HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament
1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

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

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

WEDNESDAY, MARCH 4, 1953

WITNESSES:

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

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

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

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
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MINUTES OF PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

Mrs. Luckock appeared on behalf of The Congress of Canadian Women. She presented a brief which appears in this day's printed report of proceedings as Appendix "C". The witness was questioned thereon and, at the conclusion of her deposition, was thanked by the Chairman and was retired.

At 6.00 o'clock p.m. the Committee adjourned to meet again at 10.30 a.m. Tuesday, March 10, 1953.

ANTOINE CHASSÉ,
Clerk of the Committee.

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EVIDENCE

March 4, 1953
3:30 p.m.

The CHAIRMAN: Will you come to order, gentlemen. We will proceed with the business of the committee. This afternoon we are to hear representatives of the Congress of Canadian Women, the League for Democratic Rights, and the United Electrical and Machine Workers of America. I think we should probably hear the ladies first, if that will meet with your pleasure.

Agreed.

Is there representation here from the Congress of Canadian Women? If not, we will hear the representation from the League for Democratic Rights. Will the spokesman for the league come to the head table, please.

We have with us today Mr. T. C. Roberts, Toronto, secretary of the League for Democratic Rights; Mr. Roscoe Rodd, Q.C., of Windsor, chairman of the League of Democratic Rights; Mr. J. Garfinkle, of Toronto, barrister, vice chairman of the League for Democratic Rights; and Miss Charlotte Gauthier, of Montreal, executive member of the League for Democratic Rights.

Gentlemen, you have before you the brief which has been provided by the League for Democratic Rights, which has been circulated. You have read it. Who is the spokesman for the delegation?

Mr. T. C. Roberts, Toronto, Secretary, League for Democratic Rights, called:

The WITNESS: We were going to propose, if it was agreeable to the committee, that I would touch upon part of the introduction and that Mr. Rodd would then deal with a few sections, and after that Mr. Garfinkle would deal with the rest, and Miss Gauthier would make a few remarks at the conclusion.

The CHAIRMAN: How long will each take?

The WITNESS: That was the point we wanted to clarify. We noticed in some of the minutes of your proceedings that previous delegations had read their briefs. We did not know if that was the standard practice.

The CHAIRMAN: Yes.

The WITNESS: If so, that is what we propose, to divide the reading of it into three parts.

The CHAIRMAN: It won't be necessary, though, to read it. It has been read, by committee members.

The WITNESS: I will just call attention then to the main points. Will that be agreeable?

The CHAIRMAN: If you care to make representations other than those in the brief, we would be glad to have them. You may remain seated if you like, Mr. Roberts.

Mr. NOSEWORTHY: I wonder if we may inform the witness that we have already received considerable arguments against the group of sections given in the first column of their brief, on page 5. We have received no representation against the sections given in the second column on page 5, except clauses 365 and 372. They might keep that in mind when dealing with their brief.

The CHAIRMAN: Is that agreeable, Mr. Roberts?

(See Appendix "A"—Brief submitted by League for Democratic Rights).

The WITNESS: Yes, that is agreeable. Our main point, of course, is covered by the brief and we would just like to emphasize one or two points in it, and, as I said, we will deal with a couple of points in the introduction. Our first page, as you notice, covers the three points which we think are principles governing our submission, the principle of the universal declaration of human rights, and the ideal of a Bill of Rights for Canada. Our organization has been interested in that matter ever since we came into existence three years ago. And then we go on, as you note in our brief, to the fact that some things have been done in this direction. I point out that we feel that some of the sections in the proposed revised Code go against the spirit of a Bill of Rights and against some of the laws against discrimination as we have summarized them in page 2.

On the next page we deal with the fact that also underlying our report is the experience of the people in the United States, and there is considerable documentation that might be brought forward there. We wish to make our point clear on this, that that documentation we have in mind is based not on our surveys but on surveys made by many outstanding citizens in that country, and it seems to me that should be borne in mind. Underlying our entire brief, and perhaps the most important general principle, is the question of freedom of thought and of speech, for we think, in spite of all the difficulties that it sometimes causes, that is the matter that has to be upheld both positively and negatively in this country of ours, and particularly because of many conditions this question has become quite a major problem on this continent and elsewhere in the world today, and our principal position is that the greatest amount of freedom of thought and speech has to be maintained for the good of our democracy and of our country.

We also, as you know, take the principal position with regard to the right to strike. Our organization is not a trade union, but we do believe, and it is one of the principles of our constitution that the right to strike and the right to picket are essential rights of the labour movement in this country, and we deal with some sections in the proposed Code which we criticize because we think they either weaken or lessen or could be used to eliminate those rights.

We make a couple of other general points that we are arguing this from the basis of the letter of the law, and we think that as far as the average citizen is concerned, he should be able to know with some degree of certainty what it is proposed shall be a crime. One of the things that we think has made some of the sections we criticize wrong is the fact that there has been, or at least it so appears to us, that there has been a tendency to make briefer sections out of lengthy sections in the present Code and suspends too much on a generalization. While this under ordinary circumstances is a thing to be desired, that is, a certain brevity, we do not think it should be followed as far as the Code is concerned, and we developed that argument a little. We make the point that while two of our officers whom we have with us today are members of the legal profession, the majority of our people are not and, therefore, this document is not a strictly legal document. We do that for two reasons: firstly, despite the fact that this law relates to the legal profession, it affects all the critizens and, therefore, concerns them very directly, and, secondly, of course, because some of you are lawyers—I think there are some lawyers on this committee—and you may think that the way the brief is made is not just the way a lawyer would put it, but you cannot hold our chairman or vice chairman responsible for that, because they are not operating on the basis of lawyers but as chairman and vice chairman of our organization. And, finally, a point of some import: despite the fact that we have been interested in this legislation since it was

first announced and brought forward last April in the form of the report of the commission, we have not been able to go over all the sections, and, therefore, we cannot say that we have said everything that needs to be said about the Code.

We do think that there are very many important matters affecting the Code, and it is important that we get the best possible Code even if that takes longer than was originally anticipated. We do not think there is any need, in itself, why a revised Code should be completed, even in the next few weeks, unless, of course, it is a satisfactory document at that time, but that otherwise we hope that the members of this committee and the members of the House of Commons and the Senate, while they are revising this Code—the first time, we understand, in sixty years—that it should be done with a view to making it a much better document, and also with a view to taking into account the feelings of the people of Canada. After all, the job is to make laws for them, and as they see it, and while that point is not made in this submission, we have made it before, that time is not of paramount importance in getting the job done. The important thing is getting the proper Code, even if that takes longer than the committee anticipated.

That is all, Mr. Chairman, that I wish to say at this time, and I am going to ask Mr. Rodd now to touch upon some of the other points in the section that Mr. Noseworthy pointed out have been covered. I do not know whether they have all been covered as exhaustively as we have tried to do. We have paid perhaps as much attention to this revision as any other organization in the country, and have given it considerable thought. I will ask Mr. Rodd to deal with his part.

The CHAIRMAN: Thank you, Mr. Roberts.

Mr. NOSEWORTHY: My remark, Mr. Chairman, was not intended to indicate that the witness should not deal with those, but I thought it would be interesting to them to know that there were certain sections on which we had received no represenations and we would like to hear from them particularly concerning those sections.

Mr. Roscoe Rodd, Q.C., Windsor, Chairman, League for Democratic Rights, called:

The WITNESS: Mr. Chairman and members of the committee. We appreciate very much the opportunity of making this submission to your very busy committee.

Mr. MACINNIS: I wonder if the delegate would speak a little louder, please. We cannot hear him.

The CHAIRMAN: Would you like to change seats with Mr. Roberts, Mr. Rodd?

The WITNESS: I would like to deal first with proposed section 46, which is the treason section of the bill, and to say with regard to it, and without reading it as I do not wish to take up your time by reading it, that we think that it goes far beyond the original statute which created the offence of treason. That original statute was made up of what we find in (*a*), (*b*) and (*c*) of subsection (1) if you terminate (*c*) with the words "assists an enemy at war with Canada", and I suggest that in Great Britain there has been no attempt to extend the treason section to the extent which we find in this particular section. One may say in connection with the latter clause of (*c*) where it has been added "or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are". Now, I suggest, also, that in Great Britain

there have been many police actions, such as you find at the present time in Kenya or in Malaya, just as we have a similar sort of action in Korea, yet I think I am correct in saying that there has been found no necessity in Great Britain of extending this clause (c) in order to create an offence of treason which could take place in wartime. Then in connection with that added clause, with regard to hostilities, there is an ambiguity which arises there which makes it difficult to know when that crime begins to be committed by anyone and which does not exist in the first part of the clause. To clarify my point: when you say "assists an enemy at war with Canada"—when there is a declaration of war every Canadian citizen knows then that he must not assist the country which is the declared enemy, but there is no such declaration when hostilities may be begun. They may be begun by a United Nations commander, by an allied commander in Europe, and I think in the War Measures Act it speaks of conclusive evidence of war being made by declaration so that the evidence shall be conclusive, but there is no such conclusive evidence of a beginning of hostilities which would involve a citizen, there is nothing, there is no moment of time, for instance, which will indicate just when this criminal offence may be incurred, and I think there is an ambiguity there which should not characterize the Criminal Code. I just quote from Mr. Justice William O. Douglas of the Supreme Court of the United States, where he says this: the vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited, and I think there is a vice of vagueness in this second clause because you would never know whether ten men engaged in hostilities created the situation where a person might be involved in this crime or one hundred men engaged in hostilities. The only safe thing I suggest to the committee is some sort of a declaration such as you get in a declaration of war so that everyone may know when he might be involved in a crime of this kind, and it is a serious crime punishable by death or life imprisonment.

Then, I suggest that this treason section, extended as it is into clauses (*d*), (*e*) and (*f*), creates a multitude of death penalty offences which I suggest to the committee should not characterize our humane code functioning in a humane country.

For instance, clauses (*e*) and (*f*)—(*e*) adds four additional death penalty possibilities to the section; (*f*) adds an additional five death penalty possibilities. Now, what are those possibilities added by those two clauses? And we suggest that they should not appear in the treason section wherever else in the Code they might be thought necessary in order to protect the safety and security of Canada. (*e*), for instance, is a conspiracy clause. Now, a conspiracy clause is always a dangerous clause in a criminal code because the essence of the crime of conspiracy is agreement between two persons. You need not prove a principal offence at all. All you need to prove is an agreement between two persons. The agreement itself constitutes the offence, whether any overt criminal act is committed or not.

Now, the vice of a conspiracy section is a peculiar rule of evidence by which if there are two persons to the agreement—the conspiracy—the words of one or the acts of one may be used against the other. Whereas, in criminal law it is a fundamental principle that only the acts a man does or the words a man speaks should implicate him in crime. But, the moment you prove conspiracy, no matter what tenuous evidence may have been adduced, the moment you prove the agreement between two people to commit a crime, then the acts of one may be used against the other.

Now, those acts may be done behind the back of the accused person or may be done by a person removed by a thousand miles from the other person, and I suggest that is another danger of this conspiracy section. And one of the reasons I think you will agree with me that this section is so frequently used is because of the easier proof under such a conspiracy clause. Now,

that is very important because let me remind the committee again this is a death penalty section where we suggest conspiracy should not have a part.

Furthermore, it is not the principal offence that is being punished here, but a subordinate offence and we point out that it is a principle of criminal law that you should not visit upon a subordinate person who commits a subordinate offence the punishment that you visit on a person who commits a principal offence. Even in the crime of murder you do not visit the attempt to commit murder with the same penalty that you do when the offence is murder itself.

In the Code we have section 21, I think, 2 and 3, dealing with parties to offences. And in section 406 and 407, and I think 408, you have the punishments scaled down, where you have subordinate offences. We suggest, therefore, that you should not tie up the principal offence of treason with conspiracy to commit treason. They should be different penalties and taken care of in a different section.

Then, the same thing applies to clause (*f*), forming an intention to commit and mentioned in paragraphs (*a*) to (*e*). Now, forming an intention is, I think, an even more serious matter to have in a death penalty section because here you have one person who may form the intention—and you notice that it says that intention is to be manifested by an overt act, and one might think there is a sufficient protection there that you have to have intention plus an overt act.

But in some of the cases in the United States an overt act has been held to be mailing a letter, visiting a friend on a certain street, so that this intention plus an overt act does not afford the protection to a citizen of Canada that we think should be afforded in a death penalty section, and we think that the intention of one person is a weakness in this section.

You will notice also, I think, in section 21 or 22 it says, that earlier section says, "Forms an intention in common with others." Here there is no such safeguard. It says, "Forms an intention," and we say that one person might be guilty of that. The danger of the conspiracy section is that we do know and we must recognize if we are realistic that there are informers, there are perjurors who appear and give evidence. One might be giving evidence and a perjured witness would come in and say, "I heard the accused say thus and so." There you have evidence of a complete conspiracy of agreement by two people to commit a crime. And again that crime can be met without the necessity of proving an overt act.

Then, I think in this section there are vague and ambiguous terms. I am not going to labour that point. I have already suggested that in hostilities how many men would create a situation where hostilities might be said to exist. With regard to the word "assists", there have been comments that this word also is very wide and might mean assisting in any manner whatsoever. And I suggest that here we have ambiguity which creates the vice that Mr. Justice Douglas has mentioned. Then this clause contains in (*d*) of 1 "uses force or violence for the purpose of overthrowing the government of Canada or a province." Now, that clause is a clause under which convictions have been obtained in the United States and of those convictions the one particularly that I have in mind was conspiracy to use force or violence, or in another to teach the use of force or violence for the purpose of overthrowing the government of Canada or of a province.

I simply wish to point out in passing in connection with that that you have had charges laid under a similar section under the Smith Act in the United States where convictions have been obtained and punishments visited upon persons and I suggest that that is a section that is a dangerous section in a treason section of the Code. And, it is carried further, as you know, in the sedition section in our own Code where you are visited with the crime of sedition if you teach the use of force or violence.

Now, I would like to point out that those prosecutions in the United States have, we submit, been responsible for the repression which we think has taken place in that country, where students in universities have been silenced, where teachers have lost their positions and have been silenced, where publishers of books have to write in an orthodox manner or they cannot get their books published, where professors of universities have lost their positions—I do not want to labour that.

Mr. CHURCHILL: What country are you referring to?

The WITNESS: I have reference to the United States.

Mr. CHURCHILL: Not Canada?

The WITNESS: Not to Canada. But my point is this: if we in our Code have this same sort of legislation is it not probable that the same sort of repression will develop and grow in Canada; and I am simply submitting to the committee that that would not be a desirable thing to happen; and I point out that this using force or violence clause is I think the clause which is responsible more than any other for bringing about that condition of repression in the United States.

Mr. CHURCHILL: Would it not be better if you referred to Canadian instances? Interpretation of force and violence in our country does not correspond to the interpretation you put upon it. I think it rather confuses the issue when you are referring to the United States. We are dealing with Canada and Canadian law.

The WITNESS: My point is simply if we have the same type of legislation will it not produce the same result in Canada?

The CHAIRMAN: May I point out it is now 4.05 o'clock and maybe we could confine ourselves more closely to the facts.

Mr. NOSEWORTHY: What does the witness suggest we do with this section 46 to which he objects?

The WITNESS: I think that the treason section—or the Canadian treason section—should get back to the original ideal of the first three clauses and stop at "assisting an enemy at war with Canada". That is where I would stop. I would suggest we should stop and we would then have a treason section that would be comprehensible and complete, and I would go a little further in order to get over the ambiguity that is inherent in the word "assist" and I would suggest that there we should make it clear that it does not apply to any trade union for instance or to a trade union dispute and also that there should be a similar clause because of that word "assist" such as is contained in section 60, clause 5, where it is made clear that you may criticize government policy, and I think that that then would create an adequate treason section and with that would sufficiently protect the safety and security of Canada.

In the United States, for instance, if I may draw an analogy again, here is the definition of treason. "Treason against the United States shall consist only in levying war against them or in adhering to their enemies, or giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses as to some overt act or on conviction in the open court."

There, to be guilty of treason, it has to be proved that you adhered to the enemy and secondly that you rendered him aid and comfort, and I think that is the essence of the treason clause.

Then, in connection with this treason clause, I would point out that—I have forgotten the name of the act.

Mr. BROWNE: The War Measures Act.

The WITNESS: No, not the War Measures Act, the Treachery Act. The Treachery Act is a very comprehensive Act and if one reads I think section 3 and 4 of that Treachery Act it seems to me that with the Treachery Act—and

I am not so sure that some things in the Treachery Act might not be looked over and improved upon and made less severe—here is section 3 of the Treachery Act.

> Notwithstanding anything contained in any other Act, regulation or law, of, with intent to help the enemy, any person does, or attempts or conspires with any other person to do, any act which is designed or likely to give assistance to the naval, military or air operations of the enemy, to impede such operations of His Majesty's forces, or to endanger life, he shall be guilty of an indictable offence and shall on conviction suffer death.

And here is where I think there might be some improvement, because again there is some ambiguity:

> If with intent to assist the enemy any person does any act which is likely to assist the enemy or to prejudice the public safety, the defence of Canada, or the efficient prosecution of the war, then, without prejudice to the law relating to treason or the provisions of section three of this Act, he shall be guilty of an indictable offence and shall on conviction be liable to imprisonment for life.

