Honourable senators have been very kind to listen to me so long. I did not take advantage of the opportunity to pay my respects to the organizer and manager of the New Brunswick election. I do so now. I think he did an excellent job.

Some Hon. Senators: Hear, hear.

The Address was adopted.

DIVORCE STATISTICS

INTERIM REPORT

Hon. Mr. Aseltine, Chairman of the Standing Committee on Divorce, moved concurrence in reports of the committee numbered 44 to 73, inclusive.

He said: Honourable senators, it has occurred to me that I should give you a short progress report. The total number of petitions filed to date is 212. Your committee has heard 75 of these; one has been rejected and 74 have been recommended. Four petitions have been withdrawn. That leaves 133 petitions to be heard after the adjournment, together with any others which may have been filed by that time.

The motion was agreed to, and the reports were concurred in.

DIVORCE BILLS

FIRST READINGS

Hon. Mr. Aseltine presented the following bills:

Bill G-2, an Act for the relief of Robert Gordon.

Bill H-2, an Act for the relief of Helen Isabelle Hammond Dadson.

Bill I-2, an Act for the relief of Harold Gordon McFarlane.

Bill J-2, an Act for the relief of Dezso Ferenc Cross.

Bill K-2, an Act for the relief of Eric Ernest Auclair.

Bill L-2, an Act for the relief of Napoleon Jean-Paul Chayer.

Bill M-2, an Act for the relief of Marie Josephte Gilberte Belanger Byrne.

Bill N-2, an Act for the relief of Nina Diflore Statner.

Bill O-2, an Act for the relief of Tillie Tietlebaum Victor.

Bill P-2, an Act for the relief of Elina Iacurto Floyd.

Bill Q-2, an Act for the relief of Jennie Miller Solomon.

Bill R-2, an Act for the relief of Elia Kuczerian.

Bill S-2, an Act for the relief of Ruth Audrey Lorraine Beauchamp Laderoute.

Bill T-2, an Act for the relief of Phyllis Newman Lunan.

Bill U-2, an Act for the relief of Helen Doreen Cave Crawshaw.

Bill V-2, an Act for the relief of Armand Frenette.

Bill W-2, an Act for the relief of Florence Brown Boyaner.

Bill X-2, an Act for the relief of Eileen Mercedes Hudson Walsh.

Bill Y-2, an Act for the relief of Madeleine McCartney Ratcliff.

Bill Z-2, an Act for the relief of Kathleen Mary Wilkinson Paraskiewicz.

Bill A-3, an Act for the relief of Georges Chaput.

Bill B-3, an Act for the relief of Florence Anna Carsh Laing.

Bill C-3, an Act for the relief of Beatrice Miriam Kert Beloff.

Bill D-3, an Act for the relief of John Alexander Stronach.

Bill E-3, an Act for the relief of Raymond Gelinas.

Bill F-3, an Act for the relief of Anna Madeline Patterson Cotter.

Bill G-3, an Act for the relief of Claudia Marie Boudreau Leblanc.

Bill H-3, an Act for the relief of Lily Belzberg Bigman.

Bill I-3, an Act for the relief of Joseph Arthur Lesage.

Bill J-3, an Act for the relief of Minnie Gruhn Boon.

The bills were read the first time.

SECOND READINGS

Hon. Mr. Aseltine: Honourable senators, as we are nearing the end of this part of the session, I propose to ask, with leave of the Senate, that these bills be read the second and third times this afternoon.

With leave of the Senate, I now move the second readings of these bills.

The motion was agreed to, and the bills were read the second time, on division.

THIRD READINGS

The Hon. the Speaker: Honourable senators, when shall these bills be read the third time?

Hon. Mr. Aseltine: With leave, now. I so move.

The bills were read the third time, and passed, on division.

It being six o'clock, the Senate took recess.

At eight o'clock the sitting was resumed.

CRIMINAL CODE BILL

REPORT OF COMMITTEE

Hon. Salter A. Hayden presented the report of the Standing Committee on Banking and Commerce on Bill O, an Act respecting the criminal law.

The report was read by the Clerk Assistant as follows:

The Standing Committee on Banking and Commerce, to whom was referred Bill O, an Act respecting the criminal law, have in obedience to the order of reference of November 25, 1952, examined the said bill and now beg leave to report the same with the following amendments: . . .

Hon. Mr. Robertson: Dispense.

(See Appendix at end of today's report.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

Hon. Mr. Hayden, with leave, moved concurrence in the report.

He said: Honourable senators, in view of the importance of the bill which has just been reported to the Senate I thought it might be well to say a few words on what may be regarded as some of the highlights in the committee's consideration of this measure. I can say that it is with a certain sense of satisfaction, and also with a great sense of relief, that I see the bill now reported.

During the progress of our study of the bill this fall it became necessary to set up a sub-committee, just as we did last spring, when we considered in the sub-committee possibly less than a third of the sections in the bill. What we did then has facilitated our work at this session. Nevertheless, since the session began the sub-committee has sat on fifteen days, on most of which the meetings began in the morning and extended over the afternoon and evening. That was the only practical way in which a job of this size could be done, for if the continuity of consideration had not been preserved a good deal of time would have been wasted in warming up to the task.

The sub-committee recommended more than one hundred amendments to various parts of the bill. These were in addition to the amendments suggested by the sub-committee last spring, many of which were incorporated into the bill before it was reintroduced into the Senate at this session.

