reading)

Clause 160. Passed.

In clause 161 we provide against disturbance of religious services.

The CHAIRMAN: (Reading)

Clause 161 is amended as follows:—

Page 52, line 21, after "wilfully" insert "wilfully and without lawful excuse".

Page 52, line 26, after "(2)", insert "wilfully and without lawful excuse".

Under the clause as presently worded, a property holder is powerless to do anything to disturb an assemblage of persons camping on his lawn.

Clauses 163 and 164. Passed.

Clause 165. Nuisances. Section 221 of the Code defines a common nuisance as an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of "any right common to all His Majesty's subjects".

Section 222 of the Code makes it an indictable offence to commit a common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual.

In the Bill the definition of common nuisance is omitted, and in effect gives an entirely new and remarkable definition. It says, "everyone commits a criminal common nuisance who does an unlawful act or fails to discharge a legal duty, and thereby (*a*) endangers the lives, safety, or health of the public, or, (*b*) causes physical injury to any person". So that an unlawful act causing physical injury is according to the bill a common nuisance. Such an act is already defined as "common assault".

Hon. Mr. DAVIES: Can a common nuisance be committed against an individual?

The CHAIRMAN: The basis or essence of an offence of a common nuisance must be damage to the public. The report continues:

From sub-clause (*a*) the words "property or comfort" of the public are committed, and also "obstructing the exercise or enjoyment of any right common to all His Majesty's subjects". The latter course, at least, is very important.

The CHAIRMAN: So we have made a redraft of it, restoring the definition of a common nuisance. That is, you have got to preserve some essential basis of criminal law in your approach to it, and just to make a physical injury to another person a common nuisance, without carrying it into the essence of

the offence which is disturbing the general public, or Her Majesty's subjects, is just a distortion which we felt shows no concept of a common nuisance at all.

Hon. Mr. ROEBUCK: It is a complete answer to the suggestion that this Code has been so thoroughly gone over by the officials that we should open our mouths and swallow it. It is a complete answer because no first-year law student would have passed that section if he had read it, and I cannot think it was passed by these commissioners after a reading and understanding of what they were passing. It is an outstanding piece of draftsmanship. It says:

> A common nuisance is an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, property or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of any right common to all His Majesty's subjects.
>
> Every one is guilty of an indictable offence and liable to one year's imprisonment or a fine who commits any common nuisance which endangers the lives, safety or health of the public, or which occasions injury to the person of any individual.

They strike out the definition and say that anybody who commits an unlawful act and thereby injures an individual commits a common nuisance.

Hon. Mr. FOGO: You have been reading from the Code as it stands?

Hon. Mr. ROEBUCK: Yes, now let me read from the bill, having got the Code in your minds:

> Every one commits a criminal common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
>
> (*a*) endangers the lives, safety or health of the public, or
>
> (*b*) causes physical injury to any person.

Hon. Mr. DAVIES: That is the bill?

Hon. Mr. ROEBUCK: Yes, the bill is absurd.

Hon. Mr. FOGO: You might drive on the wrong side of the street.

Hon. Mr. ROEBUCK: Yes, and if anybody strikes another person that would be an unlawful act, and it would come within this clause.

The CHAIRMAN: It is a complete misconception of what a common nuisance is. I shall continue reading from the report:

> The subcommittee requested a redraft of this clause, to read as follows:—
>
> 165. (1) Every one who commits a common nuisance and thereby
>
> (*a*) endangers the lives, safety or health of the public, or
>
> (*b*) causes physical injury to any person, is guilty of an indictable offence and is liable to imprisonment for two years.
>
> (2) For the purposes of this section, every one commits a common nuisance who does an unlawful act or fails to discharge a legal duty and thereby
>
> (*a*) endangers the lives, safety, health, property or comfort of the public, or
>
> (*b*) obstructs the public in the exercise or enjoyment of any right that is common to all the subjects of Her Majesty in Canada.

Clause 168. Passed.

Clause 171. Re: Search with or without warrant. Subclause (3) says,

> the Court before whom anything that is seized under this section is brought may (*a*) declare any money or security for money so seized and forfeited, and (*b*) direct that anything so seized other than money or security for money shall be destroyed, or if required for evidence, after it is no longer so required. There is no provision for notice to the

rightful owner, or even to the accused, and the subcommittee requested a redrafting of the clause to provide for the claiming of the goods by someone so disposed and the giving of a lag in time of 30 days before forfeiture is declared or until the proceedings are completed.

The CHAIRMAN: We did not feel in the execution of a search warrant they should be able to bring whatever they seized before a magistrate or justice of the peace and get an order for the immediate forfeiture or an order for the immediate destruction of the materials. We thought that there might be a rightful claim and a good defence, and that therefore there should be a lag in time before forfeiture is declared. The report continues:

The redraft of the clause reads as follows:—

171. (1) A justice who receives from a peace officer a report in writing that he has reasonable ground to believe and does believe that an offence under section 176, 177, 179 or 182 is being committed at any place within the jurisdiction of the justice, may issue a warrant under his hand authorizing a peace officer to enter and search the place by day or night and seize anything found therein that may be evidence that an offence under section 176, 177, 179 or 182, as the case may be, is being committed at that place, and to take into custody all persons who are found in or at that place and requiring those persons and things to be brought before him or before another justice having jurisdiction, and be dealt with according to law.

(2) A peace officer may, whether or not he is acting under a warrant issued pursuant to this section, take into custody any person whom he finds keeping a common gaming house and any person whom he finds therein, and may seize anything that may be evidence that such an offence is being committed and shall bring those persons and things before a justice having jurisdiction, to be dealt with according to law.

(3) Except where otherwise expressly provided by law, a court, judge, justice or magistrate before whom anything that is seized under this section is brought may

(*a*) declare that any money or security for money so seized is forfeited, and

(*b*) direct that anything so seized, other than money or security for money, shall be destroyed,

if no person shows sufficient cause why it should not be forfeited or destroyed, as the case may be.

(4) No declaration or direction shall be made pursuant to subsection (3) in respect of anything seized under this section until

(*a*) it is no longer required as evidence in any proceedings that are instituted pursuant to the seizure, or

(*b*) the expiration of thirty days from the time of seizure and such further time as it may be required as evidence in any proceedings.

(5) Nothing in this section authorizes the seizure, forfeiture or destruction of telephone, telegraph or other communication facilities or equipment owned by a person engaged in providing telephone, telegraph or other communication service to the public or forming part of the telephone, telegraph or other communication service or system of such a person.

Clause 174. This gives the police power to bring a person accused in connection with a disorderly house before a magistrate, where he may be examined on oath, and in event of his refusing to answer, may be dealt with as a witness appearing before a Superior Court of criminal jurisdiction, that is, sent to jail for contempt of court. This is a most drastic inquisition. The

subclause does say, however, that section 5 of the Canada Evidence Act applies. That is to say, that a person who knows of the law may protect himself against the use of the evidence so extracted from him in any subsequent proceeding other than perjury by claiming the benefit of the section, but, as the individual will not be represented by a lawyer under such circumstances, only the well initiated will know enough to claim.

Hon. Mr. ROEBUCK: Once he answers the question without claiming the privilege he is sunk. We felt that you have to proceed on the basis that a lot of people do not know what section 5 of the Canada Evidence Act provides.

Hon. Mr. DAVIES: Or even what the Canada Evidence Act is.

The CHAIRMAN: That is right. Our suggested draft is that instead of referring to section 5 of the Canada Evidence Act, put the provision of section 5 in there, and then they have to read that to him, and he understands what his position is. The report continues: The sub-committee is of opinion that the provisions of the Canada Evidence Act in this regard should be written into the clause. The clause has been redrafted to read as follows:

> 174. (1) A justice before whom a person is taken pursuant to a warrant issued under section 171 or 172 may require that person to be examined on oath and to give evidence with respect to
> (*a*) the purpose for which the place referred to in the warrant is or has been used, kept or occupied, and
> (*b*) any matter relating to the execution of the warrant.
>
> (2) A person to whom this section applies who
> (*a*) refuses to be sworn, or
> (*b*) refuses to answer a question.
> may be dealt with in the same manner as a witness appearing before a superior court of criminal jurisdiction pursuant to a subpoena.
>
> (3) No evidence that is given by a person under this section may be used or received in evidence in any criminal proceedings against him, except proceedings for perjury in giving that evidence.

Clause 178. Stands. A proposal to amend section 235 of the Code is now before Parliament. If the amendment is made, it should be written into this clause.

The CHAIRMAN: That amendment has been made by the Senate. That was the bill we had before us in connection with race meetings, and it is in the Commons now, so that section 178 in the bill will be amended by incorporating these provisions. The report continues:

Clause 180. Passed.

Clause 184. Passed.

Clause 186. Section 241 and following sections of the Code refer to failure to provide necessaries, and, if death is caused or life endangered, or health has been or is likely to be permanently injured, penalties are provided. The destitution or necessity of the person injured is thus a prime element in the offence.

The CHAIRMAN: This is where they get completely off base again. The essence of the offence under the Code as it stands is the destitution or necessity of the person injured; that is, the harm done to the public. The report continues:

The Bill drops this prime requisite entirely, and places a "legal duty" on the parent, husband, guardian, etc., to provide necessaries, and provides penalties for he who fails "without lawful excuse, the proof of which lies upon him, to provide necessaries."

In view of the fact that the legal duty is pronounced by statute without qualification, the only lawful excuse for not providing them would be such as

adultery in the case of a wife, and perhaps inability on the part of the accused. Thus the wife, child or ward might be rolling in wealth, and far better off than the husband, father or guardian, and yet the latter be guilty of a criminal offence for not adding to their abundance. This is a complete change in the principle of the law. The subcommittee ordered the section to stand so that the provision with regard to destitution or the endangering of health could be reinserted.

We feel that the basis of the offence of failing to provide necessaries has been removed. As a result, they say that in law there is liability and, if you are guilty under this section, it is a criminal offence, without taking into account the quality of the person to whom the right is given. After all, the concept must be harm resulting from what has been done or neglected.

Hon. Mr. DAVIES: Does this bill come to us straight from the Commission, or has it been reviewed?

The CHAIRMAN: It has been reviewed in the department.

Hon. Mr. DAVIES: It is the minister's bill?

The CHAIRMAN: Yes.

Hon. Mr. ROEBUCK: You mean, it comes from the department.

The CHAIRMAN: (Reading)

Clauses 189 and 190. Passed.

Clause 191. Criminal Negligence. This clause says, that "everyone is criminally negligent who shows a wanton or reckless disregard for the lives or safety of other people (*a*) by doing anything". This actually says that everyone by doing anything shows a wanton or reckless disregard for the lives or safety of other persons and is criminally negligent.

The subcommittee ordered subclause (1) to be redrawn to read as follows:—

> 191. (1) Every one is criminally negligent who
> (*a*) in doing anything, or
> (*b*) in omitting to do anything that it is his duty to do,
> shows wanton or reckless disregard for the lives or safety of other persons."

You may recall that, when the minister had finished his explanation in the Senate, I asked him about this section, because the way it read seemed to be rather unusual. As defined in the bill:

> 191. (1) Every one is criminally negligent who shows a wanton or reckless disregard for the lives or safety of other persons
> (*a*) by doing anything, or
> (*b*) by omitting to do anything that it is his duty to do.
> (2) For the purposes of this section, "duty" means
> (*a*) a duty imposed by law, or
> (*b*) a duty for the breach of which a person may be found liable in civil proceedings."

Those tests present all sorts of difficulties, because there may be a civil proceeding pending, the judge is trying a criminal proceeding, and he is going to adjudicate in effect on the civil proceeding by telling the jury "This man has committed an offence of which he may be found liable in civil proceedings". That is an instruction he gives them before the civil case has ever been tried. We thought that was a very back-handed way of trying to define "criminal negligence", so we have made the definition which I have quoted. This seems a direct and straightforward way of stating the offence, and if you compare the two you will realize how much more intelligible it is.

Clause 194. Homicide. Subclause (6) exempts a person from an accusation of homicide, "by reason only that he causes the death of a human being by

procuring, by false evidence, the conviction and death of that human being by sentence of the law." A more despicable method of securing the death of a fellow creature could hardly be imagined. No explanation is given for its continuation in the bill.

Hon. Mr. ROEBUCK: And we are asked to swallow this thing holus bolus!

The CHAIRMAN: What we are doing is, we are raising for your consideration whether or not a person who causes the death of a human being by procuring by false evidence his conviction and his death by hanging should be exempt from a charge of homicide.

Hon. Mr. FOGO: For example, a perjurer.

The CHAIRMAN: Yes. That might be one way. He might be a material witness.

Hon. Mr. FOGO: That is, if his evidence was the key evidence leading to conviction, and that were capable of being established.

The CHAIRMAN: Yes. (Reading)

Clause 198. Passed.
Clause 202. Passed.
Clauses 204 and 205. Passed.
Clause 212. Passed.

The next clause deals with attempts to commit suicide:

Clause 213. It is suggested that attempt to commit suicide should be an offence punishable on summary conviction and should not be indictable. Our feeling was that a poor person who had made his attempt had had considerable punishment in the course of trying to commit suicide, and if he ever recovered, and righted himself, there should be some penalty because it would give the courts some jurisdiction over him to give him treatment if he needed treatment, but that that was more desirable than simply inflicting a long term of years as punishment.

Hon. Mr. ROEBUCK: You cannot make an attempt at suicide no offence at all, because if the police come upon somebody who is attempting to commit suicide it is most necessary that they shall be able to arrest him and carry him into custody, but such person should be taken before a magistrate, and one can hardly imagine the man being indicted and taken before a jury. It should be a summary offence.

Hon. Mr. FOGO: It may be a question whether a magistrate might be liable to be more severe than a jury.

Hon. Mr. ROEBUCK: But the magistrate would refer him to a psychiatric hospital for examination.

The CHAIRMAN: We have made it a summary offence, which means a penalty of $500 and/or six months.

Hon. Mr. ROEBUCK: That is right,—or both.

The CHAIRMAN: (Reading)

Clause 216. Passed.
Clause 217(*b*) is questioned.
It is questioned mainly because we do not know what they mean by the language. The section says:

> 217. Every one who administers or causes to be administered to any person or causes any person to take poison or any other destructive or noxious thing is guilty of an indictable offence and is liable
>
> (*a*) to imprisonment for fourteen years, if thereby he endangers the life of or causes bodily harm to that person, or
>
> (*b*) to imprisonment for two years, if he aggrieves or annoys that person or does it with intent thereby to aggrieve or annoy that person.

Frankly, we did not know what that meant, and you can understand why we have been proceeding cautiously and hesitantly in examining these sections. We have "questioned"—that is a mild way of putting it—this particular section.

