HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

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

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, FEBRUARY 24, 1953

WEDNESDAY, FEBRUARY 25, 1953

TUESDAY, MARCH 3, 1953

WITNESSES:

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

Professor Bora Laskin, University of Toronto;

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

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

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

71271—1

MONDAY, February 23, 1953.

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

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

Attest.

LEON J. RAYMOND,
Clerk of the House.

71271—1½

MINUTES OF PROCEEDINGS

House of Commons, Room 268,

TUESDAY, February 24, 1953.

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

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

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

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

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

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

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

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

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

Wednesday, FEBRUARY 25, 1953.

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

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

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

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

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

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

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

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

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

On clause 304

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

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

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

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

TUESDAY, March 3, 1953.

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

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

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

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

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

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

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

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

ANTOINE CHASSE,
Clerk of the Committee.

EVIDENCE

MARCH 3, 1953.
10.30 a.m.

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

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

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

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

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

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

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

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

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

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

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

The CHAIRMAN: What is the wish of the committee.

The WITNESS: The brief is very short.

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

Hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. Hayes.

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

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

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

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

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

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

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

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

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

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

The WITNESS: Yes.

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

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

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

The CHAIRMAN: Agreed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The WITNESS: Yes.

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

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

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

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

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

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

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

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

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

Agreed.

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

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

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

Agreed.

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

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

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

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

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

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

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

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

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

The CHAIRMAN: Are you referring to the present bill?

Mr. CARROLL: The present bill, yes.

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

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

Mr. CARROLL: I see.

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

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

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

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

Mr. BROWNE: He must believe it is true?

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

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

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

Mr. BROWNE: I mean under this new legislation.

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

Mr. BROWNE: The bill.

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

Mr. BROWNE: A class in the community?

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

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

Mr. LASKIN: Yes.

The WITNESS: Mr. Macnaughton put three questions:

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

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

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

The second question:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Everyone who wilfully publishes a statement—

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

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

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

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

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

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

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

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

Mr. NOSEWORTHY: You are the only one.

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

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

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

By Mr. Shaw:

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

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

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

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

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

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

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

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

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

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

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

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

Mr. LASKIN: Inciting to violence.

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

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

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

The CHAIRMAN: Is it agreed?

Agreed.

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

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

Mr. CARROLL: You might.

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

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

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

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

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

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

Mr. ROBICHAUD: I am quite aware of that.

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

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

The WITNESS: Thank you again, Mr. Chairman.

(The witness retired).

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

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

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

Mr. NOSEWORTHY: I suggest we have it read.

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

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

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

The Chairman,

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

Dear Sir:

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

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

By Mr. Browne:

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

The CHAIRMAN: A dry goods store?

The WITNESS: Yes, a dry goods store.

The CHAIRMAN: Or a chain store?

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

By Mr. Browne:

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

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

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

The CHAIRMAN: Yes, they are called trading stamps.

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

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

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

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

Mr. BROWNE: Thank you.

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

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

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

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

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

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

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

Yours very truly,

Duncan K. MacTavish.

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

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

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

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

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

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

Mr. NOSEWORTHY: May I ask a question here—

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

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

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

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

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

By Mr. Noseworthy:

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

The CHAIRMAN: Could you continue your presentation now?

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

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

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

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

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

Mr. LAING: I see.

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

Mr. LAING: Is there fraud in that?

The WITNESS: There is no suggestion of fraud.

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

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

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

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

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

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

By Mr. Noseworthy:

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

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

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

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

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

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

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

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

The CHAIRMAN: He gets your business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Then Mr. Macpherson said, in Column 9434:

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

Those are just two extracts from the debate in 1905.

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

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

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

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

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

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

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

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

The CHAIRMAN: We will consider this later.

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

The committee adjourned.