Last spring and again this fall representations were received from various organizations protesting against enactments in a very general sort of way. Three organizations filed briefs. They also requested an opportunity to present to the main committee an oral submission in support of their briefs, and that is the reason why they appeared there last Thursday. Their presentations had to do mainly with the treason sections and certain sections relating to obstruction in the operation of a plant, which constitutes the offence of creating mischief. In the main their objections did not relate to offences being newly provided against in this bill, but to some that had been covered by the Criminal Code for a very long time. I think they did, however, object to some provisions that were added somewhat more recently to the section defining treason, which is section 46 in the bill.

In addition we received representations on behalf of those who were interested in providing by some amendment to the Code for the right to conduct what is commonly called dog racing, with *pari mutuel* betting. Now, notwithstanding the receipt of those representations by the main committee, no member of the committee saw fit to submit any amendments in line with them. And as to the treason sections and others which were objected to by the organizations that I mentioned, the committee is recommending no amendments which by any stretch of the imagination can be said to arise from the submissions made to the committee by those organizations last Thursday. Further, the sub-committee's report was prepared before the main committee heard those organizations.

Possibly I should refer to one or two of the committee's amendments which embody some important changes in the law. I think the committee's most notable amendment is one to provide for an appeal from conviction for contempt of court, whether the contempt is committed in the face of the court—that is, before the judge or magistrate—or as the result of some act or publication done outside the court. This provision for an appeal is something new and unusual, but it was the unanimous view of the committee that there should be some provision for an appeal as a salutary check on any improper exercise of authority in the circumstances. The appeal provision which was finally decided upon and incorporated in the bill makes it possible to appeal from sentence only, in cases where the contempt takes place in the face of the court—that is, before the judge or magistrate who finds the person guilty of contempt and imposes the penalty. But for cases in which the contempt takes place outside the court we provided an appeal from both the conviction and the sentence, so that either the conviction or the sentence or both may be reviewed by a higher court, depending upon the course of action that the convicted person decides to take. I think that is a notable advance in the law as it relates to contempt.

Another notable advance is that for the first time in our criminal law any and all offences for which a person may be charged and tried are contained within one piece of legislation, and as and when the measure

now before us is enacted by parliament, it will become the criminal law of Canada. No longer will any person be charged with what are called common law offences. Unless those offences have been incorporated into the criminal law—that is, into the particular bill now before us—they no longer exist in the realm of the criminal law of Canada.

There are several other matters which I should briefly mention to the house. Despite some protest by the departmental officials, we retained what is called "trial *de novo*"—the right to have a new trial and to have the witnesses heard again. Provision for a new trial exists in our present law, and relates to appeals from summary convictions. As the law now stands an accused person who has been convicted may appeal or, in case of an acquittal, the Crown may appeal. The matter then is taken to an appeal judge, who may hear the case *de novo*, or by agreement of the parties he may hear arguments, by both the appellant and the respondent, on the record of the evidence taken at the original trial. That requires, as I say, the consent of both parties.

It seemed to us that the provision for trial *de novo* was a salutary check on any mistakes that might occur in the trial of first instance, where the lists are so heavy. Very often an accused person does not realize the predicament he is in until a magistrate convicts him and sentences him to a fine or imprisonment, or both. If the accused is not represented by a lawyer—and very often in the court of first instance he is not—he has no appreciation of the weight of evidence against him, and he does not have the ability to cross-examine the Crown's witnesses in such a way as best to bring out the points in his favour. The common result is that he allows the record to consist of the Crown's case and nothing else in the way of an effective rebuttal of what the Crown has said; yet when the circumstances have been fully considered they may show that he has a perfectly good defence; and if he is granted a new trial he may, with the aid of counsel, provide the necessary evidence to gain an acquittal. In my opinion, that is sufficient to justify the continuation in the Code of the provision for trial *de novo*. There has been a substantial expression of opinion by judges and magistrates in various parts of the country in favour of its continuance. We felt, therefore, that we were not flying in the face of public opinion in maintaining this salutary provision.

May I say something about an appeal to the appellate court by a person who has been convicted of an indictable offence? Our law has for a long time provided that a court of appeal may find that there has been no substantial wrong or miscarriage of justice in a case, and dismiss the appeal, notwithstanding the fact that the court may also conclude that the verdict was unreasonable, having regard to the weight of evidence, or that there has been a miscarriage of justice or some wrong decision on the question of law. It seems illogical and lacking in good sense to give to the court the power to say on the one hand, that the verdict is unreasonable and against the weight of evidence, and on the other hand that there has been no substantial wrong or miscarriage of justice. That seemed to us an anomolous situation and by our amendment to this bill we have terminated it. We felt that there should be no weighing of degrees of miscarriage of justice. If in the opinion of the appellate court there has been a miscarriage, that court should not be given power to weigh the miscarriage against some intangible thing and decide whether there has been a substantial wrong or miscarriage of justice. In our view a miscarriage of justice amounts to a denial of justice, and the accused is entitled to have his appeal allowed.

In our amendment to the bill we have confined the application of the rule by which the court of appeal could dismiss an appeal on the ground that there has been no substantial wrong or miscarriage of justice to the case where there has been a wrong decision on the question of law. In those circumstances the court may examine all the facts of the case and decide that the wrong decision on a question of law was not important in the decision of the case, or that the jury was not influenced against the accused, or that the scheme of his defence was not affected adversely. In those circumstances it may well be found that notwithstanding the wrong decision in law there has been no substantial miscarriage of justice, and therefore the appeal will be dismissed. In that regard, we have made the amendment which I have indicated.