The CHAIRMAN: I wonder if we might confine ourselves to this bill and to the brief Mr. Rodd. I am wondering—I do not want to close you off by any means—but is there any way we can pass along to those sections referred to by Mr. Noseworthy. We have received representations on this section, and we would like to have some representation on these other sections. I am going to ask Judge Carroll whether he has some questions to put.

By Mr. Carroll:

Q. I do not like the idea of bringing in the United States in this, but I was going to ask under what part of section 46 would a school teacher be convicted in this country for teaching things that were not altogether according to government ideas.—A. I think that the experience in the United States has been—

Q. I am not asking you that. You made mention of this section and you were fearful that this section might be applied to what they are doing in the United States about repression. I cannot see any section here that would have anything to do with that unless a school teacher entered into a conspiracy with his students. However, that is the only question.

By Mr. Macnaughton:

Q. I have one question and it arises out of a question asked by one of our confreres. He said "what would you suggest" and in answer I understand you would revert to a 60-year-old procedure and that you would scrap c, d, e and f. —A. That is my suggestion that it should not be part of a treason section where the penalty is death. I think that a conspiracy to commit a crime should not be visited with the same penalty with the commission of the crime itself or forming the intention to commit the crime should not be contained in this very severe death penalty section.

Q. Have you carefully examined the section, part of which you quoted yourself—section 46, subsection 1(c)—for example "assists an enemy at war with Canada" and then strike out the rest. How would you deal with the rest of the wording in that sub-paragraph?—A. I would leave it out completely.

Q. How would you deal with the situation in fact.—A. In the same way Great Britain deals with it by not having it in the code at all. I think unless we feel the situation is so serious as to declare war then we should not make a situation where we have not seen fit to declare war, and since it is therefore

not so serious as war we should not bring it into the treason section where, I think, it means treachery to the country and the betrayal of the security of Canada. This severe penalty is not justified.

Q. Have you the date of the revision of the British Code—the last date?—A. I am sorry I have not. I was asking about it this morning.

Q. According to you there must be a declaration of war and until that time nothing should be done.—A. I think I would not agree to a treasonable offence without a declaration of war.

By Mr. Henderson:

Q. Would not that create a situation where a serious situation in the country would gain a great deal of momentum to the point of declaring war if you had nothing to combat it?—A. I am not quite sure I get your question.

Q. You would not have anything in the code at all to deal with the situation dealt with in *c, d, e* and *f*.

The CHAIRMAN: You mean dealing with the modern trend of not declaring war. It is the vogue now among nations not to declare war.

Mr. HENDERSON: Yes, that is right, or the situation would gain momentum.

The WITNESS: I think a citizen should know when he is committing this crime and a declaration of war lets him know he must not assist a person or a country with whom a declaration of war has been made.

By Mr. Macnaughton:

Q. How would you deal with the Korean situation,—A. I would deal with it in the same way I have said the British deal with it. I do not think they have seen fit to have a clause of this kind added and I rather gather from some of the comments in the civil liberties—there is a publication where civil liberties in all countries are compared—they have been rather surprised we have seen fit to do this when in Great Britain it has not been done.

Q. You define conspiracy as a simple agreement?—A. Yes I do.

Q. Is it not a simple agreement with intent to do or not to do—does not that make the difference?—A. It is an agreement to commit a crime but it is not a crime—that is my point.

By Mr. Browne:

Q. May I ask a question. What does the witness intend should be done to a person who at Pearl Harbour guided the Japanese forces to attack the American fleet. What would you do with that kind of person?—A. I would think under our Treachery Act if he committed the act he would be sentenced to death.

Q. Would you not think he assisted persons not at war with the United States, and done just as much damage to the country's safety?—A. In that case it was a Japanese.

Q. It was a United States citizen who guided the Japanese forces to attack the American fleet as they lay at Pearl Harbour. Would you consider he committed treason?

Mr. ROBERTS: Is not that covered by *b*?

Mr. BROWNE: I am asking the witness.

The WITNESS: I would say yes undoubtedly.

By Mr. Browne:

Q. And deserves death?—A. Yes, deserves death, and under this that would be covered.

Q. By the second part of *c*?—A. Would it not be covered by *b*?

Q. That may be so.—A. Where you levy war against Canada then you are—that is part of the original crime of treason.

By Hon. Mr. Garson:

Q. Could you levy war without a declaration of war?—A. Yes, I think you could. That would be another country which would—

Q. Can an individual levy war against a country when his own country has not declared war against it?—A. I do not know wether he could engage in an enemy act.

Q. Would he be levying war within the meaning of the Act?—A. I would say that any person who fought against Canada would be levying war against Canada and would be guilty.

The CHAIRMAN: Mr. Rodd, could we get your opinion on some of these other sections? You see we have other people here and we realize they have come probably a considerable distance and we would like to hear them.

The WITNESS: I would be glad to consider my remarks concluded in order that others may have an opportunity.

The CHAIRMAN: Have you anything else to say on these other sections.

The WITNESS: Mr. Garfinkle has something to say.

Mr. J. Garfinkle, Barrister, called:

The WITNESS: Mr. Chairman, and members of the committee, to continue with the brief in section 47 we have a question which has been raised and that is when Bill H8 was originally introduced into the Senate, section 47 read: "(*a*) to be sentenced to death" or "(*b*) imprisonment for life". That has been changed in the proposed section 47 in the bill before the committee.

We take it to mean that the death penalty is mandatory under 1-A, which means under the offences in section 46 (*a*), (*b*) or (*c*), and as such we fail to understand the difference being made between the original bill and the way it is proposed here. Now, if some of the lawyers could assist us in that respect, we would appreciate being corrected if we are wrong. But we can see no other purpose for it and we fail to understand why that was done.

Mr. MACNAUGHTON: You mean Article 47?

The WITNESS: Yes. Article 47 read formerly: 47 (1).

> Every one who commits treason is guilty of an indictable offence and is liable (*a*) to be sentenced to death, if he is guilty of an offence under paragraph (*a*), (*b*) or (*c*) of subsection (1) of section 46, or (*b*) to be sentenced to death or to imprisonment for life...

Now, the other subsections of section 46 say that (*a*) you are to be sentenced to death if you are guilty of an offence under section 46 1-*a*-b-c, and to death or imprisonment for life under subsections (*d*), (*e*) or (*f*). That is, subsection one of section 46.

The CHAIRMAN: Tell us what you think is wrong and we will consider it in committee.

The WITNESS: We fail to see why it is necessary to change the original proposal.

The CHAIRMAN: That is fine. May we now pass on to the next section?

Mr. MACNAUGHTON: What do you make of these two words "is liable"?

The WITNESS: That is a question which comes to mind. "Is liable" ordinarily would have meant, that is, the maximum penalty.

Mr. MACNAUGHTON: Does that not answer your question?

The WITNESS: No, because then we do not understand why there is the change of wording, unless there is a specific reason which we have failed to grasp. But we leave that question with you. We cannot solve it.

Under section 48—

The CHAIRMAN: Could I again stress, Mr. Garfinkle, that we have had representations on all these sections, I think, except sections 160, 96 and 87.

The WITNESS: There may be some different point of view, though. That is the point.

Hon. Mr. GARSON: Your points of view are set out in the brief.

The CHAIRMAN: Yes. They are all set out in the brief.

Mr. ROBERTS (League for Democratic Rights): Mr. Chairman, is our brief to be taken as read?

The CHAIRMAN: Yes. They are all being taken as read.

The WITNESS: Then we will go on to section 52. We do know that the question has arisen as to "interests" under section 52, which is on page 15.

The proposed section 52 reads as follows:

(1) Every one who does a prohibited act for a purpose prejudicial to

(a) the safety or interests of Canada, or . . .

We shall stop there for a moment. I think the word "interests" has been dealt with by the committee, but we wish to point out that it is a very vague word. It can encompass a very large area, we feel.

The CHAIRMAN: Now, just a moment. Could I ask you if there is anything which is not in the brief that you would like to submit? The brief, you see, will be considered page by page on each section, that is, the representations made on each of these sections will be considered. But if there is anything else you have, we would like to have the benefit of your opinion.

The WITNESS: In the same section—this is not dealt with in the brief.

Mr. LAING: We had a long, exhaustive and very able argument on that point the other day, made by the Canadian Congress of Labour.

Mr. CARROLL: On the question of "interests".

The WITNESS: I appreciate that.

Mr. NOSEWORTHY: Would the witness indicate whether he is agreeable to a substitution of the word "security" for the word "interests" in that section; for the sake of the safety or security of Canada?

The WITNESS: Paragraph (b) does say "safety or security". But we feel the word "safety" is sufficient.

The CHAIRMAN: Would you like to go on to section 57?

The WITNESS: There is one item here which is not in the brief and I do not think it has been raised. We first raised this question in the Senate committee and we realize that it was fully discussed there. Subsequently it has been discussed here.

The CHAIRMAN: Do you mean to say that you have appeared before the Senate committee?

The WITNESS: Yes, sir.

The CHAIRMAN: Well, I did not realize that.

The WITNESS: We were one of two organizations which did appear before the Senate committee.

The CHAIRMAN: What other organization appeared before the Senate committee?

The WITNESS: The League for Democratic Rights.

The CHAIRMAN: The League for Democratic Rights?

The WITNESS: That is correct.

The CHAIRMAN: Did you know that? Then we will have the benefit of all the evidence you have given before the Senate committee.

The WITNESS: But there was no record kept.

The CHAIRMAN: The League was heard before the subcommittee. I see.

The WITNESS: The question here is "For a purpose prejudicial to." We raised the question. Does that mean that the main purpose must be "prejudicial to" or the only purpose "prejudicial to" the safety of Canada? We considered section 52, and we felt that this point should be considered in connection with the submissions made by other organizations as to the threat to trade union activities.

Section 57 I think has been discussed before. We only wish to point out that the Senate saw fit, with the able support of Senator Roebuck, to remove the R.C.M.P. from one section, which made it similar to the armed forces; and we submit that it should also be removed from the proposed section 57. We submit that the R.C.M.P. should not be put in the same position as the armed forces, and this section definitely puts the R.C.M.P. on the same footing. We submit that the R.C.M.P. should remain a civilian force subject to the same external rules as the ordinary civilian police forces. Mr. Chairman, do you think that the proposed sections 60 and 61 have been covered? They are quite lengthy in our brief.

Mr. SHAW: I have one question. It says on page 17:

> It is significant to note that the R.C.M.P. are not only a federal force but that they act also as provincials in most provinces and perform the municipal police duties in many places.

They continue to be a federal force, even though there exists an agreement between the province and the federal government. But that does not in any sense alter their status as a federal force?

The WITNESS: No. That is the point we raise. As a civilian police force the R.C.M.P. largely would perform municipal police duties and it would act, so to speak, in a manner quite different from the army. And therefore they should be treated in the same way as a civilian police force is treated and there should not be a special section dealing with the R.C.M.P. on the same basis as the armed forces are dealt with.

The CHAIRMAN: We are dealing with what section now?

The WITNESS: Sections 60 and 61. I shall leave them alone, but I do ask you to consider them seriously along with our submissions in the brief.

I now pass to section 62 on page 19, which is the penalty section for seditious libel or sedition, and I ask you to note that despite the fact that several justices of the Supreme Court of Canada have in a recent decision indicated that they were dealing with seditious libel—I want that to be understood—not with any other part but just with seditious libel, their thoughts in general went along the line that sedition as an offence is one that has been changing through the years.

As to the concept of sedition, of course at one time many, many years ago, it was a crime to publish any criticism of the government. That was very many years ago.

Mr. BROWNE: It still is, in some places.

The WITNESS: That is right. And through the years the courts and the parliament in Great Britain have adopted a more moderate attitude on the question, coming to greater and greater free speech for the individual and allowing greater and greater criticism of the government.

The proposed section 62 would show, by means of a change in penalty from a matter of less than two years, that is, from two years to fourteen years, that the government would seem to think that the trend must be reversed, and we think that is not correct.

Hon. Mr. GARSON: But the trend of the nature of the crime would not be reversed by any change in the penalty, would it?

The WITNESS: Except in this respect, that the section is a threat to people to watch themselves carefully in what they say.

Hon. Mr. GARSON: But what they say would still be judged by the present concept of what constitutes sedition.

The WITNESS: That is correct, in so far as whether they be found guilty or not. I would agree. But in so far as the threat to watch what they say is concerned, the threat increases with the penalty.

Hon. Mr. GARSON: Does the change in the penalty not reflect the fact that perhaps under changing conditions sedition, if committed according to the present concept of sedition, can be a more serious offence against the state than it was, let us say, fifty years ago?

The WITNESS: I do not think so. And I would cite the case of *Rex* v. *Boucher*, if you would would care to read it.

Hon. Mr. GARSON: I am familiar with it.

The WITNESS: I do not think that is the opinion held by certain people who are very learned in the matter.

Hon. Mr. GARSON: We won't bore the committee with our differences of opinion.

Mr. CANNON: Would it not be right to say that as the scope of the crime of sedition is getting to be less because of the evolution you mention, it would be self-restricted to a more serious type of offence? Would that not justify an increase in the penalty from two to fourteen years?

The WITNESS: I am sorry, but I do not follow that. It is not being restricted to a more serious type of offence.

Mr. CANNON: I thought you said that.

The WITNESS: No, sir. I just said that the wide field that the offence used to have has been narrowed.

Mr. CANNON: That is the same thing.

The CHAIRMAN: Would you like to make your representations on the other sections now, Mr. Garfinkle?

The WITNESS: We note that the proposed section 63 has been passed by the committee, and we feel—oh, yes, our remarks are concerned with the R.C.M.P. having been deleted from this section. I think I mentioned that before.

The next item includes sections 64 to 69, and we only have printed one section on page 20, but I believe the other sections are the same substantially and have already been passed by the committee. I do not know whether you have considerable discussion on section 69, but I think it would bear substantial thought. The section has been used recently in two cases only with which we were familiar at the time of making the brief.

The CHAIRMAN: Is there anything else which is not in your brief?

The WITNESS: Yes, sir. Asbestos is not in our brief.

The CHAIRMAN: Asbestos?

The WITNESS: Yes, sir. It was used at Asbestos.

The CHAIRMAN: I do not get the point.

Hon. Mr. GARSON: You mean it was used improperly, is that your point?

The WITNESS: I am not a judge and I cannot say that.

Hon. Mr. GARSON: You mean, in your opinion?

The WITNESS: Yes. I do think it was used improperly at Louiseville, from what I gathered in the newspaper reports.

Hon. Mr. GARSON: Would you be in favour of abolishing the Riot Act proclamation altogether?

The WITNESS: Well, yes, sir; it might bear consideration with a view to abolishing it. In any event, I think it would bear consideration not to increase the danger of a misuse of it by changing the time element which used to be thirty minutes to immediately. I think that would stop further abuse, and the last thing would be to include force of arms. It has now been cut down to force. I think that would prevent partially, we hope, a situation as in Louiseville arising, instead of encouraging them.

The CHAIRMAN: If you like, you may make representations on other sections, Mr. Garfinkle.

The WITNESS: Section 87 has passed the committee, but on proposed section 87 I would like to say that in the Senate we had considerable discussion on that—no, I am sorry, it was section 96. I think section 87 has not been discussed before in this committee.

Mr. CARROLL: Yes.

The WITNESS: It has been? Well, then, I will just leave you to read that section. We would, of course, like to say we are not opposed to the police being able to keep meetings orderly; on the contrary, we think ordinary meetings are covered elsewhere by section 163.

The CHAIRMAN: Any other representations?

The WITNESS: On section 96, page 22 of the brief, we would like to add to the brief that the search without warrant under the circumstances outlined in the brief is entirely a new departure and contrary to established practice in this country and in the country from which most of our laws originally came. That has to do with individual freedom.

The CHAIRMAN: Would you like to say something about section 160, then?

Mr. CHURCHILL: Mr. Chairman, just before we go on to that, and reverting to clause 87, at the top of page 22 the brief declares that the interpretation section of the bill says that anything is an offensive weapon, and that is not what it says at all. It says "anything designed to be used..."

The CHAIRMAN: Could we consider that in committee, Mr. Churchill?

Mr. CHURCHILL: I thought I would point out that that was an incorrect statement in the brief.

The WITNESS: There is a further subsection in the definition section, clause No. 2.

The CHAIRMAN: I am thinking, Mr. Churchill, of the will of the committee and the convenience of other people who are here.

Mr. CANNON: May I ask the witness this: Are we to conclude that the League for Democratic Rights are in favour of the use of offensive weapons at public meetings?

The WITNESS: No, sir. As I stated, we are not opposed, but, on the contrary, we are all in favour of police being able to keep meetings orderly. It is the use of the generalities in the section; in line with our brief throughout we are opposed to the use of generalities.

The CHAIRMAN: Have you anything to add to section 365, then, other than as in your brief?

The WITNESS: Section 365, I have this to add which might help somewhat. I know there has been full discussion on the matter.

The CHAIRMAN: Could we pass along to the next section?