Hon. Mr. DAVIES: Do you think what they mean is that if it is given by a doctor of medicine it is not given to aggrieve or with intent to annoy?

The CHAIRMAN: No, this deal with one who "administers or causes to be administered to any person or causes any person to take poison or any other destructive or noxious thing". The penalty is two years if he aggrieves or annoys the person; that is, if a noxious thing or a poison does not do its work and endanger the life or occasion bodily harm, but only aggrieves him. What is the quality of aggrieving or annoying a person or the "intent" to aggrieve or annoy"?

Hon. Mr. ROEBUCK: If they had said it does bodily harm we would have understood it.

The CHAIRMAN: That is in subsection (*a*).

Hon. Mr. ROEBUCK: Yes, but in subsection (*b*).

The CHAIRMAN: We think it has no place in that section.

Hon. Mr. ROEBUCK: It is new law, by the way.

The CHAIRMAN: Yes.

Clause 220. Section 282 of the Code states with considerable particularity the offence of endangering lives by interfering with a railway such as throwing a log on the track and so on. The bill substitutes the words "common carrier", and in so doing places outside the protection of the criminal law, railways which are not common carriers, and there are many in Canada, running to mines, or in the lumber woods, or industrial plants.

The clause has been redrawn to read as follows:—

> 220. Every one who, with intent to endanger the safety of any person
> (*a*) places anything in, upon or near, or
> (*b*) does anything to
> any property that is used for or in connection with the transportation of persons by land, water or air is, if death or bodily harm is likely to be caused to persons thereby, guilty of an indictable offence and is liable to imprisonment for life.

Clause 221. Subclause (2) requires every one in charge of a vehicle involved in an accident to stop his vehicle, offer assistance and give his name and address. He must offer assistance whether it is required or not, and "vehicle" is wide enough to cover everything from a locomotive to a wheelbarrow.

The sub-committee ordered the paragraph to stand for reconsideration and redrafting, so as to insert "when required" after "offer of assistance", and a reconsideration of the word "vehicle".

Clause 225. Passed.

Clause 227. Passed.

Clause 228. Section 287 of the Code places a burden upon persons cutting holes in ice, digging shafts for mines, or excavations upon lands, to fence the dangerous property.

The bill has omitted all particularity, substituting the "legal duty" to guard it in such a manner that is adequate to prevent persons from falling in by accident. This is literally the equivalent of the detail previously mentioned in the Code, but nevertheless the loss of the particularity is open to

question, and then the bill goes on to give an alternative, "or is adequate to warn them that the opening exists". Although an act may be adequate to warn, a warning is frequently not adequate to prevent accidents, and this new law, the sub-committee ordered deleted, that is to say, they struck out the words "or is adequate to warn them that the excavation exists" and ordered the clause to stand for further discussion as to whether "the legal duty to guard it" sufficiently expresses the prohibition.

The CHAIRMAN: We did not think it did.

Hon. Mr. ROEBUCK: I have been thinking about this since, and I think we should make that "and" instead of "or". Let it read:

". . . to guard it in such a manner that is adequate to prevent persons from falling in by accident, and adequate to warn them that it exists".

We struck out the words "adequate to warn them that the opening exists" because to do that alone is not sufficient. You might put an ad in the newspapers and that might be described as "adequate to warn them that it exists" but that should not relieve them from the obligation to protect it.

Hon. Mr. DAVIES: Should it state what is adequate?

Hon. Mr. ROEBUCK: The Code itself does do that, but they have dropped that out from the bill.

The CHAIRMAN: We think that the provisions of the old section are good and possibly should be restored.

Hon. Mr. DAVIES: Some of the protections around manholes are very inadequate.

The CHAIRMAN: The brief continues:

Clauses 231 and 232. Passed.

Clauses 266 and 267. Passed.

Clauses 269 and 270. Passed.

Clause 273. Section 351 of the Code refers to obtaining electricity and telephone and telegraph service. "Gas" has been added in the Bill. In carrying the section into the Bill, the *wasting* of gas or electricity is not covered as the word "maliciously" has been omitted. The sub-committee ordered that the words "maliciously or" be inserted before the word "fraudulently" in the first line of the clause so that the prohibition would cover both the taking of it for use by the thief, or the maliciously wasting of it.

Clauses 283 and 284. Passed.

Clause 287. Passed.

Clause 292. In subclause (4), line 42, page 96, "aeroplane" was struck out and the word "aircraft" substituted therefor.

Clauses 293 and 294. Passed.

Clause 299. This clause is amended by inserting before the word "theft", in line 36, page 98, the words "the offence of".

The CHAIRMAN: This is really one of the wonderful ones, is it not, Senator Roebuck?

Hon. Mr. ROEBUCK: Yes.

The CHAIRMAN (Reading):

Clause 301. Under the present Code, it is permissible for the Crown, when charging receiving or retaining stolen goods, to rebut the presumption or evidence of lack of knowledge that the goods were stolen by evidence that the accused was on a previous occasion guilty of having stolen property in his possession. This is of course extraordinary proceeding, for it puts the accused on trial for previous offences, while the policy of English criminal law is to exclude the record of the accused, and try him on the offence charged.

In carrying this provision to the Bill, this privilege of the Crown is widened so that evidence may be given of the possession of property obtained by "an offence punishable by indictment". Property may be obtained by offences punishable by indictment totally different in character from the theft of goods, such as forgery, false pretences, a rubber cheque and numerous other such acts. The clause as drawn may put the accused on trial for his entire record.

The sub-committee ordered the clause to stand to be redrafted and to be limited to evidence of receiving or obtaining, that is, the possession of stolen goods only.

The clause as redrawn reads as follows:

> 301. (1) Where an accused is charged with an offence under section 296, 297 or paragraph (*b*) or (*c*) of subsection (1) of section 298 in respect of stolen property, evidence is admissible at any stage of the proceedings to show that property other than the property that is the subject matter of the proceedings.
>
> (*a*) was found in the possession of the accused, and
>
> (*b*) was stolen within twelve months before proceedings were commenced,
>
> and that evidence may be considered for the purpose of proving that the accused knew that the property forming the subject matter of the proceedings was stolen property.
>
> (2) Subsection (1) does not apply unless
>
> (*a*) at least three days' notice in writing is given to the accused that in the proceedings it is intended to prove that property other than the property that is the subject matter of the proceedings was found in his possession, and
>
> (*b*) the notice sets out the nature or description of the property and describes the person from whom it was stolen.

Clause 302. Passed.

Clauses 314 and 315. Passed.

Clause 318. Passed.

Clause 320. Subclause (1) (c) makes it an offence to destroy, damage or obliterate an "election document, which by subclause (2) means any writing relating to an election held under the authority of an Act of the Parliament of Canada or of a legislature". Any writing relating to an election may be almost anything, and the sub-committee ordered the clause to be redrawn making it clear that the document is issued by an official with respect to any election held pursuant to any such Act.

The amendment reads as follows:

> Page 106, lines 20 to 23, both inclusive, strike out subclause (2) and substitute the following:
>
> (2) In this section "election documents" means any document or writing issued under the authority of an Act of the Parliament of Canada or of a legislature, with respect to an election held pursuant to the authority of any such Act.

Clause 321. Passed.

Clause 323. Passed.

Clause 331. Passed.

Clauses 336 to 342, both inclusive. Passed.

Clause 344. section 412 of the Code makes it an offence to obtain the carriage of intoxicating liquor by false billing into a county, province, district or other place, where the importation is unlawful. This provision is carried into the bill but was extended to the carriage of anything, so that it would

include any article or substance which a provincial legislature made unlawful. The Code is thus placed at the disposal of the provincial legislatures in banning inter-provincial trade.

The subcommittee ordered the word "anything" to be struck out, and the words "intoxicating liquor" to be replaced, thus, preserving the law as it has been in the past.

The clause is amended as follows:—

Page 115, line 24, strike out "anything" and substitute "intoxicating liquor".

Clause 350. Passed.

Clause 353. Passed.

Clause 355. This clause is amended as follows:—

Page 119, line 4, after "is" insert ", unless the Court otherwise orders".

Clause 362. Passed.

Clause 365. This clause is amended as follows:—

Page 122, line 22, after "railway" add "that is a common carrier".

Clause 366. Passed.

Clauses 368 and 369. Passed.

Clause 373. Passed.

Clause 377. Passed.

Clause 384. Passed.

Clause 387. This clause stands at the request of the Department of Justice. Representations are being considered from veterinary organizations.

Part X—Clauses 391 to 405, both inclusive. Passed.

The CHAIRMAN: These sections deal with currency offences, and there will be a new Act with respect to that. The report continues:

Clauses 406 to 408, both inclusive. Passed.

Clause 413. The subcommittee is of the opinion that an offence by the holder of a judicial office should be excluded from the operation of subclause (2).

The CHAIRMAN: Mr. MacNeill, would you very briefly explain the purpose of this?

Mr. MACNEILL: This is the clause which authorizes a court of criminal jurisdiction to try indictable offences other than those enumerated. The subcommittee felt that an offence committed by the holder of a judicial office should not be tried by a judge but should be tried by a judge and jury.

Hon. Mr. ROEBUCK: We did not think that a judge should be under obligation to try another judge.

The CHAIRMAN: That is right. It does not make sense.

Hon. Mr. FOGO: He would not be able to elect.

The CHAIRMAN: That is right.

Hon. Mr. DAVIES: But it is done now under the Act?

Hon. Mr. ROEBUCK: Official corruption under the Code must be tried by a jury, and we have left it to that.

Hon. Mr. DAVIES: You do not mean that if a judge commits a criminal offence he cannot be tried by another judge?

Hon. Mr. ROEBUCK: No, not a criminal offence, but official corruption. Then he must go to a jury.

The CHAIRMAN: The report continues:

The clause has been redrafted to read as follows:—

413. (1) Every superior court of criminal jurisdiction has jurisdiction to try any indictable offence.

(2) Every court of criminal jurisdiction has jurisdiction to try an indictable offence other than

(*a*) an offence under any of the following sections, namely,
(i) section 47,
(ii) section 51,
(iii) section 52,
(iv) section 53,
(v) section 75,
(vi) section 76,
(vii) section 206,
(viii) section 207,
(ix) section 210,
(x) paragraph (*a*) of subsection (1) of section 316,
(xi) paragraph (*a*) of section 408,
(xii) section 411, or
(xiii) section 412.

(*b*) the offence of being an accessory after the fact to treason or murder; or

(*c*) an offence under section 100 by the holder of a judicial office.

Clause 416. Stand.
Clauses 418 and 419. Passed.
Clauses 422 and 424. Passed.
Clauses 427 and 429. Passed.
Clause 432. Passed.
Clause 433. Passed.
Clause 434. Passed.
Clause 435. Passed.
Clause 445. Passed.
Clause 446. Passed.

Clause 447. The subcommittee recommends that the clause be amended to restore the original requirement of proof being made on oath or affirmation of the handwriting of the justice who issued the warrant.

This is the case of where a warrant is issued in one jurisdiction and the accused is or is believed to be in another jurisdiction, and the warrant has to go to the justice in the other jurisdiction and he endorses it so that it can be executed there. We thought that the signature of the justice on the original warrant should be verified in some way before the second justice is required to act on it.

Clause 450. This clause should stand for further discussion and clarification.

It is a complicated clause, dealing with elections, and there are a number of things in it which we thought were not clear, and we wanted to have a discussion of it with departmental officers, which we have not had, so we decided that the clause should stand.

Clause 451 deals with "powers of justice": Our report states:

Clause 451. This clause is amended as follows:—

Page 154, line 24, before "informant" insert "prosecutor or".

Page 154, line 44, after "adjourned" add "with the consent of both the prosecutor or informant and the accused or his counsel".

The first amendment we suggest is in a case where a prisoner comes before a justice, and the inquiry is adjourned, and he is at large on bail. We thought that the old section was the proper one, that, with his consent and that of his sureties and the prosecutor or informant the man might be remanded for more than eight days. It is too much trouble running about trying to find an informant who may not be in court when the case comes up. So we thought it would simplify matters to add "prosecutor" as well.

Our next proposed amendment deals with a case where, the evidence of the witnesses called on behalf of the prosecution having been taken down and read, "the justice shall address the accused as follows or to the like effect." In the bill they just insert these words:

> Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial.

We feel that the old warning was much better. I will read our recommendation:

Clause 454. The subcommittee recommends that the form of address to the accused be restored to its original wording as found in section 684(2) of the Criminal Code, which reads as follows:—

> (2) . . . . Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise or favour and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you at your trial notwithstanding such promise or threat.

In other words we thought that this full warning is necessary and advisable and should be given.

Clause 460. Passed.

Clause 461. Passed.

Clause 463. Passed.

Clause 464. Passed.

Some representations had been made to us in connection with the next clause we deal with:

Clause 727. Under this clause, appeals are to be heard on the evidence taken at the trial. Under the present appeal provisions of the Code the appeal from a summary conviction offence is a trial *de novo*.

The subcommittee has had representations made to it to the effect that the clause should be amended to preserve the present method of hearing appeals. The subcommittee recommends that this change be made in the bill.

As stated, at the present time an appeal from a magistrate going to a county court judge may be by way of a trial *de novo* unless the parties consent to make use of the transcript of the evidence before the magistrate as the basis for arguing the appeal. The new bill proposed to do away with the provision for a trial *de novo* and simply states that the transcript of evidence before the magistrate would be the basis for disposing of the appeal. There have been a lot of representations that the trial *de novo* should be restored. Very often the man who comes before a magistrate does not appreciate the importance of the charge against him; he does not even have a lawyer; so there is a perfunctory sort of trial, where he has not a proper concept of what is good or sufficient evidence; the case is tried, and if the new section in the bill should become law he is locked in with that, and on that basis he has got to argue his appeal.

Hon. Mr. ROEBUCK: He is "sunk".

The CHAIRMAN: We have said that if all the parties, the Crown and accused, are satisfied with the transcript, the judge may deal with the appeal on the basis of the transcript; if they are not, then the trial takes place all over again. We think that is a very good and wise provision and should be retained, so we recommend it.

Hon. Mr. ROEBUCK: Some of the judges have expressed a desire that we do not pass this clause, because, they say, they want to see the witnesses.

The CHAIRMAN: (Reading)

The subcommittee notes that its examination of the bill is far from complete. There are 748 clauses in the bill and many of these have not yet been considered. The considerable number of amendments recommended in this interim report indicates the necessity for a complete examination.

Hon. Mr. VIEN: Is this report of the subcommittee to be printed?

The CHAIRMAN: Yes.

Hon. Mr. VIEN: Where?

The CHAIRMAN: In the proceedings of the committee. It has been taken down; it will be printed, and the appendices referred to will be attached; and it will be distributed.

Hon. Mr. ROEBUCK: Then we meet again and discuss the details that you wish to discuss.