We also dealt with the right of election by an accused person. The provisions of the Criminal Code are quite firm in relation to offences and matters of proof. The bill before you provides certain rights of election by an accused as to how he shall be tried. In that respect the bill is a departure from the present law, which allows an accused to elect to be tried summarily or by the next court of competent jurisdiction—which means by a judge and jury—and having made the latter choice, he can later re-elect to be tried by a judge without a jury. The bill as it came to us provided that if an accused elected before a magistrate to be tried by a judge without a jury, he would not have a chance—if he were later advised by counsel that he

would be better off before a jury—to re-elect to be tried by judge and jury. We felt that the new law should not put an accused in any worse position, and that at the same time we should protect the Crown by providing that an accused could re-elect only up to the fixing of the time for his trial. Once the day of his trial has been fixed he could not dilly-daily any longer with the court and the procedure of the court. Thereafter he could not make re-election for trial by judge and jury without the consent of the Attorney General or counsel representing the Attorney General. So we have provided that safeguard; and the Crown, by simply fixing, at as early a day as possible, the date of his trial, has within its own hands the means to reduce the time within which a convicted person may avail himself of this right to re-elect. After that it becomes necessary to obtain the consent of the Attorney General or counsel on his behalf.

Hon. Mr. Ross: Does that right of the accused to make election apply in all cases?

Hon. Mr. Hayden: Well, of course there are some cases in which the magistrate has absolute jurisdiction. I refer to cases where there is the right of election. Where the magistrate has absolute jurisdiction he just presides and tries the case. In summary conviction cases he presides and tries the case, and then the defendant has the right of appeal. I am speaking about cases where an accused person with his consent, that is by his election, can be tried before the magistrate, or he may make these other elections.

There are one or two other things to which I should call your attention. I think we have improved very considerably the proceedings in respect of estreat in the case of recognizance. Where sureties have entered into a recognizance assuring the appearance of an accused person at the proper time and place, and have furnished the necessary security, we have simplified the procedure in the event of default or the security not being sufficient to take care of the amount of the recognizance which was originally put up to secure the appearance of the accused person. It was provided in the bill that when the sheriff had exhausted his remedies as regards collecting the amount of the recognizance and was still short of the full amount, the next step would be an *ex parte* proceeding by the Crown for the committal of the surety to jail, and after such committal there was provision whereby, upon notice, the surety could make application to be heard by a judge as to why he should not have to remain in jail. That procedure presented many complications. It might turn out that the circumstances were such that the surety should not have been committed to jail at all. So we thought a simple method of dealing with the matter would be to substitute, for the *ex parte* hearing, a notice to the surety, who then would make out his case, if he could, and account for the circumstances which led to the lack of realization out of the assets which were put up on the recognizance. There are many situations where the surety might be blameless for the situation which subsequently developed. For instance, he might put up securities the market value of which, at the time of putting up, would be at least equal to the amount of the recognizance, but which subsequently, when default occurred and there was an attempt to realize, might by reason of factors beyond his control have dropped to such an extent that they amounted to less than the sum required. In those circumstances it would be unreasonable to penalize the surety by putting him in jail, since he had acted in perfect good faith. That is the reason we made the change. We thought it was in the interest of the protection of the surety, and it was not against the interest of the Crown.

I should direct your attention to the fact that we did one thing which may be said to make us leaders in this particular direction; we struck out in committee today the section, which heretofore was also part of the common law, that makes it an offence to libel the sovereign of a foreign state. Speaking frankly, we were moved to do that, I believe, by a realistic appraisal of the present world situation. It did not appeal to us that this section should continue to operate as a restraint on freedom of criticism or critical expression in relation to persons who may temporarily be in the position of, or designated as, sovereign heads of foreign states, or that the measure of an alleged libel should be how it was regarded in those countries. Having given the matter consideration, we felt that provisions which may not have been inappropriate in earlier times—when more regard was had for the position and the dignity of heads of sovereign states, and international relationships were on a somewhat different plane—had become more or less outmoded, if not archaic. It was our opinion that this provision added nothing to the comity of nations; that its exclusion from the present bill would be neither remarked nor regretted; and that therefore we were justified in striking it out.

These are some of the principal things we considered; and tonight I am touching only on the main sections. A number of others were amended merely for the purpose of clarification. We did not read into the drafting of the sections any intent to deprive an accused person of all the rights and pro-

cedures and defences which have availed him hitherto, but we felt that something more could be done to make plain what those rights were in particular cases.

I think it will be evident to you when you read the report that we scrutinized minutely, line by line, even down to periods and commas, every section of the bill; and it contains over 280 pages, 748 sections and quite a number of forms. In our task we received excellent assistance from our Law Clerk, who demonstrated once again the ability in these matters of which he has given us so freely. He was present at all our hearings and worked on the drafting of all the amendments. We are also indebted to the law officers of the Department of Justice who sat with us, and did an excellent job, and to whom we have referred particularly in the report.

Honourable senators, we have got to remember that the legislation before us is a revision of the Criminal Code and not a revision of the substantive criminal law of Canada. It is true that a considerable reduction has been made in the content of the Code, some 1,200 sections having been reduced to approximately 748. Many of the archaical offences have been stricken from the Code. As the Code has grown up many condensed and simpler ways have been found to express things that previously required much more space. In its general over-all scheme the Code is therefore a more simplified document today. In particular, the procedural sections have been streamlined and are much easier to follow and understand. The processes are logical and reasonable, and can be grasped readily. The Code is in a highly commendable state, but I would warn at the same time that a revision of our substantive criminal law has not been made.

