

HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

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

Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 7

(including Second Report and Third and Final Report)

APRIL 10, 14, 15, 16, 20, 22, 23, 24, 27, 28, 29, 30,
and MAY 1, 1953

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

PERSONNEL OF THE COMMITTEE
(as at May 1, 1953)

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

Browne (<i>St. John's West</i>)	Garson	Macnaughton
Cameron	Henderson	Montgomery
Cardin	Huffman	Noseworthy
Churchill	MacInnis	Robichaud
Crestohl	MacNaught	Shaw.
Gauthier (<i>Lac St. Jean</i>)		

(Quorum, 7)

ANTOINE CHASSÉ
Clerk of the Committee.

CORRECTION

Page 227, the portion of sentence contained in the first three lines up to and including the figure 12 in the third line should be corrected to read as follows:

code of ethics implying a high degree of responsibility and privilege in being licensed to provide food and services to the public. Our present membership across Canada is approximately 1200.

ORDERS OF REFERENCE

WEDNESDAY, April 15, 1953.

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

Attest.

LEON J. RAYMOND,
Clerk of the House.

WEDNESDAY, April 29, 1953.

Ordered,—That the name of Mr. Cardin be substituted for that of Mr. Carroll; and

That the name of Mr. Huffman be substituted for that of Mr. Cannon on the said Committee.

Attest.

LEON J. RAYMOND,
Clerk of the House.

MINUTES OF PROCEEDINGS

House of Commons, Room 268,
FRIDAY, April 10, 1953.

The Special Committee appointed to consider Bill 93, (Letter O of the Senate), an Act respecting the Criminal Law and all matters pertaining thereto, met at 10.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (Essex West), Browne (St. John's West), Cameron, Cannon, Garson, MacInnis, MacNaught, Montgomery, Noseworthy and Robichaud.

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

The Committee resumed from Wednesday, March 25, 1953, clause by clause consideration of Bill 93, with particular reference to such clauses of the Bill as are referred to in the numerous submissions made to the Committee.

On motion of Mr. Robichaud, clause 7 was reconsidered and passed unchanged.

On Clause 8:

On motion of Mr. Cameron,

Resolved: That the said Clause be amended by deleting sub-clauses (2), (3) and (4) thereof, and substituting therefor the following:

Appeal.

(2) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court and imposes punishment in respect thereof, that person may, with leave of the court of appeal or a judge thereof, appeal to the court of appeal

(a) from the conviction, or

(b) against the punishment imposed.

Part XVIII applies.

(3) For the purposes of an appeal under subsection (2) the provisions of Part XVIII apply, *mutatis mutandis*.

On motion of Mr. Robichaud clauses 11 and 16 were re-considered and, after a lengthy discussion thereon, both were allowed to stand for redrafting.

On motion of Mr. Noseworthy, the Committee unanimously agreed that thanks be extended to Mr. J. C. Martin, Q.C., in appreciation of his valuable contribution to the work of the Committee by the preparation, for the benefit of the members, of a comprehensive summary of all objections and representations made in respect to Bill 93.

At 12.30 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Tuesday, April 14, 1953.

Room 497,
TUESDAY, April 14, 1953.

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

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

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

The Committee resumed from Friday, April 10, with a clause by clause consideration of Bill 93, with particular regard to such of those as have been stood over at their former sittings.

Clause 28 was again allowed to stand.

On Clause 46:

On motion of Mr. MacInnis,

Resolved: That the said clause be amended as follows:

(1) Add the following as paragraph (e) after paragraph (d) of subclause (1):

(e) without lawful authority, communicates or makes available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada;

(2) Reletter paragraphs (e) and (f) of subclause (1) as paragraphs (f) and (g) respectively.

(3) Delete paragraph (f) of subclause (1), as relettered, and substitute therefor the following:

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

On Clause 47:

On motion of Mr. Browne (St. John's West),

Resolved: That the said clause be amended as follows:

Delete paragraph (b) of subclause (1) and substitute therefor the following:

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

Clause 47 as amended was passed.

Clauses 48 and 49 were passed.

On Clause 50:

On motion of Mr. Robichaud,

Resolved: That the said clause be amended as follows:

Delete paragraphs (a), (b) and (c) of sub-clause (1) thereof and substitute therefor the following:

Assisting alien enemy to leave Canada.

(a) incites or wilfully assists a subject of

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

(ii) a state against whose forces Canadian forces are engaged in hostilities, whether or not a state of war exists between Canada and the state whose forces they are, to leave Canada without the consent of the Crown, unless the accused establishes that assistance to the state referred to in subparagraph (i) or the forces of the state referred to in subparagraph (ii), as the case may be, was not intended thereby, or

Omitting to prevent treason.

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

Clause 50 as amended was passed.

Clause 51 was passed.

Clause 52: After some discussion thereon, the said clause again was allowed to stand for further consideration.

Clauses 53 to 57, and 60 to 62, inclusive, were passed.

It was agreed that Clause 63 be reconsidered and, after some discussion, the said clause was passed without change.

On Clause 69:

On motion of Mr. Browne (*St. John's West*),

Resolved: That the said clause be amended as follows:

1. By inserting a comma after the word "made" at the end of line 15 on page 25 of the Bill.
2. That the word "immediately" appearing in line 17 of page 25 of the Bill be deleted and the word "forthwith" be substituted therefor.

Clause 69 as amended was passed.

At 5.30 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Wednesday, April 15, 1953.

Room 268,

WEDNESDAY, April 15, 1953.

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

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

In attendance: Mr. A. A. Moffat, Q.C., Mr. A. J. MacLeod, Senior Advisory Counsels, and Dr. Louis-Philippe Gendreau, Assistant Director and Deputy Commissioner of Penitentiary and Psychiatry, Department of Justice.

The Committee resumed from Tuesday, April 14, clause by clause consideration of Bill 93 with particular regard to such as those as were stood over at former sittings.

On clause 28,

On motion of Mr. Noseworthy,

Resolved:—That the said clause be amended as follows:

Page 13, lines 34 and 45, delete the word "justified" and substitute therefor the following: "protected from criminal responsibility".

Clause 28 as amended was passed.

Clause 87 was by agreement reconsidered and again passed without change.

Clause 96 was passed.

On clause 116,

Mr. Noseworthy moved, seconded by Mr. Robichaud, that the said clause be deleted. After discussion thereon, the said motion was allowed to stand for further consideration.

On clause 162,

On motion of Mr. Macnaughton,

Resolved: That the said clause be amended as follows:

Page 52, line 29, delete this clause and substitute therefor the following:

Trespassing at night.

162. Every one who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling house situated on that property is guilty of an offence punishable on summary conviction.

Clause 162 as amended was passed.

The said clause, as amended, was passed.

The Committee then heard Dr. Louis Philippe Gendreau, Assistant Director and Deputy Commissioner of Penitentiary and Psychiatry, Department of Justice, in regard to PART IV of Bill 93, respecting SEX OFFENCES, PUBLIC MORALS AND DISORDERLY CONDUCT.

At 6.15 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Thursday, April 16, 1953.

Room 268,

THURSDAY, April 16, 1953.

The Committee met at 11.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

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

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

The Committee resumed from Wednesday, April 15, clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law.

On clause 200,

On motion of Mr. MacInnis,

Resolved: That said clause be amended as follows:

Page 70, line 26, delete the said clause and substitute therefor the following:

Killing by influence of the mind.

200. No person commits culpable homicide where he causes the death of a human being

(a) by any influence on the mind alone, or

(b) by any disorder or disease resulting from influence on the mind alone,

but this section does not apply where a person causes the death of a child or sick person by wilfully frightening him.

Clause 202 was passed.

On clause 206,

On motion of Mr. Montgomery,

Resolved: That the recommendation be made to the House in respect to the said clause concerning capital punishment.

On clause 217,

On motion of Mr. Shaw,

Resolved: That the said clause be amended as follows:

Page 74, line 1, delete present clause and substitute the following:

Administering noxious thing.

217. Every one who administers or causes to be administered to any person or causes any person to take poison or any other destructive or noxious thing is guilty of an indictable offence and is liable

(a) to imprisonment for fourteen years, if he intends thereby to endanger the life of or to cause bodily harm to that person, or,

(b) to imprisonment for two years, if he intends thereby to aggrieve or annoy that person.

Clause 217 as amended was passed.

On clause 221,

On motion of Mr. Montgomery,

Resolved: That the said clause be amended as follows:

Page 75, delete lines 1 to 5 inclusive, and substitute the following:

Failing to stop at scene of accident.

(2). Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, horse or vehicle, with intent to escape civil or criminal liability fails to stop his vehicle, give his name and address and, where any person has been injured, offer assistance, is guilty of

Clauses 222 to 225, inclusive, were severally considered and passed.

At 1.15 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., April 20, 1953.

Room 268,
MONDAY, April 20, 1953.

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

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

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

The Committee resumed from Thursday, April 16 clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law.

Clauses 130 to 149, and 151 to 160 were severally considered and passed.

Clauses 134, and subclause (7) of 150 were allowed to stand.

On clause 241,

On motion of Mr. Browne (St. John's West),

Resolved: That the said clause be amended as follows:

Page 81, line 42, delete subclause (2) and substitute therefor the following:

Certificate of marriage.

(2) For the purposes of this section a certificate of marriage issued under the authority of law is *prima facie* evidence of the marriage or form of marriage to which it relates without proof of the signature or official character of the person by whom it purports to be signed.

Clause 241, as amended, was passed.

Considerable discussion took place in regard to clauses 250, 251 and 252, whereafter, it was agreed that the said clauses be allowed to stand for further consideration.

At 5.30 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Wednesday, April 22, 1953.

Room 268,
WEDNESDAY, April 22, 1953.

The Committee met at 11.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

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

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

The Committee resumed from Tuesday, April 21 clause by clause consideration of Bill 93 (Letter O of the Senate) entitled "An Act respecting the Criminal Law", with particular regard to such of the clauses as were stood over at former sittings.

On clause 280:

On motion of Mr. Montgomery, the said clause was allowed to stand for further consideration in view of the representations made thereon by the Canadian Bar Association and introduced by Mr. MacInnis.

Clause 291 was allowed to stand.

On clause 295:

On motion of Mr. Browne (*St. John's West*),

Resolved: That the said clause be amended as follows:

Page 97, line 21—delete this clause and substitute therefor the following:

Possession of house-breaking instruments.

295. (1) Every one who without lawful excuse, the proof of which lies upon him, has in his possession any instrument for house-breaking, vault-breaking or safe-breaking is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Disguise with intent.

(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and is liable to imprisonment for ten years.

The said clause, as amended, was passed.

Clause 297 was again studied and, after some discussion, thereon, it was agreed that the clause should be allowed to stand for further consideration.

Clause 300 was by general agreement reconsidered and passed without change.

Clauses 308 and 328 were by agreement reconsidered and allowed to stand for further consideration.

Clause 330 was passed.

On Clause 339:

Mr. Henderson moved that the said clause be amended as follows:

Page 114, line 25, delete the word "five" and substitute therefor the word "ten".

And the question having been put on the proposed motion of Mr. Henderson, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 11; Nays, 2.

Clause 339, as amended, was passed.

On clause 343:

Mr. Robichaud moved that the said clause be amended as follows:

Page 115, line 32, delete the word "five" and substitute therefor the word "ten".

And the question having been put on the proposed motion of Mr. Robichaud, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 11; Nays, 2.

Clause 343, as amended, was passed.

In the course of the deliberations of the Committee, clauses respecting Capital Punishment, Corporal Punishment and Insanity were discussed. It was agreed that the Committee should complete its clause by clause consideration of Bill 93 and afterwards discuss those questions with a view to draft recommendations to the House on these matters. Such discussion to be reported verbatim.

At 1.05 o'clock p.m., the Committee adjourned to meet again this day at 8.15 o'clock p.m.

EVENING SITTING

The Committee met at 8.15 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

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

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

The Committee continued clause by clause consideration of Bill 93 (Letter O of the Senate) entitled "An Act respecting the Criminal Law", with particular regard to such of the clauses of the Bill as were stood over at former sittings.

Clause 369 was passed.

Clause 385 was, by general agreement, reconsidered and passed without change.

On Clause 386:

On motion of Mr. Cameron,

Resolved: That the said clause be amended as follows:

Page 129, line 17, after the word "wilfully" insert "and without lawful excuse".

Clause 386, as amended, was passed.

On Clause 413:

On motion of Mr. Garson,

Resolved: That sub-clause (2) thereof be amended as follows:

1. Page 140, immediately after line "(vi) section 76," in line 12, insert "(vii) section 192," and

2. That the subsection sub-paragraphs of sub-clause (2) now numbered "(vii) to (xii)" inclusive, be appropriately renumbered "(viii to (xiii)" inclusive.