Hon. Mr. VIEN: Next week, or later?

The CHAIRMAN: Yes.

Hon. Mr. ROEBUCK: In the meantime we are going on with this tremendously laborious job of checking these sections.

The CHAIRMAN: You have got to read every section.

Thereupon the committee adjourned.

—	A Corroboration now required	Bill No.	How disposed of in Bill
74.....	Treason.....	.....	Retained cl. 47 (2).
174.....	Perjury.....	.....	Retained cl. 115.
211.....	Seduction of girl between 16 and 18.....	143.....	Retained cl. 131 (1).
212.....	Seduction under promise of marriage.....	144.....	Retained cl. 131 (1).
213.....	Seduction of foster child, step child or ward; Seduction of female employee.....	145.....	Retained cl. 131 (1).
214.....	Seduction of female passenger on vessel.....	146.....	Retained cl. 131 (1).
215 (1)....	Parent or guardian procuring defilement.....	155.....	Retained cl. 131 (1).
216.....	Procuring.....	184.....	Retained in part in 184 (3). See B below.
217.....	Householder permitting defilement.....	156.....	Dropped, see B below.
218.....	Conspiracy to defile.....	408 *(c)*...	Dropped, see B below.
219.....	Carnal knowledge of idiots or deaf mutes.....	140.....	Retained as to part of section. retained. See B below.
220.....	Prostitution of Indian women.....	.....	Dropped, see B below.
301.....	Carnal knowledge of girl under 14.....	138.....	Cl. 134 applies.
	Carnla knowledge of girl between 14 and 16.....	138.....	See B below.
307.....	Communicating venereal disease.....	239.....	Retained cl. 239 (3).
309 (2)....	Procuring feigned marriage.....	242.....	Retained cl. 242 (2).
468.....	Forgery.....	310 (1)...	Retained cl. 310 (2).
469\	Forgery.....	.....	Repealed 1950.
470/			
1003 (2)...	This requires corrob oration in cases of having or attempting to have carnal knowledge of a girl under 14 or in cases of indecent assault under sec. 292 where the evidence of a child of tender years is admitted unsworn. Section 16 of the Canada Evidence Act requires corroboration of the unsworn evidence of a child of tender years in all cases. Subsection (1) Of section 1003 which governs the admission of such evidence has been dropped and left to the operation of Sec. 16 of the Canada Evidence Act. They have been held to be coextensive and their history shows them as coming from the same source. Clause 566 retains the requirement that such evidence be corroborated and it will apply generally.		

B

Showing where the requirement of corroboration has been dropped, replaced or added.

216. Procuring. Dropped in respect to 184(1)(*j*)—Living on the avails of prostitution). It was considered to be inconsistent with the presumption raised by clause 184(2).

217. Householder permitting defilement. This has been held to apply to houses of assignation. It was thought that there was no more reason for requiring it in such cases than in bawdy house cases where the Code does not now require it.

218. Conspiracy to defile. It was felt that it would be rarely, if ever, that the victim would be able to prove the conspiracy and that there was no more reason for requiring corroboration in such cases than in other cases of conspiracy.

220. Prostitution of Indian Women. This was dropped at the request of the Minister of Citizenship and Immigration. In a letter dated June 15, 1951, he stated in part that Indians should be in the same position as other citizens under the Criminal Code.

301. The requirement in clause 134 setting out an instruction to be given to the jury is substituted for the requirement of corroboration. There have been a number of instances of attacks upon very young girls committed under circumstances where it is difficult, if not impossible, to obtain corroboration of the evidence of the victim. It is probable that in some of such cases the offences are committed by criminal sexual psychopaths. It is felt that the issue of credibility should be left to the jury under such a safeguard as clause 134 provides.

Clause 134 involves an added provision. A rule of practice requires that the instruction set out in the clause be given in cases of rape. This rule of practice has ben codified to cover rape and attempts to commit rape.

In dealing with corroboration it may be mentioned that a similar rule of practice applies with regard to the evidence of accomplices. It has not been codified in that respect and is mentioned here only because it might apply in cases of incest.

219. This appears in clause 140 omitting the reference to deaf mutes. This omission is consequent upon the case of *R. v. Probe*, 79 C.C.C. 289, where it was held that it must be shown that the woman was, by reason of her infirmity, mentally and morally incapable of resisting the solicitations.

SECTIONS UNCHANGED OR CHANGED IN FORM ONLY

Bill No.	Code No.	—
125	185, 189, 190	Changed in form only.
126	193, 194, 195	Changed in form only.
127	191, 192	Changed in form only.
128	186	Unchanged.
131 (2)	214 (2)	Unchanged.
131 (4)	211 (2), 213 (2), 301 (4)	Changed in form only.
135	298 (1)	Unchanged.
137	300	Unchanged.
141	292 *(a)*, *(b)*	Changed in form only.
142	204	Changed in form only.
143	211 (1)	Unchanged.
144	212	Changed in form only.
146	214 (1)	Changed in form only.
147	202	Changed in form only.
151	207A	Changed in form only.
152	208	Changed in form only.
153	209 *(a)*, *(b)*	Changed in form only.
155	215 (1)	Unchanged.
156	217	Changed in form only.
158	205	Unchanged.
161	199, 200, and 201	Changed in form only.
165	221, 222	Changed in form only.
166	136	Changed in form only.
167	237	Unchanged.
169	985, 986 (1), (2) and (3)	Changed in form only.
170	986 (4)	Changed in form only.
172	640	Changed in form only.
173	640, 641 (1)	Changed in form only.
175	230	Changed in form only.
176	228, 229 (1)	Changed in form only.
177	235 (1)	Changed in form only.
179	236, 442 *(b)*	Changed in form only.
181	442 *(a)*	Unchanged.
182	228, 229 (2), (4), (6), (7)	Changed in form only.
183	229 (8)	Unchanged.
185 *(a)*, *(c)* and *(d)*	240	Unchanged.
187	246	Unchanged.
188	248	Unchanged.
194	250, 252, 253	Changed in form only.
195	251	Unchanged.
196	257	Unchanged.
197	258	Unchanged.
199	256	Unchanged.
200	255	Unchanged.
201	259	Unchanged.
203	261	Unchanged.
206	263	Unchanged.
207	268	Unchanged.
208	268A	Unchanged.
209	306	Unchanged.
210	264	Changed in form only.
211	267	Unchanged.
213	270	Unchanged.
214	271	Changed in form only.
215	272	Unchanged.
218	276	Changed in form only.

SECTIONS UNCHANGED OR CHANGED IN FORM ONLY

Bill No.	Code No.	—
219	281	Changed in form only.
221	285 (2)	Unchanged.
222	285 (4)	Unchanged.
223	285 (4) *(a)*	Unchanged.
224	285 (4) *(b)* to *(e)*	Unchanged.
226	285 (5)	Changed in form only.
229	288, 289, 595	Changed in form only.
230	290	Unchanged.
233	297	Changed in form only.
234	313	Unchanged.
235	315	Unchanged.
236	316	Changed in form only.
237	303, 304	Changed in form only.
238	305	Unchanged.
239	307	Changed in form only.
240	308	Changed in form only.
242	309 (2), 1002*(d)*	Unchanged.
243	310, 948	Changed in form only.
244	311	Changed in form only.
245	312	Unchanged.
246	198	Unchanged.
247	2 (23)	Unchanged.
248	317	Unchanged.
249	318	Unchanged.
250	333	Unchanged.
251	334	Unchanged.
252	332	Changed in form only.
253	329	Unchanged.
254	330	Changed in form only.
255	310	Unchanged.
256	321	Unchanged.
257	322	Unchanged.
258	323	Unchanged.
259	324	Unchanged.
260	325	Unchanged.
261	331	Unchanged.
262	319	Unchanged.
263	327	Unchanged.
264	328	Unchanged.
265	326	Unchanged.
268 *(a)*	335 *(d)*	Changed in form only.
268 *(b)*	335 *(h)*	Unchanged.
268 *(c)*	335 *(j)*	Changed in form only.
268 *(d)*	335 *(k)*	Changed in form only.
268 *(e)*	335 *(l)*	Changed in form only.
268 *(f)*	335 *(s)*	Unchanged.
271	348	Unchanged.
272	349 (1)	Unchanged.
274	352	Changed in form only.
275	354	Unchanged.
276	355	Changed in form only.
277	356	Unchanged.
278	357	Unchanged.
279	378 (2)	Unchanged.
281	285 (3)	Changed in form only.
282	390	Unchanged.
285	394, 431 (4), 638 and 990	Changed in form only.
286	396	Changed in form only.
288	445, 446, 448	Changed in form only.
289	447	Changed in form only.
290	449	Unchanged.

SECTIONS UNCHANGED OR CHANGED IN FORM ONLY

Bill No.	Code No.	—
291	450-454	Changed in form only.
295	464	Changed in form only.
296	399	Unchanged.
297	399	Unchanged.
298	364, 365, 400 and 869	Changed in form only.
303	404	Unchanged.
304	405, 407 (2)	Changed in form only.
305	406 (1)	Unchanged.
306	406 (2) and (3)	Unchanged.
307	407 (3)	Unchanged.
308	443	Unchanged.
309	466	Unchanged.
310	468, 1002	Unchanged.
311	467	Changed in form only.
312	471, 472, 473	Changed in form only.
313	474	Unchanged.
316	265, 516, 537 (1) *(c)* and 538	Changed in form only.
317	477	Unchanged.
319	479	Changed in form only.
322	335 *(m)*, *(o)*, *(v)*, *(x)*, *(y)* and ss. (2).	Unchanged.
324	209 *(c)*	Unchanged.
325	444A	Unchanged.
326	231, 987	Unchanged.
327	231A	Unchanged.
328	419	Changed in form only.
329	420	Unchanged.
330	421	Unchanged.
332	426	Changed in form only.
333	427	Changed in form only.
334	428	Changed in form only.
335	417 *(a)*, *(b)*	Unchanged.
343	414	Changed in form only.
345	417 *(c)*	Changed in form only.
346	408, 410	Changed in form only.
347	409	Changed in form only.
348	411	Unchanged.
349	486	Changed in form only.
351 (1)	488 (1), 489	Changed in form only.
351 (2)	488 (2)	Unchanged.
351 (3)	336	Unchanged.
351 (4)	335 *(n)* and *(w)* 341 and 342	Changed in form only.
352	488 (1) *(a)*, *(c)* and *(e)* and 494	Changed in form only.
354	490A	Changed in form only.
357	992	Changed in form only.
358	430	Unchanged.
359	432	Unchanged.
360	433	Unchanged.
361	434 (2), (2)	Unchanged.
363 (1)	436	Unchanged.
364	991	Changed in form only.
367	502A	Unchanged.
371	509, 541 pt	Changed in form only.
372	See secs. noted in Bill, p. 125	Changed in form only.
374	511, 513	Changed in form only.
375	512, 514	Changed in form only.

SECTIONS UNCHANGED OR CHANGED IN FORM ONLY

Bill No.	Code No.	—
376	541 pt	Unchanged.
378	516A	Changed in form only.
379	524	Unchanged.
380	526	Changed in form only.
381	527	Unchanged.
382	529	Changed in form only.
383	530	Changed in form only.
385	536	Changed in form only.
386	393, 537 (1)	Changed in form only.
388	543	Changed in form only.
389	544	Changed in form only.
390	545	Changed in form only.
407	69 *(d)*, 572 pt	Changed in form only.
408 *(a)*	266 *(a)*	Unchanged.
408 *(b)*	178	Changed in form only.
408 *(e)*	573	Unchanged.
409	496, 497	Unchanged.
410 (1)	590	Changed in form only.
410 (2)	2 (41)	Unchanged.
411	498	Changed in form only.
412	498A	Changed in form only.
414	577	Changed in form only.
417	581A	Unchanged.
421 (1), (2)	888	Unchanged.
423	586, 587	Changed in form only.
425	604	Changed in form only.
426	606	Changed in form only.
428	645, 714, 787	Changed in form only.
430	630	Unchanged.
436	649	Unchanged.
437	650	Changed in form only.
439	653, 654	Changed in form only.
440	655 (1), (2) and (4), 658 (3) and 659 (2)	Changed in form only.
441	658, 782 (1)	Changed in form only.
442	659 (1), 660 (2) and (3) and 664	Changed in form only.
443	660 (1)	Changed in form only.
444	660 (4) and (5)	Changed in form only.
448	667	Changed in form only.
449	668	Changed in form only.
453	682, 683, 684 (1)	Changed in form only.
455	685	Unchanged.
456	655 (2) and (3), 666	Changed in form only.
457	678	Changed in form only.
458	669	Changed in form only.

SECTIONS DROPPED

Code No.	Code No.	Code No.	Code No.
2 (1)	223	366–377	515 (3)–(6)
Para. (3) (6) (9) (10) (16) (18) (20) (26) (28) (35) (37)	224	378 (1)	540
	232	379–385	549 (2)
	233	386 (2)	568
	247	388	578
	275	389	588
	285 (1)	392 *(d)*	589
14	285 (6)	393	592
38	302	395	594
100	314	401	596
104	335 (1) *(a)*	403	597
107	335 (1) *(b)*	407 (1)	598
108	335 (1) *(c)*	412 (1)	599–602
109	335 (1) *(e)*	415A *(a)*, *(d)*, *(e)*	603
110	335 (1) *(e)* and *(f)*	422	605
130	335 (1) *(i)*	423	607
131	335 (1) *(p)*	424 (2)–(5)	619
132	335 (1) *(q)*	429	620, 621
140	335 (1) *(r)*	431 (1)–(3)	623–626
170 (2)	335 (1) *(t)*	441	627, 628
179 (1)	335 (1) *(u)*	493	636
181	337	495	643
184	338	500	656
203	343	503	663
205A (2)	349 (2)	504A	665 (1)
211 (3)	350	505 (3), (4)	688
220	353	506	689
222A	358–363	508	

NEW PROVISIONS.