When offences contained in the legislation before the house require overhauling as a result of changing conditions, some special group may have to be commissioned to deal with the matter. We must remember that as a result of social development and changing conditions, acts that are not offences now may have to be written into the Code as offences in the future. These are matters which may very well become the subject of thorough study at some future time. Our committee felt that it should not bring in new offences under a heading or description of offences which have acquired a secondary meaning. For instance, under the word "treason" we think of particular kinds of offences. We did not think it wise to bring in new and modern offences, which are the outgrowth of present world conditions, and group them under the word "treason", which has acquired its own peculiar significance. We felt that, if changing times require it, we shall have to create new criminal offences and provide adequate punishment for them. That is why in the treason section we deleted a subsection. It may be that in the light of present-day conditions that there should be such an offence and that the offender should be punished with the full rigour of the law. But let us call it what it is, and make it a criminal offence. After all, criminal law is not static and must progress as the public need requires. Let us create new offences where necessary, but let us not put them under headings which are misleading. These titles may have acquired restricted and qualified meanings over the years. That is what we thought about the word treason. I do not bow to anybody in my desire to protect the welfare and the public interest of Canada against those, either within or without this country, who would seek to undermine the public safety and welfare of Canada. In creating new offences with rigorous penalties, we should make sure that Canada can punish to the full extent of her criminal law those who might attempt to undermine her security when they are enjoying the protection, hospitality, comfort, safety and well-being that this country affords.

Some Hon. Senators: Hear, hear.

Hon. Mr. Davies: May I ask the honourable senator a question? I was present at the hearings of the main committee, and perhaps I should know more about this subject; but it is not clear in my mind what the Criminal Code has to do with dog racing. My understanding is that certain legislation would have to be passed by the federal parliament or a provincial legislature before a person could start dog racing in any province. What exactly has the Criminal Code got to do with dog racing? I am sorry to be so ignorant on the point.

Hon. Mr. Hayden: The answer is simple. If you are talking only about the running of dogs, the Criminal Code has absolutely nothing to do with that. If, however, you wish to have *pari mutuel* betting in connection with the running of dog races, then the Criminal Code will have everything to do with it. At the present time the Code makes it a criminal offence to bet on dog races; it does not exempt dog races as it does horse races, from the general provision of the Criminal Code with respect to betting. Therefore, while you could have dog races without any regard to the Criminal Code at all, you could not have dog racing with *pari mutuel* betting. I do not know to what I could compare dog racing without *pari mutuel*

betting. It would be like spending money and not having any money to spend. Dog racing without *pari mutuel* betting would mean that you would be paying money out with no money coming in. That would hardly commend itself to any person, even those of limited intelligence.

Honourable senators, I believe I have finished. I would like to close with the remark that our consideration of the bill was intensive, and although it was carried out in a short space of time you need not fear that it was hastily done or that we took any short cuts in order to complete the job. We feel that we devoted the time that was necessary to do the job, and we think that in the document before you we have presented a fairly good product.

Some Hon. Senators: Hear, hear.

Hon. W. M. Aseltine: Honourable senators, I wish to make a few brief remarks at this time, although I always feel, after listening to the honourable chairman of the Banking and Commerce Committee (Hon. Mr. Hayden) that there is little left to be said.

It is my opinion that this is the most important piece of legislation that has been brought before parliament for many a day. It affects the life and liberty of every individual in the whole of Canada. Therefore it is of tremendous significance. I feel that the government of the day is to be congratulated upon sending such a complicated bill to the Senate for consideration rather than having it introduced in the other house. I say that because we have among the members of the Senate distinguished counsel of nation-wide prominence who have freely given of their valuable time in order to study all the different phases and parts of this legislation. I refer to the chairman of the Banking and Commerce Committee (Hon. Mr. Hayden), the senator from Toronto-Trinity (Hon. Mr. Roebuck) and the senator from Vancouver-South (Hon. Mr. Farris). Also, the Senate's Law Clerk is a gentleman with a profound knowledge of the law, and in my opinion one of the ablest legal draftsmen that Canada has ever had. Because of duties that kept me engaged in a lower part of the building, I was able to get up to only one meeting of the subcommittee that worked on this bill, but at that meeting I was deeply impressed by the detailed study that was being given not only to every section, but to every sentence, every line and every word. I regret that it was not possible for me to attend further meetings.

Having practised law in western Canada for some forty years or so, I am much interested in the provisions for trial *de novo*, which have been fully explained by the chairman of the committee. The bill as drafted had dropped these provisions, and I was afraid that it would be impossible to have them restored. I am pleased to inform honourable senators that the Attorney General of the Province of Saskatchewan objected to doing away with trials *de novo*, and also that many magistrates in our province asked me, when the bill came up here for further consideration, to say to the Senate that they thought failure to provide for trials *de novo* would be a retrograde step.

I have had considerable experience with trials of this kind, particularly in cases where accused persons have been tried in the first instance summarily before magistrates. Our magistrates are not all lawyers, and quite frequently when a case is heard before a lay magistrate it does not receive the attention that it would have received had he been a lawyer. In many of these summary conviction cases also the accused does not fully understand the seriousness of the charge brought against him. Sometimes he appears in court without any witnesses or counsel, and before he knows it he is convicted and fined, or perhaps even committed to jail. In such a case it seems to me that it is only just and proper that if the accused person feels aggrieved he should be able to have a new trial. And that is what is made possible by provision for trials *de novo*, for in the notice of appeal it is not necessary to state any grounds; you are only required to state that you are aggrieved by the conviction. Then a new trial is granted, and you are given the advantage of engaging counsel and calling witnesses, so that when the case is over you feel that you have had justice.

