

The Chairman: The other part of his answer was that assuming that all the amendments they have suggested are made, then does he still want a right of appeal to the courts? And he said, "Yes, but not as strongly". The words "not as strongly" are what bothered me.

Mr. Hemens: I am sorry; I must have communicated poorly. I think an appeal to the courts is even more justified and even more practicable if we have the proposed amendments.

The Chairman: Very well.

Senator Connolly: Mr. Chairman, I notice that the witnesses have been speaking about an appeal going to the Federal Court, as provided in section 28. Do the witnesses have any views as to whether that is the appropriate court? In some of the other material and submissions before us it was suggested that such an appeal should go to the provincial courts.

Mr. Bruce: I believe we have so submitted, too, largely on the basis that the Federal Court judges have very little expertise or experience in criminal law.

Senator Connolly: Yes, that was the point made in the other submissions.

Mr. Snelgrove: Particularly as it relates to the prohibitive offences.

Mr. Bruce: I am told that it is not in the brief, but we certainly discussed it.

Senator Connolly: So the question of what court the appeal should be to has not been discussed in your brief.

The Chairman: That is a matter that we will have to come to if we get that far along the road.

At this stage, I think maybe we have shaken everything we can out of these particular elements of the act dealing with the jurisdiction of the commission to review matters.

Senator Connolly: Could I ask another question, Mr. Chairman? It seemed to me that the latter part of the discussion we had this morning ultimately came back to the problem of the definition of "product", as Senator Buckwold has raised it here, and what we have before us is the proposal to amend the Unfair Competition Act. I am not familiar enough with the mother act to know the answer to this question, but is there a possibility that some of the things that we have been considering as appropriate for change in this bill might be covered by a power to regulate that might be in the mother act? Can any of the staff tell us whether there is a power to make regulations? Usually there is.

Senator Cook: It is unique, if there is not.

Senator Connolly: I wonder, too, whether those regulations could cover some of the problems that we have discussed.

The Chairman: Well, Senator Connolly, you know the short answer, I think, of quite a number of the members of the committee—and I think I know their views—is that the committee as a whole is violently opposed to legislation by regulation.

Some Hon. Senators: Hear, hear.

Senator Flynn: That would be the case, indeed.

The Chairman: This would be substantial, if these amendments were made, and I do not know how you could amend provisions in this bill, legislatively, in their scope and effect, by passing some regulation.

Senator Connolly: I am not suggesting that you should. I just wonder whether the power to regulate is there, and whether it might be one device that might be proposed to deal with this; because if it is, we will have to handle it.

The Chairman: By the way, I might draw your attention to the fact that the right to make regulations in the bill is limited. That is section 48.

The Governor in Council may make such regulations, not inconsistent with this Act, as to him seem necessary for carrying out this Act and for the efficient administration thereof.

So that the regulation method would not appear to be a method that could be used to bring about the changes which this delegation has recommended.

Senator Beaubien: Mr. Chairman, if the regulations could amend, as it were, the act, they could be amended again.

The Chairman: Oh yes.

Senator Connolly: You are not quoting from the bill, Mr. Chairman; you are quoting from the mother act—is that right?

The Chairman: Yes.

Senator Connolly: And you were quoting section 48.

The Chairman: Yes. Now then, I would suggest that we might move on.

There is another matter that I would like to get Mr. Hemen's view on, and the view of his delegation. That is on what this bill does in the way of creating a civil right to sue for damages by any person who can claim that he has been hurt; and that what has been done by the person he is suing is contrary to the provisions of Part V. Those are the conspiracy sections of the act and the bill.

Establishing a civil right to sue, is something new, and it is interesting that there has been some case law as to what is the common law. I am just reading from one of these cases, and it is one decided in the Supreme Court of Canada in 1962, the *Direct Lumber Company Limited against Western Plywood Company*