Bill No.	Bill No.	Bill No.	Bill No.
2 (6)	85 (2)	186 (3) *(d)*	408 *(d)*
2 (7)	87	191, 192, 193	419 *(d)*
2 (10)	92		420 (1)
2 (25)	116	221 (1)	421 (3)
2 (27)	120	241 (2)	431
2 (32)	121	280	432 (3), (4)
2 (37)	134	363 (2)	438 (1)
7 and 8	154	370	450 (2), (3)
11	162	372 (1)	451 *(c)* (B)
50 *(a)* (ii)	185 *(b)*	397	452

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES

Bill No.	Code No.	Remarks
124	187, 188	As redrawn includes everyone in custody and not only those on a criminal charge.
129	196	Definition of escape redrawn to make certain that it includes "breaking prison".
130	197	"Guardian" unchanged in effect. Referred to in secs. 145 and 155.
		"Public place" clarified so as to include places where public have access in fact but not as of right.
131 (1)	1002 *(c)*	Corroboration no longer required under sec. 156.
131 (3)	210	Widened to include carnal knowledge of girl between 14 and 16.
132	294	This may be widened by inclusion of the offence of carnal knowledge.
133	215 (7), 1140 (1) *(c)*	Corroboration no longer required in cases of a householder permitting defilement, cl. 156.
136	299	Death penalty for rape abolished.
138	301 (1)-(3)	Corroboration no longer required by virtue of the provisions of cl. 134.
139	298 (2)	The rule which applied to rape is extended to cases of carnal knowledge.
140	219	The section no longer covers women who are deaf and dumb.
145	213	Subsection (2) is dropped as being inconsistent withn "seduction".
149	206	Widened to include all acts of gross indecency irrespective of sex.
150	207	Widened to include phonograph records.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
157	215 (2)-(6)	Age of child raised from 16 to 18 to conform to Juvenile Delinquents Act. Covers conduct likely to endanger instead of an irrebuttable presumption arising from certain conduct. Illegitimate are in same position as legitimate.
159	205A	Provision requiring consent of Attorney General has been dropped.
160	100, 222B and 238 *(c)* *(e)* and *(g)*	Fighting has been included.
161	199, 200, 201	Widened to include obstructing a clergyman in the performance of any duty.
163	510A	"Alarm" has been added in para. *(a)*.
164	238 *(a)* *(d)* *(i)* *(j)* *(k)* 239	Para. *(b)* of sec. 238 is dropped. Para. *(b)* the provision for a certificate has been dropped. Para. *(d)* the words "in whole or in part "have been substituted for "the most part." Para. *(e)* widened to cover all the offences for which an offender may be found to be a criminal sexual psychopath.
168	225, 226, 227, 229 (3), 985 and 986 (2)	The definitions are drawn from the sections of the present Code mentioned in column 2. Subsec. (3) has been inserted to remove any doubt as to whether it was incumbent on the accused to bring himself within the exemption, that being a matter peculiarly within his knowledge.
171	641	It now limits seizure to things which may be evidence of the commission of any of the offences mentioned therein.
174	642	Sec. 5 of the Canada Evidence Act is made applicable to persons examined thereunder. Subsec. 3 of sec. 642 referring to opium joints is dropped as it is covered by the Opium and Narcotic Drug Act.
178	235 (2)-(6)	Subsec. (1) *(d)* (ii) changed by adding "six heat races of two heats each". This change was approved by the Minister of Agriculture.
180	234	Widened to cover all public conveyances. The power to arrest is no longer obligatory.
184	216, 1002 *(c)*, 1140 (1) *(c)*	Corroboration no longer required under subsec. (1) *(j)*.
186	241, 242 and 244	The present law makes a person "who is under a legal duty to provide necessaries" criminally responsible for failure to do so. The section as redrawn declares the duty which exists in law and effects no real change. Subsec. (3) *(d)* is new.
189	245	The age limit has been increased to ten years.
190	243, 249	This has been widened to cover all cases where a master has contracted to provide necessaries to a servant or apprentice.
198	254	This is widened to include cases in which death is caused by criminal negligence.
202	260	This has been changed by deleting the words "of its use" which appear at the end of para. *(d)* of the present section.
204, 205	262	The definition of infanticide is taken from the English Act. It fixes the age of a newly-born child at one year and includes cases in which the mind is disturbed from the effects of lactation.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
212	269	Widened to cover cases in which suicide does not follow.
216	273	The emphasis has been placed on the intent rather than on the means. The word "lawful" has been omitted in respect of an arrest as it was felt that discharging a firearm should not be condoned even though the arrest was unlawful.
217	277, 278	Para. *(b)* is changed by adding "aggrieves or annoys".
220	282	Widened to cover all common carriers.
221 (2)	285 (2)	Widened to include all vehicles.
225	285 (7) and (8)	Widened to cover cases of impaired driving.
227	286	Widened to cover all cases and not only those of shipwrecked persons.
228	287	One new offence has been created.
231	274, 291, 295	The offences of wounding and causing grievous bodily harm in sec. 274 have been merged with the offence of causing actual bodily harm.
232	275 *(b)*, 296	Assaults committed on election day have been dropped as covered otherwise.
266	912, 913, 947	The provision, sec. 912 (1), about notices is dropped.
267	956	The reference to criminal information is dropped. Subsec. (2) of sec. 956 is dropped.
269, 270	344-347, 864 *(e)*	We have included these for examination.
273	351	"Gas" has been added.
283	391	Changed so as to include a refusal after employment terminated.
284	392	Para. *(d)* dropped as it appeared unnecessary in view of the provisions of the Animal Contagious Diseases Act.
287	397	The words "capable of being stolen" have been dropped as these words have been dropped in the provisions defining theft.
292	455-461	The only change is to extend the provisions to vessels, aeroplanes and trailers.
293	462	The limitation of this offence to night is abolished.
294	340	Widened to include a temporary as well as a permanent opening.
299	398	Widened to include the offence of receiving.
300	402	Widened to include the offence of retaining.
301	993	Made applicable to all cases of receiving and retaining and not to cases of receiving stolen goods only. It also permits evidence of possession of goods obtained through the commission of any offence.
302	994	Made applicable to all cases of receiving and retaining.
314	475	Widened to include cablegrams and radio messages.
315	476	Widened to include messages sent by cable or radio.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
318	478	Changed in form. The reference to testamentary instruments has been replaced by a general provision covering any instrument issued under the authority of law.
320, 321	480–483 and 528	Widened to include all public registers. Paras. *(b)* and *(c)* of sec. 481 have been dropped because covered by cl. 287.
323	444	Intent to defraud has been made an element of the offence created by sub-sec. (2).
331	425	Changed by being put in general terms.
336	412 (2)	Widened to include admission. Subsec. (1) covered by forgery or the new cl. 397.
337	424	Subsec. (2) and subsec. (5) of sec. 424 have been dropped.
338	637	The powers of the justice have been widened.
339	424A	"Oil well" has been added.
340	413, 415, 418, 484, 485	Changed by being put in general terms.
341	415A *(b)*, *(c)*	Paras. *(a)*, *(d)* and *(e)* have been dropped.
342	416	Changed by being put in general terms.
344	412 (3)	Widened to cover contraband other than liquor.
350	487	Widened to include name or initials.
353	490	Mens rea has been made an element.
355 (2)	491, 635, 1039	This removes a conflict between these provisions.
356	492	The reference to a government department of the United Kingdom is deleted.
362	435	Identity card added in *(c)* and *(d)* at request of Department of National Defence.
365	499	A breach of any contract depriving a community of essential services has been made an offence. This restores the effect of the section as it read originally.
366	501, 502	Para. *(g)* of clause 366 added. There was duplication in secs. 501 and 502.
368	504	Subsec. (4) is dropped thus permitting a charge to be laid under either cl. 368 or 336.
369	505	Subsec. (4) dropped. Subsec. (3) dropped as unnecessary.
373	539, 740 (1)	The value of the property to which the section applies has been increased from $20.00 to $50.00. Subsec. (4) is taken from 740 (1).
377	515 (1) and (2)	Widened to cover all fires.
384	531, 532	International boundary has been added.
387	542	This section has been redrawn. Any changes that have been made appear in *(a)*, *(b)* and *(c)*.

Part X. Sections 391-405

This Part replaces the present Part IX (ss. 546-569) and the other sections noted opposite p. 132 of the Bill.

It is designed to afford a complete Code for the protection of the currency and to cover the defacing or debasing of the coinage and the making or possession of counterfeit money or of the instruments for making it, the uttering of it, and the seizure and forfeiture of counterfeit money, the instruments for making it, as well as the dealing or trafficking in it.

The old Part is almost wholly included in the new but by including in the definition of counterfeit money a good deal of the descriptive matter now set out in the sections, it has been possible to effect some condensation.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
		The following changes are to be noted: Paper money now partly covered by ss. 549 and 550, and otherwise by the forgery sections, are fully covered in Part X of the Bill. Counterfeiters nowadays are more apt to make counterfeit paper money than coins. It has been made clear that there is a right to *seize* counterfeit money. (Cl. 405 (2)). Knowledge is no longer an ingredient of the offences under cls. 393 and 395. (Cf. secs. 550 and 563 *(b) (c)*). It was felt that the words "without lawful justification or excuse" protect the person who unknowingly has possession of counterfeit money. The Bill is designed to cope with the methods of counterfeiters who do not give large amounts to "passers" at any one time. Clause 397 is new. The present sec. 549 (2) is dropped. This dealt with the issue of tokens otherwise than by public authority. It was felt that this was not likely to be a matter of such general importance that it should be included in the Code.
406	570, 571, 572 pt. 574 and 575	The only change is to make an attempt to commit a summary conviction offence or being an accessory after the fact to a summary conviction offence, an offence punishable on summary conviction instead of by indictment.
408	218	Corroboration is no longer required for this offence as it would be rarely, if ever, that the victim could testify to the agreement hence there did not appear to be any greater need to require corroboration for a conspiracy under this provision than under any other.
413	580 (1), 582 —nd 583	The following list shows the offences which will not be required to be tried by jury:

Offence	*Code No.*	*Bill No.*
Seditious offences	134	61
Libels on foreign sovereigns	135	62
Spreading false news	136	166
Judicial corruption	156	100 (1)
Corruption of officers enforcing criminal law	157	101
Frauds on government	158	102
Breach of trust by public officer	160	103
Municipal corruption	161	104
Selling offices	162	105
Rape	299	136
Attempted rape	300	137
Defamatory libel	317–334	250–251

Accessory after the fact to, an attempt to commit or a conspiracy to commit, any of the above offences, bribery or undue influence, personation or other corrupt practice under the Dominion Elections Act.

Accessory after the fact to, an attempt to commit or conspiracy to commit, the following:

intimidating Parliament or a legislature,
acts intended to alarm His Majesty or cause him bodily harm,
inciting to mutiny, piracy or piratical acts.

Offences against secs. 130 and 131 relating to false oaths which were included in sec. 583 were dropped in the revision.