Hon. Mr. Reid: To whom do you appeal for a new trial?

Hon. Mr. Aseltine: The district court judge or the county court judge. In Saskatchewan these appeals are heard by district court judges.

Furthermore, if you have to rely on the evidence taken down by the magistrate you will frequently find when you get his notes that a great deal of the evidence in your favour is not there at all. And perhaps some of the evidence in favour of the prosecution is not there. I understand that in Ontario every magistrate has a reporter to take down the evidence, but this is not so in Saskatchewan. We have no such facilities at all in many places, and it is only when cases are tried in the larger centres, or in the Court of Queen's Bench, and so on, that there is a court reporter on hand at all times. Often if we want the evidence taken down in a summary trial, we ourselves have to provide a stenographer, and at many outlying district points no stenographer at all is available.

For these reasons it seems to me that in a province like Saskatchewan or Alberta, or even Manitoba and the northern parts of British Columbia, it would be a bad thing if trials *de novo* were abolished. As things now stand, it is frequently impossible for an accused person to have justice done at the first trial in those territories, and therefore it is essential that there should be machinery for a rehearing.

I was also asked before I came to Ottawa at the beginning of this session to urge another point on the committee studying this bill. That was that there should be a definition of "magistrate" which would require that he be a lawyer of at least five years' standing. However, after talking over the matter with the chairman of the committee I was given to understand that in many parts of Canada it would be impossible to put that requirement into effect at present, but that it is the intention and policy of the attorneys general of the different provinces to bring about a change whereby only lawyers of some standing will be appointed as magistrates.

Honourable senators, that is all I have to say about the bill and the committee's report. I am pleased with the way in which the matter has been handled. The committee had a hard task, and it has done a good job of which I think the Senate has every reason to be very proud.

Hon. Mr. Horner: May I ask a simple layman's question? Where do the dogs run? Have they any rights under this bill?

Hon. Mr. Hayden: Well, the dogs have not made an application before the Senate committee.

Some Hon. Senators: Oh, oh.

Hon. Mr. Hayden: An application was made on behalf of some organization—not an organization of dogs, but rather of friends of the dogs—to the end that their dog-running might be made remunerative. As no action was taken by the Senate committee with regard to that aspect of the bill, the matter does not now come before us.

Hon. Mr. Roebuck: Honourable senators, if no one else wishes to address the Senate at this time, may I ask the leader if I am right in assuming that there is no particular reason why we should pass the bill tonight? It is an important bill, and if no other honourable senator wishes to speak to it, I would move the adjournment of the debate.

Hon. Mr. Robertson: Honourable senators, notwithstanding the fact that the chairman of the committee has spoken tonight, and others have expressed their views, I think it only proper that the honourable senator from Toronto-Trinity (Hon. Mr. Roebuck) should have every opportunity to give us the benefit of his remarks. I know of no reason why we should not resume the discussion tomorrow afternoon.

Hon. Mr. Reid: May I ask the sponsor of the bill if it is the intention to have this measure incorporated into the new revised statutes?

Hon. Mr. Hayden: I understand so.

The motion of Hon. Mr. Roebuck was agreed to, and the debate was adjourned.

The Senate adjourned until tomorrow at 3 p.m.

APPENDIX

REPORT OF COMMITTEE ON BANKING AND COMMERCE ON BILL O, AN ACT RESPECTING THE CRIMINAL LAW

Tuesday, December 16, 1952

The Standing Committee on Banking and Commerce to whom was referred the Bill "O", intituled: "An Act respecting the Criminal Law", have in obedience to the order of reference of 25th November, 1952, examined the said Bill and now beg leave to report the same with the following amendments:—

1. Page 3, line 9: delete the words "recorder or" and substitute therefore the words "municipal judge of the city, as the case may be, or a".

2. Page 9, line 35: insert after "8" the figure and bracket (1).

3. Page 9: insert after subclause (1) of clause 8 the following subclauses:—

"(2) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal against the punishment imposed.

(3) Where a court or judge summarily convicts a person for a contempt of court not committed in the face of the court and punishment is imposed in respect thereof, that person may appeal

(a) from the conviction, or

(b) against the punishment imposed.

(4) An appeal under this section lies to the court of appeal of the province in which the proceedings take place, and, for the purposes of this section, the provisions of Part XVIII apply, *mutatis mutandis*.

4. Page 17, line 33: strike out the word "other".

5. Page 19, line 2: after the words "Her Majest" insert ", or does her any bodily harm tending to death or destruction, maims or wounds her, or imprisons or restrains her".

6. Page 19, lines 11 to 14: strike out paragraph (e), and reletter paragraphs (f) and (g) as (e) and (f).

7. Page 19, line 33: delete "f or g" and substitute the following "or f".

8. Page 20: immediately after clause 48 insert the heading "PROHIBITED ACTS."

8A. Pages 20 and 21: transpose clauses 49 and 52 and renumber accordingly.

8B. Page 23, lines 23 to 28: strike out clause 62.

9. Page 20, line 37: strike out the word "or".

10. Page 20, line 42: delete the period and insert therefor ", or".

11. Page 20: insert the following as paragraph (c) to subclause (1) of clause 50:—

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

12. Page 21, line 34: after the word "who" insert the word "wilfully".

13. Page 23, line 1: renumber subclause 5 of clause 60 as clause "61".

14. Page 23, line 1: delete "notwithstanding subsection (4) no person shall be" and substitute "notwithstanding subsection (4) of section 60 no person shall be".

