

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 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 therefor 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, by 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 *feri 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.