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Comm.on Criminal Law.

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

"An Act respecting The Criminal Law", and all matters pertaining thereto

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

THURSDAY, FEBRUARY 5, 1953

TUESDAY, FEBRUARY 10, 1953

WEDNESDAY, FEBRUARY 11, 1953

TUESDAY, FEBRUARY 17, 1953

WEDNESDAY, FEBRUARY 18, 1953

WITNESSES:

Mr. A. A. Moffatt, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice;

Mr. Maurice Wright Q.C., Legal Counsel for the Canadian Congress of Labour;

Mr. Leslie E. Wismer, Director of Public Relations and Research, Trades and Labour Congress of Canada.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

PERSONNEL OF THE COMMITTEE

Chairman:—Mr. Don. F. Brown (*Essex West*)

Vice-Chairman:—Mr. W. F. Carroll and Messrs.

Browne (*St. John's West*)	Henderson	Montgomery
Cameron	Laing	Noseworthy
Cannon	MacInnis	Pinard
Diefenbaker	MacNaught	Robichaud
Garson	Macnaughton	Shaw

(Quorum, 7)

ANTOINE CHASSÉ,
Clerk of the Committee.

ORDERS OF REFERENCE

HOUSE OF COMMONS,

FRIDAY, January 23, 1953.

Resolved,—That a Special Committee be appointed to consider Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law", and all matters pertaining thereto, with power to send for persons, papers and records, to examine witnesses, to print its evidence and proceedings, and to report from time to time its observations and opinions thereon; that the said Committee consist of seventeen (17) Members to be designated at a later date; and that Standing Order No. 65 be suspended in relation thereto.

MONDAY, February 2, 1953.

Resolved,—That the said Committee consist of the following Members:—Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Carroll, Churchill, Diefenbaker, Garson, Henderson, Laing, MacInnis, MacNaught, Macnaughton, Noseworthy, Pinard, Robichaud, and Shaw.

FRIDAY, January 23, 1953.

Ordered,—That the following Bill be referred to the said Committee: Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law."

WEDNESDAY, February 4, 1953.

Ordered,—That the name of Mr. Montgomery be substituted for that of Mr. Churchill on the said Committee.

THURSDAY, February 5, 1953.

Ordered,—That the quorum of the said Committee be set at seven members.

Ordered,—That the said Committee be authorized to sit while the House is sitting.

Attest.

LEON J. RAYMOND,
Clerk of the House.

70632—1½

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS, Room 268,
THURSDAY, February 5, 1953.

The Special Committee appointed to consider Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law", and all matters pertaining thereto, met at 11:00 o'clock a.m.

Members present: Brown (*Essex West*), Cameron, Cannon, Carroll, Diefenbaker, Garson, Laing, MacInnis, MacNaught, Montgomery, Robichaud, and Shaw.

The Clerk of the Committee attended to the election of a Chairman. On the proposition of Mr. Laing, seconded by Mr. MacNaught, Mr. Don. F. Brown (*Essex West*) was unanimously elected Chairman.

Upon taking the Chair, the Chairman thanked the Members for the honour and assured the Committee of his entire co-operation in conducting the proceedings of the Committee to a successful and early conclusion.

On motion of Mr. MacNaught,

Resolved,—That 750 copies in English and 250 copies in French of the Minutes of Proceedings and the Evidence adduced be printed from day to day.

On motion of Mr. Carroll,

Resolved,—That the Committee recommend to the House that the Quorum of the Committee be fixed at 7 Members.

On motion of Mr. Cannon,

Resolved,—That leave be sought for the Committee to sit while the House is sitting.

Some discussion took place as to which days in the week and at what hour the Committee should meet. While no specific days were definitely set, it was, however, agreed that the Committee should meet at 10:30 in the morning.

On motion of Mr. MacNaught,

Resolved,—That the Chairman be authorized to name 6 Members of the Committee to act with himself as a Steering Committee.

At 11:30 o'clock a.m. the Committee adjourned to meet again at 10:30 a.m., Tuesday, February 10.

TUESDAY, February 10, 1953.

The Committee met at 10:30 a.m., the Chairman, Mr. D. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Carroll, Garson, Henderson, Laing, MacInnis, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffatt, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels of the Department of Justice.

The following report from the Steering Sub-Committee was read:

February 9th, 1953.

The sub-committee met this day when the following members were present: Mr. D. F. Brown, Chairman, and Messrs. Garson, MacInnis, Macnaughton, Robichaud and Shaw.

The sub-committee considered questions of procedure and had before it a number of communications from various sources some of which contained requests to appear before the Committee to make representations in respect to Bill No. 93, An Act respecting the Criminal Law.

After careful consideration the sub-committee was unanimously of opinion, and it so recommends, that the Committee, in principle, limit oral representations to national organizations. Individuals and groups or associations not having a national character, who desire to make representations to be notified that the Committee will be pleased to consider written submissions and upon study of the written submissions the Committee will decide whether or not the representations made in writing should be supplemented by personal appearances.

Your sub-committee recommends that representatives of the Canadian Congress of Labour be invited to attend before the Committee at 10:30 o'clock a.m. Tuesday, February 17th next; representatives of the Trades and Labour Congress to be invited to appear on the following day at 3:30 o'clock p.m. (Wednesday, February 18th).

Your sub-committee recommends further that the Committee proceed forthwith with a clause by clause study of Bill No. 93, while allowing to stand for further consideration at a later date such of the clauses in the bill as are known to be contentious or in respect of which indications have come that representations are to be made to the Committee.

On motion of Mr. Macnaughton, seconded by Mr. Robichaud, said Report was unanimously adopted.

The Committee proceeded with a clause by clause study of Bill No. 93 (O of the Senate), An Act respecting the Criminal Law.

Clauses 2 to 7, 9, 10, 11, 12 to 27, 29 to 45, 58, 59, 63 to 68, 70 to 95, 97 to 98 were passed.

Clauses 8, 28, 46 to 57, 60, 61, 62, 69 and 96 were allowed to stand.

At 12:35 p.m., the Committee adjourned to meet again at 3:30 p.m. Wednesday, February 11th, 1953.

WEDNESDAY, February 11, 1953.

The Committee met at 3.30 p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Cameron, Cannon, Carroll, Garson, Henderson, MacInnis, MacNaught, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Messrs. A. A. Moffatt, Q.C., and A. J. MacLeod, Senior Advisory Counsels, Dept. of Justice.

On motion of Mr. Cannon, Mr. Carroll was unanimously elected Vice-Chairman of the Committee.

The Committee resumed from Tuesday its clause by clause consideration of Bill No. 93 (O of the Senate), an Act respecting the Criminal Law.

For a brief period, Mr. Carroll was in the Chair due to the fact that the Chairman was detained in the House.

Clauses 99 to 115, 117 to 129, 161, 163 to 199 and 201 were unanimously passed.

Clauses 116, 130 to 160, 162 and 200 were allowed to stand.

At 5.30 p.m., the Committee adjourned to meet again at 10.30 a.m. Tuesday, February 17, 1953.

TUESDAY, February 17, 1953.

The Committee met at 10.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cannon, Carroll, Diefenbaker, Laing, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffatt, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice, and the following representatives of the Canadian Congress of Labour: Mr. Donald MacDonald, Secretary-Treasurer; Mr. Maurice Wright, Legal Counsel; Dr. Eugene Forsey, Director of Research; Mr. Archie Schultz, United Automobile Workers of America.

The Chairman invited Mr. MacDonald to introduce the delegation of the Canadian Congress of Labour where after it was agreed that Mr. Maurice Wright would read the Brief presented on behalf of the Congress and would answer questions thereon.

Messrs. Moffatt and MacLeod, of the Department of Justice, were questioned briefly during the deposition of Mr. Wright on a few matters arising out of that deposition.

At the conclusion of the presentation, the Chairman expressed the thanks of the Committee to Mr. Wright and his associates of the Canadian Congress of Labour for the valuable contribution made to the Committee and in reply Mr. MacDonald, on behalf of the Canadian Congress of Labour, expressed his appreciation for the courteous hearing they had received.

At 1 o'clock p.m., the Committee adjourned to meet again at 3.30 p.m. tomorrow.

WEDNESDAY, February 18, 1953.

The Committee met at 3.30 p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Cameron, Cannon, Carroll, Henderson, MacInnis, MacNaught, Macnaughton, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffatt, Q.C., Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice; Mr. Percy R. Bengough, President, and Mr. Leslie E. Wismer, Director of Public Relations and Research, both of the Trades and Labour Congress of Canada.

The Chairman introduced the members of the delegation of the Trades and Labour Congress, whereafter it was agreed that Mr. Wismer would present the brief on behalf of the Congress. The witness was questioned thereon at length.

At the conclusion of the deposition, the witness and Mr. Bengough were thanked by the Chairman for their valuable assistance to the Committee and they were excused.

The Committee then resumed from Wednesday, February 11th, clause by clause study of Bill 93 (O of the Senate) an Act respecting the Criminal Law.

Clauses 203, 204, 205, 207 to 216, and 218 to 221 were passed.

Clauses 202, 206 and 217 were allowed to stand.

At 5.30 p.m. the Committee adjourned to meet again at 10.30 a.m., Tuesday, February 24, 1953.

ANTOINE CHASSÉ,
Clerk of the Committee.

REPORT TO THE HOUSE

THURSDAY, February 5, 1953.

The Special Committee appointed to consider Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law", and all matters pertaining thereto, begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That the quorum of the Committee be set at seven members.
2. That it be authorized to sit while the House is sitting.

All of which is respectfully submitted.

DON. F. BROWN,
Chairman.

EVIDENCE

February 17, 1953

10.30 a.m.

The CHAIRMAN: Gentlemen, if you will please come to order, we will proceed with the business of the committee. This morning we are pleased to have representation of the Canadian Congress of Labour. Before asking Mr. MacDonald to introduce the delegation, I am wondering if you all have copies of the brief which was submitted. I think we only got this yesterday, about four o'clock. Have you all copies of the brief? It may be that some have not had an opportunity of reading it, and in that event it may meet with your approval if we have the representative of the Canadian Congress of Labour read the brief, and we will go through it. I would suggest that the presentation be made by whoever is to be spokesman for the congress and that we submit questions after the presentation so that it will not delay the matter too long.

Mr. SHAW: Mr. Chairman, was it not agreed that the brief would not be read but rather that the representative of the organization would comment upon it? I thought it was understood that we would not read it.

The CHAIRMAN: It may have been; I am not too certain. There is this aspect of course, in that the brief was only presented to us last night, it may be that some of you may not have had an opportunity of reading the brief. I was going to suggest that the clause of the bill be read first and that probably the brief be read and comments made by the delegation. I thought we should have all of the presentation made before we submit the witnesses to questions; otherwise we will probably be here for quite some time. Does that meet with your approval?

Mr. DIEFENBAKER: Mr. Chairman, it is such a good brief that I was wondering whether or not there would be a half-way course taken and we take this brief by paragraphs, say, paragraph 2 dealing with treason, and at the conclusion of that, that questions be asked on that as we go from one section to another, and in that way we would not have our argument all tangled up with questions here and there and the other place.

The CHAIRMAN: Does that meet with the approval of the committee?

Agreed.

Then we will proceed. First of all, I would like to introduce to you Mr. Donald MacDonald, Secretary-Treasurer of the Canadian Congress of Labour, and I would ask Mr. MacDonald if he would introduce the other members of the delegation.

Mr. MACDONALD: Thank you, Mr. Chairman. Gentlemen, I may as well proceed with the chore that has been thrust upon me at the outset and introduce the other three members of our delegation. On my right is Mr. Maurice Wright, our legal counsel. Next to him is Dr. Eugene Forsey, our director of research, and Mr. Art. Shultz, representing the United Automobile Workers of America, one of our larger affiliates.

I would like to take this opportunity, Mr. Chairman, if I may, although it will be done more formally in the course of the presentation of the memorandum itself, to express my personal appreciation of this opportunity to make known to this committee our views with respect to the amendments proposed to the Criminal Code. We regard this as being an extremely important matter

touching, as it does, on not only the very life but the freedom, liberties and protections of all citizens of Canada, including labour, and with that in view we have tried to the best of our abilities to make the most competent job that we can of the presentation that will be submitted to you here today.

I think that I should mention in my informal remarks here in the introduction that as you will note from our submission there are a number of features in connection with the proposed amendments that in my mind are questionable. Others are actually objectionable and some go as far as to be extremely dangerous from our point of view. As a matter of fact we do take such a serious view of these that if I may be permitted to use a cliché some are such that they strike into the very hearts of our people and we think this committee being assigned the tremendous task of dealing with these amendments will no doubt give the closest possible consideration to our representations in this connection. There are some which to our mind could be utilized by people opposed to labour in such a way as to almost negate our own organizations and servicing activities.

Because of the very legalistic nature of the brief itself and its preparation, as well as the comments and questions that will arise from its presentation to you, it is our suggestion that it be read by our legal counsel, Mr. Wright, and although we do not wish to come here and try to suggest procedure to you—that is something which is entirely within the purview of the committee to decide, we realize—nevertheless we do think that it would be valuable to the committee itself if our counsel as he proceeds with the presentation of the submission were permitted to interpolate comments and observations as he goes along. If that is agreeable I won't take up any more time of the committee but will ask our counsel, Mr. Wright, to proceed with the presentation of the submission.

The CHAIRMAN: Before doing so, I should have expressed regret at the absence of the minister, the Honourable Mr. Stuart Garson, who had intended being here. He is a member of the committee and he had intended being here, but unfortunately he has been in Winnipeg and will not be back until late this afternoon. He has regretted his inability to be here. I trust it will make no difference however. Mr. Wright, would you care to be seated. We adopt the practice usually of remaining seated.

Maurice Wright, Legal Counsel for the Canadian Congress of Labour, called:

The WITNESS: Mr. Chairman and members of the committee, although I am submitting this brief on behalf of the Canadian Congress of Labour, I am afraid I cannot claim the exclusive pride of authorship in the brief. I had some part in its preparation, but for the most part Dr. Forsey has been responsible for the brief which I hope will commend itself to you favourably.

The Canadian Congress of Labour welcomes this opportunity to state its views on Bill 93. Some sections of this bill directly affect vital interests of the trade union movement. Others appear to threaten the liberties of the subject, for which organized Labour has always felt a special concern.

At the outset, there are two things we want to make clear. First, we are not here to echo anything any other organization has said. We are making our own representations, and, except where we explicitly say so, we are not supporting anybody else's. Certain organizations have had a lot to say about this bill. We are not here as a chorus for them or anybody else. Second, however, the mere fact that such organizations have criticized certain sections, and made certain objections to them, is not going to frighten us out of criticizing the same sections and making the same objections if we think it necessary.

In general, we think the Senate amendments have decidedly improved the bill. They have removed some of the most objectionable features of the original draft, and have made substantial changes for the better in other sections. We are particularly glad that the Senate made provision for appeals in contempt of court cases (section 8). This could be of considerable value in some labour cases. We are also glad that the Senate has restored the provision for a trial *de novo* on appeals from convictions by magistrates (section 727).

But we are sorry to have to add that the Senate left untouched the two sections which are most dangerous to trade unions (sections 365 and 372).

And I refer specifically to section 365 and 372 of the Code with which I will deal shortly. First, on the question of treason.

The CHAIRMAN: Would you like to read the section as in the bill? Would that be agreeable to the committee?

Some MEMBERS: Agreed.

The WITNESS: I refer specifically to section 46 subsection 1 paragraph (c). It reads: "Everyone commits treason who in Canada assists an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are."

Section 46 (1) (c) (treason).

This embodies substantially the provisions of the paragraph put into section 74 of the present Code in 1951. In effect, it *narrows* the pre-1951 section to apply only to an enemy at war with *Canada* (the old section covered the whole Commonwealth and Empire), and *widens* the offence to cover assistance to *armed forces engaged against Canadian forces,* even if no formal state of war has been declared. Narrowing the section to wars in which only Canada is engaged is certainly unobjectionable. Widening the offence to cover assistance to hostile armed forces in undeclared wars is, we think, also unobjectionable. Wars, nowadays, are often undeclared. The present war in Korea is an example. Clearly, a person who assists the North Korean or Chinese armed forces, against which Canadian forces are fighting, is just as guilty as one who assists an enemy which has been polite enough to declare war on Canada, and should be dealt with in the same way. We are glad to note that the assistance has to be assistance to the *armed forces* of the state concerned. This would seem to obviate most of the dangers which the paragraph has been alleged to present.

Section 46 (1) (*e*) of the original draft made it treason to "conspire with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada."

That is how the section read when it went to the Senate committee. Now I would like to read our comments on it.

By paragraphs (*f*) and (*g*), this would have extended also to conspiracy with any person to do such things and to forming an intention to do such things and manifesting that intention by an overt act. The Senate struck out this paragraph. We think the Senate was right, and we strongly urge that the paragraph should not be put back.

The original draft would have made it possible to condemn a person to death, or life imprisonment, for giving a civil servant in a Commonwealth or NATO country information likely to be prejudicial to the commercial interests of Canada!

The words as they appeared in the original clause 46 sub-section (1) paragraph (*e*) simply referred to interests; now, "interests" is a word which may have very particular connotations and it is certainly conceivable that it might rightly mean to the prejudice of the commercial interests of Canada. Therefore our submission is that it should not be held to be treason to communicate information which might be prejudicial, let us say, to the commercial interests of Canada.

The penalty was obviously fantastic, and the definition of the offence was dangerously sweeping. The dangerous key words were "interests" and "likely." "Interests" would cover a lot of things far less serious than "safety." "Likely" would have meant that it would not have been necessary to prove that the accused had any *intention* of harming Canada's interests or safety, but only that his action would be *likely* to have that effect. Paragraph (*e*) was therefore triply objectionable.

The Senate inserted a modified form of this paragraph in section 50 (1). On this we shall comment below.

Section 46 (2).

Subsection (1) of section 46 applies to *every* person, Canadian or not, who does any of the prohibited things *inside Canada.* Subsection (2) extends this to *Canadians* who do the same things *outside Canada.* If the definitions in subsection (1) are unobjectionable, this also is unobjectionable. If the original paragraph (*e*) of subsection (1) were put back in, subsection (2) would, of course, become objectionable, *pro tanto.*

Section 50 (1) (c)

This is merely a carry-over or a transplantation of the original clause 46 (1) (*e*) in the original draft; and it reads: "Everyone commits treason who conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada." It is not an exact duplication, inasmuch as the word "interests" has been omitted.

Section 50 (1) (c).

This is section 46 (1) (*e*) of the original draft with two important differences.

First, the punishment for offences under section 46 is death or life imprisonment. The punishment under section 50 is a maximum of fourteen years' imprisonment.

Second, the words "or interests" are dropped. This removes one of the two dangerous key words of the original draft.

We urge this committee not to put the words "or interests" in again.

But the other dangerous key word, "likely," remains. So the paragraph is still objectionable. It would still not be necessary to prove that the accused had any *intention* of prejudicing the safety of Canada; merely that his action would be likely to have that *effect.*

Besides, the "information" he communicated might be a matter of common knowledge, either among the general public, or among (for example) scientists in a certain field.

We therefore suggest that the paragraph be deleted, and the following substituted:

> Every one commits an offence who:
>
> (c) wilfully conspires with an agent of a state other than Canada to communicate information or to do an act with the intent that the communication of such information or the doing of such an act shall be prejudicial to the safety of Canada.

The point we make is that the onus be placed on the Crown of proving mens rea or guilty intent of committing an offence, and secondly, that the Crown be obliged to prove that the act is prejudicial to the safety of Canada and not merely likely to be prejudicial to the safety of Canada. Our position is that what is likely to be prejudicial to the safety of Canada becomes at once a matter of opinion, and opinions may vary. Therefore, before a person is convicted under this section, it should be established that the person has communicated information with the intent that it be prejudicial to the safety of Canada.

Sections 50 (v) (a) and (b), and (2).

This is a simplified form of the present section 76, except that it increases the penalty from a maximum of two years' imprisonment to a maximum of fourteen, and adds a new offence: inciting or assisting a subject of a state against whose forces Canadian forces are engaged in hostilities to leave Canada without the consent of the Government, unless the accused can prove that assistance to the hostile state or its armed forces was not intended.

The new offence just extends the present section 76 to cover undeclared wars. This seems unobjectionable.

We question, however, two things:

Now I would like to read section 50—another part as it were of section 50 subsection (1)—it says "everyone commits an offence who incites or assists a subject of a state that is at war with Canada, or a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are, to leave Canada without the consent of the Crown, unless the accused establishes that assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby."

> We question two things. We submit it is contrary to the established conception of criminal justice where the onus of proof devolves upon the accused only in the most exceptional cases and we submit this is not a case in which the onus should be shifted to the accused, placing the burden of proof on the accused, which we think is in general undesirable, and the sharp increase in the maximum penalty. We respectfully submit that the committee should carefully consider whether either of these features of the section is warranted.

Mr. DIEFENBAKER: Mr. Chairman, the onus is of a different type.

The CHAIRMAN: That is referred to in page one of your brief. The Senate inserted that form in this paragraph of section 50 (1) on which we shall comment. The major comment I think you have.

Shall we then discuss the presentation made so far. Is that agreeable, Mr. Wright.

The WITNESS: That is agreeable.

By Mr. Diefenbaker:

Q. I would like to ask a few questions arising out of the representations respecting section 50 (1) (*a*) and (*b*), and (2). I have gone over this and I think there are too many sections in which the onus is being put upon the accused, but I question whether or not the onus is on the accused under section 50 (1 (*a*) and (*b*), and (2) relating to "placing the burden of proof on the accused, which we think is in general undesirable".

Is not this in fact placing the accused in a position where he has a defence. If the onus is really on the accused to establish that assistance was not intended, to incite or assist a subject of a state with which we are at war the Act itself would prove intent. Suppose I decide to assist a subject of a state at war with Canada, I would be guilty, would I not?—A. Yes, but I submit respectfully, Mr. Diefenbaker, that the onus of proving the intent on the part of the accused should be an indispensable ingredient of the offence. That is to say an indispensable ingredient of the offence should be to prove that the accused intended to do what is punishable under the Act.

Q. But the very fact he did it, would not that in itself—how are you going to prove that intent? The person should know the natural consequences of this Act.—A. But if a person kills someone, the mere fact he has killed someone does not make him guilty of murder. The Crown must establish intent.

Mr. CARROLL: Not directly.

The WITNESS: But very often by way of circumstantial evidence. But it is the principle that we are objecting to, that there should be any onus imposed upon the accused at all of establishing his intent. The onus should be on the Crown.

Mr. DIEFENBAKER: I agree with that. Isn't this a matter of defence? When it is proven that a person assists somebody out of the country to serve, we will say, with the North Koreans, he then would be guilty of an offence. The intent, as Justice Carroll said a moment ago, would be presumed; it would be presumed that he intended to assist the enemy, but this gives him an opportunity, that even if he did that—it is not a matter of onus—it is allowing him to win an acquittal in the face of an unlawful act.

The WITNESS: I see your point. I was wondering if we could not find a common meeting ground simply by the insertion of the word "wilfully", and then there is not any onus imposed on the accused at all.

Mr. CANNON: I was going to say that I am of Mr. Diefenbaker's opinion in this case. I think that once the Crown has established the fact of inciting or assisting a subject of a state at war with Canada to leave Canada, then the burden of proof is shifted to the accused to prove that he did not intend, that he had no unworthy intention in doing that, and I think that is right. I think that once the Crown has established these facts in a case of a person assisting a person, the subject of a state at war with our country, that we should not also force the state or the Crown to prove the intention, but once these facts have been established I think it is perfectly right that the burden of proof should be shifted to the accused to prove that his intention was not objectionable.

Mr. ROBICHAUD: Would this not fall within the classification of a situation where it would be impossible for the Crown to establish intent? It is particularly and solely within the knowledge of the accused as to what he intended, and hence I agree with both Mr. Diefenbaker and Mr. Cannon that once the Act is proven, then the case is established and the burden shifts to the accused to prove something which nobody else can establish. It would mean that a presumption of guilt arises once the Crown succeeds in establishing that the accused did assist or incite someone to leave this country, who is a subject of a state at war with Canada.

The WITNESS: That is right. An indispensable ingredient of the offence should be proving that it was done with intent. It is common knowledge, it is basic to criminal law, that two things are necessary, proving the overt act and mens rea. The single point I make is that I hesitate to see the element of mens rea removed from the constitution of the offence.

Mr. LAING: Mr. Chairman, is it not a fact that the key words are "unless the accused establishes".

The WITNESS: That is correct, exactly.

Mr. LAING: I think that an accused, unless he establishes something, is going to find himself guilty. Are these words in the present Act?

The WITNESS: Not to my knowledge.

Mr. LAING: Is this a new departure in the Criminal Code?

The WITNESS: I believe Mr. Moffat might be in a better position than myself to answer that.

Mr. MOFFATT: It comes from section 76 (*a*)—incites or assists any subject of any foreign state or country at war with His Majesty to leave Canada without the consent of the Crown, unless the person accused can prove that assistance to the enemy was not intended, and provided that such inciting or assisting do not amount to treason.

The CHAIRMAN: Gentlemen, could I interrupt here. Could we get along with the brief. Our time is, to an extent, limited, although we do not want to cut it short.

Mr. DIEFENBAKER: These are very important sections.

Mr. NOSEWORTHY: There was a suggestion of including the word "wilfully". How would that affect the clause under discussion?

The CHAIRMAN: I was trying to make a suggestion. We are not going to make a decision at the moment. We want to get the benefit of the witnesses' opinions while they are here. Let us not lose ourselves in the trees.

Mr. NOSEWORTHY: Could we not have the point of view of the lawyer members of the committee—what is their reaction to that suggestion made by the Canadian Congress of Labour?

The CHAIRMAN: Would anyone care to comment on that? Mr. MacNaughton.

Mr. MACNAUGHTON: I have not anything to add to what was said by Mr. Diefenbaker and Mr. Cannon. It seems to me to be stretching the Code a little by inserting the word "wilfully". I do not see where "wilfully" does anything but make it a little easier for the defendant to be acquitted, and after all we are dealing here with treason.

Mr. MACINNIS: The delegation made a submission in connection with clause 46. Am I correct in my understanding of it, that the delegation does not object to clause 46 as it is in the bill before us, as it was passed by the Senate?

The WITNESS: That is right.

Mr. CARROLL: Did I understand the minister to say the other day that the amendments made by the Senate would not be interfered with here in this committee? Perhaps I was wrong in my understanding of it. I took him to have said that there would be no interference by the Justice Department with amendments made by the Senate.

Mr. MACINNIS: He could not give that undertaking to the committee.

The CHAIRMAN: What was it that was said, Mr. Moffat?

Mr. MOFFAT: The minister said he was going to introduce a provision, or at least he said he expected he would introduce something in substitution for what was first of all paragraph (*e*) of clause 46, which was transferred into section 50, and became paragraph (*c*), subsection (1) of that section—

> Conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada.

I think he said that he was going to submit a provision in place of that that would limit the provision to conduct which affected the safety of the country itself.

The CHAIRMAN: Do you think we can now pass along Mr. Diefenbaker?

By Mr. Diefenbaker:

Q. There was one question I wanted to ask Mr. Wright. At the foot of page 1, he is referring to section 50 (1) (*c*), and the brief reads:

> We therefore suggest that the paragraph be deleted and the following substituted:

A. Yes.

Q. And he dealt earlier with clause 46 (1) (*e*), where he referred to an act that would be prejudicial to the safety or interests of Canada. I think the removal of the words "or interests", on the face of it, would be a necessary act

unless my interpretation of the word "interests" would be cognate with safety, and the suggestion would make it read as follows:

> Wilfully conspires to communicate information or to do any act with the intent that the communication of such information or the doing of such an act shall be prejudicial to the safety of Canada.

Looking at the case of the Rosenbergs, they never would have been convicted had the American section equivalent to our treason contained the words "with the intent", and I will include in this May, who would never have been convicted in England, as I understand the situation. He said, "I have done these things not with the intention to prejudice the safety of the state but because I believe that this information, this atomic information, should be passed over to Russia in the interests of the commonweal among scientists."—A. That is a matter for the court to decide. The court either believed or disbelieved the story given by the accused, whether it came from the Rosenbergs or from May, or anyone else. I was thinking specifically of scientists when I suggested this amendment and I was thinking of a well-intentioned person—and we must assume most of them are well-intentioned, as most people in any section of the community are. A scientist submits a paper, say by way of private correspondence, to another scientist with respect to certain scientific information which, so far as he is concerned, is common knowledge among scientists, and he gives him that information thinking there is going to be an exchange of information between him and this other scientist. He may not know him, he may never have seen him, except that they read each other's papers in scientific journals. Well, suddenly the scientist finds himself being prosecuted and charged with treason, and I submit that we must be extremely cautious in the type of inroads being imposed on the subject.

Q. If we were to do as you suggest, the Crown could never establish that the intent was to be an intent prejudicial to the safety of the state.—A. Why?

Q. How would it prove that?—A. With much respect, sir, I submit that it can.

Q. How?—A. We are discussing hypothetical cases, of course, and there is some considerable danger in doing that, but it is simply a matter of evidentiary fact, the facts and the circumstances in each individual case. The circumstances might be that the information given to the other scientist was of a secret nature, that there was evidence that the person was told not to give his information out; another would be that the person had taken an oath of secrecy, and of course the Official Secrets Act would then come into the picture. But it comes down to a matter of taking each individual case and after hearing all the evidence, if the court is convinced that the person who did that did it with intent, I submit the amendment we suggest is not too broad.

Q. I do not like the work "likely", but I am afraid that your suggestion makes it so wide that anybody could take it upon himself to do it, whether or not the information would be prejudicial.—A. But *mens rea* is indispensable for every criminal offence.

Mr. CANNON: Well, then, it does not need to be put in the article if it is indispensable under the common law. If that is the case, you do not have to put it in the article.

The WITNESS: Possibly it is a reaction to the word "likely". We would like to play doubly safe in that the element of intent would have to be established.

Mr. CARROLL: I am like my friend Mr. Diefenbaker. I do not like the word "likely" in subsection (c) of clause 50 (1): doing an act that is "likely" to be prejudicial—why not say doing an act that "is" prejudicial to the safety of Canada?

The WITNESS: I would certainly go along with that.

The CHAIRMAN: You are talking of clause 50 (1)?

Mr. CARROLL: Clause 50 (1) (*c*), doing an act that is likely to be prejudicial to the safety of Canada.

Mr. ROBICHAUD: May I ask a supplementary question? The witness suggested a middle course, referring to clause 50 (1) (*a*), where you suggest inserting the word "wilfully". Where would you suggest the word "wilfully" should be?

The WITNESS: Everyone commits an offence who, wilfully (*a*) incites or assists.

The CHAIRMAN: Shall we pass along with the brief now?

Mr. CANNON: I am not sure that it would be a good thing to take it out.

The CHAIRMAN: Could we not discuss that among ourselves when we are revising the Act? We have heard what the witness has to say in connection with it.

Mr. NOSEWORTHY: While the witnesses are here, I would like to hear from the officials of the Department of Justice the reason for the increase in the penalty from two to fourteen years. What is behind that?

The CHAIRMAN: Would you like to answer that, Mr. Moffat?

Mr. MOFFAT: It is akin to the offence of treason. That is the reason they increased the penalty.

The CHAIRMAN: That is the maximum.

Mr. MOFFAT: That is the maximum, yes.

Mr. NOSEWORTHY: But is it the maximum that is increased from two to fourteen years?

Mr. MOFFAT: Yes.

The CHAIRMAN: Shall we get along with the brief? You are reading now from page 2 of the brief, section 52, sabotage?

The WITNESS: Yes, Mr. Chairman.

Section 52, sabotage

This is the present section 509A, inserted in 1951. It prohibits, under penalty of not more than ten years' imprisonment, certain acts, if done "for a purpose prejudicial to the safety or interests of Canada or the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada." The prohibited acts are: (*a*) to "impair the efficiency or impede the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing," and (*b*) to "cause property... to be lost, damaged or destroyed."

It has been claimed that this would prohibit strikes, since they would "impair the efficiency or impede the working of vessels," etc. There seems to be some question whether the courts would hold that a strike did "impair or impede" within the meaning of this section. A concerted withdrawal of labour is certainly not sabotage. But even if the courts did disregard what the marginal note indicates is the plain intent of the section, and held that a strike did "impair or impede," it would be necessary for the prosecution to prove that the strike was undertaken *"for a purpose prejudicial to the safety or interests of Canada or the safety or security" of allied armed forces in Canada.* In this section, it is not just "likely"; there must be *intention.*

On the other hand, the dangerous word "interests" does appear here. Even if the courts held that a strike "impairs or impedes", they could scarcely hold that any ordinary strike is undertaken for the purpose of prejudicing the safety of Canada or the safety or security of allied armed forces in Canada. But they might hold that it was undertaken for the purpose of prejudicing the *interests* of Canada.

We therefore suggest that the word "or interests" be struck out, and a proviso inserted to make it perfectly clear that a strike shall not be deemed to "impair or impede."

In other words, we think the revised clause is all right. The only thing we object to is that certain groups claim it might interfere with their right to strike, but we do not go along with that view. What we think is objectionable are the words "or interests", and if you go along with clause 50(1) (c), I think you also should think that "or interests" should be deleted here again.

The CHAIRMAN: Is it agreeable that we break at that point?

Agreed.

By Mr. Robichaud:

Q. Mr. Wright will agree that the words "or interests" were in the 1951 amendments?—A. Yes.

Q. Has anyone been unjustly penalized on account of these words in the 1951 amendment?—A. No, but that is not the point, sir, with all respect. If the word should not be there it should not be there at all, even if it has been on the statute books for one year or ten.

Mr. MACINNIS: Have there been any prosecutions under that amendment?

Mr. ROBICHAUD: I am asking you a question, Mr. Wright: Has anyone been penalized on account of the word being in the 1951 Act?

The WITNESS: No. The question is this, is there a possibility, and I submit there is.

Mr. DIEFENBAKER: There have been no prosecutions. As a matter of fact, that word "interests" has a dangerous import unless the word can be defined by the court. Mr. Justice Carroll should be able to give us a little light on that. If it was defined in the light of the word "safety", there is no danger. It could very well have the effect of interfering with the right to strike, and that was never intended, and I am sure that it is obvious that it was not, but this section has never been interpreted since 1951.

Mr. MOFFAT: I have not heard of any case.

Mr. DIEFENBAKER: If the words "or interests" were removed, then would you still claim that there would have to be a further section, explanatory or no, removing from it the right to strike, and it should not be applied in any case with the right to strike. Would you agree with that if the words "or interests" were removed?

The WITNESS: There would appear to be less necessity for a proviso of that kind if the words "or interests" were deleted, but I think it might be not from an excess of caution, but I think it might be a safe limit to insert a proviso of that kind so as to make sure this would not interfere with the right to strike.

By Mr. Carroll:

Q. There would be no chance of that operating under the provincial labour codes, would there?—A. You have brought up a point that I intend to deal with at a later stage, that if a proviso of that kind were put in, in view of the fact that the administration of justice is under provincial jurisdiction, there would not be any possibility of the section being absued.

Q. That is, in cases where a strike is allowed under our legislative authority?—A. Yes.

Mr. MACINNIS: That is a point I was going to bring up, that it would have to apply only to illegal strikes. A proviso would have to be so drafted that it would make it clear that it would only apply to illegal strikes.

The WITNESS: This section is dealing with sabotage now. I do not want to take too long on this or to digress too much, but I would not entirely go

along with you because the clear implication seems to be if you have an illegal strike it might amount to sabotage, and I would not subscribe to that.

Mr. CANNON: That is where we disagree. An illegal strike may be a matter of sabotage.

The WITNESS: It is a matter of intent. If it was a strike affecting the safety of Canada, it could be sabotage.

By Mr. Robichaud:

Q. You would not argue that the same argument that you put up with regard to the words "or interests" in the treason clause would apply with the same force to the sabotage clause?—A. Yes, I do.

Q. I agree with you that in the treason clause the words "or interests" may mean commercial interests, and hence would be rather out of place in the treason section, but will you explain why you give the same import to the word "interests" in the sabotage section?—A. Because the word "interests" means the same whether it is in the treason or the sabotage section.

Q. Not in my submission.—A. I submit that no matter in which section the word appears it has the same meaning. "Interests" can mean only one thing, but it might mean Canada's economic interests, or Canada's financial interests, and it becomes a matter of opinion as to whether or not it is contrary to the interests of Canada, and as long as it is merely a matter of opinion no criminal or penal implication should attach.

Mr. LAING: How would you cover security interests? What if we said "security interests"?

The WITNESS: I think if you use the word "safety" you cover it.

Mr. CANNON: You already have the word "safety".

By Mr. Browne:

Q. Suppose this offence takes place in France. Suppose that somebody sets fire to an aeroplane or an aeroplane hangar in France, property belonging to Canada. Is there an offence under this section? It is prejudicial to the interests of Canada.—A. I do not know if there would be any extraterritorial jurisdiction there.

Q. That is what it is intended to apply to, is it not? There must be some provision of this Code covering government property outside the country. We are protecting foreign naval and military property in this country. Are we protecting our own military and naval property outside the country?—A. I do not object to that.

The CHAIRMAN: Do you not think we have probably exhausted the knowledge of the witnesses on this particular subject?

Mr. DIEFENBAKER: Just one other question. We do not want to exhaust him, but he is giving us the benefit of his considered views. We are not taking an adverse attitude on the question, we are trying to get information and he is giving it very well.

The WITNESS: I am delighted at the interest that is being taken in this brief. I am certainly much happier to be asked these questions than I would be to merely read the brief and go home.

By Mr. Noseworthy:

Q. I wonder if the witness would still insist on the words "or interests" being omitted if a proviso such as he suggests were inserted. I would like to know the relative importance of the two.—A. It almost becomes a matter of policy, on which I am not really disposed to speak, but I think I would be speaking the opinion of the officials of the Canadian Congress of Labour—

after all I am here in a legal advisory capacity—when I say that it would seem to me that the Canadian Congress of Labour is interested not only in matters which directly affect trade unions, but they are interested in all matters which affect Canadian citizens as such, and I would submit that it is dangerous—and I say this to Mr. Diefenbaker and other members of the committee, and it was Justice Carroll, I think, who intimated as much—to leave the words "or interests" in there, because it may be a matter of opinion as to what is contrary to the interests of Canada.

Q. Regardless of whether the proviso is in there or not?—A. Yes.

Q. Is the witness prepared to suggest a proviso that would be satisfactory? —A. Unfortunately, I am not prepared to do that, but it would be a simple proviso, say, something like this: notwithstanding anything contained in this section, it shall not apply to a dispute between employers and employees. I would not want my remarks to be interpreted as a suggested text, but the proviso would be something along this line.

Mr. MACINNIS: Referring back to clause 52 (1) (*a*). Would the word "security" that is in clause 52 (1) (*b*) be satisfactory, so that 52 (1) (*a*) would read: "safety or security of Canada"?

The WITNESS: Yes, it would sir.

Mr. BROWNE: Let us suppose that the offence does not really affect the safety of Canada. Supposing there was sabotage on the Grand Trunk Western rail line going to Chicago from Port Huron. That is Canadian property in the United States. As a result it would hold up that line perhaps for a week or two. Suppose it is actual sabotage deliberately done to injure the interests of Canada. It does not affect the safety or security, but it does affect the interests of Canada.

The WITNESS: That is covered by section 52 (1) (*b*)—"Everyone who does a prohibited act for a purpose prejudicial to the safety or security of the naval, army or air forces of any state other than Canada". No, it is 52 (2) (*b*): "Everyone who does a prohibited act for a purpose prejudicial..." and "prohibited act" means an act or omission that causes property, by whomsoever it may be owned, to be lost, damaged or destroyed.

The CHAIRMAN: What section are you reading?

The WITNESS: Section 52 (2) (*b*).

By Mr. Browne:

Q. Does that section not apply in Canada?—A. If the parliament of Canada wants to make it apply elsewhere and it is within their jurisdiction to do so, they can.

Q. It seems to me you could not have any prosecution in Canada under that section.—A. If someone does something which causes destruction to property in Canada, by whomsoever it may be owned, causing that property to be lost, damaged or destroyed, it certainly would.

Q. That is only as far as the prohibited act is concerned. I will make it simpler. Supposing there was destruction of a stretch of railway line in the Rocky Mountains that could hold up the transcontinental railway service for a month. That might be said not to prejudice the safety of Canada, but it would certainly prejudice the interests of Canada.—A. I submit that that type of offence should be explicitly covered, and I am going to deal later on in my brief with something that is almost to that point, under the heading of mischief. That type of offence could be covered by several different sections, and is already covered under the present Code.

Q. In the United States there were several very serious crashes around New York, where thousands of people are using the trains. You remember

last year there was a bridge that fell over and hundred of people were killed and hundred injured. Well, that did not interfere with the safety of the United States, but it certainly interfered with the interests of that country.

Mr. DIEFENBAKER: That is a mischief.

The CHAIRMAN: Could we go along with the brief now?

The WITNESS: May I just read section 517 of the present Code:

> Everyone is guilty of an indictable offence and liable to five years imprisonment who, in manner likely to cause danger to valuable property, without endangering life or person (*a*) places any obstruction upon any railway, or takes up, removes, displaces, breaks or injures any rail, sleeper or other matter or thing belonging to any railway; or
>
> (*b*) shoots or throws anything at an engine or other railway vehicle . . .

Mr. BROWNE: That is without doing any injury; but there must be something behind that.

The WITNESS: It provides "in manner likely to cause danger to valuable property".

The CHAIRMAN: That is not under discussion at the moment in the bill.

Section 54 (desertion, etc., from the armed forces).

This is the present section 82, inserted in 1951. The pre-1951 section 82 dealt with *persuading or procuring* desertion from *His Majesty's* forces, or trying to do so; and with knowingly concealing, receiving or assisting any deserter from such forces. The present section drops persuading or procuring desertion, narrows the offence to *Canadian forces,* and puts *absence without leave on the same footing as desertion.* It also raises the penalty (not unreasonably, in view of the fall in the value of money since 1927), and provides that no proceedings shall be instituted without the consent of the Attorney-General of Canada.

Two questions arise here:

First, why is "persuading or procuring" desertion no longer an offence? If there are good reasons for dropping it, why does section 57, dealing with desertion or absence without leave from the R.C.M.P., explicity say: "procures, persuades or counsels"?

Second, why is absence without leave put on the same footing as desertion? We have been advised that the distinction between the two is often purely technical, and that the person who assists or harbours the culprit will have no means of knowing his precise status and will be equally guilty whether the man has been classified as a deserter or has just been a.w.o.l. for the same length of time. But we suggest the point should be cleared up.

The CHAIRMAN: Would you like to clear it up now, Mr. MacLeod?

Mr. MACLEOD (Department of Justice): The answer is, Mr. Chairman, that just before section 82 was revised in 1951, a new National Defence Act had been passed which covered the offence of persuading or procuring desertion from the forces, so there was no need of any duplication.

Mr. DIEFENBAKER: Would there not be an offence anyway, whether it said it or not, for aiding and abetting? Would not that be the same offence?

Mr. MOFFAT (Department of Justice): Aiding and abetting desertion?

Mr. DIEFENBAKER: Yes.

Mr. MOFFAT: It would be covered, but the reference was omitted here because it is in the National Defence Act; it is covered therein by virtue of section 69.

The CHAIRMAN: The witness, Mr. Wright, will continue, and the members of the committee will please hold their question.

Mr. ROBICHAUD: Section 54 in the 1952 amendment covers only offences which were not covered in the National Defence Act.

The CHAIRMAN: Now, Mr. Wright.

The WITNESS:

Section 57 (desertion, etc., from the R.C.M.P.).

This is the present section 84, inserted in 1951, with "wilfully" added by the Senate, which we think is an improvement. Without that word, it would not be necessary to prove intent.

Three questions arise here.

First, why is it an offence to "procure, persuade or counsel" desertion or absence without leave from the R.C.M.P., but not from the armed forces?

That point has been somewhat dealt with by Mr. MacLeod. This suggests that desertion or absence without leave from the R.C.M.P. is more serious than from the armed forces. This seems odd.

Possibly it might not seem so odd now that we have Mr. MacLeod's explanation.

Second, again, why is absence without leave put on the same footing as desertion?

Third, why is there no provision here (as there is for the armed forces) that no proceedings shall be instituted without the consent of the Attorney-General of Canada? The proviso in section 54 is presumably there to prevent frivolous prosecutions. Isn't it equally necessary in section 57? Its absence again seems to suggest that desertion or absence without leave from the R.C.M.P. is more serious than from the armed forces.

I think the point we are making there is quite plausible. If you are required to get the consent of the Attorney-General of Canada in order to prosecute a case of desertion from the armed forces, then we submit it should be a condition precedent to a prosecution for desertion from the R.C.M.P. that the consent of the Attorney-General of Canada be required.

Mr. DIEFENBAKER: Is there not a difference in the fact that it is very difficult for the Crown to establish intent in a particular case? Let us take the case of a person who is absent without leave. But when he is absent for a period over 28 days, then the intent becomes apparent that it is desertion. So no harm is done there.

The WITNESS: I do not object too strenuously, but I do urge that a similar safeguard be inserted, namely, that the consent of the Attorney-General of Canada be required.

Section 62 (seditious offences).

This is the present section 134, with a much higher penalty. Down to 1951, the maximum was two years; then it became seven; now it is to be fourteen.

Why?

This is the present clause 134 but with a much higher penalty. Why should that be?

Mr. CANNON: It is clause 135, is it not?

The WITNESS: I said clause 134. That seems to cover it. The present clause 134 says "Everyone is guilty".

Mr. CANNON: There is a typographical error in the bill.

Mr. BROWNE: That arises out of the change which was made in the Senate. I have the original draft here.

The WITNESS: I think it is correctly stated in the brief, and that clause 134 is right. We ask what the justification or reason is. There may very well be a reason which may not be apparent to us for the special increase in the penalty clause.

It may be arguable that the 1951 increase was necessary because of the vast change in world conditions since 1927, or even since the repeal of the old section 98. Even that is questionable. But what drastic change in the situation in the last year-and-a-half makes it necessary to double the maximum penalty now? We are not, of course, suggesting that sedition is a good thing, or even a trifling offence. But presumably the Government's "object all sublime" is "to make the punishment fit the crime." Does this do it?

11. We are glad to note that the Senate struck out *section 62 of the original draft (libel on the head of a foreign state)*, under which anyone who made rude remarks about Mr. Stalin or Mao-Tse-tung or Mr. Rakosi or Mr. Gottwald or Herr Pieck could have been jailed for two years. We think foreign states, Communist or otherwise, can very well look out for themselves.

Section 63 reads as follows:

> 63. (1) Every one who wilfully (*a*) interferes with, impairs or influences the loyalty of discipline of a member of a force, (*b*) publishes, edits, issues, circulates or distributes a writing that advises, counsels or urges insubordination, disloyalty, mutiny or refusal of duty by a member of a force, or (*c*) advises, counsels, urges or in any manner causes insubordination, disloyalty, mutiny or refusal of duty by a member of a force, is guilty of an indictable offence and is liable to imprisonment for five years.
>
> And, "member of a force" is defined as including: (2) In this section, 'member of a force' means a member of (*a*) the Canadian Forces, (*b*) the naval, army or air forces of a state other than Canada that are lawfully present in Canada.

Section 63 (offences in relation to armed forces).

This section originally applied to the R.C.M.P. as well as the armed forces (like the present section 132A, passed in 1951). The Senate struck out the R.C.M.P. We think the Senate was right.

The original draft dropped the word "wilfully," which was a safeguard to the accused against prosecution for something which might have had the incidental effect of impairing discipline, etc. (for example, a pacifist leaflet, not even intended for members of the armed forces, but falling accidentally into their hands). The Senate restored the word. We think the Senate was right. It is clearly undesirable to prosecute people under this section unless they have deliberately set out to commit the offences in question.

Some people have objected to putting allied armed forces in Canada on the same footing as the Canadian forces. We do not think this objection is well founded. If the allied forces are here legally, they are here at the express invitation of the Canadian people for the defence of the Canadian people, and it is as much a Canadian interest that their discipline should not be interfered with as if they were part of our own defence forces.

Now, gentlemen, I come to what we, in the Canadian Congress of Labour, regard as being the two sections which most seriously affect organized labour as such. I mean sections 365 and 272.

Section 365 reads as follows:

> 365. Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be (*a*) to endanger human life; (*b*) to cause serious bodily injury; (*c*) to expose valuable

property, real or personal; to destruction or serious injury; (*d*) to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or (*e*) to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway, is guilty of (*f*) an indictable offence and is liable to imprisonment for five years, or (*g*) an offence punishable on summary conviction.

Section 365 (criminal breach of contract).

The explanatory note in Bill 93 conveys the impression that this section is the same as the present section 499. We would like to say definitely that this is not so. The present section 499, in the main, provides for punishment for breaches of contract by persons who come *within the employer class;* e.g., breach of contract to supply a city or any other place with electric light, power, gas, or water; breach of contract by a railway company to carry Her Majesty's mails; breach of contract by a municipal corporation or authority or company to supply light, power, gas or water to any municipality, etc. Only subsection (1) of the present section 499 bears any resemblance to the new section 365. But the new section reads very differently, and has connotations of the most alarming kind for organized Labour. It can only be aimed at the working class, and we are unequivocally opposed to it.

For one thing, this section embodies a legal concept not found elsewhere in our law: that a person can be *prosecuted* under the Criminal Code for breach of a *civil* contract. Traditionally, breach of a civil obligation involves the right to seek a remedy in the *civil* courts; for example, a right to sue for damages, or to restrain by injunction. Section 365 provides that in certain circumstances breach of contract, a *civil* matter, shall also be *punisable* by a court of competent *criminal* jurisdiction. This is a principle which, if admitted at all, should be admitted only because of the most clear and overwhelming public necessity, and confined within the narrowest possible limits. No such necessity has been shown in this instance, nor is the principle so confined.

On the contrary, the terms of the section are sweeping: far more so than those of the present section 499 (1) (*a*). The present section 499 (1) (*a*) is embodied in the new 365 (*a*), (*b*) and (*c*). But the new 365 then add: "(*d*) to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or (*e*) to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway that is a common carrier."

We submit that this a new, important, and, in our opinion, dangerous.

Collective agreements are, under present labour legislation, binding upon the employer, the trade union as bargaining agent, and the employees represented by the trade union. It is conceivable that under section 365 employees in any industry covered by the section could be prosecuted for the unauthorized act of a union executive; or conversely, that a trade union could be prosecuted as a result of a wild-cat strike.

The worst feature of the section, however, is that under it a union and its members could be impaled on the horns of a dilemma by an unscrupulous employer (and unfortunately there are some). Such an employer might deliberately try to goad a union into a strike.

I would ask you not to regard this as being merely hypothetical. These things have happened and they have happened recently. There are many, many instances of them.

He might refuse to honour his contractual obligations with a union during the life of an agreement. The union and the employees would

then have to choose between putting up with intolerable conditions or being severely punished under section 365. It is important to note that the Dominion Industrial Relations and Disputes Investigation Act and the corresponding Acts in nine of the ten provinces provide specific penalties for illegal strikes. Section 365 would impose additional, and if the proceedings were on indictment, much heavier penalties, in the industries it covers.

The Canadian Congress of Labour submits that an additional subsection should be added to section 365, such subsection to read as follows:

> (2) Nothing contained in this section shall be deemed to affect any breach of a collective agreement resulting from a dispute between an employer and a bargaining agent on behalf of a group of employees.

The Congress has no reluctance whatever in recommending the addition of the above subsection. In so doing, the Congress does not seek special treatment for trade unions. The Dominion legislation (The Industrial Relations and Disputes Investigation Act) and provincial labour legislation in every province, except Prince Edward Island provide for the punishment of trade unions as well as employer for breach of any prohibited acts involved in the field of industrial relations. The prohibited acts are specific in each of these labour enactments and are designed to take care of all contingencies. In addition, labour legislation across Canada provides for a safeguard against executive or administrative abuse by providing that no prosecution shall be instituted without obtaining the consent of either the appropriate Minister of Labour or Labour Relations Board. For example, the Industrial Relations and Disputes Investigation Act provides in section 46 (1) thereof, that "no prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister." The Dominion Act specifically provides that there shall be no strike vote or strike unless and until conciliation services of the Department of Labour have been fully utilized (section 21) and it also prescribes strikes as well as lockouts while a collective agreement is in force and provides for penal consequences to the union and any person participating in the infraction of any of the provisions of the Act. We submit that the Parliament of Canada has dealt with the situation *specifically* in the Industrial Relations and Disputes Investigation Act. The provincial Legislatures have done likewise. There is no evidence that this labour legislation has broken down, or led to grave abuses which can only be met by enactment of the proposed section 365 of this bill. On the contrary, the Dominion Minister of Labour told the House of Commons on February 3 last that the Industrial Relations and Disputes Investigation Act was, in general, working very satisfactorily (*Hansard*, p. 1579).

Speaking in the House of Commons the hon. Minister of Labour said as recently as February 3:

> By any fair standard I think it will be agreed that our Labour Relations Act is working out well.

As far as we know, the provincial Governments are equally satisfied with their Labour Relations Acts. In short, this new and very drastic legislation, as it stands, is unnecessary, unwarranted and dangerous. The dangers can be removed only by some such amendment as the Congress proposes.

We have been assured unofficially from various sources that this section was not intended to take care of situations arising from relations between employers and trade unions. Assurances of that kind have been given. If this

is the case, then the Government should have no objection to stating that principle clearly and without equivocation.

The danger of this section is much increased by the drastic increase in the penalties. Even if the present section 499 (1) (*b*) and (*c*) could be held to cover only the same ground as the new 365 (*d*) and (*e*), the increase in the penalties would make the threat to workers and their unions far more imminent and serious. The temptation to prosecute would be far greater because the consequences would be so much more crippling to the victims. Under the present section 499, the penalty is not more than $100 or three months' imprisonment, with or without hard labour; under the new section 365, the penalty is not more than $500 or six months' imprisonment or both (on summary conviction), or not more than *five years'* imprisonment (on indictment). This increase in the penalty alone, we submit, is enough to condemn the section.

The WITNESS: The point we make is that we object to the principle of a breach of civil contract being punishable by way of a criminal prosecution. Trade unions are made up of ordinary human beings with all of the human frailties. If it is an illegal strike that we are worried about, then clearly it is covered by existing legislation; it is covered by our own Federal Act, the Dominion Industrial Relations and Disputes Investigation Act, and it is covered in every province of Canada except Prince Edward Island. The legislation is there and it is dealt with specifically. It is to be administered by men who presumably are trained for the purpose of dealing with the settlement of industrial disputes, and we submit that there is no place in the Criminal Code for anything which could conceivably be used for the purpose of punishment of an illegal strike; and certainly the section is capable of that interpretation.

The CHAIRMAN: Shall we break at this point and ask questions?

Mr. MACINNIS: Could this section have been used if a railway strike had taken place recently when negotiations between the operating employees and the company broke down?

The WITNESS: I do not think it could have been used there because, to my knowledge, there was not any breach of contract, wilful or otherwise.

Mr. DIEFENBAKER: "Wilful" is the qualifying word.

The WITNESS: But if there had been a breach of contract—let us take a hypothetical case, where there had been a breach of contract; then the breach could have been punished in this way.

> 365. Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be...
>
> (*e*) to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway...

The CHAIRMAN: Mr. Laing?

Mr. LAING: I think Mr. MacInnis' question was not "would it have been used", but "could it have been used?"

Mr. MACINNIS: I did not take note of the first words here which I should have done.

Mr. LAING: He used only one example; but suppose there was a crisis such as that but on a provincial basis; there my question would be: could it be used?

The WITNESS: In my view it certainly could be used, if it resulted from a wilful breach of contract.

Mr. LAING: With respect to this wilful breaking of a contract, I suppose you are thinking of cases where the severance is involuntary on the part of the individual for a variety of causes?

The WITNESS: I am taking the worst possible case from labour's point of view. Suppose that a trade union wilfully breaks a contract, a collective agreement. I am putting it on that view.

Mr. CARROLL: Perhaps Mr. MacLeod or Mr. Moffat might explain the reason for this change in the particular section.

Mr. CANNON: Before that, I would like to ask one short question: were all these representations that you just made to us in the brief made to the Senate Committee?

The WITNESS: No. There were no representations. No appearance was made by us before the Senate Committee.

The CHAIRMAN: Are we getting into a discussion as to the terms of the bill or the policy behind it, or could this witness give us some assistance on this? I do not think that Mr. Moffat should be asked that question at the moment. But perhaps when we are discussing the bill, he might answer it.

Mr. NOSEWORTHY: The last sentence in this section of the brief dealing with clause 365 reads:

> This increase in the penalty alone, we submit, is enough to condemn the section.

I would like to ask the witness if that would apply to the clause if the additional sub-clause which he suggests were added, or does it apply to the clause in any event?

The WITNESS: It may seem somewhat uncharitable of us, but if the sub-clause is added, we are not particularly concerned either way.

Mr. ROBICHAUD: To my knowledge section 499 of the Code contains the words "made by him" after every reference to the word contract. These words "made by him" have been omitted from the present draft under clause 365. What are your views on this omission?

The WITNESS: I have not really considered that; I do not know why the words were omitted.

Mr. ROBICHAUD: Neither do I.

Mr. DIEFENBAKER: That is why I thought that Mr. Carroll's question was very opportune. An omission of these words "made by him" must have been done on purpose, and it opens the field of collective bargaining, as I see it. That is significant, as I see it, the dangerous omission of these words "made by him". If they were in the clause, then most of your argument as to the dangerous nature of this change would be removed.

The CHAIRMAN: Perhaps Mr. MacLeod might have a word to say.

The WITNESS: Not quite, sir. We are getting into ticklish legal concepts. But suppose I am a trades union official who has signed a collective agreement on behalf of a trades union. I presume your point is: that Joe Doakes, if he breaks it, could not be prosecuted.

Mr. DIEFENBAKER: As it read before, if an individual made a contract with me to do certain work, let us say, to look after my factory, and do certain specified work, and then he wilfully broke his contract with the following results of endangering human life, or bringing about bodily injury or damage to valuable property and so on, he was guilty of an offence. But any removal of those words extends the field so that every collective bargaining agreement, I suggest, that causes a strike in the enforcement of the contract will give rise to the penalty which used to prevail against the individual who did so, and therefore it has been extended to cover the whole field of collective bargaining by the removal of those words, whether intended or not.

Mr. MACLEOD: My understanding of this is subject to correction by Mr. Moffat; these words did not appear when the section was originally enacted

sometime around 1907; but when the statutes of Canada were revised and consolidated in 1927, the revision commissioners put the words in. Therefore this is merely putting the clause back with the words that it had when it was originally enacted.

Mr. MACINNIS: In a collective agreement, is not every member who is a part of that collective agreement supposed to have made a contract as well as the collective organization, and does that not take care of Mr. Diefenbaker's point?

Mr. CANNON: The union makes a contract for each one of its members.

Mr. MACINNIS: Then each contract is a contract made by him?

Mr. CANNON: That sounds well.

The WITNESS: I just want to point out that section 365 refers to any contract, to the breach of any contract—"Everyone who wilfully breaks a contract, knowing. . ." Section 499 in the present Act is not nearly as broad as that. Section 499 deals specifically with specific industries—499 (*b*), the marginal note is self-explanatory, "wilfully breaking a contract connected with supply of power, light, gas or water"; 499 (*c*), the marginal note, "wilfully breaking contract with railway under agreement to carry mails". That is, if I have a contract to carry mails, either with the Canadian National or the Canadian Pacific Railway, and I break it, I am exposed to prosecution. Section 499 (2)—"municipality or company supplying light, power, gas or water, wilfully breaking contract", or 499 (3)—"railway company breaking contract". You will see that section 499 relates specifically to certain industries.

By Mr. Cannon:

Q. Section 499 (*a*) is very general.—A. It certainly is.

Q. So we do not change the law.

Mr. ROBICHAUD: We do, in my submission, change the law, and materially so, because every specific instance referred to in the marginal notes always carries after the word "contracts" the words "made by him". Mr. MacLeod has given some explanation that the change was made in 1927, but is it not a fact that in 1927 there were more unions than there were in existence in 1903, and that provision might have been a blanket protection for unions? In 1927 those words were included, but we are deleting them now. When the union signs that contract, the union member is bound by it.

Mr. MACDONALD: Individually and collectively.

The WITNESS: The Industrial Relations Act—

Mr. DIEFENBAKER: He is bound by the contract made by the collective agency, but it was not made by him.

Mr. MACINNIS: Could you say it was made by him in the sense it was made by his agents?

Mr. DIEFENBAKER: It does not say that.

Mr. LAING: If he broke it, the result would be the same.

Mr. ROBICHAUD: Suppose that it is not the case of a union. Suppose Mr. Diefenbaker makes a contract and I am his employee. I break the contract. Now, under the section I am responsible. I could be prosecuted, and it is my submission that the import, the major import of the words included in the 1927 revision exempted the employee.

Mr. LAING: We are discussing the implication on the unions.

The CHAIRMAN: Are there any further questions you would like to submit to the witness?

The WITNESS: In connection with the observation made by the gentleman who spoke last, Mr. Laing, we are discussing the implications on the union,

and I think we have tried to impress upon you the fact that this is intended to be a very reasonable approach to the subject. Section 499 deals specifically, with the single possible exception of subsection (*a*), with breaches of contract and I say, for lack of any other terminology which does not readily come to my tongue, refers only to breaches by what might be called the employer class. For instance, subsection (*b*) of section 499 says:

> Everyone is guilty of an offence . . . who . . . being bound, agreeing or assuming, under any contract made by him with any municipal corporation or authority, or with any company, to supply any city or any other place, or any part thereof, with electric light or power, gas or water, wilfully breaks such contract knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of that city or place or part thereof, wholly or to a great extent, of their supply of power, light, gas or water;

To begin with, clearly it does not envisage prosecution of unions or employees, and it is specific in every ingredient of the offence it has specifically set out. Now, compare that with the language of subclause 365(*d*):

> Everyone who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be (*d*) to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, . . .

It has an entirely different meaning.

Mr. MACINNIS: I think it was Mr. Diefenbaker who said or thought that the insertion of the words "made by him" would take care of the objections raised.

Mr. DIEFENBAKER: I just asked their opinion.

Mr. MACINNIS: I would take it that the delegation do not agree with that, I believe an amendment such as you propose would be necessary to assure that this would not apply to labour contracts.

The WITNESS: Yes, our suggested amendment can be stated quite bluntly in that way. I assume that the parliament of Canada does not intend to use this as something that can be used against or to prosecute trade unions or anything resulting from an industrial dispute. If I am correct in that assumption, then I respectfully submit there cannot be any reason why the parliament of Canada should not say so.

Mr. DIEFENBAKER: Just to clarify and leave no doubt on my stand, and I know Mr. MacInnis did not intend to leave me in a false light, I was pointing out that if these words were there, difficulty would be removed because they had been in the statute for years and years and there has been no prosecution of a trade union under the section as it was, with the words "made by him", but I certainly agree that if assurance is to be made doubly sure, this amendment would cover it, and I believe it should be accepted.

Mr. MACINNIS: I want to assure Mr. Diefenbaker that I have far too much respect for him as a lawyer to attribute something to him that he did not say.

Mr. NOSEWORTHY: Is it not true that the changes which clause 365 introduces render the section more dangerous, even with the inclusion of the words "made by him"? That is, the old section is so changed that the conditions introduced by clause 365 create an entirely different situation from that which existed under section 499, and even though there were no prosecutions under section 499, there might more easily be prosecutions under clause 365.

Mr. DIEFENBAKER: That is the point I was trying to make.

Mr. CARROLL: The penalty in this case is five years under one section. Of course you cannot put a union in jail, so this is one of the cases that would be covered by what the statute says, where corporations who have been found guilty of an indictable offence are fined. They may fine a corporation.

Mr. MOFFAT: If it is an incorporated company.

Mr. CARROLL: Well, this is incorporated. Our people are incorporated. What I am suggesting here is that this section is aimed at persons more than at the unions themselves.

Dr. FORSEY: If I might just underline what our counsel has said by comparing the terms of the present section 499(1) (*b*) with the terms proposed in clause 365(*d*). Under section 499(1) (*b*)—"Everyone is guilty of an offence . . ." and so forth, ". . . who being bound, agreeing or assuming under any contract made by him with any municipal corporation or authority, or with any company, to supply any city or any other place, or any part thereof, with electric light or power, gas or water". Now, there it refers to some person or corporation who specifically undertakes to provide a city with light, and if he breaks the contract he is subject to certain penalties. The description is of a specific contract for a specific purpose. Under clause 365(*d*)—"Everyone who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be (*d*) to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water".

Now, I may be a trade unionist. I have not made a contract to supply a city with light. I have made a contract to perform certain services for my employer, who in turn has made a contract to supply the city with light. Now, under clause 365(*d*), everyone who wilfully breaks any contract, knowing or having reasonable cause to believe that the probable consequences will be to deprive the inhabitants of the city, and so forth, of their supply of light, is guilty of an offence. In the one case it is perfectly clear that the offence applies to the person who has made the specific contract. Now, it is anybody who has made any contract the breach of which would, incidentally, if I may say so, have the effect of depriving a city of its supply of these services.

Mr. CANNON: It might apply to a contract of employment.

Dr. FORSEY: Yes, precisely.

The CHAIRMAN: Will we go along to the next presentation?

The WITNESS: This is the last section we deal with in this brief, clause 372, which is the offence of mischief. Clause 372 reads as follows—but may I merely interject that while not certainly minimizing the danger of clause 365. If anything this is probably the most objectionable section in so far as we are concerned:

> 372. (1) Every one commits mischief who wilfully (*a*) destroys or damages property; (*b*) renders property dangerous, useless, inoperative or ineffective; (*c*) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property; (*d*) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.
>
> (2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.

The rest of it we can deal with later.

Section 372 (mischief)

This is appropriately named: it is one of the most mischievous sections of the whole bill. With section 373 (which limits the scope of 372 in cases where actual danger to life is not involved, or where the destruction of, or damage

to, property is not more than fifty dollars), it purports to consolidate or condense no less than sixteen sections and part of a seventeenth in the present Code, many of them long and elaborate. All the present sections are specific; the new section 372 is general and sweeping, vague and ambiguous. In the attempt to cover a multitude of sins in a few lines, the drafters have exposed the individual to impossible hazards.

The present Code, section 96, provides for life imprisonment for those "who, being *riotously and tumultuously assembled* together to the *disturbance of the public peace, unlawfully and with force demolish or pull down,* or *begin* to demolish or pull down, any *building,* or any *machinery, whether fixed or movable,* or any *erection* used in *farming land,* or in *carrying on any trade or manufacture,* or any *erection* or *structure* used in conducting the business of any *mine,* or any *bridge, wagonway or track for conveying minerals from any mine.*"

Nothing is left to chance.

Everything is carefully defined: the precise acts, the precise manner of doing them, the precise objects damaged.

The new section 372 does not define the acts, or the manner of doing them, or the objects involved. It just says *any* wilful destruction or damage, *any* property wilfully destroyed or damaged in *any* way, *any* wilful obstruction, interruption or interference with the lawful use of *any* property. If it endangers life, life imprisonment; if it destroys, damages, or obstructs, etc., the use of, private property, not more than five years; if it destroys, damages, or obstructs, etc., the use of public property, not more than fourteen years.

The distinction between actions which are dangerous to life and those which are not is reasonable; so, probably, is the distinction between public and private property; and the limitations provided by section 373 are certainly salutary. But the total lack of distinction or limitation otherwise is the reverse of reasonable or salutary. *Riotous and tumultuous* destruction of or damage to the *particular kinds* of property specified in section 96 is clearly a serious offence; *other* kinds of wilful destruction or damage to *other* kinds of property may be much less serious, even if they cause more than fifty dollars' damage.

Section 97 of the present Code provides a penalty of not more than seven years' imprisonment for riotous and tumultuous injury or damage to any of the kinds of property specified in section 96. These acts also would come under the new sections 372 and 373, and the same comments apply.

Section 238 (*h*) of the present Code—part of a section dealing with vagrancy—provides a penalty of not more than fifty dollars, or not more without six months, with or without hard labour, or both, for anyone who "tears down or defaces signs, breaks windows, or doors or door plates, or the walls of houses, roads or gardens, or destroys fences." Once again, the objects are precisely described; and the penalty is clearly appropriate to the relatively minor offences.

Once again, also, the new sections 372 and 373 lump all these specific offences together in one shapeless mass, and if the damage happens to run to more than fifty dollars, the penalties are shot sky high. It is, in fact, preposterous and outrageous that breaking windows, even a lot of them, should expose the offender to five or fourteen years' imprisonment. It is like something out of *Alice in Wonderland;* but in the Criminal Code it is not funny.

It may be said that no court would impose the maximum penalty. Perhaps not; but if it isn't meant to be used, it ought not to be there. To plead that everyone in authority is so nice and reasonable that he

will never abuse his powers is to fly in the face of experience and of the whole course of British constitutional development; and the last place where we can afford to do that is in the criminal law.

Section 510 of the present Code covers twenty-one specific offences, very carefully defined. For the first four, the maximum penalty is life imprisonment; for the next two, fourteen years; for the next ten, seven years; for the next five, five years. There is also, at the end, a catch all: wilful damage to property not otherwise provided for, with a maximum penalty of two years' imprisonment. In some cases, the penalty seems excessive: for example, five years for wilful damage to "a tree, shrub or underwood growing in a park, pleasure ground or garden, or in any land adjoining or belonging to a dwelling-house, injured to an extent exceeding in value five dollars;" or the same penalty for damage by night to any property not otherwise provided for, to the value of twenty dollars. There may well be a case for revising the penalties; there is no case for lumping all these very different specific offences together, as if damaging a sea-wall and causing a flood were no more serious than pulling up a syringa bush from the Driveway.

Section 516B of the present Code provides a penalty of one year's imprisonment, or a fine of not more than five hundred dollars, or both, for anyone "who willfully damages or interferes with any fire protection or fire safety equipment or device so as to render it inoperative or ineffective." The new section 372 would make the penalty life imprisonment if the action endangered life, five years if the equipment or device were privately owned, fourteen years if it were publicly owned; section 373 would make it not more than five hundred dollars or six months or both, if there were no danger to life and the damage were not more than fifty dollars' worth. Under the new sections, this very serious offence is put on the same basis as wilfully pulling up shrubs or wilfully damaging a hop-bind growing in a plantation of hops or a grape vine growing in a vineyard.

Section 517 of the present Code provides a penalty of five years' imprisonment for anyone "who, in manner *likely* to cause danger to valuable property, without endangering life *or person,* (*a*) places any obstruction upon any railway, or takes up, removes, displaces, breaks or injures any rail, sleeper or other matter or thing belonging to any railway; or (*b*) shoots or throws anything at an engine or other railway vehicle; or (*c*) interferes without authority with the points, signals or other appliances upon any railway, or (*d*) makes any false signal on or near any railway; or (*e*) *wilfully* omits to do any act which it is his duty to do; or (*f*) does any other unlawful act." It also provides imprisonment for life for anyone who does any of these things *with intent* to cause such danger. The new sections 372 and 373 do not cover most of the old 517 (1), acts *likely* to cause the dangers specified; and they put the acts covered by the present 517 (1) (*e*) and (2) in the same category as wilfully destroying or damaging a letter or wilfully spilling liquor on a railway.

Obvious comments can be made, which I will refrain from doing, due to the lateness of the hour.

Section 518 of the present Code provides a penalty of two years for anyone whose wilful act or omission "obstructs or interrupts, or causes to be obstructed or interrupted, the construction, maintenance or free use of any railway or any part thereof, or any matter or thing appertaining thereto or connected therewith." The new section 372 would provide life imprisonment for anyone who did this with actual danger to life; otherwise, five years if the railway were privately owned, and fourteen years if it were publicly owned;

—the Canadian Pacific would appreciate that.

It would provide the same penalties if someone obstructed me from getting into my house or my office or this Parliament building. The penalties for the offences covered by the present section 518 are shot away up, and those very serious offences are placed on the same footing as others which are certainly far less serious and may be quite trivial.

The same sort of comment can be made on the replacement of sections 519-522 and 525 of the present Code, by the new, blanket sections 372 and 373. The change from sections 533-535, however, deserves to be specially noted.

Section 533 provides that anyone who wilfully destroys or damages "the whole or any part of any tree, sapling or shrub, or any underwood, wheresoever the same is growing, the injury done being to the amount of twenty-five cents at the least," is liable to a penalty of not more than twenty-five dollars over and above the amount of the injury done, or to two months' imprisonment with or without hard labour; on a second offence to not more than fifty dollars or four months; on any subsequent offence to two years. Under the new sections 372 and 373, if the damage is more than fifty dollars, and there is no danger to life, the penalty, even for a first offence, could be as much as five years if the sapling were private property, and fourteen if it were public, say on the Driveway.

Sections 534 and 535 provide similar penalties for wilful damage to, or destruction of, "any vegetable production growing in any garden, orchard, nursery ground, house, hothouse, green-house or conservatory," or any "cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for and in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard or nursery ground."

Everything is specifically set out and even the specific exceptions are set out—"not being a garden, orchard or nursery ground."

Under 534, the maximum penalty for the first offence is not more than twenty dollars over and above the amount of the damage, or three months with or without hard labour; for a subsequent offence, the maximum is two years. Under 535, the maximum for a first offence is five dollars over and above the amount of the damage, or one month with or without hard labour; for a subsequent offence, the maximum is three months with hard labour. The increase in the penalties under the new 372 and 373 would be formidable, and seems very hard to justify.

When Parliament intends to make certain conduct punishable, and *a fortiori* when it imposes heavy penalties, it should state clearly and specifically which acts or omissions involve criminality. The present sections 96, 97, 238 (*h*), 510, 516B, 517-522, 525, 533-535 and 539, do; the proposed new sections 372 and 373 do not. The attempt to condense over 250 lines of the present Code, covering well over fifty distinct and widely differing offences, with a great variety of penalties, into 44 lines and seven blanket offences, with four different penalties, is bound to mean the use of general and vague language which can only lead to abuse of Parliament's intention. Brevity is the soul of wit. It is not the soul of the criminal law, and even if it were it could be too dearly bought. In the proposed sections 372 and 373, it would be bought at a staggering price.

But even these criticisms, serious as they are, do not touch the Congress' main objection: that section 372, especially subsection (1), paragraph (*b*), (*c*) and (*d*), provides hostile employers and provincial

> Governments with a weapon which could be used against Labour with utter injustice and utter ruthlessness. Subsection (1) (*b*) makes it a "mischief" "wilfully" to render property . . . useless, inoperative or ineffective."

I would like to read that again: Subsection (1) (*b*) makes it a mischief wilfully to render property . . . useless, inoperative or ineffective.

> What strike does not do this, and do it wilfully? Consequently, if a union member goes out on a perfectly legal strike, and even for the most cogent reasons, he exposes himself to prosecution and heavy penalties under this section. This is plainly, indeed flagrantly, contrary to public policy as embodied in the Dominion Industrial Relations and Disputes Investigation Act and the corresponding provincial Acts. All of them explicity provide for legal strikes.

I will have something to say about that. That last statement is not, strictly speaking, accurate. I will deal with that shortly, but at any rate one can draw the implication that legal strikes are recognized by the government.

> This part of the new section 372 is another *Alice in Wonderland* effect: workers being prosecuted and severely punished for exercising rights expressly conferred on them by Dominion and provincial legislation!
>
> It will not do to say that prosecution in these circumstances is "unlikely." In some provinces it may be anything but unlikely. But the main point is that the section is there to be used; its presence opens the door to abuse which Parliament cannot control, since the administration of justice in the province is beyond Dominion jurisdiction; and, once again, if the power is not meant to be used, it ought not to be there.

Subsection (1), paragraphs (*c*) and (*d*). Now, (*c*) says it is a mischief if one wilfully interrupts or interferences with the lawful use or enjoyment or operation of property. Now, supposing I go out on a perfectly legal strike. By the very nature of the thing I am doing I wilfully interrupt or interfere with the lawful use or enjoyment or operation of property. It is inherent. Similarly I obstruct or interfere with the enjoyment of any property. And that brings up the question of picketing.

Subsection (1), paragraphs (*c*) and (*d*), provides a ready-made, simple and streamlined method of preventing picketing; even peaceful picketing, which has long been explicitly protected by the Code itself, the present section 501 (*g*) and the new section 366 (2). Under these paragraphs, it is "mischief" if anyone "obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property," or "obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property." What picketing does not, to some extent, interrupt or interfere with the lawful use, enjoyment or operation of property? Our courts have held that attending at or about an employer's place of business with the object only of communicating information to the public that a strike is in progress is not unlawful, even for a civil point of view. Section 372 would render such activity criminal, under heavy penalties. This would deprive Canadian workers of rights which were granted British workers as long ago as 1859. See Sidney and Beatrice Webb, *History of Trade Unionism,* 1920, p. 277. In fact this British Act of 1859 even went beyond our present section 501 (*g*) by legalizing peaceful persuasion to persuade workers to cease or abstain from work in order to bring about a change in wages or hours. The courts drove a coach and four through this Act, in *Regina* v. *Druitt* and *Regina* v. *Bailey,* so that it was necessary to re-enact the legalization of peaceful picketing, in the terms now used in our own Code,

in the Conspiracy and Protection of Property Act, 1875. In 1906, the Trade Disputes Act, section 2, once more legalized peaceful persuasion. See Margaret Mackintosh, *Trade Union Law in Canada*, pp. 11, 12, 16; N.A. Citrine, *Trade Union Law*, p. 438. Our own law on the subject dates from 1876. So the proposed new section 372 would set the clock back more than three-quarters of a century.

This whole section 372 is vicious, and should be dropped. The sections of the present Code which it purports to replace may need some amendment, notably in respect to penalties, but their general effect is satisfactory, and, subject to necessary amendments, they should be retained.

If I go out on strike—I do not want to labour the point—but if I go out on a perfectly legal strike, I wilfully render my employer's property; it may be dangerous, I do not know; but certainly I render it useless, inoperative and ineffective. I might have gone through the conciliation services of the Department of Labour; I might have done everything that the law requires me to do; but the moment I go out on strike, I submit that I can be successfully prosecuted under this section.

I am not unaware of the fact that another labour congress has not objected to this clause, presumably on the ground that they are advised that they have protection, or that they are covered by the provisions of clause 371 subsection (2). That clause reads as follows:

> 371 (2) No person shall be convicted of an offence under sections 372 to 387 where he proves that he acted with legal justification or excuse and with colour of right.

Now, that is conjunctive. I cannot be prosecuted if I can establish the fact that I have acted with legal justification or excuse and with colour of right.

Mr. ROBICHAUD: You cannot be convicted?

The WITNESS: Oh, I am sorry. I should have said "I cannot be convicted". I have to show that both exist. In order to escape conviction I have to show that; and presumably there is an inference that if I can show that I am out on a legal strike, I am acting with legal justification and excuse and with colour of right. I think there are a number of lawyers in this committee and I would ask them to appreciate certain obvious facts.

To begin with, in my opinion, there is no such thing as a legal strike. At the very best, all that can be said is that the Industrial Relations and Disputes justification" and "legal ecuse". They are positive things. If I go out on strike and no strike vote shall be taken unless and until you have gone through the conciliation services. That is what it says. It does not say that you may go out and strike if you have gone through the conciliation services. It just says that you shall not go out on strike, nor shall you take any strike vote until you have exhausted the conciliation services of the Department of Labour.

What court would regard a strike as having legal justification or legal excuse? We are dealing with technical legal expressions, the words "legal justification" and "legal excuse". They are positive things. If I go out on strike and do so legally in the sense that I have indicated, using the words rather loosely, I submit that that in itself cannot possibly be regarded as being legal justification or excuse. There might be some moral justification or excuse, or political or economic justification or excuse; though I dare say that in this room there would be difference of opinion on that alone. But the point is that unless I can show I have done it with legal justification or excuse, I am going to be convicted.

It is open to me to show; that is, the accused must prove that he acted with legal justification or excuse.

Mr. MACNAUGHTON: What about the word "excuse"?

The WITNESS: There is no legal excuse to go out on strike.

The CHAIRMAN: Before we get into a discussion, might I point out that it is now 12:30. Is it the wish of the committee to continue with this until 1:00 o'clock today?

Mr. CANNON: I think we should finish it.

The CHAIRMAN: Shall we finish it or go on only until 1:00 o'clock.

Mr. CARROLL: I think we should adjourn now, Mr. Chairman, because we are not going to finish this by 1:00 o'clock.

Mr. LAING: I think we should finish this by 1:00 o'clock.

The CHAIRMAN: Very well. Shall we not try to finish it by 1:00 o'clock?

Mr. CARROLL: But let us sit no longer than 1:00 Mr. Chairman.

The CHAIRMAN: We shall sit until 1:00 o'clock and assuming we have not finished, we shall adjourn at 1:00 o'clock.

Mr. SHAW: You say if we have not finished it by 1:00 o'clock?

The CHAIRMAN: We shall adjourn. But until when?

Mr. CARROLL: Could we not have a meeting this afternoon?

The CHAIRMAN: This afternoon it would be very difficult. There is the House sitting and other committees.

Mr. MACNAUGHTON: Well, Mr. Chairman, let us try to finish it before 1:00 o'clock.

Mr. CANNON: Do you not think that the inference is clear? The law says that you shall not go out on strike until you have gone through the conciliation proceedings. And after you have done so, you can go out on strike?

The WITNESS: I submit that we cannot possibly read into that legal justification or legal excuse, or the other words "colour of right". I am not at all sure that I know what the words mean. I have knowledge of the words being used in one other sense only, and that is in the definition of theft.

Mr. BROWNE: And the definition of trespass.

The WITNESS: Trespass, and possibly receiving stolen goods.

Mr. BROWNE: If he shows that he has a colour of right in trespass, then he cannot be prosecuted for damages.

The WITNESS: If I am an employee, I have no colour of right in my employer's property. I have no colour of right at all. I would refer you to sub-clause (3) of clause 371 where it reads:

> (3) Where it is an offence to destroy or to damage anything, (*a*) the fact that a person has a partial interest in what is destroyed or damaged does not prevent him from being guilty of the offence if he caused the destruction or damage, and (*b*) the fact that a person has a total interest in what is destroyed or damaged does not prevent him from being guilty of the offence if he caused the destruction or damage with intent to defraud.

Even if I have a practical legal or equitable right in property, it still does not provide an excuse for me or a defence, if I am charged under clause 371 (2). But if I have no interest at all in my employer's property, how can I be said to have any colour of right in it?

Therefore I respectfully submit that there is no legal solace or comfort from the stand-point of trade unions to be found in sub-clause (2) of clause 371. And a strike, even though it is one which follows observance of the conciliation process is certainly not one which is taken with legal justification or legal excuse, or with any colour of right.

