

Senator Blois: One merchant contacted me and said that they had been using theirs for approximately 15 years and he does not know if they are accurate or not. They went to the trouble of putting in the device and then using a yard stick to check on it and the measurement was not the same, although there was not much variation.

Mr. Anderson: They could be violating the law.

Senator Blois: What should a merchant do in a case of this kind? Is there some action he himself should take?

Mr. Anderson: The inspectors visit all establishments when they believe there is any form of measuring device.

Senator Blois: One of these firms told me that to their knowledge there had not been any inspector visit their establishment to look at the machine.

Mr. Anderson: The onus is on the traders to draw it to the attention of the inspector. The inspector goes into a store probably to inspect the scales and will ask if that is all the measuring devices there are.

Senator Blois: Dry goods stores do not have scales.

Mr. Anderson: Then probably our inspector would not go into the store.

Senator Blois: This particular person was wondering if he would be held responsible if it was brought to the attention...

Mr. Anderson: If he gave short measure.

Senator Blois: What should he do? I don't think that the bill gives this information.

Hon. Mr. Basford: He should write to the Standards Branch of the Department of Consumer and Corporate Affairs in Ottawa, giving his name and address and giving the details about the device. He should inquire whether it is an approved device and request that an inspector visit his store to check it.

Senator Blois: Are you suggesting that the many thousands of stores would have to write to your department about every device in their shops?

Hon. Mr. Basford: If they have something that it is being used as a measuring device.

Senator Blois: I think that practically every dry goods store has these measuring devices. Surely you do not expect every store across Canada...

The Chairman: There is a simple alternative we discussed a while ago. The manufacturer of that device should be the one to clear it. If this device is of the particular kind or class which has received clearance by the manufacturer, then the retailer should be home free as far as any prosecution is concerned.

Hon. Mr. Basford: I am referring to section 8 of the act which says:

No trader shall use, or have in his possession for use, in trade, any device unless that device (a) is of a class, type...

et cetera. This is why he should write to the department to find out if his measuring device is of a type already approved.

Senator Blois: Will there be any notice going out to these stores advising them that they must do this? These people are worried. I would like to advise them, but I do not know how to do it.

Hon. Mr. Basford: No, there would not. This act is not changing that situation. I am talking about the existing situation before this act was passed. If they are using a measuring device it must be of an approved type. This has been the law for the last 30, 50 or 100 years.

The Chairman: Mr. Minister, I think there might be appropriate advertising in the form of notices in regard to some of these points at the appropriate time. Maybe the regulations would provide for that.

Hon. Mr. Basford: Yes, although I think the manufacturers of measuring devices know the law. I think merchants surely know that they have to give correct measure.

The Chairman: They certainly should know that it is the law.

Senator Blois: Merchants are trying to protect themselves for the future.

Hon. Mr. Basford: This law is not changing anything relative to those dry goods stores.

Senator Blois: I realize that.

Hon. Mr. Basford: If they have a device that measures length it should be accurate, and that has been the case under the existing law even before this bill is approved.

The Chairman: Mr. Minister, there is a question I would like to raise with respect to section 35, which provides for punishment, et cetera, on summary conviction or on conviction upon indictment where the Crown elects to proceed by way of indictment. For years we have had a provision in the Income Tax Act similar to the proposed section where the Crown may proceed summarily in respect to charges involving false statements or evasion of taxes or elect to proceed by way of indictment. This provision is also in the Narcotics and Drugs Act, and it may be in a lot of other legislation. My concern now stems from the fact that it would appear that for the first time this right of election to proceed by way of indictment has been challenged in the courts. A county court judge has held that such a right of election by the Crown in the terms of this provision in the Income Tax Act is a violation of the Bill of Rights.

Now, undoubtedly the Crown is going to appeal that decision if it has not already done so. The Crown has a right to appeal to a single judge in Ontario and if not satisfied there, to proceed to the Appeal Court of Ontario. If it is not satisfied there it may go to the Supreme Court