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.

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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.