Therefore, even if Professor Cohen supported the idea behind it, he had his doubts as to the constitutionality of the measure, and this was what I wanted to bring forward.

Mr. Howard: I have one or two thoughts that I wish to express on this. It think we all recall that the Liberal party is the only party on record which, when it comes to the treatment of combines cases, favours two separate sets of circumstances; and the hiding of the flour report is a prime example of where they wanted to take steps which were contrary to the law in order to protect some favoured sons of theirs in the industrial world. The sort of argument put forward just makes one wonder whether we should believe them at all.

Mr. McIlraith: Mr. Chairman, just one point arising out of the remarks of the hon. member for Parry Sound-Muskoka. I want to point out that the quotation from Professor Cohen's evidence had to do with whether there should be authority for the application of a restraining order in these cases. That is what Professor Cohen approved. The point raised by the hon. member for Bonavista-Twillingate is whether the minister should have the authority to determine what type of proceeding should be taken in these cases, and the point was not dealt with by Professor Cohen whether the minister should have the authority to decide or whether the courts should have the authority. If he will recall what has been said here he will agree that at no point was there any objection taken, or any suggestion that the courts might not properly have the authority merely to issue a restraining order or the other appropriate type of order, instead of applying the usual penalties whether by way of fine or imprisonment.

That was not the point at all. There was no objection to that. The point was that through this amendment, the minister is in effect taking the right, where an offence has been committed, to determine whether proceedings will be by way of criminal prosecution or by way of some civil proceeding, with the appropriate type of order made. That surely is something for the courts and not for the minister.

Mr. Fulton: Well, since the point of principle has been raised, while not wishing to prolong the debate I do, however, wish to point out that there are other authorities with respect to the acceptability and desirability of this flexibility being given in legislation of this type. I refer particularly to the report of the MacQuarrie committee which was set up to study combines legislation. In their report at page 40 they say as follows:

The use of a judicial restraining order has been suggested from time to time as a promising addition to remedies. It would be of marked service in certain types of situation, of which the incipient combine—

Mr. Pickersgill: "Incipient".

Mr. Fulton: Wait; don't be so quick. I continue:

—questioned practices in the twilight zone between competition and monopoly where the law is unsettled and the operations of the single-firm monopoly are illustrations. The analogy of the American injunction suggests itself. In the United States it has been widely used and found of value. Especially when employed in the framing of consent decrees it reaches situations where criminal prosecution may be ineffective or unsuitable, and introduces a useful element of flexibility into the administration of the legislation.

Our framing of the clause now under consideration was with the purpose of carrying into effect the full scope of the view of the MacQuarrie committee.

Mr. Pickersgill: Mr. Chairman, I should like to reply to the minister by just saying the law as it now stands which, of course, was enacted pursuant to the recommendations of the MacQuarrie committee, is in our opinion very good law and should be left alone.

Mr. Caron: If the minister had continued with the citation he quoted on page 40 he would have seen that the MacQuarrie committee report says:

In this country it is unsettled whether constitutional and other legal obstacles stand in the way of the use of a remedy of this kind.

Therefore, even in the MacQuarrie committee report there is a doubt as to the constitutionality of this provision.

Mr. Fulton: That matter was considered, and we believe we have framed a clause that is not open to constitutional question; that is our view.

Mr. Howard: At the moment, Mr. Chairman, apart from this particular amendment before us, there are provisions in the act which have been there for almost a donkey's age, as it were, which allow the minister to take different approaches to the same set of circumstances in two different cases. This is an act which was enacted by the Liberal administration, or at least it was not changed by them. The zinc oxide case is a case in point. This was a case in which the minister decided not to proceed to court. The minister has discretion now. I think he used it incorrectly in the zinc oxide case, but that is beside the point. At the moment the minister can determine whether he should proceed to prosecution or drop the whole thing, and he decided to drop it in the zinc oxide case.