After some discussion thereon, the said clause again was allowed to stand for further consideration.

Clause 421 was considered at length.

And discussion on clause 421 still continuing, it was agreed to postpone consideration of the said clause until the next sitting.

At 10.15 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Thursday, April 23, 1953.

ROOM 268,

THURSDAY, April 23, 1953.

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

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

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

The Committee resumed from Wednesday, April 22, clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law with particular regard to such clauses of the Bill which had been stood over at former sittings.

On Clause 421:

On motion of Mr. Robichaud,

Resolved: That subclause (3) thereof be amended as follows:

Page 142, line 39, at the end of the said line after the word "writing", insert the following words "before a magistrate".

Clause 421, as amended, was passed.

Clause 431, by unanimous consent, was reconsidered and again passed without change.

Clauses 434 and 435 were severally considered and passed on division.

On clause 437, it was agreed to reconsider the said clause.

On motion of Mr. Robichaud,

Resolved: That the said clause be amended by deleting paragraphs "(a) and (b)" thereof and substituting therefor the following:

"(a) the owner or a person in lawful possession of property, or

(b) a person authorized by the owner or a person in lawful possession of property,"

The said clause, as amended, was carried.

On Clause 438:

On motion of Mr. Noseworthy,

Resolved: That the said clause be deleted and the following substituted therefor:

Delivery to peace officer

438 (1) Any one who arrests a person without warrant shall forthwith deliver that person to a peace officer, and the peace officer may detain the person until he is dealt with in accordance with this section.

Taking before justice

(2) A peace officer who receives delivery of and detains a person who has been arrested without warrant or who arrests a person with or without warrant shall, in accordance with the following provisions, take or cause that person to be taken before a justice to be dealt with according to law, namely,

(a) where a justice is available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice before the expiration of that period; and

- (b) where a justice is not available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice as soon as possible."

Clause 438, as amended, was passed.

Clause 462 was passed.

Clause 468 was again allowed to stand, to be further considered in the light of the suggested amendment by Mr. Robichaud.

On Clause 481:

On motion of Mr. Churchill,

Resolved: That the said clause be deleted and the following substituted therefor:

Continuance of proceedings when judge or magistrate unable to act

481 (1) Where an accused elects, under section 450, 468 or 475 to be tried by a judge or magistrate, as the case may be, and the judge or magistrate before whom the trial was commenced dies or is for any reason unable to continue, the proceedings may, subject to the provisions of this section, be continued before another judge or magistrate, as the case may be, who has jurisdiction to try the accused under this Part.

Where adjudication made

(2) Where an adjudication was made by a judge or magistrate before whom the trial was commenced, the judge or magistrate, as the case may be, before whom the proceedings are continued shall, without further election by the accused, impose the punishment or make the order that, in the circumstances, is authorized by law.

Where no adjudication by judge

(3) Where the trial was commenced before a judge but he did not make an adjudication, the judge before whom the proceedings are continued shall, without further election by the accused, commence the trial again as a trial *de novo*.

Where no adjudication by magistrate.

(4) Where the trial was commenced before a magistrate but he did not make an adjudication, the magistrate before whom the proceedings are continued shall put the accused to his election in accordance with section 468, and the proceedings shall, in all respects, be continued in accordance with this Part as if the accused were appearing before a magistrate for the first time upon the charge laid against him.

Clause 481, as amended, was passed.

On Clause 510:

On motion of Mr. Montgomery,

Resolved: That the said clause be amended by deleting subclause (5) thereof and substituting therefore the following:

Adjournment if accused prejudiced.

(5) Where, in the opinion of the court, the accused has been misled or prejudiced in his defence by a variance, error or omission in an indictment or a count thereof, the court may, if it is of opinion that the

misleading or prejudice may be removed by an adjournment, adjourn the trial to a subsequent day in the same sittings or to the next sittings of the court and may make such an order with respect to the payment of costs resulting from the necessity for amendment as it considers desirable.

Clause 510, as amended, was passed.

On clause 511:

On motion of Mr. MacInnis,

Resolved: That the said clause be deleted and the following substituted therefor:

Amended indictment need not be presented to grand jury

511. Where a grand jury returns a true bill in respect of an indictment and the indictment is subsequently amended in accordance with section 510, it is not necessary, unless the judge otherwise directs, to present the amended indictment to the grand jury, but the indictment, as amended, shall be deemed to be as valid in all respects for all purposes of the proceedings as if it had been returned by the grand jury in its amended form.

Clause 511, as amended, was passed.

Clauses 512, 539 and 558 were, by unanimous consent, severally reconsidered and passed without change.

On Clause 588:

On motion of Mr. Robichaud,

Resolved: That subclause (2) thereof be amended as follows:

Page 200, in line 15, strike out the following words "by the appellant".

The said clause, as amended, was passed.

On clause 592:

On motion of Mr. Noseworthy,

Resolved: That subsection (5) thereof be deleted and the following substituted therefor:

New trial under Part XVI

(5) Where an appeal is taken in respect of proceedings under Part XVI and the court of appeal orders a new trial under this Part, the following provisions apply, namely,

- (a) if the accused, in his notice of appeal or notice of application for leave to appeal, requested that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall be held accordingly;
- (b) if the accused, in his notice of appeal or notice of application for leave to appeal, did not request that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall, without further election by the accused, be held before a judge or magistrate, as the case may be, acting under Part XVI, other than a judge or magistrate who tried the accused in the first instance, unless the court of appeal directs that the new trial be held before the judge or magistrate who tried the accused in the first instance; and

- (c) if the court of appeal orders that the new trial shall be held before a court composed of a judge and jury it is not necessary, in any province of Canada, to prefer a bill of indictment before a grand jury in respect of the charge upon which the new trial was ordered, but it is sufficient if the new trial is commenced by an indictment in writing setting forth the offence with which the accused is charged and in respect of which the new trial was ordered.

Clause 592, as amended, was passed.

On clause 628:

On motion of Mr. MacNaught,

Resolved: That the said clause be deleted and the following substituted therefor:

Compensation for loss of property

628. (1) A court that convicts an accused of an indictable offence may, upon the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by the applicant as a result of the commission of the offence of which the accused is convicted.

Enforcement

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

Moneys found on the accused

(3) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Clause 628, as amended, was passed.

On clause 629:

On motion of Mr. Shaw,

Resolved: That the said clause be deleted and the following substituted therefor:

Compensation to bona fide purchasers

629. (1) Where an accused is convicted of an indictable offence and any property obtained as a result of the commission of the offence has been sold to an innocent purchaser, the court may, upon the application of the purchaser after restitution of the property to its owner, order the accused to pay to the purchaser an amount not exceeding the amount paid by the purchaser for the property.

Enforcement

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

Moneys found on accused

(3) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Clause 629, as amended, was passed.

Clause 634, by unanimous consent, was reconsidered. It was agreed to postpone consideration thereof to a subsequent sitting.

On clause 638:

On motion of Mr. Gauthier (*Lac St. Jean*),
Resolved: That subclause (2) thereof be amended as follows:

Page 220, strike out all the words in line 38 and substitute therefor the following:

(2) A court that suspends the passing of sentence may prescribe as conditions of the recognizance that

Clause 638, as amended, was passed.

At 5.30 o'clock p.m., the Committee adjourned to sit again in the evening at 8.15 o'clock.

 EVENING SITTING

The Committee met at 8.15 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

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

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

The Committee resumed from the afternoon sitting clause by clause consideration of Bill 93 (Letter O of the Senate) An Act respecting the Criminal Law, with particular regard to such clauses of the Bill which had been stood over from previous sittings.

On clause 634:

On motion of Mr. Cameron,

Resolved: That the said clause be amended by deleting subclause (5) thereof and substituting therefor the following:

Exception.

(5) for the purposes of subsection (2) "penitentiary" does not, until a day to be fixed by proclamation of the Governor in Council, include the penitentiary mentioned in section 37 of The Statute Law Amendment (Newfoundland) Act, chapter 6 of the statutes of 1949, or in section 82 of The Penitentiary Act, chapter 206 of the Revised Statutes of Canada, 1952.

Clause 634, as amended, was passed.

The Committee reverted to clause 20 of the Bill, in view of the certain representations made to the Committee through the Honourable Senator Arthur W. Roebuck, Q.C.

On motion of Mr. Henderson, it was agreed that the said clause be reconsidered and he moved that the said clause be amended as follows:

Page 11, in line 30, immediately after the word "warrant" insert the following: "of summons".

And the question having been put on the proposed amendment of Mr. Henderson, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 6; Nays, 3.

Clause 20, as amended, was passed.

Clause 377 was, by unanimous consent, reconsidered and again passed without change.

Clause 648 was, by unanimous consent, reconsidered and

On motion of Mr. MacInnis,

Resolved: That the said clause be amended by adding thereto the following subclause:

Where no coroner in Newfoundland.

(5) Where a sentence of death is executed in a district, county or place in the province of Newfoundland in which there is no coroner, an inquiry shall, for the purposes of this section, be conducted without the intervention of a jury by a magistrate having jurisdiction in the district, county or place, and for the purposes of this subsection the provisions of section 649 and subsections (1), (2) and (3) of this section apply, mutatis mutandis.

Clause 648, as amended, was passed.

Clauses 690 and 691 were considered at length and again allowed to stand.

Clause 692 was, by unanimous consent, reconsidered and again passed without change.

On clause 697,

On motion of Mr. Shaw,

Resolved: That the said clause be amended by adding thereto the following subclause:

Waiving jurisdiction.

(4) A summary conviction court before which proceedings under this Part are commenced may, at any time before the trial, waive jurisdiction over the proceedings in favour of another summary conviction court that has jurisdiction to try the accused under this Part.

Idem.

(5) A summary conviction court that waives jurisdiction in accordance with subsection (4) shall name the summary conviction court in favour of which jurisdiction is waived, except where, in the province of Quebec, the summary conviction court that waives jurisdiction is a judge of the sessions of the peace.

Clause 697, as amended, was passed.

Clauses 698 and 707 were severally considered and passed.

Clause 709 was, by unanimous consent, reconsidered in view of representations made thereon by the Quebec Bar Association.

After some discussion thereon, the said clause was again passed without change.

On clause 726,

On motion of Mr. MacNaught,

Resolved: That subclause (3) of this clause be deleted entirely.

Clause 726, as amended, was passed.

On clause 746,

On motion of Mr. Noseworthy,

Resolved: That this clause be deleted and the following substituted therefor:

Transitional.

746. (1) Where proceedings for an offence against the criminal law were commenced before the coming into force of this Act, the offence shall, after the coming into force of this Act, be dealt with, inquired into, tried and determined in accordance with this Act, and any penalty, forfeiture or punishment in respect of that offence shall be imposed as if this Act had not come into force, but where, under this Act, the penalty, forfeiture or punishment in respect of the offence is reduced or mitigated in relation to the penalty, forfeiture or punishment that would have been applicable if this Act had not come into force, the provisions of this Act relating to penalty, forfeiture and punishment shall apply.

Idem.

(2) Where proceedings for an offence against the criminal law are commenced after the coming into force of this Act the following provisions apply, namely,

(a) the offence, whenever committed, shall be dealt with, inquired into, tried and determined in accordance with this Act;

(b) if the offence was committed before the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act or by the law that would have applied if this Act had not come into force, whichever penalty, forfeiture or punishment is the less severe; and

(c) if the offence is committed after the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act.

Clause 746, as amended, was passed.

Clause 747 was passed.

On clause 11,

On motion of Mr. MacInnis,

Resolved: That the said clause be deleted.

On motion of Mr. Garson,

Resolved: That the Bill be further amended as follows:

- (a) That the present subclause (1) of Clause 8 become Clause 8.
- (b) That the present subclauses (2), (3) and (4) of Clause 8 become subclauses (1), (2) and (3) of Clause 9.
- (c) That the present Clause 9 become Clause 10.
- (d) That the present Clause 10 become Clause 11.

At 10.15 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Friday, April 24, 1953.

Room 497,

FRIDAY, April 24, 1953.

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

Members present: Messrs. Brown (Essex West), Browne (St. John's West), Cannon, Gauthier (Lac St. Jean), Garson, MacInnis, MacNaught, Montgomery, Noseworthy, Robichaud and Shaw.

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

The Committee resumed from Thursday, April 23, clause by clause consideration of Bill 93 (Letter O of the Senate) An Act respecting the Criminal Law, with particular regard to such clauses of the Bill as stood over from former sittings.

On clause 2:

On motion of Mr. Montgomery,

Resolved: That subclause 10 thereof be corrected as follows:

Page 3, lines 7 and 8 should not be indented.

