

*Sports Franchises*

Clearly, this Section relates to agreements which place unreasonable restrictions on the opportunities of players. It does not deal with restrictions on teams or franchises. The problem which the Hon. Member has pointed out, and which his proposal seeks to correct, lies in Subsection (3) of Section 32.3. That Subsection reads:

(3) This section applies, and section 32 does not apply, to agreements and arrangements and to provisions of agreements and arrangements between or among teams and clubs engaged in professional sport as members of the same league and between or among directors, officers or employees of such teams and clubs where such agreements, arrangements and provisions relate exclusively to matters described in subsection (1) or to the granting and operation of franchise in the league, and section 32 applies and this section does not apply to all other agreements, arrangements and provisions thereof between or among such teams, clubs and persons. 1974-75-76, c. 76, s.15.

I suppose we can all pretty well get lost in this legalese. However, I guess one could say, in just common sense English, that the Subsection therefore states that Section 32, the general conspiracy provision of the Act, will not apply to arrangements relating to the granting and operation of franchises but that Section 32.3 will apply. However, that Section does not deal with franchises at all. It only deals with restrictions on the opportunities of players to participate in the sport. The amendment which the Hon. Member proposes would delete the words "or to the granting and operation of franchises in the league". The Bill would also add a new Subsection to the present Section 32, making it clear that that Section, and not Section 32.3, would apply to arrangements concerning franchises. These agreements would then have to be tested against the main conspiracy provisions contained in Section 32 in order to determine their legality. That is the problem that I set out to clarify for myself, as to whether what was being done was legal or illegal.

Section 32 deals, first of all, with agreements or arrangements. Clearly, teams in professional sport agree among themselves on many things—rules, schedules, and so on. They may also agree among themselves on how the revenues obtained from the games they play against each other are distributed. Most importantly, however, the teams must agree to play against each other. That is, if they are organized into a league, they must agree on what other teams will be permitted to join the league. Therefore, any decision a league makes concerning the award of a franchise will have that element of "agreement" which is required by Section 32.

There are also four Subsections to Section 32(1), each of which describes what it is which makes certain agreements illegal. The main Subsection, the one under which most combines conspiracy cases are brought, is Section 32(1)(c). That is the Section which makes illegal agreements "to prevent or lessen unduly, competition in the production or supply of a product".

There may arise certain circumstances under which a league's decision on whether to award a franchise might come under that provision, if the Hon. Member's proposal is adopted. I am thinking particularly of territorial restrictions, where one team is given an exclusive right, or a monopoly, in a certain metropolitan area. A league's refusal to permit another team to establish itself and join the league in the same city or

area as an existing team, without financially compensating the existing team, could possibly be illegal under the Act if this Bill is adopted. And, perhaps it should be. But it is important that this House should not pass too hastily a Bill which may have this result.

What about a situation, such as the recent Saskatoon case, where a league denies a franchise to a city which does not already have one? Would that situation come under Section 32(1)(c)? Would it "prevent or lessen unduly competition"? The answer is not at all clear. A court would have to decide, first of all, what the product is in which competition has been lessened. If the product in question is the exhibition of games in a certain sport, or even professional sports in general, would the denial of a franchise lessen competition if there were no professional sports franchises in that city to begin with? Would it do so to an "undue extent"?

These questions must be addressed. I do not want to attempt to answer these questions here and I will not. I hope, merely by asking them, to point out to the House that the bill proposed by the Hon. Member for Saskatoon West does little to clarify the Act as it applies to the granting of professional sports franchises.

**Mr. Hnatyshyn:** Doug Richardson will be very unhappy with that.

● (1710)

**Mr. Parent:** Is Mr. Richardson your friend? I have never met the man but I am sure that if he is your friend he must be a very nice fellow.

I very seriously doubt whether the National Hockey League would have acted in any different fashion if the Hon. Member's amendments had been in place last May. I am afraid that not only does this Bill attempt to slam the barn door after the horses have left, but it does not even slam it effectively.

For a number of years now there has been talk of amending our competition laws. Many proposals have been put forward; few have been adopted. In light of that history, it would be ironic if the House should pass a bill to amend the Combines Investigation Act which is so specific in what it seeks to deal with and yet so limited in what it would accomplish.

It may be that the Combines Investigation Act does require amendment in order to deal more effectively with the way professional sports franchises are awarded. When the Act was amended in 1976 and Section 32.3(3) was incorporated into it, it was felt that professional sport had unique characteristics which required that it not be dealt with under the general conspiracy provisions of Section 32. However, as the Hon. Member pointed out in proposing the Bill, Section 32.3 let the question of franchises fall between the cracks.

Perhaps when this House considers proposals for more general amendments, including amendments to the provisions concerning monopolies and mergers, it might also look again at Section 32.3. We could then ensure that a single section, Section 32.3, would contain the entire competition law relating to professional sport. I hope that when this House does set