Mr. CARROLL: I do not see how sub-clause (3) paragraphs (*a*) and (*b*) have anything in the way of a destroying effect on the previous sub-clause which reads as follows:

> 371 (2) No person shall be convicted of an offence under sections 372 to 387 where he proves that he acted with legal justification or excuse and with colour of right.

The WITNESS: I brought it up in order to show that the interpretation of colour of right—merely to show that I have no colour of right if I work in an employer's plant in which there is valuable property.

Mr. CARROLL: Do you not think that legal justification and colour of right are synonymous and that if a man has legal justification, then he also has colour of right?

The WITNESS: I respectfully submit that a judicial interpretation of that might be extremely interesting; but I doubt very much if there would be any unanimity of opinion on it.

Dr. FORSEY: Legal justification and excuse, and colour of right.

Mr. ROBICHAUD: Did I understand the witness to say that he did not know what was meant by colour of right? Will he refer to section 541 of the Code where it is clearly defined? Therefore it is not a question for judicial interpretation. Colour of right is defined.

Mr. BROWNE: Dealing with clause 372, is there any reason to think that it applies to trade unions at all? It just applies to individuals?

The WITNESS: Suppose I, as an individual, go out on strike after my union, on my behalf, has exhausted the conciliation processes. Suppose we have gone through the conciliation processes, the conciliation officer and the conciliation board and all the rest of it, and then a strike is taken. Suppose I go out on strike. I render my employer's property useless and ineffective.

Mr. BROWNE: How?

The WITNESS: Simply by not doing what I did the day before. The day before I appeared at my place of employment and I worked on valuable and expensive machinery.

Mr. BROWNE: It seems to me that what is meant is this: Suppose I go into a plant secretly at night and remove some of the valuable parts without which it is incapable of operating. I submit that that is what is meant; it must be some malicious damage.

The WITNESS: It says "rendering".

Mr. BROWNE: That would be rendering.

The WITNESS: I submit that this act of omission might expose me to criminal consequences under this clause just as much as an act of commission.

Mr. LAING: But a picket is regarded as an individual in the eyes of the law?

The WITNESS: Yes.

Mr. MACNAUGHTON: Are you saying that the words "colour of right" have no meaning at all?

The WITNESS: In this particular context I am saying that.

Mr. MACNAUGHTON: Surely the words "colour of right" mean something in the law of lawyers?

The WITNESS: But I am applying it specifically to the sense in which it is used in this clause, its particular application to a person who goes out on strike after having gone through the conciliation processes. May I merely say this: that certainly there is no doubt in my mind that there is not any one on this committee who remotely entertains the thought that this clause be used against trade unions. But somehow or other it does not make sense. One's first reading of it would lead one to think that it is intended to apply to someone who goes

out to destroy property. But I am sure that the drafters were not thinking at all about industrial relations when it was drawn. However, there it is. The words are capable of being the manner in which I have suggested they can be used.

Mr. ROBICHAUD: May I ask the law officers in what clause of the revision the provisions of section 541 defining colour of right have been put?

Mr. MOFFATT: They are there in clauses 371 and 376.

Mr. ROBICHAUD: Are they the only references?

Mr. MOFFATT: Yes.

The CHAIRMAN: Are there any further questions?

Mr. MACINNIS: May I ask Mr. Wright this question: That even if there was protection for a trade union from the effects of clause 372, in clause 371, would that not be nullified by the fact that while they were finding out what protection there was under this, that the strike could be lost?

The WITNESS: Oh yes.

Mr. MACINNIS: That would take time; and by the time you had found out, weeks or months might have elapsed; and during the whole of that time the strike was forbidden by injunction.

The WITNESS: I can tell the committee of a specific case which happened in St. John, New Brunswick, a few years ago in which I was personally interested. A group of employees were certified. They applied to be certified but their employer refused to appear before the Labour Relations Board. The Board certified the union and the union applied to the employer to commence collective bargaining, but he told them—well, he did not tell them anything, and was not interested. Mr. MacDonald smiles, because he was there with me at the time and after this developed. The employees then applied for conciliation but the employer did not appear. He did not grace the proceedings with his presence. The Board made a unanimous recommendation to which the trade union agreed and accepted. I might say that the avaricious group of employees in question were receiving around 33 cents an hour at the time and I think the increase would have given them about another 5 cents.

Then they went to the employer and said: Will you implement the findings of the conciliation board? But the employer did not say yes or no. Finally, after being completely frustrated, the union called a strike. But not more than one hour after the strike was called, a lawyer appeared. There are a number of lawyers on this committee, and they will realize the length of time it takes to prepare affidavits and notices of motion. It all takes time. However, as I have said, not more than an hour after the strike was called, a lawyer apeared in the Supreme Court with an application for an interim injunction to restrain the employees from picketing. The restraining order was against picketing, and remember that picketing in itself is not illegal. The learned trial judge granted an ex parte interim injunction returnable in 30 days.

By the time I got down there, three days later, there was nothing left to do but to have an academic discussion. The employees had been stigmatized as law-breakers. A group of peaceful citizens, and it was all finished.

I must beg your pardon for taking up your time in telling you this story, but I do so merely to illustrate that it is not a hypothetical case that Mr. MacInnis referred to.

The CHAIRMAN: Are there any further questions? If not, will you please proceed, Mr. Wright.

Dr. FORSEY: One of the necessary amendments, it should be noted, is with respect to section 518 of the present Code, which, as the committee will notice, covers obstructing or interrupting or causing to be obstructed or interrupted, the free use of any railway. That would be open to the same objection that was made here.

Mr. LAING: Surely, Mr. Chairman, it can be assumed that the purpose here was that of simplification. There are so many conditional things with which mischief could be caused that it was thought that simplification was in order.

The WITNESS: I can appreciate the desire for brevity, but somehow or other I am afraid that in the zeal for brevity the particularity of the offence is lost.

Mr. MACINNIS: But there is no brevity in the penalty.

Mr. LAING: Do you suggest treatment for your case other than the removal of this section and the restoration of the old one?

The WITNESS: I submit that the old section, although lengthy, was much clearer and more specific, and should be left just as it was.

Mr. BROWNE: Only you have drafted another rider similar to that on page 3 of your brief?

The WITNESS: Yes.

Mr. MACNAUGHTON: This is too simple in one direction. That is your point?

The WITNESS: Yes.

Mr. ROBICHAUD: The old sections remind me of a hornet's nest, always giving me a headache whether I be prosecuting or defending.

The WITNESS: That may well be, but there is no doubt of their meaning.

The CHAIRMAN: Shall we not proceed?

366. (2) A person who attends at or near or approaches a dwelling house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this section.

Section 366 (2) (peaceful picketing)

It is high time our law on peaceful picketing was brought into line with the British law on the subject, as laid down in the Trade Disputes Act, 1906, section 2 (1). The Congress therefore proposes that the proposed new section 366 (2) be struck out, and the following substituted:

"(2) It shall be lawful for one or more persons acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working."

These are the precise words of the British Act, passed nearly half a century ago. The subsection was limited and qualified by an Act of 1927, which was, however, repealed in 1946. So our proposed new subsection has been tested and proved by some twenty-seven years of British experience.

Last year, the Canadian Welfare Council appointed a special committee of its Delinquency and Crime Division to study Bill H-8 of the Senate (the predecessor of the bill now under discussion). The report of this Welfare Council Committee, which is equally applicable to the present bill, was adopted by the Council's Board of Governors on December 13 last. The Canadian Congress of Labour endorses this report and commends it to your Committee and the Government for careful consideration.

The Congress wishes to draw particular attention to the recommendation that the new Code should provide for instalment payment of fines. This would help, as the Welfare Council says, "(1) to remove the inequality before the law between the person with means who can pay the fine and the person without funds who cannot pay the fine and must go to jail, and (2) to keep all persons possible from being exposed to the dangers of imprisonment." This

is one way of meeting Anatole France's jibe about the majestic impartiality of the law, which forbids rich and poor alike to sleep under bridges. It is one way of drawing the teeth of subversive propaganda.

Almost fourteen years ago, the Archambault Commission recommended adoption of the provisions of United Kingdom Acts of 1914 and 1935 on this subject; but nothing has been done. There was nothing hare-brained about this recommendation. The United Kingdom Acts have worked well. There has been ample time for consideration of the British experience and the Canadian Royal Commission's proposal. The present opportunity should not be allowed to slip by. This very necessary and simple and long overdue reform, should be adopted forthwith.

Mr. MACNAUGHTON: I happen to know that in Montreal fines are frequently delayed in payment, and that they are paid in instalments for certain things. It may not be legal, but they do that.

Mr. BROWNE: Is there any arrangement under the Code for delayed fines paid by instalments?

Mr. MOFFATT: No; but there is a provision whereby a person can be granted time in which to pay his fine. I think that provision is invoked, there is also a provision for part-payment of a penalty, and that reduces the alternative of imprisonment.

The WITNESS: Mr. Chairman, and members of the committee, unless Mr. MacDonald and Dr. Forsey have something to say, I have nothing more to add except to express my appreciation for the very patient hearing I have received from the committee and for the interest which they have shown in this brief.

The CHAIRMAN: Very well. If there are no further questions, I know that I bespeak the minds of all members of the committee when I express to you our thanks, Mr. Wright, Dr. Forsey, Mr. MacDonald, and Mr. Shultz for the very valuable contribution which you have made to this committee today. It has been most helpful and I am sure it will assist us considerably in the discussion of the bill when we come to that part of our work. Therefore, on behalf of the committee I express to you our sincere thanks.

Mr. MACDONALD: Mr. Chairman, and members of the committee: on behalf of the Canadian Congress of Labour I would like to reciprocate your kind sentiments and tell you and your members that we very much appreciate the courteous hearing we received today, and that we hold ourselves in readiness to appear before you again at any time you may need us.

The CHAIRMAN: Thank you. The committee is now adjourned until tomorrow afternoon at 3:30 when we shall hear from another congress.

The committee adjourned.

February 18, 1953.
3.30 p.m.

The CHAIRMAN: Gentlemen we have a quorum. We will now come to order. Today we have representatives of the Trades and Labour Congress of Canada who are presenting a brief. You all have copies of the brief I presume in front of you.

The minister, Mr. Garson, regrets that he is not able to be here for the opening of our meeting because of his urgent attendance necessitated in the House. He arrived back in town this morning and he will probably be here while the meeting is under way. We have the Trades and Labour Congress of Canada represented by Mr. Percy R. Bengough, president, and Mr. Leslie E. Wismer who is director of public relations and research. Now I suggest that as we have the brief before us we follow the brief until we come to the part dealing with section 365 and that we go through 365 and have a break at that point if that is agreeable and then proceed with the balance of the brief. Is that agreed?

Some MEMBERS: Agreed.

The CHAIRMAN: Now, Mr. Bengough, would you like to say a word.

Mr. BENGOUGH: Mr. Chairman, Mr. Wismer will present the brief.

Mr. L. E. Wismer, Director of Public Relations, Trades and Labour Congress of Canada, called:

The WITNESS: Do you want me to read it or just speak to it?

The CHAIRMAN: It would be well if you will read it and we will discuss it afterwards.

The WITNESS: Very well.

The Trades and Labour Congress of Canada has given a great deal of consideration to the proposed revision of the criminal law which you now have before you in Bill 93. We are pleased to have this opportunity to place our views before your committee in this regard.

This congress has always recognized the need for a broad code of law which could deal with criminals and criminals acts whether these were directed against individual persons or the state, but, as organized working people seeking to better our earnings and conditions through collective action, we have always been well aware of the constant threat and frustration to our efforts that is contained in certain clauses of the criminal law, whether these sections of the code were ever used or not.

While the current broad revision of the criminal law is under consideration by parliament we consider it opportune to make certain recommandations with the end in view of making it more abundantly clear that certain sections of the law exist only for the purpose of dealing with criminals and criminal negligence and not with bona fide trade unionists engaged in a lawful industrial dispute.

The criminal law has for its purpose the protection of society from the actions of persons who would and do injure or destroy persons and property. It also has for its purpose the protection of the state in certain ways and from certain actions. While these basic purposes probably will remain unchanged, a changing world requires a changing scope and emphasis in the criminal law.

We realize that one of the most difficult problems confronting democratically elected governments is how to frame laws that will give needed protection from those who work and scheme to destroy democracy and democratic institutions and at the same time not infringe on the fundamental freedoms and rights which people in Canada and the free world cherish.

We would favour, however, some strengthening of the criminal law which would serve to protect the interests of Canada from the activities of those who seek to be known as and to enjoy all the privileges of Canadian citizens while at the same time owing allegiance to an authority outside of Canada whose purpose is to undermine our Canadian democracy and the eventual overthrow of our electoral system. We draw this to your attention at this time for we are satisfied that there are persons and organizations in Canada whose main purpose is to undermine the security of the State. If such activities are not immediately evident as treason they certainly are very much akin to treason and severe penalties should be provided for them.

In this connection we would draw your attention to the fact that nearly three years ago this congress placed its views before a Special Committee of the Senate on Human Rights and Fundamental Freedoms. At that time we urged the approval and integration into the constitution of Canada of a Bill of Rights.

In our written submission to that committee we said: "While we strongly desire the fullest expression and preservation of civil liberty in Canada, we are mindful of the existence of those who would use such freedom to destroy our civil rights. Thus, in considering what our civil rights should be and how they can best be protected, we would draw your committee's attention to Article 30 of the United Nations Declaration which reads: 'Nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein'."

Following these representations to the Special Committee of the Senate, this Congress, in April, 1951, met with the Prime Minister and his cabinet and placed its annual memorandum before the government of Canada. In that memorandum we again urged the enactment of a Bill of Rights for Canada, and we repeated our sincere warning which had been given to the Special Committee of the Senate. We said: "Such a Bill of Rights should preserve and protect our human rights and civil liberties and in so doing provide against their misuse by those who despise and would, if allowed to, destroy all semblance of personal freedom."

We urge your committee to give careful consideration as to ways and means whereby the criminal law of Canada could be strengthened so that the hard won rights and freedoms of Canadians may not be destroyed by those in our country who despise such rights and freedoms and would use our democratic liberties as a means to usher in their own kind of totalitarian dictatorship with its slave camps and utter disregard for human dignity.

Two sections of the proposed revision of the criminal law, Bill 93, contain provisions which many of our affiliated members feel might be aimed at them should a dispute between them and their employers result in a legal stoppage of work. These sections are number 365 and 372.

Section 365 deals with the breaking of a contract. Section 372 deals with mischief.

BREACH OF CONTRACT

365. Everyone who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequence of doing so, whether alone or in combination with others, will be

(*a*) to endanger human life,

(*b*) to cause serious bodily injury,

(*c*) to expose valuable property, real or personal, to destruction or serious injury,

(*d*) to deprive the inhabitants of a city or place, or part therefore, wholly or to a great extent, of their supply of light, power, gas or water, or

(*e*) to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway,

is guilty of

(*f*) an indictable offence and is liable to imprisonment for five years, or

(*g*) an offence punishable on summary conviction.

There is provision in the law of Canada for *legal* stoppages of work. Even a great national utility such as the major railway systems can be shut down as a result of failure to settle an industrial dispute and such an act however unfortunate and nationally disturbing is legal under the Industrial Relations and Disputes Investigation Act, and similar acts are legal under the Labor Relations Acts of the various provinces. However, there is nothing in the language of Section 365 of Bill 93 "respecting the criminal law" specifically excepting its provisions from persons engaged in such legal work stoppages.

The CHAIRMAN: Are there any questions on that first part, 365?

Mr. CARROLL: I just have one question in connection with the matter of the Bill of Rights. You are right in saying that it is the government of Canada who should provide protection from people who are trying to destroy our state. Has your organization given any consideration to what might further be done than what we have in the Criminal Code to stop that sort of thing?

The WITNESS: Mr. Chairman, we have given a lot of thought to that sort of thing. We have had to amend our constitution several times in order to deal with these people within our own organization. Sometimes we did it not liking the way we had to do it, but we did it. And it has been raised several times in our councils and conventions as to what way one should deal with those subversive activities of this class of people.

Mr. CARROLL: I know. Your organization has done wonderful work in that respect.

The WITNESS: May I say what we have in mind in coming to this committee in that regard is that we would not like you to think that we would like you in any way to weaken this code. Perhaps it is difficult to frame a law in peacetime which could be used in other times against the criminal, but we are not here to ask you to reduce it.

Mr. BENGOUGH: When we say it is difficult to frame laws that will handle the position we have in mind and at the same time not weaken the fundamental freedoms it is indeed a difficult proposition. Quite frankly we have not come along with anything concrete on that, and in fact we would all welcome it if something could be done on that.

By Mr. MacInnis:

Q. Mr. Chairman, may I draw attention to the language in paragraph 3 on page 3. I want to ask a question on it.

> Two sections of the proposed revision of the criminal law, Bill 93, contain provisions which many of our affiliated members feel might be aimed at them should a dispute between them and their employers result in a legal stoppage of work.

What is your feeling in this matter? Do you agree with these members or do you consider, or does executive or congress believe they are not objectionable?—A. I think it is a fair question in this way, that I think you should know that we have had these individual members who try to stir up a certain amount of trouble in certain fields but some of our very legitimate people have raised this point being afraid of this, that a breach of contract might mean a breach of any contract. Now, that is the problem we want to bring before you this afternoon. If this clause 365 refers to any contract and in any way a work stoppage under the civil law may bring us under this section then we want something done about it.

Q. You too feel it is dangerous if the meaning of it is as you think it is?—A. Yes.

By Mr. Noseworthy:

Q. On page 4 you say: "there is nothing in the language of section 365 of bill 93 'respecting the criminal law' specifically excepting its provisions from persons engaged in such legal work stoppages."

There is nothing in the brief to indicate whether you suggest that the committee recommends some such provision or not. Could we ask if you have come with any suggested provision in mind or if you have any such provision, or whether or not you recommend that we adopt such a provision?—A. Well we have not read all the way through. I may draw your attention to the very last paragraph on page 6 which reads—dealing with both sections:

> We therefore request that a second clause be added to section 365, and a further clause to section 372 having this effect: that these sections of the law apply only to criminals and criminal negligence and not to persons engaged in a lawful industrial dispute.

Q. We had a suggested addition, a subsection, recommended to us yesterday by the other congress. They suggested that we might add "nothing contained in this section shall be taken to effect any breach of the collective agreement resulting from a dispute between employer and the bargaining agent on behalf of a group of employees". Would the addition of that be satisfactory to the present delegation?—A. I think it would have to be worded a little differently since there are stoppages of work which are not in the shape of a breach of contract as in that wording. I read that wording before I came to this meeting.

Q. Have you any suggestions to give to the committee as to just what should be the nature of the section to be added?—A. Well I would not like to word it for the reason that I know it is difficult to place the right kind of wording in this legislation, but there is one thing I would like to raise with the committee and that we should be sure of. Take a situation such as was dealt with by parliament in 1950 when we had a railway strike. Now, it may be that it is fair to say that no contract was broken by the unions in that strike since, operating under the Industrial Relations and Disputes Investigation Act, the contract had run out and they were dealing under that law and there was not a breach of that contract, but there might possibly be a breach under a

section of this sort and an action result in which it might be said the railways broke a contract and that the contracts, the railways had broken, were broken as a result of that stoppage of work. I think that is important.

By Mr. Shaw:

Q. Mr. Chairman, yesterday the officials of the Canadian Congress of Labour expressed some doubt with respect to the term "legal strike". They pointed out that while the Industrial Relations and Disputes Investigation Act as applied to labour legislation in nine provinces laid down the procedure for labour and employer to follow in negotiation and arbitration, they were fearful —possibly that is not the best word—but they indicated some concern about there even then not being in existence a legal strike. Do you hold any similar fears?—A. We do not hold that fear, but the fear we hold is whether the operation, as if it were legal, under the Labour Relations Act, the civil law, that once you find yourself having complied with all that, you find by some method the criminal law supersedes that, and you find yourself in violation of some section of the Criminal Code.

Q. In other words you feel that you may follow a prescribed procedure and assume you are engaged in a legal stoppage and under the criminal law find that you may be charged?—A. Yes.

Q. Just one other question. Do you feel that section 365 would be all right as it stands if one further section were added providing protection, assuming that it is a lawful dispute?—A. That is it.

Q. In other words you feel very much as the Congress of Labour feels in that respect?—A. Put it the other way, that we have no objection to what this presumably applies to: when someone breaks a contract and forces the city of Ottawa to go without light and power, or damages a railway so it cannot be run or that type of thing. We are not asking that that be reduced. But we want to find ourselves dealing under the civil law alone in this matter of industrial disputes, and not with a section such as this and which may be brought against us after we have followed all the procedure laid down under the appropriate Labour Relations Act and then, having gone on strike, someone says, well, under 365 of the Criminal Code they stopped the water supply or stopped the railway.

Mr. SHAW: I can fully appreciate your concern.

The CHAIRMAN: Any further questions?

By Mr. Cameron:

Q. I wanted to ask about the word "wilfully" there in section 365 dealing with a legal strike and a wilful breach of contract. Where is the dividing line? —A. I have discussed that with our officers. We are still in sufficient doubt to ask you to consider the submission we are making. That is, on the one hand a strike is certainly wilful. I mean the unions fully decide whether they are going out on strike or not. It is definitely a wilful act, and presumably the employer in deciding whether or not to settle a strike is acting quite wilfully.

Mr. CAMERON: That is an interpretation of "wilfully" that a lawyer would never accept.

The WITNESS: We are not lawyers.

Mr. NOSEWORTHY: The witnesses indicated that they would welcome the addition of a new section to 365, but they also indicated that they are not prepared to accept the wording of the suggested addition, or the addition suggested to us yesterday. You are not giving the committee much guidance unless you can tell us specifically where in the wording the amendment suggested does not meet with your approval.

Mr. MACINNIS: You are accepting the principle of that amendment—

The WITNESS: Let us read it again. When trying to word it I think that we would rather have something in this Act, a second section, similar to some of the other things in the Criminal Code such as in sections 409-10-11 where you exempt trade unions from the law of conspiracy and that sort of thing. You set out the law and then you say for the purposes of the Criminal Code or this section of it a trade union and its activities are exempted.

Mr. MACINNIS: That is the Criminal Code that we are operating under now.

The WITNESS: Yes, and it is in that part I think.

Mr. MOFFAT: (Justice Department): I think it is 409 or 410.

By Mr. Shaw:

Q. I think Mr. MacInnis voiced the suggestion that probably the congress is in favour of the principle contained in this proposed amendment although they prefer it if it were worded differently. Is that a fair statement?—A. Yes, but after all—and we have to be careful what we say to you—in the Labour Relations Acts there are some provisions for dealing with illegal strikes, and what might happen if we stopped work by that wording is that we might run foul of civil law. What we are so anxious about is that 365 as it stands shall not apply to the activities of a trade union and its members in a stoppage of work provided under the Industrial Relations and Disputes Investigation Act or in a similar Act of any province.

Mr. SHAW: Which makes it wilful in their opinion.

Mr. MACINNIS: I do not think this word "wilful" as at the present time in this section—members of the committee will appreciate my lack of legal experience—but I do not think the word "wilful" as in this section would apply to a trade union when it went on a legal strike even if some of these things said here should happen during the course of that strike; that is, because of the strike itself; but a person engaged in the strike could wilfully do some of these things and then come under the Criminal Code but I do not think because they have gone on strike it would.

The CHAIRMAN: I wonder what would be the effect if one individual wanted to quit his job?

Mr. MACINNIS: He is entitled to do that. That is part of his freedom.

Mr. BENGOUGH: I agree with Mr. MacInnis on that part, but I think we should be frank about this. We know why a communist comes into the labour movement. I mean the height of their ambition would be a general strike in a political crisis. There are times when they try to train the troops to break agreements so that when the time comes they are in a mental frame of mind where the breaking of an agreement is really not important. We have carried on through the years and had the reputation right along that when we went into an agreement we lived up to it and went through with it. We condemn sympathetic strikes. That is what I think the government had in mind when they drafted this bill. We are not fighting on the basis of anything contained in this section with regard to a breach of contract. We do not want any breach in a collective agreement.

Mr. CARROLL: Of course, Mr. Bengough, the government has not anything to do with this particular bill that we have before us. As you know, it is the work of a royal commission.

Mr. BENGOUGH: Yes.

Mr. MACINNIS: But if the government accepts it as the Criminal Code, they will put it into force.

Mr. CARROLL: The government has no right to accept it as the Criminal Code until parliament so decides.

Mr. SHAW: Let us not get into that field of argument or we won't get out of here till tomorrow.

The CHAIRMAN: Any questions? If there are no further questions, will you proceed, Mr. Wismer?

The WITNESS:

The language of section 372 is less limited in its scope and implication than that of 365. Section 372 says in part: "Every one commits mischief who wilfully renders property inoperative or ineffective", and it goes on to say that such mischief is an indictable offence with a penalty of life imprisonment, provided it causes "danger to life".

MISCHIEF

372. (1) Every one commits mischief who wilfully

(*a*) destroys or damages property,

(*b*) renders property dangerous, useless, inoperative or ineffective,

(*c*) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or

(*d*) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property,

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.

(3) Every one who commits mischief in relation to public property is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(4) Every one who commits mischief in relation to private property is guilty of an indictable offence and is liable to imprisonment for five years.

(5) Every one who wilfully does an act or wilfully omits to do an act that it is his duty to do is, if that act or omission is likely to constitute mischief causing actual danger to life, or to constitute mischief in relation to public property or private property, guilty of an indictable offence and is liable to imprisonment for five years.

This Congress believes that a legal stoppage of work should no longer be classed in the criminal law as mischief. We realize, of course, that section 372 might not be applied in the event of a legal strike, and we are aware of the provisions of section 371 (2) whereby "No person shall be convicted of an offence under section 372 where he proves that he acted with legal justification or excuse and with colour of rights", but we earnestly recommend that much clearer safeguards be placed in the Act.

In addition to this saving clause in section 371 we have noted the wording of clause (2) of section 366 which says: "A person who attends at or near or approaches a dwelling house or place, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning this section".

We have also noted the provisions of sections 409 (2); 410 (2); and 411 (3) under which trade unions are not conspiracies or combinations in restraint of trade within the meaning of the criminal law.

Despite these existing safeguards already in the law, we believe that there should be much clearer safeguards in connection with the possible application of sections 365 and 372.

We are also aware that the main provisions of these two sections are not new. We also recognize the need for adequate provisions in the criminal law to deal with acts of sabotage and other wilful damage to life and property.

However, we would draw your attention to the fact that the provisions of section 365 were added to the criminal law away back in 1877. At that time, Sir Edward Blake, the Minister of Justice, is reported to have said during the debate in the House of Commons on the proposed section: "The bill did not profess to deal even with a strike". And later in the debate he is reported as saying that "save under special circumstances breach of service was not a crime".

This congress is of the opinion that nothing has happened since those days of the 1870's to change our needs or thinking in this matter. On the other hand, the great body of labour relations law that has been built up in Canada in recent years now serves to assert and protect the relationships between employer and employee, the rights of both, and to provide for the settlement of their disputes, and it should be made abundantly clear that the actions of bona fide trade unionists or of trade unions acting on behalf of their members in industrial relations and disputes are not, in themselves, criminal and, as such, do not come within the provisions of the criminal law.

We therefore request that a second clause be added to section 365, and a further clause to section 372 having this effect: that these sections of the law apply only to criminals and criminal negligence and not to persons engaged in a lawful industrial dispute.

The CHAIRMAN: Are there any questions on clause 372?

Mr. NOSEWORTHY: Not directly on clause 372, but I might have liked to call Mr. Wismer's attention to the fact that the delegation which was here yesterday voiced their approval of a suggestion made by the Canadian Welfare Council regarding the payment of fines on the instalment plan. Has this Congress given any consideration to that, or is there any position taken in the matter by them?

Mr. BENGOUGH: We did not take any position on that.

Mr. MACNAUGHT: Do you approve of it?

Mr. BENGOUGH: I do not know; we just let it ride. We did not deal with it.

The CHAIRMAN: Any other questions? If not, Mr. Bengough and Mr. Wismer, may I extend the thanks of this committee to you for your very helpful brief and the assistance which you have given us. These matters, as you may have realized, were gone into quite thoroughly yesterday. In fact, we did not have time to get all the questions asked and answered in the span allotted to us, and that is the reason why there are not more questions today. However, we do want to express to you our appreciation, our thanks, for your very fine, helpful brief and for your presence with us today. We assure you we will do everything in our power to see that the bill as finally presented to the house will be as satisfactory, I think, to all sections of the country as is possible. Thank you very much.

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

"An Act respecting The Criminal Law", and all matters pertaining thereto

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, FEBRUARY 24, 1953

WEDNESDAY, FEBRUARY 25, 1953

TUESDAY, MARCH 3, 1953

WITNESSES:

Mr. Saul Hayes, National Director, Canadian Jewish Congress;

Professor Bora Laskin, University of Toronto;

Mr. M. M. Myerson, Advocate, Member Legal Committee, Canadian Jewish Congress;

Mr. R. C. Merriam, Barrister, Counsel for Premium Advertising Association of America, Inc.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

71271—1

MONDAY, February 23, 1953.

Ordered,—That the name of Mr. Churchill be substituted for that of Mr. Diefenbaker; and

That the name of Mr. Gauthier (*Lac Saint Jean*), be substituted for that of Mr. Pinard on the said committee.

Attest.

LEON J. RAYMOND,
Clerk of the House.

71271—1½

MINUTES OF PROCEEDINGS

House of Commons, Room 268,

TUESDAY, February 24, 1953.

The subcommittee appointed to consider Bill No. 93 (Letter O of the Senate), "An Act respecting the Criminal Law" and all matters pertaining thereto, met at 10.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Cameron, Cannon, Carroll, Churchill, Garson, Laing, MacInnis, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffatt, Q.C., Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

Mr. Laing presented a report of the steering subcommittee, dated February 19, as follows:

> The subcommittee met under the chairmanship of Mr. D. F. Brown, M.P., and were present: Messrs. Robichaud, Noseworthy, Shaw, Laing and Cannon.
>
> The subcommittee had before it for consideration a number of communications some of which contained requests to appear before the committee to make representations concerning Bill 93.
>
> The committee was of unanimous opinion and it so recommends that in conformity with the resolution adopted by the committee, the following be invited to appear on the date set in each case: The Association for Civil Liberties, at 10.30 a.m., Tuesday, February 24; Canadian Jewish Congress, at 10.30 a.m., Tuesday, March 3; Canadian Welfare Council, at 10.30 a.m., Tuesday, March 3; United Electrical, Radio and Machine Workers of America, at 3.30 p.m., Wednesday, March 4; League for Democratic Rights, at 3.30 p.m., Wednesday, March 4.
>
> The subcommittee recommends that the representative of the Premium Advertising Association of America, Inc., be heard either on March 3 or 4, if time allows, or at an early subsequent date.

On motion of Mr. Laing, the said report was unanimously adopted.

The committee resumed from February 18 the clause by clause study of Bill 93.

Clauses 226 to 249, 251, 253 to 290, 292, 293 and 294 were passed.

Clauses 222 to 225, 250, 252, 291 and 295 were allowed to stand.

Wednesday, FEBRUARY 25, 1953.

The committee met at 3.30 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Cameron, Cannon, Carroll, Churchill, Garson, Henderson, Laing, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy and Robichaud.

In attendance: Mr. A. A. Moffatt, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

Mr. Cannon presented the report of the Steering Subcommittee, dated February 24, as follows:

> The subcommittee met at 3.30 o'clock this day, under the chairmanship of Mr. D. F. Brown and the following members were present: Messrs. Garson, Robichaud, Laing, Shaw, MacInnis and Cannon.
>
> Your subcommittee had before it a number of communications and briefs some of which contained requests for personal appearance before the committee.
>
> Your subcommittee is unanimously of the opinion, and so recommends, that the privilege of oral representations be extended to the Congress of Canadian Women on March 4, next.
>
> In the case of the following groups, namely: Montreal Civil Liberties Union, Montreal; Canadian Union of Woodworkers, Quebec; and Canadian Friends Service Committee, Toronto; the subcommittee, having considered the written submissions of these groups, feels that the views expressed therein merely emphasize the objections to certain clauses of Bill 93 which were voiced by national organizations and were elaborately dealt with when the said national organizations attended before the committee. Therefore, personal appearances in support of the submissions do not seem necessary and your sub-committee recommends that the aforementioned groups be notified accordingly.

On motion of Mr. Cannon, the said report was unanimously adopted.

The Chairman informed the committee that advice had been received from the Canadian Welfare Council to the effect that they would be unable to appear as arranged on Tuesday, March 3. It was agreed that a subsequent date would be set for the purpose.

The Committee resumed from Tuesday, February 24, clause by clause study of Bill 93, An Act respecting the Criminal Law.

Clauses 296, 298 to 303, 305 to 329, 331 to 338, 340, 341, 342, 344 to 364, 368, 370, 374 to 385, and 387 to 390 were passed.

On clause 304

On motion of Mr. Robichaud, seconded by Mr. Cannon,

Resolved,—That the said clause be amended by deleting from paragraph 4 thereof, in line 2, page 101 of the Bill, the following words: "and did believe".

Clauses 297, 330, 339, 343, 365 to 367, 369, 371, 372, 373 and 386 were allowed to stand.

At 5.15 p.m. the committee adjourned to meet again at 10.30 a.m. Tuesday, March 3, 1953.

TUESDAY, March 3, 1953.

The committee met at 10.30 a.m. The chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Carroll, Churchill, Laing, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffatt, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice; Mr. Saul Hayes of Montreal, National Director of the Canadian Jewish Congress, with Professor Bora Laskin of Toronto, Professor of Law, School of Law, University of Toronto; Mr. M. M. Myerson, Montreal, Advocate and Barrister, Member of the Legal Committee; and Mr. Ronald C. Merriam, of the legal firm of Gowling, MacTavish, Watt, Osborne and Henderson, representing Premium Advertising Association of America.

The chairman introduced a delegation of the Canadian Jewish Congress composed of Mr. Saul Hayes, Montreal, National Director; Professor Bora Laskin, Professor of Law, School of Law, University of Toronto; and Mr. M. M. Myerson, Montreal, Advocated and Barrister, member of the Legal Committee of the Congress.

Mr. Saul Hayes read the brief on behalf of the Canadian Jewish Congress and was questioned at length thereon. Professor Bora Laskin and Mr. Myerson were also asked specific questions arising out of the study of the brief.

At the conclusion of their presentation, the members of the congress were thanked by the chairman on behalf of the committee for their valuable contribution.

The committee also heard Mr. Ronald C. Merriam of the legal firm of Gowling, MacTavish, Watt, Osborne and Henderson, who appeared on behalf of the Premium Advertising Association of America. Mr. Merriam read a short brief and was questioned thereon and the witness, after being thanked by the chairman, was retired.

At 12.30 p.m. the committee adjourned to meet again at 3.30 p.m., March 4, 1953.

ANTOINE CHASSE,
Clerk of the Committee.

EVIDENCE

MARCH 3, 1953.
10.30 a.m.

The CHAIRMAN: If you will kindly come to order, gentlemen, we will proceed with the business of the committee. We are honoured today in having before us representations from the Canadian Jewish Congress, headed by Mr. Saul Hayes of Montreal, who is the national director of the Canadian Jewish Congress, also Professor Bora Laskin of Toronto, professor of the law school of the University of Toronto, and Mr. M. M. Myerson, Montreal, who is an advocate and barrister, a member of the legal committee of the Canadian Jewish Congress. We have copies of the brief. They have been submitted to you and I assume everyone has read the brief.

Mr. SHAW: I may have received one, but I have no record of it.

The CHAIRMAN: They were in the mail yesterday because I got mine.

Now if it is your pleasure, gentlemen, Mr. Hayes is spokesman for the delegation. The committee has looked over the brief and it may be that you would care to add something by way of oral submission, Mr. Hayes?

Mr. Saul Hayes, National Director, Canadian Jewish Congress, Montreal, called:

The WITNESS: Mr. Chairman, I would like to thank this committee for receiving us to hear our representations. I should like also to say a word of explanation even though it may be strictly superfluous, that the Canadian-Jewish community through the Canadian Jewish Congress is making representation only to two sections of the bill. It should not be assumed from that it has no interest in the entire gamut of the bill from beginning to end, but we simply are directing our main interest in these two features.

As citizens of the community we will take our place in representations on other committees making some submissions to this committee on a wide variety of subject-matter as illustrated in the sections of the Code or as electors in the ordinary way. But, as representatives of an ethnic group we have a specific interest and it is this specific interest which is the subject-matter of our submission. And it restricts itself to matters of sedition, free speech, public mischief, and false news.

I should also like to explain why we come before you at this time. We could have made proposals on this subject-matter but it seems more pertinent to us to wait until the legislature concerns itself with the investigation of the Criminal Code which occurs only once in many generations. The Criminal Code is the repository of the public morality of the community and any changes in it should reflect the position of the community at the time when changes are proposed. If this were not done it would be a static set of laws whereas it should be dynamic and organic changing with the needs of any generation that assembles it.

I am wondering in the event that the brief has not been read whether it might not be better inasmuch as it is a very short brief to read it.

I should, however, make an explanation, as I believe that the brief was not received by the members of this committee in time for them to read it prior to this session. The fault does not lie with the secretary but with the fact that we did not realize we would be called on Tuesday, today, and we called an emergency meeting. It could only be held last Sunday and consequently the mechanical aspect of taking our decisions and translating them into mimeographed form could only be done so you could not possibly receive them before yesterday and consequently some members did not have the advantage of seeing them.

Under these circumstances would you give me permission to read the brief, Mr. Chairman?

The CHAIRMAN: What is the wish of the committee.

The WITNESS: The brief is very short.

The CHAIRMAN: I do not think we should have it considered as a precedent that each brief that we have before us will be read in full because some of them are quite voluminous and it would not be possible on a committee meeting to have a brief read and questions asked in connection therewith, so that while we appreciate the concise nature of this brief we would not want to have it considered as a precedent that we are going to have a brief read every time.

Hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. Hayes.

The WITNESS: The Canadian Jewish Congress, a body politic and corporate under part II of the Companies Act of Canada appears before this committee representing the Canadian Jewish Community as its official spokesman in matters of public interest. Its headquarters are in Montreal and it maintains regional offices in Halifax, Toronto, Winnipeg and Vancouver.

The Canadian Jewish Congress wishes to record its appreciation of the great public service of those citizens of Canada who contributed their talents and their time to the revision and consolidation of the Criminal Code. It welcomes this opportunity to make a submission on the draft bill which is now before the House of Commons. In the deliberations of the Senate Committee and in the deliberations of this House Committee, the people of Canada have had, and have, a unique occasion to consider the role of the Criminal law to protect all sections of our society against anti-social behaviour and conduct. This general purpose of the Criminal Code makes it eminently proper that it be the vehicle to express the national concern for unity among the different ethnic and religious groups in Canada and that it underscore this concern by properly drafted provisions looking to the elimination of acts and practices which produce or promote injurious discord. The Canadian Jewish Congress is fully aware that any such provisions must be consistent with protection of the democratic character of our society which holds sacred freedom of speech, of assembly, of association, and of religious worship.

I might say parenthetically that we underlined in every meeting that we had that any proposals we make are fully cognizant of the more import aspects of the retention of these basic freedoms.

The Jewish people of Canada share with the rest of the Canadian people the determination to preserve these freedoms which are deeply rooted in the traditions of our country and for the maintenance of which our country, in alliance with like-minded nations, fought and sacrificed. However, we do not believe, nor do we think that other Canadian groups believe that the preservation and maintenance of our essential freedoms require us to give licence to those who would arouse hostility among the different classes of our people or public malicious falsehoods to drive a wedge between such classes. Conduct of this character undermines our democratic rights, sabotages the national wel-

fare and destroys national unity. It exploits our democracy for evil ends. Canada, of all nations must depend for its fullest development upon unity among its constituent group, and anything which seriously jeopardizes this objective must be extirpated as disruptive of this objective.

The draft Criminal Code bill presently prohibits Sedition (sections 60 and 61), Public Mischief (section 120) and Spreading False News (section 166). We believe that it is consistent with the underlying philosophy of these sections, taken as they stand and also in their common law expression, to suggest two additions designed to give guarded recognition to our point of view as well as to national unity as a basic value of our society. We are of opinion that the prohibition in section 166 against spreading false news would more clearly express the public revulsion against hate-mongers if the words "public interest" (which it is the design of the section to protect) were amplified by the addition of a subsection in words like the following: "injury or mischief to a public interest shall include promoting disaffection among or ill-will or hostility between different classes of persons in Canada". This amplification will in no way impair freedom of utterance, which is secured by the very terms in which the offence is now defined, nor does it introduce new concepts of crimes. The term "public interest" in the common law was perhaps wide enough to include the gist of this proposal, but clarity of expression is desirable in the present proposals of codifying the law.

The word "perhaps" may require parenthetical observation. The law as it stands in this matter, the spreading of false news and the publishing of false news, has been the special matter of a monograph by Professor Scott of McGill University and this pamphlet indicates much more clearly than anything which our brief could say exactly what I mean by the fact that it is not clear from the ambiguity and difficulty as to what the publishing of false news really means. Therefore in the codification of the law when it will be frozen in a code without resort to any basis in common law, it will be the law of the land, and it seems to me with all humility that there is no section of the criminal law where clarity is more desirable than in this section because of the facts indicated which appear more clearly from Professor Scott's study.

It might be well also to add the word "statement" to the description of the offence so that it will read, in part, "everyone who wilfully publishes a statement, tale or news", etc.

Our second point concerns the resort to statements or allegations, whether true or false—and that is the distinction between this and the other one. In the other one the question of truth or falsity does not arise. It is a matter of falsity—designed to incite to violence against any class of persons or to provoke disorders against them. Such statements can find no justification in any belief in their truth or validity by the speaker or writer. If his design is to provoke disorder, he can find no protection in any of the freedoms which we are all sworn to uphold. Because neither the present sedition sections nor the public mischief section cover incitements or disorders of this character, there is good reason for suggesting the establishment of an offence (which, we submit, was known to the common law) in words such as the following: "Everyone who publishes or circulates, or causes to be published or circulated, orally or in writing, any statement, tale or news, intended or calculated to incite violence or provoke disorder against any class of persons or against any person as a member of any class in Canada shall be guilty of an indictable offence and liable to imprisonment for two years."

Mr. CARROLL: Would you mind reading that again, please? I am not clear on what you say was the common law. I do not seem to have the same thing. Would you please read it again?

The WITNESS: Yes.

> Everyone who publishes or circulates, or causes to be published or circulated, orally or in writing, any statement, tale or news, intended or calculated to incite violence or provoke disorder against any class of persons or against any person as a member of any class in Canada shall be guilty of an indictable offence and liable to imprisonment for two years.

The reason we make that statement is that we believe it is known to the common law, and that you perhaps are no doubt familiar with the history of the Boucher case in the Supreme Court of Canada, which case was heard twice. In the first case there were five judges and in the second case nine judges. The net result of the decision, if I may presume to put it into the perspective of a concordance is that the offence must be against the constituted authority, and the incitement to violence, however classic a definition the words be, is that it dealt with exactly—or to paraphrase it—with what we are trying to submit to this committee now. That is, that it had to do with preventing disorder against any class of persons, and was not restricted to constituted authority. And we submit, rightly in our view, that we should restore the common law offence in terms such as this, as we propose, because if we do not do it now, and the law of the land today is the Supreme Court Decision in the Boucher Case based on the previous article on sedition in section 60 in the Criminal Code, therefore, if there is no more resort to the common law in a codified aspect of the common law, then we are left with the Supreme Court Decision, and I am afraid that any attempt to obtain unity among the classes of subjects has disappeared. That is the net result of the submission.

Before recapitulating, may I, with your permission, now ask Professor Laskin, our expert on the law, to make a few observations on it?

The CHAIRMAN: Agreed.

Mr. LASKIN: Mr. Chairman and members of the committee, I want to take over from Mr. Hayes in the light of what he was saying, and to make a few observations. First, you will be aware, of course, that the Criminal Code commissioners in the original draft on sedition restored the common law position which the Supreme Court rejected in the Boucher case. Now, that was altered when the bill was presented to the Senate and as it is before us now.

Mr. CARROLL: That is, it now complies with the Boucher judgment?

Mr. LASKIN: Yes, sir. We are quite satisfied with that interpretation of sedition. I mean I do not want any mistake to arise on that because, in the first place, the sedition section carries a penalty of 14 years imprisonment, but we suggest that retaining the element of incitement to violence, constituting that as an offence, would be consistent with the common law understanding of conduct of that sort as an offence, but withdrawing it from the sedition section would more closely tie it up also with what was more commonly the understanding of the common law offence of public mischief, and that is why it appears in the form in which we have it, punishable by imprisonment for two years. I thought perhaps I should amplify those two points.

The WITNESS: To continue, Mr. Chairman. We should like to recapitulate. In the draft form the nub of our suggestions there is to take section 166 as it appears, and just before the phrase "tale or news" to insert the word "statement", so that it would now read as follows:

> Everyone who wilfully publishes a statement, tale or news that he knows is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and is liable to imprisonment for two years.

And to complete the article by adding a section (2), so that the new offence would be in two parts, being the one I have just read and the following:

> Injury or mischief to a public interest shall include promoting disaffection among or ill will or hostility between different sections of persons in Canada.

The second would be to place in the seditious libel section, but not as an amendment itself to the seditious libel articles of the Code, an offence to be called section 62 (a) and which would read as follows:

> Everyone who publishes or circulates or causes to be published or circulated orally or in writing any statement, tale or news, intended or calculated to incite violence or provoke disorder against any class of persons or against any person as a member of any class in Canada shall be guilty of an indictable offence and liable to imprisonment for two years."

Mr. Chairman and gentlemen, the motivation for our submission is based to some large extent, I may say, on fairly recent history. We have found that perhaps one of the great phenomena of modern times, certainly from 1922, 1923 on, after the Versailles Treaty, has been the enormous use of propaganda—propaganda by circulars, propaganda by distribution of what is now called hate literature, propaganda from the rostrum, propaganda from soap boxes, and so on—and while we recognize, and always have, that this propaganda does not include such classical and cultural propaganda which, by tradition, emanates from the Hyde Park orators, because there is a tradition about Hyde Park oratory, a philosophy that is a mentally stable one and peculiarly suited to the culture of the United Kingdom. Perhaps it has been found to have certain very deleterious effects on other countries.

It is probably the homogeneity of the British people of the United Kingdom that makes that possible where it may not be possible in other areas. We feel that what has happened over the years, culminating—and I hope it is the final culmination—in the propaganda of Mussolini, of Goebbels, of Hitler and his lieutenants, and perhaps the propaganda we are witnessing today may be the last. We are a Jewish ethnic group and I will confine my remarks to that particular group, but propaganda behind the iron curtain countries and in the U.S.S.R. on these matters is an extremely important phenomena to recognize.

Mr. CHURCHILL: Could you define the word "propaganda"?

The WITNESS: I would not dare to, and I do not think that any amount of research on the matter would help me to do so. I can realize that a fair comment may be considered propaganda by a person who does not like fair comment; that a matter of an honest difference of opinion by a person would not be considered anything but propaganda by a person who did not like to hear honest opinion, so that consequently I would find it difficult to answer the question. But I would like, if I may, to answer it by an answer, not directly to your question, but perhaps it may help, and that is to say that there are certain things which are definitely black. There are certain things which are definitely the works of the devil. There are certain things which any reasonable person will know are an incitement to violence, and public mischief is intended. And I refer to such things as—and if the committee members would like to have copies, I would be glad to furnish them—documents like the Synagogues of Satan, the Protocols of the Elders of Zion, the effusions of Gerald K. Smith, appearing in certain United States or American publications, and so on. I think the question is whether reasonable men, or a jury, if you will, of twelve reasonable men, will consider that fair comment. It is always a matter for the jury. But I think sitting around a table and putting these documents before you, everyone would say that is propaganda. Another matter may not be propaganda, but those are the things we are complaining about. We do not

criticize fair comment. It is a good thing when the motive is good. But a wilful, mischievous motive constitutes propaganda of a nature that can only do the Commonwealth some harm.

Mr. CARROLL: What you mean by the propaganda you are against is false statements sent abroad to the people.

The WITNESS: Yes.

Mr. MACNAUGHTON: May I ask a question, Mr. Chairman?

The CHAIRMAN: Have you completed your statement, Mr. Hayes?

The WITNESS: I will in a few minutes. I would like to say that that statement must be related to the fact that the Jewish community in Canada is an old community dating, in Nova Scotia, from 1752, and in Ontario and Quebec from 1763, after the British occupation. We do not believe there is a parallel between Italy of 1936 and Canada of 1952. We do not believe that there are any tin pot fuhrers or Goebbels possibly in Canada. We do not see it; it is not on the horizon. We are not coming to you with a panic fear that these things are around the corner and unless you do something the minorities are in jeopardy. Not at all. We do believe that the Criminal Code must be the expression of the community's norms of behaviour and, therefore, its insertion in the Criminal Code is of the greatest educative force possible. Of course such happenings may occur, perhaps even generations from now, or in a crisis, either an economic crisis or in any other situation where mischievous people use these things for their own advancement. I make this subsidiary point if I may. There is a dilemma here that influences a minority in these matters. If we are to take the advice to come before the legislature when the matter is of such a nature that immediate protection must be devised, it is then too late. You must go to the legislature when things look to be "civilized", if I might put that in quotations. You must come to them in a time when sober reflection will permit them to accept the advocacy of a particular position. But if you wait till the position becomes tragic, as it was in Germany from 1929 to 1933, or in Belgium at the time of the Degraill riots, and so on, you cannot get it. The climate is not right. When you want it you cannot get it, and when you need it, it is too late. That is the dilemma.

Finally, if I may put it this way, a considerable advantage of this type of legislation lies in the fact that we do not foresee necessarily a myriad of actions, as I mentioned before. The Canadian community is a community that believes in law, and just because it does the insertion of that in the Code is of great educative force. We do believe that its insertion in the Criminal Code will act as a barrier to do great harm to the community, to Canadian life. At the present time the Canadian post office, and the Postmaster General —and I think I am safe in saying this—generally feel that the Protocols of the Elders of Zion being distributed through the mail, and the other pamphlet, the Synagogues of Satan, are propaganda that is mischievous and bad, but until there is a law he cannot do anything to prevent their spread. In the same way is this matter of the importation of propaganda from Sweden. The customs department has to find out that there is a law against it or it is not in the legal sense scurrilous. So the Department of National Revenue cannot prevent its importation because there is no law against it. It is our contention, then, that it would be just as much a matter of preventing such vile propaganda and such debased propaganda from being circulated even if no action occurs, to guard against the work of malefactors.

Permit me to thank you on behalf of our delegation here and on the part of the Canadian Jewish Congress, representing as it does the Jewish ethnic community, for the opportunity of coming before your committee and hearing us and our submission.

Mr. MACNAUGHTON: I have had the advantage of studying this brief reasonably carefully, and I drafted three questions which I would like to throw at the witness, although he has answered some in part. Perhaps I could give the three questions together and he could mix them up, if he wants to. The first question is: Why is not the present Code in its sections on seditious libel (60, 61), or false news (166), or even public mischief (120), sufficient to repel any wilful, malicious or scurrilous attacks against classes of subjects or groups?

The CHAIRMAN: Have you your questions in writing, Mr. Macnaughton?

Mr. MACNAUGHTON: Yes. I will read them and then pass the written questions to the witness. The second question is: What is the history in Canada of attacks on ethnic or religious groups? Is it a serious problem or a theoretical one? My third question is—and I admit you have answered it in part, but perhaps you would give us other details. The question is: How do other countries deal with this?

The WITNESS: May I have the permission of this committee to answer some of those myself and have my colleagues answer others?

Agreed.

The WITNESS: I would ask Professor Laskin if he would be good enough to deal with the first one.

Mr. LASKIN: Gentlemen, I think that I offered a partial explanation a few minutes ago, resulting from the judgment of the Supreme Court of Canada in the Boucher-Jehovah Witnesses case of a few years ago. Now, I think it is rather interesting to note that in the judgment of Mr. Justice Rand—

Mr. BROWNE (St. John's West): I wonder if Mr. Laskin could give to the committee a brief resume of the facts in the Boucher case. There must be a good many here who do not know what he is talking about.

Agreed.

Mr. LASKIN: The Boucher case was a prosecution for seditious libel that resulted from the distribution in the province of Quebec by Jehovah's Witnesses of a pamphlet which was entitled, as I recall, "Quebec's Burning Hate for God". Now, that pamphlet was distributed in several communities and was the reason for the series of prosecutions that went all the way to the Supreme Court of Canada and, as Mr. Hayes pointed out, we have a rather unique situation here, in that the Supreme Court sat twice—it had a hearing and it had a rehearing, so important was this issue in the general question of our concern for civil liberties. Now, over a period of years we have come to accept quite a new meaning. Our concept of sedition covered the setting of group against group. That had been the traditional definition by the famous Sir James Stephen, who was in a sense the architect of this Criminal Code, too. We then found out from the Supreme Court of Canada that the passage of 100 years had changed our understanding of sedition and turned it into what the Supreme Court said was simply an attack, an incitement to violence against constituted authority, and because this pamphlet was not considered as directed to governmental authority, with the sense of inciting to violence or the overthrow or disrupting of government, it did not amount to sedition, whatever else it might have amounted to. So I say, coming to the point that in the course of his judgment, Mr. Justice Rand, whose views I think might be said perhaps generally to reflect the opinion which you will find throughout the judgments of the members of the court, Mr. Justice Rand indicated that while this type of behaviour or incitement might not involve or amount to sedition, it might very well amount to public mischief.

Public mischief had been a common law offence and as you gentlemen know, our code had made allowance for common law offences. Now, of course, that is to be done away with. We are to find all our criminal law in the docu-

ment which will ultimately be passed. So, in looking back to the definition of public mischief, and to the definitions of seditious libel, and of publishing false news, I lump them together because they represent now the three articles which represent the same sort of philosophies of prohibiting or preventing disorders of various kinds.

In none of these sections did we find this protection against the concept of public mischief which the Supreme Court of Canada indicated was still alive, although it did not amount to sedition. Hence, the submission we have made here, confining, as you gentlemen will understand, the prohibition that we would like to see written into the code to incitement to violence so far as a substantive offence which we recommend is concerned. We do not suggest that people should be prohibited from talking simply because they happen to injure the feelings of others; but we do say that incitement to violence is another cup of tea, if I may be permitted to use that expression. Therefore in connection with the publishing of false news, we feel there is historic precedent to be found in the long line of decisions in the English common law courts, but not so many in our own courts, which would justify us in asking the legislators to round out the understanding of public interest by considering that public interest also includes this concept, that of promoting unity among the constituent groups of Canada.

I can think of no higher example than a desirable public interest. That briefly is the way we look at these sections.

The WITNESS: There is just one more point to which I think Mr. Macnaughton's question refers:

> "Why is not the present code on its sections on seditious libel, or false news, or even public mischief 'sufficient' to repel any wilful malicious or scurrilous attacks against classes of subjects or groups?"

Does it mean what we think are rudimentary requirements? The answer is that the content to be found in section 120 of the bill which is now before you restricts it to the person who causes a peace officer to do certain things. In other words, the old idea which may have existed that public mischief could be, in the words of Mr. Justice Rand, an incitement to violence, the setting of one class against another, is no longer found in the section of public mischief, because it only restricts public mischief to anyone who causes a peace officer to enter upon an investigation by wilfully doing three things. So no longer can you find any help in the section which Mr. Macnaughton has asked about, because the concept of the law of public mischief must have been changed, and it has been restricted to the matter of the peace officer.

Mr. CARROLL: I do not think that was directly the question which Mr. Macnaughton asked. Why did the code as we have it here in its sections on seditious libel not cover your difficulties?

The CHAIRMAN: Are you referring to the present bill?

Mr. CARROLL: The present bill, yes.

The CHAIRMAN: The bill that is now before us, which is not yet the law.

Mr. LASKIN: It does not cover incitement to violence against groups in a community. Under the Boucher case which this bill adopts, it is only incitement to violence against constituted authority that is sedition.

Mr. CARROLL: I see.

Mr. LASKIN: And we think this other element ought to be covered.

Mr. BROWNE: Is there any section which would allow prosecution for spreading false news?

Mr. LASKIN: The only possibility now would be under section 166, and that would depend on how you are prepared to regard the words "public

interest". You understand that it must be news which was wilfully published knowingly to the publisher, and news which was false. There is considerable protection, gentlemen, to the concept of free speech.

Mr. BROWNE: He must believe it is true?

The CHAIRMAN: You are referring to the bill before us, not to the present law?

Mr. BROWNE: Yes. I am referring to the bill.

The CHAIRMAN: There is a difference between that and the present law.

Mr. BROWNE: I mean under this new legislation.

The CHAIRMAN: So long as we understand that you are talking about the bill which is before us, it will be all right.

Mr. BROWNE: The bill.

Mr. LASKIN: As I say, it would all turn on how you consider public interest. Let us assume that I publish something which I know to be false. The question is: is it something which will cause injury to a public interest? Now, what is public interest?

Mr. BROWNE: A class in the community?

Mr. LASKIN: That is our definition that that is public interest, but it seemed to me that out of an abundance of cases and out of an abundance of convictions that ought to be made more manifest than the code now makes it. It leaves it considerably at large.

Mr. MACNAUGHTON: There is another question, is there not?

Mr. LASKIN: Yes.

The WITNESS: Mr. Macnaughton put three questions:

> "Why is not the present code in its sections on seditious libel, or false news, or even public mischief sufficient to repel any wilful, malicious, or scurrilous attacks against classes of subjects or groups?"

I would say that if the present bill, when it deals with sedition, had included Stephen's definition, then I do not think our representations would have been too much concerned with changing section 166 of the new bill which deals with false news.

It is because the representations of the commissioners on the revision of the Criminal Code were dropped out that now you do not have either a restoration of the situation there or something new such as 166 in our proposals, and thus you have nothing at all on the protection of the possibility.

The second question:

> What is the history of Canada of attacks on ethnic or religious groups. Is it a serious problem or a theoretical one?

The history in that respect has been free from any, I would think, very major consequences. We remember that in 1936, 1937, and 1938 Mr. Adrian Arcand received a following; but it is to the eternal of credit of the French Canadian population that they did not cling to Mr. Arcand's views or proposals. At the very best he may have had a membership of some 8,000 out of 2 million French Canadians, and he did not make much of an impression on labour. But the publication was so dangerous that it spread all over Canada, and in Winnipeg—and there are various racial groups in Winnipeg—it whipped up a great deal of animosity among those ethnic groups, and in the province of Manitoba, and it had some off-shoots in Ontario but not as serious as in Manitoba. Therefore, in the light of that history and in view of the thought that halcyon days cannot always be with us, one might foresee a situation of economic strife and difficulty, or international difficulty, so your corpus of

law should be prepared immediately by the introduction of section 62-A which is included in our submission. Now, I might offer a word as to how other countries deal with this and I would ask Mr. Myerson in respect to that.

Mr. MYERSON: Mr. Chairman and Members of the Committee: This idea of protecting ethnic groups against domination is not new in the world. It has been taken up in other countries and in particular in the United States where they have different concepts and different codes. They have state codes as well as the federal code. Seven of their states have introduced the idea of a group definition of group violence. Originally the concept in law naturally is that every lie which causes harm to society should be outlawed. Unfortunately, in most of the common law countries, the lie which is protected, which is harmful and which hurts ethnic groups has not been ostracized and outlawed in the manner it has been done in other sections of the Criminal Code, such as published statements, and so on, and statements which are submitted to banks, if they contain any falsehoods, in order to obtain money fraudulently. They are ostracized. But here in our country unfortunately there has not been, up to the present time, the concept of any statement that may be good, whether true or false, but which will hurt an ethnic group even if it is false. It is not outlawed.

Other countries have introduced these group libel laws, as we call them. For example, in the United States there are seven states of which I know of four, specifically Indiana, Massachusetts, New Hampshire, and Illinois which have introduced group libel laws to protect ethnic groups from these vicious attacks. There are also countries such as Denmark and Sweden.

Mr. CARROLL: May I ask one question: Do they designate those statements as false, that they must be false?

Mr. MYERSON: Roughly, they are directed against any such statement. We are attacking laws which facilitate wilful falsehoods.

Mr. CARROLL: I do not think you are. In the subsection you say:

> Everyone who publishes or circulates, or causes to be published or circulated, orally or in writing, any statement, tale or news, intended or calculated to incite violence or provoke disorder—

It does not say whether it has to be false or the contrary.

Mr. MYERSON: That is not the one to which I am directing my attention, that incites to violence to publish a statement which is false which may hurt other interests; anything which hurts the public interest or incites violence; when you incite violence whether true or not, you have no right to do it. But I am directing my attention to the lie, to wilful lies which cause harm to ethnic groups. That has been introduced in a number of states in the United States and in some few countries.

As a matter of fact it is interesting to recall that the one who has prepared our present law on that definition of individual libel law was Lord Campbell in 1843, and in dealing with this subject matter and development of defamation, he said that it would be defamation of the individual, and it is incorporated in Lord Campbell's Act. But at that time he also indicated that it would be properly directed in a case of libelling groups. And I would refer any of you who wish to see this language to King's Law of Defamation page 126 where mention is made of it.

It is strange that in a country such as England where people are more homogeneous than in Canada that even in 1843 they were far removed from the present concept yet they say in two cases that there should be a law against

group libel. A fortiori in Canada where we have a vast number of different groups, religious and ethnic groups, where harm can be done, there is good reason for producing this section as we have worded it:

Everyone who wilfully publishes a statement—

It is the wilful lie that we would ostracize, the wilful lie which may cause harm.

Mr. ROBICHAUD: I am concerned with the point that has been raised twice already by the chairman and I would like to direct one question to the delegation, if I may. Referring to your proposed section 62(a), am I right in assuming that you are, in effect, asking parliament to considerably broaden the present conception and interpretation of seditious offences by embodying therein the publication or circulation, orally or in writing, of any statement, tale or news, even if they be absolutely true and based on facts, once it may be considered or determined that they are intended to incite violence or provoke disorder against any class of persons?

The WITNESS: I think the answer is categorically yes, but, nevertheless, may I expand on it. It is intended to do that because it is not a new concept, you see. That concept of the truth or falsity being immaterial is an old concept. The matter of incitement to hatred against different classes of Her Majesty's subjects is an old concept. The thing that is new about it is only the fact that where it was considered by students to be part of the law of the land, that theory and that view was completely demolished when the Supreme Court of Canada, in the Boucher case, said nothing of the kind, it does not exist at all. It may have in Stephen's definition, it may have in Halsbury's Laws, from which Stephen quoted, but it no longer is true, and sedition can only mean incitement to violence whether true or false, against constituted authority. Now, we say we wish to restore the pristine glory of what we felt was the common law, which always says it also means against different classes of Her Majesty's subjects.

Mr. LASKIN: Could I just add one sentence? I think that for 600 or 700 years, if not longer, the basic concept of the common law of England, and more recently in Canada, has been around the idea of the breach of the King's or the Queen's peace. Now, what we are doing, it seems to me, is in the tradition of the fundamental understanding of our whole common law, namely, you must keep peace.

Mr. SHAW: There were two things that troubled me. I notice in the proposed section 62(a) you refer to a class. That is one thing, but then you refer to any person as a member of any class. Now, I visualize this situation, and I would have to have a definition of 'class' as it exists in your mind. I happen to be in a public office. I might have certain ideas. Someone may honestly criticize my ideas, but I as an individual may draw about me certain persons and we say, "now, just let him try that once again", and we as a class then will take action which might be considered as violence. I can see the reference to class on the basis of religion, let us say, or as an ethnic group, but you are narrowing it down to criticism of an individual who may be a member of a class. Is that not carrying it quite far?

Mr. LASKIN: With respect, sir, if I may offer an explanation. In the first place, the words "class of persons" have an ancient and perhaps honourable history, and as you yourself pointed out, they already appear in the sedition section. Now, those are a group of the sections which are called offences against public order. I would not like the members of this committee to get the idea that we are all for enlarging the concept of sedition. I think the essential idea is public order. Now, that is No. 1. In dealing with disorder

against any person as a member of any class, I have the idea that the gist of the offence is the direction against the class, and this will—let me take for an illustration, suppose we are going to go after people who wear bow ties.

The CHAIRMAN: I hope that is not directed to me.

Mr. NOSEWORTHY: You are the only one.

Mr. LASKIN: Now, these statements we are making are going to incite to violence the bow tie group. Then we say, let us get after Mr. Brown, you see, as being a typical person in that class. Now, there is no suggestion that there is any incitement to violence against Mr. Brown himself. That situation may be taken care of by other sections of the Code dealing with offences against the person, but where we use him as a focus for violence against a group, it seems to me that he should fall within the same protection afforded to the class.

Mr. SHAW: I look at it from the point of view that one who is in public office belongs to a group. Someone honestly criticizes me; therefore, I quickly interpret it as a criticism of a group. Now, I do not know whether the word 'class' includes that. I think of 'class' going considerably further and including a religious group, or it might be a political group or an economic group. I feel that they might place an interpretation such as that upon that section if these provisions were embodied in the criminal law.

The WITNESS: I do not think we are in any way trying to proscribe criticism of any group. That certainly is the furthest thing from our intention.

By Mr. Shaw:

Q. The witness worries me in the sense as pointed out by Mr. Robichaud, to have deleted that word "false". In other words, the statement may not need to be false.—A. Yes, sir, but the gist of the offence is keeping order, preventing incitement to violence. Let me perhaps make one other point. That question of falsity may be very relevant to a statement of facts, but I do not see, sir, how you are going to be able to deal with truth or falsity on questions of opinion. And when we are dealing with the dissemination of news or tales, I think it becomes highly elusive and perhaps impossible to make comparisons on the basis of fact or imagination, so that by keeping the gist of the offence the incitement to violence, I think we are in a very traditional sphere of keeping the Queen's peace.

Q. I see a certain element of good in the section, but I also see a good deal of danger.

The CHAIRMAN: Shall we reserve our opinions till a little later?

Mr. LAING: I would like to ask Mr. Laskin if there is any fear in their minds that we might get into literature under either of these sections, either ordinary literature or novels. I am thinking now of publications. I know of one that does not put the Scotch people in a very good light. I am thinking, too, of Jewish books as they are reflected in films which some of the Jewish people did not like. How far could this go?

Mr. LASKIN: I think, sir, the things we do not like we simply have to bear, but I think the whole thing revolves on what 12 men in the jury box think.

Mr. LAING: That is right, but some people would certainly say they were designed to create disunion among people. I am wondering how far you are opening it. My second point is: All of us are on the mailing list of a number of people. I am on the mailing list of one Gostick. I do not object to receiving his stuff because it enables me to expose it for the poison I think it is. Now, if he did not publish it he would be thinking the things and perhaps doing what he is doing by other means. I am wondering if you are not trying to achieve a purpose by attempting to write it into something that will see somebody in court, but the real purpose may be lost.

Mr. LASKIN: Just one sentence in answer to you. The same criticism you make of these sections you could also make of the sedition section of our Code. Therefore, it seems to me that if you have objection to these, then you must object consistently with the sedition section, because the gist of that section also is incitement to violence against constituted authority. For all I know, you members sitting in this room may represent, in the views of the Supreme Court, constituted authority. I know I do not, but you are legislators and, therefore, constituted authority. Therefore, incitement against a group of you may be sedition. Now, incitement to violence, it seems to me, with all due respect, that you yourselves in other capacities are members of other groups, so that incitement to violence against you in another character ought to be equally punishable.

Mr. MYERSON: May I answer Mr. Laing on this question. History in the past 27 years has taught us very clearly that literature of this type of propaganda goes out by tons and tens of tons. It goes out to masses of people. If it reaches an intelligent man, he takes it and analyzes it and dissects it; he takes the chaff from the wheat and he knows the value of it, and whatever may be of value he takes out. But when you consider the fact that thousands and hundreds of thousands of leaflets go out in a general way to the masses and strike people who have not the information that you have, and they are influenced—influenced with an animus, with a sort of hatred—then it becomes a very dangerous matter. No amount of contradiction can overcome or can cure the damage done to any group, and how can you catch up with tons and tens of tons of literature. Certainly a small ethnic group should not be called upon to have to deal with this type of propaganda and harness itself to a tremendous effort to deny the silly, and very often stupid, writings that appear in that kind of literature.

Mr. MACINNIS: I am not unsympathetic when I think of the purpose the delegates have in mind in submitting this section 62(a), but with my limited knowledge of the law I believe that it is in the wrong place. The section dealing with sedition, and sedition itself is a very serious matter, applies, as we have it now in the Code here, to constituted authority. Surely we are burdening it to a very great extent if we are going to include individuals, classes or groups. I do not believe that we would be wise in doing so. There should be a place in the Code for an amendment such as this, but, certainly in my opinion, it should not be under that section dealing with sedition.

The CHAIRMAN: I think, Mr. MacInnis, when we come to discuss this in the committee we will have to go over it very, very carefully and weigh the opinions that have been expressed.

Mr. MACINNIS: Certainly I do not disagree with what has been said. I just want to give my own opinion right now so that it will be on record. I think that it would be an unwarranted and undue extension of the sections on sedition.

Mr. NOSEWORTHY: I just want to make sure that I understand this. It is a little difficult to understand. Am I right in my conclusions that whereas under the present section, or the proposed section 62(a), it will be sedition, punishable with 14 years imprisonment, to make a statement, true or false, in writing or orally, or to be a party to such a statement against constituted authority?

Mr. LASKIN: Inciting to violence.

Mr. NOSEWORTHY: Yes, that is the present provision. You would make it a seditious offence, punishable by two years imprisonment, to do the same thing for purpose of inciting violence, provoking disorder against a group or a class. That is the sum and substance of it?

The WITNESS: I appreciate the difficulty that confronts both Mr. MacInnis and Mr. Noseworthy, because it confronted us as well. The answer may not commend itself to you, but I give it to you for what it is worth. The difficulty we found was not so much in the logic of putting it where it is but with the impossibility of putting it anywhere else. In other words, there is no other place in the Code where this can occur with the same cogency, and this is an interesting fact. I may say that even sedition under section 60, and further expanded under section 61, represents almost a conflict in ideas. It would not have represented a conflict in ideas at all if the common law offence was continued. This matter of producing feelings of hostility and ill will, the Supreme Court says it is out completely, but in the exception it is now in under section 61(d). So you have it in when it is out, and it is because that phraseology appears here referring to feelings of hostility and ill will as an exception to something that does not exist, which led us into a great deal of difficulty.

Mr. ROBICHAUD: May I be permitted to ask a second question?

The CHAIRMAN: Is it agreed?

Agreed.

I would ask members to bear in mind that we have another delegation, and it is now a quarter to twelve.

Mr. ROBICHAUD: This is in the nature of a hypothetical question. It may be far-fetched, but assuming that one of my opponents, politically, religiously, ethnically, and professionally, published this against me: This French Acadian, Catholic, lawyer, and Conservative candidate has committed a certain offence. And supposing it would be true. Under the civil law, I would have no case against the publisher of this libel.

Mr. CARROLL: You might.

Mr. ROBICHAUD: Assuming that it is true, then I would have no case.

Mr. BROWNE (St. John's West): Under the criminal law you would.

Mr. ROBICHAUD: Let me finish, Mr. Browne. Under the civil law there may be an action taken against the publisher, but he would have a perfectly good defence if the story were true. If I go against the publisher and he can prove it is true, then I am stuck. But suppose that section 62-A were embodied in our code. There are several classes involved, French Canadians, an ethnic group, the Roman Catholics, a religious group, and the poor conservatives, a political group. Supposing this section 62-A were embodied in our code, then I could prosecute, relying on the possibility that these words were intended to incite violence or cause disorder against the French Canadians, the Roman Catholics and so on. That is far fetched, but it might happen.

Mr. LASKIN: I think there are two answers to that. I am a law teacher and a lawyer and in my business I always deplore the horrors which are likely to arise from pushing things to an extreme. If you take any set of facts and push them to an extreme you make them ridiculous. So, with due respect, we do not predicate our law on that basis. Secondly, if you are asking for my opinion, I would say there was no successful chance of prosecution, because I do not see how 12 men could see in that an incitement to violence.

Mr. ROBICHAUD: While there might not be a chance of conviction, there is every possible chance of prosecution. You see, there is a distinction.

Mr. LASKIN: That is in the hands of the proper authorities. Any crown attorney's office is crowded with people who have real or fancied grievances. It is his function to sort out what might injure the public order and persuade the rest of them to go away. Furthermore, there already is in the code a section on defamatory libel in which the element of truth may or may not constitute a defence.

Mr. ROBICHAUD: I am quite aware of that.

Mr. LASKIN: That is section 247. So, to that extent we already have the history of that section to take care of that situation.

The CHAIRMAN: If there are no further questions, I want on behalf of the members of this committee to express to you, Mr. Hayes, Professor Laskin, and Mr. Myerson our sincere thanks for your attendance here today, and I am sure that your opinions will be of considerable help to us when we come to the consideration of this Bill.

The WITNESS: Thank you again, Mr. Chairman.

(The witness retired).

The CHAIRMAN: We have with us this morning Mr. Ronald C. Merriam, a barrister, representing the Premium Advertising Association of America Inc. He has presented a very short brief to us. It consists of two pages. This has been placed in your hands. It is printed on the stationery of Messrs. Gowling, MacTavish, Osborne & Henderson.

Mr. CHURCHILL: What does the brief look like, Mr. Chairman?

The CHAIRMAN: It is on firm stationery, Mr. Churchill. Now, if it is your pleasure, we shall now hear from Mr. Merriam. Do you want him to read his brief?

Mr. NOSEWORTHY: I suggest we have it read.

The CHAIRMAN: Agreed. Now, Mr. Merriam, would you care to proceed with your presentation?

Mr. Ronald C. Merriam, Barrister, Representing The Premium Advertising Association of America Inc., called:

The WITNESS: Mr. Chairman and gentlemen: After the fluency of the persons who have just finished making their representations to you, I feel somewhat inadequate. But I would like to start with just a very brief word of thanks to you for allowing us this opportunity to appear before you personally. And in accordance with your instructions, the brief which is very brief is as follows: It is addressed to:

The Chairman,

Special Committee of the House of Commons
to consider the Criminal Code.

Dear Sir:

On behalf of the Premium Advertising Association of America, Inc., we would respectfully submit for the consideration of your Committee the following representations with regard to a proposed amendment to Bill 93, being an Act respecting the Criminal Law.

As the Criminal Law now stands, it is unlawful for anyone either directly or indirectly to deal in or with trading stamps in any way. This prohibition is maintained in Section 369 (1) and (2) of Bill 93. Our clients submit that consideration should be given to either deleting this Section in its entirety or amending it so as to provide that persons may deal in trading stamps provided no fraud is practised or no fraudulent intention is present.

By Mr. Browne:

Q. Would the witness explain what trade stamps are? I have never heard the expression before?—A. Trade stamps, Mr. Browne, are small stamps. I have not got a sample with me; but if you go into a grocery store or—

The CHAIRMAN: A dry goods store?

The WITNESS: Yes, a dry goods store.

The CHAIRMAN: Or a chain store?

The WITNESS: Or a chain store, or any type of retail store, you purchase whatever merchandise you want. For each 10 cents worth of purchase that you make, the merchant gives you a little stamp, a very little stamp, smaller than a postage stamp usually, and a booklet. That booklet varies so far as the number of stamps it will hold are concerned, anywhere up to 500 stamps, maybe more, and when that booklet is filled, you have the privilege of presenting that booklet either to one of the retailers or, in some instances, to the person producing and selling the stamps themselves, and you can turn them in for a premium either in cash or goods, depending on the particular circumstances of that particular issue.

By Mr. Browne:

Q. I have never seen them.—A. They have not been in use in Canada for about 50 years.

The CHAIRMAN: Oh yes they have. I recall them very distinctly. There are probably some members of this committee who have acquired a great deal of their household silverwares and dishes and what-not by the use of trading stamps. It was quite common.

Mr. MACINNIS: But that is not what they are called.

The CHAIRMAN: Yes, they are called trading stamps.

Mr. BROWNE: I thought it was those little coupons.

Mr. SHAW: I suggest, Mr. Chairman, that we allow the witness to proceed.

The CHAIRMAN: This is an explanation of trading stamps. They were used 30 to 35 years ago, I recall.

The WITNESS: I may have been exaggerating a bit in the number of years, but I believe it is true that they have not been lawful for some years.

Mr. BROWNE: Thank you.

The WITNESS: The use of trading stamps in the United States is widespread and is popular with both retailers and consumers. We are informed that this business has flourished in the United States since before the turn of the century and if any abuses have occurred, they have not been considered of sufficient importance to have justified any investigation by the federal authorities or any prohibitory legislation being enacted. While we do not mean to suggest that any abuses have occurred, we do submit that the trading stamp business in the United States is similar in nature to any other large scale economic undertaking. While it is true that the law under which trading stamp companies operate may vary in some detail from State to State, it is equally true that the practice as such is generally recognized and has become an integral part of the United States economic life.

In addition, the trading stamp business in the United States is a highly competitive one, there being any number of companies engaged in the business, with the result that as in any other highly competitive undertaking, it is extremely difficult if not impossible for any one company to engage in unfair or fraudulent practice and still survive. We would submit that the retailers through whom the trading stamps are distributed would take strong exception to any trading stamp company indulging in such practices because of the effect on the retailers' customers and that the retailers themselves would insure that the trading stamp business was carried on in a fair and equitable manner. It is reasonable to assume that a similar development would follow in Canada were the use of trading stamps to be legalized in this country.

We have made such investigations as were open to us and the results of these investigations makes it difficult for us to see how the consumer can possibly lose by allowing the use of trading stamps. He obtains his consumer goods at exactly the same price as he would without such stamps and when he has accumulated stamps of sufficient quantity, he obtains in addition a premium in one form or another on such purchases. Whether he redeems the stamps or not he cannot possibly be worse off than he was before and if he should redeem the stamps as is his privilege, he obtains some benefit or advantage. It is simply and solely another form of advertising in which retailers may engage.

Should the Committee feel that rather than delete Section 369 in its entirety, the Section should be amended, we would submit that a suitable amendment might be as follows:

> 369. (3) No person shall be convicted under this Section where he shows, to the satisfaction of the Court or Judge, that the issuing, giving, selling or other disposition of, or the offer to issue, give, sell or otherwise dispose of trading stamps, was done or made without intention to deceive or defraud or to conduct a lottery.

This wording is included merely for the assistance of the Committee and without any suggestion that such wording is either the most appropriate or the most correct wording to accomplish the purpose which we have in mind.

After consideration it would be appreciated if your Committee might extend to either the writer or to Mr. R. C. Merriam of my firm, the privilege of appearing before the Committee to make verbal representations and to attempt to answer any questions which the members of the Committee should like to raise.

Yours very truly,

Duncan K. MacTavish.

I might add that Mr. MacTavish unfortunately is in the west at the moment and is unable to be present personally this morning.

Now, dealing with the principles generally. As the chairman pointed out trading stamps were legal in Canada up to the turn of the century. Section 505 of the Criminal Code as it presently stands—

The CHAIRMAN: There is a lot of illegal business going on.

The WITNESS: —prohibits the use of trading stamps in any way and even makes it an offence to receive trading stamps. That has been in force for many years. The commissioners, when they considered the criminal law and drafted what is presently Bill 93, included a similar section as clause 369. They did delete subsections (3) and (4) of section 505, but the offence is retained in so far as issuing trading stamps is concerned. Now, we look to the United States for precedents because, as I say, at the moment it is illegal in Canada and, therefore, it is very difficult to find a company in this country engaging in this business to make representations to you on its behalf, but it is a very well recognized business in the United States and I am told that there are hundreds of companies operating in this field. I am also advised that this has been going on for many, many years without interference on the part of either the federal or the state governments. It is a recognized part of the American economy. That would seem to indicate it must have been carried on without any excessive abuses, in any event, and certainly without detriment to the consuming public.

Now, when this section was up for discussion in 1905, in this present house, there was a suggestion made—and I think there is a quotation in Hansard to this effect—that some objection might be made against the use of trading

stamps because of the fact that a number of people did not bother to redeem them. Now, I do not know what the situation was in 1905, but that led to the observation being made. I am advised that the history in the United States shows that certainly the great percentage of trading stamps are, in fact, redeemed, but even if they are not redeemed I fail, after the investigation we have made, to see how that can be detrimental to the consuming public, because, as I say, they have obtained their consumer goods at precisely the same price and under precisely the same conditions that they would have obtained them without the use of trading stamps. If the consuming public chooses to waive its rights to a premium by not cashing its trading stamps, I suppose it has that right, but I do not see that it is being prejudiced in any way by so deciding.

Mr. NOSEWORTHY: May I ask a question here—

The CHAIRMAN: Are you through with your submission, Mr. Merriam?

The WITNESS: I have one more small observation I would like to make.

Mr. NOSEWORTHY: Would the witness point out just in what way the public would be served by the use of these trading stamps, or what service it renders to our economy?

The CHAIRMAN: Could you wait until Mr. Merriam has finished his presentation, Mr. Noseworthy?

The WITNESS: I think I can answer that. The public is going to be served maybe in a sort of nebulous fashion, if you like, Mr. Noseworthy. They are obtaining a premium on purchases—that is essentially what it is. The retailer is going to be served because it is another advertising medium in which he may engage to advertise his own goods and his own store. It is a means of drawing buyers into his store, if you like. The economy, as a whole, will be served in this fashion, in that it is another industry that can be established in this country and, I think, can flourish here.

By Mr. Noseworthy:

Q. The other industry would be composed of a few individuals who would be able to build up a lucrative business in the selling of these trading stamps?—A. The history in the United States has been that not a few individuals but a number of firms have carried on this business.

The CHAIRMAN: Could you continue your presentation now?

The WITNESS: There is one more observation I would like to make, gentlemen, and it is a sort of admission of an illegal operation having been carried on by one firm from the United States, and I am glad to say it was not our client nor was it even one of the larger firms; it is one of the smaller firms, not cognizant of the laws of Canada, which came into this country just last year with this trading stamp business, and they found it exceptionally popular, both amongst retailers and amongst consumers. It was, of course, eventually pointed out to them, after they had been in operation for three or four months, that they were running right in the face of the Canadian criminal law and, of course, their operations ceased immediately. They were not prosecuted, but during the period they were in Canada their experience was that it was a very popular business. That is the substance of my submission, Mr. Chairman.

Mr. LAING: How do the so-called trading stamps differ from premiums which are found in coffee—and soaps—and redeemable for another pound of coffee? We have two or three outfits in Vancouver who still put a little premium paper in your product, and you can redeem them if you have enough for a pound of coffee. What is the difference between that type of stamp and the trading stamps you are talking about?

