

*Combines Investigation Act*

**Mr. Fulton:** That is of the reprinted bill. I think my friend the hon. member for Ottawa West is referring to the original one.

**Mr. Pickersgill:** Which is the bill before us.

**Mr. Fulton:** Yes, the original bill.

**Mr. McIlraith:** Line 26.

**Mr. Fulton:** Line 26 on page 6.

**Mr. McIlraith:** Yes. The effect is to leave that subparagraph in the exact language used in section 411 of the Criminal Code. I think this motion achieves that purpose. I move:

That clause 13 be amended as follows, that the word "unduly" be deleted from paragraph 1 (d) of section 32.

**Mr. Fulton:** Under the circumstances outlined, Mr. Chairman, and in the light of the discussion, that amendment is acceptable to the government.

**The Deputy Chairman:** Is it the pleasure of the committee to accept the motion?

Amendment agreed to.

**Mr. Howard:** I should like to say a word or two about this matter, after listening to the discussion. Now that subsections 2 and 3 are in effect to be retained, while I do not want to cover the same ground again in so far as formal motions are concerned, it appears to me that there is some conflict between subsection 3 and subsection 1. Because there is an insistence on retaining the provisions of subsection 2, it would seem to me that perhaps the better course—

**Mr. Crestohl:** Would the hon. member mind if I have something to say on section 2 before he goes on to section 3? I think he took it for granted that subsection 2 is also lost.

**Mr. Howard:** I took it for granted that the motion of my hon. friend had been defeated and it would not be possible to move a similar motion; and that if subsection 2 is to remain, as it apparently is now because of the decision of the committee in the way it has been taken, it does appear that there is a conflict between subsection 3 and subsection 1. It would seem to me that the better course would be not to draft subsection 3 so that it made reference to specific things as it does, as in paragraph (a) to prices, in (b) to quantity or quality of the products, in (c) to markets or customers or in (d) to channels or methods of distribution, or preventing or restricting from entering into or expanding any business. I would think the better course would have been to phrase the subsection somewhat along these

lines. "Subsection 2 does not apply if a conspiracy or combination or agreement or arrangement contravenes subsection 1" or has lessened or is likely to lessen competition unduly, and leave it at that. In terms of phraseology this may not be the way the draftsman would do it, but the intent is there. I think this connects subsection 3 with the parts in subsection 1 which are deemed to be improper or illegal. I submit that if we connect the two we would have perhaps less chance of the so-called specific detriment argument being developed in court if any prosecution should be entered upon under this section. I think perhaps I should say this. Following along those lines and to insure that there is some connection between them I move:

That subsection 3 of section 32 of clause 13 be deleted and the following substituted therefor:

I will read it, and it will be seen that this proposed amendment I have in mind and am about to read inserts three or four words, and I will make reference to them.

(3) Subsection 2 does not apply if the conspiracy, combination, agreement or arrangement contravenes subsection 1 or has lessened or is likely to lessen competition unduly in respect of one of the following:

- (a) prices,
- (b) quantity or quality of production,
- (c) markets or customers, or
- (d) channels or methods of distribution,

or if the conspiracy, combination, agreement or arrangement has restricted or is likely to restrict any person from entering into or expanding a business in a trade or industry.

The added parts I have underlined, I believe, in each of the flimsy copies that are available. The added words are "contravenes subsection 1" which are inserted between the words "arrange" and "as" in line 42. It seems to me that something of this nature is perhaps a better course to follow, to deal with a case where in the first instance under subsection 2 a person is charged, and then under subsection 2 he says, "Oh, we were only exchanging statistics or defining products" and by that argument seeks to avail himself of this sanction or authorization in order that he may not be convicted. I think we then ensure that his defence is connected so that he also must show that the activity of exchanging statistics or whatever it was they were doing does not do and result in any of the things prevented or prohibited by subsection 1.

It was for this purpose that I put in the words "contravenes subsection 1". Perhaps the better course would have been to eliminate all the references in subsection 3 so it just reads that subsection 2 does not apply to conspiracies, combinations or arrangements that contravene subsection 1, and place a period there. I undertake merely to insert