

Combines Investigation Act

(d) of subsection 1 of section 32. There is the addition of the word "unduly". The section in the Criminal Code does not contain that word, but the corresponding reference in subparagraph (d) adds the word "unduly" after the word "commerce".

It seems to me this is adding something new by way of limitation of the offence that is not warranted by any explanation given by the minister. Indeed, there has been no indication of the reason for this other than that the subclause was an attempt to preserve the existing jurisprudence. Without elaborating at length on the argument, I think it has been made clear, or at least it has been argued by the minister, that there has been no attempt to cut down the offence by the new definition. If that is so I respectfully submit the word "unduly" should be deleted.

I therefore move:

That clause 13 be amended as follows:

That the word "unduly" be deleted from paragraph 1 (d) of section 32.

Perhaps the minister would answer the point.

Mr. Fulton: The purpose of inserting the word "unduly" in subparagraph (d) of 32 (1), which I believe is the point my hon. friend is dealing with now—it has been hard to follow him and to know exactly to which subsection he has been referring. Is it subparagraph (d) (1) of 32?

Mr. McIlraith: Yes.

Mr. Fulton: The purpose of inserting the word "unduly" is threefold. It was felt that the courts would read the subparagraph as though the word "unduly" were there, because the word "unduly" is an inherent part of the definition of every offence in combination except this one. It was not there before, but we certainly felt the subparagraph would be read as though it were there. Second, we thought that for the purpose of uniformity and to make it quite clear that it is the undue interference with competition or trade and commerce that parliament is considering, it should be there. Then, third, we felt it should be there because of the effect of the container materials case, one of the important pronouncements of the Supreme Court of Canada in the field of combinations.

These seemed to us to be good reasons why the word should be inserted. I recognize that, having said that in our view the courts would construe the section as though the word were there anyway, it could be argued that if that were the case then why bother to put it in the statute. I do not believe that is a strong argument. I think our position is the better position, but I am quite frank to say that if

my hon. friends opposite attach great importance to this and think it really changes the law, then because I cannot see any great potential harm in doing so I would be prepared to accept the amendment to debate the word. If my hon. friend presses the point I would be prepared to accept the amendment.

Mr. Pickersgill: I should like to say a word on the point, if I may. It depends a little on which verb you take. It is conceivable that you could restrict trade and commerce duly, which is the opposite of unduly. But it is hard for me to see how you could injure trade and commerce duly or how you could, by putting in the word "unduly" if you read it as "injure", injure trade and commerce unduly. It really suggests that there is a change in the meaning. For that reason I hope that my friend the hon. member for Ottawa West will insist upon his amendment. I might say that I think the minister's attitude is reasonable.

Mr. Howard: In view of the brief reference that was made earlier to the placing in paragraph (d) of the word "unduly", may I say this. The word "unduly" has appeared all the way through in relation to the verb in paragraphs (a), (b), (c) and (d), namely to limit, prevent or lessen. Those are not absolute terms. Lessening something can be done to slight degrees and so on. But when it comes to injury, this verb is more absolute and definite and the word "unduly" in connection with the verb "injure" implies that there is in the act something which should not be there. I think the wisest course is that indicated by the hon. member for Ottawa West. The minister indicated if the matter were pressed he would accept the amendment. Perhaps it would be better all the way round to remove the word "unduly". To me it appears that is the better course to take. I do not think the hon. member for Ottawa West formally moved that the word "unduly" be deleted therefrom, although he indicated that was his intention. I hope he will persist and that the course the minister suggested will be followed, namely that the word will be removed.

Mr. McIlraith: I think the attitude of the minister is quite fair on this point. In order that there will be no doubt in anyone's mind, may I say that the motion I had intended to move refers to the word "unduly" in line 26 on page 6 of the bill; that is to say, it restores the subparagraph exactly to the form in which it was.

Mr. Pickersgill: No, it is page 6, line 21.