

Combines Investigation Act

member for Nickel Belt. As legislators, as members of parliament, we must give the minister the opportunity to study the matter. He says that he will. Let us give him the opportunity, after having made those studies, to bring forward good law which will provide consumers with sound protection, allow them to take class action and provide protection against harassment and irresponsible actions.

Mr. Stuart Leggatt (New Westminster): Mr. Speaker, I congratulate the hon. member for Nickel Belt (Mr. Rodriguez) for his worth-while amendment. I am surprised at the comments of the noted consumer advocate from St. John's East (Mr. McGrath). I was surprised by what he said about class action, and particularly about frivolity. I ask the hon. member for St. John's East to look again at motion No. 2. It does not go as far as I would go. I suppose I should congratulate the hon. member for Nickel Belt for his reserve, caution and good judgment. As I say, I would have gone further. His is a pretty cautious amendment. It says that it is up to the Attorney General of Canada to handle cases of class action. That is what it involves.

When the hon. member for St. John's East argued vigorously—on both sides of the question, I might add—about frivolous actions, he avoided two telling points. First, the amendment says that the Attorney General of Canada must judge when to commence an action. This, surely, excludes all suggestions of frivolity, especially when you consider the non-frivolous Attorney General we now have. Second, lawyers who commence an unsuccessful action which is held as frivolous, personally pay the costs of that action. In a class action you cannot assess costs against the class; costs are assessed only against lawyers either brave or stupid enough to begin a class action. Therefore, the two points raised by the hon. member for St. John's East are met by the provisions of the motion as courts award costs against lawyers who begin a frivolous action. As I say, if the court deems an action to be frivolous, it will assess costs against the lawyers themselves.

Clearly, when we establish judicial procedures for class action we must make sure that the merits of the case can be determined at a pre-trial hearing. Such procedure would result in more adequate disposition of cases. For too long we have avoided allowing public wrongs to be righted by the courts. For too long we have been content to deal with the individual claimant but not with the whole class of claimants.

It can be said that consumers as a class suffer. When you, as an individual, buy a defective Toastmaster for which you paid 20 per cent or 30 per cent too much because of fraud or conspiracy, you are not going to sue the manufacturer. There is no reason why you should; the costs are too great. Therefore, some manufacturers are getting away with murder. So long as there is no provision for class action, it is more profitable for a manufacturer to breach the provisions of the act than not to breach them. Also, we reward vendors with excessive profits. Surely penalties provided in the legislation should take these facts into account.

The hon. member for Nickel Belt has attempted to increase penalties, and I congratulate him. Possibly—indeed, probably—the public sustains damages running

[Mr. McGrath.]

into many hundreds of millions of dollars from corporate wrongdoing. Let me give an example. Two years ago the British Columbia court fined the cement industry about \$460,000. It fined the prime movers in the cement industry. Some major federal government construction projects had been undertaken in which cement was used. The cement conspiracy had gone on for some 14 years. It appeared that all the cement that had been poured in British Columbia had been artificially raised in price by virtue of the conspiracy. Little of the cement used in British Columbia was not involved in the conspiracy, according to the finding of the court.

The fine imposed was, I think, \$426,000, but no economic impact study has been done to determine by how much the public had been bilked in those 14 years. Obviously, the sum was substantial. My point is this: this legislation will not cover such a situation unless we allow individuals as a class to right that sort of wrong. We no longer live in a pre-industrial society as so often these laws seem to reflect. The amount of public wrong is never, or rarely, reflected in the penalties contained within a statute unless you allow that class to have its day in court so the court can properly assess the damage done.

● (1640)

I am pleased to note the minister has said on several occasions that he is giving serious consideration to this subject. I am pleased he has not rejected the idea of class actions. One of the problems in our country has not been merely legislative, but a lack of imagination in terms of the legal profession. Many times class actions can be started under our legal rules, but because of the caution and conservatism of the legal profession they rarely decide to embark upon departures in legal procedure. Too often we allow our American friends to embark upon new areas in terms of class action.

The lack of a class action section to a large extent renders this bill meaningless. I wrote to the Attorney General (Mr. Lang) asking what could be done in the cement case. His response, in terms of that particular problem, the great loss that the Canadian public suffered as a result of the cement conspiracy, was:

There is little or no authority on the liability of trade conspirators to third parties who may be affected by their operations and, to the best of my knowledge, no such action has ever been brought in Canada.

That is in respect of third parties. I congratulate the minister for providing in clause 12 that individual actions may be commenced as a result of a loss. That is certainly a forward step. However, the real, major losses to a society are not the ones that can be identified in the \$100,000 range; they are the massive profits accumulated as a result of shoddy goods, shoddy merchandise and slick sales practices where the public has no redress in terms of its position in court. As a lawyer, I regret seeing the court system being avoided when we have ample precedent in the United States and England for commencing class actions by those who suffer as a result of the fraud and illegal activity of others.

There is no doubt that it pays to be dishonest. Under this legislation it will continue to pay to be dishonest until the House is ready to accept this most reasonable amend-