The WITNESS: On legal strikes. The question of legal strikes, we should remember—and our discussion ran along this line—two things. One is that legal strikes are a question for each province to decide. It is within the realm of the province, and, being controlled by each province, two questions arise from that. One is you will not have a uniform application of this section if you put in this section "is not to apply to legal strikes", because in one province you can have—let me put it this way—a law stating no strike is legal, and in another province you can have a law stating any strike is legal. Secondly, the question arises, which I do not propose to discuss, of the jurisdiction of this house—The British North America Act. Illegal strikes are defined in various trade union Acts in each province, and I would just suggest that if a proviso was to be made to section 365, the proviso should be "in industrial disputes".

The CHAIRMAN: Clause 366.

Mr. NOSEWORTHY: Would the League for Democratic Rights be satisfied with a subsection to clause 365 pointing out that nothing contained in this section shall be deemed to affect any breach of the collective agreement resulting from a dispute between an employer and a bargaining agency on behalf of a group of employees?

The WITNESS: I think the point was raised, and I am inclined to agree, that what may be a breach of contract in one province may not be a breach in another, that there may be no contract in Quebec and British Columbia, both of which provinces seem to be tending to hold a collective bargaining agreement as binding in other fields. That is the tendency. But in the other provinces as yet we have no indication of that and, therefore, collective bargaining agreements may not be contracts in that sense, and there are numerous cases where there are industrial disputes without any collective bargaining agreement being in force.

The CHAIRMAN: On clause 366, any comments?

The WITNESS: Clause 366 has been dealt with and we are, of course, referring to subsection (f).

The CHAIRMAN: Clause 372?

The WITNESS: Clause 372. If the section is to stand as it is I think it would be better for going back to where it came from, splitting it up into its component parts. The proviso should be along the lines which I proposed in clause 365.

The CHAIRMAN: Clauses 415, 462—anything to add to the recommendation you have in your brief?

The WITNESS: No. Except on habeas corpus. Clauses 463 and 464 deal with bail. Clauses 690 and 691 propose to stop what is a practice, I believe, to put it in ordinary language, to shop for a judge who will grant you a habeas corpus. I am in those words putting it bluntly.

Mr. CARROLL: That is quite a compliment to the judiciary.

The WITNESS: With all respect, just being facetious a little, and maybe I should not be. The main thing is we think we should not stop that practice because the judiciary are human, as we are, and one man may have a different viewpoint to another on the granting of habeas corpus and we should not prevent a counsel from being able to take advantage of that. If the case is such that it does not warrant it, then no judge will grant habeas corpus, and the counter argument might be that we wish to make for uniformity that one judge should not overrule a judge of the same standing, but that argument does not hold here because the judges themselves realize that, and they always try

to practise where they will not overrule each other. If the case warrants overruling, then there should be a law. I have nothing further to add.

The CHAIRMAN: We thank you very much for your representations, Mr. Roberts, Mr. Rodd and Mr. Garfinkle. What has Miss Gauthier to say?

Mr. ROBERTS: Miss Gauthier has a couple of remarks to make, if she may.

Miss GAUTHIER: I will make my remarks very short, Mr. Chairman. The people of Quebec, perhaps more than any other section of the population of Canada, are confronted daily with infringement of their rights and freedoms. I will not go into extensive details, as the other delegates have. I have not the ability of speech that they have. However, there are certain parts of the bill as presented that are definitely making the laws worse for the people of Quebec at the same time as the people of Canada. For example, in section 46 you have the words "force or violence for the purpose of overthrowing the government of Canada or a province."

The CHAIRMAN: Before we go into that—I hesitate in stopping you—but I regret asking the members of the committee here going over this evidence because we have already today had representation in this connection.

The WITNESS: I will take about five minutes. I will cover it completely in that time.

In the recent strike at Louiseville, the Catholic syndicates, at one stage, actively considered calling a general work stoppage to protest the anti-labour policies of the Quebec government. M. Duplessis qualified this proposition as a "call to generalize crime".

If this section were law, and a general work stoppage had occurred, the entire membership of the syndicates and any other bodies that might have supported them in this action could have been subject to prosecution for treason.

Moreover, in the last few weeks the Quebec legislature has adopted, over the vigorous opposition of the Liberal members, a number of amendments to the Election Act which, in the opinion of a great many people, eliminate the possibility of holding democratic elections in our province. Could a peaceful demonstration organized by the Liberal party to demand the repeal of these amendments be qualified as a resort to "force and violence"?

Numerous eye witnesses to the police violence in Louiseville on December 11 have contended that the authorities did not wait the prescribed thirty minutes before attacking the assembled strikers. Section 69 of the proposed code is designed to legalize this type of police conduct. Everyone is aware of the public outcry that followed upon the events in Louiseville.

The CHAIRMAN: Is this part of the brief of the Civil Liberties Union?

The WITNESS: I am just taking the important parts of it.

The CHAIRMAN: They are not a national organization and we have not agreed to hear them.

The WITNESS: In my remarks I think it is good here to show especially with the padlock law in Quebec how much worse it would be with a bill like 93 adopted for the people of Quebec, and I am trying to show examples that we have now. I am not referring to any American cases or other cases, but our own cases here in the province of Quebec.

The CHAIRMAN: We have certain precedents we have established.

Mr. NOSEWORTHY: Mr. Chairman, I think this is the first witness we have had to present the Quebec point of view to the committee and I suggest it would save time—

The CHAIRMAN: The committee will decide, but I am trying to find out—we have set down a certain policy and if the committee wants to deviate it is within the province of the committee.

Mr. CARROLL: I think we should hear the witness.

The WITNESS: Everyone is aware of the public outcry that followed upon the events in Louiseville. The amendments in section 69 thus run directly counter to the opinion and interests of the people. The indiscriminate use in recent years of the Riot Act in our province, and it was applied twice in Quebec in the last five years, in Asbestos and Louiseville, raises for serious consideration the question of the introduction of stringent limitation on the application of this section of the Code. The proposed amendments contained in Bill 93 far from providing such safeguards are an open encouragement to the indiscriminate use of force and violence against the civilian population.

Now, dealing with sections 52, 365 and 372. There is no question but that these sections place evry trade unionist who goes on strike in the category of a criminal.

The CHAIRMAN: Just a moment, I am sorry but you are reading directly from the brief. It is entirely within the will of the committee to decide, but we are going to consider that and you are reading verbatim from the brief, we are going to have to terminate our proceedings somehow because we have other people sitting here. If you have anything else to say we would be glad to have it.

The WITNESS: We could go on giving examples in Quebec.

The CHAIRMAN: We appreciate that, but later we are to consider your brief which has been submitted by the local organization, and you can be sure it will be given every consideration.

Mr. RODD: Thank you very much, Mr. Chairman, for your great patience and for the opportunity given to us to present this brief.

The CHAIRMAN: I thank you very much, Miss Gauthier and gentlemen, for the presentation you have made.

We have two other organizations here, the United Electric Radio and Machine Workers of America, and the Congress of Canadian Women. I think we have a number of people from the United Electrical Workers. Is there a representative here?

Mr. NOSEWORTHY: Mr. Chairman, would it not be well to hear the women first?

Mr. SHAW: You have given the ladies an opportunity but they were not here, and I think we should go on with these gentlemen here.

The CHAIRMAN: We have, gentlemen, the United Electrical Machine Workers of America represented by Mr. C. S. Jackson, president of the union, and Mr. Jean Pare, vice-president. We have, gentlemen, received your brief and it has been studied.

——(For brief see Appendix B.)

Is there anything further you would like to add to the brief?

Mr. C. S. Jackson, President of the United Electrical Machine Workers of America, called:

The WITNESS: Yes, I would like the opportunity to make a few general observations on our approach to the proposed amendments as contained in somewhat limited form in our brief. Before doing so may I say that—I do not want to take the time of the committee to introduce the full delegation we have here today, but all of the local presidents of our local unions in Canada

are here as part of the delegation. They are here to be a part of the representation made by our union on the important question.

The CHAIRMAN: Have you the names of the members of the delegation?

The WITNESS: Yes.

The CHAIRMAN: Would you like to read them aloud and they can stand up as their names are called out.

The WITNESS: Starting at Montreal we have Mr. Jock Melville, president of local 518, and Mr. O. Lavoie from the same local.

Mr. George Wallace, local 524 from Peterboro; Mr. Harold Shannon, president of local 522 Kingston; Mr. W. McClennan, president of local 520, Hamilton; Mr. A. Greenhalth, local 527, Peterboro; Mr. J. Spence, president of local 514, Toronto East; Mr. John H. Bettes, president of A.L.E.G.E., Joint Board, 507, 516 and 515; Mr. Jas. Davis, president of the composite local, 512, Toronto; Mr. R. B. Ness, president 525, Mount Dennis, Ontario; Mr. John Landry, president local 505, Niagara Falls; Mr. M. Dougan, executive member local 504, Hamilton; Mr. H. Dickerton, acting president local 535, St. Catharines; Mr. A. Hamilton, president local 523, Welland; Mr. W. C. Moffat, vice president local 521, Leaside; and Mr. D. Pyner, business agent, local 522 Kingston.

The CHAIRMAN: Have you offices in other communities besides the ones from which you have representation?

The WITNESS: These are the communities in which our organization is operating.

The CHAIRMAN: It really is not a national organization.

The WITNESS: It is a national organization as we have stated in our communication to your committee and our jurisdiction is national. We have concentrated up to this time our organizing activities in the provinces of Quebec and Ontario.

Mr. MACNAUGHTON: Where, I presume, most of the work is done?

The WITNESS: The industry is largely located there. Few go outside these two provinces and probably not more than 4,000 workers in the industry are scattered across the rest of the country.

The CHAIRMAN: Thank you, Mr. Jackson, if you will proceed.

The WITNESS: Our organization has been considering the problem of the criminal code over a long period of time as it affects the operations of the union as such, and we have found that in reading what materials are available to us in terms of the discussions in the Senate, there is some cause for considerable concern on our part as to the possible—shall we say—misuse of many of the sections of what we would term rather loose and ambiguous wordings as a possible interference in the operations of a union.

In drafting our brief we concentrated on that aspect of the code amendments rather than making any attempt to deal with them from the standpoint of their legal meaning or their legal interpretation.

We felt that within the experiences of our union and the trade union movement as a whole that from time to time as the workers and employers reached a state of impasse where strikes developed, a considerable amount of public misinformation concerned the situation and in addition to a considerable amount of public misinformation a spate of allegations as to the sincerity of the motives of the workers concerned—charges and allegations that ran the full gamut from treason to sedition and with that in mind and while looking at the specific proposed amendments and being cognizant with the fact that from time to time statements have been made that even though the words have an apparent intent they would never be used in the courts.

We felt that was not a sufficient assurance for the Labour Movement that these various amendments we have set out in our brief would not at

some time or other in the heat of industrial battle so to speak—if we can use the military term in order to the same connotation within the meaning of the Act—that under these conditions many of these sections could be brought into play even though that was not their original intent.

Hon. Mr. GARSON: Such as what.

The WITNESS: I say that applies, and in drafting our brief to sections 46, 50, 52, 60 to 62, 64 to 69, 96, 365 and 372 and in dealing with all these we pointed out in what manner each one, in a different manner, but nevertheless in some aspect, could be applied against a trade union and to the detriment of the basic democratic principles which a trade union is founded on and can only operate within.

We have in mind that there have been on the statute books of this country for many long years sections of Acts which were designed to deal with industrial relations which were never operative or were not operative for many years but on occasions, depending on the general situation prevailing at the time where it was a situation when a large number of workers and different unions were having difficulties with their employers, or in the case of the period of 1940-41 where in the case of the Industrial Disputes Investigations Act, which was passed in 1927 containing clauses which set out penalties for so-called illegal strike action, and that those sections of that Act were totally inoperative from 1927 right through to 1941 and were only used on one occasion to my knowledge and that was in 1941.

The matter went before a magistrate and the magistrate applied the penalty which at that time was $20 a day for involvement in so-called illegal strikes. The matter then went to appeal and the Appeal Board reversed the decision of the magistrate. Therefore on the record there has never been any conviction under that section.

We feel that many of these other sections—while their intent, we believe, is basically that of protection of the safety of the country—can, because of their ambiguous wording, be used against the labour movement. The illustrations which have been given here just prior to our taking the floor, from the province of Quebec, we think do underscore the fact that such sections as the Riot Act section, and the Unlawful Assembly section have been used with the result that the unions involved have been virtually defeated in their particular efforts at the time to secure improvements for their workers. So we feel that is so in the loose wording of section 46 in terms of the meaning of "assists", and in terms of the meaning of "forms and intention," and in terms of the meaning of "conspire," with the addition of that section dealing with whether our armed forces are engaged in hostilities, and whether or not a state of war exists. We feel there is a dangerous possibility of encroachment upon the right of the citizen and upon the right of the trade unionist to carry on democratic discussion and debate in the halls of the union around the very question as to whether or not the armed forces of our country should be engaged in hostilities within a given country, as in the case of Korea or in any other case that could conceivably come up.

We feel it to be the democratic right of a citizen of this country to discuss and to debate such matters and to present his opinion frankly before the public and before the government. Therefore we feel that with the type of wording in section 46, the very holding of a discussion could conceivably come under the heading of conspiracy.

By Hon. Mr. Garson:

Q. Could you explain to us how public discussion could be brought within any part of section 46, which deals with treason?—A. Yes. We feel that it could be.

Q. There is a section there with sub-clauses. Would public discussion come in under any of them?—A. We feel that the section here, which says that if one conspires with any person to do anything mentioned in the above paragraph, would tie in.

Q. Would public discussion come under paragraph (*a*) "kills or attempts to kill Her Majesty"?—A. That would not come under it.

Q. Would public discussion come under paragraph (*b*) "levies war against Canada. . ."? Would public discussion come under paragraph (c) "assist an enemy at war with Canada, etc...."?—A. In the terms of the second part of it, "assists... any armed forces against whom Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the country whose forces they are."

Q. Would you say that discussion comes under the assisting any armed forces, etc.,?—A. Is it not a matter of the construction to be put on the words "assist"?

Q. I think you would have very great difficulty in doing it by discussion in Canada.—A. I am not sure that we do not have to draw some lessons from the country south of our border.

Q. Is that what you mean that by discussion in your union; you make out an offence of treason under section 46 as presently drafted?—A. We think the language is such that if there were a situation of public hysteria, then such an interpretation could be placed upon those words by a court. And as to whether or not a treason charge could be laid, we think it is possible.

Q. Can you cite a single case in Canadian history which offers you any foundation for that statement?—A. No, I do not think we can, but I do not think we can rely today solely on the fact that there is or there is not a precedent in all these matters. I think we are dealing with a situation today in which hysteria has become a concomitant part of our civilization, and because of that increasing degree of hysteria, the interpretation of these words becomes that much greater.

Q. Are you seriously arguing before this committee, I am asking you, Mr. Jackson, if you are seriously arguing before this committee that if you engage in your right to freedom of speech within your union, you might be held on a charge of treason?—A. That is correct, and I say that because of the conjunction of those various words, "conspire", "form the intention to assist", and the question of assisting. After all, it is a matter of record that we discuss at our union meetings, at our quarterly meetings of delegates, such questions as the cease fire in Korea, and yet the cease fire in Korea is not in agreement with the stated policy of the government at this moment. Therefore, should there be a desire, or should the hysteria around this issue be greater than it is at this moment, it is not inconceivable that it could be said to be assisting the enemy.

By Mr. Macnaughton:

Q. On page 3 of your brief, Mr. Jackson, in the fifth paragraph, are you serious about that sentence: "It was stated at that time by the Montreal *Gazette* that the 1951 amendments were introduced on the demand of Washington, D.C."?—A. Yes, we are serious about everything we have in our brief, and that statement is in the record.

Q. But you must appreciate that this Code is 60 years old and that it has not been touched by way of amendment.—A. I do not get the relevancy of your remarks.

Q. The relevancy is to your statement here that it is upon orders from Washington, D.C., that we are bringing certain amendments into this Code.—A. Yes.

Q. And the implication is that we are taking orders from people across the border. Are you serious in that statement?—A. The statement is that

there was a statement in the Montreal *Gazette* to that effect which, to our knowledge, has never been patently denied. We bring it up as a question, if you like.

Q. Well, then, as a member of parliament representing a constituency I take pleasure in denying that right here.

Mr. SHAW: Was that statement contained in an editorial or in an article written by someone, or was it just a news report such as "seek ye", or otherwise, or in a letter addressed to the editor?

The WITNESS: Probably it was in an editorial, but I do not have the clipping with me.

Mr. HENDERSON: You say it was an editorial?

The CHAIRMAN: Yes. But he says he does not remember.

The WITNESS: I am not positive.

Mr. CHURCHILL: If there is no reference to the date of the publication or as to whether it was an editorial or a letter, then there is no value in that statement.

The WITNESS: That might be. I have to admit that I should have supported it by a reference in the paper.

Hon. Mr. GARSON: I think the important thing that Mr. Jackson asserts is that he believes the statement because he read it in a newspaper, and he reads it to us. There is no law in this country against believing things.

The WITNESS: None at all. That is exactly what we want to preserve, that is, the right to continue to believe whether we are right or wrong, until we are proven to be wrong.

