

Combines Investigation Act

method of approach to the drafting of new section 32 as contained in clause 13 of the bill. I had started to indicate my argument by referring to section 32 (1) which contains a statement of the offence. If I may paraphrase the subsection, everyone who conspires, combines, agrees or arranges with another person to prevent, limit or lessen unduly competition in the production, manufacture and so on of articles, or to restrain or injure trade or commerce is guilty of an indictable offence and liable to imprisonment for two years. In other words, 32 (1) is an attempt to preserve the existing jurisprudence and to restate the offence in terms almost identical with the existing law. Then follows subsection 2 which I think I ought to read. It is in these terms:

Subject to subsection 3, in a prosecution under subsection 1 the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to one or more of the following—

Then there are seven subheadings, the first six of which refer to such things as the exchange of statistics, defining of product standards and so on. As to the first six of the enumerated items, so far as I am aware, and I would ask the minister to correct me if I am not wholly accurate, there has never been any investigation or prosecution under the act. But my concern is with the seventh of the items enumerated in subsection 2, which is in these words:

(g) some other matter not enumerated in subsection 3.

Therefore there is a good defence if the combination relates to some other matter not enumerated in subsection 3. At that point we have defined the offence in subsection 1, and we have then said that there is a good defence to any prosecution under subsection 1 if the combination relates to some other matter not enumerated in subsection 3. Subsection 3 goes on to say:

Subsection 2 does not apply if the conspiracy, combination, agreement or arrangement 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—

Then these words follow:

—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.

I want to indicate what an indirect route is taken to achieve clarification in this section. The offence is set out clearly in subsection 1, as it was in the earlier legislation, and we have some 50 years of jurisprudence determining what constitutes the

offence. Subsection 2, for reasons that were indicated in the banking and commerce committee, enumerates certain types of combinations that have never been considered to be an offence, and therefore at least as to the first six paragraphs in subsection 2 it has no meaning or effect at all. But the seventh paragraph then goes on to say that there is a good defence unless the charge deals with some other matter not enumerated in subsection 3. Subsection 3 then goes on and applies a limitation. It will be seen that the whole scheme of subclause 3 is by way of limitation of the offence, and not even applied directly but applied indirectly by way of enlargement of the defences to subclause 2.

Subclause 3 is not taken in its present form from any of the existing legislation and is not, as such, the subject of any court decision. It is an attempt to repeat, I suppose the minister would say for greater clarity but I would say for dangerous, ultra-cautious reasons, what is already contained in the other subsections. This raises the whole question of how much of the offence set out in the first subclause is discarded by the combined effect of subsections 2 and 3 or the combined effect of subparagraph (g) of subclause 2 in bringing subclause 3 into effect.

I feel that this is a dangerous type of draftsmanship, and the question must remain outstanding as to how much the offence is cut down by this new method, particularly by incorporating subclauses 2 and 3 in the form in which they exist and with particular reference to subparagraph (g) of subclause 2. That is the point I wish to raise. I do not want to belabour the point and I do not want to repeat any of the arguments heretofore advanced. It seems to me, in view of that real danger, that we are unintentionally cutting down on the offence, and for no clear reasons; therefore I would support the amendment.

Amendment (Mr. Howard) negatived: Yeas, 10; nays, 25.

The Deputy Chairman: I declare the amendment lost.

Mr. McIlraith: I have one other matter that I wanted to raise, Mr. Chairman, in connection with subclause 1 of section 32. It is stated in the explanatory notes, as the minister indicated in his earlier remarks on the bill, that subsection 1 of the new section 32 incorporates section 411 of the Criminal Code. He went on to say that it was there merely to preserve the existing jurisprudence. I want to confine my argument to that narrow point. Section 411 of the Criminal Code is set out opposite page 11 of the bill, and I want to draw attention to an addition in subparagraph