Clause 2, as amended, was passed.

On clause 116:

On motion of Mr. Robichaud,

Resolved: That the said clause be amended by

- (a) deleting subclause (1) thereof and substituting therefor the following:

Witness giving contradictory evidence.

116 (1) Every one who, being a witness in a judicial proceeding, gives evidence with respect to any matter of fact or knowledge and who subsequently, in a judicial proceeding, gives evidence that is contrary to his previous evidence is guilty of an indictable offence and is liable to imprisonment for fourteen years, whether or not the prior or the later evidence or either of them is true, but no person shall be convicted under this section unless the court, judge or magistrate, as the case may be, is satisfied beyond a reasonable doubt that the accused, in giving evidence in either of the judicial proceedings, intended to mislead.

and

- (b) inserting immediately after subclause (2) thereof a new subclause as follows:

Consent required.

(3) No proceedings shall be instituted under this section without the consent of the Attorney General.

In this connection, communications exchanged between the Attorney General for the Province of Ontario and the Minister of Justice were read to the Committee.

Clause 116, as amended, was passed.

On clause 134:

On motion of Mr. Noseworthy,

Resolved: That this clause be deleted and the following substituted therefor:

Instruction to jury.

134. Notwithstanding anything in this Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 136, 137 or subsection (1) or (2) of section 138, the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular by evidence that implicates the accused, instruct the jury that it is not safe to find the accused guilty in the absence of such corroboration, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true.

Clause 134, as amended, was passed.

On clause 150:

On motion of Mr. MacInnis,

Resolved: That the said clause be amended by deleting subclause (7) thereof and substituting therefor the following:

"Crime comic".

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

- (a) the commission of crimes, real or fictitious, or
- (b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

In this connection, communications exchanged between Mr. J. D. Geller, President of the periodical "Distributor of Canada", and the Minister of Justice, were read to the Committee.

Clause 150, as amended, was passed.

On clause 184:

On motion of Mr. Robichaud,

Resolved: That subclause (1) thereof be amended as follows:

- (a) Page 66, line 34, strike out the word "or".
- (b) Line 36, immediately after the word "prostitution" insert the word "or".

(c) Immediately after paragraph (j), add the following new paragraph (k):

(k) being a female person, lives wholly or in part on the avails of prostitution of another female person,

(d) Line 42, delete the word "earnings" where it appears and substitute therefor the word "avails".

Clause 184, as amended, was passed.

On clause 250:

On motion of Mr. Montgomery,

Resolved: That the said clause be amended as follows:

Page 83, in lines 39 and 40, delete "two years or to a fine of five thousand dollars or to both" and substitute therefor "five years".

Clause 250, as amended, was passed.

On clause 251:

On motion of Mr. Shaw,

Resolved: That the said clause be amended as follows:

Page 84, line 3, strike out the words "or to a fine of one thousand dollars or to both".

Clause 251, as amended, was passed.

On clause 252:

On motion of Mr. Noseworthy,

Resolved: That subclause (3) of clause 252 be amended as follows:

Page 84, in lines 19 and 20, delete the words "two years or to a fine of one thousand dollars or to both" and substitute therefor the words "five years".

Clause 252, as amended, was passed.

Clause 280 was, by unanimous consent, reconsidered and on motion of Mr. MacInnis it was

Resolved: That the said clause be amended by deleting paragraphs (a) and (b) thereof and substituting therefor the following:

(a) to imprisonment for ten years, where the property stolen is a testamentary instrument or where the value of what is stolen exceeds fifty dollars, or

(b) to imprisonment for two years, where the value of what is stolen does not exceed fifty dollars.

Clause 280, as amended, was passed.

Clause 291 was considered and passed.

On clause 297:

On motion of Mr. Browne (St. John's West),

Resolved: That the said clause be amended by deleting paragraphs (a) and (b) thereof and substituting therefor the following:

(a) to imprisonment for ten years, where the property that comes into his possession is a testamentary instrument or where the value of what comes into his possession exceeds fifty dollars, or

(b) to imprisonment for two years, where the value of what comes into his possession does not exceed fifty dollars.

Clause 297, as amended, was passed.

On clause 304:

On motion of Mr. Gauthier (*Lac St. Jean*),

Resolved: That subclause (2) of the said clause be amended by deleting paragraphs (a) and (b) thereof and substituting therefor the following:

- (a) to imprisonment for ten years, where the property obtained is a testamentary instrument or where the value of what is obtained exceeds fifty dollars, or
- (b) to imprisonment for two years, where the value of what is obtained does not exceed fifty dollars.

Clause 304, as amended, was passed.

Clause 308 was, by unanimous consent, reconsidered and on motion of Mr. Shaw it was

Resolved: That the said clause be amended by inserting after the word "who" in line 20, page 102, the following word "fraudulently".

Clause 308, as amended, was passed.

At 5.40 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m., Monday, April 27, 1953.

ANTOINE CHASSÉ,
Clerk of the Committee.

MINUTES OF PROCEEDINGS

MONDAY, April 27, 1953.

The Special Committee appointed to consider Bill No. 93 (Letter O of the Senate), intitled: "An Act respecting the Criminal Law", and all matters pertaining thereto, met at 3.30 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

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

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

The Committee resumed consideration of Bill No. 93.

On Clause 328:

Agreed,—That the said clause be amended by adding a subclause (2) as follows:

- (2) No proceedings shall be instituted under this section without the consent of the Attorney General.

On Clause 365:

Letters from the Canadian Congress of Labour and the Trades and Labor Congress of Canada to the Department of Justice were read to the Committee by Mr. Garson.

On motion of Mr. Garson,

Ordered,—That copies of the above-mentioned letters be made and distributed to Committee members.

Clauses 365, 366, 367, 371, 372 and 373 were allowed to stand.

Clause 413 was considered and discussion continued thereon, at 5.30 o'clock p.m. the Committee adjourned until 3.30 o'clock p.m., Tuesday, April 28, 1953.

E. W. INNES,
Acting Clerk of the Committee.

ROOM 268,
TUESDAY, April 28, 1953.

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

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

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

The Committee resumed from Monday, April 27, clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, with particular regard to those clauses of the Bill which had been stood over from previous sittings.

On clause 413:

On motion of Mr. Noseworthy,

Resolved: That the said clause be further amended by adding to paragraph (a) of subclause (2) thereof the following:

Section 62, concerning Sedition; Section 101, concerning Bribery of Officers, and Section 136, concerning Rape.

Clause 413 was allowed to stand for the purpose of considering a further amendment which would exclude from the jurisdiction of every court of criminal jurisdiction:

- (a) the offence of attempting to commit any offence mentioned in paragraph (a) of subclause (2) and
- (b) the offence of conspiring to commit any offence mentioned in paragraph (a) of subclause (2).

On clause 468:

The Committee had before it for consideration the suggestion by Mr. Robichaud that the said clause be redrafted so that the jurisdiction of the Magistrate in the summary trial of indictable offences *with consent* shall not extend beyond the offences provided for by section 772 of the New Summary Trial Procedure enacted by Chapter 39, section 35, 12 George VI—1948.

After discussion on the said suggestion by Mr. Robichaud, clause 468, was passed without change.

On clause 469:

On motion of Mr. MacInnis, the said clause was considered and it was

Resolved: That the said clause be amended by adding thereto the following subclause:

Where value more than fifty dollars.

(2) Where an accused is before a magistrate charged with an offence mentioned in paragraph (a) of section 467, and, at any time before the magistrate makes an adjudication, the evidence establishes that the value of what was stolen, obtained, had in possession or attempted to be stolen or obtained, as the case may be, exceeds fifty dollars, the magistrate shall put the accused to his election in accordance with subsection (2) of section 468.

(3) Where an accused is put to his election pursuant to subsection (2), the following provisions apply, namely,

(a) if the accused does not elect to be tried by a magistrate, the magistrate shall continue the proceedings as a preliminary inquiry under Part XV, and, if he commits the accused for trial, he shall comply with paragraphs (a) and (b) of subsection (3) of section 468; and

(b) if the accused elects to be tried by a magistrate, the magistrate shall endorse on the information a record of the election and continue with the trial.

The present clause 469 in the Bill will then be 469(1).

Clause 469, as amended, was passed.

Some discussion took place in respect to clause 179 of the Bill, concerning Lotteries, and such portion of clause 467 as is related to Lotteries.

On motion of Mr. Shaw, it was agreed that this question be included, among other things, in a separate report to the House.

On clause 690:

On motion of Mr. Cannon,

Resolved: That the said clause be amended as follows:

Page 237, line 13, after the word "refused" insert the words "on the merits".

Clause 690, as amended, was carried.

On clause 691, Mr. Shaw moved that the said clause be amended by adding thereto a new subclause as follows:

When appeal to be heard.

(3) Notwithstanding anything in Part XVIII or in rules of court, the appeal of an appellant who has filed notice of appeal shall be heard within seven days after the filing of proof of service of the notice of appeal upon the respondent and, where a notice of appeal is filed when the court of appeal is not sitting, a special sittings of the court of appeal shall be convened for the purpose of hearing the appeal.

After some discussion thereon and the question having been put on the proposed amendment of Mr. Shaw, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 6; Nays, 5.

Mr. Shaw moved that Clause 691, as amended, be adopted.

And the question having been put on the proposed motion of Mr. Shaw it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 6; Nays, 5.

Clause 691, as amended, was passed.

Schedule to Part XXIV.

On motion of Mr. Montgomery,

Resolved: That the said schedule be amended by deleting therefrom on pages 258 and 259 of Bill 93, Items 20, 21, 22, 23, 25, 26, 28 and 29, and substituting therefor the following:

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
| 20. Mileage to serve summons, or subpoena or to make an arrest, each way, for each mile | \$0.10 |
| (Where a public conveyance is not used, reasonable costs of transportation may be allowed.) | |
| 21. Mileage where service cannot be effected, upon proof of a diligent attempt to effect service, each way, for each mile... | 0.10 |
| 22. Returning with prisoner after arrest to take him before a summary conviction court or justice at a place different from the place where the peace officer received the warrant to arrest, if the journey is of necessity over a route different from that taken by the peace officer to make arrest, each way, for each mile | 0.10 |
| 23. Taking a prisoner to prison on remand or committal, each way, for each mile | 0.10 |
| (Where a public conveyance is not used, reasonable costs of transportation may be allowed. No charge may be made under this item in respect of a service for which a charge is made under item 22.) | |
| 25. Each day attending trial | 4.00 |
| 26. Mileage travelled to attend trial, each way, for each mile.... | 0.10 |
| 28. Actual living expenses when away from ordinary place of residence, not to exceed per day | 10.00 |
| 29. Mileage travelled to attend trial, each way, for each mile | 0.10 |

Item 27 of the Schedule was discussed at length and the question thereon having been put, it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 5; Nays, 4.

On clause 745:

On motion of Mr. Cameron,

Resolved: That subclause (2) thereof be deleted.

At 5:30 o'clock p.m., the Committee adjourned to meet again at 8:15 o'clock p.m. this day.

EVENING SITTING

The Committee met again at 8:15 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

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

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

The Committee resumed from 5:30 o'clock p.m. clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, with particular regard to those sections of the Bill which had been stood over from previous sittings.

On clause 166:

It was agreed to reconsider this clause whereupon Mr. Crestohl moved that the said clause be replaced by the following:

166. (1) Everyone who wilfully and in bad faith publishes a statement, tale or news that is false and that causes or is likely to cause injury or mischief to a public interest is guilty of an indictable offence and is liable to imprisonment for two years.

(2) *Injury or mischief to a public interest shall include promoting disaffection among or hostility or ill-will between different classes of persons in Canada.*

In amendment to the proposed amendment of Mr. Crestohl, Mr. MacInnis moved that Clause 166 of the Bill be amended by merely inserting, on page 53, line 39, after the words "wilfully publishes a" the word "statement,".

And the question having been put on the proposed sub-amendment of Mr. MacInnis it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 13; Nays 0.

Clause 166, as amended, was passed.

On Clause 52:

On motion of Mr. Noseworthy,

Resolved: That the said clause be amended by adding thereto immediately after subclause (2), page 21, line 15, the following new subclause:

Saving.

(3) No person does a prohibited act within the meaning of this section by reason only that

- (a) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or
- (b) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

Idem.

(4) No person does a prohibited act within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (3), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

At 9.45 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Wednesday, April 29, 1953.

WEDNESDAY, APRIL 29, 1953.

The Committee met at 12.00 o'clock noon. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (Essex West), Browne (St. John's West), Cameron, Cannon, Gauthier (Lac St. Jean), Garson, MacInnis, Montgomery, Noseworthy, Robichaud and Shaw.

