

## Flag desecration bill deserves more serious study

By "JOHN BULL Jr."

ON MARCH 21 the Senate celebrated spring by giving approval in principle to a Bill making it a criminal offense for anyone wilfully to destroy, disfigure, mutilate, deface, desecrate or cast contempt upon the Canadian flag. The bill is noteworthy for several reasons aside from the fact it was approved on Friday, a day Senators usually reserve for non-legislative activities.

This was a private member's bill which had already passed the House of Commons. It had thus avoided the traditional talking-out procedure which greets so many such bills.

Indeed the few that escape this fate are normally quite harmless, such as the adoption of national "Pollution Prevention Week." But this was no innocuous declaration, it was an amendment to the Criminal Code. It created a new crime and provided for punishment of a fine or imprisonment or both.

On February 18 the sponsor of this bill, Len Hopkins, Liberal MP for Renfrew-North, had told the House of Commons the flag is an important symbol to any nation and any insult to the flag is an insult to its people.

He emphasized he was not opposed to someone wearing the flag on his jeans or sweater nor was it his intention to see the law used against someone merely disposing of an old worn out flag.

He was concerned about willful and deliberate desecration.

The House took slightly more than 30 minutes to ap-

prove this bill in principle. What discussion there was centred mainly on whether its provisions should apply to provincial and foreign flags as well.

It was decided to leave this question to the Standing Committee on Justice and Legal Affairs which considered the bill on March 12 along with one to provide for the recognition of the beaver as an official symbol of Canada.

The only witness to appear was Mr. Hopkins who repeated his arguments in favor of the bill. A number of other members also spoke in favor although there was general agreement to remove any reference to foreign or provincial flags.

One person to point out some difficulties with this bill was Ray Hnatyshyn (PC—Saskatoon-Biggar). He asked how one is to define the casting of contempt upon the flag. What is contemptible to one person may not be to another.

It is one thing for Mr. Hopkins to say how he wants the law applied but "we all know that under the rules of judicial interpretation of statutes a judge in Vancouver or Halifax is not bound by the discussion or debate. He has to look at the strict words," said Mr. Hnatyshyn.

Mr. Hopkins replied that he had faith in the judiciary's ability to properly interpret this law and again other members agreed.

THE only person to come to grips with the real problem in this bill was Ian Watson (L—Laprairie).

Mr. Watson is not even a member of the Justice and

Legal Affairs Committee but like all MPs he has the right to sit in on deliberations of committees. Although he was only supposed to speak about details of the bill, since its principle had been approved by the House, Mr. Watson's arguments put into question the wisdom of the bill itself.

He said we should not be expanding unnecessarily the number of criminal offenses. In the 10 years since the flag was inaugurated there have been few examples of people desecrating it, certainly not enough to warrant a special law.

Under the criminal code it is already possible to prosecute people who disturb the peace or cause a nuisance in the process of burning a flag. Therefore this bill must be aimed expressly at political protesters and it is at least possible that it violates their right to freedom of expression as guaranteed in the Canadian Bill of Rights.

In the best tradition of the British common-sense approach to these matters, Mr. Watson also suggested the effect of this bill was going to be the exact opposite of its intention. Instead of preventing desecration "we are going to be waving the red flag in front of people and ensuring that every protest group in the country that wants to make a point, all they need to do will be to get a flag, burn it somewhere publicly and thereby attract attention to themselves." He suggested that at the very least the committee should insure no prison sentence is involved.

DESPITE these arguments the House Committee approved the bill and on Tuesday March 18 it received final approval, without debate, by the House of Commons.

On Wednesday the bill received first reading in the Senate and the bill was placed on the order paper for second reading on Friday March 21.

When the time came Senator Muriel Fergusson led off with a short speech repeating some of the arguments made by Mr. Hopkins in the House of Commons.

There being no further speakers the bill would have passed without further debate if Senator Eugene Forsey had not taken the opportunity to ask a few questions.

He inquired about infractions and was told the penalty could be a fine of \$500 or six months in jail or both. He asked if there were recent examples of flag desecration which warranted this measure.

Several senators said there were but could not give any specific examples. Finally he questioned Mrs. Fergusson's statement that the United Kingdom had a similar law. In fact here contention was in direct contradiction of Mr. Hopkins own testimony to the House Committee where he said a search of numerous British statutes failed to reveal any provision relating to desecration of the flag.

(Nor are any such provisions to be found in Australia or New Zealand.)

Notwithstanding the lack of information given it, the Senate proceeded to give approval

in principle to the bill without even recommending it go to committee for further study. It was also moved that third and final reading be given to the bill at the next sitting, Monday evening, March 24.

Final reading was delayed and the Bill referred to committee after Senator Jacques Flynn raised some questions about the French translation of the Bill before that scheduled final reading Monday evening.

THE procedure whereby this bill made its way through Parliament raises some important questions. For example does this amendment to the Criminal Code represent government policy?

If so, why was it not introduced and defended by a member of the government which will be called upon to enforce it?

If it is not government policy should a private member have been allowed to initiate an amendment to the Criminal Code? In any case, why did the Standing Committee not call the Minister of Justice or the Solicitor General to testify about this bill? Should a private member's amendment to the criminal code be subject to less scrutiny than one by the government?

Why did the Senate seem in such an unceremonious hurry to pass this bill when it has a constitutional right and duty to prevent hasty or ill-considered legislation from becoming law?

There are at least two possible explanations for the unusual way this bill was handled. The first relates indirectly to two recent books on parliamentary reform, one by Robert Jackson of Carleton University and the other by Roman March of McMaster. In different ways both books suggest Parliament could be improved by giving private members more input into the policy process.

This is certainly a laudable objective and Professor Jackson in particular makes a number of interesting suggestions as to how this could be done. The House Standing Committee on Procedure and Organization is also investigating possible reforms in this area and it is no coincidence Parliament has been unusually receptive to private members' bills lately.

Perhaps when the various House Leaders indicated they were willing to allow this bill to go to committee other MPs were so eager to have their own bills treated similarly they were reluctant to subject this measure to serious investigation.

Perhaps from force of habit or pressure of other business most members just assumed this was another declaratory measure, like the beaver bill with which it was associated at all steps in the legislative process. Certainly MP's need more assistance to help them keep up with everything that is going on in the House and in committees.

The other alternative is more ominous, for if there is one value of Canadian life to cherish, one remnant of the spirit of the British constitution to preserve it is that no one has yet prescribed any set of values to which we are required to assent.

Is Parliament's handling of this bill partly reflection of the people's desire for a creed of Canadianism? Do they think they can achieve it by emulating Americans and others in worshipping a piece of cloth?

Once the bill receives final approval from the Senate and Royal Assent it will be the law of the land. Whether it violates the freedom of expression guaranteed in the Bill of Rights is a question that only the courts can decide.

But every interested observer of Canadian politics should realize (and many in Parliament did not) it will most certainly be tested very soon.