

*Combines Investigation Act*

practice—except for criminal law and criminology perhaps—is there such a frontal co-mingling of the disciplines as in this sustained effort to prevent, through law, “undue” restrictions on competitive behaviour.

Now, Mr. Speaker, I will deal a little later in my remarks with some of the problems which the entire question of combines regulation raises. I should like to say something particularly about the bill of the hon. member. He proposes, first, that we have obligatory minimum sentences for second and other offences under this act. I understand, however, that this is a practice contrary to the trends in the courts today. I think we want to be mindful of the current trends when we propose amendments to the Criminal Code. If the hon. member is critical of them, it seems to me he should have said so. This bill, Mr. Speaker, encourages the view that the policeman should be the agent of economic policy.

I believe this is one of the great weaknesses in our own system of law. We have, probably because of our constitution, a Combines Investigation Act which is an aspect of our criminal law. The United States practice has much to teach us. They have greater latitude by reason of the fact that the federal government can legislate much more broadly in the field of civil jurisprudence. When one talks about second and third offences, I think he should remember that the people with whom we are dealing, as the hon. member pointed out, are large corporations. If you are dealing with corporations, you are not necessarily dealing with individuals, and certainly not the same individuals for the second and third offences if there are such offences.

**Mr. Orlikow:** May I ask the hon. member a question?

**Mr. Gelber:** Yes.

**Mr. Orlikow:** Is a corporation an impersonal entity? Is there not someone who makes a decision that this action shall be taken, and is that person not responsible?

**Mr. Gelber:** Yes, certainly. I will deal with that. It is very easy for corporations, if these bodies get into difficulty as foreseen by the hon. member, to play an interesting game of musical chairs to avoid the particular regulation which he is asking this house to adopt.

**Mr. Orlikow:** They do not have to; but you will not put them in jail.

**Mr. Gelber:** I am just dealing with the regulations as they appear. I agree with the hon. member that we must have more definite

[Mr. Gelber.]

administration within this area. I feel that the particular suggestion he put forward is not necessarily going to add to the chances we might have for getting more effective regulation. We not only have this problem of the corporation and the shifting of personnel by which it is possible to vitiate completely the proposal of the hon. member, but we have also this problem of second and third offences. The practice has been for the courts to regard offences on the basis of commodities and products, and a corporation having a number of different products to manufacture will be considered a first offender in so far as each product is concerned. This again vitiates the particular suggestion of the hon. member, and I feel that these offences, not being cumulative, the proposal really does not seriously advance the administration of the act.

Then there is the question of damages, and in this connection I would like to read from a judgment in the Supreme Court of Canada, in the case of *Direct Lumber Co., Ltd. v. Western Plywood Co., Ltd.* in which Mr. Justice Judson said this:

—this criminal legislation gives no civil cause of action for its breach—

Later on he says this:

The common law itself imposes liability for harm caused by combinations to injure by unlawful means but the common law never gave any cause of action for price discrimination unaccompanied by conspiracy.

Now, on the question of the next clause, I would like to read a section of the Criminal Code because I feel clause 8 of the bill is redundant. Section 21 of the Criminal Code says:

- (1) Every one is a party to an offence who
  - (a) actually commits it,
  - (b) does or omits to do anything for the purpose of aiding any person to commit it, or
  - (c) abets any person in committing it.

For this reason I maintain that clause 8 of the hon. member's bill is redundant.

On two occasions in the past, parliament has attempted to depart from the criminal nature of this area of jurisprudence, in 1919 and in 1935, and this legislation was declared ultra vires by the courts. Criminal procedure definitely inhibits the government in administering the act. It definitely inhibits administering any combines legislation, and under existing law no civil proceedings are available to an injured party and there is no provision made for awarding damages. In addition, Mr. Speaker, there is no civil procedure for obtaining a cease and desist order, only a criminal injunction or order of