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

The Committee resumed from the previous day clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, with particular regard to those clauses of the Bill that were stood over from previous sittings.

On Clause 413:

On motion of Mr. Montgomery,

Resolved: That paragraphs (a), (b) and (c) of subclause (2), as previously amended be deleted and the following substituted therefor:

(a) an offense under any of the following sections, namely,

Treason.

(i) section 47,

Alarming or harming Her Majesty.

(ii) section 49,

Intimidating Parliament or legislature.

(iii) section 51,

Inciting to mutiny.

(iv) section 53,

Sedition.

(v) section 62,

Piracy.

(vi) section 75,

Piratical acts.

(vii) section 76,

Bribery of officers.

(viii) section 101,

Rape.

(ix) section 136,

Causing death by criminal negligence.

(x) section 192,

Murder.

(xi) section 206,

Manslaughter.

(xii) section 207,

Threat to murder.

(xiii) paragraph (a) of subsection (1) of section 316, or

Combination restraining trade.

(xiv) section 411,

Accessories.

(b) The offense of being an accessory after the fact to treason or murder,

Corrupting justice.

(c) an offense under section 100 by the holder of a judicial office,

Attempts.

(d) the offense of attempting to commit any offense mentioned in paragraph (a), or

Conspiracy.

(e) the offense of conspiring to commit any offense mentioned in paragraph (a).

Clause 413, as further amended, was passed.

Clause 699 was, on the suggestion of Mr. Robichaud, reconsidered and the question thereon having been put it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 6; Nays, 2.

Clause 699 was passed.

Clause 704 was, again on the suggestion of Mr. Robichaud, reconsidered.

On clause 365:

The Committee resumed from Monday, April 27, consideration of the said clause.

The Chairman read the communication addressed to him by the Secretary-Treasurer of the Canadian Congress of Labour on the date of April 28th, and a telegram from the National Chairman of the Canadian and Catholic Confederation of Labour, all in respect to Clause 365.

And the question thereon having been put it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 5; Nays, 1.

Clause 704 was passed.

It was agreed that all communications from or on behalf of the Trades and Labour Congress of Canada, the Canadian Congress of Labour and the Canadian and Catholic Confederation of Labour, which were placed before the Committee on Monday, April 27, and today, appear as addendum to the printed record of the proceedings of this Committee.

And the discussion on Clause 365 still continuing, the said discussion was adjourned to the next sitting.

At 1.10 o'clock p.m., the Committee adjourned to meet again at 2.00 o'clock p.m. this day.

WEDNESDAY, April 29, 1953.

The Committee met at 2.00 o'clock p.m. The Chairman, Mr. Don F. Brown, presided.

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

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

The Committee resumed the adjourned discussion on Clause 365 of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law.

Mr. Shaw moved that the said clause be amended by adding thereto the following new subclause:

(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

(a) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(b) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization, if, before the stoppage of work occurs, all steps provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

In amendment to the proposed amendment of Mr. Shaw, Mr. Noseworthy moved that the four last lines of the amendment, namely,

If, before the stoppage of work occurs, all steps provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

be deleted.

And the question having been put on the proposed sub-amendment of Mr. Noseworthy it was, on a show of hands, resolved in the negative on the following division: Yeas, 3; Nays, 4.

And the question having been put on the proposed amendment of Mr. Shaw it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 4; Nays, 3.

Mr. Cannon moved that clause 365, as amended, be adopted.

And the question having been put on the motion of Mr. Cannon it was, on a show of hands, resolved in the affirmative on the following division: Yeas, 4; Nays, 3.

Clause 365 as amended was passed.

The Committee considered Clause 366.

And the discussion on Clause 366 still continuing, the said discussion was adjourned to the next sitting.

At 3.15 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Thursday, April 30, 1953.

THURSDAY, April 30, 1953.

The Committee met at 11.30 o'clock a.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Browne (*St. John's West*), Cameron, Cardin, Crestohl, Gauthier (*Lac St. Jean*), Garson, Henderson, Huffman, MacInnis, MacNaught, Macnaughton, Montgomery, Noseworthy, Robichaud and Shaw.

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

The Committee resumed from Wednesday, April 29, clause by clause consideration of Bill 93 (Letter O of the Senate), An Act respecting the Criminal Law, with particular regard to those clauses of the Bill which had been stood over from previous sittings

On Clause 366:

Mr. MacInnis moved that subclause (2) thereof be amended by inserting after the word "information," in line 10 on page 123, the following words: "or of peacefully persuading a person to work or abstain from working".

After some discussion thereon and the question having been put on the proposed motion amendment to subclause (2) of Clause 366 of the Bill by Mr. MacInnis it was, on a show of hands, resolved in the negative on the following division: Yeas, 5; Nays, 8.

Clause 366 was passed on division, after Mr. Robichaud had made further objection to some of its provisions.

Clauses 367 and 371 were passed.

On Clause 372:

On motion of Mr. Shaw,

Resolved: that the said clause be amended by adding thereto the following subclauses (6) and (7):

Saving.

(6) No person commits mischief within the meaning of this section by reason only that

(a) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(b) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

Idem.

(7) No person commits mischief within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (6), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

Clause 372, as amended, was passed.

On Clauses 16, 179, 206, 641 and 642:

On motion of Mr. Montgomery, seconded by Mr. Crestohl,

Resolved: That in reporting Bill 93 which generally continues the provisions of the present law relating to the defence of insanity, lotteries, and the imposition of punishment by whipping and by sentence of death, the Committee does so with the strong recommendation that the Governor General in Council give consideration to the appointment of a Royal Commission, or to the submission to Parliament of a proposal to set up a Joint Parliamentary Committee of the Senate and the House of Commons, which said Royal Commission or Joint Parliamentary Committee shall consider further and report upon the substance and principles of the said provisions of the law, and shall recommend whether any of those provisions should be amended and, if so, shall recommend the nature of the amendments to be made.

At 1.00 o'clock p.m., the Committee adjourned to meet again at 3.30 o'clock p.m. this day.

AFTERNOON SITTING

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

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

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

The Committee resumed from the morning sitting clause by clause consideration of Bill 93 (Letter O of the Senate) An Act respecting the Criminal Law, with particular regard to the remaining clauses of the Bill stood over from previous sittings.

Clauses 16, 179 and 206 were passed.

On Clause 641:

On motion of Mr. Robichaud,

Resolved: That the said clause be amended by

(a) deleting thereof subclause (3) and substituting therefor the following:

Supervision

(3) A sentence of whipping shall be executed under the supervision of the prison doctor or, if he is unable to be present, it shall be executed under the supervision of a duly qualified medical practitioner to be named by the Attorney General of Canada, where the sentence is executed in a prison administered by the Government of Canada, or, where the sentence is executed in a prison administered by the government of a province, to be named by the Attorney General of that province.

Instrument to be used

(4) The instrument to be used in the execution of a sentence of whipping shall be a cat-o'-nine tails, unless some other instrument is specified in the sentence.

When to be used

(5) A sentence of whipping shall be executed at a time to be fixed by the keeper of the prison in which it is to be executed, but, whenever practicable, a sentence of whipping shall be executed not less than ten days before the expiration of any term of imprisonment to which the convicted person has been sentenced.

and

(b) that the present subclause (4) be renumbered as subclause (6).

Clause 641, as amended, was passed.

Clause 642 was passed.

On Clause 9, as amended:

On motion of Mr. Montgomery,

Resolved: That the new Clause 9 adopted on April 23rd be deleted and the following substituted therefor:

Appeal

9. (1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court and imposes punishment in respect thereof, that person may, with leave of the Court of appeal or a judge thereof, appeal to the court of appeal

- (a) from the conviction, or
- (b) against the punishment imposed.

Part XVIII applies

(2) For the purposes of an appeal under subsection (1) the provisions of Part XVIII apply, *mutatis mutandis*.

New Clause 9, as further amended, was passed.

On Clause 116:

It was agreed that this clause be reconsidered in the light of a communication received from the Attorney General for the Province of Ontario, addressed to the Honourable S. S. Garson, Q.C., Attorney General for Canada and Minister of Justice, Ottawa.

The said communication was read to the Committee whereafter it was agreed that the said communication be published as part of the addendum to the printed record of the Proceedings.

Clause 116, as amended, was passed without further change.

The preamble, the title and the short title of the Bill were severally adopted and it was ordered that Bill 93 (Letter O of the Senate) An Act respecting the Criminal Law, as amended, be reported to the House.

At 4.45 o'clock p.m., the Committee adjourned to meet again at 11.30 o'clock a.m., Friday, May 1, 1953.

FRIDAY, May 1, 1953.

The Committee met at 12.30 o'clock p.m. The Chairman, Mr. Don. F. Brown, presided.

Members present: Messrs. Brown (*Essex West*), Cardin, Crestohl, Garson, Gauthier (*Lac St. Jean*), Huffman, MacInnis, MacNaught, Montgomery, Noseworthy, Robichaud and Shaw.

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

The Committee had before it for consideration a draft of a Third Report carrying out the Committee's views expressed in the resolution passed on the previous day in respect to the following questions:

- (a) Defence of Insanity
- (b) Capital Punishment
- (c) Corporal Punishment
- (d) Lotteries

After various changes suggested in the Draft Report, it was, on motion of Mr. MacInnis, unanimously adopted and ordered to be presented to the House as the Third and Final Report of the Committee.

Expressions of thanks were voiced by various members to the Chairman and the Minister of Justice, also to the officials of the Justice Department and the staff of the Committees Branch and Committee Reporters, to which the Chairman and the Minister replied in grateful terms.

At 1.15 o'clock p.m., the Committee adjourned sine die.

ANTOINE CHASSÉ,
Clerk of the Committee.

ADDENDUM

GREENBERG & WRIGHT
Barristers and Solicitors
78 Bank Street
Ottawa, Canada

By Hand
Mr. A. J. MacLeod,
Department of Justice,
Ottawa, Ontario.

Dear Mr. MacLeod:

Re: Amendment to the Criminal Code,
Your File No. 165000-3

This will acknowledge receipt of your letter of March 14th. I have discussed the amendments which you have suggested with Mr. Donald MacDonald and Dr. E. A. Forsey. Their opinion is—and I am in agreement therewith—that your suggested amendments do not meet the objections which were raised by the Canadian Congress of Labour.

You will recall that in the brief which was submitted to the Special Committee of the House of Commons and to the Honourable Minister of Justice, the point was made that the Criminal Code is no place to make provision for regulating relations between management and labour. It was pointed out that the Industrial Relations and Disputes Investigation Act provides for specific penalties for illegal strikes and there does not appear to be any justification for imposing additional penalties by way of Sections 365 and 372. The suggested amendments have the effect of making criminal offences of illegal strikes. At our meeting with the Minister of Justice, the Minister pointed out that the responsibility of the Commission which was appointed to revise and consolidate the Criminal Code is not to make new law, but to codify existing law. We submitted at the meeting that both Sections 365 and 372 contain provisions which do not appear either in the present Criminal Code or in any of the previous Codes. Certainly the suggested amendments represent new law.

If it is considered to be desirable to enact Sections 365 and 372, then I have been instructed by the Canadian Congress of Labour to recommend the following amendments, namely:

365. (2) No person, being the employee of an employer or a member of an organization of employees formed for the purpose of regulating relations between employers and employees wilfully breaks a contract within the meaning of sub-section (1) by reason only that he stops work as the result of a dispute between the trade union representing him and his fellow employees and his employer.

(3) No trade union wilfully breaks a contract within the meaning of sub-section (1) by reason only that it authorizes stoppage of work by employees represented by such trade union as a result of a dispute between the employer and the trade union acting as bargaining agent on behalf of a groups of employees.

372. (6) No person, being an employee of an employer or a member of an organization of employees formed for the purpose of regulating relations between employers and employees, commits mischief within the meaning of this section by reason only that

- (a) he stops work as the result of a trade dispute between his employer and a trade union acting on his behalf, or
- (b) having stopped work, in the circumstances set out in paragraph (a) hereof, he attends at or near a house or place where a person resides or works or carries on business or happens to be, if he so attends, merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working.

Mr. MacDonald, Dr. Forsey and I would be glad to discuss the matter with Mr. Varcoe and yourself or any other officers of the Department of Justice at any time.

Yours very truly,

MAURICE W. WRIGHT.

THE TRADES AND LABOR CONGRESS OF CANADA

172 McLaren Street, Ottawa 4, Ontario

MARCH 18, 1953.

Office of the President

Mr. A. J. MacLeod,
Office of the
Deputy Minister of Justice,
Ottawa, Ontario.