15. Page 23, line 17: Renumber clause "61" as clause "62".

16. Page 23, lines 23 to 28: strike out clause 62.

17. Page 23, line 29: after the word "who" insert the word "wilfully".

18. Page 24, line 3: after the words "Canadian Forces," add the word "or".

19. Page 24, line 5: delete ", or" and insert a period.

20. Page 24, line 6: strike out paragraph (c).

21. Page 26, lines 2 to 5: delete paragraphs (a) and (b) and substitute therefore the following:—

"(a) challenges or attempts by any means to provoke another person to fight a duel,

(b) attempts to provoke a person to challenge another person to fight a duel, or

(c) accepts a challenge to fight a duel,"

22. Page 27, line 27: delete the word "other" and substitute therefor the words "any other dangerous".

23. Page 28, lines 3 to 7: delete paragraph (a) and substitute therefor the following:—

"(a) makes or has in his possession or under his care or control an explosive substance that he does not make or does not have in his possession or under his care or control for a lawful purpose, or".

24. Page 38, line 10: delete the word "or" and substitute the word "to".

25. Page 40, line 37: delete the words "evidence for the purpose of" and substitute therefor the words "anything with intent that it shall be used as evidence in".

26. Page 41, line 28: strike out the word "or".

27. Page 45, lines 9 to 20: delete clause 134 and substitute therefor the following:—

"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, instruct the jury that it is not safe to find the accused guilty in the absence of evidence that corroborates, in a material particular, the evidence of that female person, but that they are entitled to find the accused guilty if they are satisfied beyond a reasonable doubt that her evidence is true."

28. Page 47, line 40: after the word "vessel" insert the words "engaged in the carriage of passengers for hire,".

29. Page 50, line 15: after the word "scurrilious" add the following words: "but this section does not apply to a person who makes use of the mails for the purpose of transmitting or delivering anything mentioned in subsection (4) of section 151".

30. Page 51, line 4: strike out the words "or is likely to endanger".

31. Page 51, line 5: strike out the words "or is likely to render".

32. Page 51, lines 8 to 12: delete subclause (2) and substitute therefor the following:—

"(2) No proceedings for an offence under this section shall be commenced more than one year after the time when the offence was committed."

33. Page 51: add the following subclause (3) to clause 159:

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

34. Page 58, lines 26 and 27: delete lines 26 and 27 and substitute therefor the words "a subpoena".

35. Page 58: add the following as subclause (3) to clause 174:

"(3) No evidence that is given by a person under this section may be used or received in evidence in any criminal proceedings against him, except proceedings for perjury in giving that evidence."

36. Page 67, lines 32 to 38: delete subclause (2) and substitute therefor the following:—

"(2) Every one commits an offence who, being under a legal duty within the meaning of subsection (1), fails without lawful excuse, the proof of which lies upon him, to perform that duty, if

(a) with respect to a duty imposed by paragraph (a) or (b) of subsection (1),

(i) the person to whom the duty is owed is in destitute or necessitous circumstances, or

(ii) the failure to perform the duty endangers the life of the person to whom the duty is owed, or causes or is likely to cause the health of that person to be endangered permanently; or

(b) with respect to a duty imposed by paragraph (c) of subsection (1), the failure to perform the duty endangers the life of the person to whom the duty is owed or causes or is likely to cause the health of that person to be injured permanently.

(3) Every one who commits an offence under subsection (2) is guilty of

(a) an indictable offence and is liable to imprisonment for two years; or

(b) an offence punishable on summary conviction."

37. Page 68, line 1: renumber subclause (3) as (4).

38. Page 69, lines 1 to 9: delete clause 191 and substitute therefor the following:—

"191. (1) Every one is criminally negligent who

(a) is doing anything, or

(b) is omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

(2) For the purposes of this section, "duty" means a duty imposed by law."

39. Page 73, line 19: after the word "birth" insert the words "as a result thereof".

40. Page 74: immediately before clause 221, insert the heading

"AUTOMOBILES, DANGEROUS PLACES AND UNSEAWORTHY SHIPS"

41. Page 75, line 4: after the word "assistance" insert the words "where any person has been injured"".

42. Page 75, line 10: after the word "assistance" insert the words "where any person has been injured".

43. Page 77, line 11: after the word "who" insert the words ", without lawful excuse".

44. Page 77, line 26: delete the word "or" and substitute the word "and".

45. Page 77, line 31: delete the word "or" and substitute the word "and".

46. Page 98, line 9: after the words "Canada Post Office," add the word "or".

47. Page 99, lines 1 to 13: delete paragraph (b) and substitute therefor the following:—

"(b) was stolen within twelve months before the proceedings were commenced,

and that evidence may be considered for the purpose of proving that the accused knew that the property forming the subject-matter of the proceedings was stolen property."

48. Page 99, line 22: delete the word "obtained" and substitute therefor the word "stolen".

49. Page 104, lines 20 and 21: delete paragraph (a) and substitute therefore the following:—

"(a) a letter or writing that he knows contains a threat to cause death or injury to any person; or".