Hon. Mr. GARSON: There is no law either against being naive.

Mr. MACNAUGHTON: Or becoming hysterical.

The WITNESS: We believe a similar danger exists in other sections of our Code, to which we have drawn attention; and with regard to this one last word on section 48. It seems to us that the wording here is designed to meet a quasi peacetime situation because, from our knowledge of events over the past number of years, without the actual development of war and a state of war, it has been almost unthinkable that a government would bring down specific wartime measures in a very concrete and specific form to deal with all the possible aspects of treason and sedition arising out of a state of war. Therefore, the dangers in this section lie in the fact that it is apparently a quasi peacetime measure. If we can delineate the state of events as they exist today, I think it is that which constitutes to us the most grievous menace to the continued right of working people to meet, assemble, and discuss every aspect of policy of their government as it may affect them as working people and as citizens of the country.

The CHAIRMAN: Could we not deal with other sections now? We have only 15 minutes more and we have another delegation.

The WITNESS: I appreciate that and I do not think it is necessary for me to deal with too many sections specifically. I think we have set out our main points, our representations and our main arguments with regard to these sections. But there are still a couple of sections, one section, for instance, that we did not cover but which we should have mentioned. It is section 366, which is as we understand it the present section 502 (*a*) that sets out the rights of picketing. It is the only place, to our knowledge, where the rights of picketing are set out anywhere in a law in this country. We feel that there is an unnecessary and an unnatural restraint on the right of picketing contained in the formulation of clause 366. Its application in those situations where strikes have taken place has been extremely narrow and to the detriment of

the workers concerned. Our position is set out broadly in regard to the right to strike. In our document where we deal with the right to strike and where we refer to the wording of what was known as the Wagner Act in the United States, where it was recognized—true, the Wagner Act is not now law in the United States, but was for a considerable number of years—that there is a necessity of bringing about an equality of bargaining power between the two parties to a bargaining agreement before there can be genuine collective bargaining, and giving recognition to the fact that with individual workers the sum total of their individual bargaining powers do not meet the bargaining powers of the employer, that it is only in the collective unity of their economic strength that brings them to the bargaining table with any measure of equality, and implicit in collective bargaining is the relative economic strength of the persons, implicit is the right of the employer to dismiss all of the employees, and the converse right of the employees as a group to withhold, to withdraw their labour power. Under those conditions it seems to us that the right of employees en masse, acting in the first place as a collective group in withdrawing their labour power, should be preserved in their right to exercise that power on the picket lines en masse, and while on the picket line to exercise the bargaining position that is implicit in their organization and in their right to strike.

Mr. SHAW: But you would not go so far, Mr. Jackson, as to say they have the right to engage in violence or intimidation, would you?

The WITNESS: No. As a matter of fact, we do not agree with violence or intimidation. Our experience has been that when workers are on strike and where violence occurs, it occurs 99 per cent of the time from one of two sources, either by provocation from police or from an agent provocateur within the ranks of the workers. It is not the policy of any section of the labour movement that I know of to encourage or even countenance the use of violence or intimidation, and there is no tendency on the part of workers as I know them to indulge in violence when trying to improve their economic position.

By Hon. Mr. Garson:

Q. How then would they be prejudiced by the prohibition of violence?—A. We are not arguing for a prohibition against violence. We are arguing for the right of mass picketing.

Q. Then, on what do you base your objection to this section?—A. Our contention is that section 266 in its application constitutes basically a bar to mass picketing.

Q. Can you point out the part that does this? By the way, I presume you are equally opposed to the substance of the two sections from which those sections are taken, 501 and 502—you are opposed to them?—A. I am dealing with 502 (*a*).

Q. But you would be equally opposed to these?—A. To the extent—and I say our position is a qualified one—to the extent that they limit the right of mass picketing we are opposed to them. We are not opposed to the abjurations against violence because in no way do we agree that the labour movement is desirous of or inclined to violence in its struggles.

By Mr. Shaw:

Q. I believe, Mr. Jackson, you would agree that certain of these sections should remain, would you not, to make violence or intimidation an offence should it occur.—A. What I am trying to do here because of the shortness of time—I do not wish to interfere or rob the other people who are waiting of time—I have dealt with the high points. Our principal objection, as far as language is concerned—if we had the time I would like to go into the language

section by section to further substantiate our point. I am not making any specific charge on the language in clause 366. I am saying the effect of clause 366 is deleterious to the trades union movement.

Q. The other trade unions that we had before us did not take this exception to clause 366—the Trades and Labor Congress and the Canadian Congress of Labour. They did not feel that way about clause 366.

The CHAIRMAN: Could we just refer ourselves to this witness?

The WITNESS: I think you will find they have made reference to the rights of mass picketing. In what form they did so, I am not specifically familiar.

Hon. Mr. GARSON: And your whole point, Mr. Jackson, is that the only part about clause 366 you object to is the part that would do anything with respect to mass picketing? The rest of it is satisfactory?

The WITNESS: Yes.

Mr. NOSEWORTHY: Could you refer to any particular section, any particular part of that section which would affect picketing?

The WITNESS: No. You say that section 502 (*a*) is in another section?

Mr. BROWNE: Clause 367.

The CHAIRMAN: Could we have your comments on the other sections, Mr. Jackson Clause 392, I think you have something to say about that?

The WITNESS: 372. That was a typographical error.

The CHAIRMAN: Clause 372 "mischief".

The WITNESS: Clause 372, "mischief". I think our points are made in our brief in that regard. We have not gone into specific details in all of the sections in terms of words. Our feeling is that too broad powers are given to apply these sections, even if they may not be intended to be applied against the trade union movement. We wanted to stress, in the main, the fact that we are very carefully concerned about a misapplication and, therefore, that there should be a recognition throughout the Criminal Code that a trade union is a lawful and necessary organization within the democratic structure of Canada.

The CHAIRMAN: I think we are all agreed on that.

The WITNESS: And it should be, under all conditions, clearly set out that the amendments that are proposed and in the hopper at this time in the recodification of the Criminal Code are not to be applied in a manner which will restrict the essential democracy and operation of the trade unions, and we stress the concern with the democracy of the organizations as strongly as we do its operative functions because we believe that within a trade union it is necessary for the working people to consider all phases and facets of the policies of the government on the domestic and international front as they have a bearing on the ability of the workers to continue to improve their living standards, and we recognize from our experience that the struggle of workers for the improvement of their living standards is based to a significant extent on the economic front. We feel that we have the right to analyze, discuss, criticize, voice opinions and to petition on all matters on which the government acts, and the trade unions are in many ways the home for that discussion. That is our main purpose in coming before your committee, and we would like to hope that you are being guided along those lines in your approach to the situation.

The CHAIRMAN: We thank you very much, Mr. Jackson and Mr. Pare, and you may be sure we will give your presentation our serious consideration.

Will it be in order if we continue on past 5.30?

Agreed.

The CHAIRMAN: We have present Mrs. Rae Luckock, president of the Congress of Canadian Women. You have the brief before you. You have studied it.

—(For brief see Appendix "C".)

Mrs. Rae Luckock, President of the Congress of Canadian Women, called:

The CHAIRMAN: Is there anything further that you would like to add to the brief, Mrs. Luckock?

The WITNESS: No, Mr. Chairman, unless there are any questions anyone would like to ask.

Hon. Mr. GARSON: Mrs. Luckock, you make the statement here on page 2 of your brief that "all is not well with Canada when repressive legislation is being advanced at the urgent instigation of another country, particularly by a country itself in the throes of hysteria". You have quoted an editorial in May 3, 1952, issue of Toronto *Saturday Night* to the effect that these amendments you are speaking of were drafted very hastily and on the urgent instigation of the United States. Had you any other basis for the statement you make in your brief?

The WITNESS: No, Mr. Garson. Only the article here in *Saturday Night* and little things we see in the press which is the only place we have to get information.

Hon. Mr. GARSON: You have no other basis at all?

The WITNESS: No.

Mr. BROWNE: I notice that the Montreal *Gazette* is quoted of May 3, 1951. I wonder if that is an error?

The WITNESS: No.

Hon. Mr. GARSON: That is a different question. The reason I asked that question is that as the minister who introduced this legislation I want to say categorically and positively that there is no truth whatsoever in the statement that these amendments were introduced at the instigation of the United States. They were not introduced at the instigation of that country directly or indirectly or in any way whatsoever. They were introduced upon the responsibility of the Canadian government without any reference to the United States at all.

Mr. MACNAUGHTON: Nor were they quietly wangled into the code with the least possible notice. As I understand it, the government brought in this bill a long time ago, and did not proceed with it with the express intention of giving the public notice of what was contained in the bill.

Hon. Mr. GARSON: I think Mrs. Luckock is referring to the introduction of these amendments in a previous session and then having amended the code the previous session they were brought forward in this consolidation. I think it is in relation to that previous occasion that the statement was made in the Toronto *Saturday Night*, and perhaps in the Montreal *Gazette*, but it would not be true in relation to that previous occasion either; for my experience is that it is very difficult to wangle these things in a quiet way. They are discussed by the whole membership of the House of Commons and it is quite impossible to do it in a quiet way.

Mr. MACNAUGHTON: The Minister of Justice should never wangle, should he?

Hon. Mr. GARSON: He is never permitted to.

The WITNESS: Mr. Chairman, I was thinking of the paper which make these mistakes, and they make many mistakes about myself also—it is too

bad that they don't correct these mistakes when they are rectified by Hon. Mr. Garson.

Mr. NOSEWORTHY: Most of the major part of the brief deals with the effect of these amendments on the trade union movement which have been pretty well covered, but I notice there are two new features introduced in this brief. The question of whipping and section 661. There have been no representations made before the committee on those two. They are new. I wonder if we might have some comment on this from the witness. That is at page 3 of the brief.

The WITNESS: The first of these is the sentence of whipping which may be inflicted for some offences. "We earnestly suggest that this punishment be abolished, since, in our opinion, it does not contribute to correction or rehabilitation of the offender, but rather is a vengeful type of punishment, demeaning to the administrator, and certainly not in keeping with humanitarian views."

The second is with respect to the punishment of sexual offenders.

The CHAIRMAN: Pardon me. Would you care to submit any question on that first part?

Mr. MACNAUGHTON: I am wondering what experience you have had to force that conclusion.

The WITNESS: I never had any personal experience nor have any of our women, but you see cases of it and personally I have said it belongs to the dark ages, and in 1953 let us step up our thinking. We feel there is something the matter with those clauses.

Mr. BROWNE: Only last week I think I saw some reference to that in connection with sexual offences because they are so numerous, you see them here in Ottawa. There were several women attacked over in the States in Syracuse, girls are being attacked every night, and they are talking about introducing whipping for their protection.

The WITNESS: Do you not think there would be more protection if they had medical and psychiatric treatment to see what in the world is the matter with them?

The CHAIRMAN: How can you when you don't know who they are?

Mr. BROWNE: In some cases, yes.

The CHAIRMAN: What is the question.

Mr. BROWNE: I was just answering the witness. She asked a question as to whether they should have psychiatric treatment and I said in some cases yes.

The WITNESS: And medicals. Perhaps we could then find out what is the matter with them and it could be fixed.

Hon. Mr. GARSON: There is a provision for indeterminate sentence for criminal sexual psychopaths whereunder they can be held indefinitely and if they go into a penitentiary we have a psychiatrist and medical men who are at the service of the inmates of the penitentiaries and whose services are available for the cure of these sexual psychopaths to the extent that they are curable; but in many cases they are not.

Mr. BROWNE: That would be where they are sentenced to the penitentiary. It would not apply to cases where they are not.

Hon. Mr. GARSON: That is quite right, but they could be treated if they had an indeterminate sentence and there is provision for that in the bill.

The CHAIRMAN: Any further question.

Mr. MACNAUGHTON: I have one question. I am not trying to be forceful, but I would point to some of these phrases on page 3:

> It is our considered opinion that these proposed amendments which we have discussed above, as well as the related ones which we have not mentioned, reveal a great fear by the government—a fear of the searching and clear light of open criticism upon their actions.

I suggest you might look around you. I do not think there is any sense of fear at this meeting. We are here to do a job. What do you mean by these phrases.

The WITNESS: There are many things that fill us with fear, many things, and I know one thing I am very much afraid of and that is I do not like laws by order in council passed. I like to have representatives of the government —that is the thing that fills me with fear. That is one example, and there are other things that affect other people. We do not all think alike.

I think it is healthy to have these differences of opinion and it is healthy in these amendments to consider the situation all over the world and see if we cannot have the best code in the world in Canada. I am not afraid of looking at other countries.

Mr. BROWNE: I do not think we are. We have spent, if I am not mistaken, two years on this.

Hon. Mr. GARSON: The commission engaged on it spent three years drafting it and Parliament has been considering it nearly a full year. It was all last session in the Senate and part of this session before it got through the Senate and we are just starting on it in the House of Commons and so if expenditure of time and energy is any guarantee of producing a good code, we should be well on the way.

The WITNESS: I am not saying you are afraid, but some women may feel and some men fear, but you cannot rid other people's minds unless they speak out.

Hon. Mr. GARSON: It is a free country, we can believe and we can fear.

The WITNESS: Absolutely.

The CHAIRMAN: Anything further you wish to add Mrs. Luckock.

The WITNESS: No, I do not think there is anything further.

Mr. NOSEWORTHY: Do you wish to make any comment on the second paragraph?

The CHAIRMAN: On sexual offenders.

The WITNESS: Yes, on 661.

"We feel that they certainly should have this medical and psychiatric treatment and we would consider it a great improvement if such treatment were definitely provided for in the Act, with the understanding that detention be continued (reviewable at stated intervals) until a cure is effected. We believe this would afford added protection for the public at large upon the release of the offender, as well as reforming the person guilty of such offences."

Hon. Mr. GARSON: Have you read the section yet Mrs. Luckock?

The WITNESS: Yes I did.

Hon. Mr. GARSON: Did you read this, subsection 3 clause 661 of the bill:

> (3) Where the court finds that the accused is a criminal sexual psycopath it shall, notwithstanding anything in this Act or any other Act of the parliament of Canada, sentence the accused to a term of imprisonment of not less than two years in respect of the offence of which he was convicted and, in addition, impose a sentence of preventive detention

And, as I said before, when he goes into one of the federal penitentiaries—this may be so also about the provincial prisons although I am not personally acquainted with them in an official or any other capacity— but when he goes into a federal penitentiary we have excellent medical staff and it includes in every one of our penitentiaries a psychiatrist who is well equipped to deal with this form of aberration.

Mr. SHAW: I was just going to seek further information. When an accused under this section appears before the court, if sufficient evidence is adduced to warrant conviction is there then action taken to determine what may be wrong with the fellow before he is sentenced, because, if not, it is conceivable a magistrate may well sentence him to 18 months. He does not quite reach that stage. That is the matter that concerns me.

Hon. Mr. GARSON: The difficulty under this section is not any defect of the section itself. This section is in the code at the present time. It was introduced if I remember rightly about three years ago, and it was passed, but the difficulty has been having it invoked by the prosecutors who operate under provincial auspices. All we can do in the federal field is to provide the law. There is no way in which we can compel the enforcement of it. But the law is there and we have not received any representations other than the ones we have received today. We have received no representations from law enforcement officers that it needs tightening up. All it needs is to be invoked.

Mr. HENDERSON: I was interested in hearing what the minister said about it being on the statute. I may say as regards the federal penitentiary at Kingston, which is in my riding, that I think it would be as well if Mrs. Luckock could go there some time and have a look at the hospital provided—

The CHAIRMAN: Just as a visitor I presume.

Mr. HENDERSON: Yes and look at the medical facilities provided for these people. Doctors, some of whom are the best in their profession, are in charge of them, and I think the witness would be satisfied that they are pretty well looked after and it is an experience which will relieve her mind.

The WITNESS: I would be glad to. It is an important field. Can you tell me do I need to write and ask? I do not know how to do it.

Hon. Mr. GARSON: I suggest if you write to me I will see that you will get in.

The WITNESS: I would like to ask Mr. Garson a question. Perhaps we should press the provincial governments and find out what they are doing and just how they are doing it. Perhaps—

Hon. Mr. GARSON: I am afraid that is outside my province.

Mr. BROWNE: May I make an observation from my own experience. I can tell you and I am sure Judge Carroll will bear me out on what I say that when a person of this character comes before the court and has been charged with a sexual offence and it is established that it is of an outrageous character which offends—

Hon. Mr. GARSON: Sadism?

Mr. BROWNE: —public feeling, the point is what are you going to do? Is it criminal? If it is criminal he goes to jail. But then he will be out again after two years and the police will then have to watch him all the time. They will have to be on the lookout for that man and if anything happens, he is the one who is going to be arrested immediately upon suspicion. Some time ago, without there being any provision in our law at all, I used to have such a person examined to permit the doctors an opportunity to certify him as being insane and to send him to a mental hospital.

The CHAIRMAN: Mr. Browne has been a magistrate, I might say for the purposes of the record.

Mr. NOSEWORTHY: Yes. He has been a magistrate of long standing in Newfoundland.

The CHAIRMAN: For 15 years in Newfoundland. Are there any further questions?