The CHAIRMAN: Yes, and you often get a coupon worth 10 cents in a package of soap powder.

Mr. LAING: That is right. Where is the difference?

The WITNESS: There is no difference in principle, but the difference is in the method of operation. You must redeem, in the first instance, from the company which issued the premium. Let us say the Quaker Oats Company puts a premium in their own box of Quaker Oats. You must redeem it from that company by taking its own products, and that is perfectly legal. But if a third party enters into it and purchases trading stamps, which it sells to a retailer, that is illegal.

Mr. LAING: I see.

The WITNESS: And that retailer then passes it on to the consumer public. It is the right to redeem at another store, at another retailer's or for the goods of another manufacturer, that is illegal.

Mr. LAING: Is there fraud in that?

The WITNESS: There is no suggestion of fraud.

Mr. SHAW: I would take it there is nothing to prevent a merchant printing his own trading stamps, issuing them to all of his own customers and redeeming such stamps. That is not illegal?

The WITNESS: That is not illegal. As a matter of fact, it is being done in Kingston.

Mr. NOSEWORTHY: Just what is the price range of these trading stamps? Does it depend on the type of stamp?

The WITNESS: Well, the trading stamp, sir, is constant in value, if you like. It is given for each 10 cents worth of purchases you make. For each 10c purchase you make, you get a trading stamp.

Mr. LAING: What is the general discount in the United States? Would it be one per cent?

The WITNESS: No, it is not that high, I do not think.

By Mr. Noseworthy:

Q. The price of the trading stamp does not vary with the commodity at all? It has a uniform price?—A. Yes, it has a uniform price. I do not know of that.

Q. How does the customer come into possession of those trading stamps?—A. Let us say you go into a store, a haberdasher, and you buy a suit. When you pay for that suit, as soon as you have paid your money, the clerk will hand you the requisite number of trading stamps, which you insert in your book. When your book is full, you can take it back to that store or to another store dealing in that same type of trading stamp, or you can take it to your nearest gas station if he happens to be handling that type of trading stamp, and you can redeem it there.

The CHAIRMAN: Suppose you go to a general store and buy a pound of butter for 75 cents. They give you 75 cents worth of trading stamps. If you buy a suit of clothes and it costs $50, they will give you $50 worth of trading stamps. You put them in your book and when you get your book filled up, you just turn it in for merchandise, if you so desire, which is usually on display, or it is in a catalogue, and then that merchandise will be sent to you free of charge.

Mr. ROBICHAUD: That is another form of social dividend.

Mr. LAING: The firms making a business of this type of trading and offering goods in exchange for the trading stamps may not, in all probability, give a piece of goods dealt with in that store. In all probability they might give a piece of goods, such as a piece of silver. You have already told us that if a man comes back and takes a premium out of the store, it is not illegal, that there has to be a third party entering into it to make it illegal.

The WITNESS: If the store itself wants to do it, it is legal.

Mr. MACNAUGHTON: Could we not refer this to the Justice Department? Could they give us some of the theory underlying this section?

Mr. NOSEWORTHY: Where is there any advantage to the man who sells me a $50 suit if I take the trading stamps he gives me and exchanges them at a gas station?

The CHAIRMAN: He gets your business.

Mr. NOSEWORTHY: Well, he has had my business in the first place. He gets that business without any trading stamps, or without the use of any trading stamps.

Mr. LAING: The use of trading stamps attracts customers. The customers are attracted because the merchant gives trading stamps.

The CHAIRMAN: You go to these stores because they give you trading stamps, and that is the purpose of having trading stamps. The customer knows when he deals with that store, he is going to get a premium when he gets enough of the stamps together. That makes him quite anxious to go to your store.

Mr. NOSEWORTHY: If I buy a $50 suit, I get $50 worth of trading stamps?

The CHAIRMAN: That is right. If the store you buy from deals in trading stamps.

Mr. NOSEWORTHY: What would be the value of the $50 worth of trading stamps at some other store?

The CHAIRMAN: I suppose at some other store their value would be a set amount.

Mr. SHAW: Do I take it under a scheme such as this the name of the merchant would be printed on the trading stamp, and which would be advertising in that sense?

The WITNESS: Mr. Chairman, the answer to that is no. Actually, the cost of printing these trading stamps is so excessive that to put these individual merchants' names on there would be a very expensive proposition.

The CHAIRMAN: Would you have in mind a cooperative scheme?

The WITNESS: Yes, any trading stamp company would have hundreds of clients having varying types of business.

Mr. NOSEWORTHY: I have not had my question answered yet. I buy a $50 suit and get $50 worth of trading stamps, which I understand I can turn in at any other store selling those stamps or doing business with that same trading stamp company. Is that right?

Mr. LAING: You seem to think this is social credit.

Mr. NOSEWORTHY: What would be the value of that $50?

The WITNESS: It might be $3; it might be $2.50. The premium would fall between $2.50 and $3.00

The CHAIRMAN: Could I illustrate it this way: When you have accumulated, say, $50 worth of trading stamps, you will be given a coffee pot in exchange; if you have accumulated $100 worth of trading stamps, you will be given an electric toaster. Isn't that about the idea?

The WITNESS: That is it essentially. Some companies redeem the book for cash and a lot of others redeem it for goods.

Mr. MACNAUGHTON: There was a question that has not yet been answered. The question was, what is the theory underlying this section. Why are we so strict?

Mr. MACLEOD: Could I read an extract from *Hansard* of 1905 that I have here, where this question was debated. It is reported in Volume V, Column 9432:

> Mr. KEMP: Certainly some remedy should be applied to this abuse. These trading stamp companies, small and insignificant as they are, are permitted to do what no other kind of financial corporation can do. They are permitted to circulate money. This trading stamp resembles a postage stamp. They are sold at five dollars for a hundred dollars face value. The merchant hands them out to this customer and they get into circulation that way. When a customer gets a hundred dollars worth he can go and exchange it for some article valued at from twenty-five cents to a dollar. He never gets anything worth five dollars. A greater evil is this, that a great amount of these stamps are never redeemed. Very few people can get a hundred dollars together. The people who have been deceived into taking these stamps are generally poor people, and it takes them a long time to collect a hundred dollars. Where the tremendous profit of the trade stamp companies comes in is due to the fact that the stamps are never redeemed. Then—when people present the stamp at the store, they will be told that the store is out of goods but some are expected in a few days, and in the end the trading stamp agents get away without paying anything.

Then Mr. Macpherson said, in Column 9434:

> Mr. MACPHERSON: —In a certain town, let us say there are certain merchants. The trading stamp man comes along, and goes to one of these merchants, John Jones, and says: 'If you take my trading stamps I will give you full control of the system, and the people will come and buy from you because you will give them trading stamps, which will mean a premium to them.' The merchant's neighbour, John Smith, does not get a look-in on the scheme at all. The result is that people who have been buying from Smith in the past, go and buy from Jones. In Vancouver the system became a perfect nuisance. The merchants were buying trading stamps and virtually handing over the profit of their business to this trading stamp vendor. The result was that we have many failures in Vancouver. The system was nothing more or less than a piece of blackmail—that is all the trading stamp business is.

Those are just two extracts from the debate in 1905.

Mr. CARROLL: If that is blackmail, so is advertising!

Mr. CHURCHILL: Has there been any demand from business organizations in the country to institute this?

The WITNESS: To the best of my knowledge, there has not been any demand. I do not know whether it has been considerd except, as I say, by some United States trading stamp firms.

The CHAIRMAN: As it is now it is illegal, so there is not very much demand.

Mr. CANNON: I was interested to hear what were the abuses that gave rise to the incorporation of this article, and I see that they were very real. I do not think there is any reason for us to think that if the trading stamps were made legal again the same abuses would not arise again.

The CHAIRMAN: You could provide some control over the company.

Mr. SHAW: I would not regard some of these things as abuses at all. The reference to the poor man, for instance. It has been pointed out by the witness he is no worse than if he never redeems the stamps.

Mr. MONTGOMERY: The point about the whole thing is that it works against the small retailer, the small business man. He feels that he is obliged to buy these stamps or he will lose this trade. If there are too many trading stamps in circulation one will be using one type of trading stamp and another another.

The CHAIRMAN: We will consider this later.

Are there any further questions? If not, I would like to thank you, Mr. Merriam, for your attendance before the committee. We appreciate your views here and we will give them consideration. Thank you very much.

The committee adjourned.

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament
1952-53

SPECIAL COMMITTEE
ON
BILL No. 93 (LETTER O of the SENATE)

"An Act respecting The Criminal Law", and all matters pertaining thereto

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

WEDNESDAY, MARCH 4, 1953

WITNESSES:

Mr. R. S. Rodd, Q.C., Mr. T. C. Roberts, Mr. J. Garfinkle, Miss Charlotte Gauthier, of the League for Democratic Rights;

Mr. C. S. Jackson, of the United Electrical, Radio and Machine Workers of America;

Mrs. Rae Luckock, of the Congress of Canadian Women.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS, Room 277,
WEDNESDAY, March 4, 1953.

The Special Committee appointed to consider Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, and all matters pertaining thereto, met at 3.30 p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Carroll, Churchill, Garson, Henderson, Laing, MacInnis, Macnaughton, Montgomery, Noseworthy and Shaw.

In attendance: Mr. A. A. Moffatt, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice; and the following delegations:

League for Democratic Rights—Mr. Roscoe S. Rodd, Q.C., Windsor, Ont., National Chairman; Mr. Thomas C. Roberts, Toronto, National Executive Secretary; Mr. J. Garfinkle, Barrister, Toronto; and Miss Charlotte Gauthier, Montreal, executive member.

District five, United Electrical, Radio and Machine Workers of America—Mr. C. S. Jackson, President; Mr. Jean Pare, Vice-president; and the local presidents of Local Unions in Canada, namely: Mr. Jock Melville, president, and Mr. O. Lavoie, local 518, Montreal; Mr. George Wallace, local 524, Peterborough; Mr. Harold Shannon, local 522, Kingston; Mr. W. McLennan, local 520, Hamilton; Mr. A. Greenhalth, local 527, Peterborough; Mr. J. Spence, local 514, Toronto East; Mr. John H. Bettes, president of A.L.E.G.E., Joint Board, 507, 516 and 515; Mr. James H. Davis, composite local 512, Toronto; Mr. R. B. Ness, local 525, Mount Dennis, Ontario; Mr. John Landry, local 505, Niagara Falls; Mr. M. Dougan, executive member local 504, Hamilton; Mr. H. Dickerton, acting president local 585, St. Catharines; Mr. A. Hamilton, local 523, Welland; Mr. W. C. Moffat, vice-president, local 521, Leaside; and Mr. D. Pyner, business agent, local 522, Kingston.

The Congress of Canadian Women—Mrs. Rae M. Luckock, President.

Mr. T. C. Roberts introduced the delegation for the League for Democratic Rights. He was followed on the stand by Mr. Roscoe S. Rodd, Q.C., Mr. J. Garfinkle, and Miss Charlotte Gauthier.

The brief was taken as read and appears as Appendix "A" to this day's printed report of proceedings. The officers of the League attending before the Committee were questioned at length and, at the conclusion of their deposition, were thanked by the Chairman and were retired.

Mr. C. S. Jackson was called and submitted a brief which was taken as read and appears as Appendix "B" to this day's printed report of proceedings. The witness, having concluded his deposition, was thanked by the Chairman and was retired.

Mrs. Luckock appeared on behalf of The Congress of Canadian Women. She presented a brief which appears in this day's printed report of proceedings as Appendix "C". The witness was questioned thereon and, at the conclusion of her deposition, was thanked by the Chairman and was retired.

At 6.00 o'clock p.m. the Committee adjourned to meet again at 10.30 a.m. Tuesday, March 10, 1953.

ANTOINE CHASSÉ,
Clerk of the Committee.

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EVIDENCE

March 4, 1953
3:30 p.m.

The CHAIRMAN: Will you come to order, gentlemen. We will proceed with the business of the committee. This afternoon we are to hear representatives of the Congress of Canadian Women, the League for Democratic Rights, and the United Electrical and Machine Workers of America. I think we should probably hear the ladies first, if that will meet with your pleasure.

Agreed.

Is there representation here from the Congress of Canadian Women? If not, we will hear the representation from the League for Democratic Rights. Will the spokesman for the league come to the head table, please.

We have with us today Mr. T. C. Roberts, Toronto, secretary of the League for Democratic Rights; Mr. Roscoe Rodd, Q.C., of Windsor, chairman of the League of Democratic Rights; Mr. J. Garfinkle, of Toronto, barrister, vice chairman of the League for Democratic Rights; and Miss Charlotte Gauthier, of Montreal, executive member of the League for Democratic Rights.

Gentlemen, you have before you the brief which has been provided by the League for Democratic Rights, which has been circulated. You have read it. Who is the spokesman for the delegation?

Mr. T. C. Roberts, Toronto, Secretary, League for Democratic Rights, called:

The WITNESS: We were going to propose, if it was agreeable to the committee, that I would touch upon part of the introduction and that Mr. Rodd would then deal with a few sections, and after that Mr. Garfinkle would deal with the rest, and Miss Gauthier would make a few remarks at the conclusion.

The CHAIRMAN: How long will each take?

The WITNESS: That was the point we wanted to clarify. We noticed in some of the minutes of your proceedings that previous delegations had read their briefs. We did not know if that was the standard practice.

The CHAIRMAN: Yes.

The WITNESS: If so, that is what we propose, to divide the reading of it into three parts.

The CHAIRMAN: It won't be necessary, though, to read it. It has been read, by committee members.

The WITNESS: I will just call attention then to the main points. Will that be agreeable?

The CHAIRMAN: If you care to make representations other than those in the brief, we would be glad to have them. You may remain seated if you like, Mr. Roberts.

Mr. NOSEWORTHY: I wonder if we may inform the witness that we have already received considerable arguments against the group of sections given in the first column of their brief, on page 5. We have received no representation against the sections given in the second column on page 5, except clauses 365 and 372. They might keep that in mind when dealing with their brief.

The CHAIRMAN: Is that agreeable, Mr. Roberts?

(See Appendix "A"—Brief submitted by League for Democratic Rights).

The WITNESS: Yes, that is agreeable. Our main point, of course, is covered by the brief and we would just like to emphasize one or two points in it, and, as I said, we will deal with a couple of points in the introduction. Our first page, as you notice, covers the three points which we think are principles governing our submission, the principle of the universal declaration of human rights, and the ideal of a Bill of Rights for Canada. Our organization has been interested in that matter ever since we came into existence three years ago. And then we go on, as you note in our brief, to the fact that some things have been done in this direction. I point out that we feel that some of the sections in the proposed revised Code go against the spirit of a Bill of Rights and against some of the laws against discrimination as we have summarized them in page 2.

On the next page we deal with the fact that also underlying our report is the experience of the people in the United States, and there is considerable documentation that might be brought forward there. We wish to make our point clear on this, that that documentation we have in mind is based not on our surveys but on surveys made by many outstanding citizens in that country, and it seems to me that should be borne in mind. Underlying our entire brief, and perhaps the most important general principle, is the question of freedom of thought and of speech, for we think, in spite of all the difficulties that it sometimes causes, that is the matter that has to be upheld both positively and negatively in this country of ours, and particularly because of many conditions this question has become quite a major problem on this continent and elsewhere in the world today, and our principal position is that the greatest amount of freedom of thought and speech has to be maintained for the good of our democracy and of our country.

We also, as you know, take the principal position with regard to the right to strike. Our organization is not a trade union, but we do believe, and it is one of the principles of our constitution that the right to strike and the right to picket are essential rights of the labour movement in this country, and we deal with some sections in the proposed Code which we criticize because we think they either weaken or lessen or could be used to eliminate those rights.

We make a couple of other general points that we are arguing this from the basis of the letter of the law, and we think that as far as the average citizen is concerned, he should be able to know with some degree of certainty what it is proposed shall be a crime. One of the things that we think has made some of the sections we criticize wrong is the fact that there has been, or at least it so appears to us, that there has been a tendency to make briefer sections out of lengthy sections in the present Code and suspends too much on a generalization. While this under ordinary circumstances is a thing to be desired, that is, a certain brevity, we do not think it should be followed as far as the Code is concerned, and we developed that argument a little. We make the point that while two of our officers whom we have with us today are members of the legal profession, the majority of our people are not and, therefore, this document is not a strictly legal document. We do that for two reasons: firstly, despite the fact that this law relates to the legal profession, it affects all the critizens and, therefore, concerns them very directly, and, secondly, of course, because some of you are lawyers—I think there are some lawyers on this committee—and you may think that the way the brief is made is not just the way a lawyer would put it, but you cannot hold our chairman or vice chairman responsible for that, because they are not operating on the basis of lawyers but as chairman and vice chairman of our organization. And, finally, a point of some import: despite the fact that we have been interested in this legislation since it was

first announced and brought forward last April in the form of the report of the commission, we have not been able to go over all the sections, and, therefore, we cannot say that we have said everything that needs to be said about the Code.

We do think that there are very many important matters affecting the Code, and it is important that we get the best possible Code even if that takes longer than was originally anticipated. We do not think there is any need. in itself, why a revised Code should be completed, even in the next few weeks, unless, of course, it is a satisfactory document at that time, but that otherwise we hope that the members of this committee and the members of the House of Commons and the Senate, while they are revising this Code—the first time, we understand, in sixty years—that it should be done with a view to making it a much better document, and also with a view to taking into account the feelings of the people of Canada. After all, the job is to make laws for them, and as they see it, and while that point is not made in this submission, we have made it before, that time is not of paramount importance in getting the job done. The important thing is getting the proper Code, even if that takes longer than the committee anticipated.

That is all, Mr. Chairman, that I wish to say at this time, and I am going to ask Mr. Rodd now to touch upon some of the other points in the section that Mr. Noseworthy pointed out have been covered. I do not know whether they have all been covered as exhaustively as we have tried to do. We have paid perhaps as much attention to this revision as any other organization in the country, and have given it considerable thought. I will ask Mr. Rodd to deal with his part.

The CHAIRMAN: Thank you, Mr. Roberts.

Mr. NOSEWORTHY: My remark, Mr. Chairman, was not intended to indicate that the witness should not deal with those, but I thought it would be interesting to them to know that there were certain sections on which we had received no represenations and we would like to hear from them particularly concerning those sections.

Mr. Roscoe Rodd, Q.C., Windsor, Chairman, League for Democratic Rights, called:

The WITNESS: Mr. Chairman and members of the committee. We appreciate very much the opportunity of making this submission to your very busy committee.

Mr. MACINNIS: I wonder if the delegate would speak a little louder, please. We cannot hear him.

The CHAIRMAN: Would you like to change seats with Mr. Roberts, Mr. Rodd?

The WITNESS: I would like to deal first with proposed section 46, which is the treason section of the bill, and to say with regard to it, and without reading it as I do not wish to take up your time by reading it, that we think that it goes far beyond the original statute which created the offence of treason. That original statute was made up of what we find in (*a*), (*b*) and (*c*) of subsection (1) if you terminate (c) with the words "assists an enemy at war with Canada", and I suggest that in Great Britain there has been no attempt to extend the treason section to the extent which we find in this particular section. One may say in connection with the latter clause of (c) where it has been added "or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are". Now, I suggest, also, that in Great Britain

there have been many police actions, such as you find at the present time in Kenya or in Malaya, just as we have a similar sort of action in Korea, yet I think I am correct in saying that there has been found no necessity in Great Britain of extending this clause (c) in order to create an offence of treason which could take place in wartime. Then in connection with that added clause, with regard to hostilities, there is an ambiguity which arises there which makes it difficult to know when that crime begins to be committed by anyone and which does not exist in the first part of the clause. To clarify my point: when you say "assists an enemy at war with Canada"—when there is a declaration of war every Canadian citizen knows then that he must not assist the country which is the declared enemy, but there is no such declaration when hostilities may be begun. They may be begun by a United Nations commander, by an allied commander in Europe, and I think in the War Measures Act it speaks of conclusive evidence of war being made by declaration so that the evidence shall be conclusive, but there is no such conclusive evidence of a beginning of hostilities which would involve a citizen, there is nothing, there is no moment of time, for instance, which will indicate just when this criminal offence may be incurred, and I think there is an ambiguity there which should not characterize the Criminal Code. I just quote from Mr. Justice William O. Douglas of the Supreme Court of the United States, where he says this: the vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited, and I think there is a vice of vagueness in this second clause because you would never know whether ten men engaged in hostilities created the situation where a person might be involved in this crime or one hundred men engaged in hostilities. The only safe thing I suggest to the committee is some sort of a declaration such as you get in a declaration of war so that everyone may know when he might be involved in a crime of this kind, and it is a serious crime punishable by death or life imprisonment.

Then, I suggest that this treason section, extended as it is into clauses (*d*), (*e*) and (*f*), creates a multitude of death penalty offences which I suggest to the committee should not characterize our humane code functioning in a humane country.

For instance, clauses (*e*) and (*f*)—(*e*) adds four additional death penalty possibilities to the section; (*f*) adds an additional five death penalty possibilities. Now, what are those possibilities added by those two clauses? And we suggest that they should not appear in the treason section wherever else in the Code they might be thought necessary in order to protect the safety and security of Canada. (*e*), for instance, is a conspiracy clause. Now, a conspiracy clause is always a dangerous clause in a criminal code because the essence of the crime of conspiracy is agreement between two persons. You need not prove a principal offence at all. All you need to prove is an agreement between two persons. The agreement itself constitutes the offence, whether any overt criminal act is committed or not.

Now, the vice of a conspiracy section is a peculiar rule of evidence by which if there are two persons to the agreement—the conspiracy—the words of one or the acts of one may be used against the other. Whereas, in criminal law it is a fundamental principle that only the acts a man does or the words a man speaks should implicate him in crime. But, the moment you prove conspiracy, no matter what tenuous evidence may have been adduced, the moment you prove the agreement between two people to commit a crime, then the acts of one may be used against the other.

Now, those acts may be done behind the back of the accused person or may be done by a person removed by a thousand miles from the other person, and I suggest that is another danger of this conspiracy section. And one of the reasons I think you will agree with me that this section is so frequently used is because of the easier proof under such a conspiracy clause. Now,

that is very important because let me remind the committee again this is a death penalty section where we suggest conspiracy should not have a part.

Furthermore, it is not the principal offence that is being punished here, but a subordinate offence and we point out that it is a principle of criminal law that you should not visit upon a subordinate person who commits a subordinate offence the punishment that you visit on a person who commits a principal offence. Even in the crime of murder you do not visit the attempt to commit murder with the same penalty that you do when the offence is murder itself.

In the Code we have section 21, I think, 2 and 3, dealing with parties to offences. And in section 406 and 407, and I think 408, you have the punishments scaled down, where you have subordinate offences. We suggest, therefore, that you should not tie up the principal offence of treason with conspiracy to commit treason. They should be different penalties and taken care of in a different section.

Then, the same thing applies to clause (*f*), forming an intention to commit and mentioned in paragraphs (*a*) to (*e*). Now, forming an intention is, I think, an even more serious matter to have in a death penalty section because here you have one person who may form the intention—and you notice that it says that intention is to be manifested by an overt act, and one might think there is a sufficient protection there that you have to have intention plus an overt act.

But in some of the cases in the United States an overt act has been held to be mailing a letter, visiting a friend on a certain street, so that this intention plus an overt act does not afford the protection to a citizen of Canada that we think should be afforded in a death penalty section, and we think that the intention of one person is a weakness in this section.

You will notice also, I think, in section 21 or 22 it says, that earlier section says, "Forms an intention in common with others." Here there is no such safeguard. It says, "Forms an intention," and we say that one person might be guilty of that. The danger of the conspiracy section is that we do know and we must recognize if we are realistic that there are informers, there are perjurors who appear and give evidence. One might be giving evidence and a perjured witness would come in and say, "I heard the accused say thus and so." There you have evidence of a complete conspiracy of agreement by two people to commit a crime. And again that crime can be met without the necessity of proving an overt act.

Then, I think in this section there are vague and ambiguous terms. I am not going to labour that point. I have already suggested that in hostilities how many men would create a situation where hostilities might be said to exist. With regard to the word "assists", there have been comments that this word also is very wide and might mean assisting in any manner whatsoever. And I suggest that here we have ambiguity which creates the vice that Mr. Justice Douglas has mentioned. Then this clause contains in (*d*) of 1 "uses force or violence for the purpose of overthrowing the government of Canada or a province." Now, that clause is a clause under which convictions have been obtained in the United States and of those convictions the one particularly that I have in mind was conspiracy to use force or violence, or in another to teach the use of force or violence for the purpose of overthrowing the government of Canada or of a province.

I simply wish to point out in passing in connection with that that you have had charges laid under a similar section under the Smith Act in the United States where convictions have been obtained and punishments visited upon persons and I suggest that that is a section that is a dangerous section in a treason section of the Code. And, it is carried further, as you know, in the sedition section in our own Code where you are visited with the crime of sedition if you teach the use of force or violence.

Now, I would like to point out that those prosecutions in the United States have, we submit, been responsible for the repression which we think has taken place in that country, where students in universities have been silenced, where teachers have lost their positions and have been silenced, where publishers of books have to write in an orthodox manner or they cannot get their books published, where professors of universities have lost their positions—I do not want to labour that.

Mr. CHURCHILL: What country are you referring to?

The WITNESS: I have reference to the United States.

Mr. CHURCHILL: Not Canada?

The WITNESS: Not to Canada. But my point is this: if we in our Code have this same sort of legislation is it not probable that the same sort of repression will develop and grow in Canada; and I am simply submitting to the committee that that would not be a desirable thing to happen; and I point out that this using force or violence clause is I think the clause which is responsible more than any other for bringing about that condition of repression in the United States.

Mr. CHURCHILL: Would it not be better if you referred to Canadian instances? Interpretation of force and violence in our country does not correspond to the interpretation you put upon it. I think it rather confuses the issue when you are referring to the United States. We are dealing with Canada and Canadian law.

The WITNESS: My point is simply if we have the same type of legislation will it not produce the same result in Canada?

The CHAIRMAN: May I point out it is now 4.05 o'clock and maybe we could confine ourselves more closely to the facts.

Mr. NOSEWORTHY: What does the witness suggest we do with this section 46 to which he objects?

The WITNESS: I think that the treason section—or the Canadian treason section—should get back to the original ideal of the first three clauses and stop at "assisting an enemy at war with Canada". That is where I would stop. I would suggest we should stop and we would then have a treason section that would be comprehensible and complete, and I would go a little further in order to get over the ambiguity that is inherent in the word "assist" and I would suggest that there we should make it clear that it does not apply to any trade union for instance or to a trade union dispute and also that there should be a similar clause because of that word "assist" such as is contained in section 60, clause 5, where it is made clear that you may criticize government policy, and I think that that then would create an adequate treason section and with that would sufficiently protect the safety and security of Canada.

In the United States, for instance, if I may draw an analogy again, here is the definition of treason. "Treason against the United States shall consist only in levying war against them or in adhering to their enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses as to some overt act or on conviction in the open court."

There, to be guilty of treason, it has to be proved that you adhered to the enemy and secondly that you rendered him aid and comfort, and I think that is the essence of the treason clause.

Then, in connection with this treason clause, I would point out that—I have forgotten the name of the act.

Mr. BROWNE: The War Measures Act.

The WITNESS: No, not the War Measures Act, the Treachery Act. The Treachery Act is a very comprehensive Act and if one reads I think section 3 and 4 of that Treachery Act it seems to me that with the Treachery Act—and

I am not so sure that some things in the Treachery Act might not be looked over and improved upon and made less severe—here is section 3 of the Treachery Act.

> Notwithstanding anything contained in any other Act, regulation or law, of, with intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of an indictable offence and shall on conviction suffer death.

And here is where I think there might be some improvement, because again there is some ambiguity:

> If with intent to assist the enemy any person does any act which is likely to assist the enemy or to prejudice the public safety, the defence of Canada, or the efficient prosecution of the war, then, without prejudice to the law relating to treason or the provisions of section three of this Act, he shall be guilty of an indictable offence and shall on conviction be liable to imprisonment for life.

The CHAIRMAN: I wonder if we might confine ourselves to this bill and to the brief Mr. Rodd. I am wondering—I do not want to close you off by any means—but is there any way we can pass along to those sections referred to by Mr. Noseworthy. We have received representations on this section, and we would like to have some representation on these other sections. I am going to ask Judge Carroll whether he has some questions to put.

By Mr. Carroll:

Q. I do not like the idea of bringing in the United States in this, but I was going to ask under what part of section 46 would a school teacher be convicted in this country for teaching things that were not altogether according to government ideas.—A. I think that the experience in the United States has been—

Q. I am not asking you that. You made mention of this section and you were fearful that this section might be applied to what they are doing in the United States about repression. I cannot see any section here that would have anything to do with that unless a school teacher entered into a conspiracy with his students. However, that is the only question.

By Mr. Macnaughton:

Q. I have one question and it arises out of a question asked by one of our confreres. He said "what would you suggest" and in answer I understand you would revert to a 60-year-old procedure and that you would scrap *c, d, e* and *f*. —A. That is my suggestion that it should not be part of a treason section where the penalty is death. I think that a conspiracy to commit a crime should not be visited with the same penalty with the commission of the crime itself or forming the intention to commit the crime should not be contained in this very severe death penalty section.

Q. Have you carefully examined the section, part of which you quoted yourself—section 46, subsection 1(c)—for example "assists an enemy at war with Canada" and then strike out the rest. How would you deal with the rest of the wording in that sub-paragraph?—A. I would leave it out completely.

Q. How would you deal with the situation in fact.—A. In the same way Great Britain deals with it by not having it in the code at all. I think unless we feel the situation is so serious as to declare war then we should not make a situation where we have not seen fit to declare war, and since it is therefore

not so serious as war we should not bring it into the treason section where, I think, it means treachery to the country and the betrayal of the security of Canada. This severe penalty is not justified.

Q. Have you the date of the revision of the British Code—the last date?—A. I am sorry I have not. I was asking about it this morning.

Q. According to you there must be a declaration of war and until that time nothing should be done.—A. I think I would not agree to a treasonable offence without a declaration of war.

By Mr. Henderson:

Q. Would not that create a situation where a serious situation in the country would gain a great deal of momentum to the point of declaring war if you had nothing to combat it?—A. I am not quite sure I get your question.

Q. You would not have anything in the code at all to deal with the situation dealt with in *c, d, e* and *f*.

The CHAIRMAN: You mean dealing with the modern trend of not declaring war. It is the vogue now among nations not to declare war.

Mr. HENDERSON: Yes, that is right, or the situation would gain momentum.

The WITNESS: I think a citizen should know when he is committing this crime and a declaration of war lets him know he must not assist a person or a country with whom a declaration of war has been made.

By Mr. Macnaughton:

Q. How would you deal with the Korean situation,—A. I would deal with it in the same way I have said the British deal with it. I do not think they have seen fit to have a clause of this kind added and I rather gather from some of the comments in the civil liberties—there is a publication where civil liberties in all countries are compared—they have been rather surprised we have seen fit to do this when in Great Britain it has not been done.

Q. You define conspiracy as a simple agreement?—A. Yes I do.

Q. Is it not a simple agreement with intent to do or not to do—does not that make the difference?—A. It is an agreement to commit a crime but it is not a crime—that is my point.

By Mr. Browne:

Q. May I ask a question. What does the witness intend should be done to a person who at Pearl Harbour guided the Japanese forces to attack the American fleet. What would you do with that kind of person?—A. I would think under our Treachery Act if he committed the act he would be sentenced to death.

Q. Would you not think he assisted persons not at war with the United States, and done just as much damage to the country's safety?—A. In that case it was a Japanese.

Q. It was a United States citizen who guided the Japanese forces to attack the American fleet as they lay at Pearl Harbour. Would you consider he committed treason?

Mr. ROBERTS: Is not that covered by *b*?

Mr. BROWNE: I am asking the witness.

The WITNESS: I would say yes undoubtedly.

By Mr. Browne:

Q. And deserves death?—A. Yes, deserves death, and under this that would be covered.

Q. By the second part of *c*?—A. Would it not be covered by *b*?

Q. That may be so.—A. Where you levy war against Canada then you are—that is part of the original crime of treason.

By Hon. Mr. Garson:

Q. Could you levy war without a declaration of war?—A. Yes, I think you could. That would be another country which would—

Q. Can an individual levy war against a country when his own country has not declared war against it?—A. I do not know wether he could engage in an enemy act.

Q. Would he be levying war within the meaning of the Act?—A. I would say that any person who fought against Canada would be levying war against Canada and would be guilty.

The CHAIRMAN: Mr. Rodd, could we get your opinion on some of these other sections? You see we have other people here and we realize they have come probably a considerable distance and we would like to hear them.

The WITNESS: I would be glad to consider my remarks concluded in order that others may have an opportunity.

The CHAIRMAN: Have you anything else to say on these other sections.

The WITNESS: Mr. Garfinkle has something to say.

Mr. J. Garfinkle, Barrister, called:

The WITNESS: Mr. Chairman, and members of the committee, to continue with the brief in section 47 we have a question which has been raised and that is when Bill H8 was originally introduced into the Senate, section 47 read: "(*a*) to be sentenced to death" or "(*b*) imprisonment for life". That has been changed in the proposed section 47 in the bill before the committee.

We take it to mean that the death penalty is mandatory under 1-A, which means under the offences in section 46 (*a*), (*b*) or (*c*), and as such we fail to understand the difference being made between the original bill and the way it is proposed here. Now, if some of the lawyers could assist us in that respect, we would appreciate being corrected if we are wrong. But we can see no other purpose for it and we fail to understand why that was done.

Mr. MACNAUGHTON: You mean Article 47?

The WITNESS: Yes. Article 47 read formerly: 47 (1).

> Every one who commits treason is guilty of an indictable offence and is liable (*a*) to be sentenced to death, if he is guilty of an offence under paragraph (*a*), (*b*) or (*c*) of subsection (1) of section 46, or (*b*) to be sentenced to death or to imprisonment for life...

Now, the other subsections of section 46 say that (*a*) you are to be sentenced to death if you are guilty of an offence under section 46 1-*a*-*b*-*c*, and to death or imprisonment for life under subsections (*d*), (*e*) or (*f*). That is, subsection one of section 46.

The CHAIRMAN: Tell us what you think is wrong and we will consider it in committee.

The WITNESS: We fail to see why it is necessary to change the original proposal.

The CHAIRMAN: That is fine. May we now pass on to the next section?

Mr. MACNAUGHTON: What do you make of these two words "is liable"?

The WITNESS: That is a question which comes to mind. "Is liable" ordinarily would have meant, that is, the maximum penalty.

Mr. MACNAUGHTON: Does that not answer your question?

The WITNESS: No, because then we do not understand why there is the change of wording, unless there is a specific reason which we have failed to grasp. But we leave that question with you. We cannot solve it.

Under section 48—

The CHAIRMAN: Could I again stress, Mr. Garfinkle, that we have had representations on all these sections, I think, except sections 160, 96 and 87.

The WITNESS: There may be some different point of view, though. That is the point.

Hon. Mr. GARSON: Your points of view are set out in the brief.

The CHAIRMAN: Yes. They are all set out in the brief.

Mr. ROBERTS (League for Democratic Rights): Mr. Chairman, is our brief to be taken as read?

The CHAIRMAN: Yes. They are all being taken as read.

The WITNESS: Then we will go on to section 52. We do know that the question has arisen as to "interests" under section 52, which is on page 15.

The proposed section 52 reads as follows:

(1) Every one who does a prohibited act for a purpose prejudicial to

(*a*) the safety or interests of Canada, or . . .

We shall stop there for a moment. I think the word "interests" has been dealt with by the committee, but we wish to point out that it is a very vague word. It can encompass a very large area, we feel.

The CHAIRMAN: Now, just a moment. Could I ask you if there is anything which is not in the brief that you would like to submit? The brief, you see, will be considered page by page on each section, that is, the representations made on each of these sections will be considered. But if there is anything else you have, we would like to have the benefit of your opinion.

The WITNESS: In the same section—this is not dealt with in the brief.

Mr. LAING: We had a long, exhaustive and very able argument on that point the other day, made by the Canadian Congress of Labour.

Mr. CARROLL: On the question of "interests".

The WITNESS: I appreciate that.

Mr. NOSEWORTHY: Would the witness indicate whether he is agreeable to a substitution of the word "security" for the word "interests" in that section; for the sake of the safety or security of Canada?

The WITNESS: Paragraph (*b*) does say "safety or security". But we feel the word "safety" is sufficient.

The CHAIRMAN: Would you like to go on to section 57?

The WITNESS: There is one item here which is not in the brief and I do not think it has been raised. We first raised this question in the Senate committee and we realize that it was fully discussed there. Subsequently it has been discussed here.

The CHAIRMAN: Do you mean to say that you have appeared before the Senate committee?

The WITNESS: Yes, sir.

The CHAIRMAN: Well, I did not realize that.

The WITNESS: We were one of two organizations which did appear before the Senate committee.

The CHAIRMAN: What other organization appeared before the Senate committee?

The WITNESS: The League for Democratic Rights.

The CHAIRMAN: The League for Democratic Rights?

The WITNESS: That is correct.

The CHAIRMAN: Did you know that? Then we will have the benefit of all the evidence you have given before the Senate committee.

The WITNESS: But there was no record kept.

The CHAIRMAN: The League was heard before the subcommittee. I see.

The WITNESS: The question here is "For a purpose prejudicial to." We raised the question. Does that mean that the main purpose must be "prejudicial to" or the only purpose "prejudicial to" the safety of Canada? We considered section 52, and we felt that this point should be considered in connection with the submissions made by other organizations as to the threat to trade union activities.

Section 57 I think has been discussed before. We only wish to point out that the Senate saw fit, with the able support of Senator Roebuck, to remove the R.C.M.P. from one section, which made it similar to the armed forces; and we submit that it should also be removed from the proposed section 57. We submit that the R.C.M.P. should not be put in the same position as the armed forces, and this section definitely puts the R.C.M.P. on the same footing. We submit that the R.C.M.P. should remain a civilian force subject to the same external rules as the ordinary civilian police forces. Mr. Chairman, do you think that the proposed sections 60 and 61 have been covered? They are quite lengthy in our brief.

Mr. SHAW: I have one question. It says on page 17:

> It is significant to note that the R.C.M.P. are not only a federal force but that they act also as provincials in most provinces and perform the municipal police duties in many places.

They continue to be a federal force, even though there exists an agreement between the province and the federal government. But that does not in any sense alter their status as a federal force?

The WITNESS: No. That is the point we raise. As a civilian police force the R.C.M.P. largely would perform municipal police duties and it would act, so to speak, in a manner quite different from the army. And therefore they should be treated in the same way as a civilian police force is treated and there should not be a special section dealing with the R.C.M.P. on the same basis as the armed forces are dealt with.

The CHAIRMAN: We are dealing with what section now?

The WITNESS: Sections 60 and 61. I shall leave them alone, but I do ask you to consider them seriously along with our submissions in the brief.

I now pass to section 62 on page 19, which is the penalty section for seditious libel or sedition, and I ask you to note that despite the fact that several justices of the Supreme Court of Canada have in a recent decision indicated that they were dealing with seditious libel—I want that to be understood—not with any other part but just with seditious libel, their thoughts in general went along the line that sedition as an offence is one that has been changing through the years.

As to the concept of sedition, of course at one time many, many years ago, it was a crime to publish any criticism of the government. That was very many years ago.

Mr. BROWNE: It still is, in some places.

The WITNESS: That is right. And through the years the courts and the parliament in Great Britain have adopted a more moderate attitude on the question, coming to greater and greater free speech for the individual and allowing greater and greater criticism of the government.

The proposed section 62 would show, by means of a change in penalty from a matter of less than two years, that is, from two years to fourteen years, that the government would seem to think that the trend must be reversed, and we think that is not correct.

Hon. Mr. GARSON: But the trend of the nature of the crime would not be reversed by any change in the penalty, would it?

The WITNESS: Except in this respect, that the section is a threat to people to watch themselves carefully in what they say.

Hon. Mr. GARSON: But what they say would still be judged by the present concept of what constitutes sedition.

The WITNESS: That is correct, in so far as whether they be found guilty or not. I would agree. But in so far as the threat to watch what they say is concerned, the threat increases with the penalty.

Hon. Mr. GARSON: Does the change in the penalty not reflect the fact that perhaps under changing conditions sedition, if committed according to the present concept of sedition, can be a more serious offence against the state than it was, let us say, fifty years ago?

The WITNESS: I do not think so. And I would cite the case of *Rex* v. *Boucher*, if you would would care to read it.

Hon. Mr. GARSON: I am familiar with it.

The WITNESS: I do not think that is the opinion held by certain people who are very learned in the matter.

Hon. Mr. GARSON: We won't bore the committee with our differences of opinion.

Mr. CANNON: Would it not be right to say that as the scope of the crime of sedition is getting to be less because of the evolution you mention, it would be self-restricted to a more serious type of offence? Would that not justify an increase in the penalty from two to fourteen years?

The WITNESS: I am sorry, but I do not follow that. It is not being restricted to a more serious type of offence.

Mr. CANNON: I thought you said that.

The WITNESS: No, sir. I just said that the wide field that the offence used to have has been narrowed.

Mr. CANNON: That is the same thing.

The CHAIRMAN: Would you like to make your representations on the other sections now, Mr. Garfinkle?

The WITNESS: We note that the proposed section 63 has been passed by the committee, and we feel—oh, yes, our remarks are concerned with the R.C.M.P. having been deleted from this section. I think I mentioned that before.

The next item includes sections 64 to 69, and we only have printed one section on page 20, but I believe the other sections are the same substantially and have already been passed by the committee. I do not know whether you have considerable discussion on section 69, but I think it would bear substantial thought. The section has been used recently in two cases only with which we were familiar at the time of making the brief.

The CHAIRMAN: Is there anything else which is not in your brief?

The WITNESS: Yes, sir. Asbestos is not in our brief.

The CHAIRMAN: Asbestos?

The WITNESS: Yes, sir. It was used at Asbestos.

The CHAIRMAN: I do not get the point.

Hon. Mr. GARSON: You mean it was used improperly, is that your point?

The WITNESS: I am not a judge and I cannot say that.

Hon. Mr. GARSON: You mean, in your opinion?

The WITNESS: Yes. I do think it was used improperly at Louiseville, from what I gathered in the newspaper reports.

Hon. Mr. GARSON: Would you be in favour of abolishing the Riot Act proclamation altogether?

The WITNESS: Well, yes, sir; it might bear consideration with a view to abolishing it. In any event, I think it would bear consideration not to increase the danger of a misuse of it by changing the time element which used to be thirty minutes to immediately. I think that would stop further abuse, and the last thing would be to include force of arms. It has now been cut down to force. I think that would prevent partially, we hope, a situation as in Louiseville arising, instead of encouraging them.

The CHAIRMAN: If you like, you may make representations on other sections, Mr. Garfinkle.

The WITNESS: Section 87 has passed the committee, but on proposed section 87 I would like to say that in the Senate we had considerable discussion on that—no, I am sorry, it was section 96. I think section 87 has not been discussed before in this committee.

Mr. CARROLL: Yes.

The WITNESS: It has been? Well, then, I will just leave you to read that section. We would, of course, like to say we are not opposed to the police being able to keep meetings orderly; on the contrary, we think ordinary meetings are covered elsewhere by section 163.

The CHAIRMAN: Any other representations?

The WITNESS: On section 96, page 22 of the brief, we would like to add to the brief that the search without warrant under the circumstances outlined in the brief is entirely a new departure and contrary to established practice in this country and in the country from which most of our laws originally came. That has to do with individual freedom.

The CHAIRMAN: Would you like to say something about section 160, then?

Mr. CHURCHILL: Mr. Chairman, just before we go on to that, and reverting to clause 87, at the top of page 22 the brief declares that the interpretation section of the bill says that anything is an offensive weapon, and that is not what it says at all. It says "anything designed to be used..."

The CHAIRMAN: Could we consider that in committee, Mr. Churchill?

Mr. CHURCHILL: I thought I would point out that that was an incorrect statement in the brief.

The WITNESS: There is a further subsection in the definition section, clause No. 2.

The CHAIRMAN: I am thinking, Mr. Churchill, of the will of the committee and the convenience of other people who are here.

Mr. CANNON: May I ask the witness this: Are we to conclude that the League for Democratic Rights are in favour of the use of offensive weapons at public meetings?

The WITNESS: No, sir. As I stated, we are not opposed, but, on the contrary, we are all in favour of police being able to keep meetings orderly. It is the use of the generalities in the section; in line with our brief throughout we are opposed to the use of generalities.

The CHAIRMAN: Have you anything to add to section 365, then, other than as in your brief?

The WITNESS: Section 365, I have this to add which might help somewhat. I know there has been full discussion on the matter.

The CHAIRMAN: Could we pass along to the next section?

The WITNESS: On legal strikes. The question of legal strikes, we should remember—and our discussion ran along this line—two things. One is that legal strikes are a question for each province to decide. It is within the realm of the province, and, being controlled by each province, two questions arise from that. One is you will not have a uniform application of this section if you put in this section "is not to apply to legal strikes", because in one province you can have—let me put it this way—a law stating no strike is legal, and in another province you can have a law stating any strike is legal. Secondly, the question arises, which I do not propose to discuss, of the jurisdiction of this house—The British North America Act. Illegal strikes are defined in various trade union Acts in each province, and I would just suggest that if a proviso was to be made to section 365, the proviso should be "in industrial disputes".

The CHAIRMAN: Clause 366.

Mr. NOSEWORTHY: Would the League for Democratic Rights be satisfied with a subsection to clause 365 pointing out that nothing contained in this section shall be deemed to affect any breach of the collective agreement resulting from a dispute between an employer and a bargaining agency on behalf of a group of employees?

The WITNESS: I think the point was raised, and I am inclined to agree, that what may be a breach of contract in one province may not be a breach in another, that there may be no contract in Quebec and British Columbia, both of which provinces seem to be tending to hold a collective bargaining agreement as binding in other fields. That is the tendency. But in the other provinces as yet we have no indication of that and, therefore, collective bargaining agreements may not be contracts in that sense, and there are numerous cases where there are industrial disputes without any collective bargaining agreement being in force.

The CHAIRMAN: On clause 366, any comments?

The WITNESS: Clause 366 has been dealt with and we are, of course, referring to subsection (*f*).

The CHAIRMAN: Clause 372?

The WITNESS: Clause 372. If the section is to stand as it is I think it would be better for going back to where it came from, splitting it up into its component parts. The proviso should be along the lines which I proposed in clause 365.

The CHAIRMAN: Clauses 415, 462—anything to add to the recommendation you have in your brief?

The WITNESS: No. Except on habeas corpus. Clauses 463 and 464 deal with bail. Clauses 690 and 691 propose to stop what is a practice, I believe, to put it in ordinary language, to shop for a judge who will grant you a habeas corpus. I am in those words putting it bluntly.

Mr. CARROLL: That is quite a compliment to the judiciary.

The WITNESS: With all respect, just being facetious a little, and maybe I should not be. The main thing is we think we should not stop that practice because the judiciary are human, as we are, and one man may have a different viewpoint to another on the granting of habeas corpus and we should not prevent a counsel from being able to take advantage of that. If the case is such that it does not warrant it, then no judge will grant habeas corpus, and the counter argument might be that we wish to make for uniformity that one judge should not overrule a judge of the same standing, but that argument does not hold here because the judges themselves realize that, and they always try

to practise where they will not overrule each other. If the case warrants overruling, then there should be a law. I have nothing further to add.

The CHAIRMAN: We thank you very much for your representations, Mr. Roberts, Mr. Rodd and Mr. Garfinkle. What has Miss Gauthier to say?

Mr. ROBERTS: Miss Gauthier has a couple of remarks to make, if she may.

Miss GAUTHIER: I will make my remarks very short, Mr. Chairman. The people of Quebec, perhaps more than any other section of the population of Canada, are confronted daily with infringement of their rights and freedoms. I will not go into extensive details, as the other delegates have. I have not the ability of speech that they have. However, there are certain parts of the bill as presented that are definitely making the laws worse for the people of Quebec at the same time as the people of Canada. For example, in section 46 you have the words "force or violence for the purpose of overthrowing the government of Canada or a province."

The CHAIRMAN: Before we go into that—I hesitate in stopping you—but I regret asking the members of the committee here going over this evidence because we have already today had representation in this connection.

The WITNESS: I will take about five minutes. I will cover it completely in that time.

In the recent strike at Louiseville, the Catholic syndicates, at one stage, actively considered calling a general work stoppage to protest the anti-labour policies of the Quebec government. M. Duplessis qualified this proposition as a "call to generalize crime".

If this section were law, and a general work stoppage had occurred, the entire membership of the syndicates and any other bodies that might have supported them in this action could have been subject to prosecution for treason.

Moreover, in the last few weeks the Quebec legislature has adopted, over the vigorous opposition of the Liberal members, a number of amendments to the Election Act which, in the opinion of a great many people, eliminate the possibility of holding democratic elections in our province. Could a peaceful demonstration organized by the Liberal party to demand the repeal of these amendments be qualified as a resort to "force and violence"?

Numerous eye witnesses to the police violence in Louiseville on December 11 have contended that the authorities did not wait the prescribed thirty minutes before attacking the assembled strikers. Section 69 of the proposed code is designed to legalize this type of police conduct. Everyone is aware of the public outcry that followed upon the events in Louiseville.

The CHAIRMAN: Is this part of the brief of the Civil Liberties Union?

The WITNESS: I am just taking the important parts of it.

The CHAIRMAN: They are not a national organization and we have not agreed to hear them.

The WITNESS: In my remarks I think it is good here to show especially with the padlock law in Quebec how much worse it would be with a bill like 93 adopted for the people of Quebec, and I am trying to show examples that we have now. I am not referring to any American cases or other cases, but our own cases here in the province of Quebec.

The CHAIRMAN: We have certain precedents we have established.

Mr. NOSEWORTHY: Mr. Chairman, I think this is the first witness we have had to present the Quebec point of view to the committee and I suggest it would save time—

The CHAIRMAN: The committee will decide, but I am trying to find out—we have set down a certain policy and if the committee wants to deviate it is within the province of the committee.

Mr. CARROLL: I think we should hear the witness.

The WITNESS: Everyone is aware of the public outcry that followed upon the events in Louiseville. The amendments in section 69 thus run directly counter to the opinion and interests of the people. The indiscriminate use in recent years of the Riot Act in our province, and it was applied twice in Quebec in the last five years, in Asbestos and Louiseville, raises for serious consideration the question of the introduction of stringent limitation on the application of this section of the Code. The proposed amendments contained in Bill 93 far from providing such safeguards are an open encouragement to the indiscriminate use of force and violence against the civilian population.

Now, dealing with sections 52, 365 and 372. There is no question but that these sections place evry trade unionist who goes on strike in the category of a criminal.

The CHAIRMAN: Just a moment, I am sorry but you are reading directly from the brief. It is entirely within the will of the committee to decide, but we are going to consider that and you are reading verbatim from the brief, we are going to have to terminate our proceedings somehow because we have other people sitting here. If you have anything else to say we would be glad to have it.

The WITNESS: We could go on giving examples in Quebec.

The CHAIRMAN: We appreciate that, but later we are to consider your brief which has been submitted by the local organization, and you can be sure it will be given every consideration.

Mr. RODD: Thank you very much, Mr. Chairman, for your great patience and for the opportunity given to us to present this brief.

The CHAIRMAN: I thank you very much, Miss Gauthier and gentlemen, for the presentation you have made.

We have two other organizations here, the United Electric Radio and Machine Workers of America, and the Congress of Canadian Women. I think we have a number of people from the United Electrical Workers. Is there a representative here?

Mr. NOSEWORTHY: Mr. Chairman, would it not be well to hear the women first?

Mr. SHAW: You have given the ladies an opportunity but they were not here, and I think we should go on with these gentlemen here.

The CHAIRMAN: We have, gentlemen, the United Electrical Machine Workers of America represented by Mr. C. S. Jackson, president of the union, and Mr. Jean Pare, vice-president. We have, gentlemen, received your brief and it has been studied.

——(For brief see Appendix B.)

Is there anything further you would like to add to the brief?

Mr. C. S. Jackson, President of the United Electrical Machine Workers of America, called:

The WITNESS: Yes, I would like the opportunity to make a few general observations on our approach to the proposed amendments as contained in somewhat limited form in our brief. Before doing so may I say that—I do not want to take the time of the committee to introduce the full delegation we have here today, but all of the local presidents of our local unions in Canada

are here as part of the delegation. They are here to be a part of the representation made by our union on the important question.

The CHAIRMAN: Have you the names of the members of the delegation?

The WITNESS: Yes.

The CHAIRMAN: Would you like to read them aloud and they can stand up as their names are called out.

The WITNESS: Starting at Montreal we have Mr. Jock Melville, president of local 518, and Mr. O. Lavoie from the same local.

Mr. George Wallace, local 524 from Peterboro; Mr. Harold Shannon, president of local 522 Kingston; Mr. W. McClennan, president of local 520, Hamilton; Mr. A. Greenhalth, local 527, Peterboro; Mr. J. Spence, president of local 514, Toronto East; Mr. John H. Bettes, president of A.L.E.G.E., Joint Board, 507, 516 and 515; Mr. Jas. Davis, president of the composite local, 512, Toronto; Mr. R. B. Ness, president 525, Mount Dennis, Ontario; Mr. John Landry, president local 505, Niagara Falls; Mr. M. Dougan, executive member local 504, Hamilton; Mr. H. Dickerton, acting president local 535, St. Catharines; Mr. A. Hamilton, president local 523, Welland; Mr. W. C. Moffat, vice president local 521, Leaside; and Mr. D. Pyner, business agent, local 522 Kingston.

The CHAIRMAN: Have you offices in other communities besides the ones from which you have representation?

The WITNESS: These are the communities in which our organization is operating.

The CHAIRMAN: It really is not a national organization.

The WITNESS: It is a national organization as we have stated in our communication to your committee and our jurisdiction is national. We have concentrated up to this time our organizing activities in the provinces of Quebec and Ontario.

Mr. MACNAUGHTON: Where, I presume, most of the work is done?

The WITNESS: The industry is largely located there. Few go outside these two provinces and probably not more than 4,000 workers in the industry are scattered across the rest of the country.

The CHAIRMAN: Thank you, Mr. Jackson, if you will proceed.

The WITNESS: Our organization has been considering the problem of the criminal code over a long period of time as it affects the operations of the union as such, and we have found that in reading what materials are available to us in terms of the discussions in the Senate, there is some cause for considerable concern on our part as to the possible—shall we say—misuse of many of the sections of what we would term rather loose and ambiguous wordings as a possible interference in the operations of a union.

In drafting our brief we concentrated on that aspect of the code amendments rather than making any attempt to deal with them from the standpoint of their legal meaning or their legal interpretation.

We felt that within the experiences of our union and the trade union movement as a whole that from time to time as the workers and employers reached a state of impasse where strikes developed, a considerable amount of public misinformation concerned the situation and in addition to a considerable amount of public misinformation a spate of allegations as to the sincerity of the motives of the workers concerned—charges and allegations that ran the full gamut from treason to sedition and with that in mind and while looking at the specific proposed amendments and being cognizant with the fact that from time to time statements have been made that even though the words have an apparent intent they would never be used in the courts.

We felt that was not a sufficient assurance for the Labour Movement that these various amendments we have set out in our brief would not at

some time or other in the heat of industrial battle so to speak—if we can use the military term in order to the same connotation within the meaning of the Act—that under these conditions many of these sections could be brought into play even though that was not their original intent.

Hon. Mr. GARSON: Such as what.

The WITNESS: I say that applies, and in drafting our brief to sections 46, 50, 52, 60 to 62, 64 to 69, 96, 365 and 372 and in dealing with all these we pointed out in what manner each one, in a different manner, but nevertheless in some aspect, could be applied against a trade union and to the detriment of the basic democratic principles which a trade union is founded on and can only operate within.

We have in mind that there have been on the statute books of this country for many long years sections of Acts which were designed to deal with industrial relations which were never operative or were not operative for many years but on occasions, depending on the general situation prevailing at the time where it was a situation when a large number of workers and different unions were having difficulties with their employers, or in the case of the period of 1940-41 where in the case of the Industrial Disputes Investigations Act, which was passed in 1927 containing clauses which set out penalties for so-called illegal strike action, and that those sections of that Act were totally inoperative from 1927 right through to 1941 and were only used on one occasion to my knowledge and that was in 1941.

The matter went before a magistrate and the magistrate applied the penalty which at that time was $20 a day for involvement in so-called illegal strikes. The matter then went to appeal and the Appeal Board reversed the decision of the magistrate. Therefore on the record there has never been any conviction under that section.

We feel that many of these other sections—while their intent, we believe, is basically that of protection of the safety of the country—can, because of their ambiguous wording, be used against the labour movement. The illustrations which have been given here just prior to our taking the floor, from the province of Quebec, we think do underscore the fact that such sections as the Riot Act section, and the Unlawful Assembly section have been used with the result that the unions involved have been virtually defeated in their particular efforts at the time to secure improvements for their workers. So we feel that is so in the loose wording of section 46 in terms of the meaning of "assists", and in terms of the meaning of "forms and intention," and in terms of the meaning of "conspire," with the addition of that section dealing with whether our armed forces are engaged in hostilities, and whether or not a state of war exists. We feel there is a dangerous possibility of encroachment upon the right of the citizen and upon the right of the trade unionist to carry on democratic discussion and debate in the halls of the union around the very question as to whether or not the armed forces of our country should be engaged in hostilities within a given country, as in the case of Korea or in any other case that could conceivably come up.

We feel it to be the democratic right of a citizen of this country to discuss and to debate such matters and to present his opinion frankly before the public and before the government. Therefore we feel that with the type of wording in section 46, the very holding of a discussion could conceivably come under the heading of conspiracy.

By Hon. Mr. Garson:

Q. Could you explain to us how public discussion could be brought within any part of section 46, which deals with treason?—A. Yes. We feel that it could be.

Q. There is a section there with sub-clauses. Would public discussion come in under any of them?—A. We feel that the section here, which says that if one conspires with any person to do anything mentioned in the above paragraph, would tie in.

Q. Would public discussion come under paragraph (*a*) "kills or attempts to kill Her Majesty"?—A. That would not come under it.

Q. Would public discussion come under paragraph (*b*) "levies war against Canada. . ."? Would public discussion come under paragraph (c) "assist an enemy at war with Canada, etc...."?—A. In the terms of the second part of it, "assists... any armed forces against whom Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the country whose forces they are."

Q. Would you say that discussion comes under the assisting any armed forces, etc.,?—A. Is it not a matter of the construction to be put on the words "assist"?

Q. I think you would have very great difficulty in doing it by discussion in Canada.—A. I am not sure that we do not have to draw some lessons from the country south of our border.

Q. Is that what you mean that by discussion in your union; you make out an offence of treason under section 46 as presently drafted?—A. We think the language is such that if there were a situation of public hysteria, then such an interpretation could be placed upon those words by a court. And as to whether or not a treason charge could be laid, we think it is possible.

Q. Can you cite a single case in Canadian history which offers you any foundation for that statement?—A. No, I do not think we can, but I do not think we can rely today solely on the fact that there is or there is not a precedent in all these matters. I think we are dealing with a situation today in which hysteria has become a concomitant part of our civilization, and because of that increasing degree of hysteria, the interpretation of these words becomes that much greater.

Q. Are you seriously arguing before this committee, I am asking you, Mr. Jackson, if you are seriously arguing before this committee that if you engage in your right to freedom of speech within your union, you might be held on a charge of treason?—A. That is correct, and I say that because of the conjunction of those various words, "conspire", "form the intention to assist", and the question of assisting. After all, it is a matter of record that we discuss at our union meetings, at our quarterly meetings of delegates, such questions as the cease fire in Korea, and yet the cease fire in Korea is not in agreement with the stated policy of the government at this moment. Therefore, should there be a desire, or should the hysteria around this issue be greater than it is at this moment, it is not inconceivable that it could be said to be assisting the enemy.

By Mr. Macnaughton:

Q. On page 3 of your brief, Mr. Jackson, in the fifth paragraph, are you serious about that sentence: "It was stated at that time by the Montreal *Gazette* that the 1951 amendments were introduced on the demand of Washington, D.C."?—A. Yes, we are serious about everything we have in our brief, and that statement is in the record.

Q. But you must appreciate that this Code is 60 years old and that it has not been touched by way of amendment.—A. I do not get the relevancy of your remarks.

Q. The relevancy is to your statement here that it is upon orders from Washington, D.C., that we are bringing certain amendments into this Code.—A. Yes.

Q. And the implication is that we are taking orders from people across the border. Are you serious in that statement?—A. The statement is that

there was a statement in the Montreal *Gazette* to that effect which, to our knowledge, has never been patently denied. We bring it up as a question, if you like.

Q. Well, then, as a member of parliament representing a constituency I take pleasure in denying that right here.

Mr. SHAW: Was that statement contained in an editorial or in an article written by someone, or was it just a news report such as "seek ye", or otherwise, or in a letter addressed to the editor?

The WITNESS: Probably it was in an editorial, but I do not have the clipping with me.

Mr. HENDERSON: You say it was an editorial?

The CHAIRMAN: Yes. But he says he does not remember.

The WITNESS: I am not positive.

Mr. CHURCHILL: If there is no reference to the date of the publication or as to whether it was an editorial or a letter, then there is no value in that statement.

The WITNESS: That might be. I have to admit that I should have supported it by a reference in the paper.

Hon. Mr. GARSON: I think the important thing that Mr. Jackson asserts is that he believes the statement because he read it in a newspaper, and he reads it to us. There is no law in this country against believing things.

The WITNESS: None at all. That is exactly what we want to preserve, that is, the right to continue to believe whether we are right or wrong, until we are proven to be wrong.

Hon. Mr. GARSON: There is no law either against being naive.

Mr. MACNAUGHTON: Or becoming hysterical.

The WITNESS: We believe a similar danger exists in other sections of our Code, to which we have drawn attention; and with regard to this one last word on section 48. It seems to us that the wording here is designed to meet a quasi peacetime situation because, from our knowledge of events over the past number of years, without the actual development of war and a state of war, it has been almost unthinkable that a government would bring down specific wartime measures in a very concrete and specific form to deal with all the possible aspects of treason and sedition arising out of a state of war. Therefore, the dangers in this section lie in the fact that it is apparently a quasi peacetime measure. If we can delineate the state of events as they exist today, I think it is that which constitutes to us the most grievous menace to the continued right of working people to meet, assemble, and discuss every aspect of policy of their government as it may affect them as working people and as citizens of the country.

The CHAIRMAN: Could we not deal with other sections now? We have only 15 minutes more and we have another delegation.

The WITNESS: I appreciate that and I do not think it is necessary for me to deal with too many sections specifically. I think we have set out our main points, our representations and our main arguments with regard to these sections. But there are still a couple of sections, one section, for instance, that we did not cover but which we should have mentioned. It is section 366, which is as we understand it the present section 502 (*a*) that sets out the rights of picketing. It is the only place, to our knowledge, where the rights of picketing are set out anywhere in a law in this country. We feel that there is an unnecessary and an unnatural restraint on the right of picketing contained in the formulation of clause 366. Its application in those situations where strikes have taken place has been extremely narrow and to the detriment of

the workers concerned. Our position is set out broadly in regard to the right to strike. In our document where we deal with the right to strike and where we refer to the wording of what was known as the Wagner Act in the United States, where it was recognized—true, the Wagner Act is not now law in the United States, but was for a considerable number of years—that there is a necessity of bringing about an equality of bargaining power between the two parties to a bargaining agreement before there can be genuine collective bargaining, and giving recognition to the fact that with individual workers the sum total of their individual bargaining powers do not meet the bargaining powers of the employer, that it is only in the collective unity of their economic strength that brings them to the bargaining table with any measure of equality, and implicit in collective bargaining is the relative economic strength of the persons, implicit is the right of the employer to dismiss all of the employees, and the converse right of the employees as a group to withhold, to withdraw their labour power. Under those conditions it seems to us that the right of employees en masse, acting in the first place as a collective group in withdrawing their labour power, should be preserved in their right to exercise that power on the picket lines en masse, and while on the picket line to exercise the bargaining position that is implicit in their organization and in their right to strike.

Mr. SHAW: But you would not go so far, Mr. Jackson, as to say they have the right to engage in violence or intimidation, would you?

The WITNESS: No. As a matter of fact, we do not agree with violence or intimidation. Our experience has been that when workers are on strike and where violence occurs, it occurs 99 per cent of the time from one of two sources, either by provocation from police or from an agent provocateur within the ranks of the workers. It is not the policy of any section of the labour movement that I know of to encourage or even countenance the use of violence or intimidation, and there is no tendency on the part of workers as I know them to indulge in violence when trying to improve their economic position.

By Hon. Mr. Garson:

Q. How then would they be prejudiced by the prohibition of violence?—A. We are not arguing for a prohibition against violence. We are arguing for the right of mass picketing.

Q. Then, on what do you base your objection to this section?—A. Our contention is that section 266 in its application constitutes basically a bar to mass picketing.

Q. Can you point out the part that does this? By the way, I presume you are equally opposed to the substance of the two sections from which those sections are taken, 501 and 502—you are opposed to them?—A. I am dealing with 502 (*a*).

Q. But you would be equally opposed to these?—A. To the extent—and I say our position is a qualified one—to the extent that they limit the right of mass picketing we are opposed to them. We are not opposed to the abjurations against violence because in no way do we agree that the labour movement is desirous of or inclined to violence in its struggles.

By Mr. Shaw:

Q. I believe, Mr. Jackson, you would agree that certain of these sections should remain, would you not, to make violence or intimidation an offence should it occur.—A. What I am trying to do here because of the shortness of time—I do not wish to interfere or rob the other people who are waiting of time—I have dealt with the high points. Our principal objection, as far as language is concerned—if we had the time I would like to go into the language

section by section to further substantiate our point. I am not making any specific charge on the language in clause 366. I am saying the effect of clause 366 is deleterious to the trades union movement.

Q. The other trade unions that we had before us did not take this exception to clause 366—the Trades and Labor Congress and the Canadian Congress of Labour. They did not feel that way about clause 366.

The CHAIRMAN: Could we just refer ourselves to this witness?

The WITNESS: I think you will find they have made reference to the rights of mass picketing. In what form they did so, I am not specifically familiar.

Hon. Mr. GARSON: And your whole point, Mr. Jackson, is that the only part about clause 366 you object to is the part that would do anything with respect to mass picketing? The rest of it is satisfactory?

The WITNESS: Yes.

Mr. NOSEWORTHY: Could you refer to any particular section, any particular part of that section which would affect picketing?

The WITNESS: No. You say that section 502 (*a*) is in another section?

Mr. BROWNE: Clause 367.

The CHAIRMAN: Could we have your comments on the other sections, Mr. Jackson Clause 392, I think you have something to say about that?

The WITNESS: 372. That was a typographical error.

The CHAIRMAN: Clause 372 "mischief".

The WITNESS: Clause 372, "mischief". I think our points are made in our brief in that regard. We have not gone into specific details in all of the sections in terms of words. Our feeling is that too broad powers are given to apply these sections, even if they may not be intended to be applied against the trade union movement. We wanted to stress, in the main, the fact that we are very carefully concerned about a misapplication and, therefore, that there should be a recognition throughout the Criminal Code that a trade union is a lawful and necessary organization within the democratic structure of Canada.

The CHAIRMAN: I think we are all agreed on that.

The WITNESS: And it should be, under all conditions, clearly set out that the amendments that are proposed and in the hopper at this time in the recodification of the Criminal Code are not to be applied in a manner which will restrict the essential democracy and operation of the trade unions, and we stress the concern with the democracy of the organizations as strongly as we do its operative functions because we believe that within a trade union it is necessary for the working people to consider all phases and facets of the policies of the government on the domestic and international front as they have a bearing on the ability of the workers to continue to improve their living standards, and we recognize from our experience that the struggle of workers for the improvement of their living standards is based to a significant extent on the economic front. We feel that we have the right to analyze, discuss, criticize, voice opinions and to petition on all matters on which the government acts, and the trade unions are in many ways the home for that discussion. That is our main purpose in coming before your committee, and we would like to hope that you are being guided along those lines in your approach to the situation.

The CHAIRMAN: We thank you very much, Mr. Jackson and Mr. Pare, and you may be sure we will give your presentation our serious consideration.

Will it be in order if we continue on past 5.30?

Agreed.

The CHAIRMAN: We have present Mrs. Rae Luckock, president of the Congress of Canadian Women. You have the brief before you. You have studied it.

—(For brief see Appendix "C".)

Mrs. Rae Luckock, President of the Congress of Canadian Women, called:

The CHAIRMAN: Is there anything further that you would like to add to the brief, Mrs. Luckock?

The WITNESS: No, Mr. Chairman, unless there are any questions anyone would like to ask.

Hon. Mr. GARSON: Mrs. Luckock, you make the statement here on page 2 of your brief that "all is not well with Canada when repressive legislation is being advanced at the urgent instigation of another country, particularly by a country itself in the throes of hysteria". You have quoted an editorial in May 3, 1952, issue of Toronto *Saturday Night* to the effect that these amendments you are speaking of were drafted very hastily and on the urgent instigation of the United States. Had you any other basis for the statement you make in your brief?

The WITNESS: No, Mr. Garson. Only the article here in *Saturday Night* and little things we see in the press which is the only place we have to get information.

Hon. Mr. GARSON: You have no other basis at all?

The WITNESS: No.

Mr. BROWNE: I notice that the Montreal *Gazette* is quoted of May 3, 1951. I wonder if that is an error?

The WITNESS: No.

Hon. Mr. GARSON: That is a different question. The reason I asked that question is that as the minister who introduced this legislation I want to say categorically and positively that there is no truth whatsoever in the statement that these amendments were introduced at the instigation of the United States. They were not introduced at the instigation of that country directly or indirectly or in any way whatsoever. They were introduced upon the responsibility of the Canadian government without any reference to the United States at all.

Mr. MACNAUGHTON: Nor were they quietly wangled into the code with the least possible notice. As I understand it, the government brought in this bill a long time ago, and did not proceed with it with the express intention of giving the public notice of what was contained in the bill.

Hon. Mr. GARSON: I think Mrs. Luckock is referring to the introduction of these amendments in a previous session and then having amended the code the previous session they were brought forward in this consolidation. I think it is in relation to that previous occasion that the statement was made in the Toronto *Saturday Night*, and perhaps in the Montreal *Gazette*, but it would not be true in relation to that previous occasion either; for my experience is that it is very difficult to wangle these things in a quiet way. They are discussed by the whole membership of the House of Commons and it is quite impossible to do it in a quiet way.

Mr. MACNAUGHTON: The Minister of Justice should never wangle, should he?

Hon. Mr. GARSON: He is never permitted to.

The WITNESS: Mr. Chairman, I was thinking of the paper which make these mistakes, and they make many mistakes about myself also—it is too

bad that they don't correct these mistakes when they are rectified by Hon. Mr. Garson.

Mr. NOSEWORTHY: Most of the major part of the brief deals with the effect of these amendments on the trade union movement which have been pretty well covered, but I notice there are two new features introduced in this brief. The question of whipping and section 661. There have been no representations made before the committee on those two. They are new. I wonder if we might have some comment on this from the witness. That is at page 3 of the brief.

The WITNESS: The first of these is the sentence of whipping which may be inflicted for some offences. "We earnestly suggest that this punishment be abolished, since, in our opinion, it does not contribute to correction or rehabilitation of the offender, but rather is a vengeful type of punishment, demeaning to the administrator, and certainly not in keeping with humanitarian views."

The second is with respect to the punishment of sexual offenders.

The CHAIRMAN: Pardon me. Would you care to submit any question on that first part?

Mr. MACNAUGHTON: I am wondering what experience you have had to force that conclusion.

The WITNESS: I never had any personal experience nor have any of our women, but you see cases of it and personally I have said it belongs to the dark ages, and in 1953 let us step up our thinking. We feel there is something the matter with those clauses.

Mr. BROWNE: Only last week I think I saw some reference to that in connection with sexual offences because they are so numerous, you see them here in Ottawa. There were several women attacked over in the States in Syracuse, girls are being attacked every night, and they are talking about introducing whipping for their protection.

The WITNESS: Do you not think there would be more protection if they had medical and psychiatric treatment to see what in the world is the matter with them?

The CHAIRMAN: How can you when you don't know who they are?

Mr. BROWNE: In some cases, yes.

The CHAIRMAN: What is the question.

Mr. BROWNE: I was just answering the witness. She asked a question as to whether they should have psychiatric treatment and I said in some cases yes.

The WITNESS: And medicals. Perhaps we could then find out what is the matter with them and it could be fixed.

Hon. Mr. GARSON: There is a provision for indeterminate sentence for criminal sexual psychopaths whereunder they can be held indefinitely and if they go into a penitentiary we have a psychiatrist and medical men who are at the service of the inmates of the penitentiaries and whose services are available for the cure of these sexual psychopaths to the extent that they are curable; but in many cases they are not.

Mr. BROWNE: That would be where they are sentenced to the penitentiary. It would not apply to cases where they are not.

Hon. Mr. GARSON: That is quite right, but they could be treated if they had an indeterminate sentence and there is provision for that in the bill.

The CHAIRMAN: Any further question.

Mr. MACNAUGHTON: I have one question. I am not trying to be forceful, but I would point to some of these phrases on page 3:

> It is our considered opinion that these proposed amendments which we have discussed above, as well as the related ones which we have not mentioned, reveal a great fear by the government—a fear of the searching and clear light of open criticism upon their actions.

I suggest you might look around you. I do not think there is any sense of fear at this meeting. We are here to do a job. What do you mean by these phrases.

The WITNESS: There are many things that fill us with fear, many things, and I know one thing I am very much afraid of and that is I do not like laws by order in council passed. I like to have representatives of the government —that is the thing that fills me with fear. That is one example, and there are other things that affect other people. We do not all think alike.

I think it is healthy to have these differences of opinion and it is healthy in these amendments to consider the situation all over the world and see if we cannot have the best code in the world in Canada. I am not afraid of looking at other countries.

Mr. BROWNE: I do not think we are. We have spent, if I am not mistaken, two years on this.

Hon. Mr. GARSON: The commission engaged on it spent three years drafting it and Parliament has been considering it nearly a full year. It was all last session in the Senate and part of this session before it got through the Senate and we are just starting on it in the House of Commons and so if expenditure of time and energy is any guarantee of producing a good code, we should be well on the way.

The WITNESS: I am not saying you are afraid, but some women may feel and some men fear, but you cannot rid other people's minds unless they speak out.

Hon. Mr. GARSON: It is a free country, we can believe and we can fear.

The WITNESS: Absolutely.

The CHAIRMAN: Anything further you wish to add Mrs. Luckock.

The WITNESS: No, I do not think there is anything further.

Mr. NOSEWORTHY: Do you wish to make any comment on the second paragraph?

The CHAIRMAN: On sexual offenders.

The WITNESS: Yes, on 661.

"We feel that they certainly should have this medical and psychiatric treatment and we would consider it a great improvement if such treatment were definitely provided for in the Act, with the understanding that detention be continued (reviewable at stated intervals) until a cure is effected. We believe this would afford added protection for the public at large upon the release of the offender, as well as reforming the person guilty of such offences."

Hon. Mr. GARSON: Have you read the section yet Mrs. Luckock?

The WITNESS: Yes I did.

Hon. Mr. GARSON: Did you read this, subsection 3 clause 661 of the bill:

> (3) Where the court finds that the accused is a criminal sexual psycopath it shall, notwithstanding anything in this Act or any other Act of the parliament of Canada, sentence the accused to a term of imprisonment of not less than two years in respect of the offence of which he was convicted and, in addition, impose a sentence of preventive detention

And, as I said before, when he goes into one of the federal penitentiaries—this may be so also about the provincial prisons although I am not personally acquainted with them in an official or any other capacity— but when he goes into a federal penitentiary we have excellent medical staff and it includes in every one of our penitentiaries a psychiatrist who is well equipped to deal with this form of aberration.

Mr. SHAW: I was just going to seek further information. When an accused under this section appears before the court, if sufficient evidence is adduced to warrant conviction is there then action taken to determine what may be wrong with the fellow before he is sentenced, because, if not, it is conceivable a magistrate may well sentence him to 18 months. He does not quite reach that stage. That is the matter that concerns me.

Hon. Mr. GARSON: The difficulty under this section is not any defect of the section itself. This section is in the code at the present time. It was introduced if I remember rightly about three years ago, and it was passed, but the difficulty has been having it invoked by the prosecutors who operate under provincial auspices. All we can do in the federal field is to provide the law. There is no way in which we can compel the enforcement of it. But the law is there and we have not received any representations other than the ones we have received today. We have received no representations from law enforcement officers that it needs tightening up. All it needs is to be invoked.

Mr. HENDERSON: I was interested in hearing what the minister said about it being on the statute. I may say as regards the federal penitentiary at Kingston, which is in my riding, that I think it would be as well if Mrs. Luckock could go there some time and have a look at the hospital provided—

The CHAIRMAN: Just as a visitor I presume.

Mr. HENDERSON: Yes and look at the medical facilities provided for these people. Doctors, some of whom are the best in their profession, are in charge of them, and I think the witness would be satisfied that they are pretty well looked after and it is an experience which will relieve her mind.

The WITNESS: I would be glad to. It is an important field. Can you tell me do I need to write and ask? I do not know how to do it.

Hon. Mr. GARSON: I suggest if you write to me I will see that you will get in.

The WITNESS: I would like to ask Mr. Garson a question. Perhaps we should press the provincial governments and find out what they are doing and just how they are doing it. Perhaps—

Hon. Mr. GARSON: I am afraid that is outside my province.

Mr. BROWNE: May I make an observation from my own experience. I can tell you and I am sure Judge Carroll will bear me out on what I say that when a person of this character comes before the court and has been charged with a sexual offence and it is established that it is of an outrageous character which offends—

Hon. Mr. GARSON: Sadism?

Mr. BROWNE: —public feeling, the point is what are you going to do? Is it criminal? If it is criminal he goes to jail. But then he will be out again after two years and the police will then have to watch him all the time. They will have to be on the lookout for that man and if anything happens, he is the one who is going to be arrested immediately upon suspicion. Some time ago, without there being any provision in our law at all, I used to have such a person examined to permit the doctors an opportunity to certify him as being insane and to send him to a mental hospital.

The CHAIRMAN: Mr. Browne has been a magistrate, I might say for the purposes of the record.

Mr. NOSEWORTHY: Yes. He has been a magistrate of long standing in Newfoundland.

The CHAIRMAN: For 15 years in Newfoundland. Are there any further questions?

Mr. BROWNE: The courts are very anxious to get the right solution.

Mr. MACNAUGHTON: It seems to me that a distinction should be made. There are federal penitentiaries and provincial institutions, and it might be worth while for you to examine both and compare them.

The WITNESS: I think it would be. I have often felt that it would be wiser if people would go and see how things are being done.

Mr. NOSEWORTHY: I am rather surprised that the Congress of Canadian Women have made no mention of the question of capital punishment in this brief. Has that question been discussed or studied at all by the Congress?

The WITNESS: Yes, we have. If you want my own personal views on it, I do not like capital punishment. I feel that the man who does the hanging is worse than the man that he is hanging, because he is getting paid for it.

Mr. NOSEWORTHY: Can you not give us the views of the Congress on it?

The WITNESS: No, because we differ on it. Some are in favour of it and some are not.

Mr. NOSEWORTHY: That is of no help, then.

Hon. Mr. GARSON: He wants you to say that they are all opposed to it.

The CHAIRMAN: Are there any further questions? If not, Mrs. Luckock, I want to thank you for coming all this distance to help us with our deliberations. I am sure that your representations have been valuable and we appreciate them, and we thank you very much.

The WITNESS: Thank you, Mr. Chairman, for inviting us to come.

The CHAIRMAN: The meeting is now adjourned until Tuesday, March 10, at 10:30 o'clock in the morning.

APPENDIX "A"

LEAGUE FOR DEMOCRATIC RIGHTS

National Chairman:
Roscoe S. RODD, Q.C.

National Office:
Room 24, 356 Bloor Street East
Toronto 5, Ontario
Telephone: PRincess 1244

National Executive Secretary:
THOMAS C. ROBERTS

February, 1953.

The Special Committee on the Criminal Code
The House of Commons
Ottawa, Ontario.

Gentlemen:

We welcome and appreciate this opportunity of presenting our views on the proposed revision of the Criminal Code to members of the House of Commons. We have concerned ourselves with this matter (as Bill H8, Bill O and now Bill 93) since April 7, 1952 when the Criminal Code Revision Commission made its report to Parliament.

We welcome the fact that changes have been made by the Senate and by the Government so that Bill 93 is, in our opinion, an improvement over Bill H8. We trust that the House of Commons will make all the further changes necessary to have the Criminal Code serve its proper purpose without in any way jeopardizing or eliminating traditional democratic rights.

Before outlining our objections to certain sections in Bill 93 we wish to place on record the principles upon which this presentation is based.

INTRODUCTION

1. The Universal Declaration of Human Rights

On December 10, 1948, the United Nations adopted the Universal Declaration of Human Rights and by this act, performed a very valuable service to the peoples of the World. In its general terms are set forth the rights and freedoms that all mankind strives to achieve.

2. A Bill of Rights for Canada

In a debate in the House of Commons last March it was pointed out that upwards of one million, one hundred thousand Canadians had petitioned Parliament for a Bill of Rights for Canada. In the course of the last few years probably most of the organizations in Canada, at some time or other, have gone on record in favour of such legislation.

We believe the vast majority of Canadians want a Bill of Rights which will effectively guarantee such rights as the following: the right to freedom from discrimination; the right to freedom of speech, assembly, association and religion; the right to citizenship, personal liberty, fair trial and equality before the law; the right to petition, and to government of, for and by the people.

3. Law against discrimination

We think this is an opportune time to commend Parliament and the Government for what has been done during the last few months in recognition of the desire of the people for a Bill of Rights. We refer to the amendment to

the Unemployment Insurance Act passed during the last session with respect to discrimination on the grounds of racial origin, colour, religious belief or political affiliation; to Order in Council P.C. 4138 of September 24, 1952 concerning acts of discrimination with respect to Government contracts; and to Bill 100 of the present session, designed to provide a federal Fair Employment Practices Act.

While the grounds of discrimination set forth in these laws and Bill 100 are not as comprehensive, and for that reason, not as satisfactory as those in Article II of the Universal Declaration of Human Rights (viz. "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status") nevertheless these actions are commendable.

These laws and Bill 100, we believe, are in accordance with the desires of the Canadian people, whereas certain proposals contained in Bill 93, which affect democratic rights are not—are in fact, in direct opposition to the clearly expressed demands of the majority of our people for a Bill of Rights.

