

engage in illegal activities on behalf of the Crown". That is her statement and not mine.

Senator Frith: She dissented.

Senator Roblin: Yes, she did, but she is entitled to her opinion as I am entitled to mine.

Senator Frith: Quite so.

Senator Roblin: That is not the majority opinion. The point that I want to make, cutting through all the palaver here, is what is the critical public issue that has to be addressed? It is to establish confidence that our system is framed in the right order and to establish confidence that people in public organizations who do things which are deemed to be questionable are subject to the same penalty and the same examination as others in the community. Therefore, I ask the minister very specifically to tell me whether the government intends to deal with this matter. His answer to me is unclear. He says it will be considered in the context of another bill, but exactly what that means we will not know until we see the bill. That is the point that is at issue here. The fact that the government now finds itself, for one reason or another, inclined to say it was a great mistake from the beginning—in other words, that we should not have charged the two crown corporations and, since we cannot charge them, we are not going to go ahead with charges against the four private corporations—is, I think, an example of the confusion that has developed because of the poor policy posture in which the government, and thus the country, finds itself on the question of crown immunity.

I think the minister would be well advised to examine the genesis of this problem, which was not of my making but rather arose from the activities of the government through its crown advisers. He would be well advised to examine the question of immunity, which he referred to but certainly not in any definitive terms, so that we do not run into this kind of situation again. With respect to being invidious, I think it is invidious not to include the two crown corporations in the defence operation. I am rather surprised that the minister, being so keen to have a defence of his action before the courts—and I think he is right to do so—has not exercised more influence in securing some means by which this could be brought about. Not being a lawyer, I am not at all convinced that it is impossible for the Crown to waive immunity. I do not think it is impossible. They may not have to do it. The law may exclude them from the onus of this charge, but I am not at all convinced that they could not say, "We will give up the crown immunity that the Supreme Court has conferred upon us and appear before the court and give an account just as we expect the other four companies to do." If they have committed no wrong—and the minister maintains that position—there is nothing to fear. In fact, it would be helpful because it would clear the air, and that should be done. With regard to the uranium industry, in principle you want to support them, but you do not want to do so in contravention of the laws of the country. Somebody in the legal department thought that the law had been contravened, and we are still left hanging in mid-air with respect to that important issue.

[Senator Roblin.]

Hon. Jack Austin (Minister of State for Social Development): Honourable senators, with the same leave that Senator Roblin obtained, I should also like to provide some observations. This is a bitter-sweet situation for me. As I have said before, I would much prefer that the public record demonstrate clearly what was done in the circumstances of the government's response to the uranium crisis in the early 1970s. That these judicial proceedings will deny that possibility is also now clear. Whatever Senator Roblin believes about the law, the Supreme Court of Canada has now found that crown immunity applies by statute to Eldorado Nuclear Ltd. and Uranium Canada Ltd., and the law officers of the Crown have advised that the Crown cannot waive a statutory provision because it has no discretion to do so.

I said that the Minister of Consumer and Corporate Affairs intends to introduce statutory provisions which would change this circumstance.

● (1440)

This matter had its origins in a commercial dispute between a United States entity, Westinghouse, and certain Canadian uranium producers. The embargo by the United States on Canadian uranium production in 1959 followed a period when the United States encouraged Canadian resource development for its market. Then, suddenly, it delivered this guillotine blow to the Canadian uranium industry.

The matter of the Canadian government's response in the early seventies was raised by Conservative members of the House of Commons and became something of a public debate. Those members were not content with the answers given by ministers of the Crown of the day with respect to the allegations. The Director of the Combines Investigations Branch launched an inquiry. A special investigator was retained. That investigator suggested that the issue should be proceeded with in the manner that is on the record.

We come back to the beginning point of the circle. No facts have been alleged in these proceedings to show any matter of a criminal kind or any matter which constitutes a breach of the Combines Investigation Act because, prior to hearing evidence on the merits of this matter, the Supreme Court of Canada was asked to make a ruling. There I end by saying I regret the merits were not heard, but that seems to end the matter.

Senator Roblin: I have one comment to make, and that is that the minister says that no facts of impropriety were introduced. What on earth, then, was the charge contemplated, and why was it contemplated?

Senator Austin: A charge is not facts; a charge is a charge. Facts are quite different from a charge.

Senator Roblin: No one makes a charge without some facts, so there must have been some reason for the charge.

Senator Austin: That is implying that any time someone wishes to lay a charge the onus is on the defendant to show he is not guilty of the charge. Under our law, guilt cannot be found until evidence is introduced and a court of competent jurisdiction has rendered a judgment.