Mr. BROWNE: The courts are very anxious to get the right solution.

Mr. MACNAUGHTON: It seems to me that a distinction should be made. There are federal penitentiaries and provincial institutions, and it might be worth while for you to examine both and compare them.

The WITNESS: I think it would be. I have often felt that it would be wiser if people would go and see how things are being done.

Mr. NOSEWORTHY: I am rather surprised that the Congress of Canadian Women have made no mention of the question of capital punishment in this brief. Has that question been discussed or studied at all by the Congress?

The WITNESS: Yes, we have. If you want my own personal views on it, I do not like capital punishment. I feel that the man who does the hanging is worse than the man that he is hanging, because he is getting paid for it.

Mr. NOSEWORTHY: Can you not give us the views of the Congress on it?

The WITNESS: No, because we differ on it. Some are in favour of it and some are not.

Mr. NOSEWORTHY: That is of no help, then.

Hon. Mr. GARSON: He wants you to say that they are all opposed to it.

The CHAIRMAN: Are there any further questions? If not, Mrs. Luckock, I want to thank you for coming all this distance to help us with our deliberations. I am sure that your representations have been valuable and we appreciate them, and we thank you very much.

The WITNESS: Thank you, Mr. Chairman, for inviting us to come.

The CHAIRMAN: The meeting is now adjourned until Tuesday, March 10, at 10:30 o'clock in the morning.

APPENDIX "A"

LEAGUE FOR DEMOCRATIC RIGHTS

National Chairman:
Roscoe S. RODD, Q.C.

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National Executive Secretary:
THOMAS C. ROBERTS

February, 1953.

The Special Committee on the Criminal Code
The House of Commons
Ottawa, Ontario.

Gentlemen:

We welcome and appreciate this opportunity of presenting our views on the proposed revision of the Criminal Code to members of the House of Commons. We have concerned ourselves with this matter (as Bill H8, Bill O and now Bill 93) since April 7, 1952 when the Criminal Code Revision Commission made its report to Parliament.

We welcome the fact that changes have been made by the Senate and by the Government so that Bill 93 is, in our opinion, an improvement over Bill H8. We trust that the House of Commons will make all the further changes necessary to have the Criminal Code serve its proper purpose without in any way jeopardizing or eliminating traditional democratic rights.

Before outlining our objections to certain sections in Bill 93 we wish to place on record the principles upon which this presentation is based.

INTRODUCTION

1. The Universal Declaration of Human Rights

On December 10, 1948, the United Nations adopted the Universal Declaration of Human Rights and by this act, performed a very valuable service to the peoples of the World. In its general terms are set forth the rights and freedoms that all mankind strives to achieve.

2. A Bill of Rights for Canada

In a debate in the House of Commons last March it was pointed out that upwards of one million, one hundred thousand Canadians had petitioned Parliament for a Bill of Rights for Canada. In the course of the last few years probably most of the organizations in Canada, at some time or other, have gone on record in favour of such legislation.

We believe the vast majority of Canadians want a Bill of Rights which will effectively guarantee such rights as the following: the right to freedom from discrimination; the right to freedom of speech, assembly, association and religion; the right to citizenship, personal liberty, fair trial and equality before the law; the right to petition, and to government of, for and by the people.

3. Law against discrimination

We think this is an opportune time to commend Parliament and the Government for what has been done during the last few months in recognition of the desire of the people for a Bill of Rights. We refer to the amendment to

the Unemployment Insurance Act passed during the last session with respect to discrimination on the grounds of racial origin, colour, religious belief or political affiliation; to Order in Council P.C. 4138 of September 24, 1952 concerning acts of discrimination with respect to Government contracts; and to Bill 100 of the present session, designed to provide a federal Fair Employment Practices Act.

While the grounds of discrimination set forth in these laws and Bill 100 are not as comprehensive, and for that reason, not as satisfactory as those in Article II of the Universal Declaration of Human Rights (viz. "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status") nevertheless these actions are commendable.

These laws and Bill 100, we believe, are in accordance with the desires of the Canadian people, whereas certain proposals contained in Bill 93, which affect democratic rights are not—are in fact, in direct opposition to the clearly expressed demands of the majority of our people for a Bill of Rights.

4. Hysteria and Witch-Hunts are not Wanted Here

Possibly we in this country can consider ourselves fortunate in that we have had an opportunity to watch, at close hand, the effects of repressive, undemocratic legislation without having to suffer too much, either directly or indirectly from it. Certainly most Canadians from all ranks of life, are agreed that we do not want in Canada the Fear, the Hysteria and the Witch-hunts that have swept across the United States of America during the last few years. We most certainly do not mean to imply by that that Canadians are somehow better or more noble than the citizens of the United States—for we believe the majority of them had no wish for witch-hunts either. We are, however, in a position to learn from their bitter experiences; and we are in fact, learning—as could be shown by numerable examples.

It would be useful and salutary to document the recent history of the attacks on democratic rights in the U.S.A. so that no lesson would be lost on us. Time, of course, will not permit but we urge the busy members of the House of Commons not to ignore these lessons, particularly during the consideration of Bill 93.

5. Freedom of Thought and Speech

The right to freedom of opinion and expression, thought and speech, is, we believe, the basic cornerstone of our democratic rights. The proper exercise of every other right and freedom depends upon freedom of speech. Progress, justice and democracy are impossible without it.

It cannot, of course, be denied that free speech is at times both annoying and embarrassing. All of us have wished at times that we could silence our critics. It is a temptation too easy to succumb to—particularly to those possessing effective power.

It is also essential to remember that we do but take coals to Newcastle by upholding free speech for our friends. The real test of our belief in free speech is our upholding of it for our critics and enemies. The popular and the mighty need no guarantees. It is the unpopular, the minorities whose right to freedom of thought and speech must be defended.

We believe that the statement made by Mr. Justice Locke should guide this Committee and Parliament in their consideration of Bill 93, and other legislation relating to free speech. As reported in Canada Law Reports (1951) Mr. Justice Locke said:

". . . subject only to the restraint imposed by laws both civil and criminal as to defamation, and in the case of the administration of justice to the law as to contempt of court. . . It is the right of His Majesty's subjects to freely criticize the manner in which the government of the country is carried on, the

conduct of those administering the affairs of the government, and the manner in which justice is administered. . ." (at p. 330).

6. Right to Strike

We believe in the right of workers to organize, to freely choose their own bargaining agent without interference of any kind from anyone. This is a right which is essential in our society.

It is not, however, sufficient to uphold unions. A union without the right to strike and to picket is an ineffective organization. It is essential that this right exist in fact—without restrictions large or small.

Employers, individually or collectively, provide work or withhold it at their discretion—subject not to criminal law, but only to their own best interests. Workers are equally entitled, individually or collectively, to work or to refuse to work without being subjected to legal penalties.

No one likes strikes—least of all the workers involved in them. However, in our considered opinion, as an essential right there is today no satisfactory alternative available to the workers of Canada.

7. The Letter of the Law

In criticizing certain of the sections in this proposed revision of the Code we do so not on the basis of what might be the intent behind them but rather on their possible interpretation. For example it is no protection of the rights of citizens for a supporter of proposed section 372 to maintain that it is not *intended* that trade union activity be circumscribed by the definition of "mischief". It is not what might be the intent of the legislators but the letter of the law in its widest possible interpretation which is decisive.

As the National Council of Civil Liberties of the United Kingdom said with respect to one part of Bill 93: "No doubt section 46 can and will be defended with the customary comfortable assurances that it does not really mean what it says, and that its use in circumstances unconnected with national security is not contemplated. In England we have been caught like that before; experience teaches that the most earnest assurances at the time of the passing of an act are no protection against a Government or a Minister who decides at a later date that circumstances warrant the application of the letter of the law."

8. Precision of Definition Essential

Brevity for brevity's sake has no place in a Criminal Code; generalized phrase substituted for a lengthy, detailed, and precise description is dangerous in a document like the Code.

It is, of course, easy to generalize and often extremely difficult to be specific. But in a document that deals with the life and liberty of all Canadians, it is surely not asking too much to expect both simplicity and precision.

One of our most serious objections to Bill 93 is that it contains words and phrases which are extreme and dangerous generalizations. For example the phrase "the interests of Canada", which is undefined, has such a wide variety of meanings that its use in a Criminal Code very seriously threatens justice, democracy and liberty.

In another instance one new section (Proposed Section 372) approximately 23 lines long, is to replace fifteen sections of the present Code which contain over 230 lines. A condensation of that order cannot retain the detailed precision of the original—proposed section 372 certainly does not.

The January 1963 issue of the Anglican Outlook And Digest, in an article dealing with this proposed revision of the Code, said: "...there is no better test of a peoples's liberty than the terms of their penal code. We know best what we can do by knowing what is forbidden, and if we may not know that

with reasonable certainly then we are slaves in fact to fear." The article also said of the Code that it should be "as simple, direct and understandable to the layman as it is possible to make it..."

9. General

While two of the leading officers of the National Executive of the League for Democratic Rights are members of the legal profession, the majority are not. Moreover, while for obvious reasons, a Criminal Code, its drafting, revision and use, is of particular interest to lawyers, nevertheless the spirit and letter of the criminal law concerns all citizens—most of whom are not trained in law. Therefore, this submission is not a lawyer's document in the sense of being restricted deliberately to points of law.

We are not certain that we have dealt with everything in this proposed revision which should concern an organization that exists solely in order to help defend and extend democratic rights in Canada—not that we have deliberately made omissions but we have not been able to study carefully all of the 744 sections in Bill 93.

It is our intention to deal with the sections with which this submission is concerned in the numerical order of their appearance in the bill.

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Proposed Section 46

(1) Every one commits treason who, in Canada,

(*a*) kills or attemps to kill Her Majesty or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her;

(*b*) levies war against Canada or does any act preparatory thereto;

(*c*) assists an enemy at war with Canada, or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are;

(*d*) uses force or violence for the purpose of overthrowing the government of Canada or a province;

(*e*) conspires with any person to do anything mentioned in paragraphs (*a*) to (*d*); or

(*f*) forms an intention to do anything mentioned in paragraphs (*a*) to (*e*) and manifests that intention by an overt act.

(2) Notwithstanding subsection (1), a Canadian citizen or a person who owes allegiance to Her Majesty in right of Canada commits treason if, while out of Canada, he does anything mentioned in subsection (1).

(3) Where it is treason to conspire with any person, the act of conspiring is an overt act of treason.

We welcome the fact that The Senate of Canada amended this proposed section by deleting from it the clause which read: "conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety or interests of Canada". We shall have considerable to say with respect to that clause in our criticism of proposed section 50 where it has now been placed. Here we will just note that, in our opinion, it was an extremely dangerous proposition to include in the Criminal Code, and more especially, if that is possible, in the Treason section—and we trust that the Members of the House of Commons will not override the action of The Senate which deleted it from proposed section 46.

46 (1) (b)

The words "or does any act preparatory thereto" deal with a matter subordinate to the principal offence of levying war against Canada, and should not carry the same penalty as if the crime of levying war had actually been committed.

Furthermore the provisions of the proposed sections relating to parties to offences (proposed section 21) and to attempt, conspiracies, counselling, and accessories (sections 406 and 407), give the added scope which these words would seem intended to provide.

We recommend, therefore, that the words "or does any act preparatory thereto" be deleted.

46 (1) (c)

The words "or any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists between Canada and the country whose forces they are" are a new and unwarranted extension of the crime of treason. These words establish a peace time offence of treason. This is a drastic and unwarranted innovation. This provision creates the death penalty for any act committed when the danger to Canada is so remote that our government has not yet seen fit even to declare war.

The capital offence of treason should be restricted to apply only to one who assists the enemy when his country is at war and when it is thereby gravely menaced. It should not apply to so-called police action abroad engaged in by our armed forces either alone or in company with the armed forces of other nations. "Hostilities" might even be begun by the commander, say in Europe, of allied forces without previous or formal approval of the Government of Canada.

Without a doubt one of the most, if not the most, important decision made by the people of Canada through their elected representatives in Parliament is a "Declaration of War". Certainly nothing should be done that will in any way lessen or take away this vital function of our democracy. Only the people through their elected representatives must be able to involve Canada in a war and all that such a Declaration implies. Yet the latter part of this proposed clause (c) seriously weakens this vitally important principle.

It has always been true that one of the worst and most unpleasant concomitants of a "Declaration of War" has been the restriction of civil liberty—and in particular the curtailment of freedom of speech. That restriction is unfortunate enough when it is used during a specific war period and after the people through their representatives have knowingly made the grave decision to go to war. It would be intolerable as a more or less permanent feature of our society. One, moreover, over which parliament and the people had no direct control.

For hundreds of years treason has been associated exclusively, with a declared war or physical attacks on the person of the sovereign. Proposed clause (c) not only destroys that long-standing principle but it also automatically places treason, and restrictions on liberty, free speech, etc. outside of the

control of the people of Canada, the parliament of Canada, and even the Government and Ministers of the Crown. We submit, therefore, that these words should be deleted from section 46(1)(c).

We urge also that the vague and indefinite word "assists" should be strictly defined in this death penalty section. It has been suggested that it could be interpreted to mean assists in any manner whatsoever. As it is at the moment it could be interpreted to include even in peace time, (1) a trade unionist engaged in a strike in an industry producing war material; or in our transportation services; or in public utilities services producing necessary power; or in mining esssential war materials, etc.; (2) a person opposing conscription; (3) one advocating peace or disarmament or criticizing the war policy of a government; (4) or possibly one selling goods to China, because Chinese volunteers are engaged in hostilities with Canadian soldiers.

We propose that the word "assists" should be specifically defined to include only such direct, unmistakable and overt assistance to an enemy formally at war with Canada as to cause imminent danger to Canada.

46 (1) (d)

This further death penalty clause has as its target one who "uses force or violence for the purpose of overthrowing the government of Canada or a province".

Previously only in the section dealing with sedition was a similar phrase used. In that section it is a crime to teach or advocate, etc. the use of force to accomplish a governmental change (our objections to this, and these are relevant here, are given further on in this submission). In this proposed section on treason it is a crime to use force to change a government—or to *conspire* to do so, or to *form an intention* to do so.

For years the maximum penalty for sedition was two years imprisonment. Because of this lighter penalty judicial interpretation was much broader. There is a grave danger that these interpretations would be applied to the offence of treason where it is now proposed that the crime should be similar but that the maximum penalty be death rather than two years in jail.

Moreover, for the lesser crime of sedition there is provided something in the nature of a safeguard which attempts to limit and restrict the meaning of "seditious intention". Yet notwithstanding the fact that it is now proposed that treason shall encompass an infinitely wider variety of things than does sedition, it has not even been suggested that similar safeguards should apply. We note this significant factor without thereby implying that proposed section 46 would be made fit and proper if a similar "safeguard" were appended thereto.

The phrase "force and violence", through overwork and loose usage, has come to mean everything from a picket line to a bombing attack. This provision could place a terrible weapon in the hands of a timid and reactionary government which might easily be used, for instance, in the case of a hunger strike protest march on Ottawa or any provincial capital. When does political pressure or constraint become "force and violence" in the mind of a fearful government?

Undoubtedly this paragraph would make it an offence for any one to wage war with lethal weapons in order to overthrow a government but it is by no means limited to that. This clause would be an open invitation to a reactionary government to visit severe and cruel punishment upon peaceful opponents of its policies. It indicates a distrust of the democratic process. Let us in Canada disdain using any of the instruments of despotism and tyranny.

46 (1) (e)

This clause, together with the following clause (f) may accurately be said to create death penalty offences by wholesale, and hence should be classed with that harsh and Draconian legislation of 621 B.C. which was said to have

been written not in ink but in blood. Legislation so severe and dangerous is not befitting to the civilized age in which we live, nor complimentary to our humane Canadian people. It is such legislation as is born of panic and hysteria rather than of reason, sanity and good judgment.

By their possible combinations and permutations with the preceding clauses of section 46, this clause and the succeeding clause create more than 20 death penalty offences. This is repression with a vengeance!

In the first place "conspiracy" to commit a crime should not be given the same penalty as commission of the crime itself. The commission of the crime itself is a principal offence. Conspiracy only to commit a crime is a subordinate offence.

It is submitted that proposed general sections 21, 22, 23, 406 and 407, relating to parties to offence, common intention, persons counselling offence, attempts and accessories have sufficiently safe-guarded and will in the future adequately safeguard the public without the addition of dangerous conspiracy offences.

Furthermore proposed sections 406 and 407 quite properly impose lighter penalties for the subordinate offences of counselling or attempting to commit a crime. Even conspiracy to commit a murder is under proposed section 408 visited with a penalty of only 14 years imprisonment. What then is the real reason for the cruel and vindicative proposed penalty of death for conspiracy?

The danger inherent in a conspiracy offence is very great, and such an offence therefore, should not form part of a death penalty section. For, on a conspiracy charge the prosecution need only prove an agreement to commit a crime. The commission of the crime itself need not be proven. The offence of conspiracy is complete the moment the agreement itself is proven.

By this device of making the conspiracy or agreement itself a crime the prosecution is not required to prove the commission of the principal crime itself. This conspiracy device is further aided by 46 (3) which provides that "where it is treason to conspire with any person the act of conspiring is an overt act of treason."

