

ity no court would conclude that Parliament intended to take away the discretion of the court.

However, my comment on that would be that it would be desirable to eliminate any possible doubt. This is a serious matter, whether it is a fine of \$1 million or a fine of \$750,000, and therefore we feel that we should harmonize this provision in the bill with other sections of it where you have used the words "up to" or "not exceeding." We should harmonize the language used so that a judge will not be able to give any different interpretation, so long as what we do is in line with your explanation given in the House of Commons.

Senator Walker: Yes. That is it.

Hon. Mr. Ouellet: Well, Mr. Chairman, I agree with your view, and I submit to the members of the committee that in fact there is no contradiction between the view expressed and the content of this clause of the bill, because the Criminal Code is very clear on this, and I suspect that judges are aware of it. It is section 645(2). I am sorry that I only have the French version of the Criminal Code with me, but I understand you have a translation service here. I will read it slowly and possibly it could be translated. The Criminal Code says this:

Lorsqu'une disposition prescrit une peine à l'égard d'une infraction, la peine à infliger est, sous réserve des restrictions contenues dans la disposition, à la discrétion de la cour qui condamne l'auteur de l'infraction, mais nulle peine n'est une peine minimum à moins qu'elle ne soit déclarée telle.

Therefore the million dollars there is not a minimum amount.

Mr. Cowling: That is quite right, Mr. Minister. I do not want to labour this, but I think the point really is that notwithstanding that provision in the Criminal Code, because of the fact that in a subsequent statute, which this will be, the legislature has seen fit to provide penalties in different ways, and that the intention may have been, in the case of the Combines Investigation Act, to override the provision of the Criminal Code which you have just read.

Senator Connolly: Mr. Chairman, in this connection are we talking about very many clauses of this bill?

Senator Walker: Just the one, is it not?

Mr. Lewis: Mr. Chairman, the main clauses we are talking about are 32(1) on page 24, and 36(5)(a) on page 32 of the bill as passed by the Commons.

Senator Connolly: That is in the discretion of the court.

Senator Flynn: Yes. That is clear.

Mr. Cowling: I have not combed the act. The one that was turned up that came immediately to mind was sub-clause 32(1), which is the penalty for conspiracy. As I say, I have not combed the act for others, but it seems to me that whether there is one example or two or three it is the same problem. It is perhaps even worse if there is only one example.

Hon. Mr. Ouellet: Well, I have no objection to having the legislation clearer. Quite obviously this section could be presented in a different form to make it clearer, to the effect that the \$1 million is not a minimum. I suspect that that would be the only clause in the entire bill on this point.

Having this in mind, I suspect that many other bills exist where there are penalties that have used the same language, basing their assumption on section 645 of the Criminal Code. Granting to you the fact that we have, despite the section in the Criminal Code, made it clearer to meet Mr. Lambert's suggestion in committee, we have accepted some amendments to make it still clearer, and indicate clearly to laymen that in fact, where in the legislation it is said only that the person could be sentenced to imprisonment, that does not mean imprisonment automatically.

Now, I accepted those amendments because I accepted, Mr. Lambert's argument that for laymen it could look embarrassing, but this one is not really directed to laymen. It is directed to the judges. Surely they are in a better position to know the Criminal Code and read what a clause of a bill means better than a layman.

Mr. Cowling: As I said, I do not want to belabour the point but I think a judge would have to say to himself, "Why was it necessary for the legislature to put in Mr. Lambert's amendment?" He would not call it Mr. Lambert's amendment because that will be long gone by the time it comes before a court. It was unnecessary because the Criminal Code already provided for this.

The Chairman: Why was it done?

Mr. Cowling: He could conclude that the legislature's intention with respect to the Combines Investigation Act was really to put aside the general rules of the Criminal Code for all purposes. We do not know whether a judge would so conclude, but we feel it is a possibility, and should clarify it.

The Chairman: I think we have exhausted that particular point. Unless you have something more to say, can we move on to the next point?

Mr. Cowling: While we are on the subject of penalties—

Senator Connolly: Mr. Chairman, would you allow me to ask a question, just following up on that matter, because I am just looking at the memorandum that has been made available to us. Is it the intention then to review these three sections and try and get the language into uniform shape?

The Chairman: Well, that would be the ultimate goal in doing it, except that when you say, "a fine not exceeding" a specified amount then there can be no real confusion there. If you say "a fine in the discretion of the court," that is clear. You may not be able to interpret what is in the judge's mind as to how much he is going to fine that person, but the language is clearly such that you can understand it. If you fly in the face of a provision in the Criminal Code, which provides in effect for a discretion, even though you have a fixed fine, then you have got to say to yourself, "Perhaps Parliament intended this." Yet, when I read *Hansard*, and as I listen to you today, I know it was not intended.

Senator Connolly: But that is not available to the court.

The Chairman: No.

Hon. Mr. Ouellet: Except that section 645 of the Criminal Code should be known by the judge.

Senator Flynn: I am quite sure that the judge would be inclined to accept your view, Mr. Minister, but the perti-