

Combines Investigation Act

the formal right to conduct these prosecutions, as well as the *de facto* right he has at the present time. I shall deal with that later in greater detail; but what I meant by saying that it does not add to his rights is that it merely formalizes the *de facto* rights the attorney general has been exercising through the years. I think any lawyer would appreciate the point. There is actually no increase in power. It just formalizes his status in the courts of the provinces.

Mr. Drew: But I would point out to the minister that it does increase his power in respect of the Criminal Code, because at the present time only the attorneys general of the provinces can present indictments under the Criminal Code.

Mr. Garson: That is right, yes.

Mr. Drew: This empowers the Attorney General of Canada to take proceedings which are now entirely in the hands of the attorneys general of the provinces.

Mr. Garson: Yes, that is right. But I still say that these *de facto* rights to which my hon. friend has referred are in respect of prosecutions conducted by the Attorney General of Canada in the provinces in the name, and by courtesy of, the attorneys general of the provinces. But my point is that after the passage of section 1 the conduct of these prosecutions in the provincial courts, while it will not have to be taken in the names of the provincial attorneys general, will not be carried on with any greater actual powers of prosecution than those which the Attorney General of Canada now exercises.

Perhaps it would not be amiss if I were to deal with this particular point a little more fully right now. It has been the practice for some years when an investigation by the commissioner of the combines act results in the finding that a combine exists to follow the procedure outlined in section 31 of the act, which reads:

(1) Whenever in the opinion of the commissioner an offence has been committed against any of the provisions of this act, the commissioner may remit to the attorney general of any province within which such alleged offence was committed, for such action as such attorney general may be pleased to institute because of the conditions appearing, any records, returns, evidence or report relevant to such alleged offence.

(2) The Minister of Justice may instruct counsel to attend on behalf of the minister at all proceedings consequent on any information being laid for an offence under this act.

That is to say, the attorney general of the province may lay an information if he wishes to do so and we have the power to instruct counsel. The first proceedings in the tobacco case were carried on by the provincial attorney general, but they resulted in a stay

of proceedings. About a year later further proceedings were again instituted by the provincial attorney general but the Attorney General of Canada instructed counsel to appear.

When a report comes in from the combines act commissioner the practice has been to send a copy to each of the provincial attorneys general in order to give them an opportunity to decide whether or not they wish to take action. In the majority of cases they do not desire to do so, and this for a number of reasons. The report has not been prepared by their own provincial civil servants. If they step into the matter they will be undertaking to prove something that the federal combines investigation commission has created, that is, a report on a particular industry. Their position in that regard is not ordinarily as comfortable as our position would be in prosecuting upon a report made by our own combines investigation department. What ordinarily happens is that after a bit they reply politely to the effect that they do not wish to proceed, and then we launch proceedings.

Where we start proceedings because the provincial attorney general prefers that we take that responsibility, we conduct the prosecution, we pay the costs, but the proceedings are taken with the consent and in the name of the attorney general of the province in which the trial is to be held. The proposed amendment would dispense with the formality of asking the provincial attorney general whether he would consent to this course.

In the case of the two reports which have figured largely in the discussion during recent days, the flour and bakery reports, transactions of an interprovincial nature right across the country are covered. In a case of that kind it would be extremely awkward to say the least for a provincial attorney general to carry on a prosecution involving interprovincial matters. Every time a separate facet of the case was found to belong in some other province he would have to get another provincial attorney general involved and build up co-ordination with the other provincial attorney general or attorneys general in conducting the case. All that this amendment will do will be to give the Attorney General of Canada status by which he can commence action. It does not affect in any way the status of a provincial attorney general to commence action if he chooses so to do. As I said at the beginning, this amendment would formalize our present *de facto* powers of prosecution.