HOUSE OF COMMONS

Seventh Session—Twenty-first Parliament

1952-53

SPECIAL COMMITTEE

ON

BILL No. 93 (LETTER O of the SENATE)

"An Act respecting The Criminal Law", and all matters pertaining thereto

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Chairman: Mr. DON. F. BROWN

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

APRIL 9, 1953

WITNESSES:

Mrs. F. G. Montgomery, Toronto, Mr. Gregory J. Gorman, Barrister, Ottawa, and Mr. George S. Hougham, New Westminster, B.C., on behalf of the Canadian Restaurant Association.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1953

EVIDENCE

APRIL 9, 1953
11.00 a.m.

The CHAIRMAN: Would you come to order, gentlemen, please. We have with us this morning a delegation from the Canadian Restaurant Association. Mr. Gregory J. Gorman, barrister, is heading the delegation, and if it is your pleasure we shall now hear from Mr. Gorman.

Mr. GREGORY J. GORMAN: Mr. Chairman and gentlemen, first of all on behalf of the Canadian Restaurant Association I want to express to you our appreciation for this opportunity of presenting our views to this committee. Now I would like to introduce to the committee the representatives of the association who are here with the delegation this morning. We have Mr. C. H. Millbourn of Toronto. He is sitting at the end of the table on the right and he is president of the Canadian Restaurant Association. We also have Mr. J. C. Sim, of Ottawa, who is the first vice president of the association. Then we have Mrs. F. G. Montgomery of Toronto, who is sitting on my left. She is the managing director of the association. We also have Mr. George S. Hougham of New Westminster, B.C., who is sitting at the end of the table. He is a former managing director of the Canadian Restaurant Association. He was formerly of Toronto but is now a resident of British Columbia. He acts in a consultative capacity for the association from time to time and he has been called in to present a part of the brief of the association this morning. We shall be hearing from him later.

Also with us this morning is Mr. J. Howard St. George of Ottawa who represents the Canadian Hotel Association, which is giving its full support to the brief to be presented this morning.

Now you gentlemen have in your possession I believe the brief of the association which was given to the chairman of your committee some time ago and you may already have had an opportunity to read it.

The CHAIRMAN: Pardon me, Mr. Gorman, but I wonder if the members of the committee would like to have this brief read in view of the fact that it is only a very short one. What is your pleasure?

Agreed.

Maybe you could read it, Mr. Gorman, and make comments on it as you go along.

Mr. GORMAN: My hope was that Mr. Hougham, who is more completely familiar with the particular problem which faces the association, will deal with the brief.

The CHAIRMAN: Fine.

Mr. GORMAN: I have written a letter which may be in your hands at the moment, and which might be considered as a supplementary brief and which is fact sets out or suggests to you a form of relief which might overcome the problem which this association has. It deals with section 366 of the draft bill and perhaps at this stage I can read it so that you will know just what we are asking for. I think that would be a good starting point. The letter is addressed to Mr. Don. F. Brown, M.P., Chairman, special committee considering bill No. 93 "An Act respecting the Criminal Law", and it reads as follows:

APRIL 8th, 1953.

Mr. Don. F. Brown, M.P.,
Chairman,
Special Committee Considering
Bill No. 93 "An Act Respecting the Criminal Law",
Parliament Buildings,
OTTAWA, Ontario.

Dear Mr. Brown:

We have been consulted by The Canadian Restaurant Association regarding their brief to be presented to your Committee. The brief of The Canadian Restaurant Association to your Committee dated March 17th, 1953, outlines the position of the Association with reference to the use of picketing as an instrument in labour negotiations and these remarks are supplementary thereto.

The following is submitted as a suggested manner in which the relief sought by the Association can be granted through an amendment to Bill No. 93 under consideration by your Committee.

Section 366 of Bill No. 93 is the Section which most vitally affects the members of the Association and other persons carrying on the restaurant business and related businesses. Because of the particularly vulnerable position of persons carrying on such businesses, it is respectfully submitted that Section 366, subsection 2, of Bill No. 93 should be amended to include after the word "place", in the second line of that subsection 2, the following:

> such place not being the place of business of a person supplying goods or services directly to the consumer thereof

so that subsection 2 as amended will read as follows:

> 2. A person who attends at or near or approaches a dwelling-house or place, such place not being the place of business or a person supplying goods or services directly to the consumer thereof, for the purpose only of obtaining or communicating information, does not watch or beset within the meaning of this Section.

The effect of such an amendment would protect persons relying for the welfare of their business on the direct patronage of the public who are easily discouraged from resorting to places of business where there is even slight evidence of possible trouble or inconvenience, and who under ordinary circumstances, can resort to alternative establishments supplying the same goods or services.

The foregoing is respectfully submitted on behalf of The Canadian Restaurant Association.

Yours very truly,

CLARK, MACDONALD, CONNOLLY,
AFFLECK & BROCKLESBY,
per GREGORY J. GORMAN

Now, having told you what we are asking for, I think it would be appropriate at this time to have the problem facing the members of this association explained to you. But before doing that, I should like to call on Mrs. Montgomery who was introduced earlier as the managing director of the association. I call on Mrs. Montgomery to explain to you the scope and activities of this association. Mrs. Montgomery?

Mrs. F. G. MONTGOMERY: Mr. Chairman, and gentlemen, the Canadian Restaurant Association was organized in 1944 for the specific purpose of raising the standards of restaurant operation in Canada. We operate under a

code of ethics and we have a high degree of responsibility and privilege in being licensed to provide food and services to the public. Our present membership across Canada is approximately 12. We have representatives in all 10 provinces, and we have 23 organized branches.