In this connection it may be said that the requirement of only one witness to prove an act of treason, if the evidence of that witness implicating the accused is corroborated in a material particular, gives insufficient protection to an accused. Since conspiracy may be simply an agreement with no positive crime committed, conspiracy can be established by proving an agreement between two persons only to commit a crime. Now one of the two persons would be the accused and the other might easily be one of those perjured, professional witnesses, out for notoriety or monetary reward, frequently met with in treason or sedition trials.

The requirement of corroborative evidence does not afford a great deal of protection, when in a recent American case such overt acts were stated in the indictment as: that the accused visited a building on a certain date; that on a certain date the accused talked with another person; that on a certain date he took a train to a certain place; that the accused received a written paper from a witness.

In conspiracy cases, moreover, guilt or innocence largely depends upon the characters, motives and interests of the witnesses. In such cases the evidence of an accomplice is often heard, and the evidence of an accomplice is notoriously untrustworthy. The "accomplice" may really be the sole and only perpetrator of a crime, who in the hope of a light sentence, or early parole, tries to implicate in his crime another and possibly innocent person. An accomplice has usually pleaded guilty to the crime. He now appears to betray an alleged associate.

How dangerous is such evidence! Is he implicating his associate hoping to gain some benefit for himself, or to feed his resentment and to pay off

an old score against an innocent person? Remember also that if at a later date it is discovered that the informer gave false evidence as a result of which another person was convicted and hung, the only charge that could be levied against the informer would be that of perjury—he would be in no danger of being accused and sentenced to death for what was, in effect, murder.

46 (1) (g)

This clause goes even farther than the conspiracy clauses and says that every one commits treason who in Canada merely "forms an intention to do anything mentioned in paragraphs (a) to (e) and manifests that intention by an overt act".

This clause by one stroke establishes no less than 5 offences of treason punishable by death or life imprisonment.

This clause is alien to the whole tradition of English jurisprudence, for like the conspiracy clauses, it creates an offence of treason without the actual commission of the principal crime. It punishes the "idea" or "intention" itself. It penalizes what a man thinks, rather than what he does. It makes a capital crime of an "idea" or "thought" which has never, or might never have exploded into action. It punishes an "idea" or "thought" which might even have changed, let alone have developed to the stage of action. Forming an "intention" is even more remote than "conspiracy". It does not even require an agreement of two or more people. The "idea" or the "thought" of one person could constitute treason under this clause.

This clause is so broad and sweeping and remote from the actual commission of a principal or positive crime of treason that it should be deleted entirely from the Code. It is thought control of the most vindictive and repressive type and wholly unworthy of a democratic country. Besides, who of us can say with assurance what is in the mind of another; what his intention is. Here again arises the danger of doubtful evidence which might be given as to one's intention by perjurers, informers, accomplices or by one with an axe to grind or a grudge to satisfy. Here again the dependence upon an "overt" act which might easily be referable either to an innocent or guilty intention.

Proposed Section 47

(1) Every one who commits treason is guilty of an indictable offence and is liable

(a) to be sentenced to death, if he is guilty of an offence under paragraph (a), (b) or (c) of subsection (1) of section 46, or

(b) to be sentenced to death or to imprisonment for life, if he is guilty of an offence under paragraph (d), (e) or (f) of subsection (1) of section 46.

(2) No person shall be convicted of treason upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.

When the bill revising the Code was first introduced in May, 1952 as Bill H-8 (of The Senate of Canada) paragraphs (a) and (b) of subsection (1) of section 47 read:

(a) to be sentenced to death, or

(b) to imprisonment for life.

It will be noted that that would make considerable difference with respect to convictions under paragraphs (a), (b) and (c) of subsection (1) of section 46. As it now stands in Bill 93, the death penalty is mandatory for persons convicted under those paragraphs whereas the original proposal in Bill H-8 provided an alternative penalty of life imprisonment or less.

Hundreds of years ago, the death penalty was provided for quite a variety of crimes but as civilization progressed these were steadily reduced. If a referendum vote of the Canadian people were taken today it is quite conceivable that many, possibly the overwhelming majority, would be in favour of the complete abolition of the death penalty. Certainly there would not be anywhere near a majority advocating an increase in the number of crimes punishable by death. Yet in spite of this humane trend which has been in existence for some considerable time, Bill 93 proposes a very substantial increase in the number of capital offences.

We have already noted, but it warrants repetition, that the proposed section on treason is substantially different from the general principle of the Code as set forth in Sections 406-408, inclusive, in that principal and subordinate offences are subject to the same penalty in the treason section, while this is not the case in other crimes.

Proposed Section 48

(1) No proceedings for an offence of treason as defined by paragraph (*d*) of subsection (1) of section 46 shall be commenced more than three years after the time when the offence is alleged to have been committed.

(2) No proceedings shall be commenced under section 47 in respect of an overt act of treason expressed or declared by open and considered speech unless

(*a*) an information setting out the overt act and the words by which it was expressed or declared is laid under oath before a justice within six days after the time when the words are alleged to have been spoken, and

(*b*) a warrant for the arrest of the accused is issued within ten days after the time when the information is laid.

In the present Code (viz. Section 1140, "Limitations of Actions" which, it should be noted, has been omitted almost entirely in the proposed revision) the three year limitation applied to all parts of the treason section "except treason by killing His Majesty, or where the overt act alleged is an attempt to injure the person of His Majesty". Proposed Section 48, therefore, follows the new repressive trends apparent in proposed Sections 46 and 47.

Presumably if Sections 46-48 were passed, as here proposed, proceedings could be taken against a person under paragraph (*a*), (*b*), (*c*), (*e*) or (*f*) of Section 46 for an offence allegedly committed at any time in the past. It should also be noted that the protection afforded by 48 (2) is more apparent than real as a warrant may be issued and withheld indefinitely.

Proposed Section 50

(1) Every one commits an offence who

(*a*) incites or assists a subject of

(i) a state that is at war with Canada, or

(ii) a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are,

to leave Canada without the consent of the Crown, unless the accused establishes that assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby,

(*b*) knowing that a person is about to commit treason does not, with all reasonable dispatch, inform a justice of the peace or other peace officer thereof or make other reasonable efforts to prevent that person from committing treason, or

(c) conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety of Canada.

(2) Every one who commits an offence under subsection (1) is guilty of an indictable offence and is liable to imprisonment for fourteen years.

In dealing with proposed section 46 we set forth our findings with regard to the paragraph that reads: "a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are". All that was said there bears repeating here. The lesser penalty provided in this section in no way lessens the danger to freedom of opinion and expression inherent in the above paragraph.

When this clause was first introduced in June, 1951 the reason given was the need for security and the fact that new conditions had arisen. It was argued that Canadian forces were involved in a "police action" in Korea—not a war—and this new situation, which might be repeated elsewhere, required new law.

Canada derives its criminal law from the United Kingdom. "Police action" by the armed forces of the United Kingdom is certainly no new phenomenon. The law-makers at Westminster for years have been familiar with that type of action. It may be new to Canada to have its army, navy and air force involved in "police actions" which are not the result of a declaration of war, but it is not new to the United Kingdom. It is very significant that the older, more experienced parliament of the U.K. does not attempt to stifle or eliminate criticism of its "police actions". The argument advanced in Ottawa in June, 1951 that an entirely new situation warrants new, unprecedented law is thus shown to be fallacious.

50 (1) (c)

The Senate of Canada has seen fit to remove this paragraph from proposed section 46, and we agree that it certainly has no place in that section. The Senate also, in deleting from this paragraph the all-embracing generalization "or interest", removed a further great danger to the freedom and liberty of Canadians.

However, paragraph (c) of proposed section 50 (1) is still a grave threat to democratic rights. It is vague and capable of wide and uncertain interpretation.

The terms of reference are fantastic. Consider for a moment the various parts of the paragraph:

"conspires"

First there is again introduced here the crime of conspiracy. In a recent article, a distinguished English lawyer, D. N. Pritt, Q.C. discussed why a charge of conspiracy to commit some crime or other is so frequently made, in lieu of a charge that the crime was actually committed. He said:

" 'Conspiracy' can be defined, sufficiently for present purposes, as an agreement between two or more people to commit a crime; it is itself a crime, and the crime of conspiracy is complete as soon as two or more persons have agreed in any way whatsoever, whether formally or informally, by words or by conduct, to commit some crime; it is not necessary for the prosecution to prove the commission of the ultimate crime nor even of acts amounting to an attempt to commit it.

"It is thus in general easier to secure a conviction for conspiracy than for any other offence, for less has actually to be proved against the defendants; and prejudice or excitement may lead a jury to convict parties on a mere allegation that they agreed or arranged together to do something, under circumstances where, if it were necessary to prove some positive criminal act, the jury would have to acquit because there would be no evidence at all of any such acts.

"To secure a conviction is moreover made easier still by the operation of a peculiar rule of evidence. In all normal cases no evidence can be given against any defendant in a criminal case except evidence of acts which he himself did or words which he himself spoke; but in a conspiracy case, so long as some evidence—however tenuous—is given from which an agreement between the alleged conspirators might be inferred, the acts and words of any of them, asserted to be done or spoken in pursuance of the conspiracy, are admissible evidence against all the others, on the footing that they are all agents of one another, and so responsible for each other's words and actions.

"It is little wonder, in the circumstances, that in all periods of tension, in all countries, charges of conspiracy have been frequently made, and many defendants have been found guilty and sentenced to imprisonment, although little has been proved against them and no other crime could plausibly even be charged."

"an agent of a state other than Canada"

It was pointed out by the Hon. Arthur W. Roebuck, Q.C., in the Senate that: "The word 'agent' could mean any civil servant of any country other than Canada—of the United States or the United Kingdom, for instance, or of any of our fellow members of the British Commonwealth. 'Agent' is a very wide term; there are literally thousands of agents through whom information is conveyed."

"to communicate information"

This phrase includes everything from the alphabet to atomic secrets; to quote Senator Roebuck again "It might be the most harmless and trifling information or something which is well known to everybody. No term could be wider than the word 'information' ".

"to do an act"

This phrase is just as comprehensive and all-inclusive as those that have gone before it and those that follow. In its proposed context it is also fantastically broad and sweeping.

"that is likely to be prejudicial"

Not, be it carefully noted, "that *is* prejudicial" but only maybe, perhaps, at some time, in some one's opinion "*likely* to be". That is an umbrella-like turn of phrase—to cover any and all possibilities. Who can decide, justly and with any degree of certainty, what "is *likely* to be prejudicial"? Can such a decision be left to a provincial attorney-general, a crown prosecutor, a judge, or even a jury?

"the safety of Canada"

At first glance this phrase appears more precise and certain than those that have preceded it. But is it really clear and definite enough to protect our liberties—which, after all, are part of the Canada we cherish?

Remembering that this is a peace-time offence and taking all factors, including experience, into account, is it not possible to think of examples of information given or acts performed that some would consider against "the safety of Canada" while others, at least equal in number, would take a negative or opposite position. In short this phrase also is nowhere near as clear and precise as a phrase should be to appear in our Criminal Code.

The Official Secrets Act

It is of significance that the idea for this proposed paragraph was taken from the Official Secrets Act which, for its looseness and unjust, undemocratic character, was so roundly condemned a few years back by many Canadians. In this instance it is clearly a case of going from bad to worse.

In our mind there is no question that freedom of opinion and expression will suffer if this proposition is made law. Critics and opponents of the party in power could be silenced by it. History, unfortunately even very recent history, affords examples of this sort of thing and of how easily it can be done with the aid of laws such as 50 (1) (c) as proposed.

Proposed Section 51

"Every one who does an act of violence in order to intimidate the Parliament of Canada or the legislature of a province is guilty of an indictable offence and liable to imprisonment for fourteen years."

Again in this section we have the vague, loose phrase "an act of violence". Experience has demonstrated that with respect to issues over which strong differences exist in the community, the term "violence" is bandied about in a manner to include legitimate protest action. There must be no encroachment on the rights of Canadians to petition Parliament and express their opinions.

Proposed Section 52

"(1) Every one who does a prohibited act for a purpose prejudicial to
(a) the safety or interests of Canada, or
(b) the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada,
is guilty of an indictable offence and is liable to imprisonment for ten years.

(2) In this section, "prohibited act" means an act or omission that
(a) impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing, or
(b) causes property, by whomsoever it may be owned, to be lost, damaged or destroyed."

This particular section is without doubt a direct threat to the trade union movement.

It is an elementary fact, obvious to any worker, that a strike impedes the working of some "machinery, apparatus or other thing". That is the very purpose of a strike.

Any worker, who has ever had anything to do with a strike, knows from his own experience that it is a very common thing for a strike, or even the threat of one, to be greeted with a hue and cry that it is against the "safety or interests of Canada". A national railway strike, a farmer's strike, the threat of a strike in the steel industry or even a garment factory producing army uniforms, all call forth the same refrain.

We think it can be assumed that a Canadian worker does not go on strike in order to endanger his country—but, particularly in periods of tension and crisis, there is a very real danger that a court could be persuaded, by a barrage of propaganda, to misconstrue the worker's motives. Thus could this proposed section be used to curtail or eliminate the right to strike.

We object to the definition of "a prohibited act", particularly part (a), because it is also the definition of a strike. We also object to the generalizations in subsection (1), namely: "(a) the safety or interests of Canada, or (b) the safety or security of..." Undoubtedly the word "interests" is the worst word in these phrases, but in the context, in a Criminal Code, the words safety or security are only a little less dangerous.

Proposed Section 57

"Every one who wilfully
(a) procures, persuades or counsels a member of the Royal Canadian Mounted Police to desert or absent himself without leave,

(b) aids, assists, harbours or conceals a member of the Royal Canadian Mounted Police who he knows is a deserter or absentee without leave, or

(c) aids or assists a member of the Royal Canadian Mounted Police to desert or absent himself without leave, knowing that the member is about to desert or absent himself without leave,

is guilty of an offence punishable on summary conviction."

This proposal puts the R.C.M.P. on the same footing as our military forces. In our opinion the R.C.M.P. should be a civilian police force.

We trust no one would think of suggesting that this proposal should be applied, for instance, to the Toronto, Montreal, Vancouver or Ottawa city police. It is significant to note that the R.C.M.P. are not only a federal force but that they act also as provincials in most provinces and perform the municipal police duties in many places.

The question posed by the proposed section is whether the R.C.M.P. is a civilian police force or is to become a militarized guard. As far as we are concerned there is only one answer to that question—a civilian police force.

Proposed Section 60 and 61

"(1) Seditious words are words that express a seditions intention.

(2) A seditious libel is a libel that expresses a seditious intention.

(3) A seditious conspiracy is an agreement between two or more persons to carry out a seditious intention.

(4) Without limiting the generality of the meaning of the expression "seditious intention", every one shall be presumed to have a seditious intention who

(a) teaches or advocates, or

(b) publishes or circulates any writing that advocates, the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada."

In the recent seditious libel case of Boucher v. The King (1951 S.C.R. 265) tried in the Supreme Court of Canada it was said that the crime of seditious libel was well known to the Common Law—that up to the end of the 18th century it was, in essence, a contempt in words of political authority or the actions of political authority—that it flowed from the conception of the governors of society as superior beings, exercising a divine mandate, and enacting laws to be obeyed by men without question or criticism. In such a political climate was the law of sedition written.

But this is the 20th century, and the ruler or government is properly considered as the agent or the servant of the people in whom the sovereign power resides. In this modern democratic view of government a member of the public has the right to censure and find fault with his representatives in government. The Court referred to Stephen's "History of the Criminal Law of England" in which the author says, that to those who hold this modern view of government and carry it out to all its consequences there can be no such offence as sedition.

It cannot be denied that the crime of sedition has always been a threat to the right to freedom of speech. Its origin, history and contemporary use all reveal that. It is an archaic law which jeopardizes free speech. Proposed sections 60-62, inclusive, should be deleted from the Code.

"Section 98"

Clause (4) of proposed section 60 was enacted in 1936 by the same chapter 29 of the Statutes of Canada of that year which repealed the notorious section 98

which had been enacted in 1919. The close relationship between subsection 1 of section 98 and subsection (4) of proposed section 60 may be observed by comparing them. Subsection 1 of old section 98 was as follows:

> "Any association, organization, society or corporation, whose professed purpose or one of whose purposes is to bring about any governmental, industrial or economic change within Canada by use of force, violence or physical injury to person or property, or by threats of such injury, or which teaches, advocates, advises or defends the use of force, violence, terrorism, or physical injury to person or property, or threats of such injury, in order to accomplish such change, or for any other purpose, or which shall by any means prosecute or pursue such purpose or professed purpose, or shall so teach, advocate, advise or defend, shall be an unlawful association.
>
> (For clause (4) of proposed section 60 see above, page 17)

"Treason and sedition"

In the treason section as proposed—46. (1) (*d*)—treason is committed if one uses force or violence to overthrow the government, or forms an intention or conspires to do so. In this section it is proposed that it shall be an offence to teach or advocate the use, without the authority of law, of force as a means of accomplishing a governmental change within Canada. Both proposals are an open invitation to a reactionary government to repress criticism of itself.

