Mr. Fulton: No, because we can if we feel the nature of the offence warrants it, still take that seven year old offence into court to get a conviction.

Mr. Howard: Perhaps I should inquire of the hon. member for Bonavista-Twillingate whether the effect of the amendment is contrary to the proposals in subsection 2. Is it designed to defeat the purposes set out in subsection 2?

Mr. Pickersgill: No, it is merely designed to make it necessary for the government, in a case where the attorney general believes an offence has been committed, to prosecute and not merely to ask for an injunction. We feel that if an offence has been committed, even if it is seven years old, there should be a prosecution and a conviction. In that case, as the minister has said, under subsection 1 all the other things that can be done under subsection 2 can be done anyway. We do not believe there should be any escape hatch for people who have actually committed an offence. Do I make it clear?

Mr. Howard: Yes. I think if one were to delete subsection 2 it would accomplish the same end?

Mr. Pickersgill: No, because subsection 2 also refers to someone who is about to commit an offence and the MacQuarrie commission recommended this procedure, as I recall it, as did other parties. Before an offence has been committed but when it is pretty evident that someone is getting himself in the position where he is going to commit an offence and you apply under the act to the court for an injunction, it seems to me that is a good thing to do because these things are against the public interest, and if we can prevent them altogether so much the better.

Mr. Fulton: I think I should explain that the effect of the amendment is to undo the effect we have sought to write into clause 2. There are additional reasons to the ones I gave for having clause 2—in addition to the fact that you might want to be dealing with an offence committed a long time ago. As the hon. member has pointed out, when dealing with an offence which we believe is about to be committed, obviously we are not in a position to prosecute and convict and then get an order. So we have to be in a position to apply for an injunction or a restraining order on an information; but the proof will be of the same order.

In addition to the possibility of a past case of the type to which I have referred, you may be dealing with a situation which is produced as the result of a merger or non-per se combination offence involving pretty fine judgment as to whether an offence has actually been committed. It did seem to us inappropriate in such circumstances to leave the only method of procedure by way of a prosecution leading to conviction.

Mr. Howard: It appears to me that while generally the amendment of the minister is an acceptable course to take, there are some inconsistencies between this course which is advocated and other courses which have been rejected by the minister as involving something which requires a great deal of study. It does not appear to me that the automatic end of an offence is a conviction and a fine, but that there could be and there should be other alternatives, especially in the field of mergers or proposed mergers and the functions and operations of monopolies.

We have argued the question earlier about mergers and the effect they have on the economy, and also the operation of monopolies and the need to take a different look at the problem and develop different procedures. The minister has rejected these out of hand almost by saying that there is no case law that one could rely on for a safe development of judicial opinion as to what is a merger and when it is operating to the detriment of the public interest. I believe he said there is one case presently being studied by the restrictive trades practices commission in the field of mergers, and that we must wait until such time as we get a sufficient amount of decisions from the court on the effect of mergers and a sufficient amount of results from studies by the restrictive trades practices commission on the effects of mergers and the growth of concentration in industry before we move to deal with the question of mergers and the growth and absorption of one company by another.

However, here he takes a different course and says that we should take an alternative approach to prosecution, and in the case of a merger or a monopoly we should direct that person or any other person to do such of the things necessary in order to dissolve the merger or monopoly in such manner as the court directs. This, I submit is a new course to be following and is not consistent with the attitude of the minister as expressed earlier with respect to the effect of mergers upon the economy.

On the one hand the minister says that we want to make no alteration in the definition of merger until we have a sufficient amount of study material behind us either from the commission or from decisions of the courts in order to give an indication as to in which direction we should go. On the other hand we want the right to proceed to