50. Page 115, line 37: strike out the words "or by any other means".

51. Page 116, line 31: strike out the word "undue".

52. Page 122, line 18: after the word "railway" add the words "that is a common carrier,".

53. Page 140, line 8: delete line 8 and substitute "(ii) section 49",

54. Page 140, line 9: delete line 9 and substitute "(iii) section 51",

55. Page 145, lines 27 and 28: strike out the words "or any other Act of the Parliament of Canada".

56. Page 145, lines 32 and 33: strike out the words "or any other Act of the Parliament of Canada".

57. Page 146, lines 33 to 39: Delete subclause (1) of Clause 432 and substitute the following:

"432. (1) Where anything that has been seized under section 431 or under a warrant issued pursuant to section 429 is brought before a justice, he shall, unless the prosecutor otherwise agrees, detain it or order that it be detained, taking reasonable care to ensure that it is preserved until the conclusion of any investigation or until it is required to be produced for the purposes of a preliminary inquiry or trial, but nothing shall be detained under the authority of this section for a period of more than three months after the time of seizure unless, before the expiration of that period, proceedings are instituted in which the subject-matter of detention may be required".

58. Page 147: Immediately after subclause 4 of clause 432, add the following new subclause:

"(5) Where anything is detained under subsection (1), a judge of a superior court of criminal jurisdiction or of a court of criminal jurisdiction may, on summary application on behalf of a person who has an interest in what is detained, after three clear days' notice to the Attorney General, order that the person by or on whose behalf the application is made be permitted to examine anything so detained."

59. Page 147: Immediately after the new subclause (5) of clause 432 add the following new subclause:

"(6) An order that is made under subsection (5) shall be made on such terms as appear to the judge to be necessary or desirable to ensure that anything in respect of which the order is made is safeguarded and preserved for any purpose for which it may subsequently be required".

60. Page 152, lines 21 to 26: Delete subclause (1) and substitute the following:

"447. (1) Where a warrant for the arrest of an accused cannot be executed in accordance with section 445, a justice within whose jurisdiction the accused is or is believed to be shall, upon application and upon proof on oath or by affidavit of the signature of the justice who executed the warrant, authorize the execution of the warrant within his jurisdiction by making an endorsement, which may be in Form 25, upon the warrant."

61. Page 153, lines 1 to 7: Delete clause 449 and substitute the following:

"449. Where an accused who is charged with an indictable offence is before a justice, the justice shall, in accordance with this Part, inquire into that charge and any other charge against that person."

62. Page 153, lines 33 and 34: Delete the words "stood mute" and substitute the words "did not elect,".

63. Page 153, line 40: Delete the words "stood mute" and substitute the words "did not elect.".

64. Page 154, line 15: After the word "directs" insert the words "without any deposit;".

65. Page 154, line 24: Delete the word "informant" and substitute therefor the word "prosecutor".

66. Page 154, line 44: After the word "adjourned" insert the words "with the consent of the prosecutor and the accused or his counsel;".

67. Page 155, lines 11 to 13: Delete paragraph (i) and substitute therefor the following:—

"(i) receive evidence on the part of the prosecutor or the accused, as the case may be, after hearing any evidence that has been given on behalf of either of them;".

68. Page 155, line 18: Delete the word "answered" and substitute therefor the word "served".

69. Page 155, lines 26 to 29: Delete paragraph (a) of subclause (1) and substitute the following:

"(a) take the evidence under oath, in the presence of the accused, of the witnesses called on the part of the prosecution and allow the accused or his counsel to cross-examine them; and".

70. Page 156, line 22: Immediately after the word "trial." insert the following:—

"You must clearly understand that you have nothing to hope from any promise of favour and nothing to fear from any threat

that may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you at your trial notwithstanding the promise or threat."

71. Page 160, line 19: Strike out the word "who".

72. Page 162, line 38: Delete the words "or stands mute".

73. Page 163, line 2: Delete the words "stood mute" and substitute therefor the words "did not elect".

74. Page 163, line 9: Delete the words "stood mute" and substitute therefor the words "did not elect".

75. Page 163, lines 43 and 44: Strike out the words "but it is not necessary for witnesses to sign their depositions".

76. Page 164: Immediately after subclause (4) of clause 474 add the following as subclause (5):—

"(5) Where an accused has elected under section 450 or 468 to be tried by a judge without a jury he may, at any time before a time has been fixed for his trial or thereafter with the consent in writing of the Attorney General or counsel acting on his behalf, re-elect to be tried by a judge and jury by filing with the clerk of the court an election in writing and the consent, if consent is required, and where an election is filed in accordance with this subsection the accused shall be tried before a court of competent jurisdiction with a jury and not otherwise.".

77. Page 165, line 39: delete the words "stood mute" and substitute therefore the words "did not elect".

78. Page 169, line 31: strike out the words "in Canada".

79. Page 172, line 27: after the word "particulars" insert the words "and, without restricting the generality of the foregoing, may order the prosecutor to furnish particulars",

80. Page 178, line 11: delete the words "in sections 50 to 53" and substitute "in sections 49, 50, 51 and 53."

81. Page 187, line 8: immediately before the word "shaken" insert the word "thoroughly".

82. Page 191, line 7: after the word "judge" insert the words ", in any case tried without a jury,"

83. Page 191, line 23: after the word "anyone" insert the words "other than himself or another member of the jury,"

84. Page 192, line 25: delete the word "prosecutor" and substitute therefor the words "Attorney General or counsel acting on his behalf".

85. Page 193, line 9: after the word "jury" insert the words "and any proceeding incidental thereto".

86. Page 195, lines 1 to 13: renumber subclause (4) of clause 569 as new clause 570.

87. Page 195, lines 14 to 20: strike out clause 570.

88. Page 196, line 12: after the word "conviction" insert the words "in Canada".

89. Page 196, line 15: after the word "conviction" insert the words "in Canada".

90. Page 200, lines 36 and 37: strike out the words "necessary or expedient".

91. Page 201: Insert a new subclause (2) of clause 589 as follows:—

"(2) In proceedings under this section the parties or their counsel are entitled to examine or cross-examine witnesses and, in an inquiry under paragraph (e) of subsection (1), are entitled to be present during the inquiry and to adduce evidence and to be heard.".