It must be remembered that usually the victims of the sedition section have been political opponents of the government in office or trade unionists involved in labour disputes. Recent examples of their use come from Quebec: Labour leaders indicted on charges of "seditious conspiracy" for acts allegedly committed during strikes (Ayers Ltd., Lachute, 1947—Associated Textiles, Louiseville, 1952); and a member of Jehovah's Witnesses indicted for "seditious libel" in 1946.

"The Smith Act of the U.S.A."

In the United States under the repressive Smith Act a grand jury charged defendants that they "unlawfully, wilfully and knowingly did conspire... to commit offences against the United States prohibited by section 2 of the Smith Act... by so conspiring... to advocate and teach the duty and necessity of overthrowing and destroying the government of the United States by force and violence..." The similarity of the wording of this charge to clause (4) of proposed section 60 is striking.

Some of the overt acts specified in the indictment referred to were that one of the defendants "did leave" a certain street address; that another defendant did attend and participate in a meeting; that another did prepare the contents for and did mail approximately fifty envelopes; that another did write and cause to be published a pamphlet; that another did teach at a certain school.

Under such an indictment, alleging such overt acts, the defendants were tried, convicted and sentenced to long terms of imprisonment. These convictions were greeted joyfully by the New York World Telegram which said "We now have a stream lined instrument for thought control trials. . . ."

In the U.S.A. during the past two years at least 85 persons have been arrested under this part of the Smith Act which is so similar to paragraph (4) of section 60. Concerning those already convicted Mr. Justice Black of the U.S. Supreme Court said: (they) "were not charged with an attempt to overthrow the government. They were not charged with non-verbal acts of any kind designed to overthrow the government. They were not even charged with saying or writing anything designed to overthrow the government.

The charge was that they agreed to assemble and talk and publish certain ideas at a later date . . . No matter how it is worded, this is a virulent form of prior censorship of speech and press. . . ."

It may be suggested that since clause (4) has remained dormant since 1936 there is no danger of such convictions in Canada. It may be pointed out, however, that the Smith Act lay dormant for eight years before it was used.

As a result of the Smith Act and other repressive measures a veritable reign of fear and hysteria has gripped the people of the United States. Liberal radio commentators have been cleared from the air; students at schools, colleges and universities are afraid to discuss public questions; liberal teachers have been dismissed; text books have been purged by ignorant, bigoted, wholly unqualified and self appointed censors; six million civil servants have been terrorized by the Hatch Act and made less willing to read, to criticize, to join civic groups and to trust their fellow men; authors fear to write except along tame and orthodox lines; book publishers fear to publish unorthodox books; scenario and play writers fear to write what their genius prompts them to write, and producers fear to produce any but the most orthodox plays. Fear sits on every doorstep. Fear of the bigot, the professional informer and perjurer, the would be controller of other peoples' thoughts. This has been the price of repression in the United States.

Proposed Section 62

"Every one who

(*a*) speaks seditious words,

(*b*) publishes a seditious libel, or

(*c*) is a party to a seditious conspiracy,

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

Let us note the recent harsh trend towards greater penalties for seditious offences. Prior to June 1951, the penalty was 2 years imprisonment. In June 1951 the penalty was increased to 7 years. As proposed in this Bill it is to be 14 years.

The penalty under section 98 was 20 years. When it was repealed in 1936, by the predecessors of the present government for sound reasons, and clause (4) was submitted therefor, the penalty was reduced to two years.

Proposed Section 63

"(1) Every one who wilfully

(*a*) interferes with, impairs or influences the loyalty or discipline of a member of a force,

(*b*) publishes, edits, issues, circulates or distributes a writing that advises, counsels or urges insubordination, disloyalty, mutiny or refusal of duty by a member of a force, or

(*c*) advises, counsels, urges or in any manner causes insubordination, disloyalty, mutiny or refusal of duty by a member of a force,

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

(2) In this section, "member of a force" means a member of

(*a*) the Canadian Forces, or

(*b*) the naval, army or air forces of a state other than Canada that are lawfully present in Canada.

We welcome the fact that the Senate deleted from this proposed section a paragraph which would have made this offence apply to the R.C.M.P. as well

as the military forces. As we maintained in our remarks concerning proposed section 57, the R.C.M.P. should be regarded as a civilian police force, not a militarized gestapo.

As this proposal now stands, after the Senate's amendment, it is still dangerous to democratic rights because of the extremely broad, vague terms contained in paragraph (1)(*a*), and in the phrase "or in any manner" contained in paragraph (1)(*c*).

It is true that the Senate has lessened the danger by inserting the word "wilfully" after the words "(1) Every one who . . ." but in our opinion this proposal is still too all-embracing. Words like "interferes with, impairs or influences" are capable of very wide interpretation.

Proposed Sections 64-69, inclusive

"Everyone is guilty of an indictable offence and is liable to imprisonment for life who

(*a*) opposes, hinders or assaults, wilfully and with force, a person who begins to make or is about to begin to make or is making the proclamation referred to in section 68 so that it is not made,

(*b*) does not peaceably disperse and depart from a place where the proclamation referred to in section 68 is made immediately after it is made, or

(*c*) does not depart from a place immediately when he has reasonable ground to believe that the proclamation referred to in Section 68 would have been made in that place if some person had not opposed, hindered or assaulted, wilfully and with force, a person who would have made it.

In the past these Unlawful Assembly and Riot Act sections have been used most often in connection with strikes, unemployed demonstrations, gatherings of citizens protesting government policies, and the like. These sections were used recently (December, 1952) in Louiseville, Quebec. All too often their use has been premature and unjustified—and basic democratic rights have suffered as a result.

Proposed Sections 64-68, inclusive, are substantially the same as their counterparts in the present Code. This is not a recommendation and now, during the complete revision of the Code, is an opportune time to get rid of them.

Proposed Section 69 has been changed in a way to add more teeth to an already dangerous law. A sentence in the present section which begins "with force and arms wilfully oppose, hinder or hurt. . . ." has been changed, in the proposed revision, to read, "opposes, hinders or assaults, wilfully and with force." Note the significant omission of the words "and arms." This could make prosecution and conviction considerably easier—for it would no longer be necessary to establish strikers and demonstrators carried "arms".

In the present Code there is an important, qualifying phrase which says that every one can be imprisoned for life who continues "together to the number of twelve for thirty minutes" after the reading of the Riot Act. In the proposed revision of Section 69 this important qualification has been changed to read, "Every one . . . who does not disperse and depart . . . immediately . . ." after the reading.

In other words, according to the present Code, no one could be charged for ignoring a reading of the Riot Act unless, thirty minutes afterwards, there were still twelve or more persons assembled. It is now proposed that "every one" who does not depart "immediately" after the reading should be liable to life imprisonment. Nothing has happened to justify the elimination of the phrase: "continue together to the number of twelve for thirty minutes". On

the contrary recent events in Louiseville show that there is no justification for continuing to carry these sections (64-69, inclusive) in the Code to be used at the discretion of provincial administrators of justice.

Proposed Section 87

"Notwithstanding anything in this Act, every one who has an offensive weapon in his possession while he is attending or is on his way to attend a public meeting is guilty of an offence punishable on summary conviction."

This proposal taken together with the new definition of an "offensive weapon" provided in proposed section 2 (29) constitutes a danger to the democratic right of freedom of assembly. Paragraph (29) of proposed section 2 is still another example of the almost dominant trend towards all-embracing generalities. It says, in effect, that *anything* is an "offensive weapon". Then along comes proposed section 87—which is a new section—to make it an offence to have an offensive weapon (previously defined as anything) while attending or on the way to a public meeting. Any one who has any acquaintance with a strike, or unemployed demonstration, or political protest meeting, will recognize the danger in this proposed combination.

Proposed Section 96

"(1) Whenever a peace officer believes on reasonable grounds that an offence is being committed or has been committed against any of the provisions of sections 82 to 91 he may search, without warrant, a person or vehicle, or premises other than a dwelling house, and may seize anything by means of or in relation to which he reasonably believes the offence is being committed or has been committed."

This proposed section allows any policeman to search, *without warrant*, any individual, any vehicle, or "premises other than a dwelling house". The principal purpose of a *search warrant* is to provide some protection for the citizen against arbitrary, unnecessary or repressive actions by the police. This proposal is the not-so-thin edge of a wedge which could whittle away an important right of Canadian citizens.

This proposed section is particularly dangerous to trade unions and political parties. It is easy to imagine what well might happen during a strike (e.g. the recent one at Louiseville, Quebec) or during a political crisis. Using this proposal as an excuse the police could raid union offices and halls *without warrant* and disrupt, intimidate and secure information to which they are not entitled.

The fact that the section says that the policeman must have "reasonable grounds . . ." is insufficient protection; for experience shows that the average citizen finds it extremely difficult to secure redress, which can only be civil, from a policeman who has acted officiously.

Proposed Section 160

On the basis of what has happened in the past we object to two paragraphs in this proposed section, namely: "(a) (iii) by impeding or molesting other persons; (c) loiters in a public place and in any way obstructs persons who are there;"

Again it is a case of vague, loose terminology which is at the root of the trouble. The word "impeding" in paragraph (a) (iii) and the phrase "in any way obstructs" in paragraph (c) are both too all-inclusive. In 1950 the first was broadly interpreted to penalize individuals who were standing on street corners inviting passersby to sign petitions.

We note too that 160 (c) has been reworded to make it more vague and all-inclusive. It presents a particular threat to the now well-recognized right of trade unions to picket—which right is nowhere guaranteed in this proposed Code.

Proposed Section 365

"Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be

(a) to endanger human life,

(b) to cause serious bodily injury,

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

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

(d) to delay, or prevent the running of a locomotive engine, tender, freight or passenger train or car, on a railway that is a common carrier,

is guilty of

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

(g) an offence punishable on summary conviction.

This is another section which seriously affects the hard won trade union right to strike. It is our understanding that the change proposed here is intended to put the section back to where it was before it was revised in 1906. It was clearly stated that the purpose of the change was to make it a crime to "break a contract with a person who had contracted to supply services". Obviously this can be used with reference to trade union members. We can see no other reason for the amendment than to prevent strikes in public utilities, and in spite of the public inconvenience caused by such strikes we do not think such restrictions can be justified. If it is claimed that this is not the intention of the amendment it should be clarified by insertion of a clause clearly stipulating that it is not intended that this section should cover trade union activity.

It could not only be used to prohibit strikes, and thus indirectly enforce compulsory arbitration, as far as utility and transportation workers are concerned, but it could make it dangerous for workers in those industries to respect the picket-line of other unions. Last October in Saskatoon members of the United Steelworkers were on strike. The company involved attempted to break the strike by having the railway move out some carloads of steel. However the railway workers refused to cross the steelworkers' picket line to get the cars. If proposed Section 365 were law, the train crew could have been sent to jail for abiding by an essential principle of trade unionism.

While utility and transportation workers would be chiefly affected by this particular proposal, workers in other industries could come under the provisions in paragraphs (a) to (c). Remembering the history of trade union struggles, especially during times of tension and crisis, it is easy to imagine how this section could be used against unions—not, of course, "reasonably" but rather, hysterically and vindictively.

Proposed Section 366

Here again is a section which has been used to prevent what is now an accepted trade union right because there is no specific enactment dealing with the right of the people of Canada to picket.

Proposed Section 372

"(1) Every one commits mischief who wilfully

(a) destroys or damages property,

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

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

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

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

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

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

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

No strike ever took place in this country that did not do one or the other of the things set forth in paragraphs (b), (c) or (d) of this proposed section. Both the right to strike and the right to picket are threatened by these new proposals.

These paragraphs are new and their meaning goes far beyond that presently covered by any of the sections which 372 is supposed to replace.

The "Explanatory Notes" in the Bill state that 372 is designed to replace fifteen sections in the present Code. There are upwards of 230 lines of type in the present fifteen sections against only 23 in 372. This substantial reduction was obtained by sacrificing specific details and replacing them with sweeping generalities. As we said in our introduction, this is a principle which has no place in a Criminal Code.

Recently Mr. Justice William O. Douglas speaking for a majority of the U. S. Supreme Court said: "The vice of vagueness in criminal statutes is the treachery they conceal either in determining what persons are included or what acts are prohibited".

In 372 and in other proposed sections of Bill 93 looseness and vagueness of language could make it possible for trade union rights to be curtailed or eliminated under the authority of the Criminal Code. We believe that the majority of the Canadian people have no desire to curb the right to strike or to picket. If that belief is correct then it is incumbent upon Parliament to ensure that the Code cannot be used to curb these rights.

Proposed Section 415

(The right to trial by jury)

We think it should be clearly established that in *all* cases the accused should have the right to trial by jury.

Proposed Section 462

(Evidence taken at a preliminary hearing)

We recommend that in all cases the accused receive a copy of the evidence taken at a preliminary hearing without payment.

Proposed Sections 463 and 464
(bail)

The English Bill of Rights provides that excessive bail shall not be required. However we are not sure that this Bill of 1689 is applicable in all provinces, and in any event, we think such a provision should be reiterated in our Code.

Proposed Sections 690 and 691
(Habeas Corpus)

In our opinion there should be no limitations on the right of habeas corpus. As habeas corpus acts as a check, a safeguard, and does not of itself establish the guilt or innocence of the accused, we see no reason to restrict this long standing provision.

Expert Witnesses

It has been brought to our attention that in some instances where the prosecutor submits the testimony of expert witnesses, the accused, through lack of financial resources, cannot counter. In such cases we think, to ensure fair trial, that provision should be made to provide for the payment of such experts.

Public Defender

We believe it would be advisable to provide for a position that might be called that of "Public Defender" to provide legal defence to accused persons who cannot afford to hire counsel. We note that Law Societies in some provinces have voluntarily made this provision but we think it should be uniform and that it should be the responsibility of the state.

The Right to Personal Liberty and Fair Trial

In our opinion it would be helpful to the citizens of Canada if the Criminal Code contained a special part wherein were set forth in unmistakable terms the rights of all with respect to those matters with which the Code is concerned. We realize that by practice and implication the rights of citizens in respect of the law do, in great measure, already exist. However, we believe it would be useful and valuable to add a part to the Code reading as follows:

"Everyone in Canada charged with a penal offence shall have the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence including the unfettered right to appeal. No one in Canada shall be subjected to arbitrary arrest, detention or exile; nor be subjected to arrest and detention for longer than 24 hours without public charge; nor be subjected to arbitrary interference with his privacy, family, home, correspondence or telephone; nor twice be put in jeopardy of life, or limb for the same offence; nor be compelled to be a witness against himself in any criminal case; nor be deprived of life, liberty or property without due process of law. Every one in Canada shall have the right to bail and excessive bail shall not be required, nor excessive fines imposed, nor cruel or inhuman treatment or punishment inflicted. The right to habeas corpus shall not be suspended under any circumstances."

Summary

The requests in this brief, presented by the National Executive of the League for Democratic Rights—Ligue des droits démocratiques, may be summarized as follows:

1. The sections in Bill 93 which would restrict or eliminate democratic rights should be rejected. Specifically we urge the rejection of Sections 46-48, 50-52, 57, 60-69, 87, 96, 160, 365, 366 and 372 (all numbers inclusive).

2. Sections 415, 462, 463, 464, 690 and 691 should be added to in order to provide additional safeguards.

3. A new Part should be added to the Code setting forth the rights of all with respect to personal liberty, fair trials, humane treatment, etc.

All of which is respectfully submitted.

THE NATIONAL EXECUTIVE
LEAGUE FOR DEMOCRATIC RIGHTS
LIGUE DES DROITS DEMOCRATIQUES

THOMAS C. ROBERTS,
National Executive Secretary.

APPDENDIX "B"

Brief

to the

Special Committee of the House of Commons

appointed

to consider Bill 93

by

District Five

United Electrical, Radio and Machine Workers

of America

February 18, 1953

entlemen:

On behalf of our 27,000 members, working in the electrical, radio and achine industries in Canada, our union, the United Electrical, Radio and achine Workers of America, an independent union, not affiliated with any ntral labour organization, welcomes this opportunity to put before your mmittee the views of our members on the important aspects of House ll 93 which has been referred to your Committee for consideration.

Bill 93 provides for a revision and re-codification of the entire Criminal de of Canada. The Honourable Stewart S. Garson, Minister of Justice, in eaking to this Bill on the second reading in the House on January 23, 1953, ted that "the purpose of the revision was not to effect changes in broad nciple." Our reading of many of the sections indicates to us that Mr. rson's statement are at variance with the wording of many sections, and the erpretations which labour and many other public organizations have placed many of these amendments.

An article in the Anglican *Outlook*, January, 1953, makes the following ıment on this Bill:

> If this was all that could be said about Bill H-8 it would only be of passing interest. In fact, it is not a mere re-organization of the Criminal Code. It contains many important and startling changes in criminal law that threaten freedoms and safeguards won by centuries of struggle. The most important changes have to do with crimes involving the security of the State. But the legitimate security of the democratic state is not to be purchased at the expense of the very freedoms which make it democratic. In times of great anxiety there is always a danger that we will ourselves destroy what we sincerely believe we are fighting to protect. It is no exaggeration to say that in its present form Bill H-8 could be used to curtail severely not only the freedom of speech and legitimate criticism but labour's hard won freedoms to strike and picket lawfully. The crime of TREASON, for which the penalty is death, has been made so broad that not even the trained lawyer could say for certain where it begins and ends. The penalty for other crimes such as sedition, which has been much abused in the suppression of unpopular opinions, has been made so much more severe that the crimes have taken on a frightening importance. If the intention is to frighten and

intimidate the citizen into silence and consent to anything that government may decide to do then the Bill will be successful. But this is tantamount to admitting that democracy can not survive on its own merits. This too is a treason which we have to fear.