165000-3

Re: Amendments to the Criminal Code

Dear Sir:

In reply to your letter of March 14th enclosing copies of proposed subclauses to be added to clauses 365 and 372 of Bill 93, these drafts have been discussed with other officers of The Trades and Labor Congress of Canada. While it is appreciated that these drafts have been prepared for discussion purposes only, they generally seem to provide the type of amendment we were seeking when we spoke with Mr. Garson and later submitted our views to the Special Committee of the House of Commons considering Bill 93.

However, we believe that the intent and application of these proposed subclauses could be clarified. We suggest that the word "termination" be deleted wherever it occurs in proposed subclause (2) of clause 365 and that there be substituted therefor the words "failure to conclude, renew or revise" so that the proposed subclause would read:

365. (2) No person, being the employee of an employer or a member of an organization of employees formed for the purpose of regulating relations between employers and employees, wilfully breaks a contract within the meaning of subsection (1) by reason only that he stops work as a result of the failure to conclude, renew or revise, in accordance with law, his agreement with his employer or as a result of the failure to conclude, renew or revise a collective agreement between his employer and a bargaining agent acting on behalf of the organization of which he is a member.

In support of this suggested substitution in your proposed sub-clause (2) of clause 365 we would draw to your attention the fact that many collective agreements now in existence between employers and our affiliated organizations provide for their automatic renewal from year to year unless either party indicates its desire to amend the contract on renewal. It is also true that labor relations laws in all jurisdictions in Canada provide that, in spite of anything contained in the agreement, the contract shall be extended without amendment throughout any period of negotiation and conciliation. The time for strike action is not generally provided in these laws as being the point at which the contract terminates, but the point in time after a due lapse of a certain number of days following the completion of the conciliation procedure. Thus it appears to us that the provision in the labor relations law for the exercise of the right to strike is not geared directly to the termination of the collective agreement, but to the *failure to conclude an agreement or to obtain amendment or renewal* of the existing agreement after all means of negotiation and conciliation have been exhausted.

More particularly, the Industrial Relations and Disputes Investigation Act avoids any mention of the termination of an agreement in laying down the conditions which must precede the taking of strike action. Section 21 of the Act reads, in part: "Where a trade union on behalf of a unit of employees is entitled by notice under this Act to require their employer to commence collective bargaining with a view to the *conclusion or renewal or revision* of a collective agreement, the trade union shall not... declare or authorize a strike of the employees in the unit... until..." The succeeding subsections (a), (b), and (c) lay down the precedent conditions to the taking of strike action.

The Ontario Labour Relations Act, while attempting to fix certain specific times when collective agreements become operative and cease to operate, relies, as does the federal statute, upon compliance with certain precedent conditions before a trade union may exercise the right to strike. Section 49 (1) reads, in part: "Where a collective agreement is in operation no employee bound by the agreement shall strike..." Section 49 (2) reads, in part: "Where no collective agreement is in operation no employee shall strike... until a trade union has become entitled to give and has given notice under section 10 or... (Section 38)... and conciliation services have been granted and seven days have elapsed after the conciliation board has reported to the Minister."

Noting these examples of federal and provincial statutes which serve to set forth the precedent conditions which trade unions must comply with prior to taking strike action, we are of the opinion that the word "termination" in the proposed subclause to clause 365 is not desirable or adequate. We respectfully suggest that further consideration be given to this matter and that the alternate wording suggested above be carefully considered.

It may, on the other hand, be considered more satisfactory and the wording of the proposed subclause made more specific if a modification of the language of the Industrial Relations and Disputes Investigation Act were used.

A further alternative, of course, might be to define "termination" for the purpose of this subclause.

These suggestions, of course, also apply equally to proposed subclause (6) of clause 372.

Yours very truly,

PERCY R. BENGOUGH,
President

The Trades and Labor Congress of Canada.

SPECIAL COMMITTEE

GREENBERG & WRIGHT

Barristers and Solicitors

78 Bank Street
Ottawa

APRIL 10th, 1953.

By Hand

Mr. A. J. MacLeod,
Department of Justice,
Ottawa, Ontario.Re: Amendments to the Criminal Code
Your File No. 165000-3

Dear Mr. MacLeod:

This will acknowledge receipt of the material which you sent to me to-day. I have had an opportunity of discussing the proposed amendments with Mr. Donald MacDonald and Dr. Eugene A. Forsey. The following comments are made with their concurrence.

The Canadian Congress of Labour is prepared to accept your latest amendment to Section 365, provided only that the following words are deleted, namely:

if, before the stoppage of work occurs, all steps, provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

If the Government is not disposed to enact the amendment with the above deletion, then the Canadian Congress of Labour suggests that Section 499 of the present Criminal Code should be retained in place of Section 365. The terms of reference of the Commission dealing with criminal law require it to consolidate and revise the existing law, and I would respectfully submit that it would be more in keeping with the terms of reference to retain the existing law rather than revert to the law as it existed in 1892. In the event, however, that the Government is not disposed to retain Section 499, then the Canadian Congress of Labour has instructed me to advise that it has no objection to the enactment of your redraft of Section 521 of the Criminal Code of 1892 as it existed prior to the revision of 1906.

The Canadian Congress of Labour wishes to make it perfectly clear, however, that it is unequivocally opposed to the proposed amendment to Section 365 if the last four lines thereof are retained. This would have the effect of imposing punishment in the field of industrial relations in addition to the penalties provided for in existing labour legislation. I should also point out that the existing labour legislation provides that negotiations, collective bargaining, conciliation, etc., must be followed prior to taking a strike vote or calling a strike. If the conciliation process is followed, then clearly there is no breach of contract. In effect, therefore, your proposed amendment says that no person would wilfully break a contract if he has not broken a contract.

With respect to Section 372, the Canadian Congress of Labour is satisfied with your latest amendment, subject only to one observation. Sub-clause (b) provides that a person does not commit mischief if "being a member of an organization of employees... he stops work..." At any given time there are a number of employees who, as a result of their being in arrears in payment of dues, are not members in good standing in their organizations. In addition, a large number of employees in Canada have deductions made from their salaries pursuant to the provision of the Rand Formula, which provides that

although certain sums of money are deducted from their salaries and paid to the union, they need not necessarily be members of the union unless they specifically indicate their willingness to be members. Membership in the union should not be any criterion, particularly in the light of Section 18 of the Industrial Relations and Disputes Investigation Act, which provides that "a collective agreement entered into by a certified bargaining agent is, subject to, and for the purposes of this Act, binding upon the bargaining agent and every employee in the unit of employees for which the bargaining agent has been certified..." Similar provisions exist in almost every Province in Canada. Non-union employees could not possibly be covered by your sub-clause (a), since the individual employee never bargains or negotiates with the employer. Negotiations are always conducted by the bargaining agent of all the employees, regardless of union membership. Consequently, I would suggest that sub-clause "b" would be adequately covered by the language contained in my sub-clause "a" as set out in my letter to you dated March 17th last. I hope that, on reflection, you will see the merit of this point.

Mr. MacDonald and Dr. Forsey have instructed me to assure you that they will be glad to discuss any feature of these matters with your Department, if so requested, and, of course, I shall likewise be pleased to meet with you as well.

Yours very truly,

(sgd) MAURICE W. WRIGHT.

MWW:SL

THE TRADES AND LABOR CONGRESS OF CANADA
172 McLaren Street, Ottawa 4, Ontario

APRIL 13th, 1953.

Honourable Stuart S. Garson, Q.C.,
Minister of Justice and
Attorney General,
Ottawa, Ontario.

Attention: Mr. A. J. MacLeod

Dear Mr. Garson:

I have been asked by President Bengough to write you indicating our views in connection with the latest draft amendments to Clauses 365 and 372 of Bill No. 93. In doing so I wish to say how much we appreciate the opportunities which have been provided for frank discussion of proposed amendments to these clauses between ourselves and your legal counsel.

In all of the submissions we have made to the Government, the House of Commons Committee and to yourself in regard to the present revision of the Code, we have tried to consistently emphasize two main points: namely, that the Act should have strength enough to be a useful obstacle to those individuals and organizations whose purpose is to undermine the security of the state and to overthrow our democratic institutions; at the same time the Criminal Code should not be capable of use either as a barrier or as a threat to the legitimate activities of free trade unions. We have considered the latest proposed amendments to Clauses 365 and 372 in this same light.

We believe that the following wording of proposed subclauses (6) and (7) to be added to Clause 372 as this clause appears in Bill 93 will meet the needs of our affiliated membership and we hope that Parliament will agree to these additions to Clause 372. The wording to which we refer is as follows:

(6) No person commits mischief within the meaning of this section by reason only that

(a) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(b) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

(7) No person commits mischief within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (6), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

In regard to Clause 365 we have been pleased to have the opportunity of considering two alternative proposals. The first of these proposals is a return to the law as it stood in Section 521 of the Criminal Code of 1892. The other proposal is to add a new subclause to Clause 365 as this now appears in Bill 93.

In the light of present circumstances and in line with the position we have taken throughout concerning this current revision of the Criminal Code, as summarized in a preceding paragraph we believe that the second proposal, that of adding a new subclause (2) to the present Clause 365 of the Bill, will more adequately meet the needs of our affiliated membership. The wording of the proposed subclause (2) to be added to the present Clause 365 of Bill 93 to which we refer is as follows:

(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

(a) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(b) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization, if, before the stoppage of work occurs, all steps provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

We sincerely hope you will find it possible to accept and recommend the addition of these subclauses, as worded above, to Clauses 365 and 372 of Bill 93.

Again thanking you for your co-operation in this regard, I remain

Yours sincerely,

(sgd) LESLIE E. WISMER,

*Public Relations and Research Director,
The Trades and Labor Congress of Canada.*

THE TRADES AND LABOR CONGRESS OF CANADA

172 McLaren Street, Ottawa 4, Ontario

APRIL 24th, 1953.

Honourable S. S. Garson, Q.C.,
Minister of Justice and
Attorney General,
Ottawa, Ontario.

Dear Mr. Garson:

Following our discussions with yourself and members of your legal staff in connection with proposed draft amendments to Clause 365 of Bill No. 93, and further to our letter of April 13th, we wish to make our position as clear

as possible as to why we very much prefer to have Clause 365 of Bill No. 93 amended by the addition of proposed subclause (2) which in the draft is worded as follows:

Saving

- (2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that
- (a) being the employèe of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or
 - (b) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization,
- if, before the stoppage of work occurs, all steps provided or contemplated by law have been taken through negotiation, collective bargaining, conciliation and arbitration."

Our reasons for preferring this amendment are:

1. It will provide the clearest protection to our members in all of their legitimate trade union activities;
2. Its intent and application is readily understandable and will be to our affiliated membership; and
3. It will at the same time provide for the fullest protection of the state and the local communities of Canada.

We hope you will accept this letter as the expression of our very sincere desire that Clause 365 be amended in this form. At the same time we would like to know that we are not among those who would be pleased if Bill No. 93 should fail to obtain approval at this Session of Parliament.

Yours sincerely,

PERCY R. BENGOUGH,
President,

The Trades and Labor Congress of Canada.

Copy by hand.

THE CANADIAN CONGRESS OF LABOUR

230 Laurier Avenue West,

Ottawa 4, Canada.

APRIL 28, 1953.

Mr. D. F. Brown, M.P.,
Chairman,
Special Committee on Bill No. 93,
Room 114, House of Commons,
Ottawa, Canada.

Dear Mr. Brown:

Reports of your Committee's proceedings yesterday, in this morning's papers, indicate that the position of the Canadian Congress of Labour on the proposed amendment to section 365 of the revised Criminal Code has been seriously misrepresented. I am therefore writing you to restate that position in terms which should leave no doubt in anyone's mind.

1. The Congress is and always has been opposed to illegal strikes. It has never asked, and does not ask now, that they should not be penalized.

2. The Minister of Justice is reported to have said that the CCL proposal "Would protect any kind of wildcat strike". I do not know if the Minister was correctly reported, but I want to state definitely that the CCL proposal would not do anything of the sort. The law of Canada, and of every province, already provides penalties for wildcat or other illegal strikes. The government's proposed section would, as the Minister himself admits, impose "extra penalties". The Canadian Congress of Labour is not asking that illegal strikes should get off scot-free. It is simply asking that they should be subject only to the penalties which Parliament and the provincial Legislatures have already provided, and not to additional and very heavy penalties which neither Parliament nor any Legislature has seen fit to provide in the various Labour Relations Acts passed for the specific purpose of dealing with matters of this kind.