416	581	Widened by the inclusion of 412. In addition it has been reworded to bring it into harmony with the provisions of the Combines Investigation Act.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
418	580 (2)	This provision has been made general. In the present Code it applied only in the Province of Quebec.
419	584	Para. *(d)* relating to offences committed in aircraft is new. Para. *(e)* has been widened to include all offences committed in the course of a journey. It now applies only in respect of certain offences relating to the mail.
422	585	This provision has been made general, it now applies to Ontario only.
424	See secs. in Bill, p. 143.	The changes are as follows: (1) Reference to Quo Warranto has been dropped; (2) Sec. 576 (3) has been dropped as unnecessary because the Supreme Court Act of Ontario created a new court, the Supreme Court, to replace the Supreme Court of Judicature; (3) Secs. 1021 (15)-(17) requiring approval and tabling of rules made by a court of appeal are not continued as there was no similar provision relating to rules made under sec. 576.
427	644	A juvenile may be charged jointly with an adult. The provision that the trial must be without publicity will still apply.
429	629, 662,	Widened to include offences under all Acts of Parliament.
432	631	New provisions added. Provision is made for dealing with things seized under cl. 431.
433	633	This provision was enacted at a time when all forfeitures went to the Crown in right of Canada. In 1900 a change was made whereby certain forfeitures went to the provinces. As enforcement falls on the provinces it was felt that they should get the forfeitures.
434	646	Widened to include all indictable offences.
435	647, 648, 652 pt.	Changed to bring it in line with cl. 434.
445	661	The seven mile limit for fresh pursuit has been abolished.
446	662 (4)-(6), 883, 941, 977	This section provides the procedure to secure the attendance of a prisoner who is required in any court to answer a charge or as a witness. Where the prisoner is outside the province the order must be made by a judge. Where the prisoner is within the province the order may be made by a magistrate. Subsecs. (5) and (6) deal with the passing of sentence where a prisoner undergoing sentence is tried.
447	662 (1)-(3)	The provision requiring proof of the signature of the issuing justice has been omitted.
450	796	This is practically all new. It requires a justice to remand cases to a magistrate where a magistrate has absolute jurisdiction. It provides for an election after the justice has decided to commit the accused for trial. This is designed to ascertain whether the accused wishes trial by jury or by a judge alone at the earliest opportunity. This provision has received the approval of the provincial authorities who attended the joint meeting in Toronto in September last.
451	673, 679, 680, 681	The main change is the clarification of the provisions relating to bail and the power to remand for mental examination a woman who has been charged with an offence arising out of the death of her newly-born child.
454	684 (2) and (3), 686	The only change is in the form of address to the accused.
460	687, 690	The provision relating to corporations is new and to cure an omission.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
461	692, 694	The provisions of these sections have been retained in respect of witnesses only.
463	697, 698, 700 and 702	These sections have been rewritten for simplification. Provision has been made for a cash deposit in lieu of sureties.
464	699	This provision has been reworded to reconcile a conflict in the decisions. In Manitoba it was held the section applied only after committal for trial. In British Columbia it was held to apply both before and after committal for trial.
485	5 (1) *(a)*	Reference to criminal informations has been dropped.
489	873 (5)-(7)	Northwest Territories and Yukon included in subclause (1). In subclause (2) Deputy Attorney General is included for all instead of only for Quebec.
490	962	Bill provides that recognizance is vacated when proceedings stayed.
498	865	Present section refers to body corporate. "Person", by interpretation includes corporation.
501	856 pt. 857, 858	The only change is that the proviso in 857 (2) respecting the trial at the same time of charges of theft, not exceeding three, is not carried into the Bill. The court is to hav full discretion.
503	849 (1) pt. 849 (2) 954	Widened so as to include (1)—property obtained by indictable offence other than theft; (2)—retaining property so obtained.
504	874, 875	The Bill is specific that witnesses examined before the grand jury must be sworn.
507	879 (1)	"or remain in attendance" added.
510 (1)	898 (1)	Demurrer omitted. Objection to be by motion to quash.
510 (2)	889 (1)	Changed in form.
510 (3)	889 (2)	The change is that the matters proposed in amendment must be disclosed by the evidence.
510 (4)	889 (2) (5)	Changed in form.
510 (5)	889 (4)	Changed in form.
510 (6)	889 (6)	Changed in form. As there are now no reserved cases, that reference is omitted.
510 (7)	889 (3), 890	Changed in form.
510 (8)	845 (3)	Unchanged.
510 (9)	847 (2)	Unchanged.
512	691, 894-896	Ten cents per folio (instead of five cents) to be paid for copies.
514	695 (3) (4)	Widened to include a magistrate.
516	905 (1), 906	Changed so that the issue of autrefois acquit or convict is to be decided by the judge and not by the jury.
519	909	Changed so as to include infanticide.
523, 524, 525	966, 967, 968	Changed so as to include a court acting under Part XVI.
529	918	The length of notice is changed from two to seven days.
539	926	Changed so that the judge, and not triers, decides the issue raised by a challenge to the array.
540	927	Changed only in subclause (3) *(b)* to conform to the change made in cl. 539.
541	927 (6), 933A	Changed to include Yukon and Northwest Territories.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
545	938 pt	Changed so as to drop joinder in challenges.
547	935	Para. *(e)* is new.
552	929	Changed to include Yukon and Northwest Territories. 'Jurors' instead of 'men' to cover cases where women may act as jurors.
553	929A	Changed to include Yukon and Northwest Territories.
556	945 (3)-(5), 946, 959	Under the Bill the jury is to be kept together unless the judge orders otherwise. Changed also to provide for cases where women may act as jurors.
558	944	Subsec. (5) is new. Subclause (4) would include a private prosecutor.
559	958	Mention of costs eliminated. The Bill provides that the judge and the accused must attend.
561	961	Proceedings on Sunday limited to taking a verdict.
565	984	Widened by being put in general terms.
569 (1)	951 (1) (2), 952	Changed so that the conviction may be for a summary conviction offence.
572	851, 963	Changed to provide that if the Crown seeks an increased peanlty it must show that notice of the intended application has been given to the accused before a plea is taken from him.
573	964	In the Bill, this section is wholly a matter of evidence in rebuttal. If increased penalty is sought there will have to be an application under cl. 572.
578	1010	Changed by being put in general terms.
579	1011	Changed by dropping references to special juries and proceedings in error.
581	1012	Definition of 'sentence' changed so that there may be an appeal where sentence is suspended. Definition of 'appellant' dropped as unnecessary.
584	1013 (2) (4) and (5)	Changed to make clear that acquittal includes acquittal of a principal offence although there has been conviction for an *included* offence.
586	1018	Subclause (4) is changed—(1) to cover fully cases where the Minister exercises his powers under cl. 596, instead of cases where he orders a new trial, and (2) to clarify procedure where proceedings in appeal make necessary a new time for execution of sentence of death or whipping. 1018 (5) is covered by cl. 624 of the Bill.
587	1019	Acting chief justice may designate judge to act on application for bail.
588	1020 (1)-(4)	Changed—(1) to specify that transcript of evidence and other material required for the appeal is to be furnished by appellant, and (2) by omitting the provision in 1020 (3) that the judge's certificate shall prevail.
589	1021 (1) and (8)	1021 (1) *(e)* omitted so that there may be cross-examination.
592	1014, 1016	The changes are—(1) Subclause (2) redrawn to accord with Welch *v.* R., 1950, S.C.R. 412. (2) Subclause (4) amplifies 1013 (5). (3) Subclause (5) altered so that there will be no new election where there has already been one, but new trial will be before another judge or magistrate unless otherwise ordered by Court of Appeal.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
595	1017	This is included for examination but it is submitted, involves only a change in form.
600	1024 (1) (2)	Subsection (3) and (4) of sec. 1024 omitted as being covered by recent amendment of the Supreme Court Act.
621 (1)	1028	This is not changed.
(2)	1029, 1054	The concluding clause has been added to resolve a conflict of judicial opinion.
(3)		This is inserted for clarity.
(4) *(a)*	746 (2), 1055	This does not involve change.
(b)		Para. *(b)* is new to cover a contingency not now provided for.
(c)	740, 1035 (4)	This is amplified to cover all contingencies.
622	1035 (1) (2)	Changed so as to make clear that there cannot be a fine in lieu of a mandatory minimum term of imprisonment.
623 (1) *(a)*	1035 (3)	This does not involve change.
(1) *(b)* and (2)		New. See also cl. 627.
624	1054B	The omission of 1054B (4) as to waiver of appeal will (by the operation of cl. 624 (1)) be for the benefit of the convicted person who has been sentenced to a penitentiary and puts him on the same footing as one sentenced to gaol.
625	1035A	Subsecs. (4) and (5) of s. 1035A are not included. It is thought that this can be regulated like other accounting.
626	1036, 1037	The only change is in dropping 1036 (2) (moieties). This accords with the repeal by 1950, c. 11, s. 18, of secs. 1041–1043 respecting moieties. See note to cl. 627 infra.
627	1038–1141	Penal actions will no longer be brought by private informers and there will be no moieties payable to them.
628	1048 (1)	The limit of $1,000 is dropped. Subsec. (2) of s. 1048 which provided for the entry of the order as a judgment is not included and the order will be effective as to money in the possession of accused when he was arrested. The order can be made by a magistrate under Part XVI.
629	1049	Clarified as to property obtained by crime other than theft.
630	1050, 795	Clarified as above. Reference to writ of restitution dropped as in modern practice this applies only to restoration of real property. Clarified to show that the property must be immediately available for restoration. There is authority for saying that this is the law now (Taschereau's Code, p. 903).
631, 632	1045, 1047	Although s. 1047 is listed as dropped, and sec. 1045 as new, they are in reality replaced by cls. 631 and 632. Provision for costs is retained only in respect of criminal libel. They are to be fixed by the court and not taxed under the tariff provided for civil actions. An order for costs may be entered as a judgment and enforced as in a civil action.
634	1006, 1056	Sub-cl. (1) comes from s. 46 of the Penitentiary Act. Sub-cl. (2) comes from the opening words of s. 1056. It will cover s. 1006 where there has been a change of venue. Sub-cl. (3) combines 1056 *(a)* and *(b)* with the added provision that if the penitentiary term is set aside, the other lesser terms will be served in a common gaol. As drawn it obviates the need for para. 1056 *(d)* which came into the Code, as to Manitoba, in 1901, and as to British Columbia in 1909. Sub-cl. (4) covers 1056 *(c)*, and sub-cl. (5) is para. *(e)* which came into the Code in 1949.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
635		This replaces s. 1057, but there will still be cases under other where hard labour may be orderred. Sub-cl. (2) covers a point which has arisen in practice. The cases are not uniform as to the right to file an amended conviction and warrant of commitment on *certiorari* or *habeas corpus*. See ss. 1124 and 1130.
637	748 (1), 1058, 1059	Changed as follows: (1) Recognizance may be for two years. Under 748 (1) it can be for one year. (2) Provision for one year's imprisonment in default of recognizance not included in view of provision for review after two weeks. (3) Review will be on application by accused rather than on notice by sheriff. (4) Stipendiary magistrate in Yukon included.
638	1081	Changed as follows: (1) The consent of Crown counsel required by 1081 (2) is not continued. (2) The recognizance limited to two years. (3) Sentence cannot be suspended when a minimum punishment is prescribed by law.
639	1083	Changed (1)—to provide for a summons on breach of recognizance instead of immediate warrant, and (2) to provide for cases where judge or magistrate by whom sentence was suspended dies or is unable to act.
641	1060	Some of the details as to execution of sentence of whipping have been omitted to be covered by regulations of the Governor in Council.
643	1063	Subsec. (3) of s. 1063 is changed as follows: (1) "stipendiary magistrate" omitted. (2) Provision is made for a case where it becomes necessary to appoint a new time for executing a sentence of death.
645	1065, 1066, 1067	The words "within the walls of the prison in which the offender is confined at the time of execution" in s. 1065 changed to "within the walls of a prison" to enable the establishment of a central place of execution as recommended by the Archambault Commission.
646	1068	Sub-cl. (2) is not mandatory upon the sheriff.
650	1071	Commisioner of Yukon Territory and of Northwest Territories added.
653	1075 (1)	1075 (2) as to tabling regulations, not continued.
654 (1)	1034 (1)	Changed by dropping the provision that pension payments cease.
(2)	1034 (2)	Provision as to pardon also omitted.
(3)	159, 162, 434 (3)	"or of a legislature" added. This combines several disabilities enacted in the Code. 434 (3) was re-enacted by 1951, c. 47, s. 17.
655	1076	The change from "the Crown" to "the Governor in Council" in sub-cl. (2) is really a change in form as it conforms to the instructions to the Governor General. Sub.-cl. (3) sets out the law as it is shown by authorities.
656	1077	This is redrawn to simplify the provisions (1077 (2)) as to notice of commutation.
659	575A, 1054A (8)	The Bill gives to magistrates acting under Part XVI the same power to deal with habitual offenders as they have now to deal with criminal sexual psychopaths. 'Preventive detention' is defined to simplify drafting.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
660	575B, 575C (1)	Changed as follows: (1) The indictment will not allege that accused is an habitual criminal. (2) If preventive detention is sought it must be applied for in accordance with cl. 662. (3) "On at least three separate and independent occasions" substituted for "at least three times previously." (4) "Five years or more" substituted for "at least five years".
661	1054A (1), (2), (3) and (5)	Changed as follows: (1) Widened to include gross indecency, buggery and bestiality and attempts to commit these offences. (2) One psychiatrist to be appointed by Attorney General instead of Minister of Justice.
662	575C (3) (4) 1054A (4)	Changed as follows: (1) The prosecutor is to give the notice. (2) The notice must be filed. (3) Where the trial is before judge and jury, the application for preventive detention will be decided by the judge alone.
663	575D	Widened to apply to persons alleged to be criminal sexual psychopaths.
664	575F, 575G (1), 1054A (5)	Changed as follows: (1) Redrawn to remove apparent conflict between 575F and 575G (1). (2) Power to commute to preventive detention will apply also to criminal sexual psychopaths.
665 (1)		New. Preventive detention will run at least 3 years. (See cl. 666).
(2)	575G (2) (3)	Changed in form only.
667	575E	Widened to allow an appeal by the Attorney General and also by a person sentenced as a criminal sexual psychopath.
681	1120	Changed to make clear that it applies before or after conviction. This is to resolve a conflict in the cases. It appears (Hansard 1892, Vol. II, col. 4448) to have been designed originally to permit defence evidence in extradition proceedings.
682	1121, 1122, 1129	There are conflicting decisions as to whether there is a right to certiorari after appeal is launched. Tremeear, 5th ed., p. 1518.
683	1124	This has been widened to include convictions or orders other than those made by justices. It has been amplified also to set out the power to correct sentences. (Tremeear, 5th ed., p. 946).
685	1126	Widened similarly to cl. 683. Sub-cl. (2) added for clarification.
687	1128	Widened similarly to clauses 683 and 685.
688	1130	Widened to include proceedings other than those under Part XVI.
692	706	Paras. *(b)* (ii) and *(c)* are derived from s. 706 (b).
	707	Para *(d)* is derived from s. 706. Para. *(f)* has in view the fact that cl. 581 *(d)* provides for appeal where sentence is suspended.
	708 (5)	Para. *(g)* is derived from s. 707 and s. 708 (5). Paras. *(a)* *(e)* *(f)* and *(h)* are new to conform to the provisions in the Bill that all summary conviction proceedings are to be commenced by information, and that an information may include more than one count.

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
693 (1)	706	This is a change in form.
(2)	1142	The change is that under the present s. 1142 the limitation in the Northwest Territories and the Yukon is twelve months.
694 (1)	1052 (2)	This replaces 1052 (2) but goes further to provide a general penalty for summary conviction offences. It obviates the need for a great deal of repetition.
694 (2) and (3)		These are derived from s. 739, omitting the reference to distress, which has been dropped throughout. The imprisonment provided has been changed from 3 to 6 months to bring it into conformity with sub-cl. (1).
695, 696	708 (1), 710	Changed as follows: (1) Informations for offences as well as complaints will be commenced by an information on oath. (2) The information is not limited to one matter but may contain more than one count.
699	709, 732	This really drops s. 709, but the circumstances set out there are regarded as reasons for the exercise of the discretion under s. 732. (Brief pp. 148–150).
700	711 pt	This omits the reference to witnesses (dealt with in Part XIX of the Bill) also the reference to orders ex parte which is considered to be unnecessary.
701	723	This applies to summary conviction matters the provisions in Part XVII of the Bill which relate to particulars and to the sufficiency of indictments.
704	724	This adapts to summary conviction matters certain provisions as to amendment which appear in Part XVII (Cl. 510) of the Bill. The provision for motion to quash in cl. 704 (1) and the provisions of sub-clauses (2), (3) and (5) are therefore new in this relation, but are designed for uniformity. Present provisions of s. 724 (2), (3) and (4) that are peculiarly referable to summary convictions, are contained in cl. 704 (4) and (6).
705	707	Part of s. 707 (2) is in the definition of 'summary conviction court' in cl. 692 (g). As to the proviso, see cl. 419 (b). There is, however, a change in that counselling or procuring will be tried where the offence counselled or procured is committed.
708	721	Sub-cl. (4) is added in view of the provision that there may be more than one count in an information. Sub-cl. (5) adapts to these proceedings the provision contained in cl. 562 (s. 978). Subsec. 721 (4) as to character evidence is not continued. It appears to add nothing to the general rules. Sec. 12 of the Canada Evidence Act and the rules as to cross-examination will apply.
710 (1)	722 (1)	There is no change here.
(2)	722 (4)	There is a change in the additional provision for a deposit in lieu of surety.
(3)	718 and 722 (5)	This involves only a change in form.
(4)	722 (3)	This is unchanged. It is thought that a sufficient procedure is provided without continuing subsec. (2) of s. 722 in its present form.
712	721A	There is a material change in sub-cl. (1) in that application for an increased penalty is subject to notice to the accused that it will be asked for. Sub-cl. (2) of cl. 696 forbids reference in an information to a previous conviction. Sub-cl. (4) as to proof, adapts to these proceedings the provisions of cl. 574 (s. 982).