4. Hysteria and Witch-Hunts are not Wanted Here

Possibly we in this country can consider ourselves fortunate in that we have had an opportunity to watch, at close hand, the effects of repressive, undemocratic legislation without having to suffer too much, either directly or indirectly from it. Certainly most Canadians from all ranks of life, are agreed that we do not want in Canada the Fear, the Hysteria and the Witch-hunts that have swept across the United States of America during the last few years. We most certainly do not mean to imply by that that Canadians are somehow better or more noble than the citizens of the United States—for we believe the majority of them had no wish for witch-hunts either. We are, however, in a position to learn from their bitter experiences; and we are in fact, learning—as could be shown by numerable examples.

It would be useful and salutary to document the recent history of the attacks on democratic rights in the U.S.A. so that no lesson would be lost on us. Time, of course, will not permit but we urge the busy members of the House of Commons not to ignore these lessons, particularly during the consideration of Bill 93.

5. Freedom of Thought and Speech

The right to freedom of opinion and expression, thought and speech, is, we believe, the basic cornerstone of our democratic rights. The proper exercise of every other right and freedom depends upon freedom of speech. Progress, justice and democracy are impossible without it.

It cannot, of course, be denied that free speech is at times both annoying and embarrassing. All of us have wished at times that we could silence our critics. It is a temptation too easy to succumb to—particularly to those possessing effective power.

It is also essential to remember that we do but take coals to Newcastle by upholding free speech for our friends. The real test of our belief in free speech is our upholding of it for our critics and enemies. The popular and the mighty need no guarantees. It is the unpopular, the minorities whose right to freedom of thought and speech must be defended.

We believe that the statement made by Mr. Justice Locke should guide this Committee and Parliament in their consideration of Bill 93, and other legislation relating to free speech. As reported in Canada Law Reports (1951) Mr. Justice Locke said:

". . . subject only to the restraint imposed by laws both civil and criminal as to defamation, and in the case of the administration of justice to the law as to contempt of court. . . It is the right of His Majesty's subjects to freely criticize the manner in which the government of the country is carried on, the

conduct of those administering the affairs of the government, and the manner in which justice is administered. . ." (at p. 330).

6. Right to Strike

We believe in the right of workers to organize, to freely choose their own bargaining agent without interference of any kind from anyone. This is a right which is essential in our society.

It is not, however, sufficient to uphold unions. A union without the right to strike and to picket is an ineffective organization. It is essential that this right exist in fact—without restrictions large or small.

Employers, individually or collectively, provide work or withhold it at their discretion—subject not to criminal law, but only to their own best interests. Workers are equally entitled, individually or collectively, to work or to refuse to work without being subjected to legal penalties.

No one likes strikes—least of all the workers involved in them. However, in our considered opinion, as an essential right there is today no satisfactory alternative available to the workers of Canada.

7. The Letter of the Law

In criticizing certain of the sections in this proposed revision of the Code we do so not on the basis of what might be the intent behind them but rather on their possible interpretation. For example it is no protection of the rights of citizens for a supporter of proposed section 372 to maintain that it is not *intended* that trade union activity be circumscribed by the definition of "mischief". It is not what might be the intent of the legislators but the letter of the law in its widest possible interpretation which is decisive.

As the National Council of Civil Liberties of the United Kingdom said with respect to one part of Bill 93: "No doubt section 46 can and will be defended with the customary comfortable assurances that it does not really mean what it says, and that its use in circumstances unconnected with national security is not contemplated. In England we have been caught like that before; experience teaches that the most earnest assurances at the time of the passing of an act are no protection against a Government or a Minister who decides at a later date that circumstances warrant the application of the letter of the law."

8. Precision of Definition Essential

Brevity for brevity's sake has no place in a Criminal Code; generalized phrase substituted for a lengthy, detailed, and precise description is dangerous in a document like the Code.

It is, of course, easy to generalize and often extremely difficult to be specific. But in a document that deals with the life and liberty of all Canadians, it is surely not asking too much to expect both simplicity and precision.

One of our most serious objections to Bill 93 is that it contains words and phrases which are extreme and dangerous generalizations. For example the phrase "the interests of Canada", which is undefined, has such a wide variety of meanings that its use in a Criminal Code very seriously threatens justice, democracy and liberty.

In another instance one new section (Proposed Section 372) approximately 23 lines long, is to replace fifteen sections of the present Code which contain over 230 lines. A condensation of that order cannot retain the detailed precision of the original—proposed section 372 certainly does not.

The January 1953 issue of the Anglican Outlook And Digest, in an article dealing with this proposed revision of the Code, said: "...there is no better test of a peoples's liberty than the terms of their penal code. We know best what we can do by knowing what is forbidden, and if we may not know that

with reasonable certainly then we are slaves in fact to fear." The article also said of the Code that it should be "as simple, direct and understandable to the layman as it is possible to make it..."

9. General

While two of the leading officers of the National Executive of the League for Democratic Rights are members of the legal profession, the majority are not. Moreover, while for obvious reasons, a Criminal Code, its drafting, revision and use, is of particular interest to lawyers, nevertheless the spirit and letter of the criminal law concerns all citizens—most of whom are not trained in law. Therefore, this submission is not a lawyer's document in the sense of being restricted deliberately to points of law.

We are not certain that we have dealt with everything in this proposed revision which should concern an organization that exists solely in order to help defend and extend democratic rights in Canada—not that we have deliberately made omissions but we have not been able to study carefully all of the 744 sections in Bill 93.

It is our intention to deal with the sections with which this submission is concerned in the numerical order of their appearance in the bill.

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Proposed Section 46

(1) Every one commits treason who, in Canada,

(*a*) kills or attemps to kill Her Majesty or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her;

(*b*) levies war against Canada or does any act preparatory thereto;

(*c*) assists an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;

(*d*) uses force or violence for the purpose of overthrowing the government of Canada or a province;

(*e*) conspires with any person to do anything mentioned in paragraphs (*a*) to (*d*); or

(*f*) forms an intention to do anything mentioned in paragraphs (*a*) to (*e*) and manifests that intention by an overt act.

(2) Notwithstanding subsection (1), a Canadian citizen or a person who owes allegiance to Her Majesty in right of Canada commits treason if, while out of Canada, he does anything mentioned in subsection (1).

(3) Where it is treason to conspire with any person, the act of conspiring is an overt act of treason.

We welcome the fact that The Senate of Canada amended this proposed section by deleting from it the clause which read: "conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada". We shall have considerable to say with respect to that clause in our criticism of proposed section 50 where it has now been placed. Here we will just note that, in our opinion, it was an extremely dangerous proposition to include in the Criminal Code, and more especially, if that is possible, in the Treason section—and we trust that the Members of the House of Commons will not override the action of The Senate which deleted it from proposed section 46.

46 (1) (b)

The words "or does any act preparatory thereto" deal with a matter subordinate to the principal offence of levying war against Canada, and should not carry the same penalty as if the crime of levying war had actually been committed.

Furthermore the provisions of the proposed sections relating to parties to offences (proposed section 21) and to attempt, conspiracies, counselling, and accessories (sections 406 and 407), give the added scope which these words would seem intended to provide.

We recommend, therefore, that the words "or does any act preparatory thereto" be deleted.

46 (1) (c)

The words "or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are" are a new and unwarranted extension of the crime of treason. These words establish a peace time offence of treason. This is a drastic and unwarranted innovation. This provision creates the death penalty for any act committed when the danger to Canada is so remote that our government has not yet seen fit even to declare war.

The capital offence of treason should be restricted to apply only to one who assists the enemy when his country is at war and when it is thereby gravely menaced. It should not apply to so-called police action abroad engaged in by our armed forces either alone or in company with the armed forces of other nations. "Hostilities" might even be begun by the commander, say in Europe, of allied forces without previous or formal approval of the Government of Canada.

Without a doubt one of the most, if not the most, important decision made by the people of Canada through their elected representatives in Parliament is a "Declaration of War". Certainly nothing should be done that will in any way lessen or take away this vital function of our democracy. Only the people through their elected representatives must be able to involve Canada in a war and all that such a Declaration implies. Yet the latter part of this proposed clause (c) seriously weakens this vitally important principle.

It has always been true that one of the worst and most unpleasant concomitants of a "Declaration of War" has been the restriction of civil liberty—and in particular the curtailment of freedom of speech. That restriction is unfortunate enough when it is used during a specific war period and after the people through their representatives have knowingly made the grave decision to go to war. It would be intolerable as a more or less permanent feature of our society. One, moreover, over which parliament and the people had no direct control.

For hundreds of years treason has been associated exclusively, with a declared war or physical attacks on the person of the sovereign. Proposed clause (c) not only destroys that long-standing principle but it also automatically places treason, and restrictions on liberty, free speech, etc. outside of the

control of the people of Canada, the parliament of Canada, and even the Government and Ministers of the Crown. We submit, therefore, that these words should be deleted from section 46(1)(c).

We urge also that the vague and indefinite word "assists" should be strictly defined in this death penalty section. It has been suggested that it could be interpreted to mean assists in any manner whatsoever. As it is at the moment it could be interpreted to include even in peace time, (1) a trade unionist engaged in a strike in an industry producing war material; or in our transportation services; or in public utilities services producing necessary power; or in mining esssential war materials, etc.; (2) a person opposing conscription; (3) one advocating peace or disarmament or criticizing the war policy of a government; (4) or possibly one selling goods to China, because Chinese volunteers are engaged in hostilities with Canadian soldiers.

We propose that the word "assists" should be specifically defined to include only such direct, unmistakable and overt assistance to an enemy formally at war with Canada as to cause imminent danger to Canada.

46 (1) (*d*)

This further death penalty clause has as its target one who "uses force or violence for the purpose of overthrowing the government of Canada or a province".

Previously only in the section dealing with sedition was a similar phrase used. In that section it is a crime to teach or advocate, etc. the use of force to accomplish a governmental change (our objections to this, and these are relevant here, are given further on in this submission). In this proposed section on treason it is a crime to use force to change a government—or to *conspire* to do so, or to *form an intention* to do so.

For years the maximum penalty for sedition was two years imprisonment. Because of this lighter penalty judicial interpretation was much broader. There is a grave danger that these interpretations would be applied to the offence of treason where it is now proposed that the crime should be similar but that the maximum penalty be death rather than two years in jail.

Moreover, for the lesser crime of sedition there is provided something in the nature of a safeguard which attempts to limit and restrict the meaning of "seditious intention". Yet notwithstanding the fact that it is now proposed that treason shall encompass an infinitely wider variety of things than does sedition, it has not even been suggested that similar safeguards should apply. We note this significant factor without thereby implying that proposed section 46 would be made fit and proper if a similar "safeguard" were appended thereto.

The phrase "force and violence", through overwork and loose usage, has come to mean everything from a picket line to a bombing attack. This provision could place a terrible weapon in the hands of a timid and reactionary government which might easily be used, for instance, in the case of a hunger strike protest march on Ottawa or any provincial capital. When does political pressure or constraint become "force and violence" in the mind of a fearful government?

Undoubtedly this paragraph would make it an offence for any one to wage war with lethal weapons in order to overthrow a government but it is by no means limited to that. This clause would be an open invitation to a reactionary government to visit severe and cruel punishment upon peaceful opponents of its policies. It indicates a distrust of the democratic process. Let us in Canada disdain using any of the instruments of despotism and tyranny.

46 (1) (e)

This clause, together with the following clause (f) may accurately be said to create death penalty offences by wholesale, and hence should be classed with that harsh and Draconian legislation of 621 B.C. which was said to have

been written not in ink but in blood. Legislation so severe and dangerous is not befitting to the civilized age in which we live, nor complimentary to our humane Canadian people. It is such legislation as is born of panic and hysteria rather than of reason, sanity and good judgment.

By their possible combinations and permutations with the preceding clauses of section 46, this clause and the succeeding clause create more than 20 death penalty offences. This is repression with a vengeance!

In the first place "conspiracy" to commit a crime should not be given the same penalty as commission of the crime itself. The commission of the crime itself is a principal offence. Conspiracy only to commit a crime is a subordinate offence.

It is submitted that proposed general sections 21, 22, 23, 406 and 407, relating to parties to offence, common intention, persons counselling offence, attempts and accessories have sufficiently safe-guarded and will in the future adequately safeguard the public without the addition of dangerous conspiracy offences.

Furthermore proposed sections 406 and 407 quite properly impose lighter penalties for the subordinate offences of counselling or attempting to commit a crime. Even conspiracy to commit a murder is under proposed section 408 visited with a penalty of only 14 years imprisonment. What then is the real reason for the cruel and vindicative proposed penalty of death for conspiracy?

The danger inherent in a conspiracy offence is very great, and such an offence therefore, should not form part of a death penalty section. For, on a conspiracy charge the prosecution need only prove an agreement to commit a crime. The commission of the crime itself need not be proven. The offence of conspiracy is complete the moment the agreement itself is proven.

By this device of making the conspiracy or agreement itself a crime the prosecution is not required to prove the commission of the principal crime itself. This conspiracy device is further aided by 46 (3) which provides that "where it is treason to conspire with any person the act of conspiring is an overt act of treason."

In this connection it may be said that the requirement of only one witness to prove an act of treason, if the evidence of that witness implicating the accused is corroborated in a material particular, gives insufficient protection to an accused. Since conspiracy may be simply an agreement with no positive crime committed, conspiracy can be established by proving an agreement between two persons only to commit a crime. Now one of the two persons would be the accused and the other might easily be one of those perjured, professional witnesses, out for notoriety or monetary reward, frequently met with in treason or sedition trials.

The requirement of corroborative evidence does not afford a great deal of protection, when in a recent American case such overt acts were stated in the indictment as: that the accused visited a building on a certain date; that on a certain date the accused talked with another person; that on a certain date he took a train to a certain place; that the accused received a written paper from a witness.

In conspiracy cases, moreover, guilt or innocence largely depends upon the characters, motives and interests of the witnesses. In such cases the evidence of an accomplice is often heard, and the evidence of an accomplice is notoriously untrustworthy. The "accomplice" may really be the sole and only perpetrator of a crime, who in the hope of a light sentence, or early parole, tries to implicate in his crime another and possibly innocent person. An accomplice has usually pleaded guilty to the crime. He now appears to betray an alleged associate.

How dangerous is such evidence! Is he implicating his associate hoping to gain some benefit for himself, or to feed his resentment and to pay off

an old score against an innocent person? Remember also that if at a later date it is discovered that the informer gave false evidence as a result of which another person was convicted and hung, the only charge that could be levied against the informer would be that of perjury—he would be in no danger of being accused and sentenced to death for what was, in effect, murder.

46 (1) (g)

This clause goes even farther than the conspiracy clauses and says that every one commits treason who in Canada merely "forms an intention to do anything mentioned in paragraphs (a) to (e) and manifests that intention by an overt act".

This clause by one stroke establishes no less than 5 offences of treason punishable by death or life imprisonment.

This clause is alien to the whole tradition of English jurisprudence, for like the conspiracy clauses, it creates an offence of treason without the actual commission of the principal crime. It punishes the "idea" or "intention" itself. It penalizes what a man thinks, rather than what he does. It makes a capital crime of an "idea" or "thought" which has never, or might never have exploded into action. It punishes an "idea" or "thought" which might even have changed, let alone have developed to the stage of action. Forming an "intention" is even more remote than "conspiracy". It does not even require an agreement of two or more people. The "idea" or the "thought" of one person could constitute treason under this clause.

This clause is so broad and sweeping and remote from the actual commission of a principal or positive crime of treason that it should be deleted entirely from the Code. It is thought control of the most vindictive and repressive type and wholly unworthy of a democratic country. Besides, who of us can say with assurance what is in the mind of another; what his intention is. Here again arises the danger of doubtful evidence which might be given as to one's intention by perjurers, informers, accomplices or by one with an axe to grind or a grudge to satisfy. Here again the dependence upon an "overt" act which might easily be referable either to an innocent or guilty intention.

Proposed Section 47

(1) Every one who commits treason is guilty of an indictable offence and is liable

(*a*) to be sentenced to death, if he is guilty of an offence under paragraph (*a*), (*b*) or (*c*) of subsection (1) of section 46, or

(*b*) to be sentenced to death or to imprisonment for life, if he is guilty of an offence under paragraph (*d*), (*e*) or (*f*) of subsection (1) of section 46.

(2) No person shall be convicted of treason upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

When the bill revising the Code was first introduced in May, 1952 as Bill H-8 (of The Senate of Canada) paragraphs (*a*) and (*b*) of subsection (1) of section 47 read:

(*a*) to be sentenced to death, or

(*b*) to imprisonment for life.

It will be noted that that would make considerable difference with respect to convictions under paragraphs (*a*), (*b*) and (*c*) of subsection (1) of section 46. As it now stands in Bill 93, the death penalty is mandatory for persons convicted under those paragraphs whereas the original proposal in Bill H-8 provided an alternative penalty of life imprisonment or less.

Hundreds of years ago, the death penalty was provided for quite a variety of crimes but as civilization progressed these were steadily reduced. If a referendum vote of the Canadian people were taken today it is quite conceivable that many, possibly the overwhelming majority, would be in favour of the complete abolition of the death penalty. Certainly there would not be anywhere near a majority advocating an increase in the number of crimes punishable by death. Yet in spite of this humane trend which has been in existence for some considerable time, Bill 93 proposes a very substantial increase in the number of capital offences.

We have already noted, but it warrants repetition, that the proposed section on treason is substantially different from the general principle of the Code as set forth in Sections 406-408, inclusive, in that principal and subordinate offences are subject to the same penalty in the treason section, while this is not the case in other crimes.

Proposed Section 48

(1) No proceedings for an offence of treason as defined by paragraph (*d*) of subsection (1) of section 46 shall be commenced more than three years after the time when the offence is alleged to have been committed.

(2) No proceedings shall be commenced under section 47 in respect of an overt act of treason expressed or declared by open and considered speech unless

(*a*) an information setting out the overt act and the words by which it was expressed or declared is laid under oath before a justice within six days after the time when the words are alleged to have been spoken, and

(*b*) a warrant for the arrest of the accused is issued within ten days after the time when the information is laid.

In the present Code (viz. Section 1140, "Limitations of Actions" which, it should be noted, has been omitted almost entirely in the proposed revision) the three year limitation applied to all parts of the treason section "except treason by killing His Majesty, or where the overt act alleged is an attempt to injure the person of His Majesty". Proposed Section 48, therefore, follows the new repressive trends apparent in proposed Sections 46 and 47.

Presumably if Sections 46-48 were passed, as here proposed, proceedings could be taken against a person under paragraph (*a*), (*b*), (*c*), (*e*) or (*f*) of Section 46 for an offence allegedly committed at any time in the past. It should also be noted that the protection afforded by 48 (2) is more apparent than real as a warrant may be issued and withheld indefinitely.

Proposed Section 50

(1) Every one commits an offence who

(*a*) incites or assists a subject of

(i) a state that is at war with Canada, or

(ii) a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are,

to leave Canada without the consent of the Crown, unless the accused establishes that assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby,

(*b*) knowing that a person is about to commit treason does not, with all reasonable dispatch, inform a justice of the peace or other peace officer thereof or make other reasonable efforts to prevent that person from committing treason, or

(c) conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety of Canada.

(2) Every one who commits an offence under subsection (1) is guilty of an indictable offence and is liable to imprisonment for fourteen years.

In dealing with proposed section 46 we set forth our findings with regard to the paragraph that reads: "a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are". All that was said there bears repeating here. The lesser penalty provided in this section in no way lessens the danger to freedom of opinion and expression inherent in the above paragraph.

When this clause was first introduced in June, 1951 the reason given was the need for security and the fact that new conditions had arisen. It was argued that Canadian forces were involved in a "police action" in Korea—not a war—and this new situation, which might be repeated elsewhere, required new law.

Canada derives its criminal law from the United Kingdom. "Police action" by the armed forces of the United Kingdom is certainly no new phenomenon. The law-makers at Westminster for years have been familiar with that type of action. It may be new to Canada to have its army, navy and air force involved in "police actions" which are not the result of a declaration of war, but it is not new to the United Kingdom. It is very significant that the older, more experienced parliament of the U.K. does not attempt to stifle or eliminate criticism of its "police actions". The argument advanced in Ottawa in June, 1951 that an entirely new situation warrants new, unprecedented law is thus shown to be fallacious.

50 (1) (c)

The Senate of Canada has seen fit to remove this paragraph from proposed section 46, and we agree that it certainly has no place in that section. The Senate also, in deleting from this paragraph the all-embracing generalization "or interest", removed a further great danger to the freedom and liberty of Canadians.

However, paragraph (c) of proposed section 50 (1) is still a grave threat to democratic rights. It is vague and capable of wide and uncertain interpretation.

The terms of reference are fantastic. Consider for a moment the various parts of the paragraph:

"conspires"

First there is again introduced here the crime of conspiracy. In a recent article, a distinguished English lawyer, D. N. Pritt, Q.C. discussed why a charge of conspiracy to commit some crime or other is so frequently made, in lieu of a charge that the crime was actually committed. He said:

" 'Conspiracy' can be defined, sufficiently for present purposes, as an agreement between two or more people to commit a crime; it is itself a crime, and the crime of conspiracy is complete as soon as two or more persons have agreed in any way whatsoever, whether formally or informally, by words or by conduct, to commit some crime; it is not necessary for the prosecution to prove the commission of the ultimate crime nor even of acts amounting to an attempt to commit it.

"It is thus in general easier to secure a conviction for conspiracy than for any other offence, for less has actually to be proved against the defendants; and prejudice or excitement may lead a jury to convict parties on a mere allegation that they agreed or arranged together to do something, under circumstances where, if it were necessary to prove some positive criminal act, the jury would have to acquit because there would be no evidence at all of any such acts.

"To secure a conviction is moreover made easier still by the operation of a peculiar rule of evidence. In all normal cases no evidence can be given against any defendant in a criminal case except evidence of acts which he himself did or words which he himself spoke; but in a conspiracy case, so long as some evidence—however tenuous—is given from which an agreement between the alleged conspirators might be inferred, the acts and words of any of them, asserted to be done or spoken in pursuance of the conspiracy, are admissible evidence against all the others, on the footing that they are all agents of one another, and so responsible for each other's words and actions.

"It is little wonder, in the circumstances, that in all periods of tension, in all countries, charges of conspiracy have been frequently made, and many defendants have been found guilty and sentenced to imprisonment, although little has been proved against them and no other crime could plausibly even be charged."

"an agent of a state other than Canada"

It was pointed out by the Hon. Arthur W. Roebuck, Q.C., in the Senate that: "The word 'agent' could mean any civil servant of any country other than Canada—of the United States or the United Kingdom, for instance, or of any of our fellow members of the British Commonwealth. 'Agent' is a very wide term; there are literally thousands of agents through whom information is conveyed."

"to communicate information"

This phrase includes everything from the alphabet to atomic secrets; to quote Senator Roebuck again "It might be the most harmless and trifling information or something which is well known to everybody. No term could be wider than the word 'information' ".

"to do an act"

This phrase is just as comprehensive and all-inclusive as those that have gone before it and those that follow. In its proposed context it is also fantastically broad and sweeping.

"that is likely to be prejudicial"

Not, be it carefully noted, "that *is* prejudicial" but only maybe, perhaps, at some time, in some one's opinion "*likely* to be". That is an umbrella-like turn of phrase—to cover any and all possibilities. Who can decide, justly and with any degree of certainty, what "is *likely* to be prejudicial"? Can such a decision be left to a provincial attorney-general, a crown prosecutor, a judge, or even a jury?

"the safety of Canada"

At first glance this phrase appears more precise and certain than those that have preceded it. But is it really clear and definite enough to protect our liberties—which, after all, are part of the Canada we cherish?

Remembering that this is a peace-time offence and taking all factors, including experience, into account, is it not possible to think of examples of information given or acts performed that some would consider against "the safety of Canada" while others, at least equal in number, would take a negative or opposite position. In short this phrase also is nowhere near as clear and precise as a phrase should be to appear in our Criminal Code.

The Official Secrets Act

It is of significance that the idea for this proposed paragraph was taken from the Official Secrets Act which, for its looseness and unjust, undemocratic character, was so roundly condemned a few years back by many Canadians. In this instance it is clearly a case of going from bad to worse.

In our mind there is no question that freedom of opinion and expression will suffer if this proposition is made law. Critics and opponents of the party in power could be silenced by it. History, unfortunately even very recent history, affords examples of this sort of thing and of how easily it can be done with the aid of laws such as 50 (1) (c) as proposed.

Proposed Section 51

"Every one who does an act of violence in order to intimidate the Parliament of Canada or the legislature of a province is guilty of an indictable offence and liable to imprisonment for fourteen years."

Again in this section we have the vague, loose phrase "an act of violence". Experience has demonstrated that with respect to issues over which strong differences exist in the community, the term "violence" is bandied about in a manner to include legitimate protest action. There must be no encroachment on the rights of Canadians to petition Parliament and express their opinions.

Proposed Section 52

"(1) Every one who does a prohibited act for a purpose prejudicial to
(*a*) the safety or interests of Canada, or
(*b*) the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada,
is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) In this section, "prohibited act" means an act or omission that
(*a*) impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing, or
(*b*) causes property, by whomsoever it may be owned, to be lost, damaged or destroyed."

This particular section is without doubt a direct threat to the trade union movement.

It is an elementary fact, obvious to any worker, that a strike impedes the working of some "machinery, apparatus or other thing". That is the very purpose of a strike.

Any worker, who has ever had anything to do with a strike, knows from his own experience that it is a very common thing for a strike, or even the threat of one, to be greeted with a hue and cry that it is against the "safety or interests of Canada". A national railway strike, a farmer's strike, the threat of a strike in the steel industry or even a garment factory producing army uniforms, all call forth the same refrain.

We think it can be assumed that a Canadian worker does not go on strike in order to endanger his country—but, particularly in periods of tension and crisis, there is a very real danger that a court could be persuaded, by a barrage of propaganda, to misconstrue the worker's motives. Thus could this proposed section be used to curtail or eliminate the right to strike.

We object to the definition of "a prohibited act", particularly part (*a*), because it is also the definition of a strike. We also object to the generalizations in subsection (1), namely: "(*a*) the safety or interests of Canada, or (*b*) the safety or security of..." Undoubtedly the word "interests" is the worst word in these phrases, but in the context, in a Criminal Code, the words safety or security are only a little less dangerous.

Proposed Section 57

"Every one who wilfully
(*a*) procures, persuades or counsels a member of the Royal Canadian Mounted Police to desert or absent himself without leave,

(*b*) aids, assists, harbours or conceals a member of the Royal Canadian Mounted Police who he knows is a deserter or absentee without leave, or

(*c*) aids or assists a member of the Royal Canadian Mounted Police to desert or absent himself without leave, knowing that the member is about to desert or absent himself without leave,

is guilty of an offence punishable on summary conviction."

This proposal puts the R.C.M.P. on the same footing as our military forces. In our opinion the R.C.M.P. should be a civilian police force.

We trust no one would think of suggesting that this proposal should be applied, for instance, to the Toronto, Montreal, Vancouver or Ottawa city police. It is significant to note that the R.C.M.P. are not only a federal force but that they act also as provincials in most provinces and perform the municipal police duties in many places.

The question posed by the proposed section is whether the R.C.M.P. is a civilian police force or is to become a militarized guard. As far as we are concerned there is only one answer to that question—a civilian police force.

Proposed Section 60 and 61

"(1) Seditious words are words that express a seditions intention.

(2) A seditious libel is a libel that expresses a seditious intention.

(3) A seditious conspiracy is an agreement between two or more persons to carry out a seditious intention.

(4) Without limiting the generality of the meaning of the expression "seditious intention", every one shall be presumed to have a seditious intention who

(*a*) teaches or advocates, or

(*b*) publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada."

In the recent seditious libel case of Boucher v. The King (1951 S.C.R. 265) tried in the Supreme Court of Canada it was said that the crime of seditious libel was well known to the Common Law—that up to the end of the 18th century it was, in essence, a contempt in words of political authority or the actions of political authority—that it flowed from the conception of the governors of society as superior beings, exercising a divine mandate, and enacting laws to be obeyed by men without question or criticism. In such a political climate was the law of sedition written.

But this is the 20th century, and the ruler or government is properly considered as the agent or the servant of the people in whom the sovereign power resides. In this modern democratic view of government a member of the public has the right to censure and find fault with his representatives in government. The Court referred to Stephen's "History of the Criminal Law of England" in which the author says, that to those who hold this modern view of government and carry it out to all its consequences there can be no such offence as sedition.

It cannot be denied that the crime of sedition has always been a threat to the right to freedom of speech. Its origin, history and contemporary use all reveal that. It is an archaic law which jeopardizes free speech. Proposed sections 60-62, inclusive, should be deleted from the Code.

"Section 98"

Clause (4) of proposed section 60 was enacted in 1936 by the same chapter 29 of the Statutes of Canada of that year which repealed the notorious section 98

which had been enacted in 1919. The close relationship between subsection 1 of section 98 and subsection (4) of proposed section 60 may be observed by comparing them. Subsection 1 of old section 98 was as follows:

> "Any association, organization, society or corporation, whose professed purpose or one of whose purposes is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property, or threats of such injury, in order to accomplish such change, or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend, shall be an unlawful association.
> (For clause (4) of proposed section 60 see above, page 17)

"Treason and sedition"

In the treason section as proposed—46. (1) (*d*)—treason is committed if one uses force or violence to overthrow the government, or forms an intention or conspires to do so. In this section it is proposed that it shall be an offence to teach or advocate the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada. Both proposals are an open invitation to a reactionary government to repress criticism of itself.

It must be remembered that usually the victims of the sedition section have been political opponents of the government in office or trade unionists involved in labour disputes. Recent examples of their use come from Quebec: Labour leaders indicted on charges of "seditious conspiracy" for acts allegedly committed during strikes (Ayers Ltd., Lachute, 1947—Associated Textiles, Louiseville, 1952); and a member of Jehovah's Witnesses indicted for "seditious libel" in 1946.

"The Smith Act of the U.S.A."

In the United States under the repressive Smith Act a grand jury charged defendants that they "unlawfully, wilfully and knowingly did conspire... to commit offences against the United States prohibited by section 2 of the Smith Act... by so conspiring... to advocate and teach the duty and necessity of overthrowing and destroying the government of the United States by force and violence..." The similarity of the wording of this charge to clause (4) of proposed section 60 is striking.

Some of the overt acts specified in the indictment referred to were that one of the defendants "did leave" a certain street address; that another defendant did attend and participate in a meeting; that another did prepare the contents for and did mail approximately fifty envelopes; that another did write and cause to be published a pamphlet; that another did teach at a certain school.

Under such an indictment, alleging such overt acts, the defendants were tried, convicted and sentenced to long terms of imprisonment. These convictions were greeted joyfully by the New York World Telegram which said "We now have a stream lined instrument for thought control trials. . . ."

In the U.S.A. during the past two years at least 85 persons have been arrested under this part of the Smith Act which is so similar to paragraph (4) of section 60. Concerning those already convicted Mr. Justice Black of the U.S. Supreme Court said: (they) "were not charged with an attempt to overthrow the government. They were not charged with non-verbal acts of any kind designed to overthrow the government. They were not even charged with saying or writing anything designed to overthrow the government.

The charge was that they agreed to assemble and talk and publish certain ideas at a later date . . . No matter how it is worded, this is a virulent form of prior censorship of speech and press. . . ."

It may be suggested that since clause (4) has remained dormant since 1936 there is no danger of such convictions in Canada. It may be pointed out, however, that the Smith Act lay dormant for eight years before it was used.

As a result of the Smith Act and other repressive measures a veritable reign of fear and hysteria has gripped the people of the United States. Liberal radio commentators have been cleared from the air; students at schools, colleges and universities are afraid to discuss public questions; liberal teachers have been dismissed; text books have been purged by ignorant, bigoted, wholly unqualified and self appointed censors; six million civil servants have been terrorized by the Hatch Act and made less willing to read, to criticize, to join civic groups and to trust their fellow men; authors fear to write except along tame and orthodox lines; book publishers fear to publish unorthodox books; scenario and play writers fear to write what their genius prompts them to write, and producers fear to produce any but the most orthodox plays. Fear sits on every doorstep. Fear of the bigot, the professional informer and perjurer, the would be controller of other peoples' thoughts. This has been the price of repression in the United States.

Proposed Section 62

"Every one who

(*a*) speaks seditious words,

(*b*) publishes a seditious libel, or

(*c*) is a party to a seditious conspiracy,

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

Let us note the recent harsh trend towards greater penalties for seditious offences. Prior to June 1951, the penalty was 2 years imprisonment. In June 1951 the penalty was increased to 7 years. As proposed in this Bill it is to be 14 years.

The penalty under section 98 was 20 years. When it was repealed in 1936, by the predecessors of the present government for sound reasons, and clause (4) was submitted therefor, the penalty was reduced to two years.

Proposed Section 63

"(1) Every one who wilfully

(*a*) interferes with, impairs or influences the loyalty or discipline of a member of a force,

(*b*) publishes, edits, issues, circulates or distributes a writing that advises, counsels or urges insubordination, disloyalty, mutiny or refusal of duty by a member of a force, or

(*c*) advises, counsels, urges or in any manner causes insubordination, disloyalty, mutiny or refusal of duty by a member of a force,

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

(2) In this section, "member of a force" means a member of

(*a*) the Canadian Forces, or

(*b*) the naval, army or air forces of a state other than Canada that are lawfully present in Canada.

We welcome the fact that the Senate deleted from this proposed section a paragraph which would have made this offence apply to the R.C.M.P. as well

as the military forces. As we maintained in our remarks concerning proposed section 57, the R.C.M.P. should be regarded as a civilian police force, not a militarized gestapo.

As this proposal now stands, after the Senate's amendment, it is still dangerous to democratic rights because of the extremely broad, vague terms contained in paragraph (1)(*a*), and in the phrase "or in any manner" contained in paragraph (1)(*c*).

It is true that the Senate has lessened the danger by inserting the word "wilfully" after the words "(1) Every one who . . ." but in our opinion this proposal is still too all-embracing. Words like "interferes with, impairs or influences" are capable of very wide interpretation.

Proposed Sections 64-69, inclusive

"Everyone is guilty of an indictable offence and is liable to imprisonment for life who

(*a*) opposes, hinders or assaults, wilfully and with force, a person who begins to make or is about to begin to make or is making the proclamation referred to in section 68 so that it is not made,

(*b*) does not peaceably disperse and depart from a place where the proclamation referred to in section 68 is made immediately after it is made, or

(*c*) does not depart from a place immediately when he has reasonable ground to believe that the proclamation referred to in Section 68 would have been made in that place if some person had not opposed, hindered or assaulted, wilfully and with force, a person who would have made it.

In the past these Unlawful Assembly and Riot Act sections have been used most often in connection with strikes, unemployed demonstrations, gatherings of citizens protesting government policies, and the like. These sections were used recently (December, 1952) in Louiseville, Quebec. All too often their use has been premature and unjustified—and basic democratic rights have suffered as a result.

Proposed Sections 64-68, inclusive, are substantially the same as their counterparts in the present Code. This is not a recommendation and now, during the complete revision of the Code, is an opportune time to get rid of them.

Proposed Section 69 has been changed in a way to add more teeth to an already dangerous law. A sentence in the present section which begins "with force and arms wilfully oppose, hinder or hurt. . . ." has been changed, in the proposed revision, to read, "opposes, hinders or assaults, wilfully and with force." Note the significant omission of the words "and arms." This could make prosecution and conviction considerably easier—for it would no longer be necessary to establish strikers and demonstrators carried "arms".

In the present Code there is an important, qualifying phrase which says that every one can be imprisoned for life who continues "together to the number of twelve for thirty minutes" after the reading of the Riot Act. In the proposed revision of Section 69 this important qualification has been changed to read, "Every one . . . who does not disperse and depart . . . immediately . . ." after the reading.

In other words, according to the present Code, no one could be charged for ignoring a reading of the Riot Act unless, thirty minutes afterwards, there were still twelve or more persons assembled. It is now proposed that "every one" who does not depart "immediately" after the reading should be liable to life imprisonment. Nothing has happened to justify the elimination of the phrase: "continue together to the number of twelve for thirty minutes". On

the contrary recent events in Louiseville show that there is no justification for continuing to carry these sections (64-69, inclusive) in the Code to be used at the discretion of provincial administrators of justice.

Proposed Section 87

"Notwithstanding anything in this Act, every one who has an offensive weapon in his possession while he is attending or is on his way to attend a public meeting is guilty of an offence punishable on summary conviction."

This proposal taken together with the new definition of an "offensive weapon" provided in proposed section 2 (29) constitutes a danger to the democratic right of freedom of assembly. Paragraph (29) of proposed section 2 is still another example of the almost dominant trend towards all-embracing generalities. It says, in effect, that *anything* is an "offensive weapon". Then along comes proposed section 87—which is a new section—to make it an offence to have an offensive weapon (previously defined as anything) while attending or on the way to a public meeting. Any one who has any acquaintance with a strike, or unemployed demonstration, or political protest meeting, will recognize the danger in this proposed combination.

Proposed Section 96

"(1) Whenever a peace officer believes on reasonable grounds that an offence is being committed or has been committed against any of the provisions of sections 82 to 91 he may search, without warrant, a person or vehicle, or premises other than a dwelling house, and may seize anything by means of or in relation to which he reasonably believes the offence is being committed or has been committed."

This proposed section allows any policeman to search, *without warrant,* any individual, any vehicle, or "premises other than a dwelling house". The principal purpose of a *search warrant* is to provide some protection for the citizen against arbitrary, unnecessary or repressive actions by the police. This proposal is the not-so-thin edge of a wedge which could whittle away an important right of Canadian citizens.

This proposed section is particularly dangerous to trade unions and political parties. It is easy to imagine what well might happen during a strike (e.g. the recent one at Louiseville, Quebec) or during a political crisis. Using this proposal as an excuse the police could raid union offices and halls *without warrant* and disrupt, intimidate and secure information to which they are not entitled.

The fact that the section says that the policeman must have "reasonable grounds . . ." is insufficient protection; for experience shows that the average citizen finds it extremely difficult to secure redress, which can only be civil, from a policeman who has acted officiously.

Proposed Section 160

On the basis of what has happened in the past we object to two paragraphs in this proposed section, namely: "(a)(iii) by impeding or molesting other persons; (c) loiters in a public place and in any way obstructs persons who are there;"

Again it is a case of vague, loose terminology which is at the root of the trouble. The word "impeding" in paragraph (a)(iii) and the phrase "in any way obstructs" in paragraph (c) are both too all-inclusive. In 1950 the first was broadly interpreted to penalize individuals who were standing on street corners inviting passersby to sign petitions.

We note too that 160 (c) has been reworded to make it more vague and all-inclusive. It presents a particular threat to the now well-recognized right of trade unions to picket—which right is nowhere guaranteed in this proposed Code.

Proposed Section 365

"Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be

(*a*) to endanger human life,

(*b*) to cause serious bodily injury,

(*c*) to expose valuable property, real or personal, to destruction or serious injury,

(*d*) to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or

(*d*) to delay, or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway that is a common carrier,

is guilty of

(*f*) an indictable offence and is liable to imprisonment for five years, or

(*g*) an offence punishable on summary conviction.

This is another section which seriously affects the hard won trade union right to strike. It is our understanding that the change proposed here is intended to put the section back to where it was before it was revised in 1906. It was clearly stated that the purpose of the change was to make it a crime to "break a contract with a person who had contracted to supply services". Obviously this can be used with reference to trade union members. We can see no other reason for the amendment than to prevent strikes in public utilities, and in spite of the public inconvenience caused by such strikes we do not think such restrictions can be justified. If it is claimed that this is not the intention of the amendment it should be clarified by insertion of a clause clearly stipulating that it is not intended that this section should cover trade union activity.

It could not only be used to prohibit strikes, and thus indirectly enforce compulsory arbitration, as far as utility and transportation workers are concerned, but it could make it dangerous for workers in those industries to respect the picket-line of other unions. Last October in Saskatoon members of the United Steelworkers were on strike. The company involved attempted to break the strike by having the railway move out some carloads of steel. However the railway workers refused to cross the steelworkers' picket line to get the cars. If proposed Section 365 were law, the train crew could have been sent to jail for abiding by an essential principle of trade unionism.

While utility and transportation workers would be chiefly affected by this particular proposal, workers in other industries could come under the provisions in paragraphs (*a*) to (*c*). Remembering the history of trade union struggles, especially during times of tension and crisis, it is easy to imagine how this section could be used against unions—not, of course, "reasonably" but rather, hysterically and vindictively.

Proposed Section 366

Here again is a section which has been used to prevent what is now an accepted trade union right because there is no specific enactment dealing with the right of the people of Canada to picket.

Proposed Section 372

"(1) Every one commits mischief who wilfully

(*a*) destroys or damages property,

(*b*) renders property dangerous, useless, inoperative or ineffective,

(*c*) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or

(*d*) obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.

(2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.

(3) Every one who commits mischief in relation to public property is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(4) Every one who commits mischief in relation to private property is guilty of an indictable offence and is liable to imprisonment for five years.

(5) Every one who wilfully does an act or wilfully omits to do an act that it is his duty to do is, if that act or omission is likely to constitute mischief causing actual danger to life, or to constitute mischief in relation to public property or private property, guilty of an indictable offence and is liable to imprisonment for five years."

No strike ever took place in this country that did not do one or the other of the things set forth in paragraphs (*b*), (*c*) or (*d*) of this proposed section. Both the right to strike and the right to picket are threatened by these new proposals.

These paragraphs are new and their meaning goes far beyond that presently covered by any of the sections which 372 is supposed to replace.

The "Explanatory Notes" in the Bill state that 372 is designed to replace fifteen sections in the present Code. There are upwards of 230 lines of type in the present fifteen sections against only 23 in 372. This substantial reduction was obtained by sacrificing specific details and replacing them with sweeping generalities. As we said in our introduction, this is a principle which has no place in a Criminal Code.

Recently Mr. Justice William O. Douglas speaking for a majority of the U. S. Supreme Court said: "The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited".

In 372 and in other proposed sections of Bill 93 looseness and vagueness of language could make it possible for trade union rights to be curtailed or eliminated under the authority of the Criminal Code. We believe that the majority of the Canadian people have no desire to curb the right to strike or to picket. If that belief is correct then it is incumbent upon Parliament to ensure that the Code cannot be used to curb these rights.

Proposed Section 415

(The right to trial by jury)

We think it should be clearly established that in *all* cases the accused should have the right to trial by jury.

Proposed Section 462

(Evidence taken at a preliminary hearing)

We recommend that in all cases the accused receive a copy of the evidence taken at a preliminary hearing without payment.

Proposed Sections 463 and 464
(bail)

The English Bill of Rights provides that excessive bail shall not be required. However we are not sure that this Bill of 1689 is applicable in all provinces, and in any event, we think such a provision should be reiterated in our Code.

Proposed Sections 690 and 691
(Habeas Corpus)

In our opinion there should be no limitations on the right of habeas corpus. As habeas corpus acts as a check, a safeguard, and does not of itself establish the guilt or innocence of the accused, we see no reason to restrict this long standing provision.

Expert Witnesses

It has been brought to our attention that in some instances where the prosecutor submits the testimony of expert witnesses, the accused, through lack of financial resources, cannot counter. In such cases we think, to ensure fair trial, that provision should be made to provide for the payment of such experts.

Public Defender

We believe it would be advisable to provide for a position that might be called that of "Public Defender" to provide legal defence to accused persons who cannot afford to hire counsel. We note that Law Societies in some provinces have voluntarily made this provision but we think it should be uniform and that it should be the responsibility of the state.

The Right to Personal Liberty and Fair Trial

In our opinion it would be helpful to the citizens of Canada if the Criminal Code contained a special part wherein were set forth in unmistakable terms the rights of all with respect to those matters with which the Code is concerned. We realize that by practice and implication the rights of citizens in respect of the law do, in great measure, already exist. However, we believe it would be useful and valuable to add a part to the Code reading as follows:

"Everyone in Canada charged with a penal offence shall have the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence including the unfettered right to appeal. No one in Canada shall be subjected to arbitrary arrest, detention or exile; nor be subjected to arrest and detention for longer than 24 hours without public charge; nor be subjected to arbitrary interference with his privacy, family, home, correspondence or telephone; nor twice be put in jeopardy of life, or limb for the same offence; nor be compelled to be a witness against himself in any criminal case; nor be deprived of life, liberty or property without due process of law. Every one in Canada shall have the right to bail and excessive bail shall not be required, nor excessive fines imposed, nor cruel or inhuman treatment or punishment inflicted. The right to habeas corpus shall not be suspended under any circumstances."

Summary

The requests in this brief, presented by the National Executive of the League for Democratic Rights—Ligue des droits démocratiques, may be summarized as follows:

1. The sections in Bill 93 which would restrict or eliminate democratic rights should be rejected. Specifically we urge the rejection of Sections 46-48, 50-52, 57, 60-69, 87, 96, 160, 365, 366 and 372 (all numbers inclusive).

2. Sections 415, 462, 463, 464, 690 and 691 should be added to in order to provide additional safeguards.

3. A new Part should be added to the Code setting forth the rights of all with respect to personal liberty, fair trials, humane treatment, etc.

All of which is respectfully submitted.

THE NATIONAL EXECUTIVE
LEAGUE FOR DEMOCRATIC RIGHTS
LIGUE DES DROITS DEMOCRATIQUES

THOMAS C. ROBERTS,
National Executive Secretary.

APPDENDIX "B"

Brief

to the

Special Committee of the House of Commons

appointed

to consider Bill 93

by

District Five

United Electrical, Radio and Machine Workers

of America

February 18, 1953

Gentlemen:

On behalf of our 27,000 members, working in the electrical, radio and machine industries in Canada, our union, the United Electrical, Radio and Machine Workers of America, an independent union, not affiliated with any central labour organization, welcomes this opportunity to put before your Committee the views of our members on the important aspects of House Bill 93 which has been referred to your Committee for consideration.

Bill 93 provides for a revision and re-codification of the entire Criminal Code of Canada. The Honourable Stewart S. Garson, Minister of Justice, in speaking to this Bill on the second reading in the House on January 23, 1953, stated that "the purpose of the revision was not to effect changes in broad principle." Our reading of many of the sections indicates to us that Mr. Garson's statement are at variance with the wording of many sections, and the interpretations which labour and many other public organizations have placed on many of these amendments.

An article in the Anglican *Outlook*, January, 1953, makes the following comment on this Bill:

> If this was all that could be said about Bill H-8 it would only be of passing interest. In fact, it is not a mere re-organization of the Criminal Code. It contains many important and startling changes in criminal law that threaten freedoms and safeguards won by centuries of struggle. The most important changes have to do with crimes involving the security of the State. But the legitimate security of the democratic state is not to be purchased at the expense of the very freedoms which make it democratic. In times of great anxiety there is always a danger that we will ourselves destroy what we sincerely believe we are fighting to protect. It is no exaggeration to say that in its present form Bill H-8 could be used to curtail severely not only the freedom of speech and legitimate criticism but labour's hard won freedoms to strike and picket lawfully. The crime of TREASON, for which the penalty is death, has been made so broad that not even the trained lawyer could say for certain where it begins and ends. The penalty for other crimes such as sedition, which has been much abused in the suppression of unpopular opinions, has been made so much more severe that the crimes have taken on a frightening importance. If the intention is to frighten and

intimidate the citizen into silence and consent to anything that government may decide to do then the Bill will be successful. But this is tantamount to admitting that democracy can not survive on its own merits. This too is a treason which we have to fear.

During the many months this Bill was before the Senate, the members of our union have in many meetings expressed their grave concern for the future of the trade union movement as democratic organizations, should these amendments as set out in Bill 93 become law. An ever-increasing number of other sections of the labour movement and the public generally, on becoming acquainted with the subject matter of what was then Bill H-8, have expressed grave concern over the revisions which impinge on the question of civil and democratic rights.

We feel, therefore, that in making our representations, we do so as a part of an ever-growing number of organizations.

Throughout sections 46, 50, 52, 60 to 62, 64 to 69, 96, 365 and 372 in the proposed amendments runs a current of anti-strike legislation.

It is axiomatic with democracy that workers have the right to withdraw or withhold their labour from the employer in the striking of a collective bargain. Implicit in collective bargaining is a balanced bargaining strength between the parties. Employers are relatively free to dispense with the services of the employees and thus to negate their bargaining power. The creation of a temporary reduction of forces, the shutting down of the plant, etc. can be carried out in many ways which avoid the characterization of "lockout". But the employees have only one means of balancing the bargaining position of the parties in negotiations, that is, to strike.

All labour legislation contains this recognition in one form or another.

We suggest to your committee that if there is any intent to legislate against strike, that this intention be not smuggled into amendments to the code but rather be clearly placed so that the Canadian people can deal with such a vital question in terms of its full implication to our state of democracy.

We are not presenting a legal brief with regard to Bill 93, but rather choose to single out those sections of the Bill which, to our knowledge and out of our experience, lend themselves to dangerous interpretations with regard to the right of effective operation of a trade union.

In the first place, we would point out that incorporated in Bill 93 are the rather sweeping amendments to the Criminal Code, hastily adopted by the House of Commons in June, 1951, at the end of that Parliamentary Session. These amendments were introduced with practically no publicity and very little discussion.

It was stated at that time by the Montreal *Gazette* that the 1951 Amendments were introduced on the demand of Washington, D.C. Our union at that time vigorously protested against these amendments as did many other importtant Canadian organizations.

In looking over Bill 93 today, we find that not only are these 1951 Amendments firmly established in the revisions of the Criminal Code, but are in some instances even worsened in their impact on the continued activity of the working people through their unions.

We certainly subscribe to the opinions voiced in the *Anglican Outlook* as quoted above, that with the enactment of Bill 93, in its present form, our country would be taken much further along the path to reaction away from democracy and towards the establishment of thought control and a police state.

Dealing with certain sections of Bill 93, and in numerical order through the amended sections, we come first to Sections 46 and 47, under the heading of TREASON. As pointed out by the *Anglican Outlook,* the crime of treason for which the penalty is death has now been made so broad that depending

on the view of the judge before whom the case might come, an expressed opinion or speech or article which may be critical of government policy might well be considered as treason within the meaning of this section.

This is of broad concern to the trade union movement, because a trade union, dedicated to advancing the welfare of its members and to advancing their living standards, must of necessity from time to time be quite critical of governmental policies, both domestic and foreign, as they affect the living standards of the Canadian working people.

Under Section 46, the mere fact that Canadian forces are engaged in hostilities with the forces of another country, appears to make that other country automatically an enemy of Canada even though no declaration of war has been made.

Today with Canadian forces operating under the United Nations our forces could be engaged in hostilities on any one of a number of fronts without the sanction of the Canadian Parliament or the Canadian people, thereby broadening the definition of enemy and the application of Section 46.

Much more could be said on this section with regard to the looseness of meaning of such words as "conspires with", "forms an intention to do", etc., but we will leave these interpretations to those who come before your committee with a much deeper legal background.

Under sections 49, 50, 51, and 52, which are allied sections under the heading of PROHIBITED ACTS, much of the argument which we have advanced on Section 46 applies here although the penalties set out are imprisonment of ten to fourteen years rather than death.

With regard to Section 52, wherein there is an attempt to define a prohibited act, it is set out as being for purposes "prejudicial to (a) the safety or interests, or (b) the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada." It is a very important question as to who is going to define "safety or interests" in any given case. Certainly the working people may consider it in the best interests of Canada that our forces not be engaged in hostilities with another country, but a judge on the bench may have the opposite opinion.

Certainly a trade union engaged in collective bargaining with an employer and finding the bargaining processes breaking down, and faced with the necessity of strike action would view such actions as in the interests of these workers. But a court may well decide that the interests of the employer are in some way more related to the interests of Canada than are the interests of the working people and so invoke Section 52 with its penalty of ten years as a deterrent to a worker's freedom of action.

In Part 2 of Section 52, reference is made to a "prohibited act" which "impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing." In this regard it is interesting to note that the words "impair the efficiency" agree with a specific meaning with regard to strikes as contained in Section 1 of the United States National Labour Relations Act, better known as the "Wagner Act", made law in the United States in 1942, wherein we find the following:

> The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strike or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (*a*) *impairing the efficiency,* safety, or operation of the instrumentalities of commerce.

The language used in this Act which was established in order to give protection to labour's right to bargain collectively and strike parallels so

closely the language of Parts 2(*a*) and (*b*) of Section 52, that it is almost a certainty that Section 52 would be utilized as a deterrent to strike action by the threat of the application of the full penaly of ten years' imprisonment.

Section 57 has the effect of making the R.C.M.P. synonomous with the armed forces of the country.

It is contrary to the tradition of Canada to use the armed forces of the country for intervention in industrial relations disputes. The R.C.M.P. has been frequently used in such situations. By giving this police force the status of a branch of the armed forces and then continuing to use them in the arena of an industrial dispute can only be viewed as the introduction of the police state. Every democratically-minded Canadian would rebel at such a development. Section 57 would virtually put this police force beyond criticism or questioning of their activities if any judge were so inclined to interpret and apply this section.

Sections 60, 61 and 62, dealing with the ancient crime of SEDITION have a particularly ominous meaning to the labour movement. Nowhere in the sections is the word "sedition" given a clear, succinct meaning. The labour movement is quite familiar with the broad usage of the charge of sedition to interfere with its right to strike and picket. This is most clearly shown in the case of the strike of the Canadian and Catholic Confederation of Labour in Louiseville, Quebec, where in 1952, organizers and leaders of the strike were charged with "seditious conspiracy", in order to render them ineffective in a struggle of the workers.

Again in Section 63, we find a section similar to that in Section 52, where reference is made to "forces of any state other than Canada that are lawfully present in Canada." It is a well-known fact that personnel of the U.S. armed forces are stationed at many places in Canada today, and who are exempt from the application of Canadian law. Many Canadians genuinely resent both the presence of these armed forces of another country on our soil and the setting aside of our sovereign rights with regard to the application of Canadian law to these foreign troops. Yet under Sections 62 and 63, it would virtually become an act of sedition for any Canadian to raise any question on this very important matter of sovereign rights.

Sections 64 to 69, under the heading of UNLAWFUL ASSEMBLIES AND RIOTS, is particularly to the forefront in the minds of Canadian workers today, following on the events in Louiseville, Quebec, in December, 1952. The wording of these sections has been broadened in its application and meaning so as to make it applicable to many a strike situation. It is only necessary for an agent provocateur to appear in the midst of a group of strikers and create a disturbance for Sections 64 to 69 to be invoked against those workers and their strike smashed and their union outlawed.

Section 96 broadens the powers of police in terms of searching, without warrant, premises other than a dwelling house. This would be particularly dangerous to trade unions. Using this proposed section, police could raid union offices and halls without warrant, disrupt and intimidate and secure information to which they were not entitled, merely on the grounds that the policeman "has reasonable grounds for believing that an offense is being or has been committed against Sections 82 to 91."

While these sections apply to the possession of offensive weapons, it would be easy enough to justify the search after the fact by "finding" an offensive weapon on the premises.

Section 365 with its reference to the breaking of a contract would seem to be specifically formulated to have the effect of making the breaking of a trade union contract subject to imprisonment for five years. In its more direct

meaning, this section stands clearly as a bar to strikes by transportation and utility workers, and likewise could have its effect in almost any strike in almost any industrial enterprise in Canada.

Under Section 392, parts (*a*), (*b*), (*c*) and (*d*), could all be applied to almost any strike. It was pointed out by the Honourable Arthur W. Roebuck Q.C., in the Senate that "no strike ever took place in this country that did not do one or the other of those things. Strikes have always interfered in some way with the enjoyment or operation of property. That is usually the very purpose of a strike."

We must agree with Senator Roebuck in that the strike is the withdrawal by the workers of their labour power which has the effect of interrupting or interfering with the enjoyment or operation of property for profit. This section, it would seem to us, has been specifically drawn with a view to establishing heavy penalties against effective strikes or picketing and as such it interferes with one of the basic freedoms of democracy, that is, to organize into trade unions which has a meaning only if the unions have power to withdraw their labour as a part of the bargaining process.

In presenting our views on the above mentioned sections of Bill 93, we are motivated by concern for the continued freedom and operation of the trade union movement as a necessary bulwark of democracy. It is axiomatic that to the degree that a country provides in law protection for the right of workers to form trade unions as a means to advance their living standards, to that extent the country can lay claim to being a democracy. Contained within the meaning of the free operation of a trade union are the freedoms to organize, freedom to assemble, freedom to speak and freedom to strike.

Canada today has no statutory declaration of civil rights for its citizens. In its place, we have a negative form of setting out the civil rights of our people. That negative form is the Criminal Code in which are set out the limitations imposed by law on the basic rights which mankind has struggled for and achieved for many centuries.

Our union is strongly of the belief that the enactment of a code of civil rights for the Canadian people is long overdue, and this should be the immediate concern of Parliament.

APPENDIX "C"

THE CONGRESS OF CANADIAN WOMEN
LE CONGRÈS DES FEMMES CANADIENNES

President: MRS. RAE M. LUCKOCK
Executive Secretary: MRS. ETHEL GENKIND

To the Special Committee of the House of Commons
appointed to consider Bill 93

Mr. Chairman and Members of the Committee:

The Congress of Canadian Women welcomes this opportunity to place before you the views of our membership on some of the proposed amendments to the Criminal Code (Bill 93), which we consider would have a deleterious effect on our Canadian way of life.

Women comprise half the population of Canada. Women have the same need of freedom of thought and speech as men. Women, as well as men, wish to, and indeed have the obligation to, on occasion, express criticism of government policies. Women industrial workers, on occasion, need to strike and picket in order to protect and advance standards achieved through their trade unions. Women have a particular interest in the maintenance of peaceful relations with other nations. Yet the proposed amendments to the Criminal Code, in our opinion, threaten the right to pursue any of the above mentioned activities.

It is our understanding that the task of the Criminal Code Revision Commission was to recodify and rearrange the present Code to make it more readily understandable to the average citizen. However, the redraft as it appears now, Bill 93, proposes several changes and additions. Some of them are vague to the point of obscuring their meaning, and it is our opinion that they seriously endanger long-held liberties of Canadian citizens.

Our law in Canada is based on the finest of English law—on Magna Charta, the Petition of Rights and the Bill of Rights—not on the repressive measure of King John, nor on the Statute of Heretics. The Congress of Canadian Women believes that the revision of the Code should be in line with the great charters of English liberty, not with those laws which are a reproach and shame to the history of any nation.

With respect to Section 46, on *Treason,* Toronto *Saturday Night* in an editorial entitled "What's Treason Nowadays?" voices the general apprehension of the country:

> *Saturday Night* had no enthusiasm for those amendments at the time when they were *quietly wangled into the Code with the least possible notice,* and we have no more enthusiasm for them now, being convinced that they are potentially dangerous to the freedom of the citizen...
>
> We pointed out at the time the extreme uncertainty and obscurity of the new definition of treason (a crime punishable by death) which makes it cover, not merely assistance to an 'enemy' but also assistance to 'any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists'. The existence of a state of war, and consequently of a definite enemy, is a matter of proclamation...

...This removal of the distinction between 'hostilities' and 'war' abolishes at one sweep all the 'laws of war' as they have developed over the centuries... Among other things, it is not necessary that the Canadian forces in question should have been ordered into hostilities by any action of the Canadian Government; they may have been plunged into them by the commander of an allied but alien army...

The amendments were drafted very hastily, and *upon the urgent instigation of the United States.* They have been sharply criticized by many of the best liberal-minded lawyers of the country. They should be very carefully overhauled at the present time. (May 3, 1952—our emphasis)

All is not well with Canada when repressive legislation is being advanced, at the "urgent instigation" of another country, particularly by a country, itself in the throes of hysteria.

In the British Commonwealth generally, and in Canada up until June 1951, the crime of treason consisted of crimes against the person of the monarch, and that of assisting an enemy at war with the state. But in June 1951, reportedly at the request of a foreign government (see above quotation and the Montreal *Gazette,* May 3, 1951), amendments were introduced amongst which the definition of treason, as known for hundred of years, was completely changed. We recall to the members of this Committee the words of Mr. J. G. Diefenbaker in the House of Commons in June, 1951: "I know of no case in four or five hundred years' interpretation of the law of treason that goes as far as this amendment."

Further, with regard to Section 50 (1) (*c*), everyone commits an offense subject to 14 years' imprisonment who "conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety of Canada." Who is to determine what is "likely to be prejudicial?" There are many Canadians today who consider that the actions of our present government insofar as the NATO alliance is concerned is "prejudicial to the safety of Canada." Who decides?

In Section 48 (2) (*a*), "open and considered speech" can be construed as an act of treason!

Section 52, dealing with sabotage is not so vague. It threatens with a ten-year sentence a striking worker or farmer who might cause property "by whomsoever it may be owned, to be lost, damaged or destroyed". As Senator Roebuck said, "This is terrible and drastic—a dandy piece of legislation to use in case of a strike—Any plant would qualify under this." (SENATE OF CANADA DEBATES, June, 1951).

Section 50 would make informers of Canadian citizens, judging who is or who is not "about to commit treason." Under Section 51, such demonstrations as hunger marches might well be conceived as "intimidating the Parliament of Canada or the legislature of a province" with a penalty of 14 years.

And under Section 57, for what reason is it proposed that the Royal Canadian Mounted Police be placed on the same basis as members of the armed forces? The Congress of Canadian Women agrees with Senator Roebuck, "We want no SS Guard in Canada." (SENATE OF CANADA DEBATES, June, 1951).

Sections 60 to 62, dealing with *Sedition,* raises the penalty from seven years (two years until 1951) to fourteen years in prison. Is this another means to stifle freedom of speech, and particularly criticism of the government? Surely, if it is necessary to adopt such laws to save democracy, we have already lost that democracy! It is within the memory of all of us that the late J. S. Woodsworth was arrested for publishing "seditious libel"—he had quoted passages from the book of Isaiah!

It is our considered opinion that these proposed amendments which we have discussed above, as well as the related ones which we have not mentioned, reveal a great fear by the Government—a fear of the searching and clear light of open criticism upon their actions. Rather than succomb to this sort of panic, it is far better, and most certainly in accordance with our best traditions, to maintain our rights to freely examine and criticize. Canada needs a Bill of Rights, not a taking away of these rights she has dearly won.

The Congress of Canadian Women urges upon the Government the removal from the Criminal Code of Canada all vagueness and obscurity, and all proposals which in any way would infringe upon the democratic rights of citizens. Let Canadians not fear to take their part in the affairs of their country. "Give me liberty to know, to utter, and to argue freely according to conscience," said John Milton, "Above all other liberties." Above all—"We must not let Justice fail because of the temper of the times."

In addition to the above matters which we consider are serious threats to our traditional liberties, there are in this Bill two other items which urge the Committee to consider.

The first of these is the sentence of "Whipping" which may be inflicted for some offences. We earnestly suggest that this punishment be abolished, since, in our opinion, it does not contribute to correction or rehabilitation of the offender, but rather is a vengeful type of punishment, demeaning to the administrator, and certainly not in keeping with humanitarian views.

The second is with respect to the punishment of sexual offenders. As an organization of women, and having great concern for our children, we are naturally very anxious that everything possible be done for their protection. We agree that such offenders must be dealt with resolutely. We note that Section 661 provides for punishment of such offenders and that, while preventitive detention beyond the sentence is allowed, no specific mention is made of medical or psychiatric treatment. We would consider it a great improvement if such treatment were definitely provided for in the Act, with the understanding that detention be continued (reviewable at stated intervals) until a cure is effected. We believe this would afford added protection for the public at large upon release of the offender, as well as reforming the person guilty of such offences.

May we again express our appreciation for this opportunity of placing before you our views on these very vital matters.

February 26, 1953.

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

"An Act respecting The Criminal Law", and all matters pertaining thereto

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

TUESDAY, MARCH 10, 1953

WEDNESDAY, MARCH 11, 1953

WITNESSES:

Dr. B. K. Sandwell, Mr. Irving Himel and Mr. Ronald Grantham, for the Association of Civil Liberties;

Mr. Norman Borins, Q.C., Barrister, Rev. D. Bruce Macdonald and Mr. W. T. McGrath, for the Canadian Welfare Council.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS, Room 268,
TUESDAY, March 10, 1953.

The Special Committee appointed to consider Bill No. 93 (Letter O of the Senate), An Act respecting the Criminal Law, and all matters pertaining thereto, met at 10.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cannon, Carroll, Churchill, Laing, MacInnis, MacNaught, Montgomery, Noseworthy and Robichaud.

In attendance: Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice; and the following delegations:

Association for Civil Liberties: Dr. B. K. Sandwell and Mr. Irving Himel, with Mr. Ronald Grantham, Chairman of the Ottawa Human Rights and Civil Liberties Council;

Canadian Welfare Council: Reverend D. Bruce Macdonald, Westboro United Church, Ottawa; Mr. Norman Borins, Q.C., Barrister, Toronto; and Mr. W. T. McGrath, Canadian Welfare Council, Ottawa.

The Chairman invited the members of the Association for Civil Liberties to address the Committee. Mr. Irving Himel commented on the Association brief which appears as Appendix A to this day's printed report of proceedings. Dr. B. K. Sandwell spoke briefly on certain aspects of the brief and Mr. Grantham, on behalf of the Ottawa Human Rights and Civil Liberties Council, supported the Association's presentation. In conclusion, the Chairman thanked the members of the delegation for their valuable contribution.

The delegation from the Canadian Welfare Council was also heard. Mr. Norman Borins, Q.C., presented the Council's brief which appears as Appendix B to this day's printed report to proceedings. The witness offered a few comments on the brief and was questioned thereon. Reverend Mr. Macdonald and Mr. McGrath were questioned briefly on a certain aspect of the brief. On the conclusion of the presentation, the Chairman thanked the members of the delegation for their valuable help.

At 12.45 p.m., the Committee adjourned to meet again tomorrow, Wednesday, at 3.30 o'clock p.m.

WEDNESDAY, March 11, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. D. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Carroll, Henderson, Garson, Gauthier (*Lac St. Jean*), Laing, Macnaughton, Montgomery, Noseworthy, Robichaud.

In attendance: Mr. A. A. Moffatt, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice.

TUESDAY, March 10, 1953.

Mr. Robichaud read the report of the Steering Sub-Committee, as follows:

The Sub-Committee met at 3.30 o'clock p.m., under the Chairmanship of Mr. D. F. Brown, M.P., and were present the following members: Honourable Garson, Messrs. Noseworthy, Laing, Robichaud and Cannon.

A large number of communications relating to Bill 93 were considered by the Committee. Among those were requests for personal appearance from the following organizations: The Canadian Section of the International Union of Mine Mill and Smelter Workers; The National Council of Women of Canada; National Federation of Labor Youth.

In the case of the first named organization, a brief has been received. After some discussion, it was agreed that the Committee Secretariat would make a very careful study of the said brief to ascertain whether or not it contained anything of importance which has not already been fully discussed in the presentation of briefs from national and other regional organizations which have appeared before the Committee. When this analysis is completed, the Sub-Committee will consider anew the desirability of inviting a delegation from the Canadian Section of the International Union of Mine Mill and Smelter Workers to appear before the Committee.

The other two groups to be invited to send a written brief which will be dealt with in the same manner.

After a lengthy discussion on the matter, it was finally agreed to recommend that the Committee set March 24th as a limit to receive further briefs and unless any of these should contain material which will not have already been before the Committee, none of the sponsors thereof be called before the Committee to make representations.

On motion of Mr. Robichaud, the said report was unanimously adopted.

The Committee resumed from Wednesday, February 25, consideration, clause by clause, of Bill 93, an Act respecting the Criminal Law.

Clauses 391 to 412, 414 to 420, 422 to 433 were passed.

Clauses 413, 421 and 434 were allowed to stand.

At 5.30 o'clock p.m., the Committee adjourned to meet again at 10.30 o'clock a.m. Tuesday, March 17.

ANTOINE CHASSÉ,
Clerk of the Committee.

EVIDENCE

March 10, 1953.
10.30 a.m.

The CHAIRMAN: If you will come to order gentlemen, we will proceed with the business of the committee. We have two delegations appearing before the committee this morning. One is the Association for Civil Liberties, and the other is the Canadian Welfare Council. We have first the Association for Civil Liberties of which Dr. B. K. Sandwell and Mr. Irving Himel are the delegates, with Mr. Ronald Grantham, chairman of the Ottawa Human Rights and Civil Rights Council.

Are you the spokesman Mr. Himel?

Mr. HIMEL: Yes, sir.

The CHAIRMAN: Mr. Irving Himel is to be the spokesman. Gentlemen you have before you a copy of the brief which you have studied.

(*See appendix "A"*) I presume it is your wish that we ask Mr. Himel if he would like to add anything to what is contained in the brief. Is that your pleasure gentlemen?

Agreed.

The CHAIRMAN: Mr. Himel, have you anything you would like to add to the brief?

Mr. Irving Himel, Executive Secretary, Association of Civil Liberties, called:

The WITNESS: I would like first of all to say that we expected that representatives from the Montreal Civil Liberties Association would be present. Unfortunately, their representatives have not been able to come. We have received a wire from one of their representatives to state as follows:

> Regret university business prevented me joining your delegation. Would emphasize need for delay because amendments proposed amount to almost major revision and deserve more detailed study particularly public law crimes sentences contradictory evidence.

The CHAIRMAN: That telegram is from whom?

The WITNESS: From Mr. Maxwell Cohen, professor of law of the university of McGill in Montreal.

It is rather hard generally in a brief which embraces the scope of the Criminal Code to reduce our objections to a small number because, of necessity, the code in its revision is bound to change some of the existing law no matter how careful the draftsmen are. It is the opinion of our association that not only have changes to be made of necessity but there have been a number of deliberate changes that require careful examination. In our brief we have made reference to a number of those. The most important of course are the more serious crimes and it is our feeling that the code in a number of respects requires the most careful consideration.

The offence of treason, we feel, should be reviewed having in mind what the law of treason is in countries like Great Britain and the United States, and where the language used in the section is necessary and in fact so clear as to avoid possible injustices. We take the view that with an offence such as

treason the basic justification for its amendment must lie in the fact that the amendments are necessary to deal with a clear and present danger, and if, after the clearest kind of case has been made out that there is a clear and present danger, and these changes are necessary to deal with that danger, then we submit the language should be scrutinized with the greatest of care because in the language lies the offence and if the language is general there is a danger of abuse.

Our point on the service of warrants I think is founded on the traditional practice in Anglo-Saxon countries. We fail to see why it should be necessary to create an exception in the case of the service of a warrant and permit a warrant to be served without the officer having the warrant with him. We feel that that can lead to serious abuse. The time-honoured practice has been to insist, as you find in the present code, that if an officer wishes to execute a warrant he must have it with him so that the person against whom it is directed can say to him "what is your authority for searching my premises and what is your authority for arresting me" and certainly it is only sensible that he should be expected to produce his authority. If he is going to be allowed to say "I have my authority, but not with me", you can well appreciate that many abuses can creep in under procedure of that kind.

The offence of assisting an enemy alien to leave Canada and conspiring to communicate information—section 50: It is our submission that the language in this section is ambiguous and can be interpreted in many ways and is capable of an interpretation which might lead to grave abuse. Reference is made to the language in clause 50(1)(c). The use of the words "likely to be prejudicial to the safety of Canada"—it is submitted that those words are open to a wide number of interpretations, depending on the judge and depending on the particular point of view of jurors, and certainly it is the task of parliament to make the offence as clear as possible so that there will be no chance of a citizen misunderstanding how far he may go and where he must stop.

This business of sentences in the Code has given us considerable concern. There seems to be a general attitude, which is notable in the Code, that sentences should be increased without reference to the particular crime, to the number of times it may have been committed in the past, and the need for an increased sentence as a deterrent. We have cases, for example under clause 50, where the sentence has been increased from two to fourteen years. There is no suggestion that there has been such a wide number of offences under this section that you need to increase the sentence. This feature merely seems to lie within the scope of some particular person, who drafted that clause in the first place, to change the number from two to fourteen. We submit that the Code sentences must bear a correlation to the crime, to the extent with which that crime has been committed in the past, and how reasonable the sentence should be, having regard to the nature of the crime.

This question of sentences is reflected in clauses 77 and 78, dealing with the duty of care re explosives. It is suggested that if a man is lacking in care and causes an explosion which is likely to cause death, he should be liable to a penalty of imprisonment for life. Now, that seems to me to be a distinct departure in our law. Heretofore, if a person was guilty of a breach of duty, the only time the law provided for a penalty of imprisonment for life was in manslaughter cases. Now it is proposed that if you cause an explosion which is likely to cause death, you should be liable to the same penalty. And so, too, in the case of explosions which are likely to cause bodily harm or damage to property, the penalty there is fourteen years without reference to how serious the damage might be—the damage might be caused by a firecracker!

I submit that the language speaks for itself and it is not enough to say that you must rely on the court to act with prudence. I think the prudence must start in parliament and then, of course, carry through to the courts. If

you start off with an imprudent sentence, the danger is that someone who is charged under this section, where formerly he might have received six months, faces a maximum penalty of fourteen years, and the judge would be prompted to think he was letting him off leniently with a sentence of two years.

Now, a very important section that we view with considerable alarm is the section on perjury, clause 116. I think here I should call on Doctor Sandwell to add some further words to what I have said.

Mr. B. K. SANDWELL: All I want to say on this section, Mr. Chairman, is that if I were a lawyer—which I am not and heaven forbid—and this became a part of the Criminal Code, and I had a witness who had given evidence which I was very anxious to maintain, whether it was true or not, and I was afraid that the counsel on the opposite side might be able to break him down, I think I should spend about a day reading over this clause to him in order to make him realize that if he was broken down he would render himself liable to prosecution and penalty for perjury, and that the onus of proof would be shifted to him. I do not know whether this new consideration in matters of perjury has been adopted by any other jurisdiction. If it has not, it seems to me it is a rather dangerous experiment for Canada to start in on. I would like to suggest that it might be wiser for us to wait for somebody else to try it out before we adopt it ourselves, because I think that our point is that the use which could be made of this section in judicial proceedings might well thwart the course of justice. I can see that it would greatly simplify the task of the prosecution in a perjury case, but surely that is not the sole object of the Criminal Code.

The WITNESS: I think the point there is one which will particularly appeal to lawyers. Under the section as proposed, if the witness gives contradictory evidence in any judicial proceedings, he renders himself liable to a charge of perjury, and then the onus is established that he gave contradictory evidence of a material nature, and the onus is on the accused to disprove that he intended to give that evidence without misleading.

Every lawyer knows that it is a very common thing in judicial proceedings for witnesses to contradict themselves, and that they do it for the most honest of reasons such as a bad memory, a hasty remark, perhaps a misunderstanding of the question, and so forth. Frequently a witness fails to hear the question but he is so anxious to answer that he answers without thinking.

If it is going to be the law of Canada that a witness, once he gives contradictory evidence of a material nature is liable to a perjury charge, I think the greatest kind of abuse can creep into our entire administration of justice, and in particular in civil cases.

I wonder if Mr. Sandwell would care to comment on the Treason Section.

Mr. SANDWELL: That, Mr. Chairman, is another point on which I have been very considerably disturbed, that is, in so far as it relates to the results of a state of war.

In the past there has been no possibility of question as to the existence of a state of war; that is the result of an act by a government, a declaration of war, after which every person knows how to conduct himself.

I can realize that things have changed now, and that there is a good deal of fighting going on without there being any declaration of war. I realize that is the condition with which this amendment attempts to deal.

The CHAIRMAN: Pardon me, but you are dealing with treason, are you not?

Mr. SANDWELL: Yes.

The CHAIRMAN: I thought it was with mischief, and that you were following the brief.

Mr. SANDWELL: It is page 2 of our brief. I suggest that there should be some action by a government to indicate that Canadian forces are engaged

in hostilities against a certain country before our citizens should be required to govern themselves by this clause.

At the present time a citizen has to make up his mind whether he is assisting any armed forces against whom Canadian forces are engaged in hostilities. But if those hostilities are going on half way around the world, it may take some time before that citizen knows that Canadian forces are engaged in hostilities.

In any event, there might quite conceivably be a case of a country wherein there are two rival authorities claiming to exercise power and govern that country. There might conceivably be a question of whose forces are the forces of the country.

The expression used here is "the country whose forces they are". I wonder, having regard to recent times in the history of China, which forces of China were the forces of the country of China. It seems to me there could be a very great improvement in this section if something were added to the effect that it would not operate either until a state of war had been declared, or until the Canadian government had, by a proclamation, made it clear that certain armed forces are engaged in hostilities against Canadian forces. That is the suggestion I want to add to the brief as we have it.

The WITNESS: On the treason aspect of it, one thing I would like to draw attention to as well is the paragraph on page 3 of the brief which reads as follows:

> We should add that irrespective of the changes that are finally made the section should be amended to provide that no proceedings may be commenced under it without the consent of the Attorney General of Canada. The offence of treason is far too serious and important to allow charges to be laid under it without providing adequate safeguards. If the consent of the Attorney General of Canada were required it would afford a measure of protection against unwarranted charges.

Now, turn to page 5 dealing with disturbing certain meetings. I think also there is a need for closer study. It is proposed (1) to wilfully disturb or interrupt an assemblage of persons met for a moral, social or benevolent purpose; or (2) to disturb the order or solemnity of any such meeting.

I think that the point made by the association is a valid one.

Since it is not uncommon to have at least one or two people at a social affair interrupting or causing a disturbance, the enactment of these sections in their present form could render a large proportion of the social gatherings attended by members of the public illegal.

It is suggested that these sections be reddrafted to conform more closely to the existing section of the code, section 201. It provides, among other things, that everyone is guilty of an offence who wilfully disturbs, interrupts or disquiets any assemblage of persons met for any moral, social or benovelent purpose, by profane discourse, by rude or indecent behaviour, or by making a noise either within the place of such meeting or so near it as to disturb the order or solemnity of the meeting.

Now, under vagrancy: "It has been our experience that the vagrancy section has been used at various times for a purpose for which it was never intended and that people have been improperly arrested on vagrancy charges. To prevent such abuse we would propose that the offence of vagrancy be defined as narrowly as possible. Furthermore, that s.s. (1) (a) (i) which provides that everyone commits vagrancy, who not having any apparent means of support lives without employment, should be revised to make clear that it is not intended to cover persons who, through no fault of their own, are out of work and without apparent means of support."

Under witchcraft, it is noteworthy that in Great Britain the Witchcraft Act of 1735 was recently repealed. If it is deemed that the offence should be

retained in the code, we would submit that the section should be redrafted. As it stands at the present time it would be an offence for a person to charge for reading tea cups under s.s. (b). We believe that the section would be materially improved if the word "fraudulent" was added to make it an essential element of the offence.

10. *Criminal Breach of Contract*—Section 365.

The offence of criminal breach of contract was first established in Canada in 1877. Since then there has been a considerable change in the public attitude concerning breach of contracts in labour disputes. As a result collective bargaining and other legislation have largely taken over the field. In the light of these events it is submitted that this section should be amended accordingly.

We would further submit that there is no justification for increasing the penalty for violations from a fine not exceeding $100.00 or three months to a possible sentence of five years. There is no evidence that there has been widespread abuse of this section. The penalty for the offence has been the same since 1877 and prosecutions under the existing section 499 have been almost negligible, so that there would appear to be no reason whatsoever for enlarging the penalty to five years.

The CHAIRMAN: Mr. Himel, could I interrupt you for a moment. I note that you are now reading the brief and I was going to suggest to you perhaps you would like to comment on these points as we go along so that the members of the committee may have time to submit questions to you at the conclusion if they so desire. Would that meet with your pleasure?

The WITNESS: The offence of mischief. There has been a great amount of criticism of this section and I think largely because it has been drafted in such vague and general terms. I think that the attempt to compress the five sections now in the Code into one section is perhaps trying to bite off more than you can chew and I think it is necessary to review the sections now in the Code and see whether the offence could be described there with much greater particularity to remove any doubt as to what would be criminal conduct and what would not be criminal conduct. There, too, the offences are far too severe having regard to the nature of the offence.

Three day verbal remand. This is something which in most jurisdictions is no problem, but in some jurisdictions it has been found to be a problem. A man is arrested and instead of being remanded to the custody of a jail he is remanded to the custody of the police for a three day period. In the past it has been found that people complained they have been subjected to unnecessary and embarrassing procedure during that three day period. I fail to see any reason for a provision of this kind. There may be, but to date no one has adduced any valid reason for it and unless there is a very good reason for such a procedure we would submit that it should be deleted from the Code.

The question of arrest. There, we hope that in your deliberations you will see fit to amend the arrest section, so that instead of vague words a person arrested should be brought before a justice as soon as possible and there should be a time limit in which it is required to bring him before a justice. That might be a little difficult in outlying regions, but possibly the answer is to provide for a period in city areas and another period for areas outside the immediate vicinity of the jail.

One provision that we feel rather strongly about is this provision for whipping. We feel that it is out of date; in fact, that it offends article V of the United Nations Declaration of Human Rights: "None shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment . . ."; and we seriously suggest that whipping is certainly cruel. It is not only our opinion. There was a departmental committee of government of Great Britain which went into the question of whipping in great detail and reported to the same effect. Great Britain at that time abolished whipping and we would

earnestly ask that you propose to parliament that it now be abolished in Canada, something that we feel is antiquated and meaningless and it should be done away with in the Code. A very important provision we feel should be in the Code is provision for the payment of fines on time. That is something that Great Britain started in 1914 and statistics are available that after it was introduced in Great Britain the prison population declined. Imprisonment in default of the payment of fines decreased from 79,000 some odd to 15,000 in a period of ten years. From 12,000 in 1930 to 7,900 in 1938. Now, that is a way in which we could in Canada save money in the amount of money spent on persons in prisons, certainly people who because of poverty cannot pay their fines at one time should be given every consideration by parliament. We suggest it is an appropriate time to seriously consider the introduction of a similar scheme to that which prevails in Great Britain to allow people who are unable to pay their fines in one lump to pay them on reasonable terms. I believe we have referred to the question of sentences already.

The subject of onus of proof is one that we are quite concerned about. We note in the Code a number of new sections which are designed to change the existing law and in effect to override a very strongly entrenched principle of our law that the onus of proof in criminal cases should be on the Crown and not on the accused.

The section on perjury is a good example of where people would find themselves in that position that they would have to prove their innocence rather than the Crown had to prove their guilt. There are sections dealing with explosives and dealing with trespassing at night and we have referred to them in this brief, and they are also new in the sense that the onus of proof on the production of evidence of a limited kind is shifted to the accused, and we submit that this is a very dangerous principle to incorporate in our Code and that only if it is absolutely essential for the administration of justice should the onus of proof be shifted to the accused.

Finally, if I may be allowed, Mr. Chairman, I should like to read the last part because it in a sense is the basis of our submission.