3. The Government would apply the penalties under this section only to illegal strikes. But who defines "illegal"? In most cases, the provincial Legislature. So the Government's proposal would leave workers in most industries completely at the mercy of the provincial Legislatures. A provincial Legislature which chose to make all strikes illegal could thus impose on the strikers not only its own penalties but the additional and very heavy penalties provided by the Criminal Code. Even if a Legislature did not go as far as that, it might surround the right to strike with so many conditions, limitations and restrictions that for all practical purposes it would cease to exist, and once again the additional and very heavy penalties would apply.

4. The effect of this is that Parliament would be prescribing penalties for undefined offences. It would be saying to the provinces "Here's the penalty. Now you decide what it applies to." This is a flagrant breach of the most elementary principles of justice.

5. The Minister is reported to have told the Committee that he did not see how the Dominion Government could interfere in the provinces' wide field of labour jurisdiction. But in effect that is precisely what it is doing. In effect it is saying to the provinces that when they passed their Labour Relations Acts, providing for specific penalties against illegal strikes, they didn't know what they were doing; that the penalties were not heavy enough; that they must be steeply increased.

6. The Government has repeatedly said that this bill is for the sole purpose of consolidating, condensing, clarifying, existing law; that it is not intended to make new law; that no proposals for changes in the existing law could be entertained. The Government's proposal on this point is new law. It does very obviously change the existing law. All the Canadian Congress of Labour is asking is that the existing law, the law which has prevailed for forty-seven years, should be maintained.

The Minister of Justice is reported to have told the Committee that "it would be pretty awkward for a committee of Parliament to recommend a saving clause for wildcat strikes". The Committee would not be recommending a saving clause for wildcat strikes. It would simply be recommending, in accordance with its terms of reference, that the law should remain as it is.

We trust that the views set forth in this letter will be made known to the Committee in the usual manner.

Yours sincerely,

(Signed) DONALD MacDONALD,

Donald MacDonald,
Secretary-Treasurer.

DMacD:MR.

CANADIAN NATIONAL TELEGRAPHS

1953 Apr 28 PM 5 29

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MOA 466 67—FD Montreal Que 28 502P—
Donald F Brown Chairman. Special Committee on Bill 93
House of Commons Room 114 Ottawa

Our organization Canadian and Catholic Confederation of Labour has been in consultation with Canadian Congress of Labour in connection with bill amending Criminal Code Stop We are in agreement with written submission made today by CCL and we wish to inform your committee of this decision from our part Stop We hope that more than serious consideration will be given to suggestion made Canadian Congress of Labour.

GERARD PICARD
Ntl Chairman CCCL

Toronto 5, Ontario,

APRIL 27, 1953.

Dear Mr. Garson:

Following my letter to you of April 20 with reference to Clause 116 in the new draft of the Criminal Code, I noticed a report in the press of the discussion of the contents of my letter. Emphasis was apparently placed upon my comment that from the administrative point of view provisions contained in certain statutes requiring the consent of the Attorney-General to certain types of prosecutions are, from the administrative point of view, a nuisance. This, of course, was not the main point of my objection to the Section in the present Bill. I pointed out in the second paragraph that an informant must satisfy a Justice that there is sufficient cause for issuing process. Also, in this Province the local Crown Attorney is consulted before process is issued, if the offence is complicated. Thus, there are in practice precautions against the issue of process where prima facie there may appear to be insufficient grounds.

Section 116 deals with a crime quite different in its nature and seriousness from offences, for example, under the Lord's Day Act. I may remind you that as a result of the consent section in the Lord's Day Act there is a wide disparity in policy in the various provinces as to the laying of prosecutions. I understand that in the Province of Quebec, as a matter of consistent policy, the Attorney-General refuses to consent to any prosecution under the Act. In Ontario consents are given, except in certain special types of cases. Thus, in effect, a law which is intended to be national in scope is enforced according to what may be differences in provincial policy in different provinces.

If the provision is to remain in 116 a similar result may follow. If an Attorney-General is doubtful as to the merits of this Section he may, as a matter of policy, refuse to consent in all cases. Thus, a law which deals with the indictable offence of perjury in a novel and drastic way, involving imprisonment for 14 years, may legally be enforced in some provinces and in others, not at all.

Whether or not there may be some justification for requiring the consent of the Attorney-General to prosecutions under statutes involving relatively minor penalties, the difficulty with which an Attorney-General would be faced in exercising his discretion under Section 116 would be very great. Indeed, I think that such a discretion would be unfairly placed in the Attorney-General of a province. The Section clearly states that a person who gives material

evidence contrary to any evidence that may previously be given, is guilty of an indictable offence and liable to imprisonment for 14 years. Thus, if such a prima facie case may be made out, what is the possible scope within which an Attorney-General may exercise discretion? It is true that the Section as drafted provides that the accused will not be guilty if he succeeds in establishing that none of the evidence was given with intent to mislead. The onus for this, however, is placed upon the accused. I cannot conceive as to how an Attorney-General could decide whether a person might be able to establish such a defence.

I note that according to the press report that the Attorney-General's consent was for the purpose of preventing charges laid at the instance of disgruntled litigants. I cannot see how this circumstance can properly enter into the case. Under the Section, if a person gives material evidence contrary to his previous evidence, he is guilty; subject to his establishing that none of the evidence was given with intent to mislead. I do not see why an Attorney-General's discretion should be affected by the fact that the person laying the charge was a litigant who happened to lose his case in the civil courts or otherwise. The whole question would be whether the offence had been committed or not. An Attorney-General should not be put in the position of having to pre-try the issues. It seems to me that if there is prima facie evidence that the indictable offence has been committed, the motives of persons who may bring the information to the Crown are quite irrelevant.

It is not for me to comment upon the merits of the Section. Criminal law is entirely the responsibility of the Federal Parliament. I am simply pointing out the unfairness of introducing the provision as to the Attorney-General's consent as a matter of enforcement. It is also unfair in the extremely uneven enforcement that would result throughout the country. In this respect it would be unfair in many cases to the accused, for under the same set of circumstances he could be charged in one province; whereas, if the act had occurred in another province he might, by reason of the exercise of the Attorney-General's discretion, not be charged at all.

I also note that you have received no objections to this clause from any other provincial Attorney-General. I submit that this should have no bearing upon the matter. If my objections are sound they should be viewed on the merits. I should be surprised if any Attorney-General definitely approved of the insertion of this provision.

Yours very truly,

DANA PORTER

The Honourable S. S. Garson, Q.C.,
Attorney-General for Canada and Minister of Justice,
Ottawa, Ontario.

REPORTS TO THE HOUSE

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

SECOND REPORT

Pursuant to the Order of Reference of twenty-third January, 1953, whereby Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law", was referred to it your Committee has carefully considered the said Bill and has agreed to report same with the following amendments, namely:

Clause 2, paragraph (10). Delete paragraph (10) and substitute the following:

Court of criminal jurisdiction.

(10) "court of criminal jurisdiction" means

- (a) a court of general or quarter sessions of the peace, when presided over by a superior court judge or a county or district court judge, or in the cities of Montreal and Quebec, by a municipal judge of the city, as the case may be, or a judge of the sessions of the peace.
- (b) a magistrate or judge acting under Part XVI, and
- (c) in the province of New Brunswick, the county court;

Clause 8. Delete the figure "(1)" where it appears in line 35 on page 9. Delete subclauses (2), (3) and (4) and substitute the following:

Appeal.

9. (1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court and imposes punishment in respect thereof, that person may, with leave of the court of appeal or a judge thereof, appeal to the court of appeal

- (a) from the conviction, or
- (b) against the punishment imposed.

Part XVIII applies.

(2) For the purposes of an appeal under subsection (1) the provisions of Part XVIII apply, *mutatis mutandis*.

Clause 9. Renumber as clause 10.

Clause 10. Renumber as clause 11.

Clause 11. Delete clause 11 of the Bill as it appears in lines 25 and 28 on page 10.

Clause 20. Add the words "or summons" after the word "warrant" in line 30 on page 11.

Clause 28. Delete the word "justified" where it appears in lines 34 and 45 on page 13 and substitute therefor the words "protected from criminal responsibility".

Clause 46. Add the following as paragraph (e) after paragraph (d) of subclause (1):

- (e) without lawful authority communicates or makes available to an agent of a state other than Canada, military or scientific information

or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada;

Delete paragraph (e) of subclause (1) and substitute the following:

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

Reletter paragraph (f) of subclause (1) as paragraph (g).

Clause 47. Delete paragraph (b) of subclause (1) and substitute the following:

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

Clause 50. Delete paragraphs (a), (b) and (c) and substitute the following:

Assisting alien enemy to leave Canada.

(a) incites or wilfully assists a subject of

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

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

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

Omitting to prevent treason.

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

Clause 52. Add the following as subclauses (3) and (4) to this clause:

Saving.

(3) No person does a prohibited act within the meaning of this section by reason only that

(a) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or

(b) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

(4) No person does a prohibited act within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (3), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

Clause 69. Delete the word "immediately" where it appears in lines 16 and 17 on page 25 and substitute therefor the word "forthwith".

Clause 116. Delete subclause (1) of this clause and substitute the following:

Witness giving contradictory evidence.

116. (1) Every one who, being a witness in a judicial proceeding, gives evidence with respect to any matter of fact or knowledge and who subsequently, in a judicial proceeding, gives evidence that is contrary to his previous evidence is guilty of an indictable offence and is liable to imprisonment for fourteen years, whether or not the prior or the later evidence or either of them is true, but no person shall be convicted under this section unless the court, judge or magistrate, as the case may be, is satisfied beyond a reasonable doubt that the accused, in giving evidence in either of the judicial proceedings, intended to mislead.

Insert the following immediately after subclause (2):

Consent required.

(3) No proceedings shall be instituted under this section without the consent of the Attorney General.

Clause 134. Delete this clause and substitute the following:

Instruction to jury.

134. Notwithstanding anything in this Act or any other Act of the Parliament of Canada, where an accused is charged with an offence under section 136, 137 or subsection (1) or (2) of section 138, the judge shall, if the only evidence that implicates the accused is the evidence, given under oath, of the female person in respect of whom the offence is alleged to have been committed and that evidence is not corroborated in a material particular by evidence that implicates the accused, instruct the jury that it is not safe to find the accused guilty in the absence of such corroboration, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true.

Clause 150. Delete subclause (7) and substitute the following:

Crime comic.

(7) In this section, "crime comic" means a magazine, periodical or book that exclusively or substantially comprises matter depicting pictorially

- (a) the commission of crimes, real or fictitious, or
- (b) events connected with the commission of crimes, real or fictitious, whether occurring before or after the commission of the crime.

Clause 162. Delete this clause and substitute the following:

Trespassing at night.

162. Every one who, without lawful excuse, the proof of which lies upon him, loiters or prowls at night upon the property of another person near a dwelling house situated on that property is guilty of an offence punishable on summary conviction.

Clause 166. Delete the words "a tale" where they appear in line 39 on page 53 and substitute therefor the words "a statement, tale".

Clause 177. Insert the figure (1) after the figures "177" in line 6 on page 59.

Clause 184. Delete the word "or" where it appears in line 34 on page 66 and insert it after the word "prostitution" in line 36, and add the following paragraph immediately after paragraph (j):

- (k) being a female person, lives wholly or in part on the avails of prostitution of another female person,

Delete the word "earnings" where it appears in line 42 on page 66 and substitute the word "avails".

Clause 200. Delete this clause and substitute the following:

Killing by influence on the mind.

200. No person commits culpable homicide where he causes the death of a human being

- (a) by any influence on the mind alone, or,
- (b) by any disorder or disease resulting from influence on the mind alone,

but this section does not apply where a person causes the death of a child or sick person by wilfully frightening him.

Clause 217. Delete this clause and substitute the following:

Administering noxious thing.

217. Every one who administers or causes to be administered to any person or causes any person to take poison or any other destructive or noxious thing is guilty of an indictable offence and is liable

- (a) to imprisonment for fourteen years, if he intends thereby to endanger the life of or to cause bodily harm to that person, or,
- (b) to imprisonment for two years, if he intends thereby to aggrieve or annoy that person.

Clause 221. Delete that portion of subclause (2) that immediately precedes paragraph (a) thereof and substitute the following:

Failing to stop at scene of accident.

(2) Every one who, having the care, charge or control of a vehicle that is involved in an accident with a person, horse or vehicle, with intent to escape civil or criminal liability fails to stop his vehicle, give his name and address and, where any person has been injured, offer assistance, is guilty of

Clause 241. Delete subclause (2) and substitute the following:

Certificate of marriage.

(2) For the purposes of this section a certificate of marriage issued under the authority of law is *prima facie* evidence of the marriage or form of marriage to which it relates without proof of the signature or official character of the person by whom it purports to be signed.