92. Page 201: Re-number present subclauses (2) and (3) as subclauses (3) and (4).

93. Page 202, lines 17 to 22: Strike out subparagraph (ii), and re-number the subsequent subparagraphs as (ii) and (iii).

94. Page 202, line 27: After the word "in" insert the words "subparagraph (ii) of".

95. Page 203, line 8: After the words "subparagraph (i)" strike out the words "or (ii)"

96. Page 217, line 37: Strike out the word "or".

97. Page 217, line 42: After the word "committed" add . "or".

98. Page 217: Insert a new paragraph in subclause (3) as follows:—

"(d) property in respect of which there is a dispute as to ownership or right of possession by claimants other than the accused.".

99. Page 220, lines 40 to 42: Strike out paragraph (a).

100. Page 220, line 43: Re-letter paragraphs (b) and (c) as (a) and (b) respectively.

101. Page 229: insert the following as subclause (4):—

"(4) The provisions of section 669 and subsections (1), (2) and (3) of this section shall be endorsed on any recognizance entered into pursuant to this Act."

102. Page 232, lines 14 to 46: delete clause 679 and substitute therefor the following:—

"679. (1) Where a writ of *fieri facias* has been issued under this Part and it appears from a certificate in a return made by the sheriff that sufficient goods and chattels, land and tenements cannot be found to satisfy the writ, or that the proceeds of the execution of the writ are not sufficient to satisfy it, a judge of the court may, upon the application of the Attorney General or counsel acting on his behalf, fix a time and place for the sureties to show cause why a warrant of committal should not be issued in respect of them.

(2) Seven clear days' notice of the time and place fixed for the hearing pursuant to subsection (1) shall be given to the sureties.

(3) The judge shall, at the hearing referred to in subsection (1), inquire into the circumstances of the case and may in his discretion

(a) order the discharge of the amount for which the surety is liable, or

(b) make any order with respect to the surety and to his imprisonment that he considers proper in the circumstances and issue a warrant of committal in Form 24.

(4) A warrant of committal issued pursuant to this section authorizes the sheriff to take into custody the person in respect of whom the warrant was issued and to confine him in a prison in the territorial division in which the writ was issued or in the prison nearest to the court, until satisfaction is made or until the period of imprisonment fixed by the judge has expired.

(5) In this section and in section 677, "Attorney General" means, where subsection (2) of section 626 applies, the Attorney General of Canada."

103. Page 237, line 5: strike out the words "make it a condition of".

104. Page 237, line 6: before the word "quashing" insert the word "in".

105. Page 237, line 6: after the word "proceeding" insert ", order".

106. Page 241, line 14: after the word "required" insert the words ", except by way of rebuttal,".

107. Page 242, line 9: insert the word "or" after the word "negatived,"

108. Page 243, lines 37 and 38: strike out the words ", but it is not necessary for the witnesses to sign their depositions".

109. Page 250, line 6: after the word "made" insert the words "in such amount as the judge or justice directs,"

110. Pages 251 and 252: delete clause 727 and substitute therefor the following:

"727. (1) Where an appeal has been lodged in accordance with this Part from a conviction or order made against a defendant, or from an order dismissing an information, the appeal court shall hear and determine the appeal by holding a trial *de novo*, and for this purpose the provisions of sections 701 to 716, insofar as they are not inconsistent with sections 720 to 732, apply, *mutatis mutandis*.

(2) The appeal court may, for the purpose of hearing and determining an appeal, permit the evidence of any witness taken before the summary conviction court to be read if that evidence has been authenticated in accordance with section 453, and if

(a) the appellant and respondent consent,

(b) the appeal court is satisfied that the attendance of the witness cannot reasonably be obtained, or

(c) by reason of the formal nature of the evidence or otherwise the court is satisfied that the opposite party will not be prejudiced,

and any evidence that is read under the authority of this subsection has the same force and effect as if the witness had given the evidence before the appeal court.

(3) Where an appeal is taken against sentence, the appeal court shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may upon such evidence, if any, as it thinks fit to require or receive, by order,

(a) dismiss the appeal, or

(b) vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted.

(4) The following provisions apply in respect of appeals, namely,

(a) where an appeal is based on an objection to an information or any process, judgment shall not be given in favour of the appellant,

(i) for any alleged defect therein in substance or in form, or

(ii) for any variance between the information or process and the evidence adduced at the trial, unless it is shown

(iii) that the objection was taken at the trial, and

(iv) that an adjournment of the trial was refused notwithstanding that the variance referred to in subparagraph (ii) had deceived or misled the appellant; and

(b) where an appeal is based on a defect in a conviction or order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect".

111. Page 255, line 32: delete line 32 and substitute: "conviction court dies, quits office, or is unable to act, the appellant may,".

112. Page 280, Form 24: after the word "them" in the third paragraph insert the words "for a period of ———— or".

113. Page 280, Form 24: strike out the words "or until ———— is discharged in due course of law" in the third paragraph.

114. Page 280, Form 24: strike out the fourth paragraph.

115. Page 283, Form 28: insert "669, 670", after "638", in the first line of said form.

116. Page 283, Form 28: add the following immediately after the first line of said form:

(N.B. The provisions of sections 669 and 670 (1), (2) and (3) must be endorsed on a recognizance. See section 670 (4))".

All which is respectfully submitted.

Salter A. Hayden,
Chairman.