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
716 (1)	735 and 736	It has been held that the costs to be awarded are those set out in the tariff.
(2) and (3)	737	No change in effect.
(4)	738	Reference to distress omitted. Sub-cl. (5) embodies what is set out in the warrant of committal and authority to issue it.
717	748 (2)-(5)	The change is that the proceedings will be commenced by information on oath. Otherwise the procedure is set out in fuller detail.
719	749 (1)	Changed as to the Northwest Territories (cl. 719 (*g*)). See also cl. 721.
720	749 (1)	Changed to give an appeal against sentence and also to specify a right of appeal on the part of the Attorney General of Canada or of a province.
721	749	This embodies provisions as to British Columbia (s. 749 (1) (*d*)), Saskatchewan (s. 749 (1) (*f*)), Alberta (s. 749 (1) (*ff*)), Yukon and Northwest Territories (s. 749 (2)).
722	750 (*b*)	This modifies s. 750 (*b*) in several respects: (1) the notice of appeal is to set out the grounds of appeal; (2) there can be alternative service only where the respondent is a person engaged in enforcement of the law. It could apply, e.g., where a policeman respondent is transferred during the pendency of the appeal; (3) the notice is to be filed within seven days after service is completed.
724	750 (*e*)	Changed as follows: (1) An informant appellant (except the Attorney General of Canada or of a province) must give security. (2) The appeal court may permit the substitution of a new and better recognizance. This adapts the provisions of cl. 735 (4) (s. 762 (3)) as to stated cases.
726	757 (1)	Sub-cl. (1) makes clear that transmission is required only if there is an appeal. It appears that the practice where there is no appeal varies in the provinces. Sub-cl. (2) is new. There is some reason to think that a right to certiorari exists in the circumstances described but that might not be wide enough to cover all cases. Sub-cl. (3) is new in this Part and is designed to fill a gap. It adapts sub-cl. (2) of cl. 588 (s. 1020 (2)).
727	753 and 754 (1)	Sub-cl. (1) effects *a notable change* in doing away with a trial de novo on appeal. Sub-cl. (5) comes from s. 754 (1) and sub-cl. (6) (*a*) comes from s. 753. The rest of the clause adapts (for uniformity in view of the abolition of trial de novo) some of the procedure relating to other appeals (clauses 589 and 592).
729	755 (1) pt.	The provision in s. 760 as to six days' notice of abandonment is not included.
	760	This is a matter affecting costs which are, by cl. 730, in the discretion of the appeal Court.
730	754 (1) pt., 755 (1) pt., 760 pt	This combines the provisions as to costs now appearing in the sections noted. This is essentially a change in form, although in s. 760 the word 'shall' is used.
731 (1)	758	The change is that the provision for distress in s. 759 (2) is omitted from cl. 731 (4). The Bill does not provide for distress.
(2)	751 (2)	
(3)	759 (1)	
(4)	759 (2), (3)	
732 (1)	754 (2), (3)	Provision for distress (s. 756) omitted from cl. 732 (2).
(2)	756	
(3)	757 (4)	

SECTIONS IN WHICH THERE ARE SUBSTANTIVE CHANGES—*Continued*

Bill No.	Code No.	Remarks
724 (1) (2)	761 (1) 761 (2), (3)	Justice's refusal to state a case is dealt with in cl. 738. Changed as follows: (1) Time for stating case reduced from 3 months to 1 month. (2) Time for filing and transmitting case increased from 3 days to 7 days. Sub-cl. (3) is derived from s. 763.
735 (1) (2) (3) (4) (5)	762 (1) 762 (2) 762 (3)	The only change is in the insertion of sub-cl. (3) which is new.
743	769A	The exception in cl. 743 (1) *(b)* limits the right of appeal to a case where the stated case did not go to the Court of Appeal as it may do in British Columbia, Saskatchewan, Alberta and Manitoba. It was felt that there should be provision for costs here as in preceding steps in summary conviction proceedings.
744	770	The items relating to distress are not included. "Reasonable costs of transportation" substituted for "reasonable livery charges".

PART XVI

Changes in Substance

Part XVI is a consolidation of the present Parts XVI and XVIII. This has made possible the elimination of a great deal of repetition as many provisions were common to both Parts.

This Part was submitted to and received the approval of the Provincial representatives present at a joint meeting with the Commission in September last.

The main changes under the Bill are as follows:

1. The jurisdiction conferred on magistrates is to be exercised by those specially appointed.

2. The asolute jurisdiction of magistrates has been increased in the following respects:
   (*a*) all offences of receiving and retaining are included where the value is $50.00 or less;
   (*b*) the value in respect of theft and false pretences is increased from $25.00 to $50.00;
   (*c*) attempted receiving, retaining and obtaining by false pretences are included;
   (*d*) offences under clause 179 (lotteries) are included.

3. The absolute jurisdiction of magistrates has been reduced in the following respects:
   (*a*) attempt to commit theft is limited to cases where the value is $50.00 or less;
   (*b*) the offences of indecent assault described in section 773(*d*) are eliminated;
   (*c*) the offence of being an inmate of a bawdy house is eliminated.

4. The jurisdiction with consent is increased (see note to clause 413).

5. The form of the election is changed.

6. The limitation of sentences in respect of offences over which magistrates have absolute jurisdiction is dropped. None of the offences over which magistrates have absolute jurisdiction is punishable with more than two years.

7. Charges may be joined in the one indictment with power to order separate trials.

8. The somewhat involved provisions of Part XVIII regarding election and re-election have been made uniform and have been simplified so as to provide that, with the consent of the Crown, there may be election or re-election within 14 days of the jury sittings but not otherwise.

The following table gives the source of the clauses of the Bill in so far as it is possible to do so:

Bill No.	*Code No.*	*Bill No.*	*Code No.*
466	823 *bafi*, 771	476	888 (5)
467	773	477	832
468 (1) and (2)	781 (1) and (2)	478	827 (3)
468 (3)	785		834
468 (4)	781 (4)	479	829
469	784	480	775, 825 (5)
470	782	481	831
471	New	482	781 (4),
472	825 (1)		790, 793,
473	824		794, 799,
474	New		827 (5)
475	828, 830	483	781 (5),
			838
		484	839

BILL—PART XIX

This is a compilation from the sections scattered through the present Code in respect of the attendance of witnesses. Nothing that is in the Code now is dropped and no new material is introduced except as follows:

1. A magistrate acting under Part XVI will have power to deal with a recalcitrant witness as for contempt. This was obviously a casus omissus from s. 788 as other courts (and even a justice by ss. 674(2) and 711(1)) have that power.

2. Cl.603(3) prevents the arbitrary issue of a warrant for a witness in the first instance.

3. As to cl. 608(1). A subpoena issued out of a superior court has effect outside the province. It is felt that a warrant so issued should also have that effect.

4. As to cl. 610(3). The note next preceding applies to this also.

5. A magistrate acting under Part XVI will have power (cl. 616) to appoint a commissioner to take the evidence of a witness who is out of Canada.

6. The provisions of s. 996, as to the attendance of the accused when evidence is taken before the commissioner, are varied (cl. 617). Such provisions, however, continue to be discretionary.

7. As to cl. 613(1)(ii). The provision for inability to attend for "some other good and sufficient cause", extends the present 995(1).

The following is an allocation of the clauses:

602. Special provision for the attendance of witnesses who are prisoners appears in cl. 446.

603. There will be a single form to be served on a witness. This clause provides how it is to be issued. Sub-cl. (2) is taken from ss. 673(1) and (2) and 973. It extends the discretion given to the justice by cl. 440, but provides that a warrant to arrest a witness who is evading service shall not be issued unless there has been an unsuccessful attempt to serve a subpoena.

604. This does not change the law as set out in Code sections 676, 711-713 and 974. Provisions for service appear in clauses 606 et seq.

605. Sub-cl. (1) comes from s. 671.
Sub-cl. (2) comes from s. 971.

606. Sub-cl. (1) comes from s. 672. See also s. 658 (4).
Sub-cls. (2) and (3) come from s. 676(2).

607. Sub-cl. (1) is derived from s. 974.
Sub-cl. (2) is derived from ss. 676 and 713.

608. (1) This is noted supra.
(2) The note to 607(2) applies to this also.

609. This is derived from s. 693. Detention is provided for in cl. 616. As to endorsement, the present s. 662(1) refers to 'any warrant'.

610. Sub-cls. (1) and (2) are derived from ss. 673(1), 842(1) and 972(1). The extension effected by sub-clause (3) is mentioned above (Notes 3 and 4).

611. This is derived from ss. 674(1) and 972(2).

612. This comes from ss. 674(2), 842(2), 842(3) and 972(3). The penalty is taken from 842(3) and 972(3). See also Note (1) supra.

613. This is derived from ss. 716(2), 995 and 997. See Note (7) supra.

614. This is derived from s. 995(1).

615. This is derived from s. 998.

616. This is derived from s. 997(1), (3) and (4). The extension in cl. 616(1) (*b*) is mentioned supra (Note 5).

617. This is a modification of s. 996. See Note (6) supra.

618. This is derived from s. 997(2).

619. This combines ss. 999 and 1000.

BILL—PART XXII

This is a complete redraft of the present Part XXII and is designed to provide a simple as well as a uniform procedure in respect of broken recognizances.

668. This refers to the Schedule which appears at p. 233 of the Bill. That Schedule embodies, as to each province, the court of courts, and the officials, designated by it.

669. This includes provisions now appearing in ss. 698(3) and 886(2) but is widened by being put in general terms. It will be noted that the provision for notice in s. 886(2) is not continued.

670. This comes from s. 1092 without change in effect.

671. This is a new provision. It sometimes happens that an accused who is at large on bail commits a new crime and is arrested therefor. It is thought that the subsequent arrest, which is an intervention by the Crown, should not operate to discharge his sureties.

672. (1), (2). Redraft of s. 1088 without change in effect.
(3), (4). Redraft of s. 1090 without change in effect.

673. This comes from s. 1091. No change in effect as cl. 675 provides for a new application.

674. This is s. 1093 without change. It preserves the common law right of render by surety.

675. Redraft of s. 1089 without change in effect.

676. This replaces ss. 1094, 1098 and 1099 and, as to Quebec, ss. 1113 and 1114.
As the Bill provides for a deposit in lieu of sureties, sub-cl. (4) is necessary.

677. This effects major changes.
(1) There will be an application to the court designated in the Schedule.
It will be on notice and will give the principal and sureties a right to be heard.
(2) The levy by execution has been separated from capias. The levy by execution is not new. It is provided for in ss. 1105 et seq., and, as to Quebec, in ss. 1115 et seq.

678. This is an adaptation of ss. 1107 and, with reference to Quebec, of s. 1116(1). It adopts the principle that the procedure to realize upon a forfeited recognizance is a civil matter. This accords with the law in Quebec and also with the judgment in Re Talbot's Bail. 1892, 23 O.R. 65, "these proceedings, being essentially for the purpose of collecting a debt, are civil in their nature, rather than criminal, and are regulated, except where there are special provisions, by provincial law". Tremeear, 5th ed., p. 1409.

679. This adapts ss. 1106 and 1117. There may be a committal by warrant if fieri facias cannot be satisfied, but a right is given to apply for relief by way of petition.

1952

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill (308 from the House of Commons), intituled: "An Act to revise the capital structure of the Canadian National Railway Company and to provide for certain other financial matters".

The Honourable J. W. de B. FARRIS, Acting Chairman

FRIDAY, JUNE 20, 1952

WITNESS:

Mr. Donald Gordon, President, Canadian National Railway Company.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1952

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter A. Hayden, Chairman. The Honourable Senators Aseltine, Baird, Beaubien, Bouffard, Buchanan, Burchill, Campbell, Crerar, Daigle, David, Davies, Dessurault, Emmerson, Euler, Fallis, Farris, Fogo, Gershaw, Gouin, *Haig, Hardy, Hawkins, Hayden, Horner, Howard, Howden, Hugessen, King, Kinley, Lambert, MacKinnon, MacLennan, Marcotte, McDonald, McGuire, McIntyre, McKeen, McLean, Nicol, Paterson, Pirie, Pratt, Quinn, Raymond, *Robertson, Roebuck, Taylor Vaillancourt, Vien, Wilson and Wood. *Ex officio member.

FRIDAY June 19, 1952.

The Standing Committee on Banking and Commerce to whom was referred the Bill 308, intituled: "An Act to revise the capital structure of the Canadian National Railway Company and to provide for certain other financial matters", beg leave to report, as follows:—

Your Committee recommend that they be authorized to print 500 copies in English and 200 copies in French of its proceedings on the said Bill, and that Rule 100 be suspended in relation to the said printing.

All which is respectfully submitted.

J. W. de B. FARRIS,
Acting Chairman.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 19th June, 1952.

"Pursuant to the Order of the Day, the Honourable Senator Isnor moved that the Bill (308), intituled: "An Act to revise the capital structure of the Canadian National Railway Company and to provide for certain other financial matters", be now read the second time.

After debate, and—

The question being put on the said motion,

It was resolved in the affirmative.

The said Bill was then read the second time, and—

Referred to the Standing Committee on Banking and Commerce."

L. C. MOYER
Clerk of the Senate.

60071—1½

MINUTES OF PROCEEDINGS

FRIDAY, June 20, 1952.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 12.15 P.M.

Present: The Honourable Senators:— Farris, Acting Chairman; Aseltine, Beaubien, Crerar, Emmerson, Gershaw, Haig, Horner, Howden, King, Kinley, Lambert, McLean, Robertson, Roebuck and Wilson. 16.

Mr. John F. McNeill, Q.C., Law Clerk and Parliamentary Counsel was in attendance.

Bill 308, intituled: "An Act to revise the capital structure of the Canadian National Railway Company and to provide for certain other financial matters", was considered.

Mr. Donald Gordon, President, Canadian National Railway Company, was heard in explanation of the Bill.

At 1 P.M. the Committee adjourned.

At 4 P.M. the Committee resumed.

Present: The Honourable Senators:—Farris, Acting Chairman; Aseltine, Emmerson, Fallis, Gershaw, Haig, Horner, Howden, King, Kinley, Lambert, MacKinnon, McLean Robertson, Roebuck and Wilson. 16.

Mr. John F. MacNeill Q.C., Law Clerk and Parliamentary Counsel and the official reporters of the Senate were in attendance.

Mr. Donald Gordon was further heard in explanation of the said Bill.

It was RESOLVED to report the Bill without any amendment.
Attest.

JAMES D. MacDONALD,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Friday, June 20, 1952.

The Standing Committee on Banking and Commerce, to whom was referred Bill 308, an Act to revise the capital structure of the Canadian National Railway Company and to provide for certain other financial matters, met this day at 10:30 a.m.

Hon. Mr. FARRIS in the Chair.

Mr. DONALD GORDON, President of the Canadian National Railways, appeared as a witness and submitted the following statement:

As is generally known, the formation of the Canadian National System was precipitated by the financial collapse of three major privately-owned companies. There were no bankruptcy proceedings; together with a number of government lines these properties were brought under a single management in 1923, and all their debts came with them. The component railways of the new System could not even pay their direct operating costs. They owed annual interest charges of $35·6 millions to the public and a further $28·2 millions to the government. Moreover, further borrowings had to be made to finance the large capital expenditures necessary to co-ordinate the four separate railways and bring them to an acceptable standard for unified operation. In the course of time, other lines which had been built or acquired for reasons of public policy were added to the System, the most recent example being the Newfoundland Railway & Steamship Services.

All these handicaps, and in particular the excessive burden of fixed interest-bearing debt, have been reflected in the financial record of the Canadian National System. It is a fact which is not generally appreciated that the Canadian National has never failed to meet its operating expenses, but nevertheless except for the year 1928 and the war years 1941-1945 the System has been unable to carry the impossible load of fixed interest charges with which it was saddled at the outset.