It is apparent that much work has to be done on Bill 93 before it can be said to be free from fundamental objection. The revision was undertaken in the first instance for the purpose of simplifying the code and not in order to make major substantive changes. There would therefore appear to be no great urgency to adopt a revised code.

Moreover, in our opinion there are a number of reasons for proceeding slowly and carefully with this undertaking. The last revision of the code was made in 1892. Since then many countries have attempted to experiment with new ideas in the field of crime and penology not found in Bill 93. The attitude of the public and views of social scientists on the problem of crime and punishment have changed radically in the last fifty years. In our submission before the code is finally approved there should be a re-examination and re-appraisal of its provisions and thorough study made in the light of modern developments in criminology and penology and the experience of other countries from which we may benefit.

Furthermore, Bill 93 attempts to condense 1,152 sections into 744. Of necessity many material changes of a substantive nature are bound to creep in as a result of this process of condensation. Moreover as appears from this brief many important changes of a substantive kind are in fact included in the code. Since they affect the rights of the people of Canada, we believe that the proposed changes should not be rushed through but should be further submitted for the fullest and most careful study to an independent body of experts on crime and punishment in the fields of law, medicine and social science.

It has been said that it is better that a score of guilty people go free than that one innocent individual be convicted. So too, it would be better that the enactment of the code be deferred for further study for as long as it should be required, than that through faulty draftsmanship, the exercise of hasty judgment, or the pressure of our times, a person should be unjustly convicted.

The CHAIRMAN: Does that complete your submission?

The WITNESS: Yes.

The CHAIRMAN: Now, before I ask you to submit questions, gentlemen, the Honourable Stuart Garson's secretary has just been in to see me and has spoke to me here to tell me that Mr. Garson unavoidably is absent this morning because of an important cabinet meeting which was not scheduled. He has asked me to express his regrets.

Mr. Grantham, who is the chairman of the Ottawa Human Rights and Civil Rights Council would like to say something to the committee at this time.

Mr. Ronald GRANTHAM (Chairman of the Ottawa Human Rights and Civil Rights Council): Thank you Mr. Chairman. The Ottawa council gives general endorsation to the brief presented by the Toronto association.

The CHAIRMAN: Just so we will not set a precedent here, I believe we have established a policy that we are not to hear local organizations at this time at least. We have heard the national organization represented by Mr. Himel and you could say something on that, but we would not like it to go out over the country that we are giving some privileges to one particular group or local organization.

Mr. GRANTHAM: If you wish to hear local organizations later, perhaps I could come back.

The CHAIRMAN: No, I do not suggest that.

Mr. MACINNIS: Is the brief submitted this morning which we have heard read and commented on from the Civil Liberties Association of Canada or from the Toronto branch of the association?

The WITNESS: Actually it is from the Toronto branch. There is a liaison between the different groups and Mr. Grantham in effect represents the Ottawa group.

The CHAIRMAN: I do not think you heard a telegram read at the opening of the session, Mr. MacInnis.

The WITNESS: It was from the Montreal Group where they indicated their point of view in that telegram and Mr. Grantham in a sense represents a local group and I think by and large they endorse this brief.

Mr. GRANTHAM: I can make no further remarks beyond that without expressing some of our own thoughts.

The CHAIRMAN: If you speak for the National Group we would be glad to hear you.

Mr. GRANTHAM: I cannot do that.

Mr. CARROLL: Is there any different opinion in your group in Ottawa and the brief presented here this morning?

Mr. GRANTHAM: No, sir.

The CHAIRMAN: Do you support the brief here this morning?

Mr. GRANTHAM: Yes.

The CHAIRMAN: Have you anything to add to what they have said which is of a national character?

Mr. GRANTHAM: If you want me to speak for myself I will do so.

Mr. LAING: I think Mr. Grantham should be allowed to say anything which supports the general view.

Mr. GRANTHAM: It seems to us, Mr. Chairman—I do not want to go into details at all, but we are concerned about certain aspects of the section on sedition and treason and we hope parliament will, before it finishes its work, make sure there are no loopholes. The Senate Committee did some very good work in tightening up the definitions and in linking the penalties directly to the offence. I think that was an excellent job, but we feel there are two or three weak points in Section 50. The word "likely" remains there, whereas it was taken out by the Senate in Section 46 which defines treason. The word "likely" in Section 50 we suggest is still rather vague and might be eliminated as it was in Section 46.

In the case of sedition, Mr. Chairman, we endorse the brief you have heard and commented upon, with respect to the section not being condensed, and that there is an urgent need in Canada to raise the sentence within a few years time from two to seven years and then double; we are not convinced there is a need to double at this time.

In a general way we endorse the apprehensions expressed by the Canadian Congress of Labour for example and other groups in relation to certain sections of the revised Code. We feel that in normal times the organized labour movement is in no danger, but we are thinking ahead to possibly times that are not normal when the country may be faced with difficulties and when there may be excitement in public opinion when a government or governments may be in office that are not so liberal minded as our present governments, provincial or federal, at such times. There is always a danger that sections of a criminal code which do not give explicit protection to organized labour may be abused by authority in those circumstances. In particular we would hope that you will study carefully sections 365, 366 and 372. These deal with breaking of contracts, the setting of watches at places of work and interfering with property. We feel that perhaps these sections are not ideally worded as yet for the protection of organized labour.

And again with respect to the code, Mr. Himel said a punishment such as whipping seems to us out of date in Canada and we suggest that the whole approach to crime in Canada is going through a change. We are taking a more sober approach. We are applying psychological and psychiatric knowledge and sober understanding to these problems of crime and we feel that the code as revised has not sufficiently reflected these trends of thought and these modes of treatment and we hope, therefore, that the House of Commons will be able to bring these to bear upon the revision of the code.

And finally, sir, if it would not be too much of an imposition for me to add a personal word, speaking not on behalf of the organization, but in connection with the penalties: would it be of any interest to the members of this committee to have a personal word? I have given considerable time to a study of the question of capital punishment.

Mr. ROBICHAUD: Mr. Chairman, is this in order? Are we going to deviate from the policy we have adopted to hear national bodies or are we going to hear individuals who are using the shield of a national body to express their own opinions?

Mr. GRANTHAM: I have no wish to pursue my—

The CHAIRMAN: Just a moment, please. You have completed your presentation. I think the point probably is well taken. We have deviated to some extent to hear Mr. Grantham because he was here. We have, of course, on other occasions had others slip in to present their briefs that were not of a national character but I think as much as possible we should avoid it; but on the other hand we do not want to be too rigid.

Mr. ROBICHAUD: Capital punishment has not been touched at all in the brief.

The CHAIRMAN: It was a personal view presented by Mr. Grantham and he has terminated his remarks.

Could we now have ten minutes of questions.

Mr. NOSEWORTHY: On the point just raised, can Mr. Himel tell us whether the national organization has considered the question of capital punishment even though it was not included in the brief.

The WITNESS: No. That question has not been considered at any length. I must admit it is an involved question and must need special treatment. But certainly there is no reason why this could not be contained in the proposal recommending the whole code should be turned over to a group of experts. Such a body might well go into the subject of capital punishment. I do not know what answers they would come up with, but certainly after fifty years we are entitled to review the question.

Mr. LAING: Do you know that this code came to you from a body of experts working on it for several years?

Mr. GRANTHAM: Yes, but I think in the main they have been people in the legal profession and I sometimes feel, much as I happen to be a member of the legal profession, it is a matter for having the point of view of people in other professions including medicine, social sciences, who also are concerned with the problem of crime and punishment, and probably we could benefit from their views, and certainly from the experience of people in other countries. To my knowledge, there has been no effort made to study what goes on in other countries in this field of crime and punishment with a view to seeing whether we can adopt some practices which are worthy of introduction in Canada.

By the Chairman:

Q. Don't you think, Mr. Himel, if we put it over another year, and from year to year, that each year we put it over there would be other opinions brought up each time? Don't you think it would be better to put something into effect and then, if necessary, amend it?—A. Well, if this was not an attempt to revise the Code, I would agree with you whole-heartedly, but since this is a job undertaken for the first time in fifty years, I think it is proper to seek out opinions other than those that have heretofore been obtained. I think, by and large, from my understanding of the people who have been responsible for the Code, they have been lawyers and judges.

Q. Yes, but the members of this committee now are not all lawyers, and they represent a large section of the people, the common people of the whole Dominion of Canada. Don't you think their opinions might be of some value? —A. I most certainly do feel that they would be of great value, but the question is whether you feel that you have enough time to consider in great detail each of the sections, having regard to the wording, and whether you also feel that among you are people of such breadth of knowledge that they are acquainted in considerable detail with the legislation and what has gone on in the fields of crime and penology, both here and abroad; for example, on the subject of the payment of fines and the statistics relating to that subject. For instance, on the subject of payment of fines on time, I think it would be most desirable to have someone do a statistical job in Canada on the number of people that have had to go to prison for the reason that they could not pay a fine, and to explore how the number might be cut down and what formula should be used to give people time to pay their fines, and also to find out how it has worked in England and what legislation they have there. I think those are all reasonable fields of inquiry.

The CHAIRMAN: May we go into that. Mr. Robichaud has some questions.

By Mr. Robichaud:

Q. In the last paragraph of your brief, you give three reasons why this revision should be deferred: faulty draftsmanship, the exercise of hasty judgment, or the pressure of our times; and you say there is danger of a hasty revision. Now, may I ask you this question. I understand you made a thorough study of the revision. In your opinion, is not the draftsmanship adopted throughout the wording of the new revision much better, considerably better, than we had under the old Code?—A. Well, that is a rather hard question to answer, sir. On the whole, through the onslaught of time—

Q. My question is directed to draftsmanship, which you mentioned. Will you answer that?—A. I am thinking that we have experimented with the present Code for 50 years and, by and large, if there had been any injustices that had crept in, they have been remedied by parliament through amendment. We know what we have at the present time, but we are not sure what we will get in the revision, and I think it would be presumptuous on my part to attempt to praise the revised Code and say it is better than the old one. I know what we have in the old one, but I am not sure what we are going to get in the new, and to that extent the old Code is better. We may be running into trouble with the new one. I am not suggesting that the revision should not go through, but I would respectfully suggest that the most careful study should be given to it, as there is no rush.

Q. May I direct the gentleman again to my question on draftsmanship. In your opinion, is it better or worse than it was before, or are you not prepared to give an opinion?

Mr. MacINNIS: He is answering on that.

Mr. ROBICHAUD: Just a minute.

The WITNESS: I have tried to answer it by saying that in the present Code we do know what we have and therefore it is good to that extent. In the new Code, we are not sure what we are going to have and it might well be a poorer job than the old Code. Surely if those criticisms levelled at the Code are not remedied, one could say on the question of perjury, for example, the revised Code would, I think, be a retrogression over the present Code if that section is included.

Mr. ROBICHAUD: I would like to direct the gentleman's attention to my question.

The CHAIRMAN: I do not think we should really pin the witness down. We are not in a court of law at the moment, we are just trying to ascertain from this witness what he knows and I think we have found out pretty much his view on it. Could you now go on to the next question?

Mr. ROBICHAUD: My next question is with reference to whipping. It has been referred to as having been abolished in England. We all know that. Now, is the gentleman aware that crimes of violence have considerably increased in England as a result of the abolition of whipping?

The CHAIRMAN: Can you say "as a result"?

Mr. ROBICHAUD: As one of the results.

The CHAIRMAN: Can you say "as one of the results", or is it that the statistics show they have increased?

Mr. ROBICHAUD: Let me put my question. According to statistics we have from England, crimes of violence have increased from 2,721, before this whipping was abolished, to 6,516 in 1952. Have you an explanation to offer?

Mr. MacINNIS: What was the previous year for which you quoted those figures?

Mr. ROBICHAUD: Before 1948.

Mr. MacINNIS: Well, there were a large number of years before 1948.

The WITNESS: I can only say this, that I have not the statistics available, but if I did I think it would not be very hard to put this to you. The statistics, say, of 1940, show crimes of violence to have been at a much lower rate than 1952 in Canada. Now, we have had whipping in both those years and certainly the conclusion does not follow that whipping is a deterrent, because crimes of violence have increased substantially in Canada, too, and we have had whipping to serve as an alleged deterrent. But I should go on further and say that those statistics, no doubt, were used by a certain group of the British parliament to try and change the law there, and the subject was thoroughly considered by British parliament on a motion apparently to reinstate whipping. Parliament decided, I think very definitely—the government decided, and I believe the Labour members overwhelmingly decided—against the reinstitution of whipping. Now, to the extent that that represents the considered opinion of the people of England, I would submit that they are not impressed with the fact that crimes of violence have increased because of the abolition of whipping.

Mr. CANNON: In the last paragraph of your brief, you refer to and make some rather sweeping statements on the question of faulty draftsmanship, on the exercise of hasty judgment in connection with this Code, which has been revised at great length by a committee which was established to that end.

The CHAIRMAN: It was a commission, I believe, was it not, Mr. Cannon?

By Mr. Cannon:

Q. A commission, I meant to say. It was carefully studied by the Senate and now it is being carefully studied by the House of Commons. In your brief you mention certain articles by number. Are there any other articles in which you say there is faulty draftsmanship, or hasty judgment has been exercised, or do these representations at the end of your brief refer only to the articles that are mentioned in your brief?—A. I can only say that no one can attempt to set himself up as a judge of the revised Code. It occurred to us that these were the main points that we, as an association, were interested in and should bring up.

Q. I gather you have no other representations to make on any individual article other than those mentioned in your brief?—A. I must say the language used was not intended as a reflection on any particular group, but it was intended as a general observation that we should not rush and then, through possible fautly draftsmanship or hasty judgment or something else, accept the Code and not consider it in the most careful and exacting way.

The CHAIRMAN: Now, if we could terminate—

By Mr. Carroll:

Q. In connection with your remarks at the top of page five, paragraph No. 7, disturbing certain meetings—section 161 (2) and (3). You reach a conclusion that under certain circumstances certain meetings which are described in section 161 (2) and (3) might become illegal under this section—certain meetings called for social, religious or other purposes. I cannot just understand what you say there.—A. Well, sir, the language is proposed to read: "to wilfully disturb or interrupt an assemblage of persons met for a moral, social or benevolent purpose";—

Q. That is a subsection?—A. Yes, and we seem to feel that the language is very broad—

Q. But how could that language in any possible way have the effect of declaring a meeting illegal which is legal for social, religious or other purposes?—A. Well, the fact that there are a number of people who are participating in a breach of the Criminal Code per se makes it illegal to that extent.

Q. It makes them do something illegal, but it certainly does not make the meeting, the assemblage, illegal if it is for the purposes described in

the Act.—A. That might be true except that if there were a number of people that were making a disturbance and others, as it were, aiding and abetting in creating that disturbance. I would say that the meeting as a whole was of an illegal nature. It is somewhat like people who are found in a gambling place, to the extent that they are engaged in betting on horses.

Q. I do not follow you on that, but there is one other question. When was the witchcraft provision in the common law done away with in England? —A. I believe it was in 1951. There is an article to which I can give you reference.

Q. If you will. You feel that this has been abolished?—A. Well, not entirely. I think there is some section which has taken its place, but that section deals with fraudulent activities.

Q. I see.

By Mr. Laing:

Q. Mr. Himel, you suggest that this bill be not passed now, but that it be returned for the fullest and most careful study by an independent body of experts on crime and punishment in the fields of law, medicine and social sciences. Is it not a case that you think this is the first opportunity, when the bill came before the Commons and before this committee—that this is the first chance the public has really had to look at it? Is that not your opinion?—A. That is quite true.

Q. Now, might I point out that we are endeavouring to obtain what you suggest in your brief by the hearing of all these groups or organizations, such as yours, who have come here with great conviction. By what other means could we obtain the information you suggest by setting up a committee, except by this means? Are you not suggesting that this, being the first opportunity that the public has had of getting a look at this proposed bill, and since all laws must depend for their effectiveness on preponderant common sense, is it not your opinion that the public at the present time is not sufficiently aware of this to justify us proceeding this year? Is that not the general substance of your brief?—A. I think that is true in part. I happen to be a member of the Civil Liberties Committee of the Canadian Bar Association in Toronto, and only last week that committee discussed, for the first time, the Criminal Code, and I must say that I understand they are coming here to Ottawa to make representations to you, as that committee is somewhat concerned over some sections of the Code.

The CHAIRMAN: When are they coming? They have not made any application.

The WITNESS: I understand from the chairman that they are asking for a date around the 30th March.

The CHAIRMAN: That is news to me.

By Mr. Laing:

Q. If this body were set up comprised of these people well versed in this sort of thing, and they made a report, their report then would be acted upon by a committee of the House of Commons, which would once again invite interested parties all over again to come and give their views. We would have relatively the same situation as we have today. Mind you, I am not dismissing your suggestion that the time is not opportune at the moment for the passing of this bill. Probably you are right; but I suggest if you were to set up a committee such as you suggest, we would have this same sort of thing all over again.—A. I think perhaps you could do in much the same way as it is done certainly in the United States—call upon certain people whom you feel are qualified to give you opinions on certain phases of the bill, invite them to submit their views so that you will have the benefit of more informed opinions, and then you proceed and sift everything you have. We are not trying to create

an austere body of experts, but we do feel that some reference should be made to people outside the legal profession for their points of view, not only on the sections that are in the Code but the sections that are not in the Code. We suggest that there is much merit in the idea of payment of fines on time, as an example. Now, if you could consult some qualified persons to give you a report on that phase of it, then you would be perhaps better qualified to render an opinion on it. It is only a question, primarily, of time. Do you feel, as a committee, that you have the time to go into this now that a revision is being undertaken and do the kind of job that should be done on a revision? If you feel that experts might assist you by reports on certain phases, then I submit it would be a good idea for the committee to call on such experts to give you reports on different subjects.

Mr. NOSEWORTHY: Are you, Mr. Himel, or is your association in a position to suggest what experts in the fields you mention here would be helpful to this committee if they were invited to give us their opinion?

The WITNESS: Well, that is a hard question to answer.

The CHAIRMAN: I draw to your attention that we are now encroaching on the time of the next delegation, to the extent of ten minutes. I hope you will bear that in mind when the next delegation comes along.

The WITNESS: I think the welfare council people are a good people on this phase. The mental association people are good, also. There are people working in law departments who approach the subject of crime more from a social point of view than from a strictly legal point of view. That would be most helpful. I think it would not be hard to find out who those qualified would be. I have reference to that type of person.

Mr. MACINNIS: I was going to ask Mr. Himel if his opinion is that the first commission that was set up to revise the present Code would be greatly benefited by the great amount of information and opinion that has come to us through the various organizations that have appeared before this committee, which is something that they did not have before, and which from my own point of view this committee will not have the time to digest and think through before the bill is referred back to the house.

The CHAIRMAN: Don't you think we have thrashed this out pretty well now? I do not think there are any further questions to ask this witness.

Mr. NOSEWORTHY: I do not know whether the member of the Department of Justice present here can answer my question or not, but I have been told—

The CHAIRMAN: If you are going to ask Mr. MacLeod a question, I think we could well reserve that. Mr. MacLeod is going to be with us each day and we will not take up the time of these witnesses, if you do not mind.

Doctor Sandwell, Mr. Himel and Mr. Grantham—I want to express, on behalf of this committee, our thanks for your attendance here today, and to assure you that the comments that you have made will be given serious consideration. We appreciate the help that you have given us and we thank you very kindly.

Mr. CARROLL: And I think we should be very proud to have such a man as Doctor Sandwell appear before us on a matter of this kind—a man who has given Canada some of the greatest benefits of any person that I know of.

The CHAIRMAN: I think, Judge Carroll, you speak on behalf of all the committee.

Gentlemen, we have now the Canadian Welfare Council represented by the Reverend D. Bruce Macdonald of Ottawa, Mr. Norman Borins, Q.C. of Toronto, barrister, and Mr. W. T. McGrath of the Canadian Welfare Council, Ottawa. Reverend Bruce Macdonald is the chairman and I would ask him if he would now like to introduce his delegation.

Rev. Mr. MACDONALD: Mr. Chairman and members of the committee I would like to say to you first of all that the members of the delinquency and crime division who have presented this report to you are represented across Canada by the members of the legal profession, social workers and both churches, Catholic and Protestant.

Mr. CANNON: Is Mr. Gareau who is president of your organization, from Quebec city?

Mr. MACDONALD: Yes.

Mr. CANNON: I know him well.

Mr. MACDONALD: In presenting this report we have confined ourselves to the sections which we think have social significance, and following the presentation in developing the seven sections brought to you by Mr. Borins, we would be delighted if you feel free to ask questions.

See Appendix "B".

Mr. Norman Borins, Q.C., Canadian Welfare Council, called:

The WITNESS: Mr. Chairman, may I say a few words by way of a preliminary introduction to the rest of my remarks. I just want to say, Mr. Chairman and gentlemen, that the Canadian Welfare Council is profoundly grateful for the opportunity of being represented here today. As you know I have with me the present chairman of the delinquency and crime division, Mr. Macdonald and the secretary, Mr. McGrath. I have been asked to make certain submissions for the reasons, I suppose, that during the time when certain briefs were prepared and which, I suppose, will be the subject matter of today's discussion, I was then chairman of the crime and delinquency committee.

This committee, one of six divisions of the Canadian Welfare Council has always found it most difficult to know just where to make a beginning in a field so vast and uncertain and yet so vital to the welfare of the nation. As in many other endeavours in the field of social studies, the committee has found little response from the public resulting quite often in a feeling of frustration.

The Canadian Welfare Council is, therefore, very appreciative of the support that it has been receiving from the government in recent years and for the privilege extended to this Committee here today.

The committee has been directing its efforts to reaching the public—in the work of public relations concerning the problem of crime and punishment—prison reform—rehabilitation, and has worked with the Canadian Penal Association, the John Howard Societies and the Elizabeth Fry organizations.

In June of 1950 we submitted—and when I say we I mean the crime and deliquency division with the approval of the board of directors of the Canadian Welfare Council—

The CHAIRMAN: I forgot to ask you if you all have your brief from the Canadian Welfare Council before you.

The WITNESS: In June of 1950 we submitted a brief to the Honourable the Minister of Justice and which was later followed by a report which I think is before you and the Minister of Justice, as I stated, referred the brief and the report to the commission working on the revision of the Criminal Code and we were happy to learn that some of our recommendations were included in the draft bill. I am referring particularly to the recommendation that mandatory minimum sentences be repealed. It may very well be that the commission acted on some of the recommendations of other groups on their own thinking but nevertheless that was something we had included in our brief of June 1950 and we were pleased to find it included in the draft bill. It is with some regret, however, that our recommendations were not accepted all

the way in the matter of suspended sentences without the concurrence of the Crown. We feel that in the matter of granting of suspended sentences, the court should be given complete independence.

The draft bill goes part way. Now, as I understand it, if the draft bill finally becomes the law, the court may grant suspended sentence to a first offender no matter what the sentence or penalty may be without the concurrence of the Crown; we feel perhaps you should go all the way and give the court complete freedom and complete independence to grant suspended sentences in all cases wherever the Court feels that that should be done. While I gathered from listening to the previous representations it is your desire that whatever is said here by the spokesman, he should confine himself to the thinking of the association, I hope you will forgive me if I add my own personal opinion on the matter of granting suspended sentences without the concurrence of the Crown. I was privileged to be in the Crown Attorney's office in Toronto and the County of York for a period of eleven years and that is a pretty busy court. About 60 per cent of the criminal law of the province is administrated within the County of York.

The CHAIRMAN: That is a serious confession.

The WITNESS: Yes, Mr. Chairman, it is.

Mr. MACINNIS: Hardly "Toronto the good".

The WITNESS: I know Crown counsel is quite often subjected to the influence of detectives and inspectors in charge of the particular cases who sit beside you and load you with a lot of stuff which sometimes we find is correct and unfortunately sometimes is incorrect and perhaps Crown counsel should not make representations based on what the police officers tell him, but nevertheless he is on the spot; he works with these people and gets up and makes certain representations that will prevent the judge or magistrate from granting the suspended sentence that he may want to impose. Now, the function of passing sentence is one that is entirely that of the judge of the Court. If the concurrence of the Crown counsel is required, then the crown counsel who is sometimes a very inexperienced person or who has limited thinking usurps the function of the court by refusing to give the concurrence that is required. That is all I wish to say on that point. The recommendation is that serious consideration be given to this particular point on the question of suspended sentence. The report is before you gentlemen and I am not going to read it again, except to touch on a few matters that we think deserve repetition. One of them is the matter of payment of fines on the instalment plan that was referred to by Mr. Hemil who was the spokesman for the previous delegation here this morning. Now, I think that in so far as Mr. Hemil's remarks are concerned concerning this matter alone I think I am safe in saying we subscribe to his remarks. I have a feeling myself that the matter of the payment of fines on the instalment plan does not appeal to the public very readily for the reason that there is a general belief that fines are imposed for almost every type of criminal offence. I think that if a careful analysis were made of cases where fines are imposed, I think you will find, Mr. Chairman and gentlemen, that in major offences fines are not imposed. I know myself as Crown Counsel I always detested the idea of imposing a fine where a person was found guilty of a major offence such as burglary, receiving of stolen goods which is very serious and in some cases of theft. The reason I detested it was that particular person, if able to pay his fine, has bought his way out of goal and out of punishment and I think that is the general belief of all magistrates and judges and most of the courts across the country with the odd exception. I think that the matter of fines is confined mostly to less important criminal cases, less serious crimes, and in most cases fines are imposed for violation of Provincial Statutes with which you are not concerned here. I think the majority of cases where fines are imposed are such cases. In so far as offences

under the criminal code are concerned there are very few fines imposed and whenever they are imposed the offence is not serious, the person is not likely an offender with a long criminal record. And for those reasons it is most important that that individual be given careful consideration. Usually when fines are imposed for the reasons I have stated they usually run from $25.00 to $100.00 or thereabouts. It is a rare case where we find a fine of $500.00 or $1,000.00 for an offence under the criminal code. In all my eleven years I recall one fine for a serious case of receiving stolen goods in the amount of $1,000.00 which I thought was a miscarriage of justice. Getting back to these small fines. If that particular person is unable to pay that small fine, then obviously he is a person who finds himself in destitute financial circumstances and must go to gaol for ten, fifteen, or whatever the period of days might be. Now, he is going to gaol for the reason he has not got ten, fifteen, twenty-five of fifty dollars with which to pay the fine and I am not going to say anything more on that. Mr. Hemil referred to statistics. But, I thought it might be interesting for you gentlemen to know as probably you do in one of our Federal Statutes, the Juvenile Delinquents Act, Section 20 (c) it provides that a fine may be imposed not exceeding $25.00 which may be paid in periodical amounts or otherwise, so that apparently we have a precedent in a Federal Statute. I do not know whether the language there is sufficient, whether the language is adequate, but nevertheless the magistrate or judge, as the case may be, has the authority by reason of that section to impose a fine on the instalment plan.

Now then, dealing with the draft bill in a general way, I just want to say this, and perhaps Mr. Macdonald might be able to add something to it, and that is that we stress the lack of a philosophical and social approach—when I say we I mean the Canadian Welfare Council—with reference to the criminal code. Using the language—this is not my own language, but an editorial which appeared in the Globe and Mail, Toronto, which I thought was particularly appropriate, (it is an editorial in that newspaper dated June 15th, 1953. I am sorry, January 15th, 1953) and, without reading all the editorial, because it is a lengthy one, the essence of it is this, that it is regrettable that there is a lack of philosophical approach to the new criminal code, especially in view of the considerable progress made in other jurisdictions, particularly in Great Britain, to deal with crime on a reformative basis rather than on a narrow punitive basis. Of course I must concede, gentlemen, that in England they are in a better position to stress the reformative basis because of the Borstal System, because of the ten institutions that constitute the Borstal System, and all the machinery that exists to enable the courts to stress the reformative basis. And sometimes I wonder, to be quite frank and ernest about it, in discussing the matter with my chairman and the secretary, they stress this even more than I do, and I asked them this morning, "What if we do have a preamble in the criminal code indicating to the court that when deliberating in a matter of punishment and prison sentences, that he should think of the individual and stress the reformative basis. I said to my two associates, well, supposing we had the preamble, and supposing the judge did think of it, what can he do? When all is said and done he has two alternatives: if it is less than two years it is the reformatory, and if it is more than two years it is the penitentiary; and well do I recall the great amount of mental anguish that would beset His Honour Judge Parker, of York County, who is now deceased, who was greatly distressed when it came to passing sentences, especially on young people. I worked with him for many years and he would put if off from week to week, and finally I would say to him, "you have to do it some time, so why not now—if it is less than two years it is the reformatory, and if you sentence him to a punishment of more than two years it is the penitentiary." So I said to my colleagues, "what if we have this preamble?", and they said this, "if such a preamble is contained in the new Criminal Code, then that may lead to the other", and I think there is a good deal in what they say. Apart from the obstacles that I have mentioned,

it seems to me if we did have such a section or preamble in the new Criminal Code, that perhaps the court might consider the matter more carefully, might ask for a report from the probation officers to a greater extent than they do, and ask to be guided by a report from the psychiatrist and the like. Of course, we lack the official machinery for that sort of thing, but perhaps it might encourage the court to ask for representations along these lines from defence counsel as well as from Crown counsel. Of course if this preamble, or this new section, should accomplish what my friends suggest, it might bring about some action on the part of the government in the matter of altering our system of punishment. This, of course, would be all for the good, because I think, gentlemen, we must all agree that our system of punishment as it exists today is one of the real causes of recidivism and all the tragic consequences that flow therefrom. Of course that matter was long ago dealt with by the Archambault Royal Commission back in 1938 and they recommended the Borstal system, but, of course, that was during the depression years, and along came the war and I suppose the government was not just able to deal with it.

Now, another matter which I would wish to stress a great deal, that is, that this committee is very much concerned with our recommendation of a scientific study of the sex offender. Now, gentlemen, in this new Code the royal commissioners provided in section 661 as follows—and I might say before I read it that this section is headed "Criminal Sexual Psychopaths", and it is under Part XXI of the new code, which is under the heading of Preventive Detention, and deals chiefly with habitual offenders.

Then the construction of Part XXI is as follows: First of all, there is section 659 dealing with interpretations of certain words; then follows section 660, dealing with the application for preventive detention of habitual offenders; and then comes section 661, dealing with criminal sexual psychopaths, and then section 662 is general in nature and deals chiefly again with the habitual offender.

Now, may I point out two technical objections to section 661. First of all, it provides that where an accused is convicted of one of a certain number of offences, sections 136, 138, 141, 147, 148 or 149, dealing with rape, indecent assault, gross indecency, and all the rest of the relevant offences, where an accused is convicted of an offence under any of those sections or of an attempt to commit an offence under any of these provisions, the court may, upon application, before passing sentence, hear evidence as to whether the accused is a criminal sexual psychopath. Subsection (2) reads:

> on the hearing of an application under subsection (1) the court may hear any evidence that it considers necessary, but shall hear the evidence of at least two psychiatrists, one of whom shall be nominated by the attorney general.

Subsection (3) reads:

> where the court finds that the accused is a criminal sexual psychopath, it shall, notwithstanding anything in this Act or any other Act of the parliament of Canada, sentence the accused to a term of imprisonment of not less than two years in respect of the offence of which he was convicted and, in addition, impose a sentence of preventive detention.

Now, in reading that, gentlemen, something occurred to me, something I did not realize before. We have a mandatory sentence here—"not less than two years". I thought that was all done away with in the revised Code, mandatory minimum sentences. They are not. Mr. Chairman, and that has particular significance. It just occurred to me now. In our opinion, Mr. Chairman and gentlemen, this has been a long step backwards and will be a long step backwards if parliament adopts section 661. Now, in the first place, when you deal with habitual offenders, in reading all the sections you will find the accused must have a certain number of criminal convictions before

he can be found to be a habitual offender. If you read section 661, you will find that a person may come along and be convicted for the first time of any of these offences, and he may, if an application is made, as a result of that application—although he may be a first offender—he may be found to be a sexual psychopath and be sentenced to an indeterminate period, which may very well be life imprisonement. Then, section 661 contains no provisions for allowing the accused to call on a doctor or to adduce evidence in rebuttal of the evidence that is adduced by the Crown. Now, you will find in section 663 of this part that where the court is dealing with an application to have a person found a habitual offender, that the accused may tender evidence as to his character and repute, and that evidence may be admitted on the question whether the accused is or is not persistently leading a criminal life, or is or is not a criminal sexual psychopath, as the case may be, but no similar provision exists in section 661. And what if he cannot afford to have a psychiatrist? It seems to me there should be more protection for that type of individual. He should have the opportunity of perhaps having a psychiatrist provided for him.

Mr. LAING: A defence psychiatrist?

The WITNESS: A defence psychiatrist, yes.

Mr. BROWNE: Excuse me. But under secton (2) of section 661 it reads:

> On the hearing of an application under section (1) the court may hear any evidence that it considers necessary, but shall hear the evidence of at least two psychiatrists, one of whom shall be nominated by the attorney general.

The WITNESS: But what worries me, sir, is the language is not like it is in section 663, and I think that the language has reference to evidence that may be adduced by the Crown, which is making the application. The language might be clarified. It might be, sir, that you are correct, but I am afraid.

The CHAIRMAN: We could let the witness complete his presentation and then we can ask him further questions.

The WITNESS: Now, those are technical objections in so far as the sex offender is concerned. We say that it is a long step backwards, because with all the advancement and progress that has been made in the last 15 or 20 years in the field of psychiatry, instead of taking some advantage and cognizance of all that has been discovered in that field and see if something can be done about that type of individual, putting him in a special type of institution, it would appear, with great respect, the matter as it is dealt with in section 661 is to throw the fellow away and get rid of him with an indeterminate sentence. The thought is to protect society, and society only. Reformatively treating the person, attempting to cure him, or dealing with the individual, is completely abandoned, with great respect, in my submission.

By Mr. Cannon:

Q. Have you any information on what percentage of these cases can be cured?—A. I have not, sir.

Q. Would it be practical, in other words, to provide for care or treatment? —A. Except that there have been a great many reports published that would indicate that something can be done for them, I am not prepared to answer that.

The CHAIRMAN: Could I again ask that you let the witness complete his presentation and then we will submit questions, if that meets with your pleasure.

The WITNESS: I just want to read very briefly a report that was prepared by Mr. McGrath, secretary of this division of the Canadian Welfare Council, and in reading it I find that what he has done is that he has studied many reports and then has stated his views. He says:

The whole question of sex behaviour has been clouded by a lack of factual information. Within the past few years the social scientists have carried on a number of studies in this area and if our criminal law is to reflect a realistic understanding of the situation the findings of these studies should be taken into consideration when our laws are framed. However, despite the work already done, the picture is still far from clear and a comprehensive and thorough study by a government commission is advocated. This study should not be a superficial one. It should be as extensive and as complete as possible. All disciplines interested should be involved. These would include anthropology, education, law, medicine, psychiatry, psychology, religion, social work and sociology.

Some of the problems that are identified by the studies carried out to date and which suggest our criminal law may not be sensitive to modern social conditions are the following:

(1) It is agreed that dangerous sex offenders should be segregated, but it is difficult to define the terms under which such detention should be carried out. Since only seven convictions have taken place under the present provision for preventive detention of dangerous sex offenders, it would appear that the provision is not fulfilling its intention of segregating dangerous people.

(2) Some sex offenders are recognized as mentally and emotionally ill people. In that case, should not treatment be provided for those who are to be segregated and should there not be provision for review of their case by qualified psychiatrists so they may be released when their dangerous tendencies have been removed?

(3) Some acts now defined as crimes are apparently so common in the population that provisions against them cannot be enforced. For example, Dr. Kinsey in his Report (Kinsey, Alfred Charles, "Sexual Behaviour in the Human Male", Philadelphia: W. B. Saunders Co., 1948) says that about one-third of males admit homosexual acts and one-sixth admit that homosexuality has been their chief sex interest for at least a period of three years.

(4) In most cases rape appears not to be primarily a sex crime but is rather an expression of a normal sex impulse coupled with lack of social inhibitions. The problem may not be a sex problem after all.

Some psychiatrists suggest that in our society we tend to associate sex with violence, crime and filth in the mind of the child; whereas it should be associated with home, love, the family, and so on. Sex education in the child might be simpler if the association with crime were kept to a minimum in our laws. There is also a suggestion that treatment of sexual abnormalties might be easier if abnormal sex activity that is not dangerous were not classified as crime. Tension, built up by the knowledge that he is a criminal, makes it more difficult for the sex deviate to use treatment.

By the Chairman:

Q. Did you read the whole of the brief that you are submitting?—A. I did not want to take the time of the committee, so I omitted sections here and there.

Q. Would you like to have the whole incorporated in the evidence?—A. Yes.

Agreed.

The WITNESS: It is recommended that section 661 be repealed, because it is a step backward, and that the two technical objections that I mentioned,

if it is not repealed, be amended, so that they might take care of the two problems I mentioned. But it is seriously recommended that a body be appointed to study the matter because it is somewhat new.

Now, I think that I have touched on the important matters. First of all, the psychological and the social approach to the new Criminal Code; we are very much concerned with section 661 and the sex offender; and the other matters are suspended sentences at all times whenever the court thinks fit, and the payment of fines on the instalment plan. I think the report deals likewise with the question of corporal punishment. We are not in favour of it, but I am not going to say any more on that. We say nothing about capital punishment.

The CHAIRMAN: Probably now we could have a few moments of questioning.

By Mr. Browne:

Q. Is there any evidence that this committee has that there has been an abuse caused by the existence of the provisions that are now incorporated in section 661?—A. This is new, as I understand it, sir.

Q. No, it is a compilation of section 1054A(1), (2), (3) and (5).—A. I know, but it just came in as a recent amendment.

Mr. ROBICHAUD: 1948 or 1950.

Mr. BROWNE: Is it not just a purely theoretical position that you have raised here, or have you any support for it at all on a medical or psychiatric basis?

Rev. Mr. MACDONALD: We are concerned primarily with the sex offender. When a sex offender is sentenced, there is no provision made for his reformation. It is purely a punitive sentence.

By Mr. Browne:

Q. Is there not a provision made here for his cure?—A. No.

Q. Is there nothing said about him being kept in a separate institution?

Mr. ROBICHAUD: Section 655(2)—"an accused who is sentenced to preventative detention may be confined in a penitentiary or part of a penitentiary set apart for that purpose"—

The WITNESS: No one knows of any machinery that is available.

Mr. ROBICHAUD: I understand that is the only thing.

The WITNESS: And that section 665 is there chiefly for the habitual offender. Of course it may cover both. It covers anyone who is sentenced on the basis of preventative detention.

Mr. BROWNE: While we are on this section, may I ask the representative of the Justice Department—

The CHAIRMAN: May I again remind you that the Department of Justice will be with us at all times, and if we can dispose of these witnesses it will be greatly appreciated.

By Mr. Browne:

Q. I can only repeat the original question that I asked. Is there any evidence that by sentencing them to this indeterminate sentence that there has been any injustice, or has any injustice been done, or have any abuses come to light?—A. If there is no machinery set up, sir, for treating them, for ascertaining what improvement a person may be making, or for anyone to know, and by what method anyone is to know he is fit to be released, the danger is he is likely to be there for a long time.

Q. Now, a lot of these offences here I will agree have been committed from time immemorial without necessarily implying the sort of abnormality which would require examination by psychiatrists—for example, rape, carnel knowledge and indecent assault. You would not say that there was a tremendous abnormality in these offences on certain occasions?—A. Well, there would be abnormality in the case of carnal knowledge of a young girl of tender years, and likewise in the case of gross indecency.

Q. I did not mention the last one—I said, rape, carnal knowledge or indecent assault.—A. In some cases of carnal knowledge if it happens to be a girl of tender years I would think it is an indication of abnormality.

Mr. BROWNE: I agree there.

By Mr. Cannon:

Q. There is one point I would like to clear up. In arriving at the conclusion, you suggest 661 be repealed entirely if there is no provision for remedial treatment?—A. Yes.

Q. Wouldn't you agree there the primary object of the Criminal Code is to protect society and it is better to have a man like that who is a sexual psychopath locked up even if from his point of view there is no provision for him being treated; in other words is it not better to protect society and not cure the man than to let the man out and leave him free to being again committing the same crimes?—A. I think our position is that if we can identify the dangerous people segregation is essential, but the fact that only seven convictions have turned up under this section would indicate it is not fulfilling its purpose of segregating dangerous people. Our fear is that under this section you do not necessarily pick out the people who are dangerous. There is provision here for any number of people who are not dangerous to get this type of sentence and we are saying it is an extremely difficult thing to define who are dangerous people.

Q. If you repeal the section completely you are allowing dangerous people to go free.—A. That is a point too.

Q. I think there may be some merit in your suggestion there should be some provision for treatment for these people, but I think you are going too far when you say if we do not put in some provision for treatment we should leave the people entirely free.—A. If we think only of society yes, but if we think of the individual we do nothing for him and of course he is a product of society. This offender is no different than the person who repeatedly commits armed robbery. He is as harmful as a sex offender and is not sent away for an indeterminate period.

Q. You are going too far when you want to remove the article completely if you do not get the amendment you suggest.

By Mr. Robichaud:

Q. I might agree with your point about the treatment, but is not there something in 665-2. They are confined to a penitentiary set apart for that purpose and shall be subject to such disciplinary and reformative treatment as may be prescribed by law. Isn't there an opening there for reformative treatment? If you will note 666 "The Minister of Justice shall, at least once in every three years, review the condition, history and circumstances of that person." There is a provision for revision.—A. So far as we understand that review, it would be this: We may be wrong, but that merely consists of a report which comes from the warden to the Minister of Justice. Obviously the Minister of Justice does not know. That report is information gathered from the chief guard or a guard who may have a grudge against the individual.

Q. 666 goes further than that: "Review the condition, history and circumstances".—A. That consists of a report.

Mr. NOSEWORTHY: On page 9 your recommendations are for the setting up of a Royal Commission for further study. Just where do you suggest that that Royal Commission should fit into our time scheme; do you want the whole code held up until then, or the whole section dealing with sex offenders be held up and the old code used in the interim. What is your suggestion?—A. Just that the sections on the sex offender be held up.

Mr. ROBICHAUD: How long would it be in a Royal Commission—two years.

The WITNESS: The Commissioners here have done exceptional work in the time allotted to them, very capable people chaired by the Hon. Mr Justice Martin, Chief Justice of Saskatchewan.

By Mr. Noseworthy:

Q. What is your suggestion dealing with the sex offender while that commission is making its report?—A. I would say, speaking for myself that some more protection be given to the accused before he is found to be a sexual psychopath, and perhaps an application should not be made where he is just a first offender because we all know in many rape cases they are just borderline cases and it may be a yound man eighteen, nineteen or twenty years of age and in the opinion of the particular crown counsel he thinks an application should be made and in the opinion of that particular presiding judge he thinks he should find that man is a sexual psychopath and away he goes for an indeterminate period.

Mr. LAING: We have only seven.

The WITNESS: If seven people have been improperly dealt with that is quite a number.

Mr. Carroll:

Q. Do you not think a great deal has been done in the last five or six years to give reformatory correction in our main criminal institutions or penitentiaries?—A. Not with respect to sex.

Q. Everything I think.—A. It must be conceded a great deal has been done in the penitentiaries in Ontario. There is an institution in Brampton which is a Provincial institution. But, in the penitentiaries you still could have a seventeen year old mingling with hardened criminals.

Q. I agree with that. I only wanted your opinion on the reformative attitude of the Department in the last few years based, no doubt, on the report that is made?—A. A real attempt has been made and good work has been done.

By Mr. Montgomery:

Q. I would like to get the witness' opinion on mandatory sentences. You feel that they should be eliminated?—A. Mandatory minimum sentences, yes.

Q. In section 661(3) now, it is two years. You feel it would be some help from the reformative standpoint if these words "not less than" were struck out to give the court a chance to use its discretion?—A. Well, I think they should be struck out. Either we believe, or we do not believe in the principle of doing away with mandatory minimum sentences, and if we do there should not be any exception. I am surprised in my reading of this, as I had not noticed it till today. While the commissioners in their report say they have done away with minimum mandatory sentences, I must confess that right here we have a mandatory minimum sentence of two years, and, of course, that is only conditional on the judge finding that the person is a sexual psychopath. If he wishes to send him away for an indeterminate period then he must sentence him on the substantive offence on which he is charged, rape, or whatever it is.

By Mr. Laing:

Q. It has to be declared by at least two psychiatrists that he is a sexual psychopath. I do not know what that means, but I think it is just like the fellow in Kansas who said: "He has gone just about as far as he can go".—A. May I suggest this, that the experts who are sometimes called in a hurry by Crown attorneys in criminal cases are not always to be relied upon. They are departmental people, and I am not trying to criticize civil servants or departmental people, but sometimes their evidence is amazing.

Q. Your suggestion is, then, to get a defence psychiatrist to contest the evidence of the Crown psychiatrists.

Mr. CANNON: Does it not say one Crown psychiatrist?

The WITNESS: It says one shall be appointed by the attorney general.

Mr. CANNON: I would presume the second one was to be appointed by the defence.

The CHAIRMAN: If there are no further questions, I want to extend to Rev. Mr. Macdonald, Mr. Borins and Mr. McGrath our thanks for attending before this committee and giving us the benefit of their studies and their experience. I am sure that the evidence that they have given will be studied with interest by this committee and will be of considerable help to it. I thank you gentlemen sincerely for the trouble that you have gone to in coming before us.

There will be a meeting of the steering committee this afternoon, gentlemen, at 2.30 in this room.

There will be a further meeting of the committee tomorrow afternoon at 3:30 in this room, also.

If there is no further business, the meeting stands adjourned.

APPENDIX "A"

BRIEF

of

THE ASSOCIATION FOR CIVIL LIBERTIES

to the

HOUSE OF COMMONS SPECIAL COMMITTEE
ON CRIMINAL LAW ON THE REVISION OF THE CRIMINAL CODE

The Association for Civil Liberties is appreciative of this opportunity to submit its views on the proposed new Criminal Code. The task of re-writing the code, we recognize, is not a simple one. And it is appreciated that much thought and hard work have gone into the code to this point.

However we are certain that those responsible for the preparation of the proposed code would be the first to say that if the code is at fault anywhere, or if it can be improved upon, then by all means let us have the improvements. Moreover, we, as an Association dedicated to the protection of the civil liberties of the individual, and you, as representatives of your constituents, both have a duty to approach the code with a fresh mind and examine it carefully, critically and constructively.

It is hard to know in a document as large as the code where to start. May we therefore begin with these general observations.

1. It would seem that the proposed code has been written more from the viewpoint of the prosecution than from the viewpoint of the defence and that the code could provide more adequate safeguards for an accused person.

2. It has always been a recognized principle of our law that criminal offences should be clearly and precisely defined so that there will be no mystery about the offence. The revised code somewhat departs from this principle by the use of definitions at times which are too general in scope and language which is too vague and uncertain.

3. The sentences on the whole in the proposed code have been increased. In many cases there would appear to be no justification for the change.

4. One would like to see a greater spirit of reform pervade the code and a greater effort made to bring the code more closely in line with modern scientific and sociological thought in the field of human rights, criminology and penology.

In particular we should like to propose these specific changes to Bill 93 for your earnest consideration.

1. *Service of Warrants*—Section 29 (1)

It has always been a recognized principle of Anglo-Saxon jurisprudence that anyone who executes a warrant should have the warrant with him and produce it if requested. This principle is incorporated in section 40 of the present code.

Under Bill 93 it is proposed to modify this principle so that it would not be necessary for a person who executes a warrant to have it with him and produce it when it is not feasible to do so.

We believe that this exception is unwarranted, and undesirable, since it might well open the door to infringements of the rights of the individual. We would therefore submit that the words "where it is feasible to do so" in Section 29 (1) be deleted.

2. *Treason*—Section 46

Much has been said and written about the treason section of Bill 93. Concern has been expressed over the wording of the section and the vagueness of some of the language used therein. The question has been raised whether a person who engaged in trading with China at the present time could be charged under s.s. 1 (*c*) with "assisting any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are".

Doubt has been expressed about the meaning and scope of s.s. 1 (*f*) "forms an intention to do anything mentioned in paragraphs (*a*) to (*e*) and manifests that intention by an overt act" and what precise activities it makes treasonous.

The revised section provides for a number of important changes in our present law of treason and what is regarded as treason in the United States and in Great Britain, where the law has remained unchanged since 1785.

We are of the opinion that with an offence as serious as treason, which carries with it possible sentence of death and is so closely linked to our civil liberties, any proposed extensions to the existing treason law shoud be scrutinized with the greatest caution and care. Futhermore, that the present law of treason should only be extended provided that the clearest kind of a case has been made out that the proposed changes are necessary to deal with a clear and present danger and to fill a serious gap in the law.

"We should add that irrespective of the changes that are finally made the section should be amended to provide that no proceedings may be commenced under it without the consent of the Attorney General of Canada. The offence of treason is far too serious and important to allow charges to be laid under it without providing adequate safeguards. If the consent of the Attorney General of Canada were required it would afford a measure of protection against unwarranted charges."

3. *Assisting an alien enemy to leave Canada and conspiring to communicate information*—Section 50.

Section 50 (*a*) (ii) provides for a new offence, that of assisting a subject of a state against whose forces Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the state whose forces they are, to leave Canada without the consent of the Crown.

It is felt that this section is somewhat ambiguous. It might be asked, for instance, whether a person who assisted a Chinese subject, who had lived in Canada for a number of years without becoming a citizen, to return to his native country, would run the risk that he might be charged under this section if he did so without obtaining the consent of the Crown.

With reference to section 50(1)(*c*) it is submitted that it too is ambiguous and open to a variety of interpretations. To base an offence on the interpretation of what is "an act that is likely to be prejudicial to the safety of Canada", we would suggest, is to invite trouble. The Official Secrets Act covers with greater particularity most, if not all, of the illegal activities contemplated by this section and we would seriously question whether it is necessary to have this section at all in the code. Certainly if the section is to be included the words "likely to be prejudicial to the safety of Canada" ought in our opinion, to be replaced with words which define the offence more clearly and with greater particularity.

Finally we note that the maximum penalty for violations under section 50 has been increased from two to fourteen years. There is no evidence to suggest that offences under this section have become so numerous that it is necessary to increase the penalty to serve as a deterent. In fact prosecutions under this section in the past have been very scarce and we fail to see any sound ground for extending the penalty beyond the present maximum of two years.

4. *Duty of care re explosives and breach of duty*—Sections 77 and 78.

It is proposed that every person who fails, without lawful excuse, to take reasonable care and as a result an explosion of an explosive substance occurs that is likely to cause death shall be liable to imprisonment for life. We believe this penalty to be unusually severe. Heretofore where there was a breach of duty, our criminal law has confined the penalty of imprisonment for life to manslaughter cases. We see no reason for departing from this principle. We would submit that a more reasonable penalty be provided both for this offence, and also, for the maximum penalty of fourteen years proposed in section 78(b) in cases where the explosion causes bodily harm or damage to property or is likely to cause bodily harm or damage to property.

5. *Perjury—witness giving contradictory evidence*—Section 116.

It is submitted that this proposed new section is open to serious objection and should be deleted for these reasons:

(1) The section fails to take into account that in a large number, if not most judicial proceedings, witnesses may honestly and without any intention to mislead give contradictory evidence. Indeed the very purpose of cross-examination is to elicit contradictory evidence from the witness.

(2) The offence contemplates that once contradictory evidence of a material nature is given the onus of proof is shifted to the accused. This surely is contrary to our whole concept of justice that an accused shall be deemed innocent until proven guilty.

(3) The use which could be made of this section in judicial proceedings might well thwart the course of justice.

6. *Public mischief*—Section 120.

We believe that this offence would be defined more clearly and appropriately if after the word "wilfully" the words "and with intent to mislead" were added.

It is further submitted that the offence of public mischief is not of such a serious type that a person found guilty of it should be liable to imprisonment for five years. It is suggested that the penalty be reduced to a more reasonable period.

7. *Disturbing certain meetings*—Section 161 (2) and (3).

These two sections propose among other things to make it an offence:

(1) to wilfully disturb or interrupt an assemblage of persons met for a moral, social or benevolent purpose;

(2) to disturb the order or solemnity of any such meeting.

Since it is not uncommon to have at least one or two people at a social affair interrupting or causing a disturbance, the enactment of these sections in their present form could render a large proportion of the social gatherings attended by members of the public illegal.

It is suggested that these sections be redrafted to conform more closely to the existing section of the code, section 201. It provides, among other things, that everyone is guilty of an offence who wilfully disturbs, interrupts or disquiets any assemblage of persons met for any moral, social or benevolent

purpose, by profane discourse, by rude or indecent behaviour, or by making a noise either within the place of such meeting or so near it as to disturb the order or solemnity of the meeting.

8. *Vagrancy*—Section 164.

It has been our experience that the vagrancy section has been used at various times for a purpose for which it was never intended and that people have been improperly arrested on vagrancy charges. To prevent such abuse we would propose that the offence of vagrancy be defined as narrowly as possible. Furthermore, that s.s. (1) (a) (i) which provides that everyone commits vagrancy, who not having any apparent means of support lives without employment, should be revised to make clear that it is not intended to cover persons who, through no fault of their own, are out of work and without apparent means of support.

9. *Witchcraft*—Section 308.

It is noteworthy that in Great Britain the Witchcraft Act of 1735 was recently repealed. If it is deemed that the offence should be retained in the code, we would submit that the section should be redrafted. As it stands at the present time it would be an offence for a person to charge for reading tea cups under s.s. (b). We believe that the section would be materially improved if the word "fraudulent" was added to make it an essential element of the offence.

10. *Criminal Breach of contract*—Section 365.

The offence of criminal breach of contract was first established in Canada in 1877. Since then there has been a considerable change in the public attitude concerning breach of contracts in labour disputes. As a result collective bargaining and other legislation have largely taken over the field. In the light of these events it is submitted that this section should be amended accordingly.

We would further submit that there is no justification for increasing the penalty for violations from a fine not exceeding $100.00 or three months to a possible sentence of five years. There is no evidence that there has been widespread abuse of this section. The penalty for the offence has been the same since 1877 and prosecutions under the existing section 499 have been almost negligible, so that there would appear to be no reason whatsoever for enlarging the penalty to five years.

11. *Mischief*—Section 372.

There has been much public criticism of this section. When it was considered in the Senate a prominent lawyer stated "no strike ever took place in this country that did not do one or other of the things prohibited by this section".

We would urge that this section be carefully redrafted and that the offence be described with much greater certainty and particularity. It is perhaps too much to attempt to compress in one section that which has heretofore required almost fifteen sections to cover.

In addition we would submit that the penalties provided in s.s. (2) to (5) are far too severe having regard to the nature of the offence and should be reduced to reasonable proportions.

12. *Three day verbal remand*—Section 451, s.s. (c) (ii).

The time honoured and recognized procedure observed when an accused is remanded without bail is to remand him to custody in a prison. For some reason, which is not too clear, a provision has crept into the code allowing a justice orally to remand an accused to the custody of a peace officer or

other person, where the remand is for a period not exceeding three clear days. We submit that the proper place to remand an accused without bail is to the custody of a prison. It has been our experience that a three day verbal remand to the custody of a peace officer or other person can be abused and we would urge that this provision be deleted from the code.

13. *Arrests*—Section 438 (2) and (3)

To safeguard the rights of the individual we would urge, that if practical, this section be amended to provide a definite time within which a peace officer is required to bring an arrested person before a justice to be dealt with according to law.

14. *Whipping*—Section 641.

We believe the time has come that for a re-examination of the punishment of whipping to determine whether it should be continued.

In our submission whipping should be abolished because it offends this basic human right—"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"—Article 5 United Nations Declaration of Human Rights.

In Great Britain whipping was abolished by the Criminal Justice Act of 1948 following a report prepared by a Departmental Committee on Corporal Punishment. According to this report the Committee found:—"Corporal punishment is purely punitive; and it is out of accord with modern ideas which stress the need for using such methods of penal treatment as give an opportunity of subjecting the offender to reformative influences....

"In its own interests society should, in our view, be slow to authorize a form of punishment which may degrade the brutal man still further and may deprive the less hardened man of the last remaining traces of self respect." "The use of corporal punishment as a penalty for criminal offences by adults has been discontinued in all the fifteen foreign countries covered by this enquiry, with the sole exception of two States in the United States of America, where it is recognized by State law as a penalty for a limited number of offences"..."In our view, the retention of corporal punishment can be justified only if it can be shown (a) that a sentence of imprisonment or penal servitude combined with corporal punishment operates more effectively as a deterrent than a sentence of imprisonment or penal servitude not combined with corporal punishment; and (b) that for some offences or classes of offence sentences of imprisonment or penal servitude are so ineffective as deterrents that it is necessary, for the protection of society, to add a further penalty containing an exceptional element of deterrence." The Committee reported that it could find no evidence that corporal punishment operates as a deterrent to further crime by the individual or by others.

The subject of whipping was also considered by the Ontario Court of Appeal in the case of Rex-*vs*-Childs, 1939 Ontario Reports, p. 9. In that case the Court observed:—"While we are content to remain among the backward nations of the earth and have upon our Criminal Code provisions for punishment having their origin in the dark ages, Judges can do but little. Parliament alone can interfere."

In an article written in 1949 Canadian Bar Review, p. 1010, Chief Justice McRuer, of the Supreme Court of Ontario, has this to say about whipping:

"If the punishment of whipping is to be retained, the provisions of the law governing it should be revised and clarified. The sentence of whipping is quite harsh enough without leaving the number of strokes to be administered unlimited. A law exposing an offender to three repeated whippings has in it a great element of cruelty.

The instrument to be used for whipping should be clearly defined. It should never be possible for a prison official to keep the execution of the sentence of whipping hanging over the head of a convicted person during an uncertain portion of the prison term."

15. *Hard Labour*

In our opinion the sentence of hard labour in criminal cases is antiquated and meaningless. Great Britain abolished hard labour in 1948 by the Criminal Justice Act. We would urge that it now be abolished in Canada.

16. *Fines*

Every year thousands of people are sentenced to prison for want of sufficient money to pay a fine. In England action was taken as long ago as 1914 to mitigate any tendency of the law to penalize a man because of poverty. Legislation was passed giving people time for payment of fines and for payment in instalments. As a result imprisonments for default in the payment of fines fell from 79,583 in 1913 to 15,261 in 1923; from 12,497 in 1930 to 7,936 in 1938.

We believe that it is time similar provision were made in Canada for the payment of fines on time. Everyone in Canada is supposed to enjoy equal rights under the law. But this can hardly be said to be true as long as people have to serve jail sentence because they are not financially able to pay a fine except in instalments.

In Canada we have been looking for ways and means of reducing our prison population and the expense of maintaining our prisons. From the English experience it would seem that by allowing people to pay fines on time the population of our prisons could be materially reduced and public funds saved in the process. We would therefore urge that Bill O be amended to allow for the payment of fines on time in appropriate cases.

17. *Sentences*

We note a general tendency throughout the code to make the penalties more severe. In some cases there may well be justification for an increased punishment. However, in many instances, some of which have been referred to before, we feel that the maximum sentence has been raised for no apparent reason whatsoever.

We would urge that your Committee review the proposed changes in the penalties to see that they are appropriate to the offence and are kept within reasonable limits.

18. *Onus of Proof*

We view with concern the tendency in the proposed code to enlarge on the offences for which the onus of proof is shifted from the Crown to the accused. Sections 50 (1) (a) (ii), 80, 116, 162, are some examples of cases in point.

We would submit that only where it is absolutely necessary in the interests of the administration of justice should this practice be permitted. We would therefore ask your Committee to scrutinize most carefully those sections where the onus of proof is placed on an accused to determine whether or not they are of an essential nature.

It is apparent that much work has to be done on Bill O before it can be said to be free from fundamental objection. The revision was undertaken in the first instance for the purpose of simplifying the code and not in order to make major substantive changes. There would therefore appear to be no great urgency to adopt a revised code.

Moreover, in our opinion there are a number of reasons for proceeding slowly and carefully with this undertaking. The last revision of the code was made in 1892. Since then many countries have attempted to experiment with new ideas in the field of crime and penology not found in Bill O. The attitude

of the public and views of social scientists on the problem of crime and punishment have changed radically in the last fifty years. In our submission before the code is finally approved there should be a re-examination and re-appraisal of its provisions and thorough study made in the light of modern developments in criminology and penology and the experience of other countries from which we may benefit.

Furthermore, Bill O attempts to condense 1152 sections into 744. Of necessity many material changes of a substantive nature are bound to creep in as a result of this process of condensation. Moreover as appears from this brief many important changes of a substantive kind are in fact included in the code. Since they affect the rights of the people of Canada, we believe that the proposed changes should not be rushed through but should be further submitted for the fullest and most careful study to an independent body of experts on crime and punishment in the fields of law, medicine and social science.

It has been said that it is better that a score of guilty people go free than that one innocent individual be convicted. So too, it would be better that the enactment of the code be deferred for further study for as long as it should be required, than that through faulty draftsmanship, the exercise of hasty judgment, or the pressure of our times, a person should be unjustly convicted.

APPENDIX "B"

THE CANADIAN WELFARE COUNCIL

A National Clearing House for Canadian Social Welfare
245 Cooper Street, Ottawa, 4, Canada

President: J. M. GUÉRARD
Executive Director: R. E. G. DAVIS

The Delinquency and Crime Division

REPORT

of

THE COMMITTEE ON REVISION OF THE CRIMINAL CODE

The Delinquency and Crime Division of the Canadian Welfare Council welcomes the Government's decision to amend the Criminal Code. The Division is strongly of the opinion that the opportunity provided by this review of the Criminal Code should be seized to express in our laws modern principles of penal philosophy, as far as these apply.

To this end the Delinquency and Crime Division set up a Committee to study Bill H8, An Act respecting the Criminal Law, which was given first reading in the Senate on May 12, 1952, and to prepare recommendations thereon. The Committee hereby submits its Report.

The Canadian Welfare Council presented a Brief on Revision of the Criminal Code to the Minister of Justice on June 8, 1950, dealing with many of the points covered in this Report.

1. The purpose of punishing the criminal is to protect society from lawbreakers. However, the only ultimate protection for society lies in the reform of the individual offender. It must be borne in mind that every convicted offender—with the exception of the few who are executed or who die a natural death in prison—will some day be returned to society. The population of our prisons remains relatively constant. For every new prisoner admitted, another is freed to play his part, good or bad, in the community. The crucial question is whether the released prisoner is more suited to social living than he was when starting his sentence. If he is not, his incarceration has accomplished little and if, as is too often the case, his imprisonment had made him even more dangerous, society has suffered a loss. It is not protected but endangered.

If, then, our criminal law is to fulfil its purpose of protecting society from lawbreakers, it must provide the maximum opportunity for reforming the individual offender, and no provision that makes such reformation more difficult should be retained.

This Committee recommends inclusion in the Criminal Code of a statement of the purpose of criminal punishment emphasizing that the aim is the protection of society through the reform of the individual. This statement might be contained in a preamble to the Criminal Code or in a separate section thereof. It could then serve as a guide to the courts in determining appropriate sentences.

Such a guide is provided in similar legislation. Section 38 of the Juvenile Delinquents Act, 1929, states:

> This Act shall be liberally construed to the end that its purpose may be carried out, to wit: That the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by its parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.

In Great Britain, the Criminal Justice Act, 1948, contains no broad statement. But in its provisions for the extension of probation, for Borstal treatment, and for the limitation of imprisonment it clearly recognizes the reformative purpose of the law. The necessity for consideration of the individual offender is expressed in the sections on restriction on imprisonment:

> 17. *Restriction on Imprisonment*
>
> (1) A court of summary jurisdiction shall not impose imprisonment on a person under seventeen years of age; and a court of assize or quarter sessions shall not impose imprisonment on a person under fifteen years of age.
>
> (2) No court shall impose imprisonment on a person under twenty-one years of age unless the court is of the opinion that no other method of dealing with him is appropriate; and for the purpose of determining whether any other method of dealing with any such person is appropriate the court shall obtain and consider information about the circumstances, and shall take into account any information before the court which is relevant to his character and his physical and mental condition.
>
> (3) Where a court of quarter sessions or a court of summary jurisdiction imposes imprisonment on any such person as is mentioned in the last foregoing subsection, the court shall state the reason for its opinion that no other method of dealing with him is appropriate, and if the court is a court of summary jurisdiction the reason shall be specified in the Warrant of commitment. . . .

The Federal Youth Correction Act, passed in 1951 by the Congress of the United States, defines treatment as "corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders".

The preamble to the Corrections Act, 1950, of the Province of Saskatchewan reads:

> Whereas it is desirable that, for the ultimate protection of society, a juvenile adjudged to have committed a delinquency and a person adjudged to have committed an offence to be examined with a view to determining as accurately as may be the cause or causes of the delinquency or offence, and that so far as practicable every delinquent or offender be given such help, guidance, retraining and treatment, whether within or outside a correctional institution, as may appear most likely to remedy or correct conditions believed to underlie his delinquency or offence.

2. We commend the omission from the Bill H8 of most of the mandatory minimum sentences provided in the present Criminal Code for specific offences.

3. We commend the provisions of Section 421 (3) of Bill H8 which would make it possible for an accused to have offences committed in another province, and to which he pleads guilty, taken into consideration by a court in the province in which he is in custody.

4. We commend the provisions of Section 638 of Bill H8 insofar as they remove the necessity for consent of the Crown before the court can suspend sentence. We do not, however, agree that the power of the court to suspend sentence should be limited to first offenders, or to those whose one previous offence occurred five years prior to the offence under consideration or which was of a character not related to the offence under consideration. We are of the opinion that the number of offences does not in itself preclude successful treatment on probation, and though the court would obviously take previous convictions into consideration in determining whether the offender should be placed on probation the power of the court should not be restricted in this respect.

5. We are impressed by the fact that in recent years all Western European countries and most of the United States have considered it desirable to abolish corporal punishment. On the other hand, in England, where corporal punishment was abolished by the Criminal Justice Act in 1948, there presently appears to be a large body of experienced opinion in favour of the reinstitution of corporal punishment as a deterrent in cases of crimes of violence of a more aggravated nature. Under these circumstances, we feel ourselves unable at the present time to make a definitive recommendation regarding the abolition or retention of corporal punishment. We feel the matter is one of very great importance and unanimously recommend that it be made the subject of an immediate study under the supervision of the Minister of Justice with a view to determining whether corporal punishment has sufficient merit as a deterrent to warrant its continuance in the face of the many objections which are made to it on social and humanitarian grounds.

We are unanimously of the opinion that everything possible should be done to humanize the execution of sentences of corporal punishment, and in any event, we are unanimously of the opinion that the use of the cat or the lash should be abolished. It would appear that our recommendations in this regard could be adopted by effective action of the Governor-in-Council under the provisions of Section 641(3) of Bill H8, and that no amendment to the proposed statute would be necessary.

6. In the Brief on the Revision of the Criminal Code submitted to the Minister of Justice by the Canadian Welfare Council on June 8, 1950, it was recommended that there be included in the Criminal Code provision for the instalment payment of fines. This recommendation was intended (1) to remove the inequality before the law between the person with means who can pay a fine and the person without funds who cannot pay the fine and must go to jail, and (2) to keep all persons possible from being exposed to the dangers of imprisonment. This provision is not included in Bill H8 and we urge that the matter be given further consideration.

The report of the Archambault Commission also deals with this question (page 167):

> Time for payment of fines, and
> imprisonment for non-payment
>
> The attention of your Commissioners has frequently been drawn to the large number of persons who are annually committed to jail for non-payment of fines. The number shown by the Canadian Criminal Statistics for 1936, to have been sentenced to jail with the option of a fine was 9,593, but statistics are not available to show how many of these served sentences in jail.
>
> Under the provisions of the Criminal Justice Administration Act passed in England in 1914, the Court is obliged to allow time for payment of fines and for investigation of inability to pay.
>
> During the five years ending in 1913, the average number of persons in England and Wales sent to prison annually for default in payment of fines was 83,187. For a similar five year period ending in the year 1930 the average number of persons admitted to prison for non-payment of fines was 12,497. While the difference may not be entirely accounted for by the operation of the statute, it is no doubt largely responsible for the results. The matter was the subject of an extensive investigation and report by a departmental committee in England in 1934. The report resulted in the enactment of the Money Payments Act (Justices Procedure Act) of 1935. The Act makes further provision for the investigation of the means of the defaulter when time is allowed for payment. Supervision of defaulters under 21 years of age is made obligatory, except where the court is satisfied that it is undesirable or impracticable. The statute provides that no one is to be sent to jail for non-payment of a fine unless it can be shown that he might reasonably be expected to pay such fine. This Act came into force on January 1, 1936, and the results of its first year of operation are shown by a substantial reduction in imprisonments for non-payment.

The following statement was made by the Home Secretary, Sir John Simon, in the English House of Commons, on February 4th, 1937:

"The number of committals to prison in default of payment of moneys during 1935, as compared with 1936, were as follows:

Number of persons imprisoned	1935	1936
(1) In default of payment of fines	10,825	7,424
(2) For failure to pay sums due under wife maintenance orders	2,324	1,876
(3) For failure to pay sums due under affiliation orders	1,300	859
(4) In default of payment of rates	2,118	1,464
	16,567	11,623"

Your Commissioners recommend that the principle embodied in these English statutes should be introduced into Canada.

Imprisonment for non-payment, when the convicted person has not the means or ability to pay, is, in fact, imprisonment for poverty. The injustice of such a law is patent. The poverty-stricken man is punished more severely for the commission of the same offence than the man with means. Your Commissioners are of the opinion that many recidivist criminals often receive their first education in crime upon being committed to prison for non-payment of fines.

It should be noted that the Juvenile Delinquents Act 1929, contains provision for the instalment payment of fines.

7. In our opinion the sections of Bill H8 that deal with sex offences were framed without sufficient consideration being given to the knowledge of human sexual behaviour collected by the social scientists over the past few years. These scientific studies have uncovered information regarding the causality and frequency of certain sexual habits presently defined as criminal offences which raises questions as to the wisdom of the laws covering these matters. This is well illustrated by Section 661 of Bill H8 which provides that a person may be deemed to be a sexual psychopath and sentenced to a term of preventive detention of indeterminate length, *without any provision for treatment.* It may be necessary for the protection of society and for the protection of the offender himself that certain dangerous sexually maladjusted persons be kept in detention, but if the offenders are recognized as ill persons, treatment should be provided. The fact that there have been only eight convictions under the corresponding section of the present Code would indicate the provision is unsatisfactory. In the Committee's opinion the provision is loosely framed and represents a real danger to the liberty of the individual. In our opinion it should either be omitted from the Act or amended.

The Committee would like to call attention to the Interim Report of the Committee on the Sex Offender, published by the Canadian Penal Association in 1948. This Report introduces some of the problems that are peculiar to Canada, as well as dealing with some of the more generic issues.

The Committee knows of no thorough study of the sex offender prepared in Canada, and believes that without such a study good legislation covering this difficult matter cannot be framed. *We therefore recommend that a Royal Commission be set up to study further the whole matter of the sex offender and to make recommendations thereon to the Federal Government. This Royal Commission should include in its membership representatives of education, law, medicine, psychiatry, psychology, religion, social work and sociology.*

A number of similar studies have been undertaken by some of the United States. The following appear to be of particular interest:

Michigan. *Report of the Governor's State Commission on the Deviated Sex Offender.* 1951

New Jersey State Commission. *The Habitual Sex Offender.* 1950

New York, Commissioner of Corrections. *Report on Study of 102 Sex Offenders at Sing Sing Prison.* 1950

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament
1952-53

SPECIAL COMMITTEE
ON
BILL No. 93 (LETTER O of the SENATE)

"An Act respecting The Criminal Law", and all matters pertaining thereto

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

March 17, 18, 20, 24, 25, 30, 31, 1953

WITNESSES:

Dr. J. D. M. Griffin, Director General, and

Dr. Kenneth Gray, of the Canadian Mental Health Association;

Mr. Nelson Thibault and Mr. L. Robinson, of the International Union of Mine, Mill and Smelter Workers (Canadian Section).

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

CORRECTION

Paragraphs 1, 2, 6, 7 and 8 on page 64 of the evidence should be corrected to read as follows:

"Mr. MYERSON: Mr. Chairman and Members of the Committee: The idea of protecting ethnic groups against defamation is not new in this world. It has been introduced in other countries and, in particular, in some of the states in the United States. As you know, they have state criminal codes as well as federal codes. Seven of their states have introduced laws against group defamation. Generally speaking, the concept of law dictates every lie which causes harm to society should be outlawed. Unfortunately, in most of the common law countries, the lie which is malicious, which is harmful, which hurts ethnic groups has not been ostracized and outlawed in the same manner as it has been done in other sections of the Criminal Code, such as the case of publication of false statements on advertisements, or statements which are submitted to banks, which contain falsehoods in order to obtain money fraudulently. These latter lies are ostracized. But here too, in our country, unfortunately, the concept prevailed that any statement made against an ethnic group is protected, whether it is true or false. The statement which will cause harm to ethnic groups, even though it is false, is not outlawed.

Other countries have introduced these group libel laws, as we call them, as for example in the United States there are seven such states of which I know four specifically, Indiana, Massachusetts, New Hampshire and Illinois, which have introduced group libel laws to protect ethnic groups from these vicious attacks. There are also such countries as Denmark and Sweden.

Mr. MYERSON: That is not the one to which I am directing my attention. The other one is "the incitement to violence", the one I speak of is "the publishing of a statement which is false and which hurts the public interest". I am directing my attention to the lie, the wilful lie which causes harm to ethnic groups. The remedy to that type of lie has been introduced, as already said, in a number of the United States and in some countries.

As a matter of fact it is interesting to recall that the one who prepared our present law on defamatory libel, that is the defamation of an individual, was Lord Campbell—in the year 1843. In dealing with this subject, defamatory libel, also known as Lord Campbell's Act, he indicated that there should be a law directed against the libeling of groups. I would refer you to King's Law of Defamation, page 126, where this matter is discussed.

It is strange in a country such as England, where the people are more homogeneous than in Canada, even at that time in 1843, Lord Campbell developed the concept of two types of defamatory libel, the libeling of the individual and the group libel. A fortiori in Canada now, where we have a vast number of different groups, religious and ethnic groups, where great harm can be done to such groups, there is good reason for introducing the section which we submitted to you, namely . . . "

MINUTES OF PROCEEDINGS

House of Commons, Room 268,
TUESDAY, March 17, 1953.

The Special Committee appointed to consider Bill No. 93 (Letter O of the Senate), An Act respecting the Criminal Law, and all matters pertaining thereto, met at 10.30 o'clock a.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Carroll, Churchill, Garson, Gauthier (*Lac St. Jean*), Laing, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy and Robichaud.

In attendance: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Wednesday, March 11, its clause by clause study of Bill 93, An Act respecting the Criminal Law.

Clauses 436, 437, 439 to 461 and 463 to 467 of the said Bill were passed.

Clauses 435, 438, 462 and 468 of the said Bill were allowed to stand.

After some discussion, it was agreed that the Committee hold an additional sitting this week on Friday, March 20, 1953, at 10.30 o'clock a.m.

At 12.30 o'clock p.m., the Committee adjourned to meet again tomorrow (Wednesday, March 18) at 3.30 o'clock p.m.

WEDNESDAY, March 18, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. D. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Carroll, Churchill, Garson, Henderson, Laing, MacInnis, MacNaught, Gauthier (*Lac St. Jean*), Macnaughton, Montgomery, Noseworthy and Robichaud.

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice.

The Committee considered a report of the Steering Sub-Committee which on motion of Mr. Henderson was adopted unanimously and read as follows:

TUESDAY, March 17, 1953.

The Sub-Committee met today at 3.30 under the Chairmanship of Mr. Don. F. Brown, M.P., and were also present Messrs. Henderson, Laing, Noseworthy and Robichaud.

The Sub-Committee had before it a number of communications, all pertaining to Bill 93, An Act respecting the Criminal Law. These will be included in a general analysis which shall be placed before the Committee when the various clauses of the Bill which were stood over will be reconsidered.

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A number of briefs were received from the following: International Union of Mine, Mill and Smelter Workers; Labour Youth Federation; Canadian District No. 10 International Fur and Leather Workers Union.

The Sub-Committee recommends that in the case of the first named, a representative of the said Union be invited to appear before the Committee on Tuesday, March 31, in support of the brief already at hand. In the case of the other two groups, the Sub-Committee has carefully analysed the contents of the respective briefs and find that neither one reveals new issues apart from those which have been presented to the Committee by national and other organizations, therefore, the sub-committee is of the opinion that no purpose would be served in inviting representatives from the organizations to appear before the Committee.

Requests for personal appearance have also come from the Canadian Restaurant Association and from the Civil Liberties Committee (Ontario Section) of the Canadian Bar Association. The sub-committee recommends that these two groups be invited to send briefs at the earliest possible date and, should the contents thereof raise new issues which have not already been fully discussed on other occasions before the Committee, the representative from these groups may then be invited to appear.

The Committee then resumed from Tuesday, March 17, consideration clause by clause of Bill 93, "An Act respecting the Criminal Law".

Clauses 469 to 480, 482 to 509 and 512 to 580 of the said Bill were severally considered and passed.

Clauses 481, 510 and 511, after some discussion thereon, were allowed to stand.

At 5.10 o'clock p.m., the Committee adjourned to meet again at 10.30 o'clock a.m., Friday, March 20, 1953.

FRIDAY, March 20, 1953.

The Committee met at 10.30 o'clock a.m. The Chairman, Mr. D. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Carroll, Churchill, Garson, Laing, MacInnis, MacNaught, Montgomery, Noseworthy and Robichaud.

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice.

The Committee resumed from Wednesday, March 18, consideration clause by clause of Bill 93, "An Act respecting the Criminal Law".

Clauses 581 to 587, 589, 590, 591, 593 to 627, 630 to 637, 639, 640 and 643 to 658 of the said Bill were severally considered and passed.

Clauses 588, 592, 628, 629, 638, 641 and 642, after some discussion thereon, were allowed to stand.

At 12.30 o'clock p.m., the Committee adjourned to meet again at 10.30 o'clock a.m., Tuesday, March 24.

TUESDAY, March 24, 1953.

The Committee met at 10.30 o'clock a.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Cannon, Carroll, Garson, Laing, MacInnis, Gauthier (*Lac St. Jean*), Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice.

The Committee resumed from Friday, March 20, consideration clause by clause of Bill 93, "An Act respecting the Criminal Law".

Clauses 659 to 689, 692 to 696 and 699, also Schedule to Part XXII of the said Bill were severally considered and passed.

Clauses 690, 691, 697 and 698 were, after some discussion thereon, allowed to stand.

At 12.40 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Wednesday, March 25.

WEDNESDAY, March 25, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Cannon, Carroll, MacNaught, Macnaughton, Montgomery, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice.

The Committee resumed from the previous day consideration clause by clause of Bill 93, "An Act respecting the Criminal Law".

Clauses 700 to 706, 708 to 725, 727 to 744, also clause 748 and forms Nos. 1 to 45 set out under Part XXVI, were passed.

Clauses 707, 726, 745, 746 and 747 were allowed to stand.

The Schedule to Part XXIV (Fees and Allowances) of the Bill, with the exception of Items 20, 25, 26 and 27 which were stood over, was passed.

The following Report of the Steering Sub-Committee was read and on motion of Mr. MacInnis was unanimously adopted:

TUESDAY, March 24, 1953.

The sub-committee met this day at 5.00 o'clock p.m., under the chairmanship of Mr. Don. F. Brown and were also present the following members, namely: Messrs. Cannon, Henderson, MacInnis, Macnaughton, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. J. C. Martin, Q.C., and the Clerk of the Committee.

Five briefs, submitted by the following, were examined as to their contents:

League for Democratic Rights—Winnipeg Chapter

Student Christian Movement Study Group, Carleton College

Civil Liberties Committee (Ontario Section) Canadian Bar Association

National Council of Women of Canada

Canadian Mental Health Association.

The sub-committee recommends that the request from the Canadian Mental Health Association, whose brief introduces new issues, that their representatives be heard in support thereof, be granted and that the hearing take place at the regular sitting of the Committee on Tuesday morning, March 31, 1953.

A number of telegrams and other communications from the organizations concerned and other sources, asking reconsideration of the requests, formerly rejected, of International Fur and Leather Workers Union (Canadian District No. 10) and of the National Federation of Labour Youth to appear before the Committee in support of their respective briefs, were read. After extended discussion on the said requests, and further study of the said briefs, the sub-committee again came to the conclusion that neither one of these briefs introduce new issues apart from those which have been presented to the Committee by national or other organizations and that no apparent purpose will be served in inviting a representative from the organization concerned to appear before the Committee in support of the material contained in the briefs. For these reasons, the sub-committee reiterates its recommendation adopted by the main Committee on Wednesday, March 18, to the effect that these requests be not granted.

The sub-committee also examined a number of communications from various sources, relating to the provisions in whole or in part of Bill 93, An Act respecting the Criminal Law. The sub-committee will include these in the final analysis of all representations received by the Committee which will be submitted after March 31 when all submissions are completed.

The Chairman read the following communiqué:

SPECIAL COMMITTEE ON BILL 93, AN ACT RESPECTING THE CRIMINAL LAW

Statement by the Chairman, Mr. Don. F. Brown, M.P.

The Bill to revise the Criminal Code is the work of a Commission appointed by Order in Council. The work of revision continued from early in the year 1949 until 1952 whereafter a Bill was introduced to the Senate of Canada as Bill H8. The said Bill was referred to the Senate Banking and Commerce Committee, who in turn appointed a Subcommittee to study the Bill clause by clause. The main committee accepted briefs and heard oral representations. The Bill was before the Committee during two sessions of parliament and having been reported to the Senate, and accepted there, it is now before the House of Commons as Bill 93, and has been referred to this special Committee for considration.

This Committee has been holding regular sittings since its Order of Reference on January 23, 1953.

One of its first orders of business was to resolve that those national organizations desirous of making representations to assist the Committee be asked to present written briefs, and where it was considered that further clarification might be helpful that they be invited to appear before the Committee to make oral representations. Accordingly, the following organizations have been heard:

1. Canadian Congress of Labour.
2. Trades and Labour Congress of Canada.
3. Canadian Jewish Congress.
4. Premium Advertising Association of America, Inc.
5. League for Democratic Rights.
6. United Electrical, Radio and Machine Workers of America.
7. Congress of Canadian Women.
8. Association for Civil Liberties.
9. Canadian Welfare Council.

It is also proposed to hear from:

1. International Union of Mine, Mill and Smelter Workers (Canadian Section).
2. Canadian Restaurant Association.
3. Canadian Mental Health Association.