Mr. GORMAN: Thank you, Mrs. Montgomery. Now perhaps Mr. Hougham will deal with the background of our request and, at the end of his remarks, if it is the wish of the committee, perhaps I can direct some further remarks with respect to the amendment which is requested. Now, Mr. Hougham.

Mr. George S. Hougham, New Westminster, B.C., called:

The WITNESS: Mr. Chairman and gentlemen, may I very briefly remark by way of introduction that I am particularly concerned with representing the British Columbia division of the association because its people were unable to be here.

While we recognize that the issue is one of national importance and significance in management-labour relations, perhaps British Columbia and Vancouver particularly at the moment, and in recent months, have been spotlighted by certain law cases which have been held out there, and by certain activities which rendered us peculiarly susceptible to the impact of union activities in the field of picketing particularly.

I am glad to have the privilege of reading this brief because, if I had been simply asked to comment on it, I maght have missed some of the significant points. So I thank you for the opportunity of reading it.

The CHAIRMAN: Are there any members of the committee who do not have copies of the brief?

The WITNESS: I have a few spare copies here.

TO: THE PARLIAMENTARY COMMITTEE CONSIDERING THE CRIMINAL CODE

Mr. Chairman and Gentlemen:—

The Canadian Restaurant Association, a Dominion-wide organization, organized primarily for the purpose of raising the standards of restaurant operation across Canada, is glad of the opportunity afforded by your present study of the Criminal Code to bring to your attention a matter concerning management-personnel relationships generally but with particular reference to the use of picketing as an instrument in labour negotiations.

The necessity for emphasis upon this subject arises out of an experience originating in Vancouver, concerning a collective bargaining agreement between Aristocratic Restaurants Limited and Local 28 of the Hotel and Restaurant Employees Union.

The negotiations and ensuing dispute between the respective parties proceeded through the due processes of law, commencing with proceedings under the British Columbia Industrial Conciliation and Arbitration Act and culminating in a decision reached by a majority of the Supreme Court of Canada.

It is beyond the scope of such a submission as this to review the various steps, judgments and appeals or to review the terms of the Supreme Court judgment with its involved legal references; but for the purposes of this brief, may we refer you to the attached Appendix being a photostatic copy of an article in a trade union magazine which sets out a concise history of the case to which we have referred. And for greater clarity, so that the point of our submission may not be missed, may we particularly emphasize the following quotations therefrom:

> The second great event of June 26th 1951 was getting word from Canada that the highest Court in the land had backed Local 28 by five votes to two—a good score in any game!—on the question of our right to picket a spot WHERE THERE IS NO STRIKE AND WHERE, INDEED, THERE MAY BE NO UNION MEMBERS . . .
>
> The importance of this decision to organized labour throughout the Dominion of Canada, cannot be stressed too strongly. It is a milestone in Canadian labour history and assures working people and their Unions that they may without hindrance INFORM THE PUBLIC OF THE ACT THAT ANY ESTABLISHMENT IS OPERATING WITHOUT A UNION AGREEMENT.

The capitals are ours.

In the light of the foregoing quotations and of the Supreme Court ruling which makes them possible, it is respectfully submitted that the spirit and intent of the B.C. Industrial Conciliation and Arbitration Act and comparable provincial legislation elsewhere in Canada, are defeated and the very terms "Conciliation" and "Arbitration" cease to have any significance.

Now, of course, this is the opinion of the layman. I do not accept any responsibility for legal opinions. This is just our opinion, the opinion of lay people.

From the viewpoint of the legal mind, it may be considered to be an over-simplification of the case when we state that the majority decision of the Supreme Court of Canada is apparently based upon the rights of an individual or his representative—a trade union for example—to communicate a statement of fact to the public by a printed placard displayed by a picket.

This association is as reasonably concerned with the rights of the individual as any other group of Canadian citizens who cherish the democratic process; but it respectfully submits that rights or privileges carry with them corresponding responsibilities and due recognition of the rights of others.

In actual practice the use of the picketing instrument as a means of enforcing the demands of a labour union, is in itself a method of intimidation regardless of the accuracy, within strict legal limits, of any statement that may be made on the placard used by the picket. If this were not true, the picketing process itself would be valueless.

A restaurant, or indeed any service establishment dealing directly with the consumer, is peculiarly susceptible to the picketing process in that the presence of a single picket or a picket line outside such an establishment tends to discourage consumer patronage which is precisely what it is intended to do.

For this reason this association urges that the right to picket the premises of an employer is one that should be safeguarded by every reasonable precaution and should only be considered as a measure of last resort where all other processes of negotiation have failed to reach an agreement.

Such a safeguard could hardly be said to be present where, as is stated in a previous quotation, there is a "Right to picket a spot where there is no strike and where, indeed, there may be no union members."

It is further respectfully submitted that public opinion has sanctioned various legislative enactments the general purpose of which is to bring management and personnel together for the purpose of reaching an amicable understanding and agreement in matters of policy, working conditions and rates of compensation. Such legislation, we submit, is designed to promote a spirit of partnership between employers and employees. The idea of a union or labour organization is implicit in such legislation and its function as a collective bargaining agency recognized when it has established the necessary authority through certification.

Such legislation generally establishes elaborate machinery to prevent precipitate action with its implied inconvenience to employers and the public and probable hardship to employees. All these precautionary measures are nullified if it is possible for a labour organization to by-pass such acts through the simple process of establishing a picket line outside an establishment whether any dispute is in progress, any negotiations have been attempted, or any union members employed on the premises by merely taking refuge in the right of the individual to "communicate a statement of fact to the public", the fact being that the said establishment does not have a union agreement of some kind.

We respectfully submit that the intimidation inherent in the picketing process itself even under adequate legislative control, is sufficiently coercive in its implications particularly, as we have already said, when applied to service establishments