Between 1923 and 1948, at which time we made our submission to the Royal Commission, the annual deficit averaged about $20 millions. If the record were restated to make provision for depreciation as calculated on our present methods, the average deficit would have been $25 millions annually. An appraisal of the future prospect requires a further allowance for losses on the Newfoundland operations, which last year amounted to roughly $5 millions. The relevant figure therefore is $30 millions, representing the gap between our net earning capacity and the annual interest burden.

This was the quantum of relief on which I based my proposals to the Royal Commission for relief from fixed interest charges. Proceeding from the well-established principle that no corporation should have to finance every dollar of capital expenditure by means of fixed-interest obligations, it was part of my proposal that Management should be allowed to re-invest some of the surpluses earned in good years.

The committee will recall that the Royal Commission was specifically charged with the duty of reporting on recapitalization of the C.N.R., and their proceedings provided a forum for expression of all shades of opinion on this subject. The Commission concluded that the Canadian National had established

a case for the reduction of fixed charges, and went on to make specific recommendations. In brief, they proposed that the railway be relieved of fixed interest charges amounting to $21,798,000, and that the government assume the operating losses on the Newfoundland Railway & Steamship Services, then estimated at $4 millions annually. In addition to this immediate relief of $25,798,000, they recommended that some provision be made out of available net earnings to finance capital expenditures.

The plan as contained in Bill No. 308 provides a remedy which differs somewhat from the plan recommended by the Commission but the difference is in form rather than in the quantum of relief. In my opinion the plan in the Bill is more factual, more practical and more easily understood than the Commission's plan. My reasons for this opinion briefly are:

(*a*) The Commission assumed that the Canadian National would continue to be exempt from income tax but the situation has been changed materially by reason of the recent amendments to the Income Tax Act, under which Crown corporations are now subject to tax. The use of income debentures as recommended by the Commission in all probability would have eliminated any likelihood that Canadian National would pay tax, as the interest on such income debentures would substantially all be deductible in computing the amount of taxable income.

(*b*) There are reasons why it is not advisable to segregate the financial results of the operations of the Newfoundland Railway and Steamship Services from the general accounts of the Canadian National Railways. Although the relief given by the Bill is less than what would be the case under the Commission's recommendation, I accept it as being the preferable method.

(*c*) The Commission proposed that losses, if and when realized, should be charged against accumulated reserves set aside to finance additions and betterments. This appeared to be contradictory and impractical. The formula adopted in the Bill is more workable, and the results will be more dependable, and will better relate the disbursements on additions and betterments in any given year to the volume of business done during that year.

(*d*) Income bonds, as recommended by the Commission, have largely been used in the recapitalization of corporations emerging from bankruptcy proceedings, and to me at any rate, have the odour of failure or bankruptcy attached to them. I think it is important to exclude any suggestion of this sort from the capital structure of Canadian National.

Bill 308 proposes to relieve the railway of fixed charges amounting to $22,154,926 per annum. This interest is not cancelled outright, it is changed from the category of a fixed charge and becomes payable only if earned in the form of a dividend on the preferred stock. The Bill also proposes to relieve the railway for an initial period of 10 years of interest amounting to $3,549,908 per annum, this in partial recognition of the burden imposed on the railway as a result of the entrustment to it of the Newfoundland Railway and Steamship Services. Together the annual interest relief is $25,704,834 which may be compared with the $25,798,000 recommended by the Commission.

The Bill further provides that the Government will provide funds to finance in part our capital expenditures in each of the initial 9 years 1952-1960. Based on last year's revenues the amount of such financing would approximate $18,700,000 per annum in the form of 4 per cent preferred stock. Perhaps the best test of the reasonableness of this amount may be to compare it

with the opinion of the Board of Transport in its judgment in the 21 per cent freight rate case dated March 30, 1948. The Board found that in the case of the Canadian National Railways a reasonable amount would be $16,777.000. The $16,777,000 represents 3·83 per cent of our gross revenues in 1947, the results of which year were under review by the Board at that time.

Both in the case of the relief afforded in connection with the Newfoundland Railway and Steamship Services and in the formula for financing part of future capital expeditures through the issue of 4 per cent preferred stock, a most essential principle has been established and while an expiry date for this relief is stated in the Bill I assume the measure of continuing relief after such expiry dates will be a matter for review by government at that time. Further, I take it for granted that if any lines are acquired in the national interest and entrusted to the Canadian National System, or development lines are to be built, their effect on the operating results of the Canadian National System and any necessary capital or other contributions required for them will be settled at the time such arrangements are made.

The 1937 Capital Revision Act did not go to the root of the problem we are concerned with here, and indeed it was not intended to do so. The present legislation, both in respect of the quantum and the method of relief provided, is the distilled result of many months of discussion by all interested parties, and for the first time offers a solution adequate to our financial condition.

It remains for me to summarize four points for the benefit of this Committee.

(1) That the legislation will enable the Canadian National Railways to produce a statement of its annual operations on a basis that will be readily comprehensible to the public.

(2) That the Canadian National Railways on the average should be able to provide out of its earnings reasonable depreciation, interest on its outstanding debt, income tax, and have something available for a dividend on its preferred stock.

(3) That the need for the capital revision is recognized by all shades of public opinion and that the implemenation of it will be a major force in the stimulation of the morale of officers and employees alike, something which is bound to be reflected in the operating results of the property.

(4) That the legislation now before us makes the necessary adjustments and meets the essential points of the Royal Commission recommendation, as well as the views of the Canadian National Railways management in a practical, simple and workable fashion.

The Committee adjourned until the Senate rises this afternoon.

The Committee resumed at 4 p.m.

Hon. Mr. HAIG: Mr. Chairman, I should like to ask some questions of Mr. Gordon. What liabilities were assumed by the Canadian National Railways on the 31st of December, 1922, or the 1st of January, 1923, when the road was started?

Mr. GORDON: The debt held by the public at the time of consolidation—which I assume is what you have in mind?—

Hon. Mr. HAIG: Yes, sir.

Mr. GORDON: —which was assumed by the Canadian National Railway system totalled $804,503,144; and in addition to that the government had spent on Canadian government railways, which were included in the system, a total of $429,563,445.

Hon. Mr. HAIG: During the years 1923 to December 31, 1951, what was the railways' total operating revenue?

Mr. GORDON: The grand total operating revenue from 1923 to 1951 was $9,009,111,688.

Hon. Mr. HAIG: What was the total operating expenses for the same period?

Mr. GORDON: $7,920,223,664.

Hon. Mr. HAIG: That left what net operating profit?

Mr. GORDON: The net operating profit was $1,088,887.024.

Hon. Mr. HAIG: How was that figure disposed of?

Mr. GORDON: Perhaps I should put it another way: That made available for payment of our fixed interest a sum of $797,430,376. The difference between that amount and the $1 billion odd which I just mentioned represents sundry payments in the form of rents, taxes and things of that kind. Perhaps I should complete the statement by pointing out that our actual requirements for fixed interest were a total of $1,377,564,270, which produced an income deficit over the years we are talking about of a total of $580,133,894.

Hon. Mr. HAIG: In 1937 the Parliament of Canada wrote off certain monies. Will you make a statement about that? There has been some dispute about it, and I should like you to comment on it.

Mr. GORDON: You have in mind the Capital Revision Act, I understand, senator?

Hon. Mr. HAIG: Yes.

Mr. GORDON: Anticipating something of that kind, I looked up my submission to the Royal Commission on Transportation, and with your permission, Mr. Chairman, I should like to read an extract from it. It is a matter which needs careful phrasing to make certain that it is accurate. It will take a few minutes to read it.

Hon. Mr. HAIG: That is quite all right.

Mr. GORDON: In the Canadian National Railways' submission to the Royal Commission, relating to the Capital Revision Act of 1937, I said as follows:

> As the revisions made under the provisions of this Act had an important corrective effect on the capital structure of the Canadian National it is thought they should be clearly described and their effect correctly appraised. Let it be emphasized at the outset that no portion the capital invested by the Government was written off and there was no interference with the funded debt of the Canadian National in the hands of the public. Any amounts written off related to income deficits, interest charges, and the worthless capital stocks of the bankrupt predecessor companies.

The authorized revisions which are relevant to the present study comprised:

(*a*) Government advances for deficits were written off.

(*b*) Interest accrued on Government loans and advances was written off.

(*c*) Worthless capital stocks and grants were cancelled.

(*d*) Government loans for capital were converted into equity capital.

(*a*) The amount of Government advances for deficits to December 31, 1936 was $373,823,120. The Canadian National claimed that such advances were not capitalizable items, that when the Government paid such sums it was restoring an impairment of capital and not adding to its capital investment. Such amounts did not provide assets which are capable of earning a return.

(*b*) The interest accrued in the Canadian National accounts on Government loans and advances amounted to $530,832,597 at December 31, 1936. In so far as interest had been accrued on advances for deficits, it was thought the interest should be treated similarly to the advances and that it should be written off. In so far as interest had been accrued on loans for capital purposes there may have been justification initially for the interest charge, but if the interest was not earned, as was the case, then it became part of the annual deficit, and should be accorded the treatment given to the deficit and written off. Anoher way to express it is to say that the Government as creditor, having loaned the money, was entitled to interest but the Government as proprietor, would have to absorb the loss because the business had failed to earn it. It should further be noted that the loans (for capital) under the revisions authorized by the Act, became equity capital, entitled to a return only if earned.

(*c*) The revision under this heading consisted of removing from the balance sheet:

1. $82,000,600 of Canadian Northern capital stock and $165,627,738 of former Grand Trunk capital stock which under arbitration proceedings were determined to be without value.
2. $15,142,633 representing aid granted to the old Grand Trunk by the Province of Canada prior to Confederation. This liability ranked junior to the Grand Trunk common stock which was found to be without value.
3. There remained $18 millions of Canadian Northern common stock which was transferred by the Government to Canadian National Railway Company in exchange for an equal par value of that Company's capital stock.

(*d*) After reduction of the amount of Government loans and advances by the $373,823,120 referred to in (*a*) there remained $347,260,905 representing loans for capital purposes. Of this $77,223,467 was for capital loans subsequent to December 31, 1931. This amount was continued on the balance sheet as capital loans at interest. The remaining $270,037,438 was converted from loan capital into equity capital, and continued as such on the balance sheet.

A word of explanation should be added in respect of the amounts written off, items (*a*) and (*b*) above. The indebtedness to the Government was not cancelled absolutely. The debts were transferred by the Government to a holding company (Canadian National Railways Securities Trust) as a precautionary measure to preclude the improvement of the position of certain securities which ranked junior to such debts.

Statements have been made from time to time that as a result of the 1937 Capital Revision, the Government had had to write off as lost much of the money it had invested in the Canadian National, that its capital liabilities were drastically reduced, and that it was then given a new capital structure adjusted to its needs. This is not correct. The amounts written off represented income deficits and unearned interest. These were not capital items. It had been wrong from the beginning to consider them as such. The report of March 26, 1925 to the Board of Audit is very clear on this point. The views expressed in that report were endorsed by the Minister of Finance and became Government policy as from January 1st, 1932. The 1937 Capital Revision Act merely applied them retroactively to the period prior to 1932.

There was no gain to the Canadian National nor loss to the Government by the cancellation in the accounts of the worthless capital stocks and grants referred to in item (c). Any loss there might have been had taken place long before the Government took over.

Again there was no loss of capital when loan capital referred to in item (d) was converted into equity capital. There was some interest relief to the Canadian National in being relieved of a fixed charge but that is all. Changing bonds into shares is a Treasury affair, not affecting the physical assets one way or the other. The fact that the Government may not receive a direct interest return on a capital investment does not mean that the capital is lost. The nation does not expect an interest return on its investment in highways, airports, and public works generally. No one thinks of the money invested in the Intercolonial Railway as having been lost. The Quebec Bridge, the Prince Edward Island Ferry, the post offices, the Welland Canal, may not earn interest on their cost but that does not change the fact that they are national assets. Why Government money invested in the Canadian National which does not earn a direct interest return is regarded in some quarters as money lost is difficult to understand. A more correct view would be to regard it as an investment, furnishing essential transportation service, and gainfully employed from the standpoint of the over-all economy.

It is the thought of some people that in 1937 the capital structure of the Canadian National was revised and put upon a satisfactory basis. The 1937 revision was confined to the relationship between the Government and the Canadian National only. It did not deal in any way with the large funded debt of the System in the hands of the public. It was considered at the time there was no possibility of the Minister of Finance taking up in Public Accounts a block of Canadian National obligations so long as they were held by the public. It would have been impracticable to leave out of the Canadian National accounts any of its outstanding securities in the hands of the public.

It was thought unwise to refuse the relief it was possible to secure on the grounds that it was not a final and complete solution. It was clearly indicated by the Canadian National management that the proposals did not go far enough, but as the Chairman of the Board of Directors said: "Better halfe a loafe than no bread."

The Capital Revision was made effective to the accounts of the System as of December 31, 1936. The fixed charges in 1936 on their adjusted basis were $52·2 millions. The net income available to pay fixed charges was only $8·9 millions. On their adjusted basis the fixed charges represented 28 per cent of gross revenue; the Canadian Pacific ratio in 1936 was 17 per cent, and the percentage for Class I railroads was 16 per cent. Clearly, no effort was made to put Canadian National on a comparable basis with other railroads.

Hon. Mr. HAIG: Mr. Gordon, the next question, which I asked this morning—and I am going to ask it again—is this: what does the present adjustment do? Answering me the same way as you did before, what does it cover?

Mr. GORDON: Well, that is what I attempted to cover in my statement; but to summarize that, I would say that it puts the balance sheet of the Canadian National Railway on a basis which reflects the current position of the railway.

Hon. Mr. HAIG: Of the railroad?

Mr. GORDON: Of the railroad. In other words, on the basis of the fixed interest charges which are left for the railway to pay, interest on debt which still remains in the hands of the public or owing to the government, as the

case may be, the railway should on an average, as I stated this morning, be able to meet that burden, as well as providing reasonable depreciation, income tax, and have something available for the payment of a dividend on this preferred stock.

Hon. Mr. HAIG: I asked you this question this morning, and I am going to ask it again, because I want it on record. What in your opinion, if this bill passes, will be the effect on the personnel of the road?

Mr. GORDON: I think it should improve the morale of the employees very considerably; because it is human nature, as I stated earlier, that people like to feel that they are working for a successful enterprise and not for something which is always pointed to as being a failure; and that has been a misapprehension, in my opinion, which has been in the minds of a great section of the public,—that because of these bookkeeping deficits, the fact that the railway was efficiently run and was earning its keep was not shown to the public, and therefore the Canadian National Railway employees worked under that psychological disadvantage.

Hon. Mr. HAIG: Thank you very much, sir. That is all the questions I want to ask.