Clause 250. Delete the words "two years or to a fine of five thousand dollars or to both" where they appear in lines 39 and 40 on page 83 and substitute the words "five years".

Clause 251. Delete the words "or to a fine of one thousand dollars or to both" where they appear in line 3 on page 84.

Clause 252. Delete the words "two years or to a fine of one thousand dollars or to both" where they appear in lines 19 and 20 on page 84 and substitute the words "five years".

Clause 280. Delete paragraphs (a) and (b) and substitute the following:

(a) to imprisonment for ten years, where the property stolen is a testamentary instrument or where the value of what is stolen exceeds fifty dollars, or

(b) to imprisonment for two years, where the value of what is stolen does not exceed fifty dollars.

Clause 295. Delete this clause and substitute the following:

Possession of house-breaking instruments.

295. (1) Every one who without lawful excuse, the proof of which lies upon him, has in his possession any instrument for house-breaking, vault-breaking or safe-breaking is guilty of an indictable offence and is liable to imprisonment for fourteen years.

Disguise with intent.

(2) Every one who, with intent to commit an indictable offence, has his face masked or coloured or is otherwise disguised is guilty of an indictable offence and is liable to imprisonment for ten years.

Clause 297. Delete paragraphs (a) and (b) and substitute the following:

(a) to imprisonment for ten years, where the property that comes into his possession is a testamentary instrument or where the value of what comes into his possession exceeds fifty dollars, or

(b) to imprisonment for two years, where the value of what comes into his possession does not exceed fifty dollars.

Clause 304. Delete paragraphs (a) and (b) of subclause (2) and substitute the following:

(a) to imprisonment for ten years, where the property obtained is a testamentary instrument or where the value of what is obtained exceeds fifty dollars, or

(b) to imprisonment for two years, where the value of what is obtained does not exceed fifty dollars.

Delete the words "and did believe" where they appear in subclause (4) in line 2 on page 101.

Clause 308. Add the word "fraudulently" after the word "who" in line 20 on page 102.

Clause 328. Add the following as subclause (2) to this clause:

Consent required.

(2) No proceedings shall be instituted under this section without the consent of the Attorney General.

Insert the figure "(1)" after the figures "328" in line 1 on page 110.

Clause 339. Delete the word "five" where it appears in line 25 on page 114 and substitute therefor the word "ten".

Clause 343. Delete the word "five" where it appears in line 32 on page 115 and substitute therefor the word "ten".

Clause 365. Add the following to this clause as subclause (2):

Saving.

(2) No person wilfully breaks a contract within the meaning of subsection (1) by reason only that

- (a) being the employee of an employer, he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or
- (b) being a member of an organization of employees formed for the purpose of regulating relations between employers and employees, he stops work as a result of the failure of the employer and a bargaining agent acting on behalf of the organization to agree upon any matter relating to the employment of members of the organization,

if, before the stoppage of work occurs, all steps provided by law have been taken through negotiation, collective bargaining, conciliation and arbitration.

Clause 372. Add the following as subclause (6) and (7) to this clause:

Saving.

(6) No person commits mischief within the meaning of this section by reason only that

- (a) he stops work as a result of the failure of his employer and himself to agree upon any matter relating to his employment, or
- (b) he stops work as a result of the failure of his employer and a bargaining agent acting on his behalf to agree upon any matter relating to his employment.

Idem.

(7) No person commits mischief within the meaning of this section by reason only that, having stopped work in the circumstances set out in subsection (6), he attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information.

Clause 386. Add the words "and without lawful excuse" after the word "wilfully" in line 17 on page 129.

Clause 413, subclause (2). Delete paragraphs (a), (b) and (c) of subclause (2) and substitute the following therefor:

- (a) an offence under any of the following sections, namely,

Treason.

- (i) section 47,

Alarming or harming Her Majesty.

- (ii) section 49,

Intimidating Parliament or legislature.

- (iii) section 51,

Inciting to mutiny.

- (iv) section 53,

Sedition.

- (v) section 62,

Piracy.

(vi) section 75,

Piratical acts.

(vii) section 76,

Bribery of officers.

(viii) section 101,

Rape.

(ix) section 136,

Causing death by criminal negligence.

(x) section 192,

Murder.

(xi) section 206,

Manslaughter.

(xii) section 207,

Threat to murder.

(xiii) paragraph (a) of subsection (1) of section 316, or

Combination restraining trade.

(xiv) section 411,

Accessories.

(b) the offence of being an accessory after the fact to treason or murder,

Corrupting justice.

(c) an offence under section 100 by the holder of a judicial office,

Attempts.

(d) the offence of attempting to commit any offence mentioned in paragraph (a), or

Conspiracy.

(e) the offence of conspiring to commit any offence mentioned in paragraph (a)."

Clause 421. Insert the words "before a magistrate" after the word "writing" in line 39 on page 142.

Add the following as subclause (4) immediately after subclause (3):

Writing not admissible.

(4) No writing that is executed by an accused pursuant to subsection (3) is admissible in evidence against him in any criminal proceedings.

Renumber subclause (4) as subclause (5).

Clause 437. Delete paragraphs (a) and (b) and substitute the following:

- (a) the owner or a person in lawful possession of property, or
- (b) a person authorized by the owner or by a person in lawful possession of property,

Clause 438. Delete this clause and substitute the following:

Delivery to peace officer.

438. (1) Any one who arrests a person without warrant shall forthwith deliver that person to a peace officer, and the peace officer may detain the person until he is dealt with in accordance with this section.

(2) A peace officer who receives delivery of and detains a person who has been arrested without warrant or who arrests a person with or without warrant shall, in accordance with the following provisions, take or cause that person to be taken before a justice to be dealt with according to law, namely,

(a) where a justice is available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice before expiration of that period; and

(b) where a justice is not available within a period of twenty-four hours after the person has been delivered to or has been arrested by the peace officer, the person shall be taken before a justice as soon as possible.

Clause 469. Add the following as subclauses (2) and (3) to this clause:

Where value more than fifty dollars.

(2) Where an accused is before a magistrate charged with an offence mentioned in paragraph (a) of section 467, and, at any time before the magistrate makes an adjudication, the evidence establishes that the value of what was stolen, obtained, had in possession or attempted to be stolen or obtained, as the case may be, exceeds fifty dollars, the magistrate shall put the accused to his election in accordance with subsection (2) of section 468.

Continuing proceedings.

(3) Where an accused is put to his election pursuant to subsection (2), the following provisions apply, namely,

(a) if the accused does not elect to be tried by a magistrate, the magistrate shall continue the proceedings as a preliminary inquiry under Part XV, and, if he commits the accused for trial, he shall comply with paragraphs (a) and (b) of subsection (3) of section 468; and

(b) if the accused elects to be tried by a magistrate, the magistrate shall endorse on the information a record of the election and continue with the trial.

Clause 481. Delete this clause and substitute the following:

Continuance of proceedings when judge or magistrate unable to act.

481. (1) Where an accused elects, under section 450, 468 or 475 to be tried by judge or magistrate, as the case may be, and the judge or magistrate before whom the trial was commenced dies or is for any reason unable to continue, the proceedings may, subject to the provisions of this section, be continued before another judge or magistrate, as the case may be, who has jurisdiction to try the accused under this Part.

Where adjudication made.

(2) Where an adjudication was made by a judge or magistrate before whom the trial was commenced, the judge or magistrate, as the case may be, before whom the proceedings are continued shall, without further election by the accused, impose the punishment or make the order that, in the circumstances, is authorized by law.

Where no adjudication by judge.

(3) Where the trial was commenced before a judge but he did not make an adjudication, the judge before whom the proceedings are continued shall, without further election by the accused, commence the trial again as a trial *de novo*.

Where no adjudication by magistrate.

(4) Where the trial was commenced before a magistrate but he did not make an adjudication, the magistrate before whom the proceedings are continued shall put the accused to his election in accordance with section 468, and the proceedings shall, in all respects, be continued in accordance with this Part as if the accused were appearing before a magistrate for the first time upon the charge laid against him.

Clause 510. Delete subclause (5) of this clause and substitute the following:

Adjournment if accused prejudiced.

(5) Where, in the opinion of the court, the accused has been misled or prejudiced in his defence by a variance, error or omission in an indictment or a count thereof, the court may, if it is of opinion that the misleading or prejudice may be removed by an adjournment, adjourn the trial to a subsequent day in the same sittings or to the next sittings of the court and may make such an order with respect to the payment of costs resulting from the necessity for amendment as it considers desirable.

Clause 511. Delete this clause and substitute the following:

Amended indictment need not be presented to grand jury.

511. Where a grand jury returns a true bill in respect of an indictment and the indictment is subsequently amended in accordance with section 510, it is not necessary, unless the judge otherwise directs, to present the amended indictment to the grand jury, but the indictment, as amended, shall be deemed to be as valid in all respects for all purposes of the proceedings as if it had been returned by the grand jury in its amended form.

Clause 588, subclause (2). Delete the words "by the appellant" where they appear in line 15 on page 200.

Clause 592. Delete subclause (5) and substitute the following:

New trial under Part XVI.

(5) Where an appeal is taken in respect of proceedings under Part XVI and the court of appeal orders a new trial under this Part, the following provisions apply, namely,

(a) if the accused, in his notice of appeal or notice of application for leave to appeal, requested that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall be held accordingly;

- (b) if the accused, in his notice of appeal or notice of application for leave to appeal, did not request that the new trial, if ordered, should be held before a court composed of a judge and jury, the new trial shall, without further election by the accused, be held before a judge or magistrate, as the case may be, acting under Part XVI, other than a judge or magistrate who tried the accused in the first instance, unless the court of appeal directs that the new trial be held before the judge or magistrate who tried the accused in the first instance; and
- (c) if the court of appeal orders that the new trial shall be held before a court composed of a judge and jury it is not necessary, in any province of Canada, to prefer a bill of indictment before a grand jury in respect of the charge upon which the new trial was ordered, but it is sufficient if the new trial is commenced by an indictment in writing setting forth the offence with which the accused is charged and in respect of which the new trial was ordered.

Clause 628. Delete this clause and substitute the following:

Compensation for loss of property.

628. (1) A court that convicts an accused of an indictable offence may, upon the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by the applicant as a result of the commission of the offence of which the accused is convicted.

Enforcement.

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

Moneys found on the accused.

(3) All or any part of an amount that is ordered to be paid under subsection (1) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Clause 629. Delete this clause and substitute the following:

Compensation to "bona fide" purchasers.

629. (1) Where an accused is convicted of an indictable offence and any property obtained as a result of the commission of the offence has been sold to an innocent purchaser, the court may, upon the application of the purchaser after restitution of the property to its owner, order the accused to pay to the purchaser an amount not exceeding the amount paid by the purchaser for the property.

"Enforcement."

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was

held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.

"Moneys found on accused."

(3) All or any part of an amount that is ordered to be paid under subsection (2) may be taken out of moneys found in the possession of the accused at the time of his arrest, except where there is a dispute as to ownership of or right of possession to those moneys by claimants other than the accused.

Clause 634, subclause (5) Delete subclause (5) and substitute the following:

Exception.

(5) For the purposes of subsection (2) 'penitentiary' does not, until a day to be fixed by proclamation of the Governor in Council, include the penitentiary mentioned in section 37 of 'The Statute Law Amendment (Newfoundland) Act, chapter 6 of the statutes of 1949, or in section 82 of the Penitentiary Act, chapter 266 of the Revised Statutes of Canada, 1952.

Clause 638, subclause (2). Delete that portion of subclause (2) immediately preceding paragraph (a) thereof and substitute the following:

(2) A court that suspends the passing of sentence may prescribe as conditions of the recognizance that

Clause 641. Delete subclause (3) and substitute the following therefor:

Supervision.

(3) A sentence of whipping shall be executed under the supervision of the prison doctor or, if he is unable to be present, it shall be executed under the supervision of a duly qualified medical practitioner to be named by the Attorney General of Canada, where the sentence is executed in a prison administered by the Government of Canada, or, where the sentence is executed in a prison administered by the government of a province, to be named by the Attorney General of that province.

Instrument to be used.

(4) The instrument to be used in the execution of a sentence of whipping shall be a cat-o'-nine tails, unless some other instrument is specified in the sentence.

When to be used.

(5) A sentence of whipping shall be executed at a time to be fixed by the keeper of the prison in which it is to be executed, but, whenever practicable, a sentence of whipping shall be executed not less than ten days before the expiration of any term of imprisonment to which the convicted person has been sentenced.

Renumber subclause (4) as subclause (6).

Clause 648. Add the following as subclause (5) immediately after subclause (4):

Where no coroner in Newfoundland.

