HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament
1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

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

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

March 17, 18, 20, 24, 25, 30, 31, 1953

WITNESSES:

Dr. J. D. M. Griffin, Director General, and

Dr. Kenneth Gray, of the Canadian Mental Health Association;

Mr. Nelson Thibault and Mr. L. Robinson, of the International Union of Mine, Mill and Smelter Workers (Canadian Section).

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

CORRECTION

Paragraphs 1, 2, 6, 7 and 8 on page 64 of the evidence should be corrected to read as follows:

"Mr. MYERSON: Mr. Chairman and Members of the Committee: The idea of protecting ethnic groups against defamation is not new in this world. It has been introduced in other countries and, in particular, in some of the states in the United States. As you know, they have state criminal codes as well as federal codes. Seven of their states have introduced laws against group defamation. Generally speaking, the concept of law dictates every lie which causes harm to society should be outlawed. Unfortunately, in most of the common law countries, the lie which is malicious, which is harmful, which hurts ethnic groups has not been ostracized and outlawed in the same manner as it has been done in other sections of the Criminal Code, such as the case of publication of false statements on advertisements, or statements which are submitted to banks, which contain falsehoods in order to obtain money fraudulently. These latter lies are ostracized. But here too, in our country, unfortunately, the concept prevailed that any statement made against an ethnic group is protected, whether it is true or false. The statement which will cause harm to ethnic groups, even though it is false, is not outlawed.

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

Mr. MYERSON: That is not the one to which I am directing my attention. The other one is "the incitement to violence", the one I speak of is "the publishing of a statement which is false and which hurts the public interest". I am directing my attention to the lie, the wilful lie which causes harm to ethnic groups. The remedy to that type of lie has been introduced, as already said, in a number of the United States and in some countries.

As a matter of fact it is interesting to recall that the one who prepared our present law on defamatory libel, that is the defamation of an individual, was Lord Campbell—in the year 1843. In dealing with this subject, defamatory libel, also known as Lord Campbell's Act, he indicated that there should be a law directed against the libeling of groups. I would refer you to King's Law of Defamation, page 126, where this matter is discussed.

It is strange in a country such as England, where the people are more homogeneous than in Canada, even at that time in 1843, Lord Campbell developed the concept of two types of defamatory libel, the libeling of the individual and the group libel. A fortiori in Canada now, where we have a vast number of different groups, religious and ethnic groups, where great harm can be done to such groups, there is good reason for introducing the section which we submitted to you, namely..."

MINUTES OF PROCEEDINGS

House of Commons, Room 268,
TUESDAY, March 17, 1953.

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

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

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

The Committee resumed from Wednesday, March 11, its clause by clause study of Bill 93, An Act respecting the Criminal Law.

Clauses 436, 437, 439 to 461 and 463 to 467 of the said Bill were passed.

Clauses 435, 438, 462 and 468 of the said Bill were allowed to stand.

After some discussion, it was agreed that the Committee hold an additional sitting this week on Friday, March 20, 1953, at 10.30 o'clock a.m.

At 12.30 o'clock p.m., the Committee adjourned to meet again tomorrow (Wednesday, March 18) at 3.30 o'clock p.m.

WEDNESDAY, March 18, 1953.

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

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

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice.

The Committee considered a report of the Steering Sub-Committee which on motion of Mr. Henderson was adopted unanimously and read as follows:

TUESDAY, March 17, 1953.

The Sub-Committee met today at 3.30 under the Chairmanship of Mr. Don. F. Brown, M.P., and were also present Messrs. Henderson, Laing, Noseworthy and Robichaud.

The Sub-Committee had before it a number of communications, all pertaining to Bill 93, An Act respecting the Criminal Law. These will be included in a general analysis which shall be placed before the Committee when the various clauses of the Bill which were stood over will be reconsidered.

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A number of briefs were received from the following: International Union of Mine, Mill and Smelter Workers; Labour Youth Federation; Canadian District No. 10 International Fur and Leather Workers Union.

The Sub-Committee recommends that in the case of the first named, a representative of the said Union be invited to appear before the Committee on Tuesday, March 31, in support of the brief already at hand. In the case of the other two groups, the Sub-Committee has carefully analysed the contents of the respective briefs and find that neither one reveals new issues apart from those which have been presented to the Committee by national and other organizations, therefore, the sub-committee is of the opinion that no purpose would be served in inviting representatives from the organizations to appear before the Committee.

Requests for personal appearance have also come from the Canadian Restaurant Association and from the Civil Liberties Committee (Ontario Section) of the Canadian Bar Association. The sub-committee recommends that these two groups be invited to send briefs at the earliest possible date and, should the contents thereof raise new issues which have not already been fully discussed on other occasions before the Committee, the representative from these groups may then be invited to appear.

The Committee then resumed from Tuesday, March 17, consideration clause by clause of Bill 93, "An Act respecting the Criminal Law".

Clauses 469 to 480, 482 to 509 and 512 to 580 of the said Bill were severally considered and passed.

Clauses 481, 510 and 511, after some discussion thereon, were allowed to stand.

At 5.10 o'clock p.m., the Committee adjourned to meet again at 10.30 o'clock a.m., Friday, March 20, 1953.

FRIDAY, March 20, 1953.

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

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

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice.

The Committee resumed from Wednesday, March 18, consideration clause by clause of Bill 93, "An Act respecting the Criminal Law".

Clauses 581 to 587, 589, 590, 591, 593 to 627, 630 to 637, 639, 640 and 643 to 658 of the said Bill were severally considered and passed.

Clauses 588, 592, 628, 629, 638, 641 and 642, after some discussion thereon, were allowed to stand.

At 12.30 o'clock p.m., the Committee adjourned to meet again at 10.30 o'clock a.m., Tuesday, March 24.

TUESDAY, March 24, 1953.

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

Members present: Messrs. Brown (*Essex West*), Cannon, Carroll, Garson, Laing, MacInnis, Gauthier (*Lac St. Jean*), Montgomery, Noseworthy, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice.

The Committee resumed from Friday, March 20, consideration clause by clause of Bill 93, "An Act respecting the Criminal Law".

Clauses 659 to 689, 692 to 696 and 699, also Schedule to Part XXII of the said Bill were severally considered and passed.

Clauses 690, 691, 697 and 698 were, after some discussion thereon, allowed to stand.

At 12.40 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Wednesday, March 25.

WEDNESDAY, March 25, 1953.

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

Members present: Messrs. Brown (*Essex West*), Cannon, Carroll, MacNaught, Macnaughton, Montgomery, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., Senior Advisory Counsel, Department of Justice.

The Committee resumed from the previous day consideration clause by clause of Bill 93, "An Act respecting the Criminal Law".

Clauses 700 to 706, 708 to 725, 727 to 744, also clause 748 and forms Nos. 1 to 45 set out under Part XXVI, were passed.

Clauses 707, 726, 745, 746 and 747 were allowed to stand.

The Schedule to Part XXIV (Fees and Allowances) of the Bill, with the exception of Items 20, 25, 26 and 27 which were stood over, was passed.

The following Report of the Steering Sub-Committee was read and on motion of Mr. MacInnis was unanimously adopted:

TUESDAY, March 24, 1953.

The sub-committee met this day at 5.00 o'clock p.m., under the chairmanship of Mr. Don. F. Brown and were also present the following members, namely: Messrs. Cannon, Henderson, MacInnis, Macnaughton, Robichaud and Shaw.

In attendance: Mr. A. A. Moffat, Q.C., and Mr. J. C. Martin, Q.C., and the Clerk of the Committee.

Five briefs, submitted by the following, were examined as to their contents:

League for Democratic Rights—Winnipeg Chapter

Student Christian Movement Study Group, Carleton College

Civil Liberties Committee (Ontario Section) Canadian Bar Association

National Council of Women of Canada

Canadian Mental Health Association.

The sub-committee recommends that the request from the Canadian Mental Health Association, whose brief introduces new issues, that their representatives be heard in support thereof, be granted and that the hearing take place at the regular sitting of the Committee on Tuesday morning, March 31, 1953.

A number of telegrams and other communications from the organizations concerned and other sources, asking reconsideration of the requests, formerly rejected, of International Fur and Leather Workers Union (Canadian District No. 10) and of the National Federation of Labour Youth to appear before the Committee in support of their respective briefs, were read. After extended discussion on the said requests, and further study of the said briefs, the sub-committee again came to the conclusion that neither one of these briefs introduce new issues apart from those which have been presented to the Committee by national or other organizations and that no apparent purpose will be served in inviting a representative from the organization concerned to appear before the Committee in support of the material contained in the briefs. For these reasons, the sub-committee reiterates its recommendation adopted by the main Committee on Wednesday, March 18, to the effect that these requests be not granted.

The sub-committee also examined a number of communications from various sources, relating to the provisions in whole or in part of Bill 93, An Act respecting the Criminal Law. The sub-committee will include these in the final analysis of all representations received by the Committee which will be submitted after March 31 when all submissions are completed.

The Chairman read the following communiqué:

SPECIAL COMMITTEE ON BILL 93, AN ACT RESPECTING THE CRIMINAL LAW

Statement by the Chairman, Mr. Don. F. Brown, M.P.

The Bill to revise the Criminal Code is the work of a Commission appointed by Order in Council. The work of revision continued from early in the year 1949 until 1952 whereafter a Bill was introduced to the Senate of Canada as Bill H8. The said Bill was referred to the Senate Banking and Commerce Committee, who in turn appointed a Subcommittee to study the Bill clause by clause. The main committee accepted briefs and heard oral representations. The Bill was before the Committee during two sessions of parliament and having been reported to the Senate, and accepted there, it is now before the House of Commons as Bill 93, and has been referred to this special Committee for considration.

This Committee has been holding regular sittings since its Order of Reference on January 23, 1953.

One of its first orders of business was to resolve that those national organizations desirous of making representations to assist the Committee be asked to present written briefs, and where it was considered that further clarification might be helpful that they be invited to appear before the Committee to make oral representations. Accordingly, the following organizations have been heard:

1. Canadian Congress of Labour.
2. Trades and Labour Congress of Canada.
3. Canadian Jewish Congress.
4. Premium Advertising Association of America, Inc.
5. League for Democratic Rights.
6. United Electrical, Radio and Machine Workers of America.
7. Congress of Canadian Women.
8. Association for Civil Liberties.
9. Canadian Welfare Council.

It is also proposed to hear from:

1. International Union of Mine, Mill and Smelter Workers (Canadian Section).
2. Canadian Restaurant Association.
3. Canadian Mental Health Association.

The purpose of accepting briefs and hearing oral representations has been to assist the Committee in revising the provisions of the Criminal Code so that a report may be made to the House of Commons for ratification without unnecessary delay, and not for the purpose of giving publicity to individuals or associations desiring to be heard.

All briefs, letters or other communications submitted have been analysed and are being studied by the Committee and are related to the clauses of the Bill to which they refer.

Most organizations have accepted the decision of the Committee and have not insisted on being heard but have been content with submitting briefs. Other organizations have not accepted the Committee's decision but, in addition to submitting briefs, have insisted upon being heard. As the material submitted by the latter groups was found to be similar to that put forward by certain organizations already heard, it was felt that no useful purpose would be served in acceding to their requests.

On motion of Mr. Robichaud, seconded by Mr. Cannon, it was agreed that copies of the above communiqué be given to the Press and that it be made part of the printed record of the Committee.

Mr. Robichaud moved that, hereafter, deliberations of the Committee on the many clauses that have been stood over for further consideration, be reported verbatim. It was agreed that this matter be referred to the Steering Sub-Committee for study and report.

At 5.45 o'clock p.m., the Committee adjourned to meet again at 10.30 o'clock a.m., Tuesday, March 31.

TUESDAY, March 31, 1953.

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

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

In attendance: Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice; Dr. J. D. M. Griffin, General Director of the Canadian Mental Health Association; Dr. Kenneth J. Gray, University of Toronto, Chairman of the Committee on Revision of the Criminal Code of the Canadian Mental Health Association.

The Chairman informed the Committee that the representatives of the Canadian Restaurant Association were unavoidably prevented from attending the Committee on this day and it was agreed that the hearing might be arranged at a later date. Mr. Montgomery, a member of the Committee, spoke on a question of privilege in relation to a newspaper report. Dr. Griffin presented the brief (Appendix A) on behalf of the Canadian Mental Health Association and he and Dr. Gray were questioned thereon.

At the conclusion of their testimony, the two witnesses were thanked by the Chairman.

Word having been received of the delayed arrival of the train on which were the delegation of the International Union of Mine, Mill and Smelter Workers (Canadian Section), it was agreed that the Committee would sit again later in the day.

The Committee continued for a brief period *in camera*.

It was agreed that the Committee sit on April 9th and 10th, following the Easter Recess.

At 12.15 o'clock p.m., the Committee adjourned to meet again at 4.30 o'clock p.m. this day.

Room 430, TUESDAY, March 31, 1953.

The Committee met at 4.30 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

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

In attendance: Mr. A. J. MacLeod, Senior Advisory Counsel, Department of Justice and a delegation from the International Union of Mine, Mill and Smelter Workers (Canadian Section), composed of the following: Mr. Nelson Thibault, Canadian representative of the International Board of the said Union; Mr. L. Robinson, Research Director; Mr. George Herman, international representative in Canada; Mr. William Muir from Nelson, British Columbia, representing western Canada; Mr. L. James, local union, Port Colborne, Ontario; Mr. M. Solski, president, local union, Sudbury, Ontario; Mr. Boyuk, a member of the local union, Sudbury, Ontario; and Mrs. Elizabeth Gunther, representative of the Canadian Ladies Auxiliary of the International Union, Sudbury, Ontario.

Mr. Robinson presented the brief on behalf of the Union (See Appendix B) and both Mr. Robinson and Mr. Thibault were questioned thereon. Mrs. Gunther also spoke briefly. The members of the delegation were thanked by the Chairman for their attendance before the Committee.

At 6.15 o'clock p.m., the Committee adjourned to meet again at 11.00 o'clock a.m., Thursday, April 9, 1953.

ANTOINE CHASSÉ,
Clerk of the Committee.

EVIDENCE

MARCH 31, 1953.
10.30 a.m.

The CHAIRMAN: Would you come to order gentlemen, please?

Today we have two delegations. We were to have had three—The Restaurant Association of Canada and the Canadian Mental Health Association and the United Mine, Mill and Smelter Workers.

The Restaurant Association was to have been represented by Mr. Sorenson. Unfortunately Mr. Sorenson had an emergency call to Vancouver where I believe he resides and was not able to come. We may have to make some other arrangements and that will be discussed this afternoon in the subcommittee.

The Mine, Mill and Smelter Workers are on a train somewhere between here and Sudbury and they will not arrive until, it is now expected, 11.40. Under the circumstances we may have to either miss our lunch hour or make some arrangements for this afternoon. I think since they have been good enough to come this distance to help us in our deliberations we should try to make ourselves available to them.

We also have the Canadian Mental Health Association which is represented here this morning. Mr. Montgomery has a matter he would like to bring up.

Mr. MONTGOMERY: Mr. Chairman, on a matter of privilege. At our last meeting when we were discussing fees under section 744 and I am reported to have said—I had better read this as reported.

The CHAIRMAN: What are you reading from?

Mr. MONTGOMERY: The *Telegraph Journal* of Thursday, March 26. This is a leading newspaper in New Brunswick.

The CHAIRMAN: Published in what town?

Mr. MONTGOMERY: Published in Saint John, New Brunswick. I had better read the first paragraph which I have no objection to.

> Mr. Montgomery protested against another section which allows peace officers 20 cents a mile both ways in serving summons or subpoena or making an arrest while court witnesses get only half that.