The CHAIRMAN: Any other questions, gentlemen?

Hon. Mr. ROEBUCK: I would like to repeat a question which I put this morning, for the record's sake. You have stated, Mr. Gordon, that in your opinion the railroad as a result of this adjustment which is contained in the bill will be able to pay its operating costs, its fixed charges, its income tax, and leave something over for the preferred shares; and I would like to know the basis upon which you make such a prognostication. You do not come here as a prophet, and I would like to know if there are any qualifications you have of that statement.

Mr. GORDON: Yes. My statement is of course essentially a matter of judgment, but our appraisal was based on our experience of the past, and it assumes the same order of relativity between freight rates on the one hand and wages and prices on the other. That is, it assumes that we will have freight rate increases commensurate with the impact of costs of our operations. In addition to judging or weighing our past experience, which included as you all know a cycle of war and peace, of prosperity and depression, we tested the plan under various hypotheses, or assumptions, concerning economic conditions in the future. That is, we assumed a boom or we assumed a depression, as the case may be and, as I say, as a matter of judgment we expected to be able on the average to meet all our operating costs, the new level of our fixed charges, our income taxes, and the rest, and still have something for a dividend on the preferred stock. If, of course, there are some extraordinary conditions which upset the whole economic atmosphere in which we live, the Canadian National Railway will be affected just as any other enterprise in the country would be affected, and these assumptions I have made may not hold true under such extraordinary conditions.

Hon. Mr. ROEBUCK: However, the readjustment now before us is gauged on your judgment that it will provide the necessary conditions which will bring about the results you have described?

Mr. GORDON: That is correct, and I hasten to add that it is not simply a personal judgment. I have had the assistance of the experienced officers of the railway who have examined the trends and cycles of the record throughout the years. They have had a lifetime of experience in doing this.

Hon. Mr. ROEBUCK: You also assume that you will be treated fairly and reasonably by the Board of Transport Commissioners?

Mr. GORDON: That is the assumption we make.

Hon. Mr. HORNER: Mr. Gordon, when the Trans-Canada Highway is completed what effect do you think it will have on the railway?

Mr. GORDON: I would assume that the improvement of highways will intensify certain types of competition, undoubtedly from trucks.

Hon. Mr. REID: May I ask Mr. Gordon a question? If this is put into effect will it place the C.N.R. in a comparable position with the C.P.R., aside from the moneys the C.P.R. receives from, shall we say, the Consolidated Mining Company?

Mr. GORDON: I find that rather difficult to answer because in point of fact you cannot get an exact comparable position between the railways at any time. After all, they have different systems in the sense that the C.P.R. was built as a planned and integrated unit, whereas we took half a dozen railways that were built primarily to compete with each other. There is that sort of difference, but by and large, as a test of efficient operation, I would say that the C.N.R. results can now be judged on a basis that would give some idea as to the degree of our efficiency compared with that of the C.P.R.

Hon. Mr. ROSS: Mr. Gordon, you spoke of preferred stock. What preferred stock is there in the railway?

Mr. GORDON: At the present time there is none, but this bill will create $736 million of preferred stock in exchange for the interest-bearing debts which are outstanding in the hands of the government.

The CHAIRMAN: When you spoke of the competition that will be created by the Trans-Canada Highway, it will also tend to create more freight, will it not?

Mr. GORDON: Oh, yes. I would not say that the Trans-Canada Highway is something we need to fear. Like any other development in the country, it is bound to expand the country and bring about additional traffic of various kinds. It is just a question of how much we will get of it.

Hon. Mr. CRERAR: Mr. Gordon, does the section between Cochrane and Winnipeg pay?

Mr. GORDON: I could not answer that question specifically. It would take a careful analysis to arrive at any conclusion.

Hon. Mr. CRERAR: And the same thing would apply to the present line you operate—the old Canadian Northern Railway—from North Bay through Sudbury to Winnipeg?

Mr. GORDON: It is always a difficult matter to analyse a specific portion of a line to determine whether it pays or does not pay, because while the specific operation of a line analysed purely by itself may show a red ink figure, there are many collateral conditions which flow into other parts of the system. In other words, if we did not have a line from one point to another we could not service the more profitable territory that lies beyond. We can arrive at a reasonable conclusion as to a specific branch line, but it is a difficult matter to do so with respect to any portion of the main transcontinental line.

Hon. Mr. CRERAR: Take the line from Redpass Junction to Rupert?

Mr. GORDON: I cannot answer your question specifically at this moment. The same thing would apply there.

Hon. Mr. KING: The railway sections running into the north country are helping to develop new territories.

Mr. GORDON: There is no question about that. My own opinion is that the whole of the old northern transcontinental line will be a valuable asset and an earning asset of the C.N.R.

Hon. Mr. ROEBUCK: I suppose you are making some mechanical progress, are you not, that may help you in the future?

Mr. GORDON: Very definitely. I might mention that in our Annual Report we made some comparisons as to technological improvements. We made a comparison between the years 1928 and 1951—both these years being big traffic years when the country was not at war, and reported:

"The overall comparison shows that in quantity the Canadian National has furnished 58 per cent more freight transportation with 12 per cent fewer locomotives and 12·4 per cent fewer freight cars, and in terms of quality the average speed has been raised by 23 per cent. This improvement was accompanied by a significant decline in fuel consumption, and the use of relatively less manpower."

This would indicate that mechanical improvements have been taken full advantage of.

Hon. Mr. ROEBUCK: You are also going into Diesel development, are you not?

Mr. GORDON: We are on a Diesel program now, and we have a program that will stretch over the next five years in which time we shall substantially increase the movement of freight in particular by the use of Diesel.

Hon. Mr. ROEBUCK: And I suppose you can count as well on an increase of population over the years?

Mr. GORDON: Yes, that is quite true.

Hon. Mr. ROEBUCK: And that would be important to your railway?

Mr. GORDON: Very important indeed.

The CHAIRMAN: What about your road beds?

Mr. GORDON: We have a regular annual maintenance program of roadbed upkeep, and it is just a question of degree as to how much time and money we are prepared to spend on it.

Hon. Mr. HORNER: What responsibility does the government assume in respect to branch lines such as the one running from Sherridon to Lynn Lake?

Mr. GORDON: That is an interesting question and rather illustrates what we will try to insist upon in regard to our future policy for building branch lines. In the case of the branch line from Sherridan to Lynn Lake we made a traffic agreement with the Sherritt Gordon Mines Limited. Having established what the capital cost would be we estimated how much traffic we would have to carry to support the line so that we should at least break even, and then the Sherritt Gordon Mines Limited underwrote this amount of traffic. If this amount of traffic does not go over the line, the Sherritt Gordon Mines Limited will pay us the difference. The same thing is true of the Kitimat line. This is the policy we shall insist upon in regard to future developments.

Hon. Mr. REID: It has been stated many times—and I have in mind a certain locomotive engineer—that the time taken in travelling on passenger trains could be greatly reduced between Montreal to Vancouver were it not for the restrictions of the Board of Transport Commissioners.

Mr. GORDON: There are no restrictions of that kind. The governing factor in regard to our time schedule between Montreal and Vancouver really is the need to arrive at main points—Winnipeg, Regina and so on—at a reasonable time of day.

Hon. Mr. REID: Could you reduce the number of hours required in making this journey?

Mr. GORDON: We could if we were prepared to deliver some of our passengers into these places at three and four o'clock in the morning.

Hon. Mr. HAIG: Not Winnipeg.

Some Hon. Senators: Oh, oh.

Mr. GORDON: I am quite sure that if there is anybody here from Regina he would have the same comment to make.

Hon. Mr. HAIG: Sure.

Hon. Mr. REID: The reason I am bringing up the matter particularly at this time is that the airplanes are competing with the trains for passenger traffic now, and the planes do not care at what hour of the day or night they land you anywhere: they are just as likely to take you into a place at midnight or one or two or three o'clock in the morning. It seemed to me that if you could cut down your time you might be better able to meet this competition. I know that out in British Columbia some people when travelling to Ontario use the United States railways, and by so doing they save twenty hours on the trip to Toronto. This means a loss of important passenger traffic to our country. It seems to be an opportune time to mention the matter, and I should like to know if your service could be speeded up so as to meet the competition from planes and United States Railways.

The CHAIRMAN: Could you do that without incurring a lot of extra cost?

Mr. GORDON: As a matter of fact, senator, we have been conducting very intensive studies on that very question. We are looking at a specific project in order to establish the order of dimension, so to speak; that is, to establish what would happen if we did run a train as a special from Vancouver to Montreal at the fastest possible time. In the first place, the capital cost of putting such a train on the tracks would be upwards of $3 million, running one way; which would mean a cost of $6 million for a shuttle service. Now, when you try to estimate the economic results of an experiment of that kind, the mathematical exercise gets you nowhere. One thing we have noticed is that people who travel by train expect standards in comfort and convenience and so forth that they do not demand of the airways.

Hon. Mr. HAIG: They will demand them.

Mr. GORDON: I hope so.

Hon. Mr. CRERAR: Mr. Chairman, I would suggest to the witness that it might be possible to leave Vancouver at four o'clock in the morning—

Hon. Mr. HAIG: That is a good idea.

Hon. Mr. CRERAR: —and arrive in Montreal at around eleven o'clock at night.

Mr. GORDON: No, I do not think we are able to do that. I forget just what the time schedules are—I should have them in my mind.

Hon. Mr. CRERAR: You leave Vancouver now at about eight o'clock in the evening. Suppose that instead you left at four o'clock in the morning. That is a difference of eight hours, and running on your present time schedule you should get into Montreal hours earlier?

Mr. GORDON: But you see, senator, that we have to consider not only the people of Vancouver and Winnipeg; we are dealing with the people in between as well. And I have already heard it suggested that we must arrive at Winnipeg at a reasonable hour.

Hon. Mr. HAIG: Yes, that is very important.

Hon. Mr. BEAUBIEN: From Winnipeg to Vancouver there are two trains daily, are there not?

Mr. GORDON: Yes.

Hon. Mr. BEAUBIEN: One runs about thirty minutes ahead of the other, and I am wondering whether the service could not be given by a single train.

Mr. GORDON: I can say at once, senator, that if the service could be given by a single train, that is what we would be doing, as a matter of efficiency; but we have had to put on a double service there by reason of the volume of express.

We found that the handling of express there slowed us down so much that we were not making our time schedules, and in order to correct that condition we started about three or four weeks ago an experiment of running two sections. That is still just an experiment and we are watching it closely for a comparison of costs and so on. One of the trains does not carry passengers at all at present; we are using it for what we call head-end traffic—that is, express and baggage —and we think that in this way we shall be able to speed up our time schedules. However, I repeat that this is still being done on an experimental basis.

Hon. Mr. HOWDEN: Mr. Gordon, when I first came to Ottawa, some twenty-five years ago, we used to have an Ottawa sleeper which arrived here at 5 or 5.10 in the morning, the same time as we get in now, but the sleeper was left on the tracks and we did not have to vacate it until 8 o'clock. And at night the sleeper was available at 9 o'clock for anyone who wanted to board it, although the train did not pull out until midnight, as it does now. That was a very great convenience for people of a certain type, and I am wondering why we can no longer get that service.

Mr. GORDON: I must answer that question very carefully, because the fact is that the financial returns showed we did not have many paying passengers on that train.

The CHAIRMAN: Are there any further questions?

Hon. Mr. ISNOR: Mr. Chairman, as I am not a member of the committee I have waited to put a question or two until members of the committee had finished. I should like to follow up the question put to the President by Senator Roebuck as to research in connection with the diesel engine. I understand, Mr. Gordon, that you have a research branch that has been working in an endeavour to perfect the diesel engine for the use of your own company and private companies as well. Is any research being done, either by the Canadian National or by private companies, into the possibility of making greater use of coal and at the same time perfecting the old steam engine or locomotive?

Mr. GORDON: We ourselves have a research laboratory and are conducting a number of very interesting experiments with regard to the better utilization of coal. Also a number of experiments are going on—one at McGill University, for instance—in connection with the use of the gas turbine. Some of the experiments with the gas turbine will use fuel oil, but others—these are in the United States—have to do with the utilization of coal. We are keeping closely in touch with these experiments.

Hon. Mr. ISNOR: Coming from Nova Scotia, I am deeply interested in a greater use of coal by the railways.

Mr. GORDON: Real progress is being made in these experiments. The last report I received showed that some quite satisfactory results had been obtained, but that certain bugs have to be ironed out before any definite decision can be arrived at.

Hon. Mr. ISNOR: I wish now to ask you a question about the company's finances, in order to clear up a point that was raised in the Senate yesterday. It was stated that during the period from 1941 to 1945 the Canadian National had paid to the government $113 million, and a doubt was expressed as to whether during that period the company had paid the interest on outstanding loans both to the public and to the government.

Mr. GORDON: In the years 1941-1945 the Canadian National Railways paid to the government in surplus earnings $112,502,061, after having paid all interest charges due either on government advances or debts due to the public.

Hon. Mr. ISNOR: Thank you; I wanted that point cleared up.

Hon. Mr. ROEBUCK: Mr. Gordon, before we close the questions, I may say that we have been told that the producing power of the Canadian nation has been increasing very rapidly in recent years, and that it is perhaps five times what it was a few years ago. Is that not reflected in the operations of the road? If this rate of acceleration continues, will it not result in a very profitable railway system? Will the C.N.R. not become a paying institution, and a very valuable asset of the Canadian people?

Mr. GORDON: Certainly the C.N.R. stands to benefit considerably with the increased traffic and further increases that are bound to follow the development of the country, but always with the proviso that we are paid an adequate price for our services.

Hon. Mr. ROEBUCK: That, of course, is the duty of the Board of Transport Commissioners. We as a parliament have a right to assume that they will treat you right in that regard.

Mr. GORDON: That is our assumption too.

Hon. Mr. ROEBUCK: So that we may look forward with some reasonable degree of certainty to a great development in this country, and as a consequence a great development in the C.N.R.?

Mr. GORDON: I would agree with that.

The CHAIRMAN: Is it not also true that profit is not the only test of the usefulness of a railway to the country?

Mr. GORDON: I think that is certainly correct. The degree of service that is rendered is of first importance to the people of Canada.

The CHAIRMAN: If we did not have the railways, we would have no country.

Mr. GORDON: I believe that is true.

The CHAIRMAN: Are there any further questions? Is it the wish of the committee that the bill should now be considered clause by clause, in view of the explanation by Senator Isnor and the proceedings here today?

Hon. Mr. HAIG: I personally do not think we can make any changes in the bill. The questions I had to ask have been satisfactorily answered.

Hon. Mr. ROEBUCK: I move that we report the bill.

Hon. Mr. HAIG: Agreed.

The CHAIRMAN: Carried.

The Committee adjourned.