

**Hon. Mr. Ouellet:** I do not think it is mandatory. If you look at the top of page 24, it says, "... is guilty of an indictable offence and is liable to imprisonment for five years, or a fine of one million dollars, or both."

**The Chairman:** It is a fine of \$1 million.

**Hon. Mr. Ouellet:** It could go up to that.

**The Chairman:** It is a specific amount.

**Hon. Mr. Ouellet:** It is "up to."

**Mr. Cowling:** That is the very point. It is a very technical point, Mr. Minister. In other places in the bill you have the words "not exceeding \$5,000," or whatever the fine might be. Now, why does the legislation use the words "not exceeding" in both those cases and not on page 24? That is the point.

**Hon. Mr. Ouellet:** I understand. I think you will appreciate that some of these amendments were made in committee. Some of the amendments which we accepted did not come from the official draftsmen of the Department of Justice, but rather were amendments brought down by the committee itself. Therefore, there might have been at one time some inconsistencies in the actual wording. At any rate, I believe those inconsistencies have been cleared up.

Do you have an example of where such an inconsistency still exists?

**Mr. Cowling:** Yes, I think that perhaps section 32.1 on page 34 is the only place where the words "not exceeding" do not appear, or the words "in the discretion of the court."

**Hon. Mr. Ouellet:** No, I do not think so. Which other one do you have in mind where the words "not exceeding" are not used?

**Mr. Cowling:** On page 37, Mr. Minister, the penalty with respect to sale above advertised price, which is section 37.1(2). In that case you have the words "not exceeding \$25,000."

**Hon. Mr. Ouellet:** There again, going back to the first explanation I gave you, in respect of offences dealt with by way of summary conviction you will find the expression, "liable to a fine not exceeding" and then a certain amount, but you will not find that wording in areas where the offence is dealt with by way of indictment.

**The Chairman:** The point is, if it is intended to be a fine of up to \$1 million, then it should be clearly stated. Otherwise, it results in confusion as against the provisions of the Criminal Code. Which way is the judge going to jump in the event of such confusion? Is he going to conclude that because you have used these various expressions to describe the amount of the fine that it is the intention to nullify section 645 of the Criminal Code? It is quite possible that he would so conclude.

**Hon. Mr. Ouellet:** Perhaps, except that the sections say that the person or firm who is guilty of an indictable offence is liable to imprisonment for five years. That is the wording.

**The Chairman:** But that does not deal with the fines.

**Hon. Mr. Ouellet:** But if the judge gives judgment one way in respect of the imprisonment and another way in respect of a fine, there would be some inconsistency in his own mind. I believe that the judiciary are clearly aware

that when we have in legislation "imprisonment for five years," that does not automatically result in a five year sentence; rather, that there is a discretion. When we say that there is to be a fine of \$1 million, he has the same discretion to make the fine any amount he wishes.

**The Chairman:** Well then, Mr. Minister, if that is what is intended, why should we not say so?

**Hon. Mr. Ouellet:** Because of the way the Criminal Code is written, Mr. Chairman, and I do not believe that you will find that type of wording in other parts of the bill which deal with indictable offences.

**Mr. Cowling:** That could be so. I am not certain. Even so, I wonder if that will be a factor in the judge's mind. I think that he could conclude, whether it was prescribed for an indictable offence or a summary conviction offence, the fact that the words "not exceeding" were used in some cases and not in others, would indicate that the legislature had intended by implication to amend the Criminal Code provisions which otherwise would have given him the discretion. It is not a certainty that the judge would so conclude, but it is a possibility.

I think that the reason the Mr. Lambert's amendment met with such general acceptance in the House of Commons was for the very reason that although there was a section in the Criminal Code which accomplished the same thing as his amendment, it was desired to draw the attention, shall we say, of the judge to the fact that he did have these options. On the same kind of reasoning I would say there might be difficulties with this present problem that you are talking about.

**Hon. Mr. Ouellet:** I do not quarrel at all with your view. I quite accept that we have to be as clear as possible. The way I read the clause, the judge, if he is embarrassed about the penalty, could always revert exclusively to imprisonment. He has three ways to go about it. He could go for imprisonment, he could go for a fine, or he could go for both.

**The Chairman:** But his opinion might be, "This is not the type of case where I should give a prison term; the ends of justice would be satisfied by a fine."

When I look at what you and Mr. Lambert said in the House of Commons when you were dealing with this amendment, I say to myself, "Why should we not reflect in this bill the explanation which you gave in the house?"

**Senator Walker:** That is what you said, Mr. Minister, but it is not your fault. In your speech you were, we think, correct, but it has not been included here. In other words, one clause of the bill is a contradiction of the other, and a judge, reading this, where he has no alternative but to give them a million dollar fine, or a five-year term of imprisonment, has to do that, because another part of the bill, where he does not have to give the maximum, specifically says so. That is what you said in your speech. In other words, there is a contradiction in the amendments that have been made to this legislation, which has nothing to do with you. If your speech had been adhered to, there would not be this contradiction. Am I right, Mr. Chairman?

**The Chairman:** Yes. The Minister and Mr. Lambert, according to *House of Commons Debates*, October 15, at pages 8232 to 8238, said that Parliament intended to impose a maximum only, and did not intend to affect the discretion of the court to impose a lesser fine, and in all probabil-