The purpose of accepting briefs and hearing oral representations has been to assist the Committee in revising the provisions of the Criminal Code so that a report may be made to the House of Commons for ratification without unnecessary delay, and not for the purpose of giving publicity to individuals or associations desiring to be heard.

All briefs, letters or other communications submitted have been analysed and are being studied by the Committee and are related to the clauses of the Bill to which they refer.

Most organizations have accepted the decision of the Committee and have not insisted on being heard but have been content with submitting briefs. Other organizations have not accepted the Committee's decision but, in addition to submitting briefs, have insisted upon being heard. As the material submitted by the latter groups was found to be similar to that put forward by certain organizations already heard, it was felt that no useful purpose would be served in acceding to their requests.

On motion of Mr. Robichaud, seconded by Mr. Cannon, it was agreed that copies of the above communiqué be given to the Press and that it be made part of the printed record of the Committee.

Mr. Robichaud moved that, hereafter, deliberations of the Committee on the many clauses that have been stood over for further consideration, be reported verbatim. It was agreed that this matter be referred to the Steering Sub-Committee for study and report.

At 5.45 o'clock p.m., the Committee adjourned to meet again at 10.30 o'clock a.m., Tuesday, March 31.

TUESDAY, March 31, 1953.

The Committee met at 10.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Cameron, Carroll, MacInnis, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice; Dr. J. D. M. Griffin, General Director of the Canadian Mental Health Association; Dr. Kenneth J. Gray, University of Toronto, Chairman of the Committee on Revision of the Criminal Code of the Canadian Mental Health Association.

The Chairman informed the Committee that the representatives of the Canadian Restaurant Association were unavoidably prevented from attending the Committee on this day and it was agreed that the hearing might be arranged at a later date. Mr. Montgomery, a member of the Committee, spoke on a question of privilege in relation to a newspaper report. Dr. Griffin presented the brief (Appendix A) on behalf of the Canadian Mental Health Association and he and Dr. Gray were questioned thereon.

At the conclusion of their testimony, the two witnesses were thanked by the Chairman.

Word having been received of the delayed arrival of the train on which were the delegation of the International Union of Mine, Mill and Smelter Workers (Canadian Section), it was agreed that the Committee would sit again later in the day.

The Committee continued for a brief period *in camera*.

It was agreed that the Committee sit on April 9th and 10th, following the Easter Recess.

At 12.15 o'clock p.m., the Committee adjourned to meet again at 4.30 o'clock p.m. this day.

Room 430, TUESDAY, March 31, 1953.

The Committee met at 4.30 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Carroll, Churchill, MacInnis, Noseworthy and Robichaud.

In attendance: Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice and a delegation from the International Union of Mine, Mill and Smelter Workers (Canadian Section), composed of the following: Mr. Nelson Thibault, Canadian representative of the International Board of the said Union; Mr. L. Robinson, Research Director; Mr. George Herman, international representative in Canada; Mr. William Muir from Nelson, British Columbia, representing western Canada; Mr. L. James, local union, Port Colborne, Ontario; Mr. M. Solski, president, local union, Sudbury, Ontario; Mr. Boyuk, a member of the local union, Sudbury, Ontario; and Mrs. Elizabeth Gunther, representative of the Canadian Ladies Auxiliary of the International Union, Sudbury, Ontario.

Mr. Robinson presented the brief on behalf of the Union (See Appendix B) and both Mr. Robinson and Mr. Thibault were questioned thereon. Mrs. Gunther also spoke briefly. The members of the delegation were thanked by the Chairman for their attendance before the Committee.

At 6.15 o'clock p.m., the Committee adjourned to meet again at 11.00 o'clock a.m., Thursday, April 9, 1953.

ANTOINE CHASSÉ,
Clerk of the Committee.

EVIDENCE

MARCH 31, 1953.
10.30 a.m.

The CHAIRMAN: Would you come to order gentlemen, please?

Today we have two delegations. We were to have had three—The Restaurant Association of Canada and the Canadian Mental Health Association and the United Mine, Mill and Smelter Workers.

The Restaurant Association was to have been represented by Mr. Sorenson. Unfortunately Mr. Sorenson had an emergency call to Vancouver where I believe he resides and was not able to come. We may have to make some other arrangements and that will be discussed this afternoon in the subcommittee.

The Mine, Mill and Smelter Workers are on a train somewhere between here and Sudbury and they will not arrive until, it is now expected, 11.40. Under the circumstances we may have to either miss our lunch hour or make some arrangements for this afternoon. I think since they have been good enough to come this distance to help us in our deliberations we should try to make ourselves available to them.

We also have the Canadian Mental Health Association which is represented here this morning. Mr. Montgomery has a matter he would like to bring up.

Mr. MONTGOMERY: Mr. Chairman, on a matter of privilege. At our last meeting when we were discussing fees under section 744 and I am reported to have said—I had better read this as reported.

The CHAIRMAN: What are you reading from?

Mr. MONTGOMERY: The *Telegraph Journal* of Thursday, March 26. This is a leading newspaper in New Brunswick.

The CHAIRMAN: Published in what town?

Mr. MONTGOMERY: Published in Saint John, New Brunswick. I had better read the first paragraph which I have no objection to.

> Mr. Montgomery protested against another section which allows peace officers 20 cents a mile both ways in serving summons or subpœna or making an arrest while court witnesses get only half that.

I have no complaint on that. In the next paragraph it says:

> He said this was widely interpreted in New Brunswick as a method for getting more money out of the municipalities for the R.C.M.P.

Mr. Chairman, I did not make that statement. I said in connection with the first question this was interpreted by the sheriffs and constables. I did not even use the word peace officers or mention the R.C.M.P. in my statement in any shape or form, nor was this my interpretation of the 20 cents a mile fee under that section on sheriffs and constables. The matter was inserted in the bill and when it came before the municipalities there was a discussion. But in discussion in this committee I did not interpret the meaning of it.

As a matter of fact, I think in fairness to the R.C.M.P. it should be said they seldom ever collect these fees. I would not like to infer they had tried to get fees under that particular section.

The CHAIRMAN: I have no doubt due note will be taken of your comments, and they will receive the necessary publicity. Mr. Cameron has something he wishes to raise.

Mr. CAMERON: I have two wires dated March 20, from the president and secretary of the Toronto joint board representing locals 35, 40 and 65 of the International Fur and Leather Workers Union, and also from officers representing local 58 of the same union in which they request that their unions be given a hearing on the matter of bill 93 and I am calling that to your attention. I was not here last week to do so.

The CHAIRMAN: If you will let us have these wires. The matter has been taken into consideration. Thank you very much Mr. Cameron. The matter has already been considered and a suitable announcement has been made.

We have this morning the Canadian Mental Health Association represented by Dr. J. D. M. Griffin, who is general director of the Canadian Mental Health Association, as well as Dr. Kenneth Gray, professor of forensic psychiatry at the University of Toronto. He is also chairman of the committee on forensic psychiatry of the scientific planning committee of the Canadian Mental Health Association.

Mr. CARROLL: Where is the Doctor from?

The CHAIRMAN: Doctor Griffin is to make the presentation. He is from Toronto. Doctor Gray is also from Toronto.

Doctor Griffin, would you have something to say in connection with your brief that you have submitted as of March 10?

Dr. J. D. M. Griffin, General Director, Canadian Mental Health Association, called:

The WITNESS: Mr. Chairman and gentlemen, I would first like to express on behalf of the Canadian Mental Health Association our great appreciation of the courtesy you have extended to us of meeting with you briefly this morning to bring to your attention some of the things we have been concerned with in the Canadian Mental Health Association. I should explain, first of all, that we are a voluntary health association. It is an association of citizens as well as doctors and scientists, nation-wide. We have provincial bodies in some six or seven of the provinces now, and the scientific and technical aspects of the program of this association is directed by what we call our scientific planning council, and it is the scientific planning council that has brought this brief to you this morning, and which I now present.

The membership of this scientific planning council is listed for you on the last page of this brief, and, Mr. Chairman, I would call your attention to the membership of this council. It will give you some idea of the level and scientific competence which lies behind the suggestions that we should like to bring to your attention this morning. The chairman is Dr. D. Ewen Cameron—I won't list them all.

The CHAIRMAN: For your information, Doctor Griffin, these names will all be published in the report. This part of your brief will be published.

The WITNESS: May I just call attention, however, to one or two others to show the wide variety of sciences represented. There is, for instance, Professor Oswald Hall, Ph.D., who is associate professor of sociology and anthropology, McGill University, Montreal; Dr. S. R. Laycock, Ph.D., who is an educationist from Saskatchewan; Dr. D. G. McKerracher, who is in charge of mental health services of the province of Saskatchewan; Dr. J. Saucier, prominent neurologist from Montreal; and Dr. A. B. Stokes as well as Dr. Kenneth G. Gray, who accompanies me here this morning as chairman of the committee on forensic psychiatry of this scientific planning council.

Now, sir, our concern with reference to the proposed revision of the Criminal Code has been limited to certain aspects of the Code where our medical and

psychiatric knowledge, experience and research findings have made it possible for us to, we feel, make relevant comments and criticisms, criticisms of a kind which are not available from other sources commonly. I am not sure, sir, whether it would be helpful if I read this brief. It is not very long.

The CHAIRMAN: What is the pleasure of the committee?

Agreed.

Shall we stop at certain intervals and have questions submitted by the committee? We would like to be through here by, say, 11.30.

Agreed.

Proceed then, Doctor, if you will, please.

The WITNESS: The scientific planning council of the Canadian Mental Health Association comprises psychiatrists and social scientists of established reputation from all parts of Canada. A list of the members of this council is attached to this brief. At the annual meeting of the council, held in Toronto on February 14 and 15 the proposed revision of the Criminal Code was studied. It was unanimously decided to make a submission to the appropriate parliamentary committee regarding certain parts of the proposed revision.

The Criminal Code of necessity concerns itself with a very wide and complex area of human behaviour, human values, motives and methods of control, reform and protection. The scientific planning council of the Canadian Mental Health Association in this brief has limited its comments and suggestions to those sections of the proposed Code where medical and psychiatric experience is particularly relevant. Psychiatric research and the practice of psychiatry in the courts and elsewhere has resulted in a body of experience upon which constructive criticism of parts of the Criminal Code may be based, and the criticism is of a kind which is not available elsewhere. The following comments respecting the proposed revision of the Criminal Code are restricted to these areas: first, abolition of terms such as "insanity, natural imbecility, diseases of the mind, etc."

The diagnosis and treatment of mental illness have advanced to a stage where archaic terms should be abandoned in favour of words which more accurately describe mentally ill people and their disabilities.

In the year 1935 the legislature of Ontario abolished such terms as "lunatic, insane, feeble minded, idiot" and replaced them by "mental illness, mentally defective" and similar modern descriptive nouns and adjectives. Subsequently a number of other provinces have made similar changes. This means that doctors, patients and their relatives and friends no longer use archaic terms like "insane" and speak of these patients and their illnesses in modern language. Likewise the courts are using the more modern terms in the various judicial processes such as the custody of patients, administration of their estates and related matters.

It is noteworthy that the Criminal Code itself has begun to incorporate the modern terminology. For example in clause (C) (i) of section 451 of the revised Criminal Code the words "mentally ill" appear. In section 527 (1) both "insane" and "mentally ill" are used. Both these terms appear.

The old terms, however, persist. The continuation of these obsolete terms in the Criminal Code may result in an unnecessary obscurity in the administration of justice. Doctors who are accustomed to the use of modern terms such as mental illness may find difficulty in giving accurate evidence in criminal cases where terms such as insanity are employed. Likewise judges, magistrates, juries and others entrusted with the administration of justice would have a clearer picture of the issues involved in a particular case if the terminology in the Criminal Code were more in keeping with the terms used elsewhere

in the administration of justice. If this recommendation were adopted it would mean deleting the terms "insane, insanity, imbecile, etc.", and substituting for them the words "mentally ill, mentally defective, etc."

In section 16 of the proposed revision of the Criminal Code (section 19 of the present Code) the following changes would be necessary:

Subsections 1 and 2—substitute the following:

> No person shall be convicted of an offence by reason of an act done or omitted by him while he was mentally ill or mentally defective to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, or of knowing that such an act or omission was wrong.

Subsection 3—It is recommended that this subsection be omitted. This section in the proposed revision reads as follows:

> A person who has specific delusions but is in other respects sane, shall not be acquitted on the grounds of insanity unless the delusions caused him to believe in the evidence of a state of things that, if it existed, would have justified or excused his act or omission.

My point here, gentlemen, is that this subsection describes a mental state which in practice does not exist. Any defence which might be raised under this subsection could be dealt with adequately under subsection 1, or the McNaghten Rules as they are commonly referred to.

Subsection 4—It is recommended that the word "sane" in this subsection be omitted and the words "mentally competent" be substituted therefor.

In section 619 (b) of the proposed revision similar changes in nomenclature would be required. Also sections 523-527 which are sections 966-970 of the present Code.

May I pause there, Mr. Chairman, for a minute. Perhaps there are questions on this part of it.

The CHAIRMAN: Any questions:

Mr. SHAW: Mr. Chairman, on page 3, where you say "in practice", do you mean "in fact" when you say "in practice". Would you care to elaborate on that?

The WITNESS: I wonder if I might refer that question to my colleague, Dr. Kenneth Gray. I should mention that Doctor Gray is both a psychiatrist, a doctor that is, and a lawyer, fully qualified.

Dr. KENNETH GRAY: I would agree. The use of the words "in fact" would convey the meaning quite properly. What I think we intend to say in the brief is that no psychiatrist has ever seen a patient such as is described in this section.

Mr. SHAW: Thank you.

Mr. CARROLL: Is there the same degree of mental illness in a person whose lawyer says that he is insane—is the same degree of mental illness there? Is it necessary to prove the same degree of mental illness there as it is in the case of a person who has delusions about a thing?

Dr. GRAY: If I may speak to that point. Delusions are just one symptom of insanity or mental illness. Delusions exist in some patients who are mentally ill. There are many patients who are mentally ill who do not exhibit delusions. Delusions might be a symptom just as fever might be a symptom of a physical illness present in some cases and not present in others, and I think the over-emphasis on delusions in subsection 3 of the proposed revision arises out of the fact that that principle in the law dates back to at least the year 1943, when the McNaghten Rules were established, and at that time delusions played a very prominent part in the thinking of doctors and others who dealt with mental illnesses in that day and age. Delusions are not as prominent a feature of modern psychiatry as they were a hundred years ago.

Mr. CARROLL: Well, there are two pleas which an insane person may make when he is charged with a crime. The first is that he was insane at the time—I am using the words of the Code—insane at the time he committed the offence, and, secondly, that he is in such a condition of insanity or mental illness now that he is not capable of giving proper instructions to his counsel or solicitor and, therefore, he gets away, if that can be proven. Will you not be making there some distinction between your idea of delusions and ordinary insanity?

Dr. GRAY: Well, the first of these distinctions, if I may use the number of the sections of the present Code, with which I am more familiar rather than the numbers in the new bill, the first defence you speak of, I take it, is the one that is dealt with in section 19 and which is a modification of the McNaghten Rules, and the scientific council has placed in the brief a specific re-enactment of section 19 which it recommends. The second defence you speak of I think is dealt with in section 967 of the present Code and there, again, the Canadian Mental Health Association would recommend that the word "insanity" be struck out and the words "mentally ill" or "mentally defective" substituted.

Mr. CARROLL: That is, he is mentally defective at the time of trial and not able to give instructions or understand the situation he is in?

Dr. GRAY: On account of mental illness or mental deficiency, incapable of directing a defence.

Mr. CARROLL: That is why I brought it to your attention. You did not mention section 967 in your brief, did you?

Dr. GRAY: That is right, but I should make it clear at this point that that kind of substitution should be made throughout.

The CHAIRMAN: Mr. Macnaughton, have you a question?

Mr. MACNAUGHTON: I would like to say that my questioning is to elicit information, not to be critical, of course. Would it be correct to say, Doctor, that psychiatry is a quasi science? You would hardly call it an exact science at the moment?

Dr. GRAY: No, I would agree with that.

Mr. MACNAUGHTON: And if that is so, then I question your recommendation on page 2 of your brief, where you say, delete the terms "insane, insanity, imbecile" and substitute "mentally ill, mentally defective", and all the rest of it. As I understand it, the terms "insane" and "insanity" in the bill have acquired definite meanings over the years in a large body of case law. Those terms automatically mean something to lawyers, judges and the people generally. If we were to substitute these words "mentally ill" and "mentally defective", their interpretation would have to come from quasi scientists, from psychiatrists, and it seems to me you would be substituting the doctor in lieu of the judge. In other words, the judge would be forced to refer the matter to the experts, and the experts, who are quasi scientists and who could be wrong, would seem to be usurping the position of the judge and the function of the ordinary men, the lawyer, the Crown attorney and the ordinary juror. It seems to me it would be going quite far in taking these functions out of the hands of justice and substituting a quasi expert in the position of judge and jury. It would be rather interesting to get your comments on that.

The CHAIRMAN: Mr. MacInnis.

Mr. MACINNIS: Mr. Chairman, might I ask this question and the doctor can comment on it at the same time. How does a judge today come to a decision that a person appearing before him is sane or insane? What evidence does he require outside of his own observations?

Dr. GRAY: Perhaps I can speak to both these questions together. I will deal with the second question first. Of course the trial judge and jury in

coming to a decision as to the sanity or insanity of an accused person is usually assisted by expert opinion. There are usually one or more doctors who will give evidence at the trial in addition to the evidence of other witnesses.

Mr. MACINNIS: Including psychiatrists?

Dr. GRAY: Yes, because the jury does not rely only on the evidence of medical witnesses for their decision, they hear the evidence of many other witnesses who have observed the conduct and behaviour, the conversation of the accused person. Now, that suggestion we have made here in this brief would not change that.

Mr. MACNAUGHTON: It would change the emphasis, though.

Dr. GRAY: The same sort of query was raised at the time the provincial legislation was changed, that is, that a body of case law had been built up over the centuries interpreting the word "insane" and the words such as "insanity" and "lunatic", and there were some observers at that time who raised the same question that Mr. Macnaughton has raised here this morning, that is, that you are going to destroy the validity of that volume of case law. I think it has not worked out in that way. The term "lunatic", for example, is no longer used. We have no Lunacy Act in most provinces any more. We have acts covering care of mental incompetents, and the judges presumably found no difficulty in interpreting these new terms, assisted, where necessary, by medical evidence as they were assisted before, so that actually I think I can say with reasonable assurance no difficulty has arisen in the courts in interpreting terms such as "mentally ill, mentally defective".

Mr. NOSEWORTHY: Doctor, you base your request for a change in the Criminal Code of this terminology on the fact the terminology has been changed in the provincial jurisdictions, where this criminal law is administered. What were the valid reasons, or the reasons that were given for changes in the provincial field, and are these reasons not just as applicable to the Criminal Code as they were to the provincial legislation? That is, aren't there more basic reasons for requiring these changes than the mere fact of bringing the Criminal Code in line with the provincial nomenclature?

Dr. GRAY: Well, sir, the changes in provincial legislation were made, I take it, partially for reasons of this sort, in recognition of the fact that people who suffer from these illnesses were sick people, they were ill people, whereas the older terms carried with them somewhat of a stigma, shall we say; and likewise the institutions for looking after these people had changed over the years and had become hospitals rather than mere jails or custodial institutions, and I think the change in terminology was intended to reflect the change in conditions, that is, it was a recognition of the fact that these were ill people who were to be treated in hospitals rather than merely dangerous people who needed to be locked up, which was the innuendo in many of the older terms. Now, then, if that were so, I think these arguments also are relevant to the language used in the Criminal Code, plus one other factor which I think is of some importance, and that is that when a psychiatrist is asked to testify in a criminal court it is surely his duty and his obligation to give the judge and the jury as clear a picture as he can of the mental condition of the accused person, and if he can do that in simple direct language, such as in the use of terms like "mentally ill", is that not preferable than for him to try to couch his evidence in words which lead to considerable hair-splitting and ambiguity. I mean, a medical witness under the present Criminal Code will be asked a question like this: "Doctor, what is the difference between insanity and mental illness?" or, "How do you define insanity?"

Mr. CARROLL: He would not be asked such questions as that because the Code defines what insanity is.

Dr. GRAY: Well, it may be defined by judicial interpretation but not in the Code itself.

Mr. CARROLL: Yes, the Code tells us exactly what a person must prove in order to have his plea of insanity carry.

Dr. GRAY: At any rate, sir, I do suggest that.

The CHAIRMAN: Would you like to give that citation, Mr. Carroll?

Mr. CARROLL: It is in the defences. It is one of the old sections.

Mr. NOSEWORTHY: Have you any knowledge, Doctor, of what the relative situation is regarding Criminal Codes of other countries?

Dr. GRAY: I am afraid not; no, I cannot in the limited time at our disposal say anything useful about that. I am afraid I would not be able to comment on the comparative situation elsewhere, except to say that the American Psychiatric Association has gone on record as advocating this same type of change in the wording of the criminal law in the United States.

Mr. NOSEWORTHY: You do not know whether they have been successful or not?

Dr. GRAY: No, I do not, because, as you know, over there the criminal law is a matter within the jurisdiction of the 48 states, and you would have to survey the enactments of the 48 individual states to find out.

Mr. MACINNIS: Could I ask one more question, Mr. Chairman? In the quotation of subsection 3 of clause 16, the revised section, the brief reads:

> A person who has specific delusions but is in other respects sane, shall not be acquitted on the grounds of insanity unless the delusions caused him to believe in the evidence of a state of things that, if it existed, would have justified or excused his act or omission.

What do you mean by that, that a person who has specific delusions is not in other respects sane, or do you mean that a sane person does not have specific delusions?

Dr. GRAY: I see. What we meant was that if a person has delusions he will not be in other respects sane.

Mr. ROBICHAUD: I am concerned with the recommendation contained in page 3 of the brief with respect to specific delusions, too. The doctor is quite aware, I am sure, of delusions of grandeur which are often brought to the fore, and delusions of persecution. You have run across these specific delusions, Doctor?

Dr. GRAY: Yes.

Mr. ROBICHAUD: You agree with what I am going to submit to you now, that insanity under our present law as it now stands is a good defence when it is shown, first, that the mind of the accused was affected to such an extent that at the time of the commission of the offence he was not able to realize that he was doing wrong; or, secondly, that though sane in other ways he was labouring under certain specific delusions which caused him to imagine a condition of affairs which, had it been so, would have justified his act. This, I submit, is the present law.

Dr. GRAY: Yes.

Mr. ROBICHAUD: You agree with that statement of the law as it now stands?

Dr. GRAY: With one proviso. I think there is one additional ground for acquittal: that is, if the accused is insane to such an extent that he did not appreciate the nature and quality of the act that he committed, or that the act was wrong; that is an additional ground you did not mention.

Mr. ROBICHAUD: I would not say that this is an additional ground. It would be embodied in subsection (1), or the first part of what I have stated in my submission, but in the second part of my submission I deal with delusions, and that is what you claim we should do away with in the revision, delusions.

Dr. GRAY: That is our recommendation.

Mr. ROBICHAUD: Are you aware of the fact, Doctor, that the Court of Criminal Appeal in England—before I put that question I will ask you this. If we were to do so, that is, to follow your recommendation, we would therefore be altering the recommendations or rules laid down in the famous McNaghten case.

Dr. GRAY: That is correct; that is, our whole recommendation is to that extent a modification of the McNaghten Rules.

Mr. ROBICHAUD: Are you aware, Doctor, of the fact that the Court of Criminal Appeal in England has held that it has no power to alter the rules laid down in the McNaghten case? Are you aware of that fact?

Dr. GRAY: I would accept your statement, certainly.

Mr. ROBICHAUD: Well, it is a decided case.

Dr. GRAY: I do not know the case.

Mr. ROBICHAUD: I will cite it to you.

Mr. CARROLL: That is why we are here. The court could not do it, but parliament could do it.

Dr. GRAY: I accept your statement, sir. I am not for the moment suggesting it is not right, but I just do not know the case.

Mr. ROBICHAUD: It is in the case of Rex v. Flavelle, 19 Criminal Appeal Reports, 141. I have given you the gist of the decision. You also agree that the courts are very loath to touch in any way, shape or form the rules laid down in the McNaghten case.

Dr. GRAY: Yes, sir, I would say that is an understatement, sir.

Mr. ROBICHAUD: And now you are asking us to do away with that particular rule as laid down in the McNaghten case.

Dr. GRAY: Not do away with it, sir, modify it.

Mr. ROBICHAUD: Modify it, but I understand you would not consider specific delusions any more.

Dr. GRAY: They would be considered, usually speaking, when the person was mentally ill.

Mr. ROBICHAUD: But in the present revision of the Code.

Dr. GRAY: The accused person who is charged with a criminal offence and who showed delusions, if a plea of being mentally ill were raised, the fact that he had delusions would be relevant and would be brought out in evidence, but I do not think you need a separate subsection in the Criminal Code to deal with a person who has delusions. His case can be dealt with under a general plea that the person is mentally ill, as suggested in the brief.

Mr. ROBICHAUD: But in so doing, were we to delete this from the revision, we would be altering the rules laid down in the McNaghten case to some extent.

Dr. GRAY: If I understand the member correctly, you do not suggest that the House of Commons has no power to change the McNaghten Rules?

Mr. ROBICHAUD: I am not suggesting that, but I say we would be doing exactly that should we follow your recommendation.

Dr. GRAY: You would be modifying the McNaghten Rules.

Mr. MACINNIS: Mr. Chairman, what this delegation is asking for, I think, is quite clear, although I do not know what the McNaghten Rules are, but it says here in the brief: "Any defence which might be raised under this subsection—" that is, in the subsection as it stands now—"could be dealt with

adequately under subsection 1, or the McNaghten Rules—" I do not think that is asking for the abolition or change in the McNaghten Rules, but the McNaghten Rules as they stand now are adequate to deal with this matter. That is my interpretation of the brief.

Mr. MONTGOMERY: Reading those first two lines, this is the law as it is now: "A person who has specific delusions but is in other respects sane,..." As I understand the modern interpretation of insanity, mental illness or what you prefer to call it, that is a rather contradictory statement.

Dr. GRAY: Quite. It is.

Mr. MONTGOMERY: In other words, a person cannot be otherwise sane if he has specific delusions.

Dr. GRAY: You won't find any such person. He just does not exist.

Mr. MONTGOMERY: That is the point you want to get over to us as a committee, Doctor Gray, that such people do not exist.

The WITNESS: May I add a few words to that, Mr. Chairman. In the everyday practice of medicine, we occasionally have a tendency to say the patient is suffering from a sick heart, or a diseased heart, for example. Now, modern medicine is moving away from that kind of practice and they are speaking more now of sick people. It so happens that a sick person can have a sick heart, but it would be wrong from a medical point of view to say that a person has a fever but is in other ways healthy. Those are inconsistent ideas. So, in psychiatry a person cannot have delusions and be in other ways sane or in mental health. The delusions make him mentally unhealthy, and in that case he is mentally sick and his case can be considered under subsection (1).

Mr. MONTGOMERY: And to that extent the law as it now stands does fit in with modern practice?

The WITNESS: That is right; the McNaghten Rules were established in 1843, I think it was, at which time the understanding of mental illness was very elementary.

Mr. MACNAUGHTON: I would just like to raise this point. I do not want to be considered oldfashioned or unsympathetic, but it does seem to me an attempt to modernize this would mean at the same time substituting the so-called expert psychiatrists for the judge; the so-called psychiatrist will be called upon to make the decision which the court itself should make, and that, to me, is a very serious step to take, particularly when it is admitted that psychiatrists, being experts, being quasi scientists, can make a mistake themselves. I would sooner have the mistake made by the judge and the jury, an honest mistake, than have it made by a quasi expert.

Mr. SHAW: Mr. Chairman, is it still not a fact that if these recommendations were accepted, the court would still be making the decision?

Mr. CARROLL: I think so.

Mr. SHAW: You are not taking away the making of the decision from those who presently render the decision. I do not get Mr. Macnaughton's point on that.

Mr. MACNAUGHTON: A surgeon or a doctor called in can say to the court that the accused is suffering from this physical disease or that physical disease, which is something he can determine, but where you are dealing with a mental state it is purely a matter of opinion, and that should be referred to a judge or a jury. Your expert is called in to give his evidence, of course, but under this suggested change in the Code your expert is practically deciding the case.

Mr. MACINNIS: Well, if he is an expert psychiatrist he knows whether the person is mentally ill or not.

Mr. NOSEWORTHY: If he is an expert psychiatrist, then why should he not make the decision?

Mr. MACNAUGHTON: Psychiatrists often claim to know, but do not.

The WITNESS: I think you understand, Mr. Chairman, it is not our aim to push the psychiatrist forward as an expert who can never be wrong. Obviously, he can make mistakes, but I do not think any more mistakes will be made under this revision as suggested here than are being made now, and it will bring into line our understanding and everyday practice of medicine in this field with the Criminal Code.

Mr. ROBICHAUD: Has it not been your experience, Doctor, in court, that not only psychiatrists, but other expert witnesses as we know them, often disagree. One psychiatrist, for instance, will say one thing, and another will say another. It is a matter of opinion.

Mr. SHAW: Something like lawyers, you mean?

Dr. GRAY: I do not think there is any greater difference of opinion among psychiatrists in court trials than there is among other expert witnesses.

Mr. CARROLL: Or even doctors?

Dr. GRAY: Or engineers. I think you will find a difference in expert opinions in many trials and certain differences of opinion expressed by psychiatrists, but not any more so than in expert evidence given by surgeons or physicians or engineers or probably laywers.

Mr. ROBICHAUD: Lawyers are very seldom called as experts.

The CHAIRMAN: Shall we proceed with the gentlemen? Doctor Griffin, will you proceed please?

The WITNESS: Criminal sexual psychopaths. The present legislation is contained in section 1054A of the Criminal Code. The present subsection 6 provides that "any person found to be a criminal sexual psychopath and sentenced accordingly shall be subject to such disciplinary and reformative treatment as may be prescribed by penitentiary regulations". This seems to have been left out of the proposed revision (sections 659 and 661). It is not clear whether this omission implies that reformative treatment is no longer to be provided for these cases.

Mr. ROBICHAUD: May I interject, Mr. Chairman? It is true that these words are left out of sections 659 to 661, but if you refer to subsection (2) of section 665, you will find the provision which you claim has been omitted. Section 665 (2) reads:

> (2) An accused who is sentenced to preventive detention may be confined in a penitentiary or part of a penitentiary set apart for that purpose and shall be subject to such disciplinary and reformative treatment as may be prescribed by law. So there is the answer.

The WITNESS: Yes, I am quite aware of that, Mr. Chairman. This section deals with the general case of preventive detention, of which the criminal sexual psychopath is one example. So in a sense that does cover it. However, the larger implication of our concern with this criminal sexual psychopath business is to point out to this committee—may I just read the last paragraph of the brief.

In any event the present legislation regarding sexual psychopaths should not be regarded as final. We are quite aware that suggestions have been made to this committee that the appointment of a royal commission should be proceeded with to review this matter, but we are leaning more towards the opinion that a royal commission would be the kind of setting that would make it difficult to prevent the kind of evidence necessary for a complete understanding of this problem. Consideration should be given to a study by the

Department of Justice, if necessary, assisted by an advisory committee of persons having special knowledge and experience with these matters, which in our opinion would call forth the kind of factual testimony which is absolutely necessary, in our opinion, for the Department of Justice to take in setting up legislation. We feel that we still do not know enough to express, to recommend a definitive plan or definitive legislation for handling these problems, and that this step which was taken some time ago in the setting up of section 1054A in the present Code was a forward step, but it still should be regarded as an open question.

May I ask, Mr. Chairman, that Doctor Gray enlarge on this?

The CHAIRMAN: By all means.

Dr. GRAY: I know your time is limited, but if there are any questions I will be glad to answer them.

Mr. CARROLL: I have to say that I think Doctor Cameron is perfectly right about this suggestion about a royal commission, and if there is to be any further investigation I think he has laid the proper basis for it this morning, that is, for an investigation such as he is considering.

The CHAIRMAN: Doctor Gray, would you care to comment?

Mr. NOSEWORTHY: I think the wisest suggestion, Mr. Chairman, even with the adoption of this Code, that we could possibly recommend to the department would be the setting up of such a committee. The Minister of Justice appeared to be quite favourable to this.

The CHAIRMAN: Were you not to make some comment, Doctor Gray?

Mr. CARROLL: The doctor asked for questions.

The CHAIRMAN: I thought Doctor Griffin suggested that he make some comment.

The WITNESS: He prefers to answer questions.

Mr. MACNAUGHTON: For my own information and that of the committee, I would like to know where the scientific planning council of the Canadian Mental Health Association ties in with the medical association generally, and if you are tied in internationally with the United States equivalent.

The WITNESS: No, to both those questions, Mr. Chairman. The scientific planning council is a body within the Canadian Mental Health Association, which is a voluntary health association and has no tie-in,—affiliation,—with the Canadian Medical Association or with the American opposite number of that association. I might point out that membership in this scientific planning council is not limited to medical personnel, but it includes social scientists and every kind of discipline, although the majority are medical people.

Mr. SHAW: May I ask the witness, Mr. Chairman, if the Canadian Mental Health Association has itself carried on any rather extensive study of this question of the criminal sexual psychopath. Have you, say, a sub-committee of your body which is giving continuing thought and study to this question?

The WITNESS: The answer to that is no. Some years ago we did have an active committee studying this problem, which actually terminated in the production of a report which was one of the bits of evidence that was, I think, used initially in setting up this present section of the Code. But since then we have had no continuing committee except Doctor Gray's sub-committee on forensic psychiatry, which would be the logical committee of our organization to concern itself with this subject.

Mr. MACNAUGHTON: Is it possible, Hr. Chairman, to use the term "psychiatrist" without being a medical doctor?

The WITNESS: I do not know whether it is legally defined as much, but in practice a psychiatrist is always a medically qualified person.

The CHAIRMAN: If there are no further questions, I want on behalf of the committee to extend to you, Doctor Griffin, and to you, Doctor Gray, our sincere appreciation for your coming this distance to assist us in our deliberations. I am sure they have been most helpful, most interesting, and informative, and I want to thank you sincerely on behalf of this committee.

The WITNESS: Thank you very much, Mr. Chairman.

The meeting adjourned.

AFTERNOON SESSION

The committee resumed at 4.30 p.m.

The CHAIRMAN: If you will come to order gentlemen we will proceed with the affairs of the committee.

This afternoon we are to hear representations made by the International Union of Mine, Mill & Smelter Workers, Canadian section. Mr. Nelson Thibault is the Canadian representative on the International Board of the Union of Mine, Mill & Smelter Workers and represents district 8 which is situated at Sudbury, Ontario. Mr. Thibault, would you like to introduce your delegation.

Mr. THIBAULT: On my left, gentlemen, is Mr. Robinson, research director in Canada for our organization; behind me is Mr. George Herman, international representative in Canada of our union; Mr. William Muir from Nelson, British Columbia, representing western Canada today; Mr. L. James, of the local union of our organization at Port Colborne; Mr. M. Solski, president of our local union in Sudbury; Mr. Boyuk, a member of the same local union from Sudbury; and Mrs. Elizabeth Gunter, representing the Canadian Ladies Auxiliary of the International Union of Mine, Mill & Smelter Workers, Canadian Section, at Sudbury.

And if I may continue, Mr. Chairman and members of this committee, I would like first to express our regrets for the train having been late in arriving from Sudbury and to thank the committee for having extended the courtesy to us of arranging a later hour for this meeting. We hope that you were not inconvenienced unnecessarily. Also we are glad that we were able as a union organization, a national organization in Canada, to take advantage of the opportunity to appear before your committee on this particular question with which we deal today, the proposed amendments to the Criminal Code of Canada.

I would just briefly like to make a point that may be of informational interest to this committee. I noticed particularly that in the session of yesterday in this House a member of the Commons in speaking to Bill No. 110, dealing with the matter of establishing the Historic Sites and Monuments Board of Canada, mentioned quite elaborately the historical significance of an organization emanating from western Canada known as the Federation of Miners. I might just point out that the Western Federation of Miners established in 1893 is the predecessor of the organization which we are representing today. The International Union of Mine, Mill & Smelter Workers was a reformation of the Western Federation of Miners and that reformation took place on October 17th, 1916. In brief our history dates back to 1893. I believe that the remarks that the member of the House made yesterday emphasize the role that our organization has played in the establishment of labour organization and the development as a whole of our country Canada.

The Canadian section of our international union is composed of 32,000 members as of now and we are situated inclusive of the province of Quebec through to the west coast. Recently at our 5th national Canadian convention

held in Calgary we took a step in further consolidating the organization in Canada on a national basis by establishing a Canadian Mine Mill council to direct our union's pursuance of questions of a purely national scope.

This brief before you which I believe every member of this committee has was directed and approved by the recent convention of our national union. The brief has been in the main prepared by our Canadian research director, Mr. Robinson on my left, and I will ask Mr. Robinson to elaborate further and deal with the points that the chairman and members of the committee will raise. I will endeavour to assist him if necessary here and there.

The CHAIRMAN: Thank you very much, Mr. Thibault. Mr. Robinson would you care to elaborate to some extent on this brief and probably we could ask questions at different periods.

Mr. L. Robinson, Research Director, International Union of Mine, Mill and Smelter Workers, Canadian Section, called:

The WITNESS: Mr. Chairman and members of the committee, if you wish in the course of my remarks to stop me and ask questions as I proceed that will be convenient. As far as I am concerned I hope that there will be a great many questions in proportion to the importance of the bill which your committee is considering.

I am going to emphasize at the outset the very great importance of the bill which your committee is considering. This has been emphasized by other and more prominent people. The chairman of the committee of the Senate which considered this bill, in introducing the committee's report to the Senate spoke as follows: "We have got to remember that this is the most important piece of legislation that has been brought before parliament for many a day. It affects the life and liberty of every individual in the whole of Canada. Therefore it is of tremendous significance." The Minister of Justice in appearing before the committee of the Senate spoke likewise and said that in his opinion this was one of the most important bills to come before parliament for a very long time. And we agree with these opinions. The fact that we are here to submit our views with respect to this bill in itself emphasizes the importance we attach to this bill. The fact that this committee has held hearings and heard a number of representations from organizations of Canadian people, representing many hundreds of thousands of Canadian people across the country, is an additional emphasis of the importance of the bill and the very widespread concern throughout the country at the various aspects of this bill, further emphasizes its very, very great importance. We are, therefore, glad to be here before this committee to make our representations in relation to this extremely important bill.

The bill is usually referred to as a revision of the Criminal Code. Again I would like to quote very briefly from the remarks made by the chairman of the Senate committee when introducing the bill to the Senate, in which he said:

> We have got to remember that the legislation before us is a revision of the Criminal Code and not a revision of the substantive criminal law of Canada.

That is a statement, Mr. Chairman, with which we respectfully cannot agree. There are sections of this bill which, in our opinion, effect very considerable substantive changes in the criminal law of Canada, and it is particularly in relation to these substantive changes that we wish to say a few words, and that we have made the main body of our written presentation, the brief which you have before you. The opinion that this represents a substantive change in the criminal law is not only my opinion, it is the opinion of other eminent people

whose knowledge of the criminal law is very great, and in particular Senator Roebuck in speaking during the Senate's debate on this question was unambiguous in the statement he made, and I would like to read this statement. He said:

> This present revision is not a revision of the substance of the Code but only of its structure. The purpose of it was to clarify, rearrange and condense. The job was given to commissioners—

and this is the important sentence—"but they have gone a good deal further and have made quite a number of amendments to the substance of the Code."

Senator Roebuck proceeds:

> Nevertheless what they have done is not a survey as such of the substance of the provisions of the Code; it is by no means the final word; it is but the beginning, I think, of the revision of our Criminal Code; and as a result of the attention that has been directed to the code through these clarifying amendments I look for many other amendments in the immediate years to come.

As we proceed, I shall refer to a number of sections which, in our opinion, do bring about substantive amendments to the law, but I would like to emphasize here that we look not in the years to come but in the work of this committee for the further amendments to the revisions which are now proposed, and our purpose in appearing here before you is to try to persuade you to try to effect these revisions not in the years to come, not in the future, but now before this bill is reported to the House of Commons.

Our brief deals with two main points. It deals on the one hand with trade union rights as they are affected adversely by several sections of the proposed bill, and it deals, secondly, with the civil rights and freedom of the Canadian people generally. I only have a few words to say on these main points which are covered in our presentation and I do not want to repeat what is said in our presentation. The sections which adversely affect the rights of labour, the important and outstanding ones, in our opinion, are sections 52, 365 and 372, and all of these sections change the substance, in our opinion, of the Criminal Code as it stood until only very recently. As regards section 52, there is not any question about that. That is the same as section 509 (A) of the present Criminal Code, and, as you know, section 509 (A) was added to the Criminal Code in 1951. It is, therefore, a very recent addition to the Criminal Code and essentially it is new matter, if you take the history of the Criminal Code over its long period. This section, as we explained, is very much not to our liking. One point that I would like to repeat here relates to the definition of the "interests of Canada". There is a quotation on this question of interests which I would like to bring to your attention. We have emphasized that this word "interests" is altogether lacking in definition in the Code and it is liable to interpretations which can have a very adverse effect so far as the rights of labour are concerned. This is a particular quotation I would like to read. Senator Roebuck in the debate in the Senate last December said, at page 164:

> What are the "interests of Canada"? Does "Canada" signify the land of Canada, the people of Canada, or some section of the people of Canada — St. James Street, for instance? Or does it mean, perhaps, the labour unions, the educational institutions — this, that or the other thing?
>
> What, I repeat, are the "interests of Canada"? If, in talking of treason, you import a commercial or property ownership, are you not going pretty far?

That is the first section which we have dealt with in our brief.

The second section is section 365, and I would—

Mr. CARROLL: Before you come to the next section, have you any suggestions as to what amendments might be incorporated there to cover the interests of Canada, that is, to make it applicable to the whole of Canada?

The WITNESS: No, Mr. Chairman, not being a lawyer we have not come forward with specific texts for proposed amendments, but if the suggestions which we submit are agreed to, we are quite certain that there are at the disposal of the committee and among its members people who can draft appropriate amendments.

Mr. CARROLL: I suppose what you would want to bring in is that it is in the interests of Canadians—would that meet your idea: interests of Canadians?

The WITNESS: I think that what we have to do is to clarify what is the meaning of "interests of Canada". That is the important thing. Of course as an important trade union we cannot see that there can be any conflict between the interests of labour and the interests of the Canadian people, because labour constitutes a great majority of the Canadian people.

As regards section 365, I was impressed very much with a point that was made here a few days ago by the representatives of the Canadian Congress of Labour, a point which is not made in our brief. We did make the point in our brief that the penalty under this section is very greatly increased. It is increased from three months to five years, which is a twenty fold increase. The point that was made by the Canadian Congress of Labour, and which seems to me an excellent point, is that the section of the present Code which this section purports to revise or to bring into the revised Code completely alters the substance and main direction and intent of section 499 of the present Code as a whole. The only part of section 499 which is in any way similar to the text of section 365, as it is proposed in this bill and as far as labour is concerned, is subsection (*a*), and all the rest is entirely different, I think that the degree of difference is shown and emphasized by the next section, section 500 of the present Code, and if you read that I think you will understand what I have in mind. In particular sections (*d*) and (*e*) of the proposed section 365 are entirely new. So far as I am aware and have been able to discover they are nowhere to be found in the present Code. They are certainly not in section 499 (*a*) and this section 365, taking the tremendous increase in penalty on the one hand, the great change in direction and intent of the section, and the great amount of new matter added into this section as compared with the present Code, makes this section an exceedingly dangerous and objectionable one, one we would very much like to see amended to remove this danger which it at present contains.

Mr. NOSEWORTHY: I have a question on this point.

The CHAIRMAN: Mr. Noseworthy.

Mr. NOSEWORTHY: The Canadian Congress of Labour recommended to us that there be an additional section or sentence added saying "nothing contained in this section shall be deemed to effect any breach of collective agreement resulting from a dispute between an employer and a bargaining agent on behalf of a group of employees." Would such an amendment meet with your approval?

The WITNESS: Yes, it would certainly meet with our approval. I think that would be an excellent amendment. It means that the purpose of the section does not cover legitimate actions and activities of the labour movement. I would not like to go on record as saying it would fully meet our objection because, not being a lawyer, I do not know whether it would cover it, but, as a layman, I certainly think the amendment proposed is a very good amendment and should be included. Also, the penalty should be reduced.

The next section is section 372. This section condenses no less than 16 sections of the present Criminal Code and the result is that whereas in

the 16 sections a very large number of offences are covered, each one of them being specifically described and each one having a specific penalty, in the present section the whole thing is thrown into one, and becomes a uniform mass or melting pot. It is extremely vague in its intent and certainly in its result, except in this respect, that in our opinion its result would be to make illegal any strikes on the part of any union, and would subject any workers who go out on strike to the penalties provided in that section. It would do the same in relation to picketing, and, as we have said in the brief, this section is one of the most odious and repressive sections in the present bill, and in our opinion it should be deleted. I do not want to say that the Criminal Code as it now stands is entirely satisfactory from our point of view, but I am not aware it has lead to any grievous results as far as the labour movement is concerned. On the other hand I have no doubt whatsoever that this proposed section, if enacted in the form in which it is now in the bill, would have a very grievous result, and in that again I find that Senator Roebuck and many other people who have discussed this question, and made representations to your committee, are in agreement with that point of view.

Mr. NOSEWORTHY: Again may I ask, would your committee approve the opinion of the Canadian Congress of Labour regarding 372. They say: "This whole section 372 is vicious and should be dropped. The sections of the present Code which it purports to replace may need some amendment, notably in respect to penalty, but their general effect is satisfactory, and subject to necessary amendments should be retained." Would your committee approve of that?

The WITNESS: By and large Mr. Chairman, I think that we would approve of that. You will find in our brief also, the clear statement that we think this section should be deleted. We are certainly very glad if other people who have made representations before you take the same position on this section as we do. There is no doubt that anybody who says that this section should be deleted has our full support. and we are very happy to have them say the same thing as we are saying.

I would like to make a few remarks on these three sections taken together. I do not wish to add anything to our representation as regards the other two sections mentioned in that part of our brief. What I want to say is this, Mr. Chairman, that these sections nowhere specifically refer to the rights of labour or refer specifically in so many words and clearly to actions on the part of labour. Nevertheless, in our opinion, there is no doubt that they can be directed, and in all probability would be directed, to the actions of labour. Particularly in regard to strikes. You will find that section 52 is described in the margin as "Sabotage", and in our opinion the result of section 52 would be to prohibit strikes. The way this section is described we get the impression that the drafters of the Code consider strikes as sabotage. Section 365 in the margin is headed "Criminal breach of contract." Again we get the impression that in the minds of the drafters of this bill certain strikes on the part of labour constitute criminal acts. Again, with respect to section 372 the heading there is "Mischief", and the result of this section there can hardly be any doubt, and there is none in my mind, would be to prohibit all strikes, which are described as mischief.

Now, representing a trade union, we absolutely cannot accept that strikes should be described either as sabotage or as criminal breaches or as mischief. In our opinion they are none of these things. Not only that, but I think you would be hard put to it in searching the record of labour in Canada, and, there is no question, hard put to it in searching the record of our union in Canada, to find any action on the part of our union which could properly be described as either sabotage or criminal acts or mischievous acts.

The history of our union testifies to the fact that we always advanced the cause of the workers we represent and in so doing enhanced the well

being and prosperity of this country, and it seems very unfortunate to us that our actions, which in the past have always been characterized by our very scrupulous respect for the interests of the nation, should now and in future be characterized as either sabotage or criminal actions, or mischievous actions. That, in our opinion, would be the result of this bill, and that is why we take the strong exception we do to the three sections I have mentioned.

Mr. BROWNE: May I ask a question. Supposing you had a piece of property with a fence around it, and a relative of yours claimed it as his and went up and bound the gates. What would you consider that he was doing?

The WITNESS: I think, Mr. Chairman, that while I may be able to answer that question, I do not see the relevancy of it to the points we are discussing, which are the activities of labour in relation to employers in endeavouring to promote their interests and welfare.

Mr. BROWNE: I am suggesting that this section is capable of two constructions, and you inferred that it applies only to labour. How would you describe a section in the Criminal Code which protects that property against any criminal who would destroy it or trespass on it. Forget for the moment the rights of labour.

Mr. NOSEWORTHY: Mr. Chairman, I do not think any member of the committee, or this committee, or this delegation suggested that this applies only to labour. I think the whole argument is that it could be applied.

The CHAIRMAN: I think this is a hypothetical question which Mr. Browne has asked, and if Mr. Robinson does not want to answer it, well and good.

Mr. THIBAULT: What would lead up to this incident which you have related?

Mr. BROWNE: It is quite a common thing to have disputes over property.

Mr. THIBAULT: Do not the civil courts provide for that?

Mr. BROWNE: The civil courts do not help when a man comes along with an axe and starts to chop down fences. You can bring him into a civil court, but it has always been regarded as a malicious act.

Mr. THIBAULT: When you relate the law in this example to an incident in a labour dispute, there would have to be a clear leading up to the alleged offence. Therefore Senator Roebuck is quite correct in raising the question of relevancy.

Mr. BROWNE: I was only trying to point out to you that the same situation can be a breach of the criminal law as well and have nothing to do with labour whatsoever. Suppose a person maliciously comes along and destroys property. There must be some section in the criminal code to cover that, and it seems to me that is the one.

Mr. THIBAULT: The law already provides for malicious acts.

Mr. BROWNE: The civil law will not stop a man from doing it. Suppose a man who does that damage has no property of his own. How are you going to get protection? He claims your property and insists upon knocking down the fences every time that you put them up. That is quite a common thing.

Mr. THIBAULT: I suggest you should go further and present an example in relation to labour disputes.

The CHAIRMAN: It has an application to other than labour matters.

Mr. BROWNE: I see that. It occurs to me that it is capable of two constructions.

Mr. NOSEWORTHY: That is my view.

Mr. CARROLL: I think the gentleman has made his case very strong when he says that he has no objection to leaving the present section of the statute as it is with regard to mischief.

The WITNESS: I have no major objection, but I am not sufficiently familiar with the code to be able to say I have no objection.

Mr. CARROLL: There has got to be some section dealing with mischief.

The WITNESS: There is no question about that.

Mr. MACINNIS: I do not think that either this delegation or any other delegation which has appeared before us has objected to the criminal law being applied where a criminal offence has taken place. What they object to is that the criminal law should apply to what has been ordinarily accepted as the civil right of trade unions in the matter of labour disputes.

The CHAIRMAN: I gather what they are trying to say is that they do not want any of the hard and bitter earned gains made by labour taken away by this code.

Mr. MACINNIS: That is right, and I agree with them.

The CHAIRMAN: I do not think you will find any argument so far as this committee is concerned in respect to that.

Mr. MACINNIS: No, I do not think so.

Mr. THIBAULT: Particularly gains already identified and established under the labour codes in the various provinces, and it seems to me that this could override what has been established in that respect.

Mr. MACINNIS: If any action is taken in a labour dispute under the labour code of Canada or the labour codes of the provinces, then it should not become a crime under this Act.

The CHAIRMAN: That is what you mean?

The WITNESS: That is right.

The CHAIRMAN: I think we are all agreed on that.

The WITNESS: Let me repeat—because it relates to the point I want to go on to; we are not claiming that this section applies only to labour. That would be a claim which I think would be fantastic, as a layman and not a lawyer, I would be very ill advised to make such a claim and am certainly not making it. But we do make the claim that it could be applied to labour in a very adverse and destructive way, and that we think any ambiguity on that score should be eliminated.

Why do we think that these sections could be applied to labour? The answer is that the safeguards which have been proposed so that they should not apply to labour have been rejected by the Senate and have not, so far as we know, been accepted by this committee, and certainly have not been accepted by the House, since the House has not yet considered this question.

As you know, in the Senate, Senator Roebuck in speaking in the debate said:

> In committee I suggested that the following words be inserted: 'A lawful act done in furtherance of the purpose of a trade union is not mischief.' I also suggested that this clause be included in another section, but I will not take time to deal with that now—I believe he was referring to Section 52. I think I can see the humour of what happened yesterday in committee.

As far as we are concerned the fact that Senator Roebuck was alone in favouring this amendment was not humorous in any way whatsoever.

> There I stood in splendid isolation, the only one who voted for my amendment. That is perfectly all right—

But not as far as we are concerned.

> —but you will hear about that clause in the future or I am no prophet.

Now, if this committee having heard our representations and other representations, includes the amendments which the committee of the Senate and the Senate as a whole did not include, then our fears would prove to have been groundless. But until there are such amendments and particularly if such amendments are not accepted in the face of the representations in favour of them which have been made here, then we would have to say that our apprehension with regard to these sections would be very much greater than it is now. That is why we strongly urge this committee to make the appropriate amendments so that there can be no doubt whatsoever that these sections are not intended and could not be applied to the legitimate activities of the labour and trade union movement.

The CHAIRMAN: Could I at this point ask you whether or not you accept Senator Roebuck's suggested amendment as being sufficient to meet your purposes?

I think it would go a very long way towards meeting our objection, but to repeat, I would not like to say that it will go fully, because I do not want to commit myself to something which I do not completely understand. But on the face of it, it looks as if it would go a very long way towards meeting our objection. His amendment was proposed in relation to sections 52 and 372, and similar amendments could be framed in relation to section 365, if other amendments are not made.

Mr. NOSEWORTHY: You would say that the amendment, in so far as these sections affect trade unions, would be satisfactory. There could be other impacts upon civil rights, or something of that kind, but you are not including them.

The WITNESS: That is right.

The CHAIRMAN: The amendment only deals with labour unions.

Mr. BROWNE: You have no suggested amendment yourself?

The WITNESS: No. Senator Roebuck framed that amendment. I believe another speaker, on behalf of another organization which appeared here, was a lawyer. They framed amendments so I think it would be presumptuous on our part, not being lawyers, to frame similar amendments.

Mr. CAMERON: Is a strike a wilful breach of contract in all cases, or in no case, or in some cases?

The WITNESS: I imagine in some cases it does constitute a breach of contract. In respect of existing legislation, what we have put in our brief concerning the situation in Quebec shows that it could very well be considered a breach of contract. Whether it was a wilful breach of a contract—you get into the question of intent there. I think our views on the question of intent are sufficiently explained in other sections of the brief and what we said there fully applies here. We do not regard that word "wilful" as constituting any effective protection against prosecution and conviction under circumstances which are likely to arise.

Mr. CAMERON: What would your opinion be in regard to what are termed wildcat strikes?

The WITNESS: That is a strike which the leadership and responsible officials of the union have not authorized. I think that answers your question sufficiently.

By Mr. Robichaud:

Q. I infer from reading your brief and from your argument that you are in short asking or advocating that this committee should embody in the revision certain saving clauses to the sections that you object to in order to protect the rights of labour?—A. That is correct.

Q. And you say Senator Roebuck's proposed amendment would be curative to a certain extent?—A. That is correct.

Q. You said a moment ago you do not think that the word "willful" is wide enough. Have you any other words to suggest? I do not know of any other words.—A. I think what I said was you are not very much better off in being effectively protected if the word "wilful" is in the Act than you are if it is not in the Act.

Q. I certainly cannot agree with you on that score. Would you consider the words "without lawful excuse" stronger, or have you given any consideration to that?—A. Frankly I do not like the word "excuse".

Q. I said "without lawful excuse".—A. Lawful or unlawful. The question is what the excuse is, and who is going to say what it is. I do not consider myself competent to answer your question as to what is a "lawful" excuse.

Mr. CAMERON: The saving clause suggested by Senator Roebuck would not apply or be an escape clause if there was what is known as a wildcat strike. Would it? It would not cover that situation?

The WITNESS: I am not sure; I would have to think about that before answering it.

The CHAIRMAN: Gentlemen, we would like you to feel at ease before this committee. The members of this committee are not trying by their questions to put you in any embarrassing position, nor trying to trick you in any way. We are trying earnestly and honestly to seek information and seek the opinions which you have to suggest.

Mr. MACINNIS: You are not under cross-examination. We are merely asking for an opinion.

The CHAIRMAN: We realize you are not lawyers and we are not all lawyers either.

By Mr. Robichaud:

Q. We are just trying to find out what your opinions are absolutely without prejudice?—A. Let me say this: That where there is an unlawful act or an allegedly unlawful act or an act which the employers consider to be unlawful, they have recourse and they can take that recourse if they think they have a case. I think that in any strike, wildcat or otherwise, you have to consider the background. There is a right to strike under certain circumstances and this right to strike must be safeguarded. It must be safeguarded as far as possible in order to put labour on an equal footing with the employers, and while in a technical sense wildcat strikes are illegal there are certain circumstances where from a moral point of view it would not be hard to convince some people, and that might include me, that they are morally justified, and any excessive penalties against wildcat strikes would in my opinion always be objectionable. I think the way to avoid wildcat strikes is to consider the responsibility that rests on the employers, or the government to persuade employers to be reasonable in meeting the demands of labour and if they are reasonable wildcat strikes will not occur.

Mr. CAMERON: Is labour to be reasonable and fair in their position as well. I was asking those questions to bring out those points because in my opinion the suggestion of the saving clause of Senator Roebuck will not protect a union who wilfully breaks a contract and enters into a wildcat strike.

Mr. NOSEWORTHY: There is no attempt on your part to seek protection for wildcat strikes that do not conform to the labour code within the province in which it takes place; all you are asking for is protection for those trade unions who comply with the law as it is set down in the recognized labour codes?

Mr. THIBAULT: Yes. And in addition to that we believe that existing labour legislation now does provide for recourse against any alleged breaches and under that legislation the whole history or background leading up to the Act can be properly analysed and dealt with accordingly. I believe the purpose of your question places us in a situation where we are almost asked to prejudge a non-existent hypothetical situation. We believe that the legislation does exist now in regard to provincial codes to give recourse to the employer who feels he has been injured or his contract has been breached.

Mr. CAMERON: I was wondering how big the umbrella had to be.

The WITNESS: Thank you. In so far as Senator Roebuck's amendment will not apply to section 365 we think other amendments should be made to section 365 to bring it back within the area which is not now covered by section 499A, and particularly that the penalty should be reduced back to the three months, rather than the five years which is 20 times more than what the penalty now is. Senator Roebuck's amendment so far as it does not apply to section 365 does not mean that therefore we allow section 365 to stand or go through as it now is because our brief makes it very clear that we do not wish that to happen.

Mr. CARROLL: You are making reference to the old code when you refer to 499A?

The WITNESS: The old code, yes.

The CHAIRMAN: It is 20 minutes to six. Before you complete your presentation, Mr. Robinson, I wonder if it would be in order to have probably a word or two from your lady delegate who is here—that is, if Mrs. Gunter would be prepared to say a word or two to the committee. I am not suggesting you do it right away, Mrs. Gunter.

Mr. ROBICHAUD: Before Mr. Robinson leaves the table I would like to ask him one question.

The CHAIRMAN: I am not suggesting Mr. Robinson leave now. We have 20 minutes more and if he would make provision for that I think it would be appreciated.

By Mr. Robichaud:

Q. In reference to section 365, you suggested we should have section 499 (A) as it is in the present Code?—A. That is right, sir.

Q. Now, you have noticed that the words after the word "contract" in the revision, the words "made by him" have been omitted in the revision. Have you given any consideration to this deletion of the words "made by him" in the revision. What is your reaction to this?—A. I believe, Mr. Chairman, that that is a somewhat technical point. I do not think that omission bodes any good, but whether it bodes any ill I do not think I am sufficiently versed in the law to say. I believe there was some discussion among the members of your committee during the course of a previous sitting on that question, in which Mr. Diefenbaker and a number of other well qualified lawyers took part, and I would not like to comment or express an opinion on the various views that were expressed in regard to that. If the opinion of the lawyers is unanimous that that omission bodes ill, we would be against it.

Q. It is very hard to get a unanimous opinion among lawyers.—A. Then I think the Code should provide every possible safeguard so that there is no ambiguity.

Mr. NOSEWORTHY: I think the witness expresses much too great a confidence in lawyers.

The WITNESS: My father was a lawyer

The CHAIRMAN: I think he is a very competent witness myself.

The WITNESS: May I continue then, Mr. Chairman. On the second major section of our brief, which deals with freedom of speech, freedom of thought, and freedom of assembly generally, our brief emphasizes that these matters are of very great importance to the labour movement because without them the labour movement could not function and the people as a whole would be restricted in the rights they have now and which we believe they should continue to have. I want to emphasize particularly here the section regarding treason. The treason section is another instance of a section which brings about a substantive change in the law as it now stands, and I do not think there can be very much difference of opinion on that because we have three lawyers who agree on the fact that it does so.

Mr. ROBICHAUD: You are lucky.

The WITNESS: Yes, we are. Senator Roebuck's view is expressed in the debates of the Senate at page 163, dated December 17, and I do not think I need to read that, because his very clearly expressed view is known to you, Mr. Diefenbaker, in the House, when the Garson amendments, so-called, were debated, also agreed that it was something very new, and Mr. Garson himself in speaking to the amendment agreed that there was something very new here. The views of Mr. Garson, Minister of Justice, and Mr. Diefenbaker, are quoted in our brief at page 14, so we have three very eminent lawyers agreeing that there is something substantively new here.

The main points on which we object to this section are stated in our brief. The first point is the great extension of the meaning of treason which is involved here. The second point is the great extension of the number of offences which could be punished by death, and the third point is the great extension of the number of sections where the alleged intention of the accused is made a decisive element leading to conviction, and no matter what the accused person's intention was and what he had in mind, and the fact that under certain circumstances he says categorically that he does not have that intention, nevertheless the court may conclude from circumstantial evidence or for other reasons that he did have the intention he denied he had and conviction may follow. We believe that this section would lead to a very severe restriction of freedom of thought and expression through fear. If conviction were secured, the freedom of speech which now exists and which we think should continue to exist would likewise be infringed.

I do not think I want to say anything beyond what is said in our brief on the other sections, the section on sedition particularly. I think what we have said there is sufficient and is quite clear, and I hope it commends itself favourably to the members of your committee, so that in concluding I would just like to make two points, as follows: It is sometimes said that the purpose of these amendments is for the security and protection of Canada and for the security and protection of the freedoms which we now enjoy. We submit there is an inconsistency there. It seems to us that it is difficult to protect freedom by denying freedom and, specifically, it is difficult to protect freedom by restricting the freedom and rights of labour, because in our opinion a strong, active and free trade union and labour movement is an essential element to democracy. Where the trade unions and labour movement are restricted and repressed, to that extent democracy in general in the country suffers and begins to wilt. We think that should not happen. So that we make a very close connection between the rights of labour and the degree of freedom which exists in the country. We think that one depends on the other to a very great extent, and that is, among other reasons, why we take the position that we do with regard to the rights of labour.

The other point I would like to make is this, Mr. Chairman, that in the United States, the country south of the border, you have the Taft-Hartley Act,

which is an Act which quite clearly, specifically, openly and admittedly is directed to restricting the rights of labour. You have the Smith Act and you have the McCarran Act, and again these Acts, especially the McCarran Act, are quite openly and admittedly directed to the restriction of the right of free speech, and the Smith Act has in fact done so to a very alarming degree. In the first place I think it is wise to take heed and learn from experience in other countries. As we have pointed out in our brief, there is a very great and alarming similarity between the wording of section 60, and the section of the Smith Act under which convictions have already been secured south of the border. The second point is that whereas these three Acts, as I have said, make no bones about the purpose which they have in mind, in this case—in the case of Bill 93—in this revision of the Code there is no such admission, and yet in our opinion there is not any doubt, unfortunately, that the result would be to a very large and dangerous degree the same as the result has been from these three Acts south of the border. Therefore the question arises in our mind, why is it that an Act which would have, we believe, these results is not advertised as such, as having that purpose? We think the answer can be found without too much difficulty, and it is this: If such an Act were brought forward with the statement that it has the purpose which we believe would be achieved by certain sections of this bill, the result would be that the Canadian people would not tolerate the passage of such an Act. They would not permit it and, therefore, if the intention is to accomplish these ends, they have to be done indirectly and without saying that that is the purpose which those Acts have.

I say we do not and cannot have much doubt of the results of the substance of Bill 93. We believe that if passed Bill 93 would strip labour of its trade union rights, and above all of the right to strike. It would rob the people of the right to free speech and assembly in their democratic institutions, and would fasten on our country of Canada an odious system of intimidation and repression. Now, Mr. Chairman, as you know the great French philosopher Voltaire said: "I disapprove of what you say, but I will defend to the death your right to say it." It seems to us that the principle and policy embodied in this bill is exactly the opposite of that. What is in effect stated to the Canadian people in this bill is this: "we do not care whether we approve or disapprove of what you say, but we insist on the power to take away your right to say it."

It seems to us there is a danger if this bill is passed that certain people will go on to say, with one of those hated tyrants in English history, the Earl of Strafford, that anyone who dares to criticize the policy of the government or the actions of the government should be punished, and punished severely, "whipped" said the insolent Earl "into his senses. If the rod be so used that it smarts not, I am the more sorry."

We are afraid the purpose of this bill and certainly the result of this bill would be to implement a policy which was so pithily expressed by that famous tyrant in English history. That is why we hope the committee will make appropriate amendments to the bill, that the committee will be guided by the wish of the Canadian people to extend their rights and freedoms and not restrict them, and will put into Canadian law the universal declaration of human rights passed by the United Nations, rather than the restrictive clauses which are contrary to this universal declaration and which, in our opinion, are embodied in Bill 93.

We earnestly suggest that Bill 93 be amended. If no agreement can be reached on amendments which accomplish the purpose we think essential, then we suggest the bill be postponed, and in this suggestion of postponement we are again in agreement with other representations which have been

made, and in particular only a few days ago with representations made to the government of Canada by the Canadian Catholic Federation of Labour, commonly known as the Catholic Syndicate.

It would be better if the bill were thoroughly amended to remove the dangers which it contains. If that cannot be agreed upon, then undoubtedly the bill should be postponed — it should be put on the shelf, and should await a different atmosphere when agreement can be reached to pass revisions which does not contain dangers to the rights, and freedom of Canadian labour and the Canadian people.

Thank you, Mr. Chairman.

The CHAIRMAN: Would Mrs. Gunter like to say a word. What is your first name?

Mrs. GUNTER: Elizabeth.

The CHAIRMAN: Where do you reside?

Mrs. GUNTER: In Sudbury.

The CHAIRMAN: What position do you hold?

Mrs. GUNTER: I am a member of the ladies auxiliary, local 117.

The CHAIRMAN: You are the president, are you?

Mrs. GUNTER: No, I am not.

The CHAIRMAN: You are representing the ladies auxiliaries.

Mrs. GUNTER: I am a representative of the Mine Mill Ladies Auxiliaries.

The CHAIRMAN: Now, if you care to say something.

Mrs. GUNTER: The auxiliary, made up of wives and mothers and sisters of the workers, as citizens of Canada, are interested in the legislation that is to be passed — excuse me —

The CHAIRMAN: Please feel that you are among friends.

Mrs. GUNTER: I have not spoken before men, and I think that is what makes me nervous.

The CHAIRMAN: I hope the men will take cognizance of this situation. We now have a woman who is lost for words!

Mrs. GUNTER: We are interested in the legislation that is proposed and we support the suggestions put forward by Mr. Robinson and Mr. Thibault. I do not think I have anything further to add. We are in agreement with the amendments they have suggested.

The CHAIRMAN: Thank you very much Mrs. Gunter.

Mr. NOSEWORTHY: May I ask a question. On section 46 and section 50, which is now extended to cover undeclared wars, the Canadian Congress of Labour told us that, as far as they were concerned, that extension was not objectionable. They were quite agreeable to having section 46 and 50 extended to include undeclared wars. Just what is the position of your committee on that?

The WITNESS: I believe our brief makes very clear that this extension is objectionable, and very definitely and categorically so.

Mr. CAMERON: May I ask why?

The WITNESS: I think the reasons why, Mr. Chairman, are expressed very clearly in our brief, and I will try to sum them up. The offence of treason has an historical and well defined meaning. If additional offences arise in the course of historical development, it is one thing to legislate with regard to these offences, but it is another thing entirely to describe them as treason, which historically has always been considered a very heinous offence.

If offences must be punished, that is one thing, but legislation which on its face may appear to be designed to punish offences, should not at the same time, as this proposed legislation does, have a very repressive effect on the freedom of speech and thought of the people of this country.

Mr. CAMERON: Of course the Act was designed to prevent giving assistance to the armed forces of other countries with whom we may be engaged in hostilities, but not at war. I do not see where you get repression. You may express an opinion, but that is not assisting.

The WITNESS: It might be held legally to be so. If this country wishes to be engaged in hostilities with other forces or vice versa, they can always declare war, and, although it is somewhat outside the field, I think undeclared wars are in many ways worse than declared wars.

Mr. CAMERON: Are you suggesting that in the event you have just mentioned of not having declared war—take the Korean situation. If someone gave assistance to the armed forces of north Korea who our troops are now fighting and which is in reality war, that they would not be guilty of a crime against Canada against their own state in doing so.

The WITNESS: What do you mean by assistance? Let me say this: that when Japan attacked the United States at Pearl Harbour without declaring war, the United States not only engaged in hostilities against Japan but immediately declared war, and that settled the situation.

With regard to what assistance might or might not be given by various people in the United States to the armed forces of Japan under the law with war having been declared, that is an historic example which surely can always be followed when, in the opinion of one country, such country has been unlawfully and unjustly attacked by the forces of another country.

By Mr. Browne:

Q. That is all right where the country is a big country such as the United States; but where the country is a feeble one such as South Korea, and there is an attack by an organized army with 400 million people back of them, and with another 178 million people behind them, what does the United Nations do? You say there is no question of South Korea fighting back and declaring war against North Korea because they would be knocked out within a month.—A. Do you know whether South Korea declared war against North Korea in response to the attacks which South Korea said had been made against her by North Korea?

Q. She had to defend herself.—A. Would she have been able to do so less effectively by declaring war?—A. I believe the United States was engaged in a defensive war against Japan when she was attacked at Pearl Harbour, but the United States had no reluctance in declaring war. It expressed the united will of the American nation. Are you suggesting only aggressive wars are wars in which one country declares war against another? I do not think history would bear you out on that.

By Mr. Cameron:

Q. What would your opinion be if I went over to North Korea and took up arms and shot down a Canadian soldier, or a soldier in the armed forces of the United Nations? Would that be committing an offence?—A. There is no doubt that you would be assisting the North Koreans.

Q. Would I have the right to do that?—A. I do not think so.

Q. Is this legislation not designed to declare what otherwise would not be treason on my part? It will be treason because I have done that. It is not treason because we have not declared war, and that is what Mr. Diefenbaker had in mind when arguing in the House that this was an extension of the

law of treason, because treason only applied in the case of war and this was not war.—A. I cannot quite grasp the relevancy of your point because there is still no declaration of war and I cannot understand the reason for that. Under the law as it has been until now, assistance under these circumstances would not be treason. The main point we are dealing with here is the extension of the meaning of treason, and the results of this extension in limiting free speech.

Q. I am just asking you. I do not want you to escape from me. Will you please answer my question. What have I done? Is there not some provision in the Canadian law to prevent me or to intimidate me from taking that course of action?—A. Undoubtedly there should be. I think that any Canadian who shoots down another Canadian is likely to get into trouble.

Q. Maybe it is not a Canadian. Let us say I am engaged in hostilities or taking part on the side of armed forces which are engaged in hostilities with Canada, although war has not been declared.—A. That is an overt act. There is no doubt or ambiguity there.

Mr. NOSEWORTHY: You are arguing, in other words, that we should not have in our criminal code a provision that would apply today to anyone assisting the forces of North Korea, because we have not declared war against them?

The WITNESS: No. I very definitely am not saying that. It is quite clear —again not being a lawyer and not being primarily interested in our presentation with that particular problem which you raise—that is not what we are saying. What we are concerned with is that in an endeavour to meet a certain situation, to deal with clear overt acts, certain—let us say—by-products are created. Such by-products seem to us very dangerous by-products to the extent almost that the tail comes to wag the dog, and we do not think that is right.

The result of these by-products, in our opinion, is to restrict the right of Canadians to freedom of thought and freedom of speech. I am quite sure that the legal abilities which exist in Canada could draft laws which would deal with the problem with which you are primarily concerned, without creating these adverse results which I have described and which are dealt with in our brief.

The points which have just been directed to us in the questioning are off our main theme and subject here.

Mr. NOSEWORTHY: Do I understand that if we were to punish, or if we wished to punish anyone who assisted the North Koreans, then we would have to declare war against North Korea?

The WITNESS: That would be one way of getting around the difficulties which arise in the section as drafted in this bill, unquestionably.

Mr. NOSEWORTHY: Do you think that international relations would have been improved if the countries which are now fighting the North Koreans had declared war against North Korea?

Mr. MACINNIS: What have these questions got to do with the subject matter we are discussing?

The CHAIRMAN: It is now 6.00 o'clock. We have devoted half an hour beyond the time which we had allowed to this delegation. Committees ordinarily close at 6.00 o'clock and it is now 6.00. Are there any further questions?

Mr. THIBAULT: I want to say for the record, so that it may be very clearly understood, that in no way through any presentation or effort offered in explanation of our presentation today, is this organization in any way opposed to any necessary efforts that must be taken by the government of this country to protect this country. Neither do we want any undue advantage, during the

course of preparing the defence or actually protecting this country, taken of any individual Canadian through the pretext of defence regulations, that he may have committed an act of which he was in no way actually guilty.

Our organization stands clear in its position in respect to its loyalty and its constant desire to defend the interests of Canada and of the Canadian people. Therefore what I have said above was said for the purpose of making it clear that that is the policy of the International Union of Mine, Mill and Smelter Workers, including its Canadian section.

I should like to thank the chairman and the members of the committee for the time that they have extended to my committee and for the fairness of the members in the questions which they have directed to us, and I only hope that we have, so far as possible, convinced the chairman and the members of the committee of our serious and earnest concern in this whole question with which you are dealing. We appreciate the magnitude of the task which you have before you and we ask that you do not work under a deadline, as it were, but that you take your time and consider the whole matter as relates to the interests of Canada and its people. I thank you very much.

The CHAIRMAN: Mr. Thibault, on behalf of the committee, I want to extend to you, and through you to the members of your delegation, including Mrs. Gunter, our appreciation for your coming all this distance to help up in the work which we have undertaken. I think you have been very fair witnesses. You have made a good presentation and we appreciate it and I am sure it will be of considerable help to us. Thank you very much.

The meeting adjourned.

APPENDIX "A"

THE CANADIAN MENTAL HEALTH ASSOCIATION

111 St. George Street,
Toronto 5, Canada.
MARCH 10th, 1953.

The Secretary,
Parliamentary Committee on the Revision
of the Criminal Code, (Bill O),
Ottawa, Ontario.

Dear Sir:

At the annual meeting of the Scientific Planning Council of the Canadian Mental Health Association, held in Toronto February 14th and 15th, 1953, the following resolution was unanimously passed:

Resolved in the matter of the current revision of the Criminal Code, representation be made to the Federal Government regarding the following:

1. Archaic words such as "insane" and "lunatic" be replaced by more modern and appropriate terms such as "mental illness" and "mentally ill person"; (section 16 proposed revision).

2. Subsection 3 of Section 16 of the proposed revision speaks of a person having specific delusions but "in other respects sane". This describes a mental state which in practice does not exist. Any defence which might be raised under the subsection can be dealt with under subsection 1 (the McNaghten Rules).

3. The proposed legislation regarding "criminal sexual psychopaths" (sections 659-667 of proposed revision) is not clear particularly regarding any reformative or treatment measures. It is recommended that the Department of Justice if necessary assisted by an advisory committee of persons having special knowledge and experience with such matters review these sections.

In this connection I have been instructed to submit the attached brief.

The Association would appreciate the opportunity of having a representative appear before the Committee in support of this submission.

Yours very truly,

(sgd.) J. D. M. GRIFFIN, M.D.,
General Director.

JDMG:m

BRIEF CONCERNING THE REVISION OF THE CRIMINAL CODE (BILL O)

A submission from the Scientific Planning Council of the Canadian Mental Health Association to the Parliamentary Committee on the Revision of the Criminal Code.

Introduction

The Scientific Planning Council of the Canadian Mental Health Association comprises psychiatrists and social scientists of established reputation from all parts of Canada. (A list of the members of this Council is attached to this brief.) At the annual meeting of the Council, held in Toronto on February 14th and 15th the proposed revision of the Criminal Code was studied. It was unanimously decided to make a submission to the appropriate Parliamentary Committee regarding certain parts of the proposed revision.

The Criminal Code of necessity concerns itself with a very wide and complex area of human behaviour, human values, motives and methods of control, reform and protection. The Scientific Planning Council of the Canadian Mental Health Association in this brief has limited its comments and suggestions to those sections of the proposed Code where medical and psychiatric experience is particularly relevant. Psychiatric research and the practice of psychiatry in the courts and elsewhere has resulted in a body of experience upon which constructive criticism of parts of the Criminal Code may be based—criticism of a kind which is not available elsewhere. The following comments respecting the proposed revision of the Criminal Code are restricted to these areas.

Abolition of terms such as "insanity, natural imbecility, disease of mind, etc."

The diagnosis and treatment of mental illness have advanced to a stage where archaic terms should be abandoned in favour of words which more accurately describe mentally ill people and their disabilities.

In the year 1935 the Legislature of Ontario abolished such terms as "lunatic, insane, feeble minded, idiot" and replaced them by "mental illness, mentally defective" and similar modern descriptive nouns and adjectives. Subsequently a number of other provinces have made similar changes. This means that doctors, patients and their relatives and friends no longer use archaic terms like "insane" and speak of these patients and their illnesses in modern language. Likewise the courts are using the more modern terms in the various judicial processes such as the custody of patients, adbinistration of their estates and related matters.

It is noteworthy that the Criminal Code itself has begun to incorporate the modern terminology. For example in clause (C) (i) of section 451 of the revised Criminal Code the words "mentally ill" appear. In section 527 (1) both "insane" and "mentally ill" are used.

The old terms, however, persist. The continuation of these obsolete terms in the Criminal Code may result in an unnecessary obscurity in the administration of justice. Doctors who are accustomed to the use of modern terms such as mental illness may find difficulty in giving accurate evidence in criminal cases where terms such as insanity are employed. Likewise judges, magistrates, juries and others entrusted with the administration of justice would have a clearer picture of the issues involved in a particular case if the terminology in the Criminal Code were more in keeping with the terms used elsewhere in the administration of justice. If this recommendation were adopted it would mean deleting the terms "insane, insanity, imbecile, etc.", and substituting for them the words "mentally ill, mentally defective, etc."

In section 16 of the proposed revision of the Criminal Code (Section 19 of the present Code) the following changes would be necessary:

Subsections 1 and 2—substitute the following

No person shall be convicted of an offence by reason of an act done or omitted by him while he was mentally ill or mentally defective to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, or of knowing that such an act or omission was wrong.

Subsection 3—*It is recommended that this subsection be omitted.*

This section in the proposed revision reads as follows: "A person who has specific delusions but is in other respects sane, shall not be acquitted on the grounds of insanity unless the delusions caused him to believe in the evidence of a state of things that, if it existed, would have justified or excused his act or omission." *This subsection describes a mental state which in practice does not exist.* Any defence which might be raised under this subsection could be dealt with adequately under subsection 1 (The McNaghten Rules).

Subsection 4—It is recommended that the word "sane" in this subsection be omitted and the words "mentally competent" be substituted therefor. In section 619 (b) of the proposed revision similar changes in nomenclature would be required. Also sections 523-527 (sections 966-970 of the old Code.)

Criminal sexual psychopaths

The present legislation is contained in section 1054A of the Criminal Code. The present subsection 6 provides that "any person found to be a criminal sexual psychopath and sentenced accordingly shall be subject to such disciplinary and reformative treatement as may be prescribed by penitentiary regulations". *This has been left out of* the proposed revision (sections 659 and 661). It is not clear whether this omission implies that reformative treatment is no longer to be provided for these cases.

In any event the present legislation regarding sexual psychopaths should not be regarded as final. The appointment of a Royal Commission to review this matter as suggested by the Canadian Welfare Council may not be the best form of investigation. Consideration should be given to a study by the Department of Justice, if necessary assisted by an advisory committee of persons having special knowledge and experience with these matters.

These criticisms and recommendations are respectfully submitted for consideration.

(Signed) D. E. CAMERON,

D. EWEN CAMERON, M.D.,
Chairman, Scientific Planning Council,
Scientific Advisor, Canadian Mental Health Association.

SCIENTIFIC PLANNING COUNCIL
CANADIAN MENTAL HEALTH ASSOCIATION

Chairman—D. Ewen Cameron, M.D., McGill University, Montreal.
W. E. Blatz, M.D., Institute for Child Study, University of Toronto, Toronto.
G. A. Davidson, M.D., University of British Columbia, Vancouver.
K. G. Gray, M.D., University of Toronto, Toronto.
Oswald Hall, Ph.D., Associate Professor of Sociology and Anthropology, McGill University, Montreal.

Charles Hendry, M.S.W., Director, School of Social Work, University of Toronto, Toronto.
R. O. Jones, M.D., Professor of Psychiatry, Dalhousie University, Halifax, N.S.
J. R. Kidd, Ed.D., Director, Canadian Association for Adult Education, Toronto.
S. R. Laycock, Ph.D., Dean, College of Education, University of Saskatchewan, Saskatoon.
Randall R. MacLean, M.D., Provincial Hospital, Ponoka, Alta.
Rev. Noel Mailloux, Director, Institute of Psychology, University of Montreal, Montreal.
D. G. McKerracher, M.D., Mental Hygiene Commissioner, Regina, Sask.
A. E. Moll, M.D., McGill University, Montreal.
R. R. Prosser, M.D., Director, Mental Health Services, Fredericton, N.B.
R. A. Riddell, B.Paed., Director of Elementary Education, Hamilton.
J. Saucier, M.D., Montreal
Baruch Silverman, M.D., Director, Mental Hygiene Institute, Montreal.
C. E. Smith, D.Paed., School of Social Work, University of Manitoba, Winnipeg.
G. M. Stephens, M.D., Manitoba Clinic, Winnipeg, Man.
A. B. Stokes, M.D., Professor of Psychiatry, University of Toronto, Toronto.

Committee on Revision of Criminal Code

Chairman—Dr. Kenneth G. Gray, University of Toronto, Toronto.
Dr. Randall MacLean, Provincial Hospital, Ponoka, Alta.
Dr. D. G. McKerracher, Mental Hygiene Commissioner, Regina, Sask.