During the many months this Bill was before the Senate, the members of our union have in many meetings expressed their grave concern for the future of the trade union movement as democratic organizations, should these amendments as set out in Bill 93 become law. An ever-increasing number of other sections of the labour movement and the public generally, on becoming acquainted with the subject matter of what was then Bill H-8, have expressed grave concern over the revisions which impinge on the question of civil and democratic rights.

We feel, therefore, that in making our representations, we do so as a part of an ever-growing number of organizations.

Throughout sections 46, 50, 52, 60 to 62, 64 to 69, 96, 365 and 372 in the proposed amendments runs a current of anti-strike legislation.

It is axiomatic with democracy that workers have the right to withdraw or withhold their labour from the employer in the striking of a collective bargain. Implicit in collective bargaining is a balanced bargaining strength between the parties. Employers are relatively free to dispense with the services of the employees and thus to negate their bargaining power. The creation of a temporary reduction of forces, the shutting down of the plant, etc. can be carried out in many ways which avoid the characterization of "lockout". But the employees have only one means of balancing the bargaining position of the parties in negotiations, that is, to strike.

All labour legislation contains this recognition in one form or another.

We suggest to your committee that if there is any intent to legislate against strike, that this intention be not smuggled into amendments to the code but rather be clearly placed so that the Canadian people can deal with such a vital question in terms of its full implication to our state of democracy.

We are not presenting a legal brief with regard to Bill 93, but rather choose to single out those sections of the Bill which, to our knowledge and out of our experience, lend themselves to dangerous interpretations with regard to the right of effective operation of a trade union.

In the first place, we would point out that incorporated in Bill 93 are the rather sweeping amendments to the Criminal Code, hastily adopted by the House of Commons in June, 1951, at the end of that Parliamentary Session. These amendments were introduced with practically no publicity and very little discussion.

It was stated at that time by the Montreal *Gazette* that the 1951 Amendments were introduced on the demand of Washington, D.C. Our union at that time vigorously protested against these amendments as did many other important Canadian organizations.

In looking over Bill 93 today, we find that not only are these 1951 Amendments firmly established in the revisions of the Criminal Code, but are in some instances even worsened in their impact on the continued activity of the working people through their unions.

We certainly subscribe to the opinions voiced in the *Anglican Outlook* as quoted above, that with the enactment of Bill 93, in its present form, our country would be taken much further along the path to reaction away from democracy and towards the establishment of thought control and a police state.

Dealing with certain sections of Bill 93, and in numerical order through the amended sections, we come first to Sections 46 and 47, under the heading of TREASON. As pointed out by the *Anglican Outlook*, the crime of treason for which the penalty is death has now been made so broad that depending

on the view of the judge before whom the case might come, an expressed opinion or speech or article which may be critical of government policy might well be considered as treason within the meaning of this section.

This is of broad concern to the trade union movement, because a trade union, dedicated to advancing the welfare of its members and to advancing their living standards, must of necessity from time to time be quite critical of governmental policies, both domestic and foreign, as they affect the living standards of the Canadian working people.

Under Section 46, the mere fact that Canadian forces are engaged in hostilities with the forces of another country, appears to make that other country automatically an enemy of Canada even though no declaration of war has been made.

Today with Canadian forces operating under the United Nations our forces could be engaged in hostilities on any one of a number of fronts without the sanction of the Canadian Parliament or the Canadian people, thereby broadening the definition of enemy and the application of Section 46.

Much more could be said on this section with regard to the looseness of meaning of such words as "conspires with", "forms an intention to do", etc., but we will leave these interpretations to those who come before your committee with a much deeper legal background.

Under sections 49, 50, 51, and 52, which are allied sections under the heading of PROHIBITED ACTS, much of the argument which we have advanced on Section 46 applies here although the penalties set out are imprisonment of ten to fourteen years rather than death.

With regard to Section 52, wherein there is an attempt to define a prohibited act, it is set out as being for purposes "prejudicial to (a) the safety or interests, or (b) the safety or security of the naval, army or air forces of any state other than Canada that are lawfully present in Canada." It is a very important question as to who is going to define "safety or interests" in any given case. Certainly the working people may consider it in the best interests of Canada that our forces not be engaged in hostilities with another country, but a judge on the bench may have the opposite opinion.

Certainly a trade union engaged in collective bargaining with an employer and finding the bargaining processes breaking down, and faced with the necessity of strike action would view such actions as in the interests of these workers. But a court may well decide that the interests of the employer are in some way more related to the interests of Canada than are the interests of the working people and so invoke Section 52 with its penalty of ten years as a deterrent to a worker's freedom of action.

In Part 2 of Section 52, reference is made to a "prohibited act" which "impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing." In this regard it is interesting to note that the words "impair the efficiency" agree with a specific meaning with regard to strikes as contained in Section 1 of the United States National Labour Relations Act, better known as the "Wagner Act", made law in the United States in 1942, wherein we find the following:

> The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strike or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) *impairing the efficiency,* safety, or operation of the instrumentalities of commerce.

The language used in this Act which was established in order to give protection to labour's right to bargain collectively and strike parallels so

closely the language of Parts 2(*a*) and (*b*) of Section 52, that it is almost a certainty that Section 52 would be utilized as a deterrent to strike action by the threat of the application of the full penaly of ten years' imprisonment.

Section 57 has the effect of making the R.C.M.P. synonomous with the armed forces of the country.

It is contrary to the tradition of Canada to use the armed forces of the country for intervention in industrial relations disputes. The R.C.M.P. has been frequently used in such situations. By giving this police force the status of a branch of the armed forces and then continuing to use them in the arena of an industrial dispute can only be viewed as the introduction of the police state. Every democratically-minded Canadian would rebel at such a development. Section 57 would virtually put this police force beyond criticism or questioning of their activities if any judge were so inclined to interpret and apply this section.

Sections 60, 61 and 62, dealing with the ancient crime of SEDITION have a particularly ominous meaning to the labour movement. Nowhere in the sections is the word "sedition" given a clear, succinct meaning. The labour movement is quite familiar with the broad usage of the charge of sedition to interfere with its right to strike and picket. This is most clearly shown in the case of the strike of the Canadian and Catholic Confederation of Labour in Louiseville, Quebec, where in 1952, organizers and leaders of the strike were charged with "seditious conspiracy", in order to render them ineffective in a struggle of the workers.

Again in Section 63, we find a section similar to that in Section 52, where reference is made to "forces of any state other than Canada that are lawfully present in Canada." It is a well-known fact that personnel of the U.S. armed forces are stationed at many places in Canada today, and who are exempt from the application of Canadian law. Many Canadians genuinely resent both the presence of these armed forces of another country on our soil and the setting aside of our sovereign rights with regard to the application of Canadian law to these foreign troops. Yet under Sections 62 and 63, it would virtually become an act of sedition for any Canadian to raise any question on this very important matter of sovereign rights.

Sections 64 to 69, under the heading of UNLAWFUL ASSEMBLIES AND RIOTS, is particularly to the forefront in the minds of Canadian workers today, following on the events in Louiseville, Quebec, in December, 1952. The wording of these sections has been broadened in its application and meaning so as to make it applicable to many a strike situation. It is only necessary for an agent provocateur to appear in the midst of a group of strikers and create a disturbance for Sections 64 to 69 to be invoked against those workers and their strike smashed and their union outlawed.

Section 96 broadens the powers of police in terms of searching, without warrant, premises other than a dwelling house. This would be particularly dangerous to trade unions. Using this proposed section, police could raid union offices and halls without warrant, disrupt and intimidate and secure information to which they were not entitled, merely on the grounds that the policeman "has reasonable grounds for believing that an offense is being or has been committed against Sections 82 to 91."

While these sections apply to the possession of offensive weapons, it would be easy enough to justify the search after the fact by "finding" an offensive weapon on the premises.

Section 365 with its reference to the breaking of a contract would seem to be specifically formulated to have the effect of making the breaking of a trade union contract subject to imprisonment for five years. In its more direct

meaning, this section stands clearly as a bar to strikes by transportation and utility workers, and likewise could have its effect in almost any strike in almost any industrial enterprise in Canada.

Under Section 392, parts (*a*), (*b*), (*c*) and (*d*), could all be applied to almost any strike. It was pointed out by the Honourable Arthur W. Roebuck Q.C., in the Senate that "no strike ever took place in this country that did not do one or the other of those things. Strikes have always interfered in some way with the enjoyment or operation of property. That is usually the very purpose of a strike."

We must agree with Senator Roebuck in that the strike is the withdrawal by the workers of their labour power which has the effect of interrupting or interfering with the enjoyment or operation of property for profit. This section, it would seem to us, has been specifically drawn with a view to establishing heavy penalties against effective strikes or picketing and as such it interferes with one of the basic freedoms of democracy, that is, to organize into trade unions which has a meaning only if the unions have power to withdraw their labour as a part of the bargaining process.

In presenting our views on the above mentioned sections of Bill 93, we are motivated by concern for the continued freedom and operation of the trade union movement as a necessary bulwark of democracy. It is axiomatic that to the degree that a country provides in law protection for the right of workers to form trade unions as a means to advance their living standards, to that extent the country can lay claim to being a democracy. Contained within the meaning of the free operation of a trade union are the freedoms to organize, freedom to assemble, freedom to speak and freedom to strike.

Canada today has no statutory declaration of civil rights for its citizens. In its place, we have a negative form of setting out the civil rights of our people. That negative form is the Criminal Code in which are set out the limitations imposed by law on the basic rights which mankind has struggled for and achieved for many centuries.

Our union is strongly of the belief that the enactment of a code of civil rights for the Canadian people is long overdue, and this should be the immediate concern of Parliament.

APPENDIX "C"

THE CONGRESS OF CANADIAN WOMEN
LE CONGRÈS DES FEMMES CANADIENNES

President: MRS. RAE M. LUCKOCK
Executive Secretary: MRS. ETHEL GENKIND

To the Special Committee of the House of Commons
appointed to consider Bill 93

Mr. Chairman and Members of the Committee:

The Congress of Canadian Women welcomes this opportunity to place before you the views of our membership on some of the proposed amendments to the Criminal Code (Bill 93), which we consider would have a deleterious effect on our Canadian way of life.

Women comprise half the population of Canada. Women have the same need of freedom of thought and speech as men. Women, as well as men, wish to, and indeed have the obligation to, on occasion, express criticism of government policies. Women industrial workers, on occasion, need to strike and picket in order to protect and advance standards achieved through their trade unions. Women have a particular interest in the maintenance of peaceful relations with other nations. Yet the proposed amendments to the Criminal Code, in our opinion, threaten the right to pursue any of the above mentioned activities.

It is our understanding that the task of the Criminal Code Revision Commission was to recodify and rearrange the present Code to make it more readily understandable to the average citizen. However, the redraft as it appears now, Bill 93, proposes several changes and additions. Some of them are vague to the point of obscuring their meaning, and it is our opinion that they seriously endanger long-held liberties of Canadian citizens.

Our law in Canada is based on the finest of English law—on Magna Charta, the Petition of Rights and the Bill of Rights—not on the repressive measure of King John, nor on the Statute of Heretics. The Congress of Canadian Women believes that the revision of the Code should be in line with the great charters of English liberty, not with those laws which are a reproach and shame to the history of any nation.

With respect to Section 46, on *Treason*, Toronto *Saturday Night* in an editorial entitled "What's Treason Nowadays?" voices the general apprehension of the country:

> *Saturday Night* had no enthusiasm for those amendments at the time when they were *quietly wangled into the Code with the least possible notice,* and we have no more enthusiasm for them now, being convinced that they are potentially dangerous to the freedom of the citizen...
>
> We pointed out at the time the extreme uncertainty and obscurity of the new definition of treason (a crime punishable by death) which makes it cover, not merely assistance to an 'enemy' but also assistance to 'any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists'. The existence of a state of war, and consequently of a definite enemy, is a matter of proclamation...

> ...This removal of the distinction between 'hostilities' and 'war' abolishes at one sweep all the 'laws of war' as they have developed over the centuries... Among other things, it is not necessary that the Canadian forces in question should have been ordered into hostilities by any action of the Canadian Government; they may have been plunged into them by the commander of an allied but alien army...
>
> The amendments were drafted very hastily, and *upon the urgent instigation of the United States.* They have been sharply criticized by many of the best liberal-minded lawyers of the country. They should be very carefully overhauled at the present time. (May 3, 1952—our emphasis)

All is not well with Canada when repressive legislation is being advanced, at the "urgent instigation" of another country, particularly by a country, itself in the throes of hysteria.

In the British Commonwealth generally, and in Canada up until June 1951, the crime of treason consisted of crimes against the person of the monarch, and that of assisting an enemy at war with the state. But in June 1951, reportedly at the request of a foreign government (see above quotation and the Montreal *Gazette,* May 3, 1951), amendments were introduced amongst which the definition of treason, as known for hundred of years, was completely changed. We recall to the members of this Committee the words of Mr. J. G. Diefenbaker in the House of Commons in June, 1951: "I know of no case in four or five hundred years' interpretation of the law of treason that goes as far as this amendment."

Further, with regard to Section 50 (1) (*c*), everyone commits an offense subject to 14 years' imprisonment who "conspires with an agent of a state other than Canada to communicate information or to do an act that is likely to be prejudicial to the safety of Canada." Who is to determine what is "likely to be prejudicial?" There are many Canadians today who consider that the actions of our present government insofar as the NATO alliance is concerned is "prejudicial to the safety of Canada." Who decides?

In Section 48 (2) (*a*), "open and considered speech" can be construed as an act of treason!

Section 52, dealing with sabotage is not so vague. It threatens with a ten-year sentence a striking worker or farmer who might cause property "by whomsoever it may be owned, to be lost, damaged or destroyed". As Senator Roebuck said, "This is terrible and drastic—a dandy piece of legislation to use in case of a strike—Any plant would qualify under this." (SENATE OF CANADA DEBATES, June, 1951).

Section 50 would make informers of Canadian citizens, judging who is or who is not "about to commit treason." Under Section 51, such demonstrations as hunger marches might well be conceived as "intimidating the Parliament of Canada or the legislature of a province" with a penalty of 14 years.

And under Section 57, for what reason is it proposed that the Royal Canadian Mounted Police be placed on the same basis as members of the armed forces? The Congress of Canadian Women agrees with Senator Roebuck, "We want no SS Guard in Canada." (SENATE OF CANADA DEBATES, June, 1951).

Sections 60 to 62, dealing with *Sedition,* raises the penalty from seven years (two years until 1951) to fourteen years in prison. Is this another means to stifle freedom of speech, and particularly criticism of the government? Surely, if it is necessary to adopt such laws to save democracy, we have already lost that democracy! It is within the memory of all of us that the late J. S. Woodsworth was arrested for publishing "seditious libel"—he had quoted passages from the book of Isaiah!

It is our considered opinion that these proposed amendments which we have discussed above, as well as the related ones which we have not mentioned, reveal a great fear by the Government—a fear of the searching and clear light of open criticism upon their actions. Rather than succomb to this sort of panic, it is far better, and most certainly in accordance with our best traditions, to maintain our rights to freely examine and criticize. Canada needs a Bill of Rights, not a taking away of these rights she has dearly won.

The Congress of Canadian Women urges upon the Government the removal from the Criminal Code of Canada all vagueness and obscurity, and all proposals which in any way would infringe upon the democratic rights of citizens. Let Canadians not fear to take their part in the affairs of their country. "Give me liberty to know, to utter, and to argue freely according to conscience," said John Milton, "Above all other liberties." Above all—"We must not let Justice fail because of the temper of the times."

In addition to the above matters which we consider are serious threats to our traditional liberties, there are in this Bill two other items which urge the Committee to consider.

The first of these is the sentence of "Whipping" which may be inflicted for some offences. We earnestly suggest that this punishment be abolished, since, in our opinion, it does not contribute to correction or rehabilitation of the offender, but rather is a vengeful type of punishment, demeaning to the administrator, and certainly not in keeping with humanitarian views.

The second is with respect to the punishment of sexual offenders. As an organization of women, and having great concern for our children, we are naturally very anxious that everything possible be done for their protection. We agree that such offenders must be dealt with resolutely. We note that Section 661 provides for punishment of such offenders and that, while preventitive detention beyond the sentence is allowed, no specific mention is made of medical or psychiatric treatment. We would consider it a great improvement if such treatment were definitely provided for in the Act, with the understanding that detention be continued (reviewable at stated intervals) until a cure is effected. We believe this would afford added protection for the public at large upon release of the offender, as well as reforming the person guilty of such offences.

May we again express our appreciation for this opportunity of placing before you our views on these very vital matters.

February 26, 1953.