(5) Where a sentence of death is executed in a district, county or place in the province of Newfoundland in which there is no coroner, an inquiry shall, for the purposes of this section, be conducted without the

intervention of a jury by a magistrate having jurisdiction in the district, county or place, and for the purposes of this subsection the provisions of section 649 and subsections (1), (2) and (3) of this section apply, *mutatis mutandis*.

Clause 690, Subclause (1) Add the words "on the merits" immediately after the word "refused" in line 12 on page 237.

Clause 691. Add the following as subclause (3) to this clause:

When appeal to be heard.

(3) Notwithstanding anything in Part XVIII or in rules of court, the appeal of an appellant who has filed notice of appeal shall be heard within seven days after the filing of proof of service of the notice of appeal upon the respondent and, where a notice of appeal is filed when the court of appeal is not sitting, a special sittings of the court of appeal shall be convened for the purpose of hearing the appeal.

Clause 697. Add the following as subclauses (4) and (5) immediately after subclause (3):

Waiving jurisdiction.

(4) A summary conviction court before which proceedings under this Part are commenced may, at any time before the trial, waive jurisdiction over the proceedings in favour of another summary conviction court that has jurisdiction to try the accused under this Part.

Idem.

(5) A summary conviction court that waives jurisdiction in accordance with subsection (4) shall name the summary conviction court in favour of which jurisdiction is waived, except where, in the province of Quebec, the summary conviction court that waives jurisdiction is a judge of the sessions of the peace.

Schedule to Part XIV commencing on page 258.

(1) Item 20. Delete this item and substitute the following therefor:

20. Mileage to serve summons or subpoena or to make an arrest, both ways, for each mile 0.10
(Where a public conveyance is not used, reasonable costs of transportation may be allowed.)

(2) Item 21. Delete line 3 on page 359 and substitute the following therefor:

each way, for each mile 0.10

(3) Item 22. Delete line 10 on page 259 and substitute the following therefor:

to make the arrest, each way, for each mile 0.10

(4) Item 23. Delete lines 11 and 12 on page 259 and substitute the following therefor:

23. Taking a prisoner to prison on remand or committal, each way, for each mile 0.10

(5) Item 25. Delete this item and substitute the following therefor:

25. Each day attending trial 4.00

(6) Item 26. Delete this item and substitute the following therefor:

26. Mileage travelled to attend trial, each way, for each mile 0.10

(7) Item 28. Delete the figures "5.00" where they appear in line 31 on page 259 and substitute therefor the figures "10.00".

(8) Item 29. Delete this item and substitute the following therefor:

29. Mileage travelled to attend trial, each way, for each mile 0.10

Clause 745. Delete subclause (2) of this clause.

Clause 746. Delete this clause and substitute the following:

Transitional.

746. (1) Where proceedings for an offence against the criminal law were commenced before the coming into force of this Act, the offence shall, after the coming into force of this Act, be dealt with, inquired into, tried and determined in accordance with this Act, and any penalty, forfeiture or punishment in respect of that offence shall be imposed as if this Act had not come into force, but where, under this Act, the penalty, forfeiture or punishment in respect of the offence is reduced or mitigated in relation to the penalty, forfeiture or punishment that would have been applicable if this Act had not come into force, the provisions of this Act relating to penalty, forfeiture and punishment shall apply.

Idem.

(2) Where proceedings for an offence against the criminal law are commenced after the coming into force of this Act the following provisions apply, namely,

- (a) the offence, whenever committed, shall be dealt with, inquired into, tried and determined in accordance with this Act;
- (b) if the offence was committed before the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act or by the law that would have applied if this Act had not come into force, whichever penalty, forfeiture or punishment is the less severe; and
- (c) if the offence is committed after the coming into force of this Act, the penalty, forfeiture or punishment to be imposed upon conviction for that offence shall be the penalty, forfeiture or punishment authorized or required to be imposed by this Act.

All of which is respectfully submitted.

DON. F. BROWN,
Chairman.

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

THIRD AND FINAL REPORT

Pursuant to the Order of Reference of the House of twenty-third day of January 1953, whereby Bill No. 93 (Letter O of the Senate), intituled: "An Act respecting the Criminal Law" was referred to it, your Committee has now discharged its duty in that respect by reporting, in its Second Report of first day of May, the said Bill with numerous amendments.

However, by the terms of its original Order of twenty-third of January, the House appointed this Committee to consider, in addition to the said Bill, all matters pertaining thereto.

Your Committee has, commencing on and since fourth February, held thirty-seven sittings. In addition, approximately twelve sittings, as required, were held by a sub-committee to which were assigned, among other things, questions of procedure and the task of summarizing the great volume of representations made to the Committee. In all cases without exception the sub-committee recommendations and reports were approved by the Main Committee.

In the course of its long deliberations your Committee, in addition to written submission, had the benefit of the oral representations of delegations appearing on behalf of the following national organizations, namely:

- The Canadian Congress of Labour.
- The Trades and Labour Congress.
- The Canadian Jewish Congress.
- The Premium Advertising Association of America Inc.
- The League for Democratic Rights.
- The United Electrical, Radio and Machine Workers of America.
- The Congress of Canadian Women.
- The Association of Civil Liberties.
- The Canadian Welfare Council.
- The Canadian Mental Health Association.
- The International Union of Mine, Mill and Smelter Workers (Canadian Section).
- The Canadian Restaurant Association.

Very detailed consideration was also given to briefs and resolutions addressed to the Committee by the following, namely:

- The Canadian and Catholic Confederation of Labour.
- The Canadian Union of Woodworkers.
- The Civil Liberties Union (Montreal).
- The International Fur and Leather Workers Union.
- The National Federation of Labour Youth.
- The National Council of Women.
- The Student Christian Movement (Carleton College, Ottawa).
- The Saskatoon and District Labour Council.
- The International Brotherhood of Boiler Makers and Iron Ship Builders and Helpers of America (Subordinate Local No. 297, Stratford, Ontario).
- The International Association of Machinists (various lodges).
- The International United Automobile, Aircraft and Agricultural Implement Workers of America, (U.A.W.-C.I.O.) Local 195, Windsor, Ontario.

United Packing House Workers of America (CIO-CCL) Local 234, Prince Albert, Sask.

Manitoba Bar Association.

National Council of Women, Ottawa.

County of Simcoe Urban Mayors and Reeves Association.

The Federation of Law Associations of Ontario.

Deputy Attorney-General of British Columbia.

Civil Liberties Committee, Canadian Bar Association.

The Canadian Friends Service Committee of the Religious Society of Friends (Quakers).

Spiritualist National Union of Canada.

Canadian Retail Federation, (Toronto).

Crown Corporation Clerical Employees' Union Local 224, Prince Albert, Sask.

Lakehead Unity Club (N.F.L.Y.), Port Arthur, Ontario.

Prince Albert Woodworkers' Union.

Toronto Typographical Union No. 91, Toronto.

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local 576.

University of Saskatchewan Employees Union, Saskatoon.

Committee on Criminal Procedure, Canadian Bar Association.

Executive Counsel of the Canadian Chamber of Commerce.

Local 200, U.A.W.-C.I.O., Windsor, Ont.

Brilliant Local No. 216, District 18, United Mine Workers of America, Newcastle, Alta.

The Bar of the Province of Quebec.

All-Slavic Alliance, Windsor, Ont.

All-Slavic Committee, Vancouver, B.C.

Association of United Ukrainian Canadians, Ottawa, Ont.

Civil Rights Union (Affiliate of L.D.R.), Toronto, Ont.

Congress of Canadian Women, Lakehead Chapter, Fort William, Ont.

Federation of Russian Canadians, Windsor, Ont.

Finnish Organization, Vancouver, B.C.

Finnish Organization, Local No. 2, Port Arthur, Ont.

Fort William Co-operative Guild, Fort William, Ont.

F.U.A., Local 311, Nestow, Alta.

Greater Victoria Firefighters, Local 730, I.A.F.F., Victoria, B.C.

International Fur and Leather Workers Union, Winnipeg Joint Board, Winnipeg, Man.

International Union of Mine, Mill and Smelter Workers, Local No. 834, Edmonton, Alta.

Labor Progressive Party, Quebec Provincial Committee, Montreal, Que.

Labor Progressive Party, Michel, B.C.

Labor Progressive Party, Fort William, Ont.

Lakehead Civil Rights Union, Port Arthur, Ont.

League for Democratic Rights, East Coulee, Alta.

League for Democratic Rights, Winnipeg Chapter, Winnipeg, Man.

Local 252, United Automobile Workers, Toronto, Ont.

Local 535, United Electrical, Radio and Machine Workers of America, St. Catharines, Ont.

Local Women's Auxiliary, United Fishermen Allied Workers Union, Fort Langley, B.C.

Montreal and District Ukrainian Canadian Conference, Local 796, International Union of Operating Engineers, Toronto, Ont.

Montreal Slav Committee, Montreal, Que.

National Leather and Shoe Federation of Canada, Inc., Quebec City, Que.

Painters, Decorators and Paperhangers of America, Local 138, Vancouver, B.C.

Regina Labour Council, Regina, Sask.

Student Christian Movement, University of Saskatchewan, Saskatoon, Sask.

Trade Union Rights Committee, Montreal, Que.

U.A.W., C.I.O., C.C.L., Local 399, New Toronto, Ont.

Ukrainian Canadian Women, (Address not shown).

United Automobile, Agricultural, Implement Workers, Local 641, Ottawa, Ont.

Labour Progressive Party—National Headquarters.

The Attorney General for the Province of Ontario.

United Electrical, Radio and Machine Workers of America, Local 535, and Employees of Yalc and Towne, St. Catharines, Ontario.

Vancouver Civil Employees Union, Vancouver, B.C.

Victoria and District Trades & Labour Council, Victoria, B.C.

Weston—Mt. Dennis Trade Union Unity Committee, Toronto, Ont.

Workers' Benevolent Association, Saskatoon, Saskatchewan.

Workers' Benevolent Association, Victoria, B.C.

Workers Co-Operative of New Ontario, Limited, Timmins, Ontario.

Canadian Brotherhood of Railway Employees and other Transport Workers, Mount Royal Division No. 39, Montreal, Quebec.

Congress of Canadian Women, Saskatoon Chapter, Saskatoon, Saskatchewan.

Congress of Canadian Women (Nanaimo Chapter).

Farmers Meeting, Jackpine, Ontario.

Meeting Ukrainian Labour Temple, Transcona, Manitoba.

Nordegg Local Union No. 7298, District 18, United Mine Workers of America, Nordegg, Alberta.

Painters and Decorators of America, A.F.L. Local Union 138, Vancouver, B.C.

United Electrical Radio and Machine Workers of America, Local 523, Welland, Ontario.

In addition, an innumerable volume of letters and cards from individual persons were received and placed before the Committee.

Your Committee is thankful for the valuable help it has received at all times from the officials of the Department of Justice, namely: Messrs. A. A. Moffat, Q.C., and A. J. MacLeod, Senior Advisory Counsel, in attendance throughout; Mr. J. C. Martin, Q.C., former Counsel to the Royal Commission on the Revision of the Criminal Code; Dr. Louis Philippe Gendreau, Deputy

Commissioner of Penitentiaries, in charge of Psychiatric and Medical Services in the Penitentiaries; Miss R. Vogel, Private Secretary to the Minister of Justice, and staff of the Committees Branch.

The clause by clause study of Bill 93 was in itself a tremendous task, because as each clause of the Bill, in respect of which objections thereto or representations thereon had been made, was reached, these objections and representations were in all cases placed before the Committee for consideration.

At various times during the course of its work, the following matters pertaining to the Criminal Law were directed to the attention of your Committee; namely:

- (a) The Defence of Insanity.
- (b) Capital Punishment.
- (c) Corporal Punishment.
- (d) Lotteries.

Although these matters are well within the scope of the Terms of Reference, your Committee is of opinion that these questions are of such paramount importance that they could and should not be dealt with merely as incidentals to the consolidation or revision of the present Criminal Code embodied in Bill 93.

The Committee upon the material before it was not prepared to recommend a change in the present law respecting the defence of insanity, lotteries and the imposition of punishment by whipping and by sentence of death, but unanimously has come to the conclusion, and so recommends, that the Governor General in Council give consideration to the appointment of a Royal Commission, or to the submission to Parliament of a proposal to set up a Joint Parliamentary Committee of the Senate and the House of Commons, which said Royal Commission or Joint Parliamentary Committee shall consider further and report upon the substance, and principles of these provisions of the law aforesaid, and shall recommend whether any of those provisions should be amended and, if so, shall recommend the nature of the amendments to be made.

A copy of the printed Minutes of Proceedings and Evidence adduced is tabled herewith.

All of which is respectfully submitted.

DON. F. BROWN,
Chairman.