

• (8:30 p.m.)

So it will be seen that to the operative part of the clause, "no person shall deposit or permit the deposit of waste of any type in any waters," is attached the unconditional, unrestricted right to impose conditions, including the payment of an effluent discharge fee. It is my view that this reference to an unqualified right to impose conditions, and the reference to a payment of an effluent discharge fee indicate that the real purpose of this clause is not to prohibit waste, as does the amendment I have introduced, but to permit it subject to regulations and the payment of fees. It is, therefore, legislation on a matter partly at least within provincial powers, and it is not criminal law.

It has been clearly laid down by the courts time and time again that there is a difference between regulation of a trade or other activity on the one side, and criminal law on the other. The attempt to regulate under the guise of prohibition is not within the power of Parliament, and it would be hard to imagine a clearer case of regulation than what we have in this bill. Professor Dale Gibson of the University of Manitoba gave expert evidence on the constitutional aspects of the bill before the Standing Committee on National Resources and Public Works. I heard him, and with most of his general review of the constitutional law applicable to the bill I am in agreement, but I must disagree with his conclusion on the specific point of clause 8 as drafted. He takes the view that clause 8 can be justified on two grounds, that it is a valid exercise of the federal Parliament's power with respect to criminal law and by virtue of the general power to legislate for the peace, order and good government of Canada. He concedes, and I have a copy of his remarks here, that—

Some people might argue that the level of sophistication in the controls contemplated by the act constitute a "regulatory" system rather than a "prohibitory" system and therefore that the matter is not essentially criminal in its nature.

He says that some people take that view. I am one of those people. I am convinced it is clearly regulatory. It is not the question of the sophistication of it; it is the question of the substance—and the substance is that all sorts of conditions may be applied and that pollution is permitted, not prohibited. Professor Gibson then goes on to cite, as an indication of federal legislation which he thinks is parallel to this, the federal Lord's Day Act. That act clearly indicated that there is a right

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for criminal law to be applied on a local option basis and it shall not apply uniformly throughout Canada. I, of course, concede that. But the Lord's Day Act does not provide that you can carry on activities on Sunday on payment of a fee. It is a very different proposition.

**Mr. Greene:** It depends who you pay.

**Mr. Brewin:** I have no experience in that, Mr. Speaker.

**Mr. Knowles (Winnipeg North Centre):** Tell the minister what the wages of sin are.

**Mr. Brewin:** Professor Gibson cites another example which he thinks is parallel, the Combines Act. He says its provisions give a very sophisticated method of determining whether there is an offence. Of course that is so, and we are not objecting to a sophisticated method being used to determine what is in fact waste, what is in fact pollution of waters, pollution to an intolerable degree. We are perfectly prepared to do that. But the Combines Act does not say: You may combine subject to any regulations that we as an authority wish to make. That is one of the difficulties in our combines legislation, that it cannot be used as a means of regulating the trades or businesses concerned. The Combines Act does not provide for fees to permit you to carry on a combine. It prohibits, and that is the essential feature of criminal legislation.

Another example was used. Here the reference was to the authority of the Food and Drugs Act of 1952-53. It is true that the definition of adulterated food which is prohibited under that act is a complicated process, but the Food and Drugs Act is very different from the legislation we have before us. It imposes a penalty on the sale of adulterated drugs or food, as defined in the act and in the regulations. The essence of criminal law, Mr. Speaker, is prohibition. The essence of regulation is permission, under fee and other conditions.

Unfortunately, although Professor Gibson says that some people take this view, the view I have advanced, he himself does not discuss it, and the analogies he gives with respect to the federal Lord's Day Act, to the Combines Act and to the Food and Drugs Act simply do not apply. Would we seriously think if this Parliament amended the Criminal Code dealing with the issue of rape, and provided that rape could be committed under regulation, on payment of a fee to some federal authority, this would be criminal law? Of