APPENDIX "B"

I—*Preamble*

Gentlemen:

The Canadian Section of the International Union of Mine, Mill and Smelter Workers represents 32,000 workers who earn their living in the non-ferrous metal mining, smelting and refining industry across the country. Our Union, along with other Canadian trade unions, is concerned to secure and extend trade union and democratic rights for its members and their families, and to guard these rights against undue restriction. Because of this, the Canadian members of our Union are gravely alarmed by certain sections contained in the proposed revision of the Criminal Code of Canada—now before your Committee and the House of Commons as Bill 93—and the possible implications of these sections.

The stated purpose of Bill 93 is to consolidate, revise and bring up-to-date the Criminal Code of Canada. It is not our intention to discuss to what extent this stated purpose is accomplished in the many and complex sections of the Bill, which fills a bulky volume. In the opinion of our members, however, certain sections of the Bill go beyond this stated purpose. These sections are such that, if passed by the House of Commons and enacted into law, they would restrict and in some cases destroy the trade union and democratic rights which our members and their families, together with all the Canadian people, have long enjoyed.

In this brief, which we present to your Committee established by the House to study in detail the proposed revisions to the Code, we shall refer specifically to the sections which appear to threaten established rights and freedoms. We shall endeavour to persuade your Committee to delete or amend these sections, either in whole or in part, so as to remove the dangers which they now contain.

We also suggest that there be added to the revised Code certain important safe-guards and guarantees of due process which it now lacks, although we do not propose to deal with these in detail.

Our Union is not alone in its stand against the repressive sections of Bill 93. The Trades and Labour Congress of Canada and the Canadian Congress of Labour have spoken out against specific sections of the Bill. Many of their affiliated Unions have done likewise. Members of all political parties have pointed to the dangers contained in the Bill or in the Garson amendments of 1951 which it includes; Senator Arthur Roebuck, Mr. J. G. Diefenbaker, Mr. Angus MacInnis and Mr. Stanley Knowles, all members of Parliament, being outstanding in this respect. The Senate made several important changes in the Bill, and although we think these changes do not go far enough, they are in the right direction. In addition, many organizations of the Canadian people have expressed their doubts or disapproval of some of the proposed revisions to the Criminal Code.

Our Union, the Canadian section of the International Union of Mine, Mill and Smelter Workers, take this opportunity to join with those who have protested various sections of the revised Code and to make suggestions for improvements and extensions of the democratic rights of the Canadian people.

II—*Trade Union Rights*

Trade Union rights are threatened mainly by Sections 52, 365 and 372 of the Bill. In quoting these sections, we shall underline the words which seem to us to be particularly dangerous.

Section 52 is as follows:

52. (1) Every one who does a prohibited act for a purpose prejudicial to

(*a*) the safety *or interests* of Canada, or

(*b*) the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada,

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

(2) In this section, *"prohibited act" means an act or omission that*

(*a*) *impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing, or*

(*b*) causes property, by whomsoever it may be owned, to be lost, damaged or destroyed.

This section is so sweeping that it could be used to prohibit all strikes and to send to jail for 10 years any worker or group of workers who found it necessary to go on strike. A strike brings production temporarily to a stop. During the strike, the workers stay away from work and thus necessarily, by their act of staying away and their omission of normal work, for the time being impair the efficiency or impede the working of the vessels, vehicles, aircraft, machinery, apparatus or other things affected. The employees by their strike seek to persuade their employer to accept demands put forward during collective bargaining for higher wages, shorter hours or improved conditions of work which the employer would not otherwise accept. If the strike is to be effective, it will to some extent do the things which are to be prohibited under paragraph (2)(*a*) above.

We note in the first place the extreme breadth of this paragraph. It covers everything imaginable. To make quite sure of this, if by chance the words "machinery and apparatus" were found to leave something out, there are the words "or other thing" to cover it. Nothing is excluded.

We note secondly that there is no definition of the interests of Canada under paragraph (1)(*a*). Senator Roebuck asked: "What are the interests of

Canada? Are they the interests of sections of Canada, all the people of Canada, or the Government of Canada?" Are they the interests of the great majority of the Canadian people who earn their living by their labour? Whose interests, for example, were at stake in the recent strike at Louiseville, Quebec? It must be remembered that the Criminal Code is enforced not by the Federal but by the Provincial governments. Workers know from experience that hardly a strike goes by but that someone raises the cry of injury to the country's interests. This is especially likely in times of tension and hysteria.

The Minister of Justice was asked in Parliament whether a strike, which is otherwise perfectly legal, could be interpreted "as an act that might impede the efficiency of certain machinery or apparatus and therefore be illegal under this section?" Mr. Garson answered: "Is not the test . . . whether the prohibited act is done for a purpose prejudicial to the safety or interests of Canada?" Thus, the question of whether a strike is legal or not is going to depend on its purpose, or rather what the Minister of Justice or the Attorney General of the Province in which the strike takes place considers to be its purpose. They are going to decide what the strikers *had in mind* in striking. The right to strike will then depend not on what is done but on the purpose with which it is done or said to be done. Justice Douglas of the United States Supreme Court wrote in this connection: "Once we start down that road we enter into territory dangerous to the liberty of every citizen. . . . We then start probing men's minds for motive and purpose; they become entangled in the law not for what they did but for what they thought; they get convicted not for what they said, but for the purposes for which they said it."

The result of Section 52 would be to abolish the right to strike. The choice and decision would no longer rest with the workers and their trade Unions. Instead, there might only be a permission and privilege bestowed by the Government or the courts if they approved of what they thought or chose to think was the purpose of the strike. No wonder Senator Roebuck exclaimed: "That is new legislation which is terrible and drastic." We urge that this section be amended so as to exempt lawful trade union activities and guarantee to working people their right to strike.

Section 365 is as follows:

> 365. Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be
>
> (*a*) to endanger human life,
>
> (*b*) to cause serious bodily injury,
>
> (*c*) to expose valuable property, real or personal, to destruction or serious injury,
>
> (*d*) *to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or*
>
> (*e*) *to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car,* on a *railway that is a common carrier,*
>
> is guilty of
>
> (*f*) an indictable offence and is liable to imprisonment for *five years,* or
>
> (*g*) an offence punishable on summary conviction.

Before discussing the substance of this section, we wish to point out the extraordinary increase in the penalty which it provides. Formerly, the maximum penalty under Section 499 of the Criminal Code was three *months* in jail, with or without hard labour. Now it is to be made 5 years!

Again, by the words underlined, this section severely limits the right to strike particularly as regards railway, transport and other public utility workers. There is a simple way to avoid strikes among these workers; that is to pay them fair wages and insure proper working conditions. If they are denied the right to strike, they are left without one of their most effective means of securing these against the will of their employers. They are compelled to accept whatever wages and conditions the employers choose to impose.

A further result of this section is to open the door to compulsory arbitration. Contracts providing for compulsory arbitration would be fastened on the trade unions, and they would have no way of changing these contracts except in violation of this section. Compulsory arbitration is recognized as a means of restricting free collective bargaining and of depriving labour of its right to obtain adequate wages and working conditions by strike action if necessary. Our Union is opposed to compulsory arbitration and the restriction of labour rights which it represents.

Still another way in which this section might limit labour's rights is that it would make it possible for employers to sign individual contracts with their employees; the employees would be made to sign such contracts as a condition of employment. In this way, workers would be unable to act together and unitedly without breaking not only their contracts but also the law under this section, and thus becoming liable to 5 years in jail. The problem is especially serious in the Province of Quebec where an individual "work contract" is presumed to exist under the Civil Code between the employer and each of his employees. Thus, a strike which is otherwise legal could be considered illegal and in breach of the individual work contracts between employers and employees. We cannot doubt, in the light of the past, that the provincial government in Quebec would so consider it. Section 365 likewise requires amendment. In particular, the penalty of 5 years in jail is grossly excessive and should be drastically reduced.

The third section which is dangerous to trade union rights is Section 372. Paragraphs (1) to (4) of this section are as follows:

> 372. (1) Every one commits mischief who wilfully
>
> (a) destroys or damages property,
>
> (b) *renders property* dangerous, *useless, inoperative or ineffective,*
>
> (c) *obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or*
>
> (d) *obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.*
>
> (2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.
>
> (3) Every one who commits mischief in relation to public property is guilty of an indictable offence and is liable to imprisonment for fourteen years.
>
> (4) Every one who commits mischief in relation to private property is guilty of an indictable offence and is liable to imprisonment for five years.

Public property includes railways, street-railways, highways and water, gas or hydro-electric systems. Private property includes any mine or smelter or other plant of any employer against whom workers might find it necessary to take strike action.

This section is particularly odious and repressive. It goes far beyond what is now to be found in those sections of the Criminal Code which it is supposed to consolidate. At the same time, for the majority of the offences now in those sections, it greatly increases the penalties to be imposed.

The section repeats without any of the qualifications the prohibitions of Section 52, and goes considerably beyond them. In addition to its general effects, it would in particular prohibit picketing during a strike. It would be added to paragraph (1) (f) of Section 366 which forbids workers to "beset or watch the... place where (a) person...works (or) carries on business." As we pointed out above, a strike brings production to a temporary stop. It thus necessarily renders property temporarily useless, inoperative or ineffective, and interrupts or interferes with the operation of property, and is effective only to the extent that it does so. But this would become illegal under Section 372. As to picketing, it is an important aid to an effective work stoppage. It is an act which helps to persuade workers on strike to remain outside the employer's property and away from their place of work. Under Section 372, however, it could only too easily be construed as interfering with the operation of the employer's property. Picketing is nowhere specifically authorized or guaranteed by law in Canada, but it has been recognized by many court decisions. The provisions of this section would overrule these decisions and make picketing a crime.

An employer's normal use, enjoyment or operation of his property consists in employing workers and selling for profit the products of their labour. The fact that this normal use is lawful does not mean that it is lawful always and under all conditions. Employers have obligations as well as rights, which are not unconditional. The right of workers to strike, conferred by law, and their right to picket, conferred by the courts, mean that when an employer refuses to accede to the just demands of his employees and their Union, the rights of property may take second place for the time being to the rights of labour, until mutual adjustment and agreement is reached. A number of Senators however, in their consideration of this section, wondered how some people could have rights which interfered with the rights of others. They thought that any interference with the "lawful use, enjoyment or operation of property" should be a form of mischief and made an offence under the Code, and accordingly adopted the section as it stands. It is therefore clear that the result of Section 372, if enacted, would be to abolish the legal right to strike and to picket, and would place property rights always and unconditionally above human rights. Our Union cannot agree to this being done. We affirm on the contrary that human rights come ahead of property rights, and indeed that property rights are valid and deserve to be recognized only insofar as they serve and enhance human rights. This section, and also paragraph (1) (*f*) of Section 366, should be deleted.

It has been said that the trade union movement's concern with these sections suggests "an unhealthy and old-fashioned obsession with the strike weapon". Old-fashioned or not, everyone knows that a strike is in essence no more than a concerted refusal by a group of workers to sell their labour when they think that the price which is offered is too low. The fact that workers have the right to strike and may as a last resort use this right is their most effective means of securing an adequate price, in terms of wages and other conditions from the employers. We wonder if those who are so ready to offer advice to labour would agree that the refusal of the owners of capital to offer their capital and thus to give employment, when they think that the rate of profit to be made is too low, should also be disallowed. We are further told that strikes "are out of place in modern society." Far more out of place than strikes is the refusal of employers to provide their employees with decent wages and working conditions; it is this refusal which makes strikes necessary. "What is hateful" said sir Wilfrid Laurier "are...the men who, when they are asked for a loaf, give a stone." The right to strike is an essential element of free labour relations and collective bargaining. It should not be taken away.

Two other sections must be briefly mentioned, namely, Sections 63 and 91. We applaud the action of the Senate in striking out paragraph (2) (c) of Section 3, under which the R.C.M.P., which is a civilian force and the Provincial Police in all the provinces except two, was to be treated as though it were a military force. As Senator Roebuck aptly remarked: "Can you imagine the shout of laughter that would go up if you proposed to apply a provision of this kind to, say, our Toronto Police Force or to our Ontario Provincial Police Force? You would be laughed out of court." We trust that your committee and the House of Commons will agree with him, and will approve the amendment made by the Senate.

Section 96 authorizes a police officer to search "without warrant" a person or vehicle or premises other than a dwelling house" whenever he "believes on reasonable grounds that an offence is being committed or has been committed" in relation to offensive weapons. This means that police officers may search without warrant Union halls and offices, or Union officials and their automobiles. No definition is given of the reasonable grounds which a police officer must have, nor does he need to find any weapons to substantiate his belief. In our opinion, the almost unlimited power of search given to police officers under this section is contrary to the public interest and should not be granted. In the words of Mr. Angus MacInnis, M.P., this section, introduced into the Code by the Garson amendments in 1951, "goes altogether too far." The long established tradition that police officers must have authority by warrant to undertake any search should be maintained. Section 9 should be repealed or amended.

Just as freedom from want is only one of the four freedoms stated by President Franklin Roosevelt, so trade union rights, which make it possible for working people to earn a decent living by their labour, are not the only rights with which the members of our Union and their families are concerned. There is the right to due process and fair trial, the right to petition for the redress of grievances, the right of free association and peaceful assembly, and above all the right to freedom of thought and speech. These rights are not only necessary and good in themselves; no trade union could function without them. We turn to a consideration of certain sections of Bill 93 which endanger these basic rights.

III—*Freedom of Speech and Assembly*

The rights of the Canadian people to freedom of speech and assembly are threatened by several sections of Bill 93. Of these the most important are Sections 46 and 47, dealing with treason, and Sections 60-62 dealing with sedition.

(*a*) *Treason*—Paragraphs (1) and (3) of section 46 are as follows:

46. (1) Every one commits treason who, in Canada,

(*a*) kills or attempts to kill Her Majesty, or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her;

(*b*) levies war against Canada or does any act preparatory thereto:

(*c*) assists an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;

(*d*) uses force or violence for the purpose of overthrowing the government of Canada or a province;

(*e*) conspires with any person to do anything mentioned in paragraphs (*a*) to (*d*); or

(*f*) forms an intention to do anything mentioned in paragraphs (*a*) to (*e*) and manifests that intention by an overt act.

(3) Where it is treason to conspire with any person, the act of conspiring is an overt act of treason.

Paragraph (1) of Section 47 provides that "every one who commits treason is guilty of an indictable offence and is liable to be sentenced to death or to imprisonment for life."

Paragraph (2) of Section 47 states: "No person shall be convicted of treason upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused."

We find these sections dangerous and are opposed to them for the following reasons:

First, they greatly extend the range of offences which are considered treason. As Senator Roebuck explained: "There are three elements in treason. An attack upon the King's person is the first. There is the levying of war against the King, which today is the levying of war against the state. The third is adhering to the King's enemies. That has come down to us through the centuries. Some changes have been made from time to time but always they have come back to these three factors. These are very serious factors. They are so serious that special provision for trial have been made, and there is the special penalty of death. We do not want to include in that definition of treason things which have not in the past been considered." But Section 46 does include many things which have not been in the past considered treason. In particular, whereas treason used to be essentially a war-time offence, it is now to become one of which a person can equally be found guilty in peace-time. The section is so broad and vague that it might well be made to cover mere criticism of the Government's foreign policies.

Secondly, they greatly extend the range of offences which can be punished by death. It has been argued that when the offence is not serious, a lighter sentence may be imposed. But the discretion as to the sentence would be left with the Judge; there is no hard and fast rule. We think that where the extreme penalty of death is involved, the offences punishable by death should not only be limited; they should also be very clearly and specifically defined, and no others should carry this penalty. Except as to mercy on the recommendation of a jury, as little leeway as possible should be left with the Judge, certainly not the very broad and dangerous leeway which is provided here. Excessive and uncertain punishment, which may also be unequal, is harmful to our conceptions and administration of justice.

Thirdly, they greatly extend the range of offences in which the alleged intent of the offender rather than his act is the essential element of guilt. The legal authorities are agreed that "treason as an offence requires proof of intention; one cannot be treasonable unintentionally." Where the act is clear and definite, as in paragraph (*a*), there is no difficulty. All that need be shown is that the act was not accidental. Equally, under paragraphs (*b*), (*c*) and (*d*), the act by itself is likely to be sufficient. To quote Senator Roebuck again: "If a man hits another man over the head, you do not have to prove that the offender knew it was going to hurt the other man, nor do you have to prove that he knew it was against the law; you only have to prove that he intended to hit him." Where there was doubt as to the intent, it could always be argued that the act spoke for itself and betrayed a criminal motive. But a person need not have committed an overt act under any of these paragraphs in order to be found guilty. Paragraphs (*a*) to (*d*) are all covered by paragraphs (*e*) and (*f*). Thus, to be found guilty of treason, it is only necessary that one person who is party to an alleged conspiracy should state that the other person had formed an intention to commit treason and had manifested that intention by conspiring with him to do so. If the evidence

of the informer is corroborated by a material particular, such as the knowledge of a certain telephone number or the possession of a certain book, conviction and death may ensue. Thus, thought followed by speech or writing is essentially all that is required. An innocent conversation, malevolently interpreted, could lead to this result. Nor is this a fanciful possibility. The law itself gives the strongest encouragement to people to inform. Under Section 50,

> every one . . . knowing that a person is about to commit treason does not, with all reasonable dispatch, inform a justice of the peace or other peace officer thereof or make other reasonable efforts to prevent that person from committing treason . . . is guilty of an indictable offence and is liable to imprisonment for fourteen years.

The testimony of self-interested persons, who may themselves be guilty and wish to escape punishment by turning state's evidence, is far too unreliable to be made the legal basis for charging and perhaps convicting people of treason. The accused may be wholly innocent; "frame-ups" are not unknown, and have sometimes led to death. The dangers of these sections are only too obvious.

Fourth, therefore, the result of these sections must inevitably be the suppression of free speech and criticism through intimidation and fear. Where there is so much doubt as to the consequences and these may be so serious, many people will unfortunately choose silence. Through the suppression of speech, thought also would be censored. It would wither because it could not be expressed.

Some discussion in relation to paragraphs (c) and (d) of Section 46 will illustrate our meaning. As to paragraph (c), the outstanding point is that it eliminates the distinction which has hitherto existed between peace and war. Until now, assistance to the armed forces of another country was treason only after Parliament had declared war and the country against which war had been declared had become our enemy. Everybody knew to whom they might give assistance and when such assistance became treasonable. Under Section 46, this is no longer so. Assistance to armed forces against whom Canadian forces are fighting is treason, whether or not Canada is at war with the country whose forces they are. No authority is specified who will state when Canadian forces are fighting against the forces of another country. Indeed, whether hostilities exist or not may be unknown. The Minister of Justice admitted that this was "a very new departure in principle". Mr. J. G. Diefenbaker, M.P., was more explicit; he said: "I know of no case in four or five hundred years' interpretation of the law of treason that goes as far as this amendment." *Saturday Night*, in its issue of May 3, 1952, under the heading "What's 'Treason' Nowadays?", commented on:

> the extreme uncertainty and obscurity of the new definition of treason (a crime punishable by death) which makes it cover, not merely assistance to an "enemy", but also assistance to "any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists." The existence of a state of war, and consequently of a defined enemy, is a matter of proclamation; the Queen tells her Canadian subjects to whom they may not lend assistance and when such assistance becomes treasonable. No such official action is necessary to turn a legitimate action into treason when the test is merely that the action benefits any armed forces against whom Canadian forces are engaged in hostilities.
>
> Incidentally, this removal of the distinction between "hostilities" and "war" abolishes at one sweep all the "laws of war" as they have developed over the centuries, and creates a new situation to which no precedents or treaties concerning war have any application. Among other things, it is not necessary that the Canadian forces in question should have been ordered into hostilities by any action of the Canadian Govern-

ment; they may have been plunged into them by the commander of an allied but alien army. It may be treason to aid an armed force about which the Canadian Government does not even know that it is "engaged in hostilities" against our forces, for the amended Code says nothing about any action by the Canadian Government whatever.

A second cause of uncertainty is that nowhere in the Code is the meaning of assistance defined. According to the Minister of Justice: " 'Assisting' means assisting in any way whatever." Canadian forces are presently engaged in hostilities in Korea. Is it assistance to the forces on the other side, and therefore treason, to call for a cease-fire in Korea? Chinese forces are fighting with the North Koreans. Is it assistance to them to advocate trade with China, to oppose a blockade of China, or to suggest that the five Great Powers, including China, should settle their differences peaceably around the table instead of piling up armaments against each other for possible use in the future? Is it assistance to the forces of other countries to advocate disarmament or to oppose conscription, or for workers to go on strike in an industry producing war materials or in a mine or smelter producing raw materials for war? All these acts are a normal part of free and democratic life; our trade union and democratic rights would be almost meaningless without them. Yet, under Sections 46 and 47, they might all be construed as treason, even in peacetime, and be punished with life imprisonment or death.

But if the above shows how uncertain is the meaning of treason where overt acts are involved, how much greater is the uncertainty and obscurity where it is a question of conspiracy and of forming an intention. Combining paragraph (*c*) with paragraphs (*e*) and (*f*), it may become treason merely to think about and discuss with someone the idea of a cease-fire in Korea. The mere thought and discussion of peace in the far East or of opposition to conscription, or of disarmament and a conference between the Big Five may be treason. The mere suggestion between two workers, let alone the preliminary planning, of a strike may be a crime. This is censorship and repression with a vengeance. Experience in other countries shows what can happen. Section 46 should be amended so as to remove the grave dangers which it contains.

As to paragraph (*d*), we shll deal with it below in conjunction with Sections 60 and 62, which are an equally dangerous threat to freedom of thought and expression.

(*b*) *Sedition*—Sections 60 and 62 are as follows:

60. (1) *Seditious words are words that express a seditious intention.*

(2) *A seditious libel is a libel that expresses a seditious intention.*

(3) *A seditious conspiracy is an agreement between two or more persons to carry out a seditious intention.*

(4) Without limiting the generality of the meaning of the expression "seditious intention", every one shall be presumed to have a seditious intention who

(*a*) teaches or advocates, or

(*b*) publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada.

62. Every one who

(*a*) speaks seditious words,

(*b*) publishes a seditious libel, or

(*c*) is a party to a seditious conspiracy,

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

Formerly, the penalty for sedition was 2 years in jail. Under the Garson Amendments of 1951, the penalty was increased to 7 years. It is now proposed to double this penalty and make it 14 years in jail. Such a sharp increase in the punishment for an offence which has always been vague and difficult to define in itself suggests a purpose hostile to free speech and criticism of government policies.

What constitutes the offence of sedition really depends on what we think is the nature of government. If we believe that government is by the divine right of superior beings who are set over us as our masters and must be obeyed, then criticism is seditious because it undermines the respect and fear in which masters must be held, as well as the source of their authority. In the United States, for example, slaves were forbidden to read so that they could not question from books as they did from their experience the right of property by which they were enslaved. On the other hand, if we believe that government derives its authority from the people whom it must serve, that it is accountable to them and can be replaced by them, criticism is an essential right which the people must use if the government is to belong to them and be truly representative. Mr. Justice Kellock summarizes as follows the opinion of Stephen in his "History of the Criminal Law of England": "To those who hold this latter viewfully and carry it out to all its consequences, there can be no such offence as sedition."

No definition of sedition is given in Section 60. Moreover, as the section makes clear, the offence is not one of acts or of words but of intention. The quotation from Justice Douglas is worth repeating here: "That is to make freedom of speech turn not on what is said but on the intent with which it is said. Once we start down that road, we enter into territory dangerous to the liberties of ever ycitizen . . . We then start probing men's minds for motive and purpose; they become entangled in the law not for what they did but for what they thought; they get convicted not for what they said but for the purpose with which they said it." Nor is it necessary that the seditious intention manifest itself in words; no speech or writing is required for a person to be accused and convicted. It is only necessary to show that two or more persons agreed amongst themselves to use certain words, to speak or write sometime in the future. Again, in the words of Justice Douglas: "To make speech unlawful because two men conceive it is to raise the law of conspiracy to appalling proportions."

Paragraph (4) of Section 60 requires particular comment. The likeness between its wording and the wording of the Smith Act in the United States is striking, as well as frightening. No less than 85 people have been arrested in the United States under this Act, and many of them have been convicted and jailed. But whereas the maximum term under the Smith Act is 5 years in jail, here it is to be 14. The freedom to teach and advocate, as well as the freedom to publish and circulate the writings of others, is directly threatened by this section. It is necessary that the forbidden teachings and writings in fact advocate the use of force to change the government? Experience shows that it is not. It is not left to those who spoke or wrote to say what they meant; the Government in prosecuting and the courts in convicting them tell them what they meant. Thus, convictions have been obtained against persons who steadfastly denied that they believed in or were teaching or advocating the use of force. And again it must be stressed that it is not a question of actual teaching or of publishing or circulating certain writings, but merely of the intention to do so in the future. We quote what Justice Black of the United States Supreme Court wrote on this point: "These petitioners were not charged with an attempt to overthrow the government. They were not even charged with overt acts of any kind designed to overthrow the government. They were not even charged with saying anything or writing any-

thing designed to overthrow the government. The charge was that they agreed to assemble and to talk and publish certain ideas at a later date, . . . to use speech or newspapers and other publications in the future to teach and advocate the forcible overthrow of the government . . . No matter how it is worded, this is a virulent form of prior censorship of speech and press . . . I would hold . . . this prior restraint unconstitutional on its face and as applied."

The language of Justices Douglas and Black is exactly applicable also to paragraphs (*d*), (*e*) and (*f*) of Section 46. Paragraph (*d*) prohibits, on pain of death or life imprisonment, the use of "force or violence for the purpose of overthrowing the government of Canada or a province." That is an overt act. But what is an overt act which manifests an intention to use force or violence? Would it not be possible for speech and writing to be declared under these paragraphs to teach or advocate the use of force or violence, and for all those who had spoken or written to be found guilty of treason? Could this not then be extended to all those who had listened or read? The possession of certain books or membership in a political party might thus become a crime; thought and its alleged intention would be made a test of treason; ideas would be placed on trial. This may be thought extreme and unlikely. But the letter of the law is there, and has been applied in other countries. It is therefore dangerous and repressive, a millstone on the liberty of the people. The true distinction between overt acts and ideas, and how they should be dealt with, was stated by Macaulay almost exactly 125 years ago:

> To punish a man because he has committed a crime, or because he is believed, though unjustly, to have committed a crime, is not persecution. To punish a man, because we infer from the nature of some doctrine which he holds, or from the conduct of other persons who hold the same doctrines with him, that he will commit, a crime, is persecution, and is, in every case, foolish and wicked.

The next sentence is slightly paraphrased:

> To argue that, because a man holds certain ideas, he must think it right to change the government by force, and that because he thinks it right, he will attempt to do it, and then, to fund on this conclusion a law for punishing him as if he had done it, is plain persecution.

It is clear that the sections we have been considering could be made the legal basis of persecution. We have already urged that Section 46 be amended. We urge that Section 60 be deleted.

(*c*) *Other Sections*

Sections 64-69 dealing with unlawful assemblies and riots are not new, although some changes for the worse have been made in them. In general, we think the sections are too strict, and have been applied too strictly on occasions in the past. They represent an undue limitation of freedom of speech and assembly.

In particular, we wish to point out three changes which have been made. In the present Code, paragraph (*a*) of Section 69 refers to those "with force and arms wilfully oppose, hinder or hurt" the person whose duty it is to read the proclamation of a riot. In the new Code as proposed, it has been changed to read: "opposes, hinders, or assaults, wilfully and with force." The important words "and arms" have been omitted, thus making prosecution and conviction a good deal easier. Also, the wording has been transposed so that the phrase "wilfully and with force" might be held to qualify only the word "assault" and not the first two words "oppose" or "hinders".

The second change is in paragraph (*b*) of Section 69. In the present Code people are forbidden to "continue together to the number of twelve for thirty minutes" after the proclamation of a riot has been read. In the new Code as

proposed, everyone is liable to life imprisonment who "does not peaceably disperse and depart... immediately" after the proclamation has been read. Thus, under the present Code, no one can be charged with ignoring a reading of the Riot Act unless thirty minutes later at least twelve people are still assembled together. The new Code proposes that "everyone" who does not "immediately" disperse and depart shall be liable to a life sentence.

Finally, paragraph (c) of Section 69 changes the word "know" to the words "has reasonable ground to believe". "Know" is better and should be retained.

Another section which limits freedom of assembly and the right to petition is Section 160. Paragraphs (a) and (c) of this section read in part as follows:

> 160. Every one who
>
> (a) not being in a dwelling house causes a disturbance in or near a public place,
>
> (iii) by *impeding* or molesting *other persons;*
>
> (c) loiters in a public place and *in any way obstructs persons who are there;*
>
> is guilty of an offence punishable on summary conviction.

The wording of this section is too vague, and its scope has been extended as compared with the present Code. Even under the wording as it now stands, the section has been used to curb open public meetings and the collection of signatures to petitions. The section is an additional threat to the right of picketing, and should be amended accordingly.

Lastly, there is Section 51 which reads:

> Every one who does an act of violence in order to intimidate the Parliament of Canada or the legislature of a province is guilty of an indictable offence and is liable to imprisonment for fourteen years.

The phrase "act of violence" lacks definition. What is the line between violence and intimidation, and legitimate assembly and peaceful demonstration? Parliament and the legislature are sensitive to public opinion, and rightly so. The people should not be hindered in voicing their opinions and making them known to those who represent them.

IV—*Conclusion*

A long step in the direction of repressive laws was taken in 1951, when the Garson amendments to the Criminal Code were adopted. The revisions contained in Bill 93 include these amendments and go a further long step forward beyond them. It is argued in defence of these measures that the protection of our rights and freedom requires that they be given us, that we must lose them if they are to be saved. This does not make sense; it appears to us as false as that other saying: if you want peace, you must prepare for war. Four years before the Garson amendments, Professor A. R. M. Lower of Queen's University wrote: "The new despotism is indeed upon us. It has not come this time, in the form of a King with extravagant claims of divine right, but in the form of a Cabinet with equally extravagant assertions about the safety of the state." It does not seem that the interests of the Canadian people, or that the people themselves, have demanded these far-reaching and steady encroachments on their rights. It would be far better if the direction were reversed. The suggestions we have made with respect to the proposed revisions of the Criminal Code are submitted with the purpose of reversing it.

When the Garson amendments were introduced nearly two years ago, it was reported that this was done at the request of the United States. *Saturday Night* stated flatly: "These amendments were drafted very hastily, and upon

the urgent instigation of the United States." Earlier, the Montreal *Gazette* on May 3, 1951 had written:

> The new legislation dealing with sabotage and espionage the government will ask parliament to pass is being introduced here at the request of the U.S. government. That is something that Prime Minister St. Laurent did not make clear when he made his announcement.
>
> During negotiations for the leased bases agreement, the U.S. made it clear that Canadian security restrictions were not considered adequate. Accordingly and at U.S. request, the Dominion agreed to seek legislation which would provide better protection for U.S. interests.

Considering that Bill 93 contains more of the same medicine, it is not unreasonable to conclude that it comes from the same bottle. If such is the case, it injures the nation's independence and is ungrateful to the national dignity of its people.

The sections of Bill 93 considered in this brief are in marked contrast to the provisions of the United Nations Universal Declaration of Human Rights. The Declaration speaks of the "equal and inalienable rights of all members of the human family", and says that all Member States of the United Nations, of which Canada is one, have pledged themselves to promote "respect for and observance of human rights and fundamental freedoms." The proposed revisions to the Criminal Code are in conflict with this pledge, which better expresses the wishes of the members of our Union and the Canadian people than the revisions do. Accordingly, the Canadian Section of the International Union of Mine, Mill and Smelter Workers urges your Committee and the House of Commons to give the most careful consideration to the suggestions of our Union which are herewith respectfully submitted.

February, 1953.

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

"An Act respecting The Criminal Law", and all matters pertaining thereto

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

APRIL 9, 1953

WITNESSES:

Mrs. F. G. Montgomery, Toronto, Mr. Gregory J. Gorman, Barrister, Ottawa, and Mr. George S. Hougham, New Westminster, B.C., on behalf of the Canadian Restaurant Association.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

MINUTES OF PROCEEDINGS

House of Commons, Room 268
THURSDAY, April 9, 1953.

The Special Committee appointed to consider Bill 93 (Letter O of the Senate), "An Act respecting The Criminal Law", and all matters pertaining thereto, met at 11.00 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Churchill, Henderson, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy and Robichaud.

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice; a delegation representing the Canadian Restaurant Association composed of the following: Mr. Gregory J. Gorman, Barrister, Ottawa; Mr. C. H. Millbourn, Toronto, President of the Association; Mr. J. C. Sim, Ottawa, Vice-President; Mrs. F. G. Montgomery, Toronto, Managing Director; Mr. George S. Hougham, New Westminster, B.C., former Managing Director, and Mr. J. Howard St. George, Ottawa, a representative of the Canadian Hotel Association.

The Committee heard the representations on behalf of the Canadian Restaurant Association which were made in turn by Mrs. Montgomery and Messrs. Gorman and Hougham. At the conclusion of the presentation, the Chairman thanked the delegation for their valuable contribution.

At 12.15 o'clock p.m., the Committee adjourned to meet again at 10.30 o'clock a.m., Friday, April 10, 1953.

ANTOINE CHASSÉ,
Clerk of the Committee.

73250—1½

EVIDENCE

APRIL 9, 1953
11.00 a.m.

The CHAIRMAN: Would you come to order, gentlemen, please. We have with us this morning a delegation from the Canadian Restaurant Association. Mr. Gregory J. Gorman, barrister, is heading the delegation, and if it is your pleasure we shall now hear from Mr. Gorman.

Mr. GREGORY J. GORMAN: Mr. Chairman and gentlemen, first of all on behalf of the Canadian Restaurant Association I want to express to you our appreciation for this opportunity of presenting our views to this committee. Now I would like to introduce to the committee the representatives of the association who are here with the delegation this morning. We have Mr. C. H. Millbourn of Toronto. He is sitting at the end of the table on the right and he is president of the Canadian Restaurant Association. We also have Mr. J. C. Sim, of Ottawa, who is the first vice president of the association. Then we have Mrs. F. G. Montgomery of Toronto, who is sitting on my left. She is the managing director of the association. We also have Mr. George S. Hougham of New Westminster, B.C., who is sitting at the end of the table. He is a former managing director of the Canadian Restaurant Association. He was formerly of Toronto but is now a resident of British Columbia. He acts in a consultative capacity for the association from time to time and he has been called in to present a part of the brief of the association this morning. We shall be hearing from him later.

Also with us this morning is Mr. J. Howard St. George of Ottawa who represents the Canadian Hotel Association, which is giving its full support to the brief to be presented this morning.

Now you gentlemen have in your possession I believe the brief of the association which was given to the chairman of your committee some time ago and you may already have had an opportunity to read it.

The CHAIRMAN: Pardon me, Mr. Gorman, but I wonder if the members of the committee would like to have this brief read in view of the fact that it is only a very short one. What is your pleasure?

Agreed.

Maybe you could read it, Mr. Gorman, and make comments on it as you go along.

Mr. GORMAN: My hope was that Mr. Hougham, who is more completely familiar with the particular problem which faces the association, will deal with the brief.

The CHAIRMAN: Fine.

Mr. GORMAN: I have written a letter which may be in your hands at the moment, and which might be considered as a supplementary brief and which is fact sets out or suggests to you a form of relief which might overcome the problem which this association has. It deals with section 366 of the draft bill and perhaps at this stage I can read it so that you will know just what we are asking for. I think that would be a good starting point. The letter is addressed to Mr. Don. F. Brown, M.P., Chairman, special committee considering bill No. 93 "An Act respecting the Criminal Law", and it reads as follows:

APRIL 8th, 1953.

Mr. Don. F. Brown, M.P.,
Chairman,
Special Committee Considering
Bill No. 93 "An Act Respecting the Criminal Law",
Parliament Buildings,
OTTAWA, Ontario.

Dear Mr. Brown:

We have been consulted by The Canadian Restaurant Association regarding their brief to be presented to your Committee. The brief of The Canadian Restaurant Association to your Committee dated March 17th, 1953, outlines the position of the Association with reference to the use of picketing as an instrument in labour negotiations and these remarks are supplementary thereto.

The following is submitted as a suggested manner in which the relief sought by the Association can be granted through an amendment to Bill No. 93 under consideration by your Committee.

Section 366 of Bill No. 93 is the Section which most vitally affects the members of the Association and other persons carrying on the restaurant business and related businesses. Because of the particularly vulnerable position of persons carrying on such businesses, it is respectfully submitted that Section 366, subsection 2, of Bill No. 93 should be amended to include after the word "place", in the second line of that subsection 2, the following:

> such place not being the place of business of a person supplying goods or services directly to the consumer thereof

so that subsection 2 as amended will read as follows:

> 2. A person who attends at or near or approaches a dwelling-house or place, such place not being the place of business or a person supplying goods or services directly to the consumer thereof, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this Section.

The effect of such an amendment would protect persons relying for the welfare of their business on the direct patronage of the public who are easily discouraged from resorting to places of business where there is even slight evidence of possible trouble or inconvenience, and who under ordinary circumstances, can resort to alternative establishments supplying the same goods or services.

The foregoing is respectfully submitted on behalf of The Canadian Restaurant Association.

Yours very truly,

CLARK, MACDONALD, CONNOLLY,
AFFLECK & BROCKLESBY,
per GREGORY J. GORMAN

Now, having told you what we are asking for, I think it would be appropriate at this time to have the problem facing the members of this association explained to you. But before doing that, I should like to call on Mrs. Montgomery who was introduced earlier as the managing director of the association. I call on Mrs. Montgomery to explain to you the scope and activities of this association. Mrs. Montgomery?

Mrs. F. G. MONTGOMERY: Mr. Chairman, and gentlemen, the Canadian Restaurant Association was organized in 1944 for the specific purpose of raising the standards of restaurant operation in Canada. We operate under a

code of ethics and we have a high degree of responsibility and privilege in being licensed to provide food and services to the public. Our present membership across Canada is approximately 12. We have representatives in all 10 provinces, and we have 23 organized branches.

Mr. GORMAN: Thank you, Mrs. Montgomery. Now perhaps Mr. Hougham will deal with the background of our request and, at the end of his remarks, if it is the wish of the committee, perhaps I can direct some further remarks with respect to the amendment which is requested. Now, Mr. Hougham.

Mr. George S. Hougham, New Westminster, B.C., called:

The WITNESS: Mr. Chairman and gentlemen, may I very briefly remark by way of introduction that I am particularly concerned with representing the British Columbia division of the association because its people were unable to be here.

While we recognize that the issue is one of national importance and significance in management-labour relations, perhaps British Columbia and Vancouver particularly at the moment, and in recent months, have been spotlighted by certain law cases which have been held out there, and by certain activities which rendered us peculiarly susceptible to the impact of union activities in the field of picketing particularly.

I am glad to have the privilege of reading this brief because, if I had been simply asked to comment on it, I maght have missed some of the significant points. So I thank you for the opportunity of reading it.

The CHAIRMAN: Are there any members of the committee who do not have copies of the brief?

The WITNESS: I have a few spare copies here.

TO: THE PARLIAMENTARY COMMITTEE CONSIDERING THE CRIMINAL CODE

Mr. Chairman and Gentlemen:—

The Canadian Restaurant Association, a Dominion-wide organization, organized primarily for the purpose of raising the standards of restaurant operation across Canada, is glad of the opportunity afforded by your present study of the Criminal Code to bring to your attention a matter concerning management-personnel relationships generally but with particular reference to the use of picketing as an instrument in labour negotiations.

The necessity for emphasis upon this subject arises out of an experience originating in Vancouver, concerning a collective bargaining agreement between Aristocratic Restaurants Limited and Local 28 of the Hotel and Restaurant Employees Union.

The negotiations and ensuing dispute between the respective parties proceeded through the due processes of law, commencing with proceedings under the British Columbia Industrial Conciliation and Arbitration Act and culminating in a decision reached by a majority of the Supreme Court of Canada.

It is beyond the scope of such a submission as this to review the various steps, judgments and appeals or to review the terms of the Supreme Court judgment with its involved legal references; but for the purposes of this brief, may we refer you to the attached Appendix being a photostatic copy of an article in a trade union magazine which sets out a concise history of the case to which we have referred. And for greater clarity, so that the point of our submission may not be missed, may we particularly emphasize the following quotations therefrom:

> The second great event of June 26th 1951 was getting word from Canada that the highest Court in the land had backed Local 28 by five votes to two—a good score in any game!—on the question of our right to picket a spot WHERE THERE IS NO STRIKE AND WHERE, INDEED, THERE MAY BE NO UNION MEMBERS . . .
>
> The importance of this decision to organized labour throughout the Dominion of Canada, cannot be stressed too strongly. It is a milestone in Canadian labour history and assures working people and their Unions that they may without hindrance INFORM THE PUBLIC OF THE ACT THAT ANY ESTABLISHMENT IS OPERATING WITHOUT A UNION AGREEMENT.

The capitals are ours.

In the light of the foregoing quotations and of the Supreme Court ruling which makes them possible, it is respectfully submitted that the spirit and intent of the B.C. Industrial Conciliation and Arbitration Act and comparable provincial legislation elsewhere in Canada, are defeated and the very terms "Conciliation" and "Arbitration" cease to have any significance.

Now, of course, this is the opinion of the layman. I do not accept any responsibility for legal opinions. This is just our opinion, the opinion of lay people.

From the viewpoint of the legal mind, it may be considered to be an over-simplification of the case when we state that the majority decision of the Supreme Court of Canada is apparently based upon the rights of an individual or his representative—a trade union for example—to communicate a statement of fact to the public by a printed placard displayed by a picket.

This association is as reasonably concerned with the rights of the individual as any other group of Canadian citizens who cherish the democratic process; but it respectfully submits that rights or privileges carry with them corresponding responsibilities and due recognition of the rights of others.

In actual practice the use of the picketing instrument as a means of enforcing the demands of a labour union, is in itself a method of intimidation regardless of the accuracy, within strict legal limits, of any statement that may be made on the placard used by the picket. If this were not true, the picketing process itself would be valueless.

A restaurant, or indeed any service establishment dealing directly with the consumer, is peculiarly susceptible to the picketing process in that the presence of a single picket or a picket line outside such an establishment tends to discourage consumer patronage which is precisely what it is intended to do.

For this reason this association urges that the right to picket the premises of an employer is one that should be safeguarded by every reasonable precaution and should only be considered as a measure of last resort where all other processes of negotiation have failed to reach an agreement.

Such a safeguard could hardly be said to be present where, as is stated in a previous quotation, there is a "Right to picket a spot where there is no strike and where, indeed, there may be no union members."

It is further respectfully submitted that public opinion has sanctioned various legislative enactments the general purpose of which is to bring management and personnel together for the purpose of reaching an amicable understanding and agreement in matters of policy, working conditions and rates of compensation. Such legislation, we submit, is designed to promote a spirit of partnership between employers and employees. The idea of a union or labour organization is implicit in such legislation and its function as a collective bargaining agency recognized when it has established the necessary authority through certification.

Such legislation generally establishes elaborate machinery to prevent precipitate action with its implied inconvenience to employers and the public and probable hardship to employees. All these precautionary measures are nullified if it is possible for a labour organization to by-pass such acts through the simple process of establishing a picket line outside an establishment whether any dispute is in progress, any negotiations have been attempted, or any union members employed on the premises by merely taking refuge in the right of the individual to "communicate a statement of fact to the public", the fact being that the said establishment does not have a union agreement of some kind.

We respectfully submit that the intimidation inherent in the picketing process itself even under adequate legislative control, is sufficiently coercive in its implications particularly, as we have already said, when applied to service establishments such as restaurants dependent exclusively upon daily public patronage as the very lifeblood of their existence. When, however, the restraining influence of conciliation and arbitration is removed, the result can easily become disastrous. Force is substituted for negotiation and under such circumstances picketing becomes a weapon of coercion directed against the employer to compel his employees to become members of a labour organization simply as a means of protecting his own business and their livelihood.

An interesting by-product of the Supreme Court decision now actually happening—it has now ceased to happen—in Vancouver involves an establishment in which the employees quite voluntarily, without undue influence on the part of the employer, refused unanimously to give the rights of certification to a union seeking to represent them in negotiations with the employer. Despite this blanket refusal, a picket is or was in continuous attendance at the premises of this employer communicating "a statement of fact" to the public, the fact being that the establishment does not have a union agreement. We respectfully submit to your comittee that this is an unreasonable abuse of the rights of the individual and is apparently made possible through the Supreme Court decision to which reference has already been made.

May I pause for a moment to digress for the purpose of making this comment. It is possible, in fact highly probable, that the Supreme Court decision does not enunciate any new principle but may spotlight a principle which is already present there, but it has been used in this particular case as an argument.

For the foregoing reasons we respectfully recommend that your committee earnestly consider if possible a revision of the Criminal Code with a view to outlawing picketing until due processes of negotiation and arbitration have been explored under appropriate provincial legislation. Again may I repeat this is just a statement of the layman. I do not know whether it is within the competence of parliament or if it is within the competence of the Criminal Code to do that, but that is what we would like to see done.

This recommendation is offered, not from any desire to restrict the legitimate rights of labour organizations as such nor the freedom of their members as individuals. Freedom, as we have already suggested, in a democratic state is predicated upon the responsibility as well as privilege limited by moral concepts which recognize the rights of others.

We believe that public opinion has long since sanctioned the idea of collective bargaining and the ultimate use of the strike and the picket line where processes of negotiation have ended in deadlock. But we also believe that these are measures of last resort the use of which should be restrained by reasonably adequate safeguards. It is in the spirit that this memorandum is respectfully submitted.

May I make one additional comment.

It is conceivable, and not highly improbable, that this measure could be used in the case of a jurisdictional dispute. Let us take a hypothetical case, hypothetical for the purposes of this argument, but it is not hypothetical in history. A union and an employer may have reached an agreement, but there may be a dispute between that union and another as to the rights of certification. The union and the employer may have reached an amicable understanding, but the rival union under this rule could easily parade a picket line stating "This establishment does not have a contract with our particular union." In the point of view of the public, who know nothing of the merits of the dispute, you can see the result would be serious.

That substantially is our case. Mr. Gorman, our counsel, has suggested a remedy which does not fall along the lines of the suggestion we have made. Now we are in your hands. We shall be glad to amplify this if you wish by answering any questions. I do want to repeat that there is no existing union contracts involved in this brief. That is not our purpose. We merely ask adequate safeguards before the use of the picket is permitted. That, sir, is our case.

The CHAIRMAN: Would you care now, Mr. Gorman, to have members of the committee submit questions?

Mr. GORMAN: That would be agreeable.

Mr. CANNON: Do you know if there is any precedent creating an exemption to the general law, allowing other businesses an exemption of that kind for any special reasons?

Mr. GORMAN: Not at the present time. The present draft section 366 is almost a redraft of the present section 501 in respect of picketing. The only change that appears now is that it is no longer an indictable offence to watch and beset. Up to 1934 watching and besetting was defined as an indictable offence and in present section 501, the saving proviso, which we are dealing with here and which appears as subsection (2) of section 366 of the draft, is paragraph (*f*) of section 501 of the Code. Now, up to 1934 that paragraph did not appear, so that watching and besetting was an offence. Well, in 1934 what is now subsection (2) was enacted and it provides that a person who attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information does not watch or beset within the meaning of this section. Now there is no exception to that saving proviso, but up to the year 1934 it did not exist at all.

Mr. CANNON: Thank you.

The CHAIRMAN: Any further questions?

By Mr. MacInnis:

Q. Mr. Hougham, you mention, I think, in various places in your brief that picketing should only be used as a means of last resort. Well, isn't that in effect today in all our labour legislation, that the right to strike is forbidden until the parties concerned and the union have exhausted every legal requirement provided in the law?—A. That, Mr. MacInnis, is the spirit and intent of labour legislation, but it is our opinion that that spirit and intent has been nullified by the Supreme Court decision.

Q. I would not agree. I do not think the Supreme Court decision nullified the provisions in any of the labour codes, either federal or provincial.—A. I am not competent to answer on legal grounds.

Q. I am not competent, either, from the legal point of view, but that is my opinion.—A. But in actual practice—you and I both come from that part of the country, Mr. MacInnis—over in North Vancouver within very recent

weeks a place has been picketed without any reference whatsoever to the Industrial Conciliation and Arbitration Act. None of the machinery has been used. The pickets have simply appeared.

Q. At such place as you mentioned, was there ever an attempt made by labour to organize the place and was the attempt unsuccessful?—A. My understanding of that situation, subject to correction, is that there was a union in that place up until about two years ago, but in the interim there has been no union and no negotiations or any attempt to establish a union on the premises. I say that subject to correction. I may be wrong, but that is my impression.

Mr. NOSEWORTHY: You have no other instance of any union taking advantage of this Supreme Court decision to place pickets before an establishment without having due process of law. You have just the one example?

The WITNESS: As far as I know. In other words, in justice to the unions, I think I ought to say that up to now I know of no particular instance in which they have used this weapon which is now placed in their hands. But they advertise quite openly that it is there for their use if they want to use it. In other words, the threat is inherent in their approach.

Mr. NOSEWORTHY: You do not think that the end result of your brief and your appearance here might be to convey to the unions across the country that there is an opportunity there for picketing which they have not been availing themselves of?

The WITNESS: I do not think they need any advisement this side of the grave.

Mr. MACINNIS: Would you take the reverse of your case? Would you take the position that an employer could not give publicity to the fact, and this is what the pickets do? They give publicity to the fact that there is no organization here. Would you make it so that the employer could not give publicity to the fact that he was not hiring organized labour?

The CHAIRMAN: You mean a counter picket?

Mr. MACINNIS: I mean indicating it in any way, by a notice in the papers, for example?

The WITNESS: That is quite a reasonable statement, but I would point this out to you; that it would be possible to a company with fairly large resources. But to a small operator it would not be possible. He is not in that kind of position. He is helpless and I am concerned particularly with the hundreds of small operators who are trying to make an honourable living out of the restaurant business. In a very large establishment in which you have capital resources which would enable you to buy advertising and that sort of thing, it might be different. But obviously, when you start a counter-picket line you are asking for trouble.

By Mr. Noseworthy:

Q. Your request is that we outlaw picketing until the unions have taken the due process of law?—A. That is right, until they have taken advantage of the union machinery which is available today.

Q. If we did that for the unions, then you would be agreeable that we should do likewise for the employers, and that they would not be permitted to announce to the public that they are carrying on a non-organized organization. I have seen advertisements by employers announcing to the public the fact that in this town, or in this village, you can carry on your business because we have no labour unions. I have known towns in Canada which have advertised that fact to Americans, urging them to establish their business in that particular place because there were no trade unions there.

They implied that it was a town where cheap labour might be employed. Now, if you are going to deny labour a certain right, are you going to forbid the employer that same right?—A. I am speaking as an individual, and I feel that a policy of that kind would not be followed by management. It is not in line with management procedure and I would question its value in the long run to any employer who would use it. But apart from that—I do not want to evade your question—but I cannot imagine a restaurant or any retail service establishment of any kind which would do that as a sheer matter of self interest. They just would not do it. That is all. It is not conceivable. If it were conceivable, then I say that it would be right. I would say that what is right in one place must be right in another.

Q. You will admit that there are restaurants which will carry on a business with unorganized labour as long as they possibly can in order to try to keep their prices up?—A. That is right. Some do, but I think if you were to study the operations of restaurants, generally, you would discover that the successful people are not the people who pay the low wages. You would discover that the people who survive in the competitive struggle in the restaurant industry are the people who practise an enlightened labour policy.

Mr. CAMERON: In this case which you quoted, Mr. Hougham, the union involved had not proceeded to the last resort before informing the public?

The WITNESS: Oh yes, they did, sir. They had gone through the process of industrialization and arbitration acts and conciliation boards, and so on, and there was a dispute, in fact. They would not accept the award of the conciliation board.

The CHAIRMAN: Who could not accept it?

The WITNESS: The union. So in that particular case they had used the machinery which was available to them at that time.

By Mr. Cameron:

Q. They were involved then in a legal struggle?—A. That is right.

Q. So that the ordinary law in regard to picketing would have been available to them?—A. Yes. You will have to read this evidence to get it. It is too long for me to summarize.

Q. Is this opinion expressed here on the bottom of the brief germane to the decision of the court?—A. Yes, because it is a principle in the law.

Q. Or was it just simply a statement which the lawyers call obiter dicta, something which is not necessary to the determination of the point involved, because they were on a legal strike and they had their normal legal rights. —A. I had better not try to get into that because if I did, I would have about 57 pages of evidence of the Supreme Court of Canada to deal with.

Q. Accepting this view as laid down by the Supreme Court of Canada, then any individual can go out in front of any restaurant with a placard and say "This restaurant is unfair to labour"; and that person would have a perfectly legal right to do so. Is that not what you are saying?—A. That is what I am saying, yes. You would have to follow the various processes through which this thing went. There was an injunction, and then it went to the Supreme Court of British Columbia and then to the Appeal Court, and finally it arrived here.

Q. Yes. But a statement of the law would have nothing whatever to do with the strike whatsoever. It was just a person exercising what you say is his legal right, that is, to walk up and down in front of a restaurant and to say "This restaurant is unfair to labour", or whatever the statement was he wished to make.—A. They should not exercise that right until they have exhausted all other means.

Q. The Supreme Court said you did not have to do that, and that you could walk up and down in the street with any statement, just so long as there seemed to be a basis for the statement.—A. That is right.

By Mr. Macnaughton:

Q. May I ask you this: the effect of this proposed amendment which you suggest would be to protect retail establishments generally, would it not?—A. Yes sir.

Q. And that is what is meant by "place of business of a person supplying goods or services?"—A. Yes sir.

Q. Restaurants, stores, etc.?—A. That is correct. I think you have on file a letter from the Canadian Retail Federation which supports the stand taken by us.

The CHAIRMAN: I do not recall it.

The WITNESS: We have a copy of it, so it is either already here or on its way.

Mrs. MONTGOMERY: It was mailed on April 2.

The CHAIRMAN: Not to me.

The WITNESS: I make the statement that the Canadian Retail Federation is in sympathy with the position which we take.

By Mr. Cannon:

Q. The only thing is that the remedy suggested on the last page of your brief would be more unfavourable to labour in the sense that there would be less traffic than with the remedy suggested in the letter of April 8, which would amend the law and exempt entirely from picketing all retail establishments. The other remedy which you suggest is that there should be no picketing unless the process of negotiation has been gone through and it would be applicable to the whole labour situation. Do you think it would be fair?—A. My comment on that is, as our counsel suggests to us, that desirable as our approach may be, there is no question of the constitutional possibility of it. But aside from that information, I do believe our remedy would be the sort of remedy we would like to have.

Q. It could be done by either the provinces or the dominion. If the dominion has not got the power, your remedy would be to go to the provinces and get an Act?—A. That again becomes a legal question which is very debatable and I shall not wander into it.

Mr. MACINNIS: I think we would have to see the Supreme Court judgment —or at least the lawyers here would have to see it so that they could evaluate these things before we could come to an opinion.

Mr. GORMAN: I should like to refer the members of the committee to the citation of the case which has been referred to. It certainly points up the problem which faces persons in a business such as the restaurant business. The citation is 1951 Supreme Court Reports at page 763. The name of the case is "Robert Williams versus Aristocratic Restaurants, 1947 Limited". I refer particularly to the judgment of Mr. Justice Kellock.

Mr. ROBICHAUD: Is that a dissenting judgment?

Mr. GORMAN: No, it is not. It is at page 788, and incidentally, there is only one dissent, and that was by Mr. Justice Locke.

Mr. NOSEWORTHY: In your brief, in paragraph 4, you refer to an attached appendix of photostatic copies of an article.

The WITNESS: That was the original document which was filed with the chairman.

The CHAIRMAN: We have a photostatic copy of the original. We only have the one.

Mr. NOSEWORTHY: There is a copy?

The CHAIRMAN: This is news from a union publication apparently. It says here that the journal will not be responsible for views expressed by correspondents. It does not state what publication this appeared in.

The WITNESS: It is the "Catering Review".

By the Chairman:

Q. It reads "Catering Industry Employee" up at the top. And then there is another one from "The Catering Industry Employee", a chat on the craft. Is this "Catering Industry Employee" a publication which is put out by any particular union?—A. Yes, in the United States.

Q. In the United States, and it has a circulation in Canada with which this union is affiliated?—A. Yes. That raises the point. Local 28 of the Hotel and Restaurant Employees Union is affiliated with the American Federation of Labour. I think they call it by the same name in the United States.

Q. It is not affiliated with either of the two leading unions there?—A. Yes, I think so.

Mr. MACINNIS: Yes, the American Federation of Labor.

The WITNESS: I thought it was.

The CHAIRMAN: Now it may be well, since you have raised the point of the Canadian Retail Federation, to say that I have looked up correspondence that has come in to me and has not yet been submitted to the subcommittee, and I find a letter from the Canadian Retail Federation. It is dated April 2nd and arrived on my desk sometime after the 3rd or 4th. With your pleasure, I will read that letter so that it may be part of these proceedings.

Agreed.

This letter is addressed to myself and dated at Toronto, April 2nd, 1953. It reads:

> On Tuesday next, the Canadian Restaurant Association will be making representations before your committee. The subject of their representations will be the use of picketing. The restaurant association is one of the organizations which, through affiliation, go to make up the Canadian Retail Federation, representative of over 32,000 retail companies in this country.
>
> We would like to take this opportunity to generally support the position taken by the restaurant association. As in their case, the federation is particularly concerned with the practice which was the subject of a decision handed down by the Supreme Court of Canada in 1951. The particular case was that of Aristocratic Restaurants (1947) Ltd. vs. Williams et al. In this decision the Supreme Court of Canada ruled that the men carrying signs in front of the restaurant involved were merely advertising a true statement; that they were merely informing people that the employees of the particular restaurant were not members of the union they represented and that they were only indulging in their constitutional rights in so doing.
>
> It is the sincere belief of the Canadian Retail Federation that the practice indulged in in that case and in others is, regardless of technical definition, in effect picketing. It certainly achieves the practical results of picketing and is particularly harmful to a business such as a restaurant or a retail store because people hesitate to cross the picket line.

It should be understood, of course, that in the case to which we are referring negotiations were still going on at the time of the so-called picketing and indeed involved a completely different unit of the restaurant chain to the one which was actually being 'picketed'.

As we understand it, the situation now is that this procedure is not, according to the Criminal Code, included in what as a layman I might describe as picketing. Therefore, such actions are not affected by the provincial labour codes. We earnestly urge upon you that a practice which has all the effects of picketing and which is extremely harmful to the business concerned and which can be carried on at any stage of negotiations or even before they begin should be recognized as being what, in practice, it is—actual picketing.

If, in the opinion of your committee, our arguments are valid and you consider that the Criminal Code is the appropriate vehicle for the purpose, we would respectfully ask that you make such recommendations as the committee's legal experience would indicate to be necessary to have this particular practice identified in the law as what it actually is—that is to say, a form of picketing.

Your sympathetic consideration of this is respectfully requested.

Sincerely yours,

E. F. K. Nelson,
General Manager,
Canadian Retail Federation

Mr. MACINNIS: Could I ask a question whether Mr. Hougham or Mr. Gorman, purely for information, know what the decisions in this case were in the lower courts before it reached the Supreme Court of Canada.

Mr. GORMAN: The trial judge held that there was no offence and did not grant an injunction.

Mr. ROBICHAUD: In what court?

Mr. GORMAN: In the Supreme Court of British Columbia. The Court of Appeal of British Columbia reversed the trial judge and did order an injunction, and that decision was reversed in the Supreme Court of Canada. If it is of interest to the committee, I might just read the head note which sets out the facts of the case. It says—

Mr. CANNON: What was the judgment of the Court of Appeal of British Columbia? Was it a unanimous judgment or was there a dissent?

Mr. GORMAN: It was not a unanimous judgment, there was one dissent by Mr. Justice Robertson of the Court of Appeal.

Mr. MACINNIS: I did not get the point clear. Did the decision in the British Columbia Court of Appeal go in favour of Local 28?

Mr. GORMAN: No, it went against them. I quote from Canada Law Reports, Part IX—1951, at page 763:

> A trade union, certified pursuant to the Industrial Conciliation and Arbitration Act, R.S.B.C. 1948, c. 155, as the bargaining authority for the employees of one of the employer's five restaurants, known as unit No. 5, failed to negotiate a collective agreement with the employer. Conciliation proceedings were then taken pursuant to the Act but the report made thereunder was rejected by the union. Although under the Act the union remained the bargaining agent for unit No. 5, it lost all its members among the employees therein; and none of the employees in unit 6 and 7 was a union member. The union picketed these three restaurants by having two men walk back and forth on the sidewalk

in front of them each bearing a placard to the effect that the employer did not have an agreement with the union. No strike vote was taken among the employees and in fact no strike occurred. The action by the employer to enjoin this picketing and for damages was dismissed by the trial judge but was maintained by a majority in the Court of Appeal for British Columbia.

Mr. MACINNIS: Thank you.

The CHAIRMAN: Any further questions?

Mr. CHURCHILL: Just one, Mr. Chairman. From a study of the Supreme Court case, are you prepared to say whether or not this summary in the trade union magazine is a correct statement of the ruling of the court?

Mr. GORMAN: I think it is; yes, sir. Incidentally, if I may just review the two points that were raised in this case. First of all, the action of the employers was based on two things: first, section 501 of the Criminal Code, and, secondly, the larger allegation that what was being done was a common law nuisance, and as I read the judgment of the judges of the Supreme Court of Canada three of them dealt with the Criminal Code aspect of it, Mr. Justice Kellock, Mr. Justice Rand and Mr. Justice Kerwin. They went about it this way. They said the plaintiff is asking for an injunction and he alleges two grounds on which it can be granted, first, that the actions complained of are contrary to the Criminal Code, and then they examined section 501 and they found that it was what was in effect watching and besetting, but then they looked at the saving provision which was in subsection (*g*) and it says that a person who attends merely for the purpose of giving information, communicating information, does not watch and beset. They said, therefore, since that was all that was being done in this case there was no watching and besetting and therefore there was no offence against the Code, so they refused to grant an injunction on that ground, and then they considered whether it was in fact a common law offence of nuisance and without making a definite finding on that question they examined section 3 of the Trade Unions Act of British Columbia, which provides—it is set out in the judgment—that no trade union or association shall be enjoined for persuading or endeavouring to persuade by fair or reasonable argument, without unlawful threats, intimidation or other unlawful acts, a workman, artisan, labourer, etc., at the expiration of any existing contract, not to renew the same with or to refuse to become the employee or customer of any such employer.

So that the injunction was refused on the two grounds. My submission is that if the saving provision of section 501 and subsection (2) of the proposed section had excluded from its terms such industries as the retail industry and the restaurant industry, then the Supreme Court would have granted the injunction. And that is in fact what is being asked for here. On the other question, it was my opinion, and I gave it as such to the association, that this committee of the parliament of Canada would not deal in the Criminal Code with questions of whether or not all processes of negotiations and conciliation had been complied with. I think that is properly the subject of the labour legislation of either the province or the dominion. The relief that is sought by industries in the category of that which is appearing before you today can be granted by the amendment suggested.

Mr. MONTGOMERY: I gather from your submission, Mr. Gorman, that your interpretation of that judgment is now such that any union may place a professional picket in front of any type of business on any street in any city in Canada if the employees in the business are not signed up with the union.

Mr. GORMAN: I should qualify my answer by saying provided there is in the province protective legislation such as is contained in section 3 of the Trade

Unions Act of British Columbia which prevents their being enjoined from what is called a common law nuisance, which is what the picketing would be.

Mr. MACINNIS: Mr. Montgomery used an expression, and I do not know whether it should be used without proof that there is such a thing as you refer to—professional pickets. I know the unions pretty well and I do not know of any unions that hire professional pickets.

Mr. MONTGOMERY: Under the interpretation, as I understand it, of the example given to us, what would there be to stop a union from hiring what you might call professional pickets?

The WITNESS: May I be permitted to make a comment on that, Mr. Chairman?

While perhaps the term professional picket might be a misnomer, I think it is generally understood that quite frequently pickets are employed to work for an organization with which those pickets have no connection. The pickets may have no connection whatsoever with the industry which employs them. They may pick up a longshoreman who has no job to do that day, and parade him outside a restaurant. To that extent I suppose he might be considered to be a professional picket.

Mr. MACNAUGHTON: Do you mean a labour commando?

The WITNESS: Whatever the term is.

Mr. MACINNIS: I have heard of professional strike breakers, but I have never heard of professional pickets!

Mr. MONTGOMERY: The idea is that they could employ anybody to parade up and down in front of a place of business?

Mr. NOSEWORTHY: Would you indicate whether or not in your opinion the circumstances under which employees may organize in a retail establishment are very different from the ordinary industrial plant, and whether it is very difficult for a union, or perhaps I should say it is more difficult for a union to observe all the processes of arbitration, conciliation, and so forth, in the case of a small restaurant than in the case of an ordinary industrial plant? What I am trying to get at is this: is there any basis for the union's right to picket a small plant such as a restaurant without going through all the due processes of conciliation as they would in the case of an industrial plant?

Mr. GORMAN: I suppose the answer to that would have to vary from province to province depending on the labour legislation in effect, and affecting the particular industry. But I think the main point to be made is that the effect on a business such as a restaurant business, or a retail business of a picket parading in front of such business is much more forceful than it would be if the picket were in front of a large plant. While, in fact, they may be merely communicating information, the fact is that it is much more harmful to the retail business. Customers may have an alternative restaurant to which to go. If they see a picket in front of one restaurant, they will certainly go to the other, in most cases, merely to save themselves inconvenience or at least through the fear of some possible trouble which may be completely non-existent. Customers of such a business have alternatives and they can be very easily persuaded to choose from alternatives.

Mr. NOSEWORTHY: While that is true, you will admit that it is more difficult in a union to organize a small restaurant and to pass through the various processes of law than it is in a larger plant.

Mr. GORMAN: I would think so, yes.

Mr. MACINNIS: The law applies in the same way to the small industry as it does to the big one. Whatever would be illegal in a large industry would likewise be illegal in a small one, as far as the law is concerned.

The WITNESS: As I apprehended the original purpose of picketing, it was designed to prevent strike breakers from entering a plant and taking the jobs of those who were on strike. I think that is a fair inference. But that is an entirely different situation to placing a picket outside of an establishment where people are being served meals and persuading them not to buy those meals. You may say it is alike in spirit, and perhaps you would be right, but in the final result it is naturally different. In the original case which I cited, and that of an industry, the end may justify the means. But in the latter case, the end result may be to put the person completely out of business, as it has actually done.

Mr. NOSEWORTHY: It seems to me that before we make a decision on this question we should get an opinion from the Department of Labour and possibly from the trade unions.

The CHAIRMAN: We shall consider this matter very carefully. Now, then if there is nothing further, I want to express to you, Mr. Gorman, and through you to the members of your delegation, our appreciation for the assistance which you have given to this committee. I want to thank you sincerely for the trouble you have gone to and for the very efficient manner in which you have presented your brief.

Mr. GORMAN: On behalf of the members of the delegation here present and the whole of the association I wish to express my thanks to you and to the various members of the committee for the very courteous hearing you have given to us this morning.

The committee adjourned.

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

"An Act respecting The Criminal Law", and all matters pertaining thereto

---

Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

(including Second Report and Third and Final Report)

APRIL 10, 14, 15, 16, 20, 22, 23, 24, 27, 28, 29, 30,
and MAY 1, 1953

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

PERSONNEL OF THE COMMITTEE
(as at May 1, 1953)

Chairman:—Mr. Don. F. Brown (*Essex West*)
and Messrs.

Browne (*St. John's West*)	Garson	Macnaughton
Cameron	Henderson	Montgomery
Cardin	Huffman	Noseworthy
Churchill	MacInnis	Robichaud
Crestohl	MacNaught	Shaw.
Gauthier (*Lac St. Jean*)		

(Quorum, 7)

ANTOINE CHASSÉ
Clerk of the Committee.

CORRECTION

Page 227, the portion of sentence contained in the first three lines up to and including the figure 12 in the third line should be corrected to read as follows:

> code of ethics implying a high degree of responsibility and privilege in being licensed to provide food and services to the public. Our present membership across Canada is approximately 1200.

ORDERS OF REFERENCE

WEDNESDAY, April 15, 1953.

Ordered,—That the name of Mr. Crestohl be substituted for that of Mr. Laing on the said Committee.

Attest.

LEON J. RAYMOND,
Clerk of the House.

WEDNESDAY, April 29, 1953.

Ordered,—That the name of Mr. Cardin be substituted for that of Mr. Carroll; and

That the name of Mr. Huffman be substituted for that of Mr. Cannon on the said Committee.

Attest.

LEON J. RAYMOND,
Clerk of the House.

73599—1½

MINUTES OF PROCEEDINGS

House of Commons, Room 268,
FRIDAY, April 10, 1953.

The Special Committee appointed to consider Bill 93, (Letter O of the Senate), an Act respecting the Criminal Law and all matters pertaining thereto, met at 10.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Garson, MacInnis, MacNaught, Montgomery, Noseworthy and Robichaud.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Wednesday, March 25, 1953, clause by clause consideration of Bill 93, with particular reference to such clauses of the Bill as are referred to in the numerous submissions made to the Committee.

On motion of Mr. Robichaud, clause 7 was reconsidered and passed unchanged.

On Clause 8:

On motion of Mr. Cameron,

Resolved: That the said Clause be amended by deleting sub-clauses (2), (3) and (4) thereof, and substituting therefor the following:

Appeal.

(2) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court and imposes punishment in respect thereof, that person may, with leave of the court of appeal or a judge thereof, appeal to the court of appeal

(*a*) from the conviction, or

(*b*) against the punishment imposed.

Part XVIII applies.

(3) For the purposes of an appeal under subsection (2) the provisions of Part XVIII apply, *mutatis mutandis*.

On motion of Mr. Robichaud clauses 11 and 16 were re-considered and, after a lengthy discussion thereon, both were allowed to stand for redrafting.

On motion of Mr. Noseworthy, the Committee unanimously agreed that thanks be extended to Mr. J. C. Martin, Q.C., in appreciation of his valuable contribution to the work of the Committee by the preparation, for the benefit of the members, of a comprehensive summary of all objections and representations made in respect to Bill 93.

At 12.30 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Tuesday, April 14, 1953.

Room 497,
TUESDAY, April 14, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Garson, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Friday, April 10, with a clause by clause consideration of Bill 93, with particular regard to such of those as have been stood over at their former sittings.

Clause 28 was again allowed to stand.

On Clause 46:

On motion of Mr. MacInnis,

Resolved: That the said clause be amended as follows:

(1) Add the following as paragraph (*e*) after paragraph (*d*) of subclause (1):

(*e*) without lawful authority, communicates or makes available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada;

(2) Reletter paragraphs (*e*) and (*f*) of subclause (1) as paragraphs (*f*) and (*g*) respectively.

(3) Delete paragraph (*f*) of subclause (1), as relettered, and substitute therefor the following:

(*f*) conspires with any person to do anything mentioned in paragraphs (*a*) to (*e*); or

On Clause 47:

On motion of Mr. Browne (*St. John's West*),

Resolved: That the said clause be amended as follows:

Delete paragraph (*b*) of subclause (1) and substitute therefor the following:

(*b*) to be sentenced to death or to imprisonment for life, if he is guilty of an offence under paragraph (*d*), (*e*), (*f*) or (*g*) of subsection (1) of section 46.

Clause 47 as amended was passed.

Clauses 48 and 49 were passed.

On Clause 50:

On motion of Mr. Robichaud,

Resolved: That the said clause be amended as follows:

Delete paragraphs (*a*), (*b*) and (*c*) of sub-clause (1) thereof and substitute therefor the following:

Assisting alien enemy to leave Canada.

(*a*) incites or wilfully assists a subject of

(i) a state that is at war with Canada, or

(ii) a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are,

to leave Canada without the consent of the Crown, unless the accused establishes that assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby, or

Omitting to prevent treason.

(b) knowing that a person is about to commit treason does not, with all reasonable dispatch, inform a justice of the peace or other peace officer thereof or make other reasonable efforts to prevent that person from committing treason.

Clause 50 as amended was passed.

Clause 51 was passed.

Clause 52: After some discussion thereon, the said clause again was allowed to stand for further consideration.

Clauses 53 to 57, and 60 to 62, inclusive, were passed.

It was agreed that Clause 63 be reconsidered and, after some discussion, the said clause was passed without change.

On Clause 69:

On motion of Mr. Browne (*St. John's West*),

Resolved: That the said clause be amended as follows:

1. By inserting a comma after the word "made" at the end of line 15 on page 25 of the Bill.
2. That the word "immediately" appearing in line 17 of page 25 of the Bill be deleted and the word "forthwith" be substituted therefor.

Clause 69 as amended was passed.

At 5.30 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Wednesday, April 15, 1953.

Room 268,

WEDNESDAY, April 15, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Carroll, Crestohl, Gauthier (*Lac St. Jean*), Garson, MacInnis, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., Mr. A. J. MacLeod, Senior Advisory Counsels, and Dr. Louis Philippe Gendreau, Assistant Director and Deputy Commissioner of Penitentiary and Psychiatry, Department of Justice.

The Committee resumed from Tuesday, April 14, clause by clause consideration of Bill 93 with particular regard to such as those as were stood over at former sittings.

On clause 28,

On motion of Mr. Noseworthy,

Resolved:—That the said clause be amended as follows:

Page 13, lines 34 and 45, delete the word "justified" and substitute therefor the following: "protected from criminal responsibility".

Clause 28 as amended was passed.

Clause 87 was by agreement reconsidered and again passed without change.

Clause 96 was passed.

On clause 116,

Mr. Noseworthy moved, seconded by Mr. Robichaud, that the said clause be deleted. After discussion thereon, the said motion was allowed to stand for further consideration.

On clause 162,

On motion of Mr. Macnaughton,

Resolved: That the said clause be amended as follows:

Page 52, line 29, delete this clause and substitute therefor the following:

Trespassing at night.

162. Every one who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling house situated on that property is guilty of an offence punishable on summary conviction.

Clause 162 as amended was passed.

The said clause, as amended, was passed.

The Committee then heard Dr. Louis Philippe Gendreau, Assistant Director and Deputy Commissioner of Penitentiary and Psychiatry, Department of Justice, in regard to PART IV of Bill 93, respecting SEX OFFENCES, PUBLIC MORALS AND DISORDERLY CONDUCT.

At 6.15 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Thursday, April 16, 1953.

Room 268,
THURSDAY, April 16, 1953.

The Committee met at 11.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Carroll, Crestohl, Garson, MacInnis, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Wednesday, April 15, clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law.

On clause 200,

On motion of Mr. MacInnis,

Resolved: That said clause be amended as follows:

Page 70, line 26, delete the said clause and substitute therefor the following:

Killing by influence of the mind.

200. No person commits culpable homicide where he causes the death of a human being

(*a*) by any influence on the mind alone, or

(*b*) by any disorder or disease resulting from influence on the mind alone,

but this section does not apply where a person causes the death of a child or sick person by wilfully frightening him.

Clause 202 was passed.

On clause 206,

On motion of Mr. Montgomery,

Resolved: That the recommendation be made to the House in respect to the said clause concerning capital punishment.

On clause 217,

On motion of Mr. Shaw,

Resolved: That the said clause be amended as follows:

Page 74, line 1, delete present clause and substitute the following:

Administering noxious thing.

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 he intends thereby to endanger the life of or to cause bodily harm to that person, or,

(*b*) to imprisonment for two years, if he intends thereby to aggrieve or annoy that person.

Clause 217 as amended was passed.

On clause 221,

On motion of Mr. Montgomery,

Resolved: That the said clause be amended as follows:

Page 75, delete lines 1 to 5 inclusive, and substitute the following:

Failing to stop at scene of accident.

(2). Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, horse or vehicle, with intent to escape civil or criminal liability fails to stop his vehicle, give his name and address and, where any person has been injured, offer assistance, is guilty of

Clauses 222 to 225, inclusive, were severally considered and passed.

At 1.15 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., April 20, 1953.

Room 268,
MONDAY, April 20, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Churchill, Gauthier (*Lac St. Jean*), Garson, MacInnis, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Thursday, April 16 clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law.

Clauses 130 to 149, and 151 to 160 were severally considered and passed.

Clauses 134, and subclause (7) of 150 were allowed to stand.

On clause 241,

On motion of Mr. Browne (*St. John's West*),

Resolved: That the said clause be amended as follows:

Page 81, line 42, delete subclause (2) and substitute therefor the following:

Certificate of marriage.

(2) For the purposes of this section a certificate of marriage issued under the authority of law is *prima facie* evidence of the marriage or form of marriage to which it relates without proof of the signature or official character of the person by whom it purports to be signed.

Clause 241, as amended, was passed.

Considerable discussion took place in regard to clauses 250, 251 and 252, whereafter, it was agreed that the said clauses be allowed to stand for further consideration.

At 5.30 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Wednesday, April 22, 1953.

Room 268,
WEDNESDAY, April 22, 1953.

The Committee met at 11.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Crestohl, Gauthier (*Lac St. Jean*), Garson, Henderson, MacInnis, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Tuesday, April 21 clause by clause consideration of Bill 93 (Letter O of the Senate) entitled "An Act respecting the Criminal Law", with particular regard to such of the clauses as were stood over at former sittings.

On clause 280:

On motion of Mr. Montgomery, the said clause was allowed to stand for further consideration in view of the representations made thereon by the Canadian Bar Association and introduced by Mr. MacInnis.

Clause 291 was allowed to stand.

On clause 295:

On motion of Mr. Browne (*St. John's West*),

Resolved: That the said clause be amended as follows:

Page 97, line 21—delete this clause and substitute therefor the following:

Possession of house-breaking instruments.

295. (1) Every one who without lawful excuse, the proof of which lies upon him, has in his possession any instrument for house-breaking, vault-breaking or safe-breaking is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Disguise with intent.

(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and is liable to imprisonment for ten years.

The said clause, as amended, was passed.

Clause 297 was again studied and, after some discussion, thereon, it was agreed that the clause should be allowed to stand for further consideration.

Clause 300 was by general agreement reconsidered and passed without change.

Clauses 308 and 328 were by agreement reconsidered and allowed to stand for further consideration.

Clause 330 was passed.

On Clause 339:

Mr. Henderson moved that the said clause be amended as follows:

Page 114, line 25, delete the word "five" and substitute therefor the word "ten".

And the question having been put on the proposed motion of Mr. Henderson, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 11; Nays, 2.

Clause 339, as amended, was passed.

On clause 343:

Mr. Robichaud moved that the said clause be amended as follows:

Page 115, line 32, delete the word "five" and substitute therefor the word "ten".

And the question having been put on the proposed motion of Mr. Robichaud, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 11; Nays, 2.

Clause 343, as amended, was passed.

In the course of the deliberations of the Committee, clauses respecting Capital Punishment, Corporal Punishment and Insanity were discussed. It was agreed that the Committee should complete its clause by clause consideration of Bill 93 and afterwards discuss those questions with a view to draft recommendations to the House on these matters. Such discussion to be reported verbatim.

At 1.05 o'clock p.m., the Committee adjourned to meet again this day at 8.15 o'clock p.m.

EVENING SITTING

The Committee met at 8.15 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Carroll, Crestohl, Gauthier (*Lac St. Jean*), Garson, Henderson, MacInnis, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod of the Department of Justice.

The Committee continued clause by clause consideration of Bill 93 (Letter O of the Senate) entitled "An Act respecting the Criminal Law", with particular regard to such of the clauses of the Bill as were stood over at former sittings.

Clause 369 was passed.

Clause 385 was, by general agreement, reconsidered and passed without change.

On Clause 386:

On motion of Mr. Cameron,

Resolved: That the said clause be amended as follows:

Page 129, line 17, after the word "wilfully" insert "and without lawful excuse".

Clause 386, as amended, was passed.

On Clause 413:

On motion of Mr. Garson,

Resolved: That sub-clause (2) thereof be amended as follows:

1. Page 140, immediately after line "(vi) section 76," in line 12, insert "(vii) section 192," and

2. That the subsection sub-paragraphs of sub-clause (2) now numbered "(vii) to (xii)" inclusive, be appropriately renumbered "(viii to (xiii)" inclusive.

After some discussion thereon, the said clause again was allowed to stand for further consideration.

Clause 421 was considered at length.

And discussion on clause 421 still continuing, it was agreed to postpone consideration of the said clause until the next sitting.

At 10.15 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Thursday, April 23, 1953.

ROOM 268,
THURSDAY, April 23, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Brown (*St. John's West*), Cameron, Carroll, Churchill, Gauthier (*Lac St. Jean*), Garson, Henderson, MacInnis, MacNaught, Montgomery, Noseworthy, Robichaud and Shaw.

In attedance: Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Wednesday, April 22, clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law with particular regard to such clauses of the Bill which had been stood over at former sittings.

On Clause 421:

On motion of Mr. Robichaud,

Resolved: That subclause (3) thereof be amended as follows:

Page 142, line 39, at the end of the said line after the word "writing", insert the following words "before a magistrate".

Clause 421, as amended, was passed.

Clause 431, by unanimous consent, was reconsidered and again passed without change.

Clauses 434 and 435 were severally considered and passed on division.

On clause 437, it was agreed to reconsider the said clause.

On motion of Mr. Robichaud,

Resolved: That the said clause be amended by deleting paragraphs "(*a*) *and* (*b*)" thereof and substituting therefor the following:

"(*a*) the owner or a person in lawful possession of property, or

(*b*) a person authorized by the owner or a person in lawful possession of property,"

The said clause, as amended, was carried.

On Clause 438:

On motion of Mr. Noseworthy,

Resolved: That the said clause be deleted and the following substituted therefor:

Delivery to peace officer

438 (1) Any one who arrests a person without warrant shall forthwith deliver that person to a peace officer, and the peace officer may detain the person until he is dealt with in accordance with this section.

Taking before justice

(2) A peace officer who receives delivery of and detains a person who has been arrested without warrant or who arrests a person with or without warrant shall, in accordance with the following provisions, take or cause that person to be taken before a justice to be dealt with according to law, namely,

(*a*) where a justice is available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice before the expiration of that period; and

(b) where a justice is not available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice as soon as possible."

Clause 438, as amended, was passed.

Clause 462 was passed.

Clause 468 was again allowed to stand, to be further considered in the light of the suggested amendment by Mr. Robichaud.

On Clause 481:

On motion of Mr. Churchill,

Resolved: That the said clause be deleted and the following substituted therefor:

Continuance of proceedings when judge or magistrate unable to act

481 (1) Where an accused elects, under section 450, 468 or 475 to be tried by a judge or magistrate, as the case may be, and the judge or magistrate before whom the trial was commenced dies or is for any reason unable to continue, the proceedings may, subject to the provisions of this section, be continued before another judge or magistrate, as the case may be, who has jurisdiction to try the accused under this Part.

