

The Standing Senate Committee on Banking, Trade and Commerce

Evidence

Ottawa, Thursday, November 13, 1975.

The Standing Senate Committee on Banking, Trade and Commerce, to which was referred Bill C-2, to amend the Combines Investigation Act and the Bank Act and to repeal an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code, met this day at 2.15 p.m. to give further consideration to the bill.

Senator Salter A. Hayden (*Chairman*) in the Chair.

The Chairman: Honourable senators, I have indicated to the minister that we will sit until 4 o'clock today, because the committee will deal with this bill again next week. Possibly next Wednesday afternoon would suit your purpose rather than the morning. There is another bill that we could deal with on Wednesday morning.

Since the bill before us is a public bill and is in our hands from the Senate in a formal way, it is at the top of our list and must be disposed of promptly. Whether we have any interference with the rapid disposition of the bill may well depend on circumstances. I am sure you understand, Mr. Minister, as well as I do that, that depends on our views as to what changes, if any, should be made, and on your views as to what changes, if any, you are prepared to concede. That is the spirit in which we have invited you here. We will tell you those problems that bother us and will ask for an explanation.

The first item to be dealt with is the one that developed after we had studied the bill—namely, the question of fines and the changes that were made in the Commons. Would you please proceed, Mr. Cowling?

Mr. R. J. Cowling, Legal Adviser to the Committee: Yes, Mr. Chairman. The difficulty seems to be, Mr. Minister, that penalties are now prescribed in three different ways in the bill. With respect to some offences, a fine of a specified amount is prescribed. An example of that is to be found in subsection 32(1) on page 24.

Another example is a fine not exceeding a specified amount, an example of which would be section 37.1, subsection (2), to be found on page 37.

A third is a fine at the discretion of the court, an example of which is to be found in paragraph 36(5)(a) on page 32.

The point has been raised that because of the different methods of describing the penalties, a court might be obliged to conclude, with respect to section 32(1), where we do not find the words "not exceeding", nor do not find a discretion—I think the fine prescribed there is \$1 million—that it did not have discretion in that particular case, that the only fine it could impose was one of \$1 million, because in other sections we find this specific wording, and on the general rules of statutory interpretation, where there is a specific provision in one place and not in another, that is

the conclusion you come to. We were wondering whether you had any comment on that.

The Honourable André Ouellet, Minister of Consumer and Corporate Affairs: The first comment I should like to make is that one has to make a distinction between summary conviction cases and those dealt with by way of indictment. That is why in some areas the amount of the fine specified and in other areas, as you have quite clearly pointed out, the amount is not specified. Those cases where it is left to the discretion of the court are where the offence is dealt with by way of indictment, and where the case is dealt with by summary conviction the amount of the fine is specified. I forget for the moment the particular section of the Criminal Code involved, but—

The Chairman: Section 645(2).

Hon. Mr. Ouellet: That is the section that states that in these cases the court could impose a fine, a term of imprisonment, or both.

During the report stage in the other place, a member of the loyal Opposition, Mr. Lambert, wanted clarification in the bill that would quite clearly specify that there is in fact a discretion with the court to go one way or the other with respect to the fine or imprisonment. He felt that should be made clear in the legislation for the benefit of those people who were not too familiar with the Criminal Code and who would not be aware that when only a jail sentence is indicated, it does not automatically mean that a jail sentence would be imposed, but that the court would still have a discretion to impose either a jail sentence, or a fine, or both.

Mr. Cowling: I believe he was referring to section 646(1) of the Criminal Code in that respect. That section states that even though a jail sentence is prescribed, the court may prescribe a fine.

The other section is section 645(2) which says that where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court.

That is another point, I think. That says that where a fine has been prescribed—that is to say, where a specific amount is mentioned— notwithstanding that, the court has the discretion to impose a lower fine, and I understand that this is how the whole subject of the amendments and the subamendments in the House of Commons came up. I do not think we are commenting at all on the substance of the amendments. It is simply that the subamendment, possibly, was not made in sufficient places in the bill, particularly section 32.1, and that a court might conclude that because of the wording in the other sections, a fine of \$1 million was mandatory in all cases.