I have no complaint on that. In the next paragraph it says:

> He said this was widely interpreted in New Brunswick as a method for getting more money out of the municipalities for the R.C.M.P.

Mr. Chairman, I did not make that statement. I said in connection with the first question this was interpreted by the sheriffs and constables. I did not even use the word peace officers or mention the R.C.M.P. in my statement in any shape or form, nor was this my interpretation of the 20 cents a mile fee under that section on sheriffs and constables. The matter was inserted in the bill and when it came before the municipalities there was a discussion. But in discussion in this committee I did not interpret the meaning of it.

As a matter of fact, I think in fairness to the R.C.M.P. it should be said they seldom ever collect these fees. I would not like to infer they had tried to get fees under that particular section.

The CHAIRMAN: I have no doubt due note will be taken of your comments, and they will receive the necessary publicity. Mr. Cameron has something he wishes to raise.

Mr. CAMERON: I have two wires dated March 20, from the president and secretary of the Toronto joint board representing locals 35, 40 and 65 of the International Fur and Leather Workers Union, and also from officers representing local 58 of the same union in which they request that their unions be given a hearing on the matter of bill 93 and I am calling that to your attention. I was not here last week to do so.

The CHAIRMAN: If you will let us have these wires. The matter has been taken into consideration. Thank you very much Mr. Cameron. The matter has already been considered and a suitable announcement has been made.

We have this morning the Canadian Mental Health Association represented by Dr. J. D. M. Griffin, who is general director of the Canadian Mental Health Association, as well as Dr. Kenneth Gray, professor of forensic psychiatry at the University of Toronto. He is also chairman of the committee on forensic psychiatry of the scientific planning committee of the Canadian Mental Health Association.

Mr. CARROLL: Where is the Doctor from?

The CHAIRMAN: Doctor Griffin is to make the presentation. He is from Toronto. Doctor Gray is also from Toronto.

Doctor Griffin, would you have something to say in connection with your brief that you have submitted as of March 10?

Dr. J. D. M. Griffin, General Director, Canadian Mental Health Association, called:

The WITNESS: Mr. Chairman and gentlemen, I would first like to express on behalf of the Canadian Mental Health Association our great appreciation of the courtesy you have extended to us of meeting with you briefly this morning to bring to your attention some of the things we have been concerned with in the Canadian Mental Health Association. I should explain, first of all, that we are a voluntary health association. It is an association of citizens as well as doctors and scientists, nation-wide. We have provincial bodies in some six or seven of the provinces now, and the scientific and technical aspects of the program of this association is directed by what we call our scientific planning council, and it is the scientific planning council that has brought this brief to you this morning, and which I now present.

The membership of this scientific planning council is listed for you on the last page of this brief, and, Mr. Chairman, I would call your attention to the membership of this council. It will give you some idea of the level and scientific competence which lies behind the suggestions that we should like to bring to your attention this morning. The chairman is Dr. D. Ewen Cameron—I won't list them all.

The CHAIRMAN: For your information, Doctor Griffin, these names will all be published in the report. This part of your brief will be published.

The WITNESS: May I just call attention, however, to one or two others to show the wide variety of sciences represented. There is, for instance, Professor Oswald Hall, Ph.D., who is associate professor of sociology and anthropology, McGill University, Montreal; Dr. S. R. Laycock, Ph.D., who is an educationist from Saskatchewan; Dr. D. G. McKerracher, who is in charge of mental health services of the province of Saskatchewan; Dr. J. Saucier, prominent neurologist from Montreal; and Dr. A. B. Stokes as well as Dr. Kenneth G. Gray, who accompanies me here this morning as chairman of the committee on forensic psychiatry of this scientific planning council.

Now, sir, our concern with reference to the proposed revision of the Criminal Code has been limited to certain aspects of the Code where our medical and

psychiatric knowledge, experience and research findings have made it possible for us to, we feel, make relevant comments and criticisms, criticisms of a kind which are not available from other sources commonly. I am not sure, sir, whether it would be helpful if I read this brief. It is not very long.

The CHAIRMAN: What is the pleasure of the committee?

Agreed.

Shall we stop at certain intervals and have questions submitted by the committee? We would like to be through here by, say, 11.30.

Agreed.

Proceed then, Doctor, if you will, please.

The WITNESS: The scientific planning council of the Canadian Mental Health Association comprises psychiatrists and social scientists of established reputation from all parts of Canada. A list of the members of this council is attached to this brief. At the annual meeting of the council, held in Toronto on February 14 and 15 the proposed revision of the Criminal Code was studied. It was unanimously decided to make a submission to the appropriate parliamentary committee regarding certain parts of the proposed revision.

The Criminal Code of necessity concerns itself with a very wide and complex area of human behaviour, human values, motives and methods of control, reform and protection. The scientific planning council of the Canadian Mental Health Association in this brief has limited its comments and suggestions to those sections of the proposed Code where medical and psychiatric experience is particularly relevant. Psychiatric research and the practice of psychiatry in the courts and elsewhere has resulted in a body of experience upon which constructive criticism of parts of the Criminal Code may be based, and the criticism is of a kind which is not available elsewhere. The following comments respecting the proposed revision of the Criminal Code are restricted to these areas: first, abolition of terms such as "insanity, natural imbecility, diseases of the mind, etc."

The diagnosis and treatment of mental illness have advanced to a stage where archaic terms should be abandoned in favour of words which more accurately describe mentally ill people and their disabilities.

In the year 1935 the legislature of Ontario abolished such terms as "lunatic, insane, feeble minded, idiot" and replaced them by "mental illness, mentally defective" and similar modern descriptive nouns and adjectives. Subsequently a number of other provinces have made similar changes. This means that doctors, patients and their relatives and friends no longer use archaic terms like "insane" and speak of these patients and their illnesses in modern language. Likewise the courts are using the more modern terms in the various judicial processes such as the custody of patients, administration of their estates and related matters.

It is noteworthy that the Criminal Code itself has begun to incorporate the modern terminology. For example in clause (C) (i) of section 451 of the revised Criminal Code the words "mentally ill" appear. In section 527 (1) both "insane" and "mentally ill" are used. Both these terms appear.

The old terms, however, persist. The continuation of these obsolete terms in the Criminal Code may result in an unnecessary obscurity in the administration of justice. Doctors who are accustomed to the use of modern terms such as mental illness may find difficulty in giving accurate evidence in criminal cases where terms such as insanity are employed. Likewise judges, magistrates, juries and others entrusted with the administration of justice would have a clearer picture of the issues involved in a particular case if the terminology in the Criminal Code were more in keeping with the terms used elsewhere

in the administration of justice. If this recommendation were adopted it would mean deleting the terms "insane, insanity, imbecile, etc.", and substituting for them the words "mentally ill, mentally defective, etc."

In section 16 of the proposed revision of the Criminal Code (section 19 of the present Code) the following changes would be necessary:

Subsections 1 and 2—substitute the following:

> No person shall be convicted of an offence by reason of an act done or omitted by him while he was mentally ill or mentally defective to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, or of knowing that such an act or omission was wrong.

Subsection 3—It is recommended that this subsection be omitted. This section in the proposed revision reads as follows:

> A person who has specific delusions but is in other respects sane, shall not be acquitted on the grounds of insanity unless the delusions caused him to believe in the evidence of a state of things that, if it existed, would have justified or excused his act or omission.

My point here, gentlemen, is that this subsection describes a mental state which in practice does not exist. Any defence which might be raised under this subsection could be dealt with adequately under subsection 1, or the McNaghten Rules as they are commonly referred to.

Subsection 4—It is recommended that the word "sane" in this subsection be omitted and the words "mentally competent" be substituted therefor.

In section 619 (b) of the proposed revision similar changes in nomenclature would be required. Also sections 523-527 which are sections 966-970 of the present Code.

May I pause there, Mr. Chairman, for a minute. Perhaps there are questions on this part of it.

The CHAIRMAN: Any questions:

Mr. SHAW: Mr. Chairman, on page 3, where you say "in practice", do you mean "in fact" when you say "in practice". Would you care to elaborate on that?

The WITNESS: I wonder if I might refer that question to my colleague, Dr. Kenneth Gray. I should mention that Doctor Gray is both a psychiatrist, a doctor that is, and a lawyer, fully qualified.

Dr. KENNETH GRAY: I would agree. The use of the words "in fact" would convey the meaning quite properly. What I think we intend to say in the brief is that no psychiatrist has ever seen a patient such as is described in this section.

Mr. SHAW: Thank you.

Mr. CARROLL: Is there the same degree of mental illness in a person whose lawyer says that he is insane—is the same degree of mental illness there? Is it necessary to prove the same degree of mental illness there as it is in the case of a person who has delusions about a thing?

Dr. GRAY: If I may speak to that point. Delusions are just one symptom of insanity or mental illness. Delusions exist in some patients who are mentally ill. There are many patients who are mentally ill who do not exhibit delusions. Delusions might be a symptom just as fever might be a symptom of a physical illness present in some cases and not present in others, and I think the overemphasis on delusions in subsection 3 of the proposed revision arises out of the fact that that principle in the law dates back to at least the year 1943, when the McNaghten Rules were established, and at that time delusions played a very prominent part in the thinking of doctors and others who dealt with mental illnesses in that day and age. Delusions are not as prominent a feature of modern psychiatry as they were a hundred years ago.

Mr. CARROLL: Well, there are two pleas which an insane person may make when he is charged with a crime. The first is that he was insane at the time—I am using the words of the Code—insane at the time he committed the offence, and, secondly, that he is in such a condition of insanity or mental illness now that he is not capable of giving proper instructions to his counsel or solicitor and, therefore, he gets away, if that can be proven. Will you not be making there some distinction between your idea of delusions and ordinary insanity?

Dr. GRAY: Well, the first of these distinctions, if I may use the number of the sections of the present Code, with which I am more familiar rather than the numbers in the new bill, the first defence you speak of, I take it, is the one that is dealt with in section 19 and which is a modification of the McNaghten Rules, and the scientific council has placed in the brief a specific re-enactment of section 19 which it recommends. The second defence you speak of I think is dealt with in section 967 of the present Code and there, again, the Canadian Mental Health Association would recommend that the word "insanity" be struck out and the words "mentally ill" or "mentally defective" substituted.

Mr. CARROLL: That is, he is mentally defective at the time of trial and not able to give instructions or understand the situation he is in?

Dr. GRAY: On account of mental illness or mental deficiency, incapable of directing a defence.

Mr. CARROLL: That is why I brought it to your attention. You did not mention section 967 in your brief, did you?

Dr. GRAY: That is right, but I should make it clear at this point that that kind of substitution should be made throughout.

The CHAIRMAN: Mr. Macnaughton, have you a question?

Mr. MACNAUGHTON: I would like to say that my questioning is to elicit information, not to be critical, of course. Would it be correct to say, Doctor, that psychiatry is a quasi science? You would hardly call it an exact science at the moment?

Dr. GRAY: No, I would agree with that.

Mr. MACNAUGHTON: And if that is so, then I question your recommendation on page 2 of your brief, where you say, delete the terms "insane, insanity, imbecile" and substitute "mentally ill, mentally defective", and all the rest of it. As I understand it, the terms "insane" and "insanity" in the bill have acquired definite meanings over the years in a large body of case law. Those terms automatically mean something to lawyers, judges and the people generally. If we were to substitute these words "mentally ill" and "mentally defective", their interpretation would have to come from quasi scientists, from psychiatrists, and it seems to me you would be substituting the doctor in lieu of the judge. In other words, the judge would be forced to refer the matter to the experts, and the experts, who are quasi scientists and who could be wrong, would seem to be usurping the position of the judge and the function of the ordinary men, the lawyer, the Crown attorney and the ordinary juror. It seems to me it would be going quite far in taking these functions out of the hands of justice and substituting a quasi expert in the position of judge and jury. It would be rather interesting to get your comments on that.

The CHAIRMAN: Mr. MacInnis.

Mr. MACINNIS: Mr. Chairman, might I ask this question and the doctor can comment on it at the same time. How does a judge today come to a decision that a person appearing before him is sane or insane? What evidence does he require outside of his own observations?

Dr. GRAY: Perhaps I can speak to both these questions together. I will deal with the second question first. Of course the trial judge and jury in

coming to a decision as to the sanity or insanity of an accused person is usually assisted by expert opinion. There are usually one or more doctors who will give evidence at the trial in addition to the evidence of other witnesses.

Mr. MACINNIS: Including psychiatrists?

Dr. GRAY: Yes, because the jury does not rely only on the evidence of medical witnesses for their decision, they hear the evidence of many other witnesses who have observed the conduct and behaviour, the conversation of the accused person. Now, that suggestion we have made here in this brief would not change that.

Mr. MACNAUGHTON: It would change the emphasis, though.

Dr. GRAY: The same sort of query was raised at the time the provincial legislation was changed, that is, that a body of case law had been built up over the centuries interpreting the word "insane" and the words such as "insanity" and "lunatic", and there were some observers at that time who raised the same question that Mr. Macnaughton has raised here this morning, that is, that you are going to destroy the validity of that volume of case law. I think it has not worked out in that way. The term "lunatic", for example, is no longer used. We have no Lunacy Act in most provinces any more. We have acts covering care of mental incompetents, and the judges presumably found no difficulty in interpreting these new terms, assisted, where necessary, by medical evidence as they were assisted before, so that actually I think I can say with reasonable assurance no difficulty has arisen in the courts in interpreting terms such as "mentally ill, mentally defective".

Mr. NOSEWORTHY: Doctor, you base your request for a change in the Criminal Code of this terminology on the fact the terminology has been changed in the provincial jurisdictions, where this criminal law is administered. What were the valid reasons, or the reasons that were given for changes in the provincial field, and are these reasons not just as applicable to the Criminal Code as they were to the provincial legislation? That is, aren't there more basic reasons for requiring these changes than the mere fact of bringing the Criminal Code in line with the provincial nomenclature?

Dr. GRAY: Well, sir, the changes in provincial legislation were made, I take it, partially for reasons of this sort, in recognition of the fact that people who suffer from these illnesses were sick people, they were ill people, whereas the older terms carried with them somewhat of a stigma, shall we say; and likewise the institutions for looking after these people had changed over the years and had become hospitals rather than mere jails or custodial institutions, and I think the change in terminology was intended to reflect the change in conditions, that is, it was a recognition of the fact that these were ill people who were to be treated in hospitals rather than merely dangerous people who needed to be locked up, which was the innuendo in many of the older terms. Now, then, if that were so, I think these arguments also are relevant to the language used in the Criminal Code, plus one other factor which I think is of some importance, and that is that when a psychiatrist is asked to testify in a criminal court it is surely his duty and his obligation to give the judge and the jury as clear a picture as he can of the mental condition of the accused person, and if he can do that in simple direct language, such as in the use of terms like "mentally ill", is that not preferable than for him to try to couch his evidence in words which lead to considerable hair-splitting and ambiguity. I mean, a medical witness under the present Criminal Code will be asked a question like this: "Doctor, what is the difference between insanity and mental illness?" or, "How do you define insanity?"

Mr. CARROLL: He would not be asked such questions as that because the Code defines what insanity is.

Dr. GRAY: Well, it may be defined by judicial interpretation but not in the Code itself.

Mr. CARROLL: Yes, the Code tells us exactly what a person must prove in order to have his plea of insanity carry.

Dr. GRAY: At any rate, sir, I do suggest that.

The CHAIRMAN: Would you like to give that citation, Mr. Carroll?

Mr. CARROLL: It is in the defences. It is one of the old sections.

Mr. NOSEWORTHY: Have you any knowledge, Doctor, of what the relative situation is regarding Criminal Codes of other countries?

Dr. GRAY: I am afraid not; no, I cannot in the limited time at our disposal say anything useful about that. I am afraid I would not be able to comment on the comparative situation elsewhere, except to say that the American Psychiatric Association has gone on record as advocating this same type of change in the wording of the criminal law in the United States.

Mr. NOSEWORTHY: You do not know whether they have been successful or not?

Dr. GRAY: No, I do not, because, as you know, over there the criminal law is a matter within the jurisdiction of the 48 states, and you would have to survey the enactments of the 48 individual states to find out.

Mr. MACINNIS: Could I ask one more question, Mr. Chairman? In the quotation of subsection 3 of clause 16, the revised section, the brief reads:

> A person who has specific delusions but is in other respects sane, shall not be acquitted on the grounds of insanity unless the delusions caused him to believe in the evidence of a state of things that, if it existed, would have justified or excused his act or omission.

What do you mean by that, that a person who has specific delusions is not in other respects sane, or do you mean that a sane person does not have specific delusions?

Dr. GRAY: I see. What we meant was that if a person has delusions he will not be in other respects sane.

Mr. ROBICHAUD: I am concerned with the recommendation contained in page 3 of the brief with respect to specific delusions, too. The doctor is quite aware, I am sure, of delusions of grandeur which are often brought to the fore, and delusions of persecution. You have run across these specific delusions, Doctor?

Dr. GRAY: Yes.

Mr. ROBICHAUD: You agree with what I am going to submit to you now, that insanity under our present law as it now stands is a good defence when it is shown, first, that the mind of the accused was affected to such an extent that at the time of the commission of the offence he was not able to realize that he was doing wrong; or, secondly, that though sane in other ways he was labouring under certain specific delusions which caused him to imagine a condition of affairs which, had it been so, would have justified his act. This, I submit, is the present law.

Dr. GRAY: Yes.

Mr. ROBICHAUD: You agree with that statement of the law as it now stands?

Dr. GRAY: With one proviso. I think there is one additional ground for acquittal: that is, if the accused is insane to such an extent that he did not appreciate the nature and quality of the act that he committed, or that the act was wrong; that is an additional ground you did not mention.

Mr. ROBICHAUD: I would not say that this is an additional ground. It would be embodied in subsection (1), or the first part of what I have stated in my submission, but in the second part of my submission I deal with delusions, and that is what you claim we should do away with in the revision, delusions.

Dr. GRAY: That is our recommendation.

Mr. ROBICHAUD: Are you aware of the fact, Doctor, that the Court of Criminal Appeal in England—before I put that question I will ask you this. If we were to do so, that is, to follow your recommendation, we would therefore be altering the recommendations or rules laid down in the famous McNaghten case.

Dr. GRAY: That is correct; that is, our whole recommendation is to that extent a modification of the McNaghten Rules.

Mr. ROBICHAUD: Are you aware, Doctor, of the fact that the Court of Criminal Appeal in England has held that it has no power to alter the rules laid down in the McNaghten case? Are you aware of that fact?

Dr. GRAY: I would accept your statement, certainly.

Mr. ROBICHAUD: Well, it is a decided case.

Dr. GRAY: I do not know the case.

Mr. ROBICHAUD: I will cite it to you.

Mr. CARROLL: That is why we are here. The court could not do it, but parliament could do it.

Dr. GRAY: I accept your statement, sir. I am not for the moment suggesting it is not right, but I just do not know the case.

Mr. ROBICHAUD: It is in the case of Rex v. Flavelle, 19 Criminal Appeal Reports, 141. I have given you the gist of the decision. You also agree that the courts are very loath to touch in any way, shape or form the rules laid down in the McNaghten case.

Dr. GRAY: Yes, sir, I would say that is an understatement, sir.

Mr. ROBICHAUD: And now you are asking us to do away with that particular rule as laid down in the McNaghten case.

Dr. GRAY: Not do away with it, sir, modify it.

Mr. ROBICHAUD: Modify it, but I understand you would not consider specific delusions any more.

Dr. GRAY: They would be considered, usually speaking, when the person was mentally ill.

Mr. ROBICHAUD: But in the present revision of the Code.

Dr. GRAY: The accused person who is charged with a criminal offence and who showed delusions, if a plea of being mentally ill were raised, the fact that he had delusions would be relevant and would be brought out in evidence, but I do not think you need a separate subsection in the Criminal Code to deal with a person who has delusions. His case can be dealt with under a general plea that the person is mentally ill, as suggested in the brief.

Mr. ROBICHAUD: But in so doing, were we to delete this from the revision, we would be altering the rules laid down in the McNaghten case to some extent.

Dr. GRAY: If I understand the member correctly, you do not suggest that the House of Commons has no power to change the McNaghten Rules?

Mr. ROBICHAUD: I am not suggesting that, but I say we would be doing exactly that should we follow your recommendation.

Dr. GRAY: You would be modifying the McNaghten Rules.

Mr. MACINNIS: Mr. Chairman, what this delegation is asking for, I think, is quite clear, although I do not know what the McNaghten Rules are, but it says here in the brief: "Any defence which might be raised under this subsection—" that is, in the subsection as it stands now—"could be dealt with

adequately under subsection 1, or the McNaghten Rules—" I do not think that is asking for the abolition or change in the McNaghten Rules, but the McNaghten Rules as they stand now are adequate to deal with this matter. That is my interpretation of the brief.

Mr. MONTGOMERY: Reading those first two lines, this is the law as it is now: "A person who has specific delusions but is in other respects sane,..." As I understand the modern interpretation of insanity, mental illness or what you prefer to call it, that is a rather contradictory statement.

Dr. GRAY: Quite. It is.

Mr. MONTGOMERY: In other words, a person cannot be otherwise sane if he has specific delusions.

Dr. GRAY: You won't find any such person. He just does not exist.

Mr. MONTGOMERY: That is the point you want to get over to us as a committee, Doctor Gray, that such people do not exist.

The WITNESS: May I add a few words to that, Mr. Chairman. In the everyday practice of medicine, we occasionally have a tendency to say the patient is suffering from a sick heart, or a diseased heart, for example. Now, modern medicine is moving away from that kind of practice and they are speaking more now of sick people. It so happens that a sick person can have a sick heart, but it would be wrong from a medical point of view to say that a person has a fever but is in other ways healthy. Those are inconsistent ideas. So, in psychiatry a person cannot have delusions and be in other ways sane or in mental health. The delusions make him mentally unhealthy, and in that case he is mentally sick and his case can be considered under subsection (1).

Mr. MONTGOMERY: And to that extent the law as it now stands does fit in with modern practice?

The WITNESS: That is right; the McNaghten Rules were established in 1843, I think it was, at which time the understanding of mental illness was very elementary.

Mr. MACNAUGHTON: I would just like to raise this point. I do not want to be considered oldfashioned or unsympathetic, but it does seem to me an attempt to modernize this would mean at the same time substituting the so-called expert psychiatrists for the judge; the so-called psychiatrist will be called upon to make the decision which the court itself should make, and that, to me, is a very serious step to take, particularly when it is admitted that psychiatrists, being experts, being quasi scientists, can make a mistake themselves. I would sooner have the mistake made by the judge and the jury, an honest mistake, than have it made by a quasi expert.

Mr. SHAW: Mr. Chairman, is it still not a fact that if these recommendations were accepted, the court would still be making the decision?

Mr. CARROLL: I think so.

Mr. SHAW: You are not taking away the making of the decision from those who presently render the decision. I do not get Mr. Macnaughton's point on that.

Mr. MACNAUGHTON: A surgeon or a doctor called in can say to the court that the accused is suffering from this physical disease or that physical disease, which is something he can determine, but where you are dealing with a mental state it is purely a matter of opinion, and that should be referred to a judge or a jury. Your expert is called in to give his evidence, of course, but under this suggested change in the Code your expert is practically deciding the case.

Mr. MACINNIS: Well, if he is an expert psychiatrist he knows whether the person is mentally ill or not.

Mr. NOSEWORTHY: If he is an expert psychiatrist, then why should he not make the decision?

Mr. MACNAUGHTON: Psychiatrists often claim to know, but do not.

The WITNESS: I think you understand, Mr. Chairman, it is not our aim to push the psychiatrist forward as an expert who can never be wrong. Obviously, he can make mistakes, but I do not think any more mistakes will be made under this revision as suggested here than are being made now, and it will bring into line our understanding and everyday practice of medicine in this field with the Criminal Code.

Mr. ROBICHAUD: Has it not been your experience, Doctor, in court, that not only psychiatrists, but other expert witnesses as we know them, often disagree. One psychiatrist, for instance, will say one thing, and another will say another. It is a matter of opinion.

Mr. SHAW: Something like lawyers, you mean?

Dr. GRAY: I do not think there is any greater difference of opinion among psychiatrists in court trials than there is among other expert witnesses.

Mr. CARROLL: Or even doctors?

Dr. GRAY: Or engineers. I think you will find a difference in expert opinions in many trials and certain differences of opinion expressed by psychiatrists, but not any more so than in expert evidence given by surgeons or physicians or engineers or probably laywers.

Mr. ROBICHAUD: Lawyers are very seldom called as experts.

The CHAIRMAN: Shall we proceed with the gentlemen? Doctor Griffin, will you proceed please?

The WITNESS: Criminal sexual psychopaths. The present legislation is contained in section 1054A of the Criminal Code. The present subsection 6 provides that "any person found to be a criminal sexual psychopath and sentenced accordingly shall be subject to such disciplinary and reformative treatment as may be prescribed by penitentiary regulations". This seems to have been left out of the proposed revision (sections 659 and 661). It is not clear whether this omission implies that reformative treatment is no longer to be provided for these cases.

Mr. ROBICHAUD: May I interject, Mr. Chairman? It is true that these words are left out of sections 659 to 661, but if you refer to subsection (2) of section 665, you will find the provision which you claim has been omitted. Section 665 (2) reads:

> (2) An accused who is sentenced to preventive detention may be confined in a penitentiary or part of a penitentiary set apart for that purpose and shall be subject to such disciplinary and reformative treatment as may be prescribed by law. So there is the answer.

The WITNESS: Yes, I am quite aware of that, Mr. Chairman. This section deals with the general case of preventive detention, of which the criminal sexual psychopath is one example. So in a sense that does cover it. However, the larger implication of our concern with this criminal sexual psychopath business is to point out to this committee—may I just read the last paragraph of the brief.

In any event the present legislation regarding sexual psychopaths should not be regarded as final. We are quite aware that suggestions have been made to this committee that the appointment of a royal commission should be proceeded with to review this matter, but we are leaning more towards the opinion that a royal commission would be the kind of setting that would make it difficult to prevent the kind of evidence necessary for a complete understanding of this problem. Consideration should be given to a study by the

Department of Justice, if necessary, assisted by an advisory committee of persons having special knowledge and experience with these matters, which in our opinion would call forth the kind of factual testimony which is absolutely necessary, in our opinion, for the Department of Justice to take in setting up legislation. We feel that we still do not know enough to express, to recommend a definitive plan or definitive legislation for handling these problems, and that this step which was taken some time ago in the setting up of section 1054A in the present Code was a forward step, but it still should be regarded as an open question.

May I ask, Mr. Chairman, that Doctor Gray enlarge on this?

The CHAIRMAN: By all means.

Dr. GRAY: I know your time is limited, but if there are any questions I will be glad to answer them.

Mr. CARROLL: I have to say that I think Doctor Cameron is perfectly right about this suggestion about a royal commission, and if there is to be any further investigation I think he has laid the proper basis for it this morning, that is, for an investigation such as he is considering.

The CHAIRMAN: Doctor Gray, would you care to comment?

Mr. NOSEWORTHY: I think the wisest suggestion, Mr. Chairman, even with the adoption of this Code, that we could possibly recommend to the department would be the setting up of such a committee. The Minister of Justice appeared to be quite favourable to this.

The CHAIRMAN: Were you not to make some comment, Doctor Gray?

Mr. CARROLL: The doctor asked for questions.

The CHAIRMAN: I thought Doctor Griffin suggested that he make some comment.

The WITNESS: He prefers to answer questions.

Mr. MACNAUGHTON: For my own information and that of the committee, I would like to know where the scientific planning council of the Canadian Mental Health Association ties in with the medical association generally, and if you are tied in internationally with the United States equivalent.

The WITNESS: No, to both those questions, Mr. Chairman. The scientific planning council is a body within the Canadian Mental Health Association, which is a voluntary health association and has no tie-in,—affiliation,—with the Canadian Medical Association or with the American opposite number of that association. I might point out that membership in this scientific planning council is not limited to medical personnel, but it includes social scientists and every kind of discipline, although the majority are medical people.

Mr. SHAW: May I ask the witness, Mr. Chairman, if the Canadian Mental Health Association has itself carried on any rather extensive study of this question of the criminal sexual psychopath. Have you, say, a sub-committee of your body which is giving continuing thought and study to this question?

The WITNESS: The answer to that is no. Some years ago we did have an active committee studying this problem, which actually terminated in the production of a report which was one of the bits of evidence that was, I think, used initially in setting up this present section of the Code. But since then we have had no continuing committee except Doctor Gray's sub-committee on forensic psychiatry, which would be the logical committee of our organization to concern itself with this subject.

Mr. MACNAUGHTON: Is it possible, Hr. Chairman, to use the term "psychiatrist" without being a medical doctor?

The WITNESS: I do not know whether it is legally defined as much, but in practice a psychiatrist is always a medically qualified person.

The CHAIRMAN: If there are no further questions, I want on behalf of the committee to extend to you, Doctor Griffin, and to you, Doctor Gray, our sincere appreciation for your coming this distance to assist us in our deliberations. I am sure they have been most helpful, most interesting, and informative, and I want to thank you sincerely on behalf of this committee.

The WITNESS: Thank you very much, Mr. Chairman.

The meeting adjourned.

AFTERNOON SESSION

The committee resumed at 4.30 p.m.

The CHAIRMAN: If you will come to order gentlemen we will proceed with the affairs of the committee.

This afternoon we are to hear representations made by the International Union of Mine, Mill & Smelter Workers, Canadian section. Mr. Nelson Thibault is the Canadian representative on the International Board of the Union of Mine, Mill & Smelter Workers and represents district 8 which is situated at Sudbury, Ontario. Mr. Thibault, would you like to introduce your delegation.

Mr. THIBAULT: On my left, gentlemen, is Mr. Robinson, research director in Canada for our organization; behind me is Mr. George Herman, international representative in Canada of our union; Mr. William Muir from Nelson, British Columbia, representing western Canada today; Mr. L. James, of the local union of our organization at Port Colborne; Mr. M. Solski, president of our local union in Sudbury; Mr. Boyuk, a member of the same local union from Sudbury; and Mrs. Elizabeth Gunter, representing the Canadian Ladies Auxiliary of the International Union of Mine, Mill & Smelter Workers, Canadian Section, at Sudbury.

And if I may continue, Mr. Chairman and members of this committee, I would like first to express our regrets for the train having been late in arriving from Sudbury and to thank the committee for having extended the courtesy to us of arranging a later hour for this meeting. We hope that you were not inconvenienced unnecessarily. Also we are glad that we were able as a union organization, a national organization in Canada, to take advantage of the opportunity to appear before your committee on this particular question with which we deal today, the proposed amendments to the Criminal Code of Canada.

I would just briefly like to make a point that may be of informational interest to this committee. I noticed particularly that in the session of yesterday in this House a member of the Commons in speaking to Bill No. 110, dealing with the matter of establishing the Historic Sites and Monuments Board of Canada, mentioned quite elaborately the historical significance of an organization emanating from western Canada known as the Federation of Miners. I might just point out that the Western Federation of Miners established in 1893 is the predecessor of the organization which we are representing today. The International Union of Mine, Mill & Smelter Workers was a reformation of the Western Federation of Miners and that reformation took place on October 17th, 1916. In brief our history dates back to 1893. I believe that the remarks that the member of the House made yesterday emphasize the role that our organization has played in the establishment of labour organization and the development as a whole of our country Canada.

The Canadian section of our international union is composed of 32,000 members as of now and we are situated inclusive of the province of Quebec through to the west coast. Recently at our 5th national Canadian convention

held in Calgary we took a step in further consolidating the organization in Canada on a national basis by establishing a Canadian Mine Mill council to direct our union's pursuance of questions of a purely national scope.

This brief before you which I believe every member of this committee has was directed and approved by the recent convention of our national union. The brief has been in the main prepared by our Canadian research director, Mr. Robinson on my left, and I will ask Mr. Robinson to elaborate further and deal with the points that the chairman and members of the committee will raise. I will endeavour to assist him if necessary here and there.

The CHAIRMAN: Thank you very much, Mr. Thibault. Mr. Robinson would you care to elaborate to some extent on this brief and probably we could ask questions at different periods.

Mr. L. Robinson, Research Director, International Union of Mine, Mill and Smelter Workers, Canadian Section, called:

The WITNESS: Mr. Chairman and members of the committee, if you wish in the course of my remarks to stop me and ask questions as I proceed that will be convenient. As far as I am concerned I hope that there will be a great many questions in proportion to the importance of the bill which your committee is considering.

I am going to emphasize at the outset the very great importance of the bill which your committee is considering. This has been emphasized by other and more prominent people. The chairman of the committee of the Senate which considered this bill, in introducing the committee's report to the Senate spoke as follows: "We have got to remember that this is the most important piece of legislation that has been brought before parliament for many a day. It affects the life and liberty of every individual in the whole of Canada. Therefore it is of tremendous significance." The Minister of Justice in appearing before the committee of the Senate spoke likewise and said that in his opinion this was one of the most important bills to come before parliament for a very long time. And we agree with these opinions. The fact that we are here to submit our views with respect to this bill in itself emphasizes the importance we attach to this bill. The fact that this committee has held hearings and heard a number of representations from organizations of Canadian people, representing many hundreds of thousands of Canadian people across the country, is an additional emphasis of the importance of the bill and the very widespread concern throughout the country at the various aspects of this bill, further emphasizes its very, very great importance. We are, therefore, glad to be here before this committee to make our representations in relation to this extremely important bill.

The bill is usually referred to as a revision of the Criminal Code. Again I would like to quote very briefly from the remarks made by the chairman of the Senate committee when introducing the bill to the Senate, in which he said:

> We have got to remember that the legislation before us is a revision of the Criminal Code and not a revision of the substantive criminal law of Canada.

That is a statement, Mr. Chairman, with which we respectfully cannot agree. There are sections of this bill which, in our opinion, effect very considerable substantive changes in the criminal law of Canada, and it is particularly in relation to these substantive changes that we wish to say a few words, and that we have made the main body of our written presentation, the brief which you have before you. The opinion that this represents a substantive change in the criminal law is not only my opinion, it is the opinion of other eminent people

whose knowledge of the criminal law is very great, and in particular Senator Roebuck in speaking during the Senate's debate on this question was unambiguous in the statement he made, and I would like to read this statement. He said:

> This present revision is not a revision of the substance of the Code but only of its structure. The purpose of it was to clarify, rearrange and condense. The job was given to commissioners—

and this is the important sentence—"but they have gone a good deal further and have made quite a number of amendments to the substance of the Code."

Senator Roebuck proceeds:

> Nevertheless what they have done is not a survey as such of the substance of the provisions of the Code; it is by no means the final word; it is but the beginning, I think, of the revision of our Criminal Code; and as a result of the attention that has been directed to the code through these clarifying amendments I look for many other amendments in the immediate years to come.

As we proceed, I shall refer to a number of sections which, in our opinion, do bring about substantive amendments to the law, but I would like to emphasize here that we look not in the years to come but in the work of this committee for the further amendments to the revisions which are now proposed, and our purpose in appearing here before you is to try to persuade you to try to effect these revisions not in the years to come, not in the future, but now before this bill is reported to the House of Commons.

Our brief deals with two main points. It deals on the one hand with trade union rights as they are affected adversely by several sections of the proposed bill, and it deals, secondly, with the civil rights and freedom of the Canadian people generally. I only have a few words to say on these main points which are covered in our presentation and I do not want to repeat what is said in our presentation. The sections which adversely affect the rights of labour, the important and outstanding ones, in our opinion, are sections 52, 365 and 372, and all of these sections change the substance, in our opinion, of the Criminal Code as it stood until only very recently. As regards section 52, there is not any question about that. That is the same as section 509 (A) of the present Criminal Code, and, as you know, section 509 (A) was added to the Criminal Code in 1951. It is, therefore, a very recent addition to the Criminal Code and essentially it is new matter, if you take the history of the Criminal Code over its long period. This section, as we explained, is very much not to our liking. One point that I would like to repeat here relates to the definition of the "interests of Canada". There is a quotation on this question of interests which I would like to bring to your attention. We have emphasized that this word "interests" is altogether lacking in definition in the Code and it is liable to interpretations which can have a very adverse effect so far as the rights of labour are concerned. This is a particular quotation I would like to read. Senator Roebuck in the debate in the Senate last December said, at page 164:

> What are the "interests of Canada"? Does "Canada" signify the land of Canada, the people of Canada, or some section of the people of Canada — St. James Street, for instance? Or does it mean, perhaps, the labour unions, the educational institutions — this, that or the other thing?
>
> What, I repeat, are the "interests of Canada"? If, in talking of treason, you import a commercial or property ownership, are you not going pretty far?

That is the first section which we have dealt with in our brief.

The second section is section 365, and I would—

Mr. CARROLL: Before you come to the next section, have you any suggestions as to what amendments might be incorporated there to cover the interests of Canada, that is, to make it applicable to the whole of Canada?

The WITNESS: No, Mr. Chairman, not being a lawyer we have not come forward with specific texts for proposed amendments, but if the suggestions which we submit are agreed to, we are quite certain that there are at the disposal of the committee and among its members people who can draft appropriate amendments.

Mr. CARROLL: I suppose what you would want to bring in is that it is in the interests of Canadians—would that meet your idea: interests of Canadians?

The WITNESS: I think that what we have to do is to clarify what is the meaning of "interests of Canada". That is the important thing. Of course as an important trade union we cannot see that there can be any conflict between the interests of labour and the interests of the Canadian people, because labour constitutes a great majority of the Canadian people.

As regards section 365, I was impressed very much with a point that was made here a few days ago by the representatives of the Canadian Congress of Labour, a point which is not made in our brief. We did make the point in our brief that the penalty under this section is very greatly increased. It is increased from three months to five years, which is a twenty fold increase. The point that was made by the Canadian Congress of Labour, and which seems to me an excellent point, is that the section of the present Code which this section purports to revise or to bring into the revised Code completely alters the substance and main direction and intent of section 499 of the present Code as a whole. The only part of section 499 which is in any way similar to the text of section 365, as it is proposed in this bill and as far as labour is concerned, is subsection (*a*), and all the rest is entirely different, I think that the degree of difference is shown and emphasized by the next section, section 500 of the present Code, and if you read that I think you will understand what I have in mind. In particular sections (*d*) and (*e*) of the proposed section 365 are entirely new. So far as I am aware and have been able to discover they are nowhere to be found in the present Code. They are certainly not in section 499 (*a*) and this section 365, taking the tremendous increase in penalty on the one hand, the great change in direction and intent of the section, and the great amount of new matter added into this section as compared with the present Code, makes this section an exceedingly dangerous and objectionable one, one we would very much like to see amended to remove this danger which it at present contains.

Mr. NOSEWORTHY: I have a question on this point.

The CHAIRMAN: Mr. Noseworthy.

Mr. NOSEWORTHY: The Canadian Congress of Labour recommended to us that there be an additional section or sentence added saying "nothing contained in this section shall be deemed to effect any breach of collective agreement resulting from a dispute between an employer and a bargaining agent on behalf of a group of employees." Would such an amendment meet with your approval?

The WITNESS: Yes, it would certainly meet with our approval. I think that would be an excellent amendment. It means that the purpose of the section does not cover legitimate actions and activities of the labour movement. I would not like to go on record as saying it would fully meet our objection because, not being a lawyer, I do not know whether it would cover it, but, as a layman, I certainly think the amendment proposed is a very good amendment and should be included. Also, the penalty should be reduced.

The next section is section 372. This section condenses no less than 16 sections of the present Criminal Code and the result is that whereas in

the 16 sections a very large number of offences are covered, each one of them being specifically described and each one having a specific penalty, in the present section the whole thing is thrown into one, and becomes a uniform mass or melting pot. It is extremely vague in its intent and certainly in its result, except in this respect, that in our opinion its result would be to make illegal any strikes on the part of any union, and would subject any workers who go out on strike to the penalties provided in that section. It would do the same in relation to picketing, and, as we have said in the brief, this section is one of the most odious and repressive sections in the present bill, and in our opinion it should be deleted. I do not want to say that the Criminal Code as it now stands is entirely satisfactory from our point of view, but I am not aware it has lead to any grievous results as far as the labour movement is concerned. On the other hand I have no doubt whatsoever that this proposed section, if enacted in the form in which it is now in the bill, would have a very grievous result, and in that again I find that Senator Roebuck and many other people who have discussed this question, and made representations to your committee, are in agreement with that point of view.

Mr. NOSEWORTHY: Again may I ask, would your committee approve the opinion of the Canadian Congress of Labour regarding 372. They say: "This whole section 372 is vicious and should be dropped. The sections of the present Code which it purports to replace may need some amendment, notably in respect to penalty, but their general effect is satisfactory, and subject to necessary amendments should be retained." Would your committee approve of that?

The WITNESS: By and large Mr. Chairman, I think that we would approve of that. You will find in our brief also, the clear statement that we think this section should be deleted. We are certainly very glad if other people who have made representations before you take the same position on this section as we do. There is no doubt that anybody who says that this section should be deleted has our full support. and we are very happy to have them say the same thing as we are saying.

I would like to make a few remarks on these three sections taken together. I do not wish to add anything to our representation as regards the other two sections mentioned in that part of our brief. What I want to say is this, Mr. Chairman, that these sections nowhere specifically refer to the rights of labour or refer specifically in so many words and clearly to actions on the part of labour. Nevertheless, in our opinion, there is no doubt that they can be directed, and in all probability would be directed, to the actions of labour. Particularly in regard to strikes. You will find that section 52 is described in the margin as "Sabotage", and in our opinion the result of section 52 would be to prohibit strikes. The way this section is described we get the impression that the drafters of the Code consider strikes as sabotage. Section 365 in the margin is headed "Criminal breach of contract." Again we get the impression that in the minds of the drafters of this bill certain strikes on the part of labour constitute criminal acts. Again, with respect to section 372 the heading there is "Mischief", and the result of this section there can hardly be any doubt, and there is none in my mind, would be to prohibit all strikes, which are described as mischief.

Now, representing a trade union, we absolutely cannot accept that strikes should be described either as sabotage or as criminal breaches or as mischief. In our opinion they are none of these things. Not only that, but I think you would be hard put to it in searching the record of labour in Canada, and, there is no question, hard put to it in searching the record of our union in Canada, to find any action on the part of our union which could properly be described as either sabotage or criminal acts or mischievous acts.

The history of our union testifies to the fact that we always advanced the cause of the workers we represent and in so doing enhanced the well

being and prosperity of this country, and it seems very unfortunate to us that our actions, which in the past have always been characterized by our very scrupulous respect for the interests of the nation, should now and in future be characterized as either sabotage or criminal actions, or mischievous actions. That, in our opinion, would be the result of this bill, and that is why we take the strong exception we do to the three sections I have mentioned.

Mr. BROWNE: May I ask a question. Supposing you had a piece of property with a fence around it, and a relative of yours claimed it as his and went up and bound the gates. What would you consider that he was doing?

The WITNESS: I think, Mr. Chairman, that while I may be able to answer that question, I do not see the relevancy of it to the points we are discussing, which are the activities of labour in relation to employers in endeavouring to promote their interests and welfare.

Mr. BROWNE: I am suggesting that this section is capable of two constructions, and you inferred that it applies only to labour. How would you describe a section in the Criminal Code which protects that property against any criminal who would destroy it or trespass on it. Forget for the moment the rights of labour.

Mr. NOSEWORTHY: Mr. Chairman, I do not think any member of the committee, or this committee, or this delegation suggested that this applies only to labour. I think the whole argument is that it could be applied.

The CHAIRMAN: I think this is a hypothetical question which Mr. Browne has asked, and if Mr. Robinson does not want to answer it, well and good.

Mr. THIBAULT: What would lead up to this incident which you have related?

Mr. BROWNE: It is quite a common thing to have disputes over property.

Mr. THIBAULT: Do not the civil courts provide for that?

Mr. BROWNE: The civil courts do not help when a man comes along with an axe and starts to chop down fences. You can bring him into a civil court, but it has always been regarded as a malicious act.

Mr. THIBAULT: When you relate the law in this example to an incident in a labour dispute, there would have to be a clear leading up to the alleged offence. Therefore Senator Roebuck is quite correct in raising the question of relevancy.

Mr. BROWNE: I was only trying to point out to you that the same situation can be a breach of the criminal law as well and have nothing to do with labour whatsoever. Suppose a person maliciously comes along and destroys property. There must be some section in the criminal code to cover that, and it seems to me that is the one.

Mr. THIBAULT: The law already provides for malicious acts.

Mr. BROWNE: The civil law will not stop a man from doing it. Suppose a man who does that damage has no property of his own. How are you going to get protection? He claims your property and insists upon knocking down the fences every time that you put them up. That is quite a common thing.

Mr. THIBAULT: I suggest you should go further and present an example in relation to labour disputes.

The CHAIRMAN: It has an application to other than labour matters.

Mr. BROWNE: I see that. It occurs to me that it is capable of two constructions.

Mr. NOSEWORTHY: That is my view.

Mr. CARROLL: I think the gentleman has made his case very strong when he says that he has no objection to leaving the present section of the statute as it is with regard to mischief.

The WITNESS: I have no major objection, but I am not sufficiently familiar with the code to be able to say I have no objection.

Mr. CARROLL: There has got to be some section dealing with mischief.

The WITNESS: There is no question about that.

Mr. MACINNIS: I do not think that either this delegation or any other delegation which has appeared before us has objected to the criminal law being applied where a criminal offence has taken place. What they object to is that the criminal law should apply to what has been ordinarily accepted as the civil right of trade unions in the matter of labour disputes.

The CHAIRMAN: I gather what they are trying to say is that they do not want any of the hard and bitter earned gains made by labour taken away by this code.

Mr. MACINNIS: That is right, and I agree with them.

The CHAIRMAN: I do not think you will find any argument so far as this committee is concerned in respect to that.

Mr. MACINNIS: No, I do not think so.

Mr. THIBAULT: Particularly gains already identified and established under the labour codes in the various provinces, and it seems to me that this could override what has been established in that respect.

Mr. MACINNIS: If any action is taken in a labour dispute under the labour code of Canada or the labour codes of the provinces, then it should not become a crime under this Act.

The CHAIRMAN: That is what you mean?

The WITNESS: That is right.

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

The WITNESS: Let me repeat—because it relates to the point I want to go on to; we are not claiming that this section applies only to labour. That would be a claim which I think would be fantastic, as a layman and not a lawyer, I would be very ill advised to make such a claim and am certainly not making it. But we do make the claim that it could be applied to labour in a very adverse and destructive way, and that we think any ambiguity on that score should be eliminated.

Why do we think that these sections could be applied to labour? The answer is that the safeguards which have been proposed so that they should not apply to labour have been rejected by the Senate and have not, so far as we know, been accepted by this committee, and certainly have not been accepted by the House, since the House has not yet considered this question.

As you know, in the Senate, Senator Roebuck in speaking in the debate said:

> In committee I suggested that the following words be inserted: 'A lawful act done in furtherance of the purpose of a trade union is not mischief.' I also suggested that this clause be included in another section, but I will not take time to deal with that now—I believe he was referring to Section 52. I think I can see the humour of what happened yesterday in committee.

As far as we are concerned the fact that Senator Roebuck was alone in favouring this amendment was not humorous in any way whatsoever.

> There I stood in splendid isolation, the only one who voted for my amendment. That is perfectly all right—

But not as far as we are concerned.

> —but you will hear about that clause in the future or I am no prophet.

Now, if this committee having heard our representations and other representations, includes the amendments which the committee of the Senate and the Senate as a whole did not include, then our fears would prove to have been groundless. But until there are such amendments and particularly if such amendments are not accepted in the face of the representations in favour of them which have been made here, then we would have to say that our apprehension with regard to these sections would be very much greater than it is now. That is why we strongly urge this committee to make the appropriate amendments so that there can be no doubt whatsoever that these sections are not intended and could not be applied to the legitimate activities of the labour and trade union movement.

The CHAIRMAN: Could I at this point ask you whether or not you accept Senator Roebuck's suggested amendment as being sufficient to meet your purposes?

I think it would go a very long way towards meeting our objection, but to repeat, I would not like to say that it will go fully, because I do not want to commit myself to something which I do not completely understand. But on the face of it, it looks as if it would go a very long way towards meeting our objection. His amendment was proposed in relation to sections 52 and 372, and similar amendments could be framed in relation to section 365, if other amendments are not made.

Mr. NOSEWORTHY: You would say that the amendment, in so far as these sections affect trade unions, would be satisfactory. There could be other impacts upon civil rights, or something of that kind, but you are not including them.

The WITNESS: That is right.

The CHAIRMAN: The amendment only deals with labour unions.

Mr. BROWNE: You have no suggested amendment yourself?

The WITNESS: No. Senator Roebuck framed that amendment. I believe another speaker, on behalf of another organization which appeared here, was a lawyer. They framed amendments so I think it would be presumptuous on our part, not being lawyers, to frame similar amendments.

Mr. CAMERON: Is a strike a wilful breach of contract in all cases, or in no case, or in some cases?

The WITNESS: I imagine in some cases it does constitute a breach of contract. In respect of existing legislation, what we have put in our brief concerning the situation in Quebec shows that it could very well be considered a breach of contract. Whether it was a wilful breach of a contract—you get into the question of intent there. I think our views on the question of intent are sufficiently explained in other sections of the brief and what we said there fully applies here. We do not regard that word "wilful" as constituting any effective protection against prosecution and conviction under circumstances which are likely to arise.

Mr. CAMERON: What would your opinion be in regard to what are termed wildcat strikes?

The WITNESS: That is a strike which the leadership and responsible officials of the union have not authorized. I think that answers your question sufficiently.

By Mr. Robichaud:

Q. I infer from reading your brief and from your argument that you are in short asking or advocating that this committee should embody in the revision certain saving clauses to the sections that you object to in order to protect the rights of labour?—A. That is correct.

Q. And you say Senator Roebuck's proposed amendment would be curative to a certain extent?—A. That is correct.

Q. You said a moment ago you do not think that the word "willful" is wide enough. Have you any other words to suggest? I do not know of any other words.—A. I think what I said was you are not very much better off in being effectively protected if the word "wilful" is in the Act than you are if it is not in the Act.

Q. I certainly cannot agree with you on that score. Would you consider the words "without lawful excuse" stronger, or have you given any consideration to that?—A. Frankly I do not like the word "excuse".

Q. I said "without lawful excuse".—A. Lawful or unlawful. The question is what the excuse is, and who is going to say what it is. I do not consider myself competent to answer your question as to what is a "lawful" excuse.

Mr. CAMERON: The saving clause suggested by Senator Roebuck would not apply or be an escape clause if there was what is known as a wildcat strike. Would it? It would not cover that situation?

The WITNESS: I am not sure; I would have to think about that before answering it.

The CHAIRMAN: Gentlemen, we would like you to feel at ease before this committee. The members of this committee are not trying by their questions to put you in any embarrassing position, nor trying to trick you in any way. We are trying earnestly and honestly to seek information and seek the opinions which you have to suggest.

Mr. MACINNIS: You are not under cross-examination. We are merely asking for an opinion.

The CHAIRMAN: We realize you are not lawyers and we are not all lawyers either.

By Mr. Robichaud:

Q. We are just trying to find out what your opinions are absolutely without prejudice?—A. Let me say this: That where there is an unlawful act or an allegedly unlawful act or an act which the employers consider to be unlawful, they have recourse and they can take that recourse if they think they have a case. I think that in any strike, wildcat or otherwise, you have to consider the background. There is a right to strike under certain circumstances and this right to strike must be safeguarded. It must be safeguarded as far as possible in order to put labour on an equal footing with the employers, and while in a technical sense wildcat strikes are illegal there are certain circumstances where from a moral point of view it would not be hard to convince some people, and that might include me, that they are morally justified, and any excessive penalties against wildcat strikes would in my opinion always be objectionable. I think the way to avoid wildcat strikes is to consider the responsibility that rests on the employers, or the government to persuade employers to be reasonable in meeting the demands of labour and if they are reasonable wildcat strikes will not occur.

Mr. CAMERON: Is labour to be reasonable and fair in their position as well. I was asking those questions to bring out those points because in my opinion the suggestion of the saving clause of Senator Roebuck will not protect a union who wilfully breaks a contract and enters into a wildcat strike.

Mr. NOSEWORTHY: There is no attempt on your part to seek protection for wildcat strikes that do not conform to the labour code within the province in which it takes place; all you are asking for is protection for those trade unions who comply with the law as it is set down in the recognized labour codes?

Mr. THIBAULT: Yes. And in addition to that we believe that existing labour legislation now does provide for recourse against any alleged breaches and under that legislation the whole history or background leading up to the Act can be properly analysed and dealt with accordingly. I believe the purpose of your question places us in a situation where we are almost asked to prejudge a non-existent hypothetical situation. We believe that the legislation does exist now in regard to provincial codes to give recourse to the employer who feels he has been injured or his contract has been breached.

Mr. CAMERON: I was wondering how big the umbrella had to be.

The WITNESS: Thank you. In so far as Senator Roebuck's amendment will not apply to section 365 we think other amendments should be made to section 365 to bring it back within the area which is not now covered by section 499A, and particularly that the penalty should be reduced back to the three months, rather than the five years which is 20 times more than what the penalty now is. Senator Roebuck's amendment so far as it does not apply to section 365 does not mean that therefore we allow section 365 to stand or go through as it now is because our brief makes it very clear that we do not wish that to happen.

Mr. CARROLL: You are making reference to the old code when you refer to 499A?

The WITNESS: The old code, yes.

The CHAIRMAN: It is 20 minutes to six. Before you complete your presentation, Mr. Robinson, I wonder if it would be in order to have probably a word or two from your lady delegate who is here—that is, if Mrs. Gunter would be prepared to say a word or two to the committee. I am not suggesting you do it right away, Mrs. Gunter.

Mr. ROBICHAUD: Before Mr. Robinson leaves the table I would like to ask him one question.

The CHAIRMAN: I am not suggesting Mr. Robinson leave now. We have 20 minutes more and if he would make provision for that I think it would be appreciated.

By Mr. Robichaud:

Q. In reference to section 365, you suggested we should have section 499 (A) as it is in the present Code?—A. That is right, sir.

Q. Now, you have noticed that the words after the word "contract" in the revision, the words "made by him" have been omitted in the revision. Have you given any consideration to this deletion of the words "made by him" in the revision. What is your reaction to this?—A. I believe, Mr. Chairman, that that is a somewhat technical point. I do not think that omission bodes any good, but whether it bodes any ill I do not think I am sufficiently versed in the law to say. I believe there was some discussion among the members of your committee during the course of a previous sitting on that question, in which Mr. Diefenbaker and a number of other well qualified lawyers took part, and I would not like to comment or express an opinion on the various views that were expressed in regard to that. If the opinion of the lawyers is unanimous that that omission bodes ill, we would be against it.

Q. It is very hard to get a unanimous opinion among lawyers.—A. Then I think the Code should provide every possible safeguard so that there is no ambiguity.

Mr. NOSEWORTHY: I think the witness expresses much too great a confidence in lawyers.

The WITNESS: My father was a lawyer

The CHAIRMAN: I think he is a very competent witness myself.

The WITNESS: May I continue then, Mr. Chairman. On the second major section of our brief, which deals with freedom of speech, freedom of thought, and freedom of assembly generally, our brief emphasizes that these matters are of very great importance to the labour movement because without them the labour movement could not function and the people as a whole would be restricted in the rights they have now and which we believe they should continue to have. I want to emphasize particularly here the section regarding treason. The treason section is another instance of a section which brings about a substantive change in the law as it now stands, and I do not think there can be very much difference of opinion on that because we have three lawyers who agree on the fact that it does so.

Mr. ROBICHAUD: You are lucky.

The WITNESS: Yes, we are. Senator Roebuck's view is expressed in the debates of the Senate at page 163, dated December 17, and I do not think I need to read that, because his very clearly expressed view is known to you, Mr. Diefenbaker, in the House, when the Garson amendments, so-called, were debated, also agreed that it was something very new, and Mr. Garson himself in speaking to the amendment agreed that there was something very new here. The views of Mr. Garson, Minister of Justice, and Mr. Diefenbaker, are quoted in our brief at page 14, so we have three very eminent lawyers agreeing that there is something substantively new here.

The main points on which we object to this section are stated in our brief. The first point is the great extension of the meaning of treason which is involved here. The second point is the great extension of the number of offences which could be punished by death, and the third point is the great extension of the number of sections where the alleged intention of the accused is made a decisive element leading to conviction, and no matter what the accused person's intention was and what he had in mind, and the fact that under certain circumstances he says categorically that he does not have that intention, nevertheless the court may conclude from circumstantial evidence or for other reasons that he did have the intention he denied he had and conviction may follow. We believe that this section would lead to a very severe restriction of freedom of thought and expression through fear. If conviction were secured, the freedom of speech which now exists and which we think should continue to exist would likewise be infringed.

I do not think I want to say anything beyond what is said in our brief on the other sections, the section on sedition particularly. I think what we have said there is sufficient and is quite clear, and I hope it commends itself favourably to the members of your committee, so that in concluding I would just like to make two points, as follows: It is sometimes said that the purpose of these amendments is for the security and protection of Canada and for the security and protection of the freedoms which we now enjoy. We submit there is an inconsistency there. It seems to us that it is difficult to protect freedom by denying freedom and, specifically, it is difficult to protect freedom by restricting the freedom and rights of labour, because in our opinion a strong, active and free trade union and labour movement is an essential element to democracy. Where the trade unions and labour movement are restricted and repressed, to that extent democracy in general in the country suffers and begins to wilt. We think that should not happen. So that we make a very close connection between the rights of labour and the degree of freedom which exists in the country. We think that one depends on the other to a very great extent, and that is, among other reasons, why we take the position that we do with regard to the rights of labour.

The other point I would like to make is this, Mr. Chairman, that in the United States, the country south of the border, you have the Taft-Hartley Act,

which is an Act which quite clearly, specifically, openly and admittedly is directed to restricting the rights of labour. You have the Smith Act and you have the McCarran Act, and again these Acts, especially the McCarran Act, are quite openly and admittedly directed to the restriction of the right of free speech, and the Smith Act has in fact done so to a very alarming degree. In the first place I think it is wise to take heed and learn from experience in other countries. As we have pointed out in our brief, there is a very great and alarming similarity between the wording of section 60, and the section of the Smith Act under which convictions have already been secured south of the border. The second point is that whereas these three Acts, as I have said, make no bones about the purpose which they have in mind, in this case—in the case of Bill 93—in this revision of the Code there is no such admission, and yet in our opinion there is not any doubt, unfortunately, that the result would be to a very large and dangerous degree the same as the result has been from these three Acts south of the border. Therefore the question arises in our mind, why is it that an Act which would have, we believe, these results is not advertised as such, as having that purpose? We think the answer can be found without too much difficulty, and it is this: If such an Act were brought forward with the statement that it has the purpose which we believe would be achieved by certain sections of this bill, the result would be that the Canadian people would not tolerate the passage of such an Act. They would not permit it and, therefore, if the intention is to accomplish these ends, they have to be done indirectly and without saying that that is the purpose which those Acts have.

I say we do not and cannot have much doubt of the results of the substance of Bill 93. We believe that if passed Bill 93 would strip labour of its trade union rights, and above all of the right to strike. It would rob the people of the right to free speech and assembly in their democratic institutions, and would fasten on our country of Canada an odious system of intimidation and repression. Now, Mr. Chairman, as you know the great French philosopher Voltaire said: "I disapprove of what you say, but I will defend to the death your right to say it." It seems to us that the principle and policy embodied in this bill is exactly the opposite of that. What is in effect stated to the Canadian people in this bill is this: "we do not care whether we approve or disapprove of what you say, but we insist on the power to take away your right to say it."

It seems to us there is a danger if this bill is passed that certain people will go on to say, with one of those hated tyrants in English history, the Earl of Strafford, that anyone who dares to criticize the policy of the government or the actions of the government should be punished, and punished severely, "whipped" said the insolent Earl "into his senses. If the rod be so used that it smarts not, I am the more sorry."

We are afraid the purpose of this bill and certainly the result of this bill would be to implement a policy which was so pithily expressed by that famous tyrant in English history. That is why we hope the committee will make appropriate amendments to the bill, that the committee will be guided by the wish of the Canadian people to extend their rights and freedoms and not restrict them, and will put into Canadian law the universal declaration of human rights passed by the United Nations, rather than the restrictive clauses which are contrary to this universal declaration and which, in our opinion, are embodied in Bill 93.

We earnestly suggest that Bill 93 be amended. If no agreement can be reached on amendments which accomplish the purpose we think essential, then we suggest the bill be postponed, and in this suggestion of postponement we are again in agreement with other representations which have been

made, and in particular only a few days ago with representations made to the government of Canada by the Canadian Catholic Federation of Labour, commonly known as the Catholic Syndicate.

It would be better if the bill were thoroughly amended to remove the dangers which it contains. If that cannot be agreed upon, then undoubtedly the bill should be postponed — it should be put on the shelf, and should await a different atmosphere when agreement can be reached to pass revisions which does not contain dangers to the rights, and freedom of Canadian labour and the Canadian people.

Thank you, Mr. Chairman.

The CHAIRMAN: Would Mrs. Gunter like to say a word. What is your first name?

Mrs. GUNTER: Elizabeth.

The CHAIRMAN: Where do you reside?

Mrs. GUNTER: In Sudbury.

The CHAIRMAN: What position do you hold?

Mrs. GUNTER: I am a member of the ladies auxiliary, local 117.

The CHAIRMAN: You are the president, are you?

Mrs. GUNTER: No, I am not.

The CHAIRMAN: You are representing the ladies auxiliaries.

Mrs. GUNTER: I am a representative of the Mine Mill Ladies Auxiliaries.

The CHAIRMAN: Now, if you care to say something.

Mrs. GUNTER: The auxiliary, made up of wives and mothers and sisters of the workers, as citizens of Canada, are interested in the legislation that is to be passed — excuse me —

The CHAIRMAN: Please feel that you are among friends.

Mrs. GUNTER: I have not spoken before men, and I think that is what makes me nervous.

The CHAIRMAN: I hope the men will take cognizance of this situation. We now have a woman who is lost for words!

Mrs. GUNTER: We are interested in the legislation that is proposed and we support the suggestions put forward by Mr. Robinson and Mr. Thibault. I do not think I have anything further to add. We are in agreement with the amendments they have suggested.

The CHAIRMAN: Thank you very much Mrs. Gunter.

Mr. NOSEWORTHY: May I ask a question. On section 46 and section 50, which is now extended to cover undeclared wars, the Canadian Congress of Labour told us that, as far as they were concerned, that extension was not objectionable. They were quite agreeable to having section 46 and 50 extended to include undeclared wars. Just what is the position of your committee on that?

The WITNESS: I believe our brief makes very clear that this extension is objectionable, and very definitely and categorically so.

Mr. CAMERON: May I ask why?

The WITNESS: I think the reasons why, Mr. Chairman, are expressed very clearly in our brief, and I will try to sum them up. The offence of treason has an historical and well defined meaning. If additional offences arise in the course of historical development, it is one thing to legislate with regard to these offences, but it is another thing entirely to describe them as treason, which historically has always been considered a very heinous offence.

If offences must be punished, that is one thing, but legislation which on its face may appear to be designed to punish offences, should not at the same time, as this proposed legislation does, have a very repressive effect on the freedom of speech and thought of the people of this country.

Mr. CAMERON: Of course the Act was designed to prevent giving assistance to the armed forces of other countries with whom we may be engaged in hostilities, but not at war. I do not see where you get repression. You may express an opinion, but that is not assisting.

The WITNESS: It might be held legally to be so. If this country wishes to be engaged in hostilities with other forces or vice versa, they can always declare war, and, although it is somewhat outside the field, I think undeclared wars are in many ways worse than declared wars.

Mr. CAMERON: Are you suggesting that in the event you have just mentioned of not having declared war—take the Korean situation. If someone gave assistance to the armed forces of north Korea who our troops are now fighting and which is in reality war, that they would not be guilty of a crime against Canada against their own state in doing so.

The WITNESS: What do you mean by assistance? Let me say this: that when Japan attacked the United States at Pearl Harbour without declaring war, the United States not only engaged in hostilities against Japan but immediately declared war, and that settled the situation.

With regard to what assistance might or might not be given by various people in the United States to the armed forces of Japan under the law with war having been declared, that is an historic example which surely can always be followed when, in the opinion of one country, such country has been unlawfully and unjustly attacked by the forces of another country.

By Mr. Browne:

Q. That is all right where the country is a big country such as the United States; but where the country is a feeble one such as South Korea, and there is an attack by an organized army with 400 million people back of them, and with another 178 million people behind them, what does the United Nations do? You say there is no question of South Korea fighting back and declaring war against North Korea because they would be knocked out within a month.—A. Do you know whether South Korea declared war against North Korea in response to the attacks which South Korea said had been made against her by North Korea?

Q. She had to defend herself.—A. Would she have been able to do so less effectively by declaring war?—A. I believe the United States was engaged in a defensive war against Japan when she was attacked at Pearl Harbour, but the United States had no reluctance in declaring war. It expressed the united will of the American nation. Are you suggesting only aggressive wars are wars in which one country declares war against another? I do not think history would bear you out on that.

By Mr. Cameron:

Q. What would your opinion be if I went over to North Korea and took up arms and shot down a Canadian soldier, or a soldier in the armed forces of the United Nations? Would that be committing an offence?—A. There is no doubt that you would be assisting the North Koreans.

Q. Would I have the right to do that?—A. I do not think so.

Q. Is this legislation not designed to declare what otherwise would not be treason on my part? It will be treason because I have done that. It is not treason because we have not declared war, and that is what Mr. Diefenbaker had in mind when arguing in the House that this was an extension of the

law of treason, because treason only applied in the case of war and this was not war.—A. I cannot quite grasp the relevancy of your point because there is still no declaration of war and I cannot understand the reason for that. Under the law as it has been until now, assistance under these circumstances would not be treason. The main point we are dealing with here is the extension of the meaning of treason, and the results of this extension in limiting free speech.

Q. I am just asking you. I do not want you to escape from me. Will you please answer my question. What have I done? Is there not some provision in the Canadian law to prevent me or to intimidate me from taking that course of action?—A. Undoubtedly there should be. I think that any Canadian who shoots down another Canadian is likely to get into trouble.

Q. Maybe it is not a Canadian. Let us say I am engaged in hostilities or taking part on the side of armed forces which are engaged in hostilities with Canada, although war has not been declared.—A. That is an overt act. There is no doubt or ambiguity there.

Mr. NOSEWORTHY: You are arguing, in other words, that we should not have in our criminal code a provision that would apply today to anyone assisting the forces of North Korea, because we have not declared war against them?

The WITNESS: No. I very definitely am not saying that. It is quite clear —again not being a lawyer and not being primarily interested in our presentation with that particular problem which you raise—that is not what we are saying. What we are concerned with is that in an endeavour to meet a certain situation, to deal with clear overt acts, certain—let us say—by-products are created. Such by-products seem to us very dangerous by-products to the extent almost that the tail comes to wag the dog, and we do not think that is right.

The result of these by-products, in our opinion, is to restrict the right of Canadians to freedom of thought and freedom of speech. I am quite sure that the legal abilities which exist in Canada could draft laws which would deal with the problem with which you are primarily concerned, without creating these adverse results which I have described and which are dealt with in our brief.

The points which have just been directed to us in the questioning are off our main theme and subject here.

Mr. NOSEWORTHY: Do I understand that if we were to punish, or if we wished to punish anyone who assisted the North Koreans, then we would have to declare war against North Korea?

The WITNESS: That would be one way of getting around the difficulties which arise in the section as drafted in this bill, unquestionably.

Mr. NOSEWORTHY: Do you think that international relations would have been improved if the countries which are now fighting the North Koreans had declared war against North Korea?

Mr. MACINNIS: What have these questions got to do with the subject matter we are discussing?

The CHAIRMAN: It is now 6.00 o'clock. We have devoted half an hour beyond the time which we had allowed to this delegation. Committees ordinarily close at 6.00 o'clock and it is now 6.00. Are there any further questions?

Mr. THIBAULT: I want to say for the record, so that it may be very clearly understood, that in no way through any presentation or effort offered in explanation of our presentation today, is this organization in any way opposed to any necessary efforts that must be taken by the government of this country to protect this country. Neither do we want any undue advantage, during the

course of preparing the defence or actually protecting this country, taken of any individual Canadian through the pretext of defence regulations, that he may have committed an act of which he was in no way actually guilty.

Our organization stands clear in its position in respect to its loyalty and its constant desire to defend the interests of Canada and of the Canadian people. Therefore what I have said above was said for the purpose of making it clear that that is the policy of the International Union of Mine, Mill and Smelter Workers, including its Canadian section.

I should like to thank the chairman and the members of the committee for the time that they have extended to my committee and for the fairness of the members in the questions which they have directed to us, and I only hope that we have, so far as possible, convinced the chairman and the members of the committee of our serious and earnest concern in this whole question with which you are dealing. We appreciate the magnitude of the task which you have before you and we ask that you do not work under a deadline, as it were, but that you take your time and consider the whole matter as relates to the interests of Canada and its people. I thank you very much.

The CHAIRMAN: Mr. Thibault, on behalf of the committee, I want to extend to you, and through you to the members of your delegation, including Mrs. Gunter, our appreciation for your coming all this distance to help up in the work which we have undertaken. I think you have been very fair witnesses. You have made a good presentation and we appreciate it and I am sure it will be of considerable help to us. Thank you very much.

The meeting adjourned.

APPENDIX "A"

THE CANADIAN MENTAL HEALTH ASSOCIATION

111 St. George Street,
Toronto 5, Canada.
MARCH 10th, 1953.

The Secretary,
Parliamentary Committee on the Revision
of the Criminal Code, (Bill O),
Ottawa, Ontario.

Dear Sir:

At the annual meeting of the Scientific Planning Council of the Canadian Mental Health Association, held in Toronto February 14th and 15th, 1953, the following resolution was unanimously passed:

Resolved in the matter of the current revision of the Criminal Code, representation be made to the Federal Government regarding the following:

1. Archaic words such as "insane" and "lunatic" be replaced by more modern and appropriate terms such as "mental illness" and "mentally ill person"; (section 16 proposed revision).

2. Subsection 3 of Section 16 of the proposed revision speaks of a person having specific delusions but "in other respects sane". This describes a mental state which in practice does not exist. Any defence which might be raised under the subsection can be dealt with under subsection 1 (the McNaghten Rules).

3. The proposed legislation regarding "criminal sexual psychopaths" (sections 659-667 of proposed revision) is not clear particularly regarding any reformative or treatment measures. It is recommended that the Department of Justice if necessary assisted by an advisory committee of persons having special knowledge and experience with such matters review these sections.

In this connection I have been instructed to submit the attached brief.

The Association would appreciate the opportunity of having a representative appear before the Committee in support of this submission.

Yours very truly,

(sgd.) J. D. M. GRIFFIN, M.D.,
General Director.

JDMG:m

BRIEF CONCERNING THE REVISION OF THE CRIMINAL CODE (BILL O)

A submission from the Scientific Planning Council of the Canadian Mental Health Association to the Parliamentary Committee on the Revision of the Criminal Code.

Introduction

The Scientific Planning Council of the Canadian Mental Health Association comprises psychiatrists and social scientists of established reputation from all parts of Canada. (A list of the members of this Council is attached to this brief.) At the annual meeting of the Council, held in Toronto on February 14th and 15th the proposed revision of the Criminal Code was studied. It was unanimously decided to make a submission to the appropriate Parliamentary Committee regarding certain parts of the proposed revision.

The Criminal Code of necessity concerns itself with a very wide and complex area of human behaviour, human values, motives and methods of control, reform and protection. The Scientific Planning Council of the Canadian Mental Health Association in this brief has limited its comments and suggestions to those sections of the proposed Code where medical and psychiatric experience is particularly relevant. Psychiatric research and the practice of psychiatry in the courts and elsewhere has resulted in a body of experience upon which constructive criticism of parts of the Criminal Code may be based—criticism of a kind which is not available elsewhere. The following comments respecting the proposed revision of the Criminal Code are restricted to these areas.

Abolition of terms such as "insanity, natural imbecility, disease of mind, etc."

The diagnosis and treatment of mental illness have advanced to a stage where archaic terms should be abandoned in favour of words which more accurately describe mentally ill people and their disabilities.

In the year 1935 the Legislature of Ontario abolished such terms as "lunatic, insane, feeble minded, idiot" and replaced them by "mental illness, mentally defective" and similar modern descriptive nouns and adjectives. Subsequently a number of other provinces have made similar changes. This means that doctors, patients and their relatives and friends no longer use archaic terms like "insane" and speak of these patients and their illnesses in modern language. Likewise the courts are using the more modern terms in the various judicial processes such as the custody of patients, adbinistration of their estates and related matters.

It is noteworthy that the Criminal Code itself has begun to incorporate the modern terminology. For example in clause (C) (i) of section 451 of the revised Criminal Code the words "mentally ill" appear. In section 527 (1) both "insane" and "mentally ill" are used.

The old terms, however, persist. The continuation of these obsolete terms in the Criminal Code may result in an unnecessary obscurity in the administration of justice. Doctors who are accustomed to the use of modern terms such as mental illness may find difficulty in giving accurate evidence in criminal cases where terms such as insanity are employed. Likewise judges, magistrates, juries and others entrusted with the administration of justice would have a clearer picture of the issues involved in a particular case if the terminology in the Criminal Code were more in keeping with the terms used elsewhere in the administration of justice. If this recommendation were adopted it would mean deleting the terms "insane, insanity, imbecile, etc.", and substituting for them the words "mentally ill, mentally defective, etc."

In section 16 of the proposed revision of the Criminal Code (Section 19 of the present Code) the following changes would be necessary:

Subsections 1 and 2—substitute the following

No person shall be convicted of an offence by reason of an act done or omitted by him while he was mentally ill or mentally defective to such an extent as to render him incapable of appreciating the nature and quality of the act or omission, or of knowing that such an act or omission was wrong.

Subsection 3—*It is recommended that this subsection be omitted.*

This section in the proposed revision reads as follows: "A person who has specific delusions but is in other respects sane, shall not be acquitted on the grounds of insanity unless the delusions caused him to believe in the evidence of a state of things that, if it existed, would have justified or excused his act or omission." *This subsection describes a mental state which in practice does not exist.* Any defence which might be raised under this subsection could be dealt with adequately under subsection 1 (The McNaghten Rules).

Subsection 4—It is recommended that the word "sane" in this subsection be omitted and the words "mentally competent" be substituted therefor. In section 619 (b) of the proposed revision similar changes in nomenclature would be required. Also sections 523-527 (sections 966-970 of the old Code.)

Criminal sexual psychopaths

The present legislation is contained in section 1054A of the Criminal Code. The present subsection 6 provides that "any person found to be a criminal sexual psychopath and sentenced accordingly shall be subject to such disciplinary and reformative treatement as may be prescribed by penitentiary regulations". *This has been left out of* the proposed revision (sections 659 and 661). It is not clear whether this omission implies that reformative treatment is no longer to be provided for these cases.

In any event the present legislation regarding sexual psychopaths should not be regarded as final. The appointment of a Royal Commission to review this matter as suggested by the Canadian Welfare Council may not be the best form of investigation. Consideration should be given to a study by the Department of Justice, if necessary assisted by an advisory committee of persons having special knowledge and experience with these matters.

These criticisms and recommendations are respectfully submitted for consideration.

(Signed) D. E. CAMERON,

D. EWEN CAMERON, M.D.,
Chairman, Scientific Planning Council,
Scientific Advisor, Canadian Mental Health Association.

SCIENTIFIC PLANNING COUNCIL
CANADIAN MENTAL HEALTH ASSOCIATION

Chairman—D. Ewen Cameron, M.D., McGill University, Montreal.
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K. G. Gray, M.D., University of Toronto, Toronto.
Oswald Hall, Ph.D., Associate Professor of Sociology and Anthropology, McGill University, Montreal.

Charles Hendry, M.S.W., Director, School of Social Work, University of Toronto, Toronto.
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J. R. Kidd, Ed.D., Director, Canadian Association for Adult Education, Toronto.
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Randall R. MacLean, M.D., Provincial Hospital, Ponoka, Alta.
Rev. Noel Mailloux, Director, Institute of Psychology, University of Montreal, Montreal.
D. G. McKerracher, M.D., Mental Hygiene Commissioner, Regina, Sask.
A. E. Moll, M.D., McGill University, Montreal.
R. R. Prosser, M.D., Director, Mental Health Services, Fredericton, N.B.
R. A. Riddell, B.Paed., Director of Elementary Education, Hamilton.
J. Saucier, M.D., Montreal
Baruch Silverman, M.D., Director, Mental Hygiene Institute, Montreal.
C. E. Smith, D.Paed., School of Social Work, University of Manitoba, Winnipeg.
G. M. Stephens, M.D., Manitoba Clinic, Winnipeg, Man.
A. B. Stokes, M.D., Professor of Psychiatry, University of Toronto, Toronto.

Committee on Revision of Criminal Code

Chairman—Dr. Kenneth G. Gray, University of Toronto, Toronto.
Dr. Randall MacLean, Provincial Hospital, Ponoka, Alta.
Dr. D. G. McKerracher, Mental Hygiene Commissioner, Regina, Sask.

APPENDIX "B"

I—*Preamble*

Gentlemen:

The Canadian Section of the International Union of Mine, Mill and Smelter Workers represents 32,000 workers who earn their living in the non-ferrous metal mining, smelting and refining industry across the country. Our Union, along with other Canadian trade unions, is concerned to secure and extend trade union and democratic rights for its members and their families, and to guard these rights against undue restriction. Because of this, the Canadian members of our Union are gravely alarmed by certain sections contained in the proposed revision of the Criminal Code of Canada—now before your Committee and the House of Commons as Bill 93—and the possible implications of these sections.

The stated purpose of Bill 93 is to consolidate, revise and bring up-to-date the Criminal Code of Canada. It is not our intention to discuss to what extent this stated purpose is accomplished in the many and complex sections of the Bill, which fills a bulky volume. In the opinion of our members, however, certain sections of the Bill go beyond this stated purpose. These sections are such that, if passed by the House of Commons and enacted into law, they would restrict and in some cases destroy the trade union and democratic rights which our members and their families, together with all the Canadian people, have long enjoyed.

In this brief, which we present to your Committee established by the House to study in detail the proposed revisions to the Code, we shall refer specifically to the sections which appear to threaten established rights and freedoms. We shall endeavour to persuade your Committee to delete or amend these sections, either in whole or in part, so as to remove the dangers which they now contain.

We also suggest that there be added to the revised Code certain important safe-guards and guarantees of due process which it now lacks, although we do not propose to deal with these in detail.

Our Union is not alone in its stand against the repressive sections of Bill 93. The Trades and Labour Congress of Canada and the Canadian Congress of Labour have spoken out against specific sections of the Bill. Many of their affiliated Unions have done likewise. Members of all political parties have pointed to the dangers contained in the Bill or in the Garson amendments of 1951 which it includes; Senator Arthur Roebuck, Mr. J. G. Diefenbaker, Mr. Angus MacInnis and Mr. Stanley Knowles, all members of Parliament, being outstanding in this respect. The Senate made several important changes in the Bill, and although we think these changes do not go far enough, they are in the right direction. In addition, many organizations of the Canadian people have expressed their doubts or disapproval of some of the proposed revisions to the Criminal Code.

Our Union, the Canadian section of the International Union of Mine, Mill and Smelter Workers, take this opportunity to join with those who have protested various sections of the revised Code and to make suggestions for improvements and extensions of the democratic rights of the Canadian people.

II—*Trade Union Rights*

Trade Union rights are threatened mainly by Sections 52, 365 and 372 of the Bill. In quoting these sections, we shall underline the words which seem to us to be particularly dangerous.

Section 52 is as follows:

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

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

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

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

(2) In this section, *"prohibited act" means an act or omission that*

(*a*) *impairs the efficiency or impedes the working of any vessel, vehicle, aircraft, machinery, apparatus or other thing, or*

(*b*) causes property, by whomsoever it may be owned, to be lost, damaged or destroyed.

This section is so sweeping that it could be used to prohibit all strikes and to send to jail for 10 years any worker or group of workers who found it necessary to go on strike. A strike brings production temporarily to a stop. During the strike, the workers stay away from work and thus necessarily, by their act of staying away and their omission of normal work, for the time being impair the efficiency or impede the working of the vessels, vehicles, aircraft, machinery, apparatus or other things affected. The employees by their strike seek to persuade their employer to accept demands put forward during collective bargaining for higher wages, shorter hours or improved conditions of work which the employer would not otherwise accept. If the strike is to be effective, it will to some extent do the things which are to be prohibited under paragraph (2)(*a*) above.

We note in the first place the extreme breadth of this paragraph. It covers everything imaginable. To make quite sure of this, if by chance the words "machinery and apparatus" were found to leave something out, there are the words "or other thing" to cover it. Nothing is excluded.

We note secondly that there is no definition of the interests of Canada under paragraph (1)(*a*). Senator Roebuck asked: "What are the interests of

Canada? Are they the interests of sections of Canada, all the people of Canada, or the Government of Canada?" Are they the interests of the great majority of the Canadian people who earn their living by their labour? Whose interests, for example, were at stake in the recent strike at Louiseville, Quebec? It must be remembered that the Criminal Code is enforced not by the Federal but by the Provincial governments. Workers know from experience that hardly a strike goes by but that someone raises the cry of injury to the country's interests. This is especially likely in times of tension and hysteria.

The Minister of Justice was asked in Parliament whether a strike, which is otherwise perfectly legal, could be interpreted "as an act that might impede the efficiency of certain machinery or apparatus and therefore be illegal under this section?" Mr. Garson answered: "Is not the test . . . whether the prohibited act is done for a purpose prejudicial to the safety or interests of Canada?" Thus, the question of whether a strike is legal or not is going to depend on its purpose, or rather what the Minister of Justice or the Attorney General of the Province in which the strike takes place considers to be its purpose. They are going to decide what the strikers *had in mind* in striking. The right to strike will then depend not on what is done but on the purpose with which it is done or said to be done. Justice Douglas of the United States Supreme Court wrote in this connection: "Once we start down that road we enter into territory dangerous to the liberty of every citizen. . . . We then start probing men's minds for motive and purpose; they become entangled in the law not for what they did but for what they thought; they get convicted not for what they said, but for the purposes for which they said it."

The result of Section 52 would be to abolish the right to strike. The choice and decision would no longer rest with the workers and their trade Unions. Instead, there might only be a permission and privilege bestowed by the Government or the courts if they approved of what they thought or chose to think was the purpose of the strike. No wonder Senator Roebuck exclaimed: "That is new legislation which is terrible and drastic." We urge that this section be amended so as to exempt lawful trade union activities and guarantee to working people their right to strike.

Section 365 is as follows:

> 365. Every one who wilfully breaks a contract, knowing or having reasonable cause to believe that the probable consequences of doing so, whether alone or in combination with others, will be
>
> (*a*) to endanger human life,
>
> (*b*) to cause serious bodily injury,
>
> (*c*) to expose valuable property, real or personal, to destruction or serious injury,
>
> (*d*) *to deprive the inhabitants of a city or place, or part thereof, wholly or to a great extent, of their supply of light, power, gas or water, or*
>
> (*e*) *to delay or prevent the running of a locomotive engine, tender, freight or passenger train or car,* on a *railway that is a common carrier,*
>
> is guilty of
>
> (*f*) an indictable offence and is liable to imprisonment for *five years,* or
>
> (*g*) an offence punishable on summary conviction.

Before discussing the substance of this section, we wish to point out the extraordinary increase in the penalty which it provides. Formerly, the maximum penalty under Section 499 of the Criminal Code was three *months* in jail, with or without hard labour. Now it is to be made 5 years!

Again, by the words underlined, this section severely limits the right to strike particularly as regards railway, transport and other public utility workers. There is a simple way to avoid strikes among these workers; that is to pay them fair wages and insure proper working conditions. If they are denied the right to strike, they are left without one of their most effective means of securing these against the will of their employers. They are compelled to accept whatever wages and conditions the employers choose to impose.

A further result of this section is to open the door to compulsory arbitration. Contracts providing for compulsory arbitration would be fastened on the trade unions, and they would have no way of changing these contracts except in violation of this section. Compulsory arbitration is recognized as a means of restricting free collective bargaining and of depriving labour of its right to obtain adequate wages and working conditions by strike action if necessary. Our Union is opposed to compulsory arbitration and the restriction of labour rights which it represents.

Still another way in which this section might limit labour's rights is that it would make it possible for employers to sign individual contracts with their employees; the employees would be made to sign such contracts as a condition of employment. In this way, workers would be unable to act together and unitedly without breaking not only their contracts but also the law under this section, and thus becoming liable to 5 years in jail. The problem is especially serious in the Province of Quebec where an individual "work contract" is presumed to exist under the Civil Code between the employer and each of his employees. Thus, a strike which is otherwise legal could be considered illegal and in breach of the individual work contracts between employers and employees. We cannot doubt, in the light of the past, that the provincial government in Quebec would so consider it. Section 365 likewise requires amendment. In particular, the penalty of 5 years in jail is grossly excessive and should be drastically reduced.

The third section which is dangerous to trade union rights is Section 372. Paragraphs (1) to (4) of this section are as follows:

> 372. (1) Every one commits mischief who wilfully
>
> (a) destroys or damages property,
>
> (b) *renders property* dangerous, *useless, inoperative or ineffective,*
>
> (c) *obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property, or*
>
> (d) *obstructs, interrupts or interferes with any person in the lawful use, enjoyment or operation of property.*
>
> (2) Every one who commits mischief that causes actual danger to life is guilty of an indictable offence and is liable to imprisonment for life.
>
> (3) Every one who commits mischief in relation to public property is guilty of an indictable offence and is liable to imprisonment for fourteen years.
>
> (4) Every one who commits mischief in relation to private property is guilty of an indictable offence and is liable to imprisonment for five years.

Public property includes railways, street-railways, highways and water, gas or hydro-electric systems. Private property includes any mine or smelter or other plant of any employer against whom workers might find it necessary to take strike action.

This section is particularly odious and repressive. It goes far beyond what is now to be found in those sections of the Criminal Code which it is supposed to consolidate. At the same time, for the majority of the offences now in those sections, it greatly increases the penalties to be imposed.

The section repeats without any of the qualifications the prohibitions of Section 52, and goes considerably beyond them. In addition to its general effects, it would in particular prohibit picketing during a strike. It would be added to paragraph (1) (f) of Section 366 which forbids workers to "beset or watch the... place where (a) person...works (or) carries on business." As we pointed out above, a strike brings production to a temporary stop. It thus necessarily renders property temporarily useless, inoperative or ineffective, and interrupts or interferes with the operation of property, and is effective only to the extent that it does so. But this would become illegal under Section 372. As to picketing, it is an important aid to an effective work stoppage. It is an act which helps to persuade workers on strike to remain outside the employer's property and away from their place of work. Under Section 372, however, it could only too easily be construed as interfering with the operation of the employer's property. Picketing is nowhere specifically authorized or guaranteed by law in Canada, but it has been recognized by many court decisions. The provisions of this section would overrule these decisions and make picketing a crime.

An employer's normal use, enjoyment or operation of his property consists in employing workers and selling for profit the products of their labour. The fact that this normal use is lawful does not mean that it is lawful always and under all conditions. Employers have obligations as well as rights, which are not unconditional. The right of workers to strike, conferred by law, and their right to picket, conferred by the courts, mean that when an employer refuses to accede to the just demands of his employees and their Union, the rights of property may take second place for the time being to the rights of labour, until mutual adjustment and agreement is reached. A number of Senators however, in their consideration of this section, wondered how some people could have rights which interfered with the rights of others. They thought that any interference with the "lawful use, enjoyment or operation of property" should be a form of mischief and made an offence under the Code, and accordingly adopted the section as it stands. It is therefore clear that the result of Section 372, if enacted, would be to abolish the legal right to strike and to picket, and would place property rights always and unconditionally above human rights. Our Union cannot agree to this being done. We affirm on the contrary that human rights come ahead of property rights, and indeed that property rights are valid and deserve to be recognized only insofar as they serve and enhance human rights. This section, and also paragraph (1) (*f*) of Section 366, should be deleted.

It has been said that the trade union movement's concern with these sections suggests "an unhealthy and old-fashioned obsession with the strike weapon". Old-fashioned or not, everyone knows that a strike is in essence no more than a concerted refusal by a group of workers to sell their labour when they think that the price which is offered is too low. The fact that workers have the right to strike and may as a last resort use this right is their most effective means of securing an adequate price, in terms of wages and other conditions from the employers. We wonder if those who are so ready to offer advice to labour would agree that the refusal of the owners of capital to offer their capital and thus to give employment, when they think that the rate of profit to be made is too low, should also be disallowed. We are further told that strikes "are out of place in modern society." Far more out of place than strikes is the refusal of employers to provide their employees with decent wages and working conditions; it is this refusal which makes strikes necessary. "What is hateful" said sir Wilfrid Laurier "are...the men who, when they are asked for a loaf, give a stone." The right to strike is an essential element of free labour relations and collective bargaining. It should not be taken away.

Two other sections must be briefly mentioned, namely, Sections 63 and 91. We applaud the action of the Senate in striking out paragraph (2) (c) of Section 3, under which the R.C.M.P., which is a civilian force and the Provincial Police in all the provinces except two, was to be treated as though it were a military force. As Senator Roebuck aptly remarked: "Can you imagine the shout of laughter that would go up if you proposed to apply a provision of this kind to, say, our Toronto Police Force or to our Ontario Provincial Police Force? You would be laughed out of court." We trust that your committee and the House of Commons will agree with him, and will approve the amendment made by the Senate.

Section 96 authorizes a police officer to search "without warrant" a person or vehicle or premises other than a dwelling house" whenever he "believes on reasonable grounds that an offence is being committed or has been committed" in relation to offensive weapons. This means that police officers may search without warrant Union halls and offices, or Union officials and their automobiles. No definition is given of the reasonable grounds which a police officer must have, nor does he need to find any weapons to substantiate his belief. In our opinion, the almost unlimited power of search given to police officers under this section is contrary to the public interest and should not be granted. In the words of Mr. Angus MacInnis, M.P., this section, introduced into the Code by the Garson amendments in 1951, "goes altogether too far." The long established tradition that police officers must have authority by warrant to undertake any search should be maintained. Section 9 should be repealed or amended.

Just as freedom from want is only one of the four freedoms stated by President Franklin Roosevelt, so trade union rights, which make it possible for working people to earn a decent living by their labour, are not the only rights with which the members of our Union and their families are concerned. There is the right to due process and fair trial, the right to petition for the redress of grievances, the right of free association and peaceful assembly, and above all the right to freedom of thought and speech. These rights are not only necessary and good in themselves; no trade union could function without them. We turn to a consideration of certain sections of Bill 93 which endanger these basic rights.

III—*Freedom of Speech and Assembly*

The rights of the Canadian people to freedom of speech and assembly are threatened by several sections of Bill 93. Of these the most important are Sections 46 and 47, dealing with treason, and Sections 60-62 dealing with sedition.

(*a*) *Treason*—Paragraphs (1) and (3) of section 46 are as follows:

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

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

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

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

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

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

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

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

Paragraph (1) of Section 47 provides that "every one who commits treason is guilty of an indictable offence and is liable to be sentenced to death or to imprisonment for life."

Paragraph (2) of Section 47 states: "No person shall be convicted of treason upon the evidence of only one witness, unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused."

We find these sections dangerous and are opposed to them for the following reasons:

First, they greatly extend the range of offences which are considered treason. As Senator Roebuck explained: "There are three elements in treason. An attack upon the King's person is the first. There is the levying of war against the King, which today is the levying of war against the state. The third is adhering to the King's enemies. That has come down to us through the centuries. Some changes have been made from time to time but always they have come back to these three factors. These are very serious factors. They are so serious that special provision for trial have been made, and there is the special penalty of death. We do not want to include in that definition of treason things which have not in the past been considered." But Section 46 does include many things which have not been in the past considered treason. In particular, whereas treason used to be essentially a war-time offence, it is now to become one of which a person can equally be found guilty in peace-time. The section is so broad and vague that it might well be made to cover mere criticism of the Government's foreign policies.

Secondly, they greatly extend the range of offences which can be punished by death. It has been argued that when the offence is not serious, a lighter sentence may be imposed. But the discretion as to the sentence would be left with the Judge; there is no hard and fast rule. We think that where the extreme penalty of death is involved, the offences punishable by death should not only be limited: they should also be very clearly and specifically defined, and no others should carry this penalty. Except as to mercy on the recommendation of a jury, as little leeway as possible should be left with the Judge, certainly not the very broad and dangerous leeway which is provided here. Excessive and uncertain punishment, which may also be unequal, is harmful to our conceptions and administration of justice.

Thirdly, they greatly extend the range of offences in which the alleged intent of the offender rather than his act is the essential element of guilt. The legal authorities are agreed that "treason as an offence requires proof of intention; one cannot be treasonable unintentionally." Where the act is clear and definite, as in paragraph (a), there is no difficulty. All that need be shown is that the act was not accidental. Equally, under paragraphs (b), (c) and (d), the act by itself is likely to be sufficient. To quote Senator Roebuck again: "If a man hits another man over the head, you do not have to prove that the offender knew it was going to hurt the other man, nor do you have to prove that he knew it was against the law; you only have to prove that he intended to hit him." Where there was doubt as to the intent, it could always be argued that the act spoke for itself and betrayed a criminal motive. But a person need not have committed an overt act under any of these paragraphs in order to be found guilty. Paragraphs (a) to (d) are all covered by paragraphs (e) and (f). Thus, to be found guilty of treason, it is only necessary that one person who is party to an alleged conspiracy should state that the other person had formed an intention to commit treason and had manifested that intention by conspiring with him to do so. If the evidence

of the informer is corroborated by a material particular, such as the knowledge of a certain telephone number or the possession of a certain book, conviction and death may ensue. Thus, thought followed by speech or writing is essentially all that is required. An innocent conversation, malevolently interpreted, could lead to this result. Nor is this a fanciful possibility. The law itself gives the strongest encouragement to people to inform. Under Section 50,

> every one . . . knowing that a person is about to commit treason does not, with all reasonable dispatch, inform a justice of the peace or other peace officer thereof or make other reasonable efforts to prevent that person from committing treason . . . is guilty of an indictable offence and is liable to imprisonment for fourteen years.

The testimony of self-interested persons, who may themselves be guilty and wish to escape punishment by turning state's evidence, is far too unreliable to be made the legal basis for charging and perhaps convicting people of treason. The accused may be wholly innocent; "frame-ups" are not unknown, and have sometimes led to death. The dangers of these sections are only too obvious.

Fourth, therefore, the result of these sections must inevitably be the suppression of free speech and criticism through intimidation and fear. Where there is so much doubt as to the consequences and these may be so serious, many people will unfortunately choose silence. Through the suppression of speech, thought also would be censored. It would wither because it could not be expressed.

Some discussion in relation to paragraphs (*c*) and (*d*) of Section 46 will illustrate our meaning. As to paragraph (*c*), the outstanding point is that it eliminates the distinction which has hitherto existed between peace and war. Until now, assistance to the armed forces of another country was treason only after Parliament had declared war and the country against which war had been declared had become our enemy. Everybody knew to whom they might give assistance and when such assistance became treasonable. Under Section 46, this is no longer so. Assistance to armed forces against whom Canadian forces are fighting is treason, whether or not Canada is at war with the country whose forces they are. No authority is specified who will state when Canadian forces are fighting against the forces of another country. Indeed, whether hostilities exist or not may be unknown. The Minister of Justice admitted that this was "a very new departure in principle". Mr. J. G. Diefenbaker, M.P., was more explicit; he said: "I know of no case in four or five hundred years' interpretation of the law of treason that goes as far as this amendment." *Saturday Night*, in its issue of May 3, 1952, under the heading "What's 'Treason' Nowadays?", commented on:

> the extreme uncertainty and obscurity of the new definition of treason (a crime punishable by death) which makes it cover, not merely assistance to an "enemy", but also assistance to "any armed forces against whom Canadian forces are engaged in hostilities whether or not a state of war exists." The existence of a state of war, and consequently of a defined enemy, is a matter of proclamation; the Queen tells her Canadian subjects to whom they may not lend assistance and when such assistance becomes treasonable. No such official action is necessary to turn a legitimate action into treason when the test is merely that the action benefits any armed forces against whom Canadian forces are engaged in hostilities.
>
> Incidentally, this removal of the distinction between "hostilities" and "war" abolishes at one sweep all the "laws of war" as they have developed over the centuries, and creates a new situation to which no precedents or treaties concerning war have any application. Among other things, it is not necessary that the Canadian forces in question should have been ordered into hostilities by any action of the Canadian Govern-

ment; they may have been plunged into them by the commander of an allied but alien army. It may be treason to aid an armed force about which the Canadian Government does not even know that it is "engaged in hostilities" against our forces, for the amended Code says nothing about any action by the Canadian Government whatever.

A second cause of uncertainty is that nowhere in the Code is the meaning of assistance defined. According to the Minister of Justice: "'Assisting' means assisting in any way whatever." Canadian forces are presently engaged in hostilities in Korea. Is it assistance to the forces on the other side, and therefore treason, to call for a cease-fire in Korea? Chinese forces are fighting with the North Koreans. Is it assistance to them to advocate trade with China, to oppose a blockade of China, or to suggest that the five Great Powers, including China, should settle their differences peaceably around the table instead of piling up armaments against each other for possible use in the future? Is it assistance to the forces of other countries to advocate disarmament or to oppose conscription, or for workers to go on strike in an industry producing war materials or in a mine or smelter producing raw materials for war? All these acts are a normal part of free and democratic life; our trade union and democratic rights would be almost meaningless without them. Yet, under Sections 46 and 47, they might all be construed as treason, even in peacetime, and be punished with life imprisonment or death.

But if the above shows how uncertain is the meaning of treason where overt acts are involved, how much greater is the uncertainty and obscurity where it is a question of conspiracy and of forming an intention. Combining paragraph (c) with paragraphs (e) and (f), it may become treason merely to think about and discuss with someone the idea of a cease-fire in Korea. The mere thought and discussion of peace in the far East or of opposition to conscription, or of disarmament and a conference between the Big Five may be treason. The mere suggestion between two workers, let alone the preliminary planning, of a strike may be a crime. This is censorship and repression with a vengeance. Experience in other countries shows what can happen. Section 46 should be amended so as to remove the grave dangers which it contains.

As to paragraph (d), we shll deal with it below in conjunction with Sections 60 and 62, which are an equally dangerous threat to freedom of thought and expression.

(b) *Sedition*—Sections 60 and 62 are as follows:

60. (1) *Seditious words are words that express a seditious intention.*

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

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

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

(a) teaches or advocates, or

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

62. Every one who

(a) speaks seditious words,

(b) publishes a seditious libel, or

(c) is a party to a seditious conspiracy,

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

Formerly, the penalty for sedition was 2 years in jail. Under the Garson Amendments of 1951, the penalty was increased to 7 years. It is now proposed to double this penalty and make it 14 years in jail. Such a sharp increase in the punishment for an offence which has always been vague and difficult to define in itself suggests a purpose hostile to free speech and criticism of government policies.

What constitutes the offence of sedition really depends on what we think is the nature of government. If we believe that government is by the divine right of superior beings who are set over us as our masters and must be obeyed, then criticism is seditious because it undermines the respect and fear in which masters must be held, as well as the source of their authority. In the United States, for example, slaves were forbidden to read so that they could not question from books as they did from their experience the right of property by which they were enslaved. On the other hand, if we believe that government derives its authority from the people whom it must serve, that it is accountable to them and can be replaced by them, criticism is an essential right which the people must use if the government is to belong to them and be truly representative. Mr. Justice Kellock summarizes as follows the opinion of Stephen in his "History of the Criminal Law of England": "To those who hold this latter viewfully and carry it out to all its consequences, there can be no such offence as sedition."

No definition of sedition is given in Section 60. Moreover, as the section makes clear, the offence is not one of acts or of words but of intention. The quotation from Justice Douglas is worth repeating here: "That is to make freedom of speech turn not on what is said but on the intent with which it is said. Once we start down that road, we enter into territory dangerous to the liberties of ever ycitizen . . . We then start probing men's minds for motive and purpose; they become entangled in the law not for what they did but for what they thought; they get convicted not for what they said but for the purpose with which they said it." Nor is it necessary that the seditious intention manifest itself in words; no speech or writing is required for a person to be accused and convicted. It is only necessary to show that two or more persons agreed amongst themselves to use certain words, to speak or write sometime in the future. Again, in the words of Justice Douglas: "To make speech unlawful because two men conceive it is to raise the law of conspiracy to appalling proportions."

Paragraph (4) of Section 60 requires particular comment. The likeness between its wording and the wording of the Smith Act in the United States is striking, as well as frightening. No less than 85 people have been arrested in the United States under this Act, and many of them have been convicted and jailed. But whereas the maximum term under the Smith Act is 5 years in jail, here it is to be 14. The freedom to teach and advocate, as well as the freedom to publish and circulate the writings of others, is directly threatened by this section. It is necessary that the forbidden teachings and writings in fact advocate the use of force to change the government? Experience shows that it is not. It is not left to those who spoke or wrote to say what they meant; the Government in prosecuting and the courts in convicting them tell them what they meant. Thus, convictions have been obtained against persons who steadfastly denied that they believed in or were teaching or advocating the use of force. And again it must be stressed that it is not a question of actual teaching or of publishing or circulating certain writings, but merely of the intention to do so in the future. We quote what Justice Black of the United States Supreme Court wrote on this point: "These petitioners were not charged with an attempt to overthrow the government. They were not even charged with overt acts of any kind designed to overthrow the government. They were not even charged with saying anything or writing any-

thing designed to overthrow the government. The charge was that they agreed to assemble and to talk and publish certain ideas at a later date, . . . to use speech or newspapers and other publications in the future to teach and advocate the forcible overthrow of the government . . . No matter how it is worded, this is a virulent form of prior censorship of speech and press . . . I would hold . . . this prior restraint unconstitutional on its face and as applied."

The language of Justices Douglas and Black is exactly applicable also to paragraphs (*d*), (*e*) and (*f*) of Section 46. Paragraph (*d*) prohibits, on pain of death or life imprisonment, the use of "force or violence for the purpose of overthrowing the government of Canada or a province." That is an overt act. But what is an overt act which manifests an intention to use force or violence? Would it not be possible for speech and writing to be declared under these paragraphs to teach or advocate the use of force or violence, and for all those who had spoken or written to be found guilty of treason? Could this not then be extended to all those who had listened or read? The possession of certain books or membership in a political party might thus become a crime; thought and its alleged intention would be made a test of treason; ideas would be placed on trial. This may be thought extreme and unlikely. But the letter of the law is there, and has been applied in other countries. It is therefore dangerous and repressive, a millstone on the liberty of the people. The true distinction between overt acts and ideas, and how they should be dealt with, was stated by Macaulay almost exactly 125 years ago:

> To punish a man because he has committed a crime, or because he is believed, though unjustly, to have committed a crime, is not persecution. To punish a man, because we infer from the nature of some doctrine which he holds, or from the conduct of other persons who hold the same doctrines with him, that he will commit, a crime, is persecution, and is, in every case, foolish and wicked.

The next sentence is slightly paraphrased:

> To argue that, because a man holds certain ideas, he must think it right to change the government by force, and that because he thinks it right, he will attempt to do it, and then, to fund on this conclusion a law for punishing him as if he had done it, is plain persecution.

It is clear that the sections we have been considering could be made the legal basis of persecution. We have already urged that Section 46 be amended. We urge that Section 60 be deleted.

(*c*) *Other Sections*

Sections 64-69 dealing with unlawful assemblies and riots are not new, although some changes for the worse have been made in them. In general, we think the sections are too strict, and have been applied too strictly on occasions in the past. They represent an undue limitation of freedom of speech and assembly.

In particular, we wish to point out three changes which have been made. In the present Code, paragraph (*a*) of Section 69 refers to those "with force and arms wilfully oppose, hinder or hurt" the person whose duty it is to read the proclamation of a riot. In the new Code as proposed, it has been changed to read: "opposes, hinders, or assaults, wilfully and with force." The important words "and arms" have been omitted, thus making prosecution and conviction a good deal easier. Also, the wording has been transposed so that the phrase "wilfully and with force" might be held to qualify only the word "assault" and not the first two words "oppose" or "hinders".

The second change is in paragraph (*b*) of Section 69. In the present Code people are forbidden to "continue together to the number of twelve for thirty minutes" after the proclamation of a riot has been read. In the new Code as

proposed, everyone is liable to life imprisonment who "does not peaceably disperse and depart... immediately" after the proclamation has been read. Thus, under the present Code, no one can be charged with ignoring a reading of the Riot Act unless thirty minutes later at least twelve people are still assembled together. The new Code proposes that "everyone" who does not "immediately" disperse and depart shall be liable to a life sentence.

Finally, paragraph (c) of Section 69 changes the word "know" to the words "has reasonable ground to believe". "Know" is better and should be retained.

Another section which limits freedom of assembly and the right to petition is Section 160. Paragraphs (a) and (c) of this section read in part as follows:

> 160. Every one who
>
> (a) not being in a dwelling house causes a disturbance in or near a public place,
>
> (iii) by *impeding* or molesting *other persons;*
>
> (c) loiters in a public place and *in any way obstructs persons who are there;*
>
> is guilty of an offence punishable on summary conviction.

The wording of this section is too vague, and its scope has been extended as compared with the present Code. Even under the wording as it now stands, the section has been used to curb open public meetings and the collection of signatures to petitions. The section is an additional threat to the right of picketing, and should be amended accordingly.

Lastly, there is Section 51 which reads:

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

The phrase "act of violence" lacks definition. What is the line between violence and intimidation, and legitimate assembly and peaceful demonstration? Parliament and the legislature are sensitive to public opinion, and rightly so. The people should not be hindered in voicing their opinions and making them known to those who represent them.

IV—*Conclusion*

A long step in the direction of repressive laws was taken in 1951, when the Garson amendments to the Criminal Code were adopted. The revisions contained in Bill 93 include these amendments and go a further long step forward beyond them. It is argued in defence of these measures that the protection of our rights and freedom requires that they be given us, that we must lose them if they are to be saved. This does not make sense; it appears to us as false as that other saying: if you want peace, you must prepare for war. Four years before the Garson amendments, Professor A. R. M. Lower of Queen's University wrote: "The new despotism is indeed upon us. It has not come this time, in the form of a King with extravagant claims of divine right, but in the form of a Cabinet with equally extravagant assertions about the safety of the state." It does not seem that the interests of the Canadian people, or that the people themselves, have demanded these far-reaching and steady encroachments on their rights. It would be far better if the direction were reversed. The suggestions we have made with respect to the proposed revisions of the Criminal Code are submitted with the purpose of reversing it.

When the Garson amendments were introduced nearly two years ago, it was reported that this was done at the request of the United States. *Saturday Night* stated flatly: "These amendments were drafted very hastily, and upon

the urgent instigation of the United States." Earlier, the Montreal *Gazette* on May 3, 1951 had written:

> The new legislation dealing with sabotage and espionage the government will ask parliament to pass is being introduced here at the request of the U.S. government. That is something that Prime Minister St. Laurent did not make clear when he made his announcement.
>
> During negotiations for the leased bases agreement, the U.S. made it clear that Canadian security restrictions were not considered adequate. Accordingly and at U.S. request, the Dominion agreed to seek legislation which would provide better protection for U.S. interests.

Considering that Bill 93 contains more of the same medicine, it is not unreasonable to conclude that it comes from the same bottle. If such is the case, it injures the nation's independence and is ungrateful to the national dignity of its people.

The sections of Bill 93 considered in this brief are in marked contrast to the provisions of the United Nations Universal Declaration of Human Rights. The Declaration speaks of the "equal and inalienable rights of all members of the human family", and says that all Member States of the United Nations, of which Canada is one, have pledged themselves to promote "respect for and observance of human rights and fundamental freedoms." The proposed revisions to the Criminal Code are in conflict with this pledge, which better expresses the wishes of the members of our Union and the Canadian people than the revisions do. Accordingly, the Canadian Section of the International Union of Mine, Mill and Smelter Workers urges your Committee and the House of Commons to give the most careful consideration to the suggestions of our Union which are herewith respectfully submitted.

February, 1953.