Where adjudication made

(2) Where an adjudication was made by a judge or magistrate before whom the trial was commenced, the judge or magistrate, as the case may be, before whom the proceedings are continued shall, without further election by the accused, impose the punishment or make the order that, in the circumstances, is authorized by law.

Where no adjudication by judge

(3) Where the trial was commenced before a judge but he did not make an adjudication, the judge before whom the proceedings are continued shall, without further election by the accused, commence the trial again as a trial *de novo*.

Where no adjudication by magistrate.

(4) Where the trial was commenced before a magistrate but he did not make an adjudication, the magistrate before whom the proceedings are continued shall put the accused to his election in accordance with section 468, and the proceedings shall, in all respects, be continued in accordance with this Part as if the accused were appearing before a magistrate for the first time upon the charge laid against him.

Clause 481, as amended, was passed.

On Clause 510:

On motion of Mr. Montgomery,

Resolved: That the said clause be amended by deleting subclause (5) thereof and substituting therefore the following:

Adjournment if accused prejudiced.

(5) Where, in the opinion of the court, the accused has been misled or prejudiced in his defence by a variance, error or omission in an indictment or a count thereof, the court may, if it is of opinion that the

misleading or prejudice may be removed by an adjournment, adjourn the trial to a subsequent day in the same sittings or to the next sittings of the court and may make such an order with respect to the payment of costs resulting from the necessity for amendment as it considers desirable.

Clause 510, as amended, was passed.

On clause 511:

On motion of Mr. MacInnis,

Resolved: That the said clause be deleted and the following substituted therefor:

Amended indictment need not be presented to grand jury

511. Where a grand jury returns a true bill in respect of an indictment and the indictment is subsequently amended in accordance with section 510, it is not necessary, unless the judge otherwise directs, to present the amended indictment to the grand jury, but the indictment, as amended, shall be deemed to be as valid in all respects for all purposes of the proceedings as if it had been returned by the grand jury in its amended form.

Clause 511, as amended, was passed.

Clauses 512, 539 and 558 were, by unanimous consent, severally reconsidered and passed without change.

On Clause 588:

On motion of Mr. Robichaud,

Resolved: That subclause (2) thereof be amended as follows:

Page 200, in line 15, strike out the following words "by the appellant".

The said clause, as amended, was passed.

On clause 592:

On motion of Mr. Noseworthy,

Resolved: That subsection (5) thereof be deleted and the following substituted therefor:

New trial under Part XVI

(5) Where an appeal is taken in respect of proceedings under Part XVI and the court of appeal orders a new trial under this Part, the following provisions apply, namely,

(*a*) if the accused, in his notice of appeal or notice of application for leave to appeal, requested that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall be held accordingly;

(*b*) if the accused, in his notice of appeal or notice of application for leave to appeal, did not request that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall, without further election by the accused, be held before a judge or magistrate, as the case may be, acting under Part XVI, other than a judge or magistrate who tried the accused in the first instance, unless the court of appeal directs that the new trial be held before the judge or magistrate who tried the accused in the first instance; and

(c) if the court of appeal orders that the new trial shall be held before a court composed of a judge and jury it is not necessary, in any province of Canada, to prefer a bill of indictment before a grand jury in respect of the charge upon which the new trial was ordered, but it is sufficient if the new trial is commenced by an indictment in writing setting forth the offence with which the accused is charged and in respect of which the new trial was ordered.

Clause 592, as amended, was passed.

On clause 628:

On motion of Mr. MacNaught,

Resolved: That the said clause be deleted and the following substituted therefor:

Compensation for loss of property

628. (1) A court that convicts an accused of an indictable offence may, upon the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by the applicant as a result of the commission of the offence of which the accused is convicted.

Enforcement

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

Moneys found on the accused

(3) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Clause 628, as amended, was passed.

On clause 629:

On motion of Mr. Shaw,

Resolved: That the said clause be deleted and the following substituted therefor:

Compensation to bona fide purchasers

629. (1) Where an accused is convicted of an indictable offence and any property obtained as a result of the commission of the offence has been sold to an innocent purchaser, the court may, upon the application of the purchaser after restitution of the property to its owner, order the accused to pay to the purchaser an amount not exceeding the amount paid by the purchaser for the property.

Enforcement

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

Moneys found on accused

(3) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Clause 629, as amended, was passed.

Clause 634, by unanimous consent, was reconsidered. It was agreed to postpone consideration thereof to a subsequent sitting.

On clause 638:

On motion of Mr. Gauthier (*Lac St. Jean*),

Resolved: That subclause (2) thereof be amended as follows:

Page 220, strike out all the words in line 38 and substitute therefor the following:

(2) A court that suspends the passing of sentence may prescribe as conditions of the recognizance that

Clause 638, as amended, was passed.

At 5.30 o'clock p.m., the Committee adjourned to sit again in the evening at 8.15 o'clock.

EVENING SITTING

The Committee met at 8.15 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Garson, Henderson, MacInnis, MacNaught, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod of the Department of Justice.

The Committee resumed from the afternoon sitting clause by clause consideration of Bill 93 (Letter O of the Senate) An Act respecting the Criminal Law, with particular regard to such clauses of the Bill which had been stood over from previous sittings.

On clause 634:

On motion of Mr. Cameron,

Resolved: That the said clause be amended by deleting subclause (5) thereof and substituting therefor the following:

Exception.

(5) for the purposes of subsection (2) "penitentiary" does not, until a day to be fixed by proclamation of the Governor in Council, include the penitentiary mentioned in section 37 of The Statute Law Amendment (Newfoundland) Act, chapter 6 of the statutes of 1949, or in section 82 of The Penitentiary Act, chapter 206 of the Revised Statutes of Canada, 1952.

Clause 634, as amended, was passed.

The Committee reverted to clause 20 of the Bill, in view of the certain representations made to the Committee through the Honourable Senator Arthur W. Roebuck, Q.C.

On motion of Mr. Henderson, it was agreed that the said clause be reconsidered and he moved that the said clause be amended as follows:

Page 11, in line 30, immediately after the word "warrant" insert the following: "of summons".

And the question having been put on the proposed amendment of Mr. Henderson, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 6; Nays, 3.

Clause 20, as amended, was passed.

Clause 377 was, by unanimous consent, reconsidered and again passed without change.

Clause 648 was, by unanimous consent, reconsidered and

On motion of Mr. MacInnis,

Resolved: That the said clause be amended by adding thereto the following subclause:

Where no coroner in Newfoundland.

(5) Where a sentence of death is executed in a district, county or place in the province of Newfoundland in which there is no coroner, an inquiry shall, for the purposes of this section, be conducted without the intervention of a jury by a magistrate having jurisdiction in the district, county or place, and for the purposes of this subsection the provisions of section 649 and subsections (1), (2) and (3) of this section apply, mutatis mutandis.

Clause 648, as amended, was passed.

Clauses 690 and 691 were considered at length and again allowed to stand.

Clause 692 was, by unanimous consent, reconsidered and again passed without change.

On clause 697,

On motion of Mr. Shaw,

Resolved: That the said clause be amended by adding thereto the following subclause:

Waiving jurisdiction.

(4) A summary conviction court before which proceedings under this Part are commenced may, at any time before the trial, waive jurisdiction over the proceedings in favour of another summary conviction court that has jurisdiction to try the accused under this Part.

Idem.

(5) A summary conviction court that waives jurisdiction in accordance with subsection (4) shall name the summary conviction court in favour of which jurisdiction is waived, except where, in the province of Quebec, the summary conviction court that waives jurisdiction is a judge of the sessions of the peace.

Clause 697, as amended, was passed.

Clauses 698 and 707 were severally considered and passed.

Clause 709 was, by unanimous consent, reconsidered in view of representations made thereon by the Quebec Bar Association.

After some discussion thereon, the said clause was again passed without change.

On clause 726,

On motion of Mr. MacNaught,

Resolved: That subclause (3) of this clause be deleted entirely.

Clause 726, as amended, was passed.

On clause 746,

On motion of Mr. Noseworthy,

Resolved: That this clause be deleted and the following substituted therefor:

Transitional.

746. (1) Where proceedings for an offence against the criminal law were commenced before the coming into force of this Act, the offence shall, after the coming into force of this Act, be dealt with, inquired into, tried and determined in accordance with this Act, and any penalty, forfeiture or punishment in respect of that offence shall be imposed as if this Act had not come into force, but where, under this Act, the penalty, forfeiture or punishment in respect of the offence is reduced or mitigated in relation to the penalty, forfeiture or punishment that would have been applicable if this Act had not come into force, the provisions of this Act relating to penalty, forfeiture and punishment shall apply.

Idem.

(2) Where proceedings for an offence against the criminal law are commenced after the coming into force of this Act the following provisions apply, namely,

(*a*) the offence, whenever committed, shall be dealt with, inquired into, tried and determined in accordance with this Act;

(*b*) if the offence was committed before the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act or by the law that would have applied if this Act had not come into force, whichever penalty, forfeiture or punishment is the less severe; and

(c) if the offence is committed after the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act.

Clause 746, as amended, was passed.

Clause 747 was passed.

On clause 11,

On motion of Mr. MacInnis,
Resolved: That the said clause be deleted.

On motion of Mr. Garson,
Resolved: That the Bill be further amended as follows:

(*a*) That the present subclause (1) of Clause 8 become Clause 8.

(*b*) That the present subclauses (2), (3) and (4) of Clause 8 become subclauses (1), (2) and (3) of Clause 9.

(*c*) That the present Clause 9 become Clause 10.

(*d*) That the present Clause 10 become Clause 11.

At 10.15 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Friday, April 24, 1953.

Room 497,
FRIDAY, April 24, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cannon, Gauthier (*Lac St. Jean*), Garson, MacInnis, MacNaught, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Thursday, April 23, clause by clause consideration of Bill 93 (Letter O of the Senate) An Act respecting the Criminal Law, with particular regard to such clauses of the Bill as stood over from former sittings.

On clause 2:

On motion of Mr. Montgomery,
Resolved: That subclause 10 thereof be corrected as follows:

Page 3, lines 7 and 8 should not be indented.

Clause 2, as amended, was passed.

On clause 116:

On motion of Mr. Robichaud,
Resolved: That the said clause be amended by

(*a*) deleting subclause (1) thereof and substituting therefor the following:

Witness giving contradictory evidence.

116 (1) Every one who, being a witness in a judicial proceeding, gives evidence with respect to any matter of fact or knowledge and who subsequently, in a judicial proceeding, gives evidence that is contrary to his previous evidence is guilty of an indictable offence and is liable to imprisonment for fourteen years, whether or not the prior or the later evidence or either of them is true, but no person shall be convicted under this section unless the court, judge or magistrate, as the case may be, is satisfied beyond a reasonable doubt that the accused, in giving evidence in either of the judicial proceedings, intended to mislead.

and

(*b*) inserting immediately after subclause (2) thereof a new subclause as follows:

Consent required.

(3) No proceedings shall be instituted under this section without the consent of the Attorney General.

In this connection, communications exchanged between the Attorney General for the Provnice of Ontario and the Minister of Justice were read to the Committee.

Clause 116, as amended, was passed.

On clause 134:

On motion of Mr. Noseworthy,

Resolved: That this clause be deleted and the following substituted therefor:

Instruction to jury.

134. Notwithstanding anything in this Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 136, 137 or subsection (1) or (2) of section 138, the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular by evidence that implicates the accused, instruct the jury that it is not safe to find the accused guilty in the absence of such corroboration, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true.

Clause 134, as amended, was passed.

On clause 150:

On motion of Mr. MacInnis,

Resolved: That the said clause be amended by deleting subclause (7) thereof and substituting therefor the following:

"Crime comic".

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

(*a*) the commission of crimes, real or fictitious, or

(*b*) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

In this connection, communications exchanged between Mr. J. D. Geller, President of the periodical "Distributor of Canada", and the Minister of Justice, were read to the Committee.

Clause 150, as amended, was passed.

On clause 184:

On motion of Mr. Robichaud,

Resolved: That subclause (1) thereof be amended as follows:

(*a*) Page 66, line 34, strike out the word "or".

(*b*) Line 36, immediately after the word "prostitution" insert the word "or".

(c) Immediately after paragraph (*j*), add the following new paragraph (*k*):

(*k*) being a female person, lives wholly or in part on the avails of prostitution of another female person,

(*d*) Line 42, delete the word "earnings" where it appears and substitute therefor the word "avails".

Clause 184, as amended, was passed.

On clause 250:

On motion of Mr. Montgomery,

Resolved: That the said clause be amended as follows:

Page 83, in lines 39 and 40, delete "two years or to a fine of five thousand dollars or to both" and substitute therefor "five years".

Clause 250, as amended, was passed.

On clause 251:

On motion of Mr. Shaw,

Resolved: That the said clause be amended as follows:

Page 84, line 3, strike out the words "or to a fine of one thousand dollars or to both".

Clause 251, as amended, was passed.

On clause 252:

On motion of Mr. Noseworthy,

Resolved: That subclause (3) of clause 252 be amended as follows:

Page 84, in lines 19 and 20, delete the words "two years or to a fine of one thousand dollars or to both" and substitute therefor the words "five years".

Clause 252, as amended, was passed.

Clause 280 was, by unanimous consent, reconsidered and on motion of Mr. MacInnis it was

Resolved: That the said clause be amended by deleting paragraphs (*a*) and (*b*) thereof and substituting therefor the following:

(*a*) to imprisonment for ten years, where the property stolen is a testamentary instrument or where the value of what is stolen exceeds fifty dollars, or

(*b*) to imprisonment for two years, where the value of what is stolen does not exceed fifty dollars.

Clause 280, as amended, was passed.

Clause 291 was considered and passed.

On clause 297:

On motion of Mr. Browne (*St. John's West*),

Resolved: That the said clause be amended by deleting paragraphs (*a*) and (*b*) thereof and substituting therefore the following:

(*a*) to imprisonment for ten years, where the property that comes into his possession is a testamentary instrument or where the value of what comes into his possession exceeds fifty dollars, or

(*b*) to imprisonment for two years, where the value of what comes into his possession does not exceed fifty dollars.

Clause 297, as amended, was passed.

On clause 304:

On motion of Mr. Gauthier (*Lac St. Jean*),

Resolved: That subclause (2) of the said clause be amended by deleting paragraphs (*a*) and (*b*) thereof and substituting therefor the following:

(*a*) to imprisonment for ten years, where the property obtained is a testamentary instrument or where the value of what is obtained exceeds fifty dollars, or

(*b*) to imprisonment for two years, where the value of what is obtained does not exceed fifty dollars.

Clause 304, as amended, was passed.

Clause 308 was, by unanimous consent, reconsidered and on motion of Mr. Shaw it was

Resolved: That the said clause be amended by inserting after the word "who" in line 20, page 102, the following word "fraudulently".

Clause 308, as amended, was passed.

At 5.40 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Monday, April 27, 1953.

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MONDAY, April 27, 1953.

The Special Committee appointed to consider Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law", and all matters pertaining thereto, met at 3.30 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Churchill, Gauthier (*Lac St. Jean*), Garson, Henderson, MacInnis, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffatt, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed consideration of Bill No. 93.

On Clause 328:

Agreed,—That the said clause be amended by adding a subclause (2) as follows:

(2) No proceedings shall be instituted under this section without the consent of the Attorney General.

On Clause 365:

Letters from the Canadian Congress of Labour and the Trades and Labor Congress of Canada to the Department of Justice were read to the Committee by Mr. Garson.

On motion of Mr. Garson,

Ordered,—That copies of the above-mentioned letters be made and distributed to Committee members.

Clauses 365, 366, 367, 371, 372 and 373 were allowed to stand.

Clause 413 was considered and discussion continued thereon, at 5.30 o'clock p.m. the Committee adjourned until 3.30 o'clock p.m., Tuesday, April 28, 1953.

E. W. INNES,
Acting Clerk of the Committee.

ROOM 268,
TUESDAY, April 28, 1953.

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Churchill, Crethol, Gauthier (*Lac St. Jean*), Garson, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy and Shaw.

In attendance: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from Monday, April 27, clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, with particular regard to those clauses of the Bill which had been stood over from previous sittings.

On clause 413:

On motion of Mr. Noseworthy,

Resolved: That the said clause be further amended by adding to paragraph (*a*) of subclause (2) thereof the following:

Section 62, concerning Sedition; Section 101, concerning Bribery of Officers, and Section 136, concerning Rape.

Clause 413 was allowed to stand for the purpose of considering a further amendment which would exclude from the jurisdiction of every court of criminal jurisdiction:

(*a*) the offence of attempting to commit any offence mentioned in paragraph (*a*) of subclause (2) and

(*b*) the offence of conspiring to commit any offence mentioned in paragraph (*a*) of subclause (2).

On clause 468:

The Committee had before it for consideration the suggestion by Mr. Robichaud that the said clause be redrafted so that the jurisdiction of the Magistrate in the summary trial of indictable offences *with consent* shall *not* extend beyond the offences provided for by section 772 of the New Summary Trial Procedure enacted by Chapter 39, section 35, 12 George VI—1948.

After discussion on the said suggestion by Mr. Robichaud, clause 468, was passed without change.

On clause 469:

On motion of Mr. MacInnis, the said clause was considered and it was

Resolved: That the said clause be amended by adding thereto the following subclause:

Where value more than fifty dollars.

(2) Where an accused is before a magistrate charged with an offence mentioned in paragraph (*a*) of section 467, and, at any time before the magistrate makes an adjudication, the evidence establishes that the value of what was stolen, obtained, had in possession or attempted to be stolen or obtained, as the case may be, exceeds fifty dollars, the magistrate shall put the accused to his election in accordance with subsection (2) of section 468.

(3) Where an accused is put to his election pursuant to subsection (2), the following provisions apply, namely,

(*a*) if the accused does not elect to be tried by a magistrate, the magistrate shall continue the proceedings as a preliminary inquiry under Part XV, and, if he commits the accused for trial, he shall comply with paragraphs (*a*) and (*b*) of subsection (3) of section 468; and

(*b*) if the accused elects to be tried by a magistrate, the magistrate shall endorse on the information a record of the election and continue with the trial.

The present clause 469 in the Bill will then be 469(1).

Clause 469, as amended, was passed.

Some discussion took place in respect to clause 179 of the Bill, concerning Lotteries, and such portion of clause 467 as is related to Lotteries.

On motion of Mr. Shaw, it was agreed that this question be included, among other things, in a separate report to the House.

On clause 690:

On motion of Mr. Cannon,

Resolved: That the said clause be amended as follows:

Page 237, line 13, after the word "refused" insert the words "on the merits".

Clause 690, as amended, was carried.

On clause 691, Mr. Shaw moved that the said clause be amended by adding thereto a new subclause as follows:

When appeal to be heard.

(3) Notwithstanding anything in Part XVIII or in rules of court, the appeal of an appellant who has filed notice of appeal shall be heard within seven days after the filing of proof of service of the notice of appeal upon the respondent and, where a notice of appeal is filed when the court of appeal is not sitting, a special sittings of the court of appeal shall be convened for the purpose of hearing the appeal.

After some discussion thereon and the question having been put on the proposed amendment of Mr. Shaw, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 6; Nays, 5.

Mr. Shaw moved that Clause 691, as amended, be adopted.

And the question having been put on the proposed motion of Mr. Shaw it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 6; Nays, 5.

Clause 691, as amended, was passed.

Schedule to Part XXIV.

On motion of Mr. Montgomery,

Resolved: That the said schedule be amended by deleting therefrom on pages 258 and 259 of Bill 93, Items 20, 21, 22, 23, 25, 26, 28 and 29, and substituting therefor the following:

20.	Mileage to serve summons or subpoena or to make an arrest, each way, for each mile ..... (Where a public conveyance is not used, reasonable costs of transportation may be allowed.)	$0.10
21.	Mileage where service cannot be effected, upon proof of a diligent attempt to effect service, each way, for each mile...	0.10
22.	Returning with prisoner after arrest to take him before a summary conviction court or justice at a place different from the place where the peace officer received the warrant to arrest, if the journey is of necessity over a route different from that taken by the peace officer to make arrest, each way, for each mile	0.10
23.	Taking a prisoner to prison on remand or committal, each way, for each mile ..... (Where a public conveyance is not used, reasonable costs of transportation may be allowed. No charge may be made under this item in respect of a service for which a charge is made under item 22.)	0.10
25.	Each day attending trial	4.00
26.	Mileage travelled to attend trial, each way, for each mile....	0.10
28.	Actual living expenses when away from ordinary place of residence, not to exceed per day	10.00
29.	Mileage travelled to attend trial, each way, for each mile	0.10

Item 27 of the Schedule was discussed at length and the question thereon having been put, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 5; Nays, 4.

On clause 745:

On motion of Mr. Cameron,

Resolved: That subclause (2) thereof be deleted.

At 5:30 o'clock p.m., the Committee adjourned to meet again at 8:15 o'clock p.m. this day.

EVENING SITTING

The Committee met again at 8:15 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Churchill, Crestohl, Gauthier (*Lac St. Jean*), Garson, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy and Shaw.

In attendance: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from 5:30 o'clock p.m. clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, with particular regard to those sections of the Bill which had been stood over from previous sittings.

On clause 166:

It was agreed to reconsider this clause whereupon Mr. Crestohl moved that the said clause be replaced by the following:

166. (1) Everyone who wilfully and in bad faith publishes a *statement,* tale or news that is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and is liable to imprisonment for two years.

(2) *Injury or mischief to a public interest shall include promoting disaffection among or hostility or ill-will between different classes of persons in Canada.*

In amendment to the proposed amendment of Mr. Crestohl, Mr. MacInnis moved that Clause 166 of the Bill be amended by merely inserting, on page 53, line 39, after the words "wilfully publishes a" the word *"statement,"*.

And the question having been put on the proposed sub-amendment of Mr. MacInnis it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 13; Nays 0.

Clause 166, as amended, was passed.

On Clause 52:

On motion of Mr. Noseworthy,

Resolved: That the said clause be amended by adding thereto immediately after subclause (2), page 21, line 15, the following new subclause:

Saving.

(3) No person does a prohibited act within the meaning of this section by reason only that

(*a*) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(*b*) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

Idem.

(4) No person does a prohibited act within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (3), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

At 9.45 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Wednesday, April 29, 1953.

WEDNESDAY, APRIL 29, 1953.

The Committee met at 12.00 o'clock noon. The Chairman, Mr. Don. F. Brown, presided.

Members present: *Messrs. Brown (Essex West)*, *Browne (St. John's West)*, Cameron, Cannon, Gauthier (*Lac St. Jean*), Garson, MacInnis, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed from the previous day clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, with particular regard to those clauses of the Bill that were stood over from previous sittings.

On Clause 413:

On motion of Mr. Montgomery,

Resolved: That paragraphs (*a*), (*b*) and (*c*) of subclause (2), as previously amended be deleted and the following substituted therefor:

(*a*) an offense under any of the following sections, namely,

Treason.

(i) section 47,

Alarming or harming Her Majesty.

(ii) section 49,

Intimidating Parliament or legislature.

(iii) section 51,

Inciting to mutiny.

(iv) section 53,

Sedition.

(v) section 62,

Piracy.

(vi) section 75,

Piratical acts.

(vii) section 76,

Bribery of officers.

(viii) section 101,

Rape.

(ix) section 136,

Causing death by criminal negligence.

(x) section 192,

Murder.

(xi) section 206,

Manslaughter.

(xii) section 207,

Threat to murder.

(xiii) paragraph (*a*) of subsection (1) of section 316, or

Combination restraining trade.

(xiv) section 411,

Accessories.

(*b*) The offense of being an accessory after the fact to treason or murder,

Corrupting justice.

(c) an offense under section 100 by the holder of a judicial office,

Attempts.

(d) the offense of attempting to commit any offense mentioned in paragraph (a), or

Conspiracy.

(e) the offense of conspiring to commit any offense mentioned in paragraph (a).

Clause 413, as further amended, was passed.

Clause 699 was, on the suggestion of Mr. Robichaud, reconsidered and the question thereon having been put it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 6; Nays, 2.

Clause 699 was passed.

Clause 704 was, again on the suggestion of Mr. Robichaud, reconsidered.

On clause 365:

The Committee resumed from Monday, April 27, consideration of the said clause.

The Chairman read the communication addressed to him by the Secretary-Treasurer of the Canadian Congress of Labour on the date of April 28th, and a telegram from the National Chairman of the Canadian and Catholic Confederation of Labour, all in respect to Clause 365.

And the question thereon having been put it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 5; Nays, 1.

Clause 704 was passed.

It was agreed that all communications from or on behalf of the Trades and Labour Congress of Canada, the Canadian Congress of Labour and the Canadian and Catholic Confederation of Labour, which were placed before the Committee on Monday, April 27, and today, appear as addendum to the printed record of the proceedings of this Committee.

And the discussion on Clause 365 still continuing, the said discussion was adjourned to the next sitting.

At 1.10 o'clock p.m., the Committee adjourned to meet again at 2.00 o'clock p.m. this day.

WEDNESDAY, April 29, 1953.

The Committee met at 2.00 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cannon, Gauthier (*Lac St. Jean*), Garson, MacInnis, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod, Senior Advisory Counsels, Department of Justice.

The Committee resumed the adjourned discussion on Clause 365 of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law.

Mr. Shaw moved that the said clause be amended by adding thereto the following new subclause:

(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

(*a*) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(*b*) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization, if, before the stoppage of work occurs, all steps provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

In amendment to the proposed amendment of Mr. Shaw, Mr. Noseworthy moved that the four last lines of the amendment, namely,

If, before the stoppage of work occurs, all steps provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

be deleted.

And the question having been put on the proposed sub-amendment of Mr. Noseworthy it was, on a show of hands, resolved in the negative on the following division: Yeas, 3; Nays, 4.

And the question having been put on the proposed amendment of Mr. Shaw it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 4; Nays, 3.

Mr. Cannon moved that clause 365, as amended, be adopted.

And the question having been put on the motion of Mr. Cannon it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 4; Nays, 3.

Clause 365 as amended was passed.

The Committee considered Clause 366.

And the discussion on Clause 366 still continuing, the said discussion was adjourned to the next sitting.

At 3.15 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Thursday, April 30, 1953.

THURSDAY, April 30, 1953.

The Committee met at 11.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cardin, Crestohl, Gauthier (*Lac St. Jean*), Garson, Henderson, Huffman, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice.

The Committee resumed from Wednesday, April 29, clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, with particular regard to those clauses of the Bill which had been stood over from previous sittings

On Clause 366:

Mr. MacInnis moved that subclause (2) thereof be amended by inserting after the word "information," in line 10 on page 123, the following words: "or of peacefully persuading a person to work or abstain from working".

After some discussion thereon and the question having been put on the proposed motion amendment to subclause (2) of Clause 366 of the Bill by Mr. MacInnis it was, on a show of hands, resolved in the negative on the following division: Yeas, 5; Nays, 8.

Clause 366 was passed on division, after Mr. Robichaud had made further objection to some of its provisions.

Clauses 367 and 371 were passed.

On Clause 372:

On motion of Mr. Shaw,

Resolved: that the said clause be amended by adding thereto the following subclauses (6) and (7):

Saving.

"(6) No person commits mischief within the meaning of this section by reason only that

(*a*) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(*b*) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

Idem.

(7) No person commits mischief within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (6), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

Clause 372, as amended, was passed.

On Clauses 16, 179, 206, 641 and 642:

On motion of Mr. Montgomery, seconded by Mr. Crestohl,

Resolved: That in reporting Bill 93 which generally continues the provisions of the present law relating to the defence of insanity, lotteries, and the imposition of punishment by whpping and by sentence of death, the Committee does so with the strong recommendation that the Governor General in Council give consideration to the appointment of a Royal Commission, or to the submission to Parliament of a proposal to set up a Joint Parliamentary Committee of the Senate and the House of Commons, which said Royal Commission or Joint Parliamentary Committee shall consider further and report upon the substance and principles of the said provisions of the law, and shall recommend whether any of those provisions should be amended and, if so, shall recommend the nature of the amendments to be made.

At 1.00 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m. this day.

AFTERNOON SITTING

The Committee met at 3.30 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown *(Essex West)*, Browne *(St. John's West)*, Cameron, Crestohl, Gauthier *(Lac St. Jean)*, Garson, Huffman, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C.; and Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice.

The Committee resumed from the morning sitting clause by clause consideration of Bill 93 (Letter O of the Senate) An Act respecting the Criminal Law, with particular regard to the remaining clauses of the Bill stood over from previous sittings.

Clauses 16, 179 and 206 were passed.

On Clause 641:

On motion of Mr. Robichaud,

Resolved: That the said clause be amended by

(*a*) deleting thereof subclause (3) and substituting therefor the following:

Supervision

(3) A sentence of whipping shall be executed under the supervision of the prison doctor or, if he is unable to be present, it shall be executed under the supervision of a duly qualified medical practitioner to be named by the Attorney General of Canada, where the sentence is executed in a prison administered by the Government of Canada, or, where the sentence is executed in a prison administered by the government of a province, to be named by the Attorney General of that province.

Instrument to be used

(4) The instrument to be used in the execution of a sentence of whipping shall be a cat-o'-nine tails, unless some other instrument is specified in the sentence.

When to be used

(5) A sentence of whipping shall be executed at a time to be fixed by the keeper of the prison in which it is to be executed, but, whenever practicable, a sentence of whipping shall be executed not less than ten days before the expiration of any term of imprisonment to which the convicted person has been sentenced.

and

(*b*) that the present subclause (4) be renumbered as subclause (6).

Clause 641, as amended, was passed.

Clause 642 was passed.

On Clause 9, as amended:

On motion of Mr. Montgomery,

Resolved: That the new Clause 9 adopted on April 23rd be deleted and the following substituted therefor:

Appeal

9. (1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court and imposes punishment in respect thereof, that person may, with leave of the Court of appeal or a judge thereof, appeal to the court of appeal

(*a*) from the conviction, or

(*b*) against the punishment imposed.

Part XVIII applies

(2) For the purposes of an appeal under subsection (1) the provisions of Part XVIII apply, *mutatis mutandis.*

New Clause 9, as further amended, was passed.

On Clause 116:

It was agreed that this clause be reconsidered in the light of a communication received from the Attorney General for the Province of Ontario, addressed to the Honourable S. S. Garson, Q.C., Attorney General for Canada and Minister of Justice, Ottawa.

The said communication was read to the Committee whereafter it was agreed that the said communication be published as part of the addendum to the printed record of the Proceedings.

Clause 116, as amended, was passed without further change.

The preamble, the title and the short title of the Bill were severally adopted and it was ordered that Bill 93 (Letter O of the Senate) An Act respecting the Criminal Law, as amended, be reported to the House.

At 4.45 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Friday, May 1, 1953.

FRIDAY, May 1, 1953.

The Committee met at 12.30 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown *(Essex West)*, Cardin, Crestohl, Garson, Gauthier *(Lac St. Jean)*, Huffman, MacInnis, MacNaught, Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice.

The Committee had before it for consideration a draft of a Third Report carrying out the Committee's views expressed in the resolution passed on the previous day in respect to the following questions:

(*a*) Defence of Insanity

(*b*) Capital Punishment

(*c*) Corporal Punishment

(*d*) Lotteries

After various changes suggested in the Draft Report, it was, on motion of Mr. MacInnis, unanimously adopted and ordered to be presented to the House as the Third and Final Report of the Committee.

Expressions of thanks were voiced by various members to the Chairman and the Minister of Justice, also to the officials of the Justice Department and the staff of the Committees Branch and Committee Reporters, to which the Chairman and the Minister replied in grateful terms.

At 1.15 o'clock p.m., the Committee adjourned sine die.

ANTOINE CHASSÉ,
Clerk of the Committee.

ADDENDUM

GREENBERG & WRIGHT
Barristers and Solicitors
78 Bank Street
Ottawa, Canada

By Hand
Mr. A. J. MacLeod,
Department of Justice,
Ottawa, Ontario.

Dear Mr. MacLeod:

Re: Amendment to the Criminal Code,
Your File No. 165000-3

This will acknowledge receipt of your letter of March 14th. I have discussed the amendments which you have suggested with Mr. Donald MacDonald and Dr. E. A. Forsey. Their opinion is—and I am in agreement therewith—that your suggested amendments do not meet the objections which were raised by the Canadian Congress of Labour.

You will recall that in the brief which was submitted to the Special Committee of the House of Commons and to the Honourable Minister of Justice, the point was made that the Criminal Code is no place to make provision for regulating relations between management and labour. It was pointed out that the Industrial Relations and Disputes Investigation Act provides for specific penalties for illegal strikes and there does not appear to be any justification for imposing additional penalties by way of Sections 365 and 372. The suggested amendments have the effect of making criminal offences of illegal strikes. At our meeting with the Minister of Justice, the Minister pointed out that the responsibility of the Commission which was appointed to revise and consolidate the Criminal Code is not to make new law, but to codify existing law. We submitted at the meeting that both Sections 365 and 372 contain provisions which do not appear either in the present Criminal Code or in any of the previous Codes. Certainly the suggested amendments represent new law.

If it is considered to be desirable to enact Sections 365 and 372, then I have been instructed by the Canadian Congress of Labour to recommend the following amendments, namely:

365. (2) No person, being the employee of an employer or a member of an organization of employees formed for the purpose of regulating relations between employers and employees wilfully breaks a contract within the meaning of sub-section (1) by reason only that he stops work as the result of a dispute between the trade union representing him and his fellow employees and his employer.

(3) No trade union wilfully breaks a contract within the meaning of sub-section (1) by reason only that it authorizes stoppage of work by employees represented by such trade union as a result of a dispute between the employer and the trade union acting as bargaining agent on behalf of a groups of employees.

372. (6) No person, being an employee of an employer or a member of an organization of employees formed for the purpose of regulating relations between employers and employees, commits mischief within the meaning of this section by reason only that

(*a*) he stops work as the result of a trade dispute between his employer and a trade union acting on his behalf, or

(*b*) having stopped work, in the circumstances set out in paragraph (*a*) hereof, he attends at or near a house or place where a person resides or works or carries on business or happens to be, if he so attends, merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

Mr. MacDonald, Dr. Forsey and I would be glad to discuss the matter with Mr. Varcoe and yourself or any other officers of the Department of Justice at any time.

Yours very truly,

MAURICE W. WRIGHT.

THE TRADES AND LABOR CONGRESS OF CANADA

172 McLaren Street, Ottawa 4, Ontario

MARCH 18, 1953.

Office of the President

Mr. A. J. MacLeod,
Office of the
Deputy Minister of Justice,
Ottawa, Ontario.

165000-3

Re: Amendments to the Criminal Code

Dear Sir:

In reply to your letter of March 14th enclosing copies of proposed subclauses to be added to clauses 365 and 372 of Bill 93, these drafts have been discussed with other officers of The Trades and Labor Congress of Canada. While it is appreciated that these drafts have been prepared for discussion purposes only, they generally seem to provide the type of amendment we were seeking when we spoke with Mr. Garson and later submitted our views to the Special Committee of the House of Commons considering Bill 93.

However, we believe that the intent and application of these proposed subclauses could be clarified. We suggest that the word "termination" be deleted wherever it occurs in proposed subclause (2) of clause 365 and that there be substituted therefor the words "failure to conclude, renew or revise" so that the proposed subclause would read:

> 365. (2) No person, being the employee of an employer or a member of an organization of employees formed for the purpose of regulating relations between employers and employees, wilfully breaks a contract within the meaning of subsection (1) by reason only that he stops work as a result of the failure to conclude, renew or revise, in accordance with law, his agreement with his employer or as a result of the failure to conclude, renew or revise a collective agreement between his employer and a bargaining agent acting on behalf of the organization of which he is a member.

In support of this suggested substitution in your proposed sub-clause (2) of clause 365 we would draw to your attention the fact that many collective agreements now in existence between employers and our affiliated organizations provide for their automatic renewal from year to year unless either party indicates its desire to amend the contract on renewal. It is also true that labor relations laws in all jurisdictions in Canada provide that, in spite of anything contained in the agreement, the contract shall be extended without amendment throughout any period of negotiation and conciliation. The time for strike action is not generally provided in these laws as being the point at which the contract terminates, but the point in time after a due lapse of a certain number of days following the completion of the conciliation procedure. Thus it appears to us that the provision in the labor relations law for the exercise of the right to strike is not geared directly to the termination of the collective agreement, but to the *failure to conclude an agreement or to obtain amendment or renewal* of the existing agreement after all means of negotiation and conciliation have been exhausted.

More particularly, the Industrial Relations and Disputes Investigation Act avoids any mention of the termination of an agreement in laying down the conditions which must precede the taking of strike action. Section 21 of the Act reads, in part: "Where a trade union on behalf of a unit of employees is entitled by notice under this Act to require their employer to commence collective bargaining with a view to the *conclusion or renewal or revision* of a collective agreement, the trade union shall not... declare or authorize a strike of the employees in the unit,... until..." The succeeding subsections (*a*), (*b*), and (*c*) lay down the precedent conditions to the taking of strike action.

The Ontario Labour Relations Act, while attempting to fix certain specific times when collective agreements become operative and cease to operate, relies, as does the federal statute, upon compliance with certain precedent conditions before a trade union may exercise the right to strike. Section 49 (1) reads, in part: "Where a collective agreement is in operation no employee bound by the agreement shall strike..." Section 49 (2) reads, in part: "Where no collective agreement is in operation no employee shall strike... until a trade union has become entitled to give and has given notice under section 10 or ... (Section 38)... and conciliation services have been granted and seven days have elapsed after the conciliation board has reported to the Minister."

Noting these examples of federal and provincial statutes which serve to set forth the precedent conditions which trade unions must comply with prior to taking strike action, we are of the opinion that the word "termination" in the proposed subclause to clause 365 is not desirable or adequate. We respectfully suggest that further consideration be given to this matter and that the alternate wording suggested above be carefully considered.

It may, on the other hand, be considered more satisfactory and the wording of the proposed subclause made more specific if a modification of the language of the Industrial Relations and Disputes Investigation Act were used.

A further alternative, of course, might be to define "termination" for the purpose of this subclause.

These suggestions, of course, also apply equally to proposed subclause (6) of clause 372.

Yours very truly,

PERCY R. BENGOUGH,
President
The Trades and Labor Congress of Canada.

GREENBERG & WRIGHT

Barristers and Solicitors

78 Bank Street
Ottawa

APRIL 10th, 1953.

By Hand

Mr. A. J. MacLeod,
Department of Justice,
Ottawa, Ontario.

Re: Amendments to the Criminal Code
Your File No. 165000-3

Dear Mr. MacLeod:

This will acknowledge receipt of the material which you sent to me to-day. I have had an opportunity of discussing the proposed amendments with Mr. Donald MacDonald and Dr. Eugene A. Forsey. The following comments are made with their concurrence.

The Canadian Congress of Labour is prepared to accept your latest amendment to Section 365, provided only that the following words are deleted, namely:

> if, before the stoppage of work occurs, all steps, provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

If the Government is not disposed to enact the amendment with the above deletion, then the Canadian Congress of Labour suggests that Section 499 of the present Criminal Code should be retained in place of Section 365. The terms of reference of the Commission dealing with criminal law require it to consolidate and revise the existing law, and I would respectfully submit that it would be more in keeping with the terms of reference to retain the existing law rather than revert to the law as it existed in 1892. In the event, however, that the Government is not disposed to retain Section 499, then the Canadian Congress of Labour has instructed me to advise that it has no objection to the enactment of your redraft of Section 521 of the Criminal Code of 1892 as it existed prior to the revision of 1906.

The Canadian Congress of Labour wishes to make it perfectly clear, however, that it is unequivocally opposed to the proposed amendment to Section 365 if the last four lines thereof are retained. This would have the effect of imposing punishment in the field of industrial relations in addition to the penalties provided for in existing labour legislation. I should also point out that the existing labour legislation provides that negotiations, collective bargaining, conciliation, etc., must be followed prior to taking a strike vote or calling a strike. If the conciliation process is followed, then clearly there is no breach of contract. In effect, therefore, your proposed amendment says that no person would wilfully break a contract if he has not broken a contract.

With respect to Section 372, the Canadian Congress of Labour is satisfied with your latest amendment, subject only to one observation. Sub-clause (*b*) provides that a person does not commit mischief if "being a member of an organization of employees... he stops work..." At any given time there are a number of employees who, as a result of their being in arrears in payment of dues, are not members in good standing in their organizations. In addition, a large number of employees in Canada have deductions made from their salaries pursuant to the provision of the Rand Formula, which provides that

although certain sums of money are deducted from their salaries and paid to the union, they need not necessarily be members of the union unless they specifically indicate their willingness to be members. Membership in the union should not be any criterion, particularly in the light of Section 18 of the Industrial Relations and Disputes Investigation Act, which provides that "a collective agreement entered into by a certified bargaining agent is, subject to, and for the purposes of this Act, binding upon the bargaining agent and *every employee* in the unit of employees for which the bargaining agent has been certified..." Similar provisions exist in almost every Province in Canada. Non-union employees could not possibly be covered by your sub-clause (*a*), since the individual employee never bargains or negotiates with the employer. Negotiations are always conducted by the bargaining agent of all the employees, regardless of union membership. Consequently, I would suggest that sub-clause "b" would be adequately covered by the language contained in my sub-clause "a" as set out in my letter to you dated March 17th last. I hope that, on reflection, you will see the merit of this point.

Mr. MacDonald and Dr. Forsey have instructed me to assure you that they will be glad to discuss any feature of these matters with your Department, if so requested, and, of course, I shall likewise be pleased to meet with you as well.

Yours very truly,

MWW:SL (sgd) MAURICE W. WRIGHT.

THE TRADES AND LABOR CONGRESS OF CANADA
172 McLaren Street, Ottawa 4, Ontario

APRIL 13th, 1953.

Honourable Stuart S. Garson, Q.C.,
Minister of Justice and
Attorney General,
Ottawa, Ontario.

Attention: Mr. A. J. MacLeod

Dear Mr. Garson:

I have been asked by President Bengough to write you indicating our views in connection with the latest draft amendments to Clauses 365 and 372 of Bill No. 93. In doing so I wish to say how much we appreciate the opportunities which have been provided for frank discussion of proposed amendments to these clauses between ourselves and your legal counsel.

In all of the submissions we have made to the Government, the House of Commons Committee and to yourself in regard to the present revision of the Code, we have tried to consistently emphasize two main points: namely, that the Act should have strength enough to be a useful obstacle to those individuals and organizations whose purpose is to undermine the security of the state and to overthrow our democratic institutions; at the same time the Criminal Code should not be capable of use either as a barrier or as a threat to the legitimate activities of free trade unions. We have considered the latest proposed amendments to Clauses 365 and 372 in this same light.

We believe that the following wording of proposed subclauses (6) and (7) to be added to Clause 372 as this clause appears in Bill 93 will meet the needs of our affiliated membership and we hope that Parliament will agree to these additions to Clause 372. The wording to which we refer is as follows:

(6) No person commits mischief within the meaning of this section by reason only that

(*a*) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(b) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

(7) No person commits mischief within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (6), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

In regard to Clause 365 we have been pleased to have the opportunity of considering two alternative proposals. The first of these proposals is a return to the law as it stood in Section 521 of the Criminal Code of 1892. The other proposal is to add a new subclause to Clause 365 as this now appears in Bill 93.

In the light of present circumstances and in line with the position we have taken throughout concerning this current revision of the Criminal Code, as summarized in a preceding paragraph we believe that the second proposal, that of adding a new subclause (2) to the present Clause 365 of the Bill, will more adequately meet the needs of our affiliated membership. The wording of the proposed subclause (2) to be added to the present Clause 365 of Bill 93 to which we refer is as follows:

(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

(a) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(b) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization, if, before the stoppage of work occurs, all steps provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

We sincerely hope you will find it possible to accept and recommend the addition of these subclauses, as worded above, to Clauses 365 and 372 of Bill 93.

Again thanking you for your co-operation in this regard, I remain

Yours sincerely,

(sgd) LESLIE E. WISMER,
Public Relations and Research Director,
The Trades and Labor Congress of Canada.

THE TRADES AND LABOR CONGRESS OF CANADA
172 McLaren Street, Ottawa 4, Ontario

APRIL 24th, 1953.

Honourable S. S. Garson, Q.C.,
Minister of Justice and
Attorney General,
Ottawa, Ontario.

Dear Mr. Garson:

Following our discussions with yourself and members of your legal staff in connection with proposed draft amendments to Clause 365 of Bill No. 93, and further to our letter of April 13th, we wish to make our position as clear

as possible as to why we very much prefer to have Clause 365 of Bill No. 93 amended by the addition of proposed subclause (2) which in the draft is worded as follows:

Saving

(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

(*a*) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(*b*) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization,

if, before the stoppage of work occurs, all steps provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration."

Our reasons for preferring this amendment are:

1. It will provide the clearest protection to our members in all of their legitimate trade union activities;

2. Its intent and application is readily understandable and will be to our affiliated membership; and

3. It will at the same time provide for the fullest protection of the state and the local communities of Canada.

We hope you will accept this letter as the expression of our very sincere desire that Clause 365 be amended in this form. At the same time we would like to know that we are not among those who would be pleased if Bill No. 93 should fail to obtain approval at this Session of Parliament.

Yours sincerely,

PERCY R. BENGOUGH,
President,
The Trades and Labor Congress of Canada.

Copy by hand.

THE CANADIAN CONGRESS OF LABOUR
230 Laurier Avenue West,
Ottawa 4, Canada.

APRIL 28, 1953.

Mr. D. F. Brown, M.P.,
Chairman,
Special Committee on Bill No. 93,
Room 114, House of Commons,
Ottawa, Canada.

Dear Mr. Brown:

Reports of your Committee's proceedings yesterday, in this morning's papers, indicate that the position of the Canadian Congress of Labour on the proposed amendment to section 365 of the revised Criminal Code has been seriously misrepresented. I am therefore writing you to restate that position in terms which should leave no doubt in anyone's mind.

1. The Congress is and always has been opposed to illegal strikes. It has never asked, and does not ask now, that they should not be penalized.

2. The Minister of Justice is reported to have said that the CCL proposal "Would protect any kind of wildcat strike". I do not know if the Minister was correctly reported, but I want to state definitely that the CCL proposal would not do anything of the sort. The law of Canada, and of every province, already provides penalties for wildcat or other illegal strikes. The government's proposed section would, as the Minister himself admits, impose "extra penalties". The Canadian Congress of Labour is not asking that illegal strikes should get off scot-free. It is simply asking that they should be subject only to the penalties which Parliament and the provincial Legislatures have already provided, and not to additional and very heavy penalties which neither Parliament nor any Legislature has seen fit to provide in the various Labour Relations Acts passed for the specific purpose of dealing with matters of this kind.

3. The Government would apply the penalties under this section only to illegal strikes. But who defines "illegal"? In most cases, the provincial Legislature. So the Government's proposal would leave workers in most industries completely at the mercy of the provincial Legislatures. A provincial Legislature which chose to make all strikes illegal could thus impose on the strikers not only its own penalties but the additional and very heavy penalties provided by the Criminal Code. Even if a Legislature did not go as far as that, it might surround the right to strike with so many conditions, limitations and restrictions that for all practical purposes it would cease to exist, and once again the additional and very heavy penalties would apply.

4. The effect of this is that Parliament would be prescribing penalties for undefined offences. It would be saying to the provinces "Here's the penalty. Now you decide what it applies to." This is a flagrant breach of the most elementary principles of justice.

5. The Minister is reported to have told the Committee that he did not see how the Dominion Government could interfere in the provinces' wide field of labour jurisdiction. But in effect that is precisely what it is doing. In effect it is saying to the provinces that when they passed their Labour Relations Acts, providing for specific penalties against illegal strikes, they didn't know what they were doing; that the penalties were not heavy enough; that they must be steeply increased.

6. The Government has repeatedly said that this bill is for the sole purpose of consolidating, condensing, clarifying, existing law; that it is not intended to make new law; that no proposals for changes in the existing law could be entertained. The Government's proposal on this point is new law. It does very obviously change the existing law. All the Canadian Congress of Labour is asking is that the existing law, the law which has prevailed for forty-seven years, should be maintained.

The Minister of Justice is reported to have told the Committee that "it would be pretty awkward for a committee of Parliament to recommend a saving clause for wildcat strikes". The Committee would not be recommending a saving clause for wildcat strikes. It would simply be recommending, in accordance with its terms of reference, that the law should remain as it is.

We trust that the views set forth in this letter will be made known to the Committee in the usual manner.

Yours sincerely,

(Signed) DONALD MacDONALD,
Donald MacDonald,
Secretary-Treasurer.

DMacD:MR.

CANADIAN NATIONAL TELEGRAPHS

1953 Apr 28 PM 5 29

(09)

MOA 466 67—FD Montreal Que 28 502P—
Donald F Brown Chairman. Special Committee on Bill 93
House of Commons Room 114 Ottawa

Our organization Canadian and Catholic Confederation of Labour has been in consultation with Canadian Congress of Labour in connection with bill amending Criminal Code Stop We are in agreement with written submission made today by CCL and we wish to inform your committee of this decision from our part Stop We hope that more than serious consideration will be given to suggestion made Canadian Congress of Labour.

GERARD PICARD
Ntl Chairman CCCL

Toronto 5, Ontario,

April 27, 1953.

Dear Mr. Garson:

Following my letter to you of April 20 with reference to Clause 116 in the new draft of the Criminal Code, I noticed a report in the press of the discussion of the contents of my letter. Emphasis was apparently placed upon my comment that from the administrative point of view provisions contained in certain statutes requiring the consent of the Attorney-General to certain types of prosecutions are, from the administrative point of view, a nuisance. This, of course, was not the main point of my objection to the Section in the present Bill. I pointed out in the second paragraph that an informant must satisfy a Justice that there is sufficient cause for issuing process. Also, in this Province the local Crown Attorney is consulted before process is issued, if the offence is complicated. Thus, there are in practice precautions against the issue of process where prima facie there may appear to be insufficient grounds.

Section 116 deals with a crime quite different in its nature and seriousness from offences, for example, under the Lord's Day Act. I may remind you that as a result of the consent section in the Lord's Day Act there is a wide disparity in policy in the various provinces as to the laying of prosecutions. I understand that in the Province of Quebec, as a matter of consistent policy, the Attorney-General refuses to consent to any prosecution under the Act. In Ontario consents are given, except in certain special types of cases. Thus, in effect, a law which is intended to be national in scope is enforced according to what may be differences in provincial policy in different provinces.

If the provision is to remain in 116 a similar result may follow. If an Attorney-General is doubtful as to the merits of this Section he may, as a matter of policy, refuse to consent in all cases. Thus, a law which deals with the indictable offence of perjury in a novel and drastic way, involving imprisonment for 14 years, may legally be enforced in some provinces and in others, not at all.

Whether or not there may be some justification for requiring the consent of the Attorney-General to prosecutions under statutes involving relatively minor penalties, the difficulty with which an Attorney-General would be faced in exercising his discretion under Section 116 would be very great. Indeed, I think that such a discretion would be unfairly placed in the Attorney-General of a province. The Section clearly states that a person who gives material

evidence contrary to any evidence that may previously be given, is guilty of an indictable offence and liable to imprisonment for 14 years. Thus, if such a prima facie case may be made out, what is the possible scope within which an Attorney-General may exercise discretion? It is true that the Section as drafted provides that the accused will not be guilty if he succeeds in establishing that none of the evidence was given with intent to mislead. The onus for this, however, is placed upon the accused. I cannot conceive as to how an Attorney-General could decide whether a person might be able to establish such a defence.

I note that according to the press report that the Attorney-General's consent was for the purpose of preventing charges laid at the instance of disgruntled litigants. I cannot see how this circumstance can properly enter into the case. Under the Section, if a person gives material evidence contrary to his previous evidence, he is guilty; subject to his establishing that none of the evidence was given with intent to mislead. I do not see why an Attorney-General's discretion should be affected by the fact that the person laying the charge was a litigant who happened to lose his case in the civil courts or otherwise. The whole question would be whether the offence had been committed or not. An Attorney-General should not be put in the position of having to pre-try the issues. It seems to me that if there is prima facie evidence that the indictable offence has been committed, the motives of persons who may bring the information to the Crown are quite irrelevant.

It is not for me to comment upon the merits of the Section. Criminal law is entirely the responsibility of the Federal Parliament. I am simply pointing out the unfairness of introducing the provision as to the Attorney-General's consent as a matter of enforcement. It is also unfair in the extremely uneven enforcement that would result throughout the country. In this respect it would be unfair in many cases to the accused, for under the same set of circumstances he could be charged in one province; whereas, if the act had occurred in another province he might, by reason of the exercise of the Attorney-General's discretion, not be charged at all.

I also note that you have received no objections to this clause from any other provincial Attorney-General. I submit that this should have no bearing upon the matter. If my objections are sound they should be viewed on the merits. I should be surprised if any Attorney-General definitely approved of the insertion of this provision.

Yours very truly,

DANA PORTER

The Honourable S. S. Garson, Q.C.,
Attorney-General for Canada and Minister of Justice,
Ottawa, Ontario.

REPORTS TO THE HOUSE

The Special Committee appointed to consider Bill No. 93 (Letted O of the Senate), intituled: "An Act respecting the Criminal Law", and all matters pertaining thereto, begs leave to present the following as its

SECOND REPORT

Pursuant to the Order of Reference of twenty-third January, 1953, whereby Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law", was referred to it your Committee has carefully considered the said Bill and has agreed to report same with the following amendments, namely:

Clause 2, paragraph (10). Delete paragraph (10) and substitute the following:

Court of criminal jurisdiction.

(10) "court of criminal jurisdiction" means

(*a*) a court of general or quarter sessions of the peace, when presided over by a superior court judge or a county or district court judge, or in the cities of Montreal and Quebec, by a municipal judge of the city, as the case may be, or a judge of the sessions of the peace.

(*b*) a magistrate or judge acting under Part XVI, and

(*c*) in the province of New Brunswick, the county court;

Clause 8. Delete the figure "(1)" where it appears in line 35 on page 9. Delete subclauses (2), (3) and (4) and substitute the following:

Appeal.

9. (1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court and imposes punishment in respect thereof, that person may, with leave of the court of appeal or a judge thereof, appeal to the court of appeal

(*a*) from the conviction, or

(*b*) against the punishment imposed.

Part XVIII applies.

(2) For the purposes of an appeal under subsection (1) the provisions of Part XVIII apply, *mutatis mutandis*.

Clause 9. Renumber as clause 10.

Clause 10. Renumber as clause 11.

Clause 11. Delete clause 11 of the Bill as it appears in lines 25 and 28 on page 10.

Clause 20. Add the words "or summons" after the word "warrant" in line 30 on page 11.

Clause 28. Delete the word "justified" where it appears in lines 34 and 45 on page 13 and substitute therefor the words "protected from criminal responsibility".

Clause 46. Add the following as paragraph (*e*) after paragraph (*d*) of subclause (1):

(*e*) without lawful authority communicates or makes available to an agent of a state other than Canada, military or scientific information

or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada;

Delete paragraph (*e*) of subclause (1) and substitute the following:

(*f*) conspires with any person to do anything mentioned in paragraphs (*a*) to (*e*); or

Reletter paragraph (*f*) of subclause (1) as paragraph (*g*).

Clause 47. Delete paragraph (*b*) of subclause (1) and substitute the following:

(*b*) to be sentenced to death or to imprisonment for life, if he is guilty of an offence under paragraph (*d*), (*e*), (*f*) or (*g*) of subsection (1) of section 46.

Clause 50. Delete paragraphs (*a*), (*b*) and (*c*) and substitute the following:

Assisting alien enemy to leave Canada.

(*a*) incites or wilfully assists a subject of

(i) a state that is at war with Canada, or

(ii) a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are,

to leave Canada without the consent of the Crown, unless the accused establishes that assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby, or

Omitting to prevent treason.

(*b*) knowing that a person is about to commit treason does not, with all reasonable dispatch, inform a justice of the peace or other peace officer thereof or make other reasonable efforts to prevent that person from committing treason.

Clause 52. Add the following as subclauses (3) and (4) to this clause:

Saving.

(3) No person does a prohibited act within the meaning of this section by reason only that

(*a*) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(*b*) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

(4) No person does a prohibited act within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (3), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

Clause 69. Delete the word "immediately" where it appears in lines 16 and 17 on page 25 and substitute therefor the word "forthwith".

Clause 116. Delete subclause (1) of this clause and substitute the following:

Witness giving contradictory evidence.

116. (1) Every one who, being a witness in a judicial proceeding, gives evidence with respect to any matter of fact or knowledge and who subsequently, in a judicial proceeding, gives evidence that is contrary to his previous evidence is guilty of an indictable offence and is liable to imprisonment for fourteen years, whether or not the prior or the later evidence or either of them is true, but no person shall be convicted under this section unless the court, judge or magistrate, as the case may be, is satisfied beyond a reasonable doubt that the accused, in giving evidence in either of the judicial proceedings, intended to mislead.

Insert the following immediately after subclause (2):

Consent required.

(3) No proceedings shall be instituted under this section without the consent of the Attorney General.

Clause 134. Delete this clause and substitute the following:

Instruction to jury.

134. Notwithstanding anything in this Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 136, 137 or subsection (1) or (2) of section 138, the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular by evidence that implicates the accused, instruct the jury that it is not safe to find the accused guilty in the absence of such corroboration, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true.

Clause 150. Delete subclause (7) and substitute the following:

Crime comic.

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

(*a*) the commission of crimes, real or fictitious, or

(*b*) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

Clause 162. Delete this clause and substitute the following:

Trespassing at night.

162. Every one who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling house situated on that property is guilty of an offence punishable on summary conviction.

Clause 166. Delete the words "a tale" where they appear in line 39 on page 53 and substitute therefor the words "a statement, tale".

Clause 177. Insert the figure (1) after the figures "177" in line 6 on page 59.

Clause 184. Delete the word "or" where it appears in line 34 on page 66 and insert it after the word "prostitution" in line 36, and add the following paragraph immediately after paragraph (*j*):

(*k*) being a female person, lives wholly or in part on the avails of prostitution of another female person,

Delete the word "earnings" where it appears in line 42 on page 66 and substitute the word "avails".

Clause 200. Delete this clause and substitute the following:

Killing by influence on the mind.

200. No person commits culpable homicide where he causes the death of a human being

(*a*) by any influence on the mind alone, or,

(*b*) by any disorder or disease resulting from influence on the mind alone,

but this section does not apply where a person causes the death of a child or sick person by wilfully frightening him.

Clause 217. Delete this clause and substitute the following:

Administering noxious thing.

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 he intends thereby to endange the life of or to cause bodily harm to that person, or,

(*b*) to imprisonment for two years, if he intends thereby to aggrieve or annoy that person.

Clause 221. Delete that portion of subclause (2) that immediately precedes paragraph (*a*) thereof and substitute the following:

Failing to stop at scene of accident.

(2) Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, horse or vehicle, with intent to escape civil or criminal liability fails to stop his vehicle, give his name and address and, where any person has been injured, offer assistance, is guilty of

Clause 241. Delete subclause (2) and substitute the following:

Certificate of marriage.

(2) For the purposes of this section a certificate of marriage issued under the authority of law is *prima facie* evidence of the marriage or form of marirage to which it relates without proof of the signature or official character of the person by whom it purports to be signed.

Clause 250. Delete the words "two years or to a fine of five thousand dollars or to both" where they appear in lines 39 and 40 on page 83 and substitute the words "five years".

Clause 251. Delete the words "or to a fine of one thousand dollars or to both" where they appear in line 3 on page 84.

Clause 252. Delete the words "two years or to a fine of one thousand dollars or to both" where they appear in lines 19 and 20 on page 84 and substitute the words "five years".

Clause 280. Delete paragraphs (*a*) and (*b*) and substitute the following:

(*a*) to imprisonment for ten years, where the property stolen is a testamentary instrument or where the value of what is stolen exceeds fifty dollars, or

(*b*) to imprisonment for two years, where the value of what is stolen does not exceed fifty dollars.

Clause 295. Delete this clause and substitute the following:

Possession of house-breaking instruments.

295. (1) Every one who without lawful excuse, the proof of which lies upon him, has in his possession any instrument for house-breaking, vault-breaking or safe-breaking is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Disguise with intent.

(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and is liable to imprisonment for ten years.

Clause 297. Delete paragraphs (*a*) and (*b*) and substitute the following:

(*a*) to imprisonment for ten years, where the property that comes into his possession is a testamentary instrument or where the value of what comes into his possession exceeds fifty dollars, or

(*b*) to imprisonment for two years, where the value of what comes into his possession does not exceed fifty dollars.

Clause 304. Delete paragraphs (*a*) and (*b*) of subclause (2) and substitute the following:

(*a*) to imprisonment for ten years, where the property obtained is a testamentary instrument or where the value of what is obtained exceeds fifty dollars, or

(*b*) to imprisonment for two years, where the value of what is obtained does not exceed fifty dollars.

Delete the words "and did believe" where they appear in subclause (4) in line 2 on page 101.

Clause 308. Add the word "fraudulently" after the word "who" in line 20 on page 102.

Clause 328. Add the following as subclause (2) to this clause:

Consent required.

(2) No proceedings shall be instituted under this section without the consent of the Attorney General.

Insert the figure "(1)" after the figures "328" in line 1 on page 110.

Clause 339. Delete the word "five" where it appears in line 25 on page 114 and substitute therefor the word "ten".

Clause 343. Delete the word "five" where it appears in line 32 on page 115 and substitute therefor the word "ten".

Clause 365. Add the following to this clause as subclause (2):

Saving.

(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

(*a*) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(*b*) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization,

if, before the stoppage of work occurs, all steps provided by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

Clause 372. Add the following as subclause (6) and (7) to this clause:

Saving.

(6) No person commits mischief within the meaning of this section by reason only that

(*a*) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(*b*) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

Idem.

(7) No person commits mischief within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (6), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

Clause 386. Add the words "and without lawful excuse" after the word "wilfully" in line 17 on page 129.

Clause 413, subclause (2). Delete paragraphs (*a*), (*b*) and (*c*) of subclause (2) and substitute the following therefor:

(*a*) an offence under any of the following sections, namely,

Treason.

(i) section 47,

Alarming or harming Her Majesty.

(ii) section 49,

Intimidating Parliament or legislature.

(iii) section 51,

Inciting to mutiny.

(iv) section 53,

Sedition.

(v) section 62,

Piracy.

(vi) section 75,

Piratical acts.

(vii) section 76,

Bribery of officers.

(viii) section 101,

Rape.

(ix) section 136,

Causing death by criminal negligence.

(x) section 192,

Murder.

(xi) section 206,

Manslaughter.

(xii) section 207,

Threat to murder.

(xiii) paragraph (*a*) of subsection (1) of section 316, or

Combination restraining trade.

(xiv) section 411,

Accessories.

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

Corrupting justice.

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

Attempts.

(*d*) the offence of attempting to commit any offence mentioned in paragraph (*a*), or

Conspiracy.

(*e*) the offence of conspiring to commit any offence mentioned in paragraph (*a*)."

Clause 421. Insert the words "before a magistrate" after the word "writing" in line 39 on page 142.

Add the following as subclause (4) immediately after subclause (3):

Writing not admissible.

(4) No writing that is executed by an accused pursuant to subsection (3) is admissible in evidence against him in any criminal proceedings.

Renumber subclause (4) as subclause (5).

Clause 437. Delete paragraphs (*a*) and (*b*) and substitute the following:

(*a*) the owner or a person in lawful possession of property, or

(*b*) a person authorized by the owner or by a person in lawful possession of property,

Clause 438. Delete this clause and substitute the following:

Delivery to peace officer.

438. (1) Any one who arrests a person without warrant shall forthwith deliver that person to a peace officer, and the peace officer may detain the person until he is dealt with in accordance with this section.

(2) A peace officer who receives delivery of and detains a person who has been arrested without warrant or who arrests a person with or without warrant shall, in accordance with the following provisions, take or cause that person to be taken before a justice to be dealt with according to law, namely,

(*a*) where a justice is available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice before expiration of that period; and

(*b*) where a justice is not available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice as soon as possible.

Clause 469. Add the following as subclauses (2) and (3) to this clause:

Where value more than fifty dollars.

(2) Where an accused is before a magistrate charged with an offence mentioned in paragraph (*a*) of section 467, and, at any time before the magistrate makes an adjudication, the evidence establishes that the value of what was stolen, obtained, had in possession or attempted to be stolen or obtained, as the case may be, exceeds fifty dollars, the magistrate shall put the accused to his election in accordance with subsection (2) of section 468.

Continuing proceedings.

(3) Where an accused is put to his election pursuant to subsection (2), the following provisions apply, namely,

(*a*) if the accused does not elect to be tried by a magistrate, the magistrate shall continue the proceedings as a preliminary inquiry under Part XV, and, if he commits the accused for trial, he shall comply with paragraphs (*a*) and (*b*) of subsection (3) of section 468; and

(*b*) if the accused elects to be tried by a magistrate, the magistrate shall endorse on the information a record of the election and continue with the trial.

Clause 481. Delete this clause and substitute the following:

Continuance of proceedings when judge or magistrate unable to act.

481. (1) Where an accused elects, under section 450, 468 or 475 to be tried by judge or magistrate, as the case may be, and the judge or magistrate before whom the trial was commenced dies or is for any reason unable to continue, the proceedings may, subject to the provisions of this section, be continued before another judge or magistrate, as the case may be, who has jurisdiction to try the accused under this Part.

Where adjudication made.

(2) Where an adjudication was made by a judge or magistrate before whom the trial was commenced, the judge or magistrate, as the case may be, before whom the proceedings are continued shall, without further election by the accused, impose the punishment or make the order that, in the circumstances, is authorized by law.

Where no adjudication by judge.

(3) Where the trial was commenced before a judge but he did not make an adjudication, the judge before whom the proceedings are continued shall, without further election by the accused, commence the trial again as a trial *de novo*.

Where no adjudication by magistrate.

(4) Where the trial was commenced before a magistrate but he did not make an adjudication, the magistrate before whom the proceedings are continued shall put the accused to his election in accordance with section 468, and the proceedings shall, in all respects, be continued in accordance with this Part as if the accused were appearing before a magistrate for the first time upon the charge laid against him.

Clause 510. Delete subclause (5) of this clause and substitute the following:

Adjournment if accused prejudiced.

(5) Where, in the opinion of the court, the accused has been misled or prejudiced in his defence by a variance, error or omission in an indictment or a count thereof, the court may, if it is of opinion that the misleading or prejudice may be removed by an adjournment, adjourn the trial to a subsequent day in the same sittings or to the next sittings of the court and may make such an order with respect to the payment of costs resulting from the necessity for amendment as it considers desirable.

Clause 511. Delete this clause and substitute the following:

Amended indictment need not be presented to grand jury.

511. Where a grand jury returns a true bill in respect of an indictment and the indictment is subsequently amended in accordance with section 510, it is not necessary, unless the judge otherwise directs, to present the amended indictment to the grand jury, but the indictment, as amended, shall be deemed to be as valid in all respects for all purposes of the proceedings as if it had been returned by the grand jury in its amended form.

Clause 588, subclause (2). Delete the words "by the appellant" where they appear in line 15 on page 200.

Clause 592. Delete subclause (5) and substitute the following:

New trial under Part XVI.

(5) Where an appeal is taken in respect of proceedings under Part XVI and the court of appeal orders a new trial under this Part, the following provisions apply, namely,

(*a*) if the accused, in his notice of appeal or notice of application for leave to appeal, requested that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall be held accordingly;

(*b*) if the accused, in his notice of appeal or notice of application for leave to appeal, did not request that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall, without further election by the accused, be held before a judge or magistrate, as the case may be, acting under Part XVI, other than a judge or magistrate who tried the accused in the first instance, unless the court of appeal directs that the new trial be held before the judge or magistrate who tried the accused in the first instance; and

(*c*) if the court of appeal orders that the new trial shall be held before a court composed of a judge and jury it is not necessary, in any province of Canada, to prefer a bill of indictment before a grand jury in respect of the charge upon which the new trial was ordered, but it is sufficient if the new trial is commenced by an indictment in writing setting forth the offence with which the accused is charged and in respect of which the new trial was ordered.

Clause 628. Delete this clause and substitute the following:

Compensation for loss of property.

628. (1) A court that convicts an accused of an indictable offence may, upon the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount by way of satisfaction or compesation for loss of or damage to property suffered by the applicant as a result of the commission of the offence of which the accused is convicted.

Enforcement.

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

Moneys found on the accused.

(3) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Clause 629. Delete this clause and substitute the following:

Compensation to "bona fide" purchasers.

629. (1) Where an accused is convicted of an indictable offence and any property obtained as a result of the commission of the offence has been sold to an innocent purchaser, the court may, upon the application of the purchaser after restitution of the property to its owner, order the accused to pay to the purchaser an amount not exceeding the amount paid by the purchaser for the property.

"Enforcement."

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was

held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

"Moneys found on accused."

(3) All or any part of an amount that is ordered to be paid under subsection (2) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Clause 634, subclause (5). Delete subclause (5) and substitute the following:

Exception.

(5) For the purposes of subsection (2) 'penitentiary' does not, until a day to be fixed by proclamation of the Governor in Council, include the penitentiary mentioned in section 37 of The Statute Law Amendment (Newfoundland) Act, chapter 6 of the statutes of 1949, or in section 82 of the Penitentiary Act, chapter 206 of the Revised Statutes of Canada, 1952.

Clause 638, subclause (2). Delete that portion of subclause (2) immediately preceding paragraph (*a*) thereof and substitute the following:

(2) A court that suspends the passing of sentence may prescribe as conditions of the recognizance that

Clause 641. Delete subclause (3) and substitute the following therefor:

Supervision.

(3) A sentence of whipping shall be executed under the supervision of the prison doctor or, if he is unable to be present, it shall be executed under the supervision of a duly qualified medical practitioner to be named by the Attorney General of Canada, where the sentence is executed in a prison administered by the Government of Canada, or, where the sentence is executed in a prison administered by the government of a province, to be named by the Attorney General of that province.

Instrument to be used.

(4) The instrument to be used in the execution of a sentence of whipping shall be a cat-o'-nine tails, unless some other instrument is specified in the sentence.

When to be used.

(5) A sentence of whipping shall be executed at a time to be fixed by the keeper of the prison in which it is to be executed, but, whenever practicable, a sentence of whipping shall be executed not less than ten days before the expiration of any term of imprisonment to which the convicted person has been sentenced.

Renumber subclause (4) as subclause (6).

Clause 648. Add the following as subclause (5) immediately after subclause (4):

Where no coroner in Newfoundland.

(5) Where a sentence of death is executed in a district, county or place in the province of Newfoundland in which there is no coroner, an inquiry shall, for the purposes of this section, be conducted without the

intervention of a jury by a magistrate having jurisdiction in the district, county or place, and for the purposes of this subsection the provisions of section 649 and subsections (1), (2) and (3) of this section apply, *mutatis mutandis*.

Clause 690, Subclause (1) Add the words "on the merits" immediately after the word "refused" in line 12 on page 237.

Clause 691. Add the following as subclause (3) to this clause:

When appeal to be heard.

(3) Notwithstanding anything in Part XVIII or in rules of court, the appeal of an appellant who has filed notice of appeal shall be heard within seven days after the filing of proof of service of the notice of appeal upon the respondent and, where a notice of appeal is filed when the court of appeal is not sitting, a special sittings of the court of appeal shall be convened for the purpose of hearing the appeal.

Clause 697. Add the following as subclauses (4) and (5) immediately after subclause (3):

Waiving jurisdiction.

(4) A summary conviction court before which proceedings under this Part are commenced may, at any time before the trial, waive jurisdiction over the proceedings in favour of another summary conviction court that has jurisdiction to try the accused under this Part.

Idem.

(5) A summary conviction court that waives jurisdiction in accordance with subsection (4) shall name the summary conviction court in favour of which jurisdiction is waived, except where, in the province of Quebec, the summary conviction court that waives jurisdiction is a judge of the sessions of the peace.

Schedule to Part XIV commencing on page 258.

(1) Item 20. Delete this item and substitute the following therefor:

20. Mileage to serve summons or subpoena or to make an arrest, both ways, for each mile 0.10
(Where a public conveyance is not used, reasonable costs of transportation may be allowed.)

(2) Item 21. Delete line 3 on page 359 and substitute the following therefor:

each way, for each mile 0.10

(3) Item 22. Delete line 10 on page 259 and substitute the following therefor:

to make the arrest, each way, for each mile 0.10

(4) Item 23. Delete lines 11 and 12 on page 259 and substitute the following therefor:

23. Taking a prisoner to prison on remand or committal, each way, for each mile 0.10

(5) Item 25. Delete this item and substitute the following therefor:

25. Each day attending trial 4.00

(6) Item 26. Delete this item and substitute the following therefor:

26. Mileage travelled to attend trial, each way, for each mile 0.10

(7) Item 28. Delete the figures "5.00" where they appear in line 31 on page 259 and substitute therefor the figures "10.00".

(8) Item 29. Delete this item and substitute the following therefor:

29. Mileage travelled to attend trial, each way, for each mile 0.10

Clause 745. Delete subclause (2) of this clause.

Clause 746. Delete this clause and substitute the following:

Transitional.

746. (1) Where proceedings for an offence against the criminal law were commenced before the coming into force of this Act, the offence shall, after the coming into force of this Act, be dealt with, inquired into, tried and determined in accordance with this Act, and any penalty, forfeiture or punishment in respect of that offence shall be imposed as if this Act had not come into force, but where, under this Act, the penalty, forfeiture or punishment in respect of the offence is reduced or mitigated in relation to the penalty, forfeiture or punishment that would have been applicable if this Act had not come into force, the provisions of this Act relating to penalty, forfeiture and punishment shall apply.

Idem.

(2) Where proceedings for an offence against the criminal law are commenced after the coming into force of this Act the following provisions apply, namely,

(*a*) the offence, whenever committed, shall be dealt with, inquired into, tried and determined in accordance with this Act;

(*b*) if the offence was committed before the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act or by the law that would have applied if this Act had not come into force, whichever penalty, forfeiture or punishment is the less severe; and

(*c*) if the offence is committed after the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act.

All of which is respectfully submitted.

DON. F. BROWN,
Chairman.

The Special Committee appointed to consider Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law", and all matters pertaining thereto, begs leave to present the following as its

THIRD AND FINAL REPORT

Pursuant to the Order of Reference of the House of twenty-third day of January 1953, whereby Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law" was referred to it, your Committee has now discharged its duty in that respect by reporting, in its Second Report of first day of May, the said Bill with numerous amendments.

However, by the terms of its original Order of twenty-third of January, the House appointed this Committee to consider, in addition to the said Bill, all matters pertaining thereto.

Your Committee has, commencing on and since fourth February, held thirty-seven sittings. In addition, approximately twelve sittings, as required, were held by a sub-committee to which were assigned, among other things, questions of procedure and the task of summarizing the great volume of representations made to the Committee. In all cases without exception the sub-committee recommendations and reports were approved by the Main Committee.

In the course of its long deliberations your Committee, in addition to written submission, had the benefit of the oral representations of delegations appearing on behalf of the following national organizations, namely:

The Canadian Congress of Labour.

The Trades and Labour Congress.

The Canadian Jewish Congress.

The Premium Advertising Association of America Inc.

The League for Democratic Rights.

The United Electrical, Radio and Machine Workers of America.

The Congress of Canadian Women.

The Association of Civil Liberties.

The Canadian Welfare Council.

The Canadian Mental Health Association.

The International Union of Mine, Mill and Smelter Workers (Canadian Section).

The Canadian Restaurant Association.

Very detailed consideration was also given to briefs and resolutions addressed to the Committee by the following, namely:

The Canadian and Catholic Confederation of Labour.

The Canadian Union of Woodworkers.

The Civil Liberties Union (Montreal).

The International Fur and Leather Workers Union.

The National Federation of Labour Youth.

The National Council of Women.

The Student Christian Movement (Carleton College, Ottawa).

The Saskatoon and District Labour Council.

The International Brotherhood of Boiler Makers and Iron Ship Builders and Helpers of America (Subordinate Local No. 297, Stratford, Ontario).

The International Association of Machinists (various lodges).

The International United Automobile, Aircraft and Agricultural Implement Workers of America, (U.A.W.-C.I.O.) Local 195, Windsor, Ontario.

United Packing House Workers of America (CIO-CCL) Local 234, Prince Albert, Sask.

Manitoba Bar Association.

National Council of Women, Ottawa.

County of Simcoe Urban Mayors and Reeves Association.

The Federation of Law Associations of Ontario.

Deputy Attorney-General of British Columbia.

Civil Liberties Committee, Canadian Bar Association.

The Canadian Friends Service Committee of the Religious Society of Friends (Quakers).

Spiritualist National Union of Canada.

Canadian Retail Federation, (Toronto).

Crown Corporation Clerical Employees' Union Local 224, Prince Albert, Sask.

Lakehead Unity Club (N.F.L.Y.), Port Arthur, Ontario.

Prince Albert Woodworkers' Union.

Toronto Typographical Union No. 91, Toronto.

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local 576.

University of Saskatchewan Employees Union, Saskatoon.

Committee on Criminal Procedure, Canadian Bar Association.

Executive Counsel of the Canadian Chamber of Commerce.

Local 200, U.A.W.-C.I.O., Windsor, Ont.

Brilliant Local No. 216, District 18, United Mine Workers of America, Newcastle, Alta.

The Bar of the Province of Quebec.

All-Slavic Alliance, Windsor, Ont.

All-Slavic Committee, Vancouver, B.C.

Association of United Ukrainian Canadians, Ottawa, Ont.

Civil Rights Union (Affiliate of L.D.R.), Toronto, Ont.

Congress of Canadian Women, Lakehead Chapter, Fort William, Ont.

Federation of Russian Canadians, Windsor, Ont.

Finnish Organization, Vancouver, B.C.

Finnish Organization, Local No. 2, Port Arthur, Ont.

Fort William Co-operative Guild, Fort William, Ont.

F.U.A., Local 311, Nestow, Alta.

Greater Victoria Firefighters, Local 730, I.A.F.F., Victoria, B.C.

International Fur and Leather Wokers Union, Winnipeg Joint Board, Winnipeg, Man.

International Union of Mine, Mill and Smelter Workers, Local No. 834, Edmonton, Alta.

Labor Progressive Party, Quebec Provincial Committee, Montreal, Que.

Labor Progressive Party, Michel, B.C.

Labor Progressive Party, Fort William, Ont.

Lakehead Civil Rights Union, Port Arthur, Ont.

League for Democratic Rights, East Coulee, Alta.

League for Democratic Rights, Winnipeg Chapter, Winnipeg, Man.

Local 252, United Automobile Workers, Toronto, Ont.

Local 535, United Electrical, Radio and Machine Workers of America, St. Catharines, Ont.

Local Women's Auxiliary, United Fishermen Allied Workers Union, Fort Langley, B.C.

Montreal and District Ukrainian Canadian Conference, Local 796, International Union of Operating Engineers, Toronto, Ont.

Montreal Slav Committee, Montreal, Que.

National Leather and Shoe Federation of Canada, Inc., Quebec City, Que.

Painters, Decorators and Paperhangers of America, Local 138, Vancouver, B.C.

Regina Labour Council, Regina, Sask.

Student Christian Movement, University of Saskatchewan, Saskatoon, Sask.

Trade Union Rights Committee, Montreal, Que.

U.A.W., C.I.O., C.C.L., Local 399, New Toronto, Ont.

Ukrainian Canadian Women, (Address not shown).

United Automobile, Agricultural, Implement Workers, Local 641, Ottawa, Ont.

Labour Progressive Party—National Headquarters.

The Attorney General for the Province of Ontario.

United Electrical, Radio and Machine Workers of America, Local 535, and Employees of Yale and Towne, St. Catharines, Ontario.

Vancouver Civil Employees Union, Vancouver, B.C.

Victoria and District Trades & Labour Council, Victoria, B.C.

Weston—Mt. Dennis Trade Union Unity Committee, Toronto, Ont.

Workers' Benevolent Association, Saskatoon, Saskatchewan.

Workers' Benevolent Association, Victoria, B.C.

Workers Co-Operative of New Ontario, Limited, Timmins, Ontario.

Canadian Brotherhood of Railway Employees and other Transport Workers, Mount Royal Division No. 39, Montreal, Quebec.

Congress of Canadian Women, Saskatoon Chapter, Saskatoon, Saskatchewan.

Congress of Canadian Women (Nanaimo Chapter).

Farmers Meeting, Jackpine, Ontario.

Meeting Ukrainian Labour Temple, Transcona, Manitoba.

Nordegg Local Union No. 7298, District 18, United Mine Workers of America, Nordegg, Alberta.

Painters and Decorators of America, A.F.L. Local Union 138, Vancouver, B.C.

United Electrical Radio and Machine Workers of America, Local 523, Welland, Ontario.

In addition, an innumerable volume of letters and cards from individual persons were received and placed before the Committee.

Your Committee is thankful for the valuable help it has received at all times from the officials of the Department of Justice, namely: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod, Senior Advisory Counsel, in attendance throughout; Mr. J. C. Martin, Q.C., former Counsel to the Royal Commission on the Revision of the Criminal Code; Dr. Louis Philippe Gendreau, Deputy

Commissioner of Penitentiaries, in charge of Psychiatric and Medical Services in the Penitentiaries; Miss R. Vogel, Private Secretary to the Minister of Justice, and staff of the Committees Branch.

The clause by clause study of Bill 93 was in itself a tremendous task, because as each clause of the Bill, in respect of which objections thereto or representations thereon had been made, was reached, these objections and representations were in all cases placed before the Committee for consideration.

At various times during the course of its work, the following matters pertaining to the Criminal Law were directed to the attention of your Committee; namely:

(*a*) The Defence of Insanity.
(*b*) Capital Punishment.
(*c*) Corporal Punishment.
(*d*) Lotteries.

Although these matters are well within the scope of the Terms of Reference, your Committee is of opinion that these questions are of such paramount importance that they could and should not be dealt with merely as incidentals to the consolidation or revision of the present Criminal Code embodied in Bill 93.

The Committee upon the material before it was not prepared to recommend a change in the present law respecting the defence of insanity, lotteries and the imposition of punishment by whipping and by sentence of death, but unanimously has come to the conclusion, and so recommends, that the Governor General in Council give consideration to the appointment of a Royal Commission, or to the submission to Parliament of a proposal to set up a Joint Parliamentary Committee of the Senate and the House of Commons, which said Royal Commission or Joint Parliamentary Committee shall consider further and report upon the substance, and principles of these provisions of the law aforesaid, and shall recommend whether any of those provisions should be amended and, if so, shall recommend the nature of the amendments to be made.

A copy of the printed Minutes of Proceedings and Evidence adduced is tabled herewith.

All of which is respectfully submitted.

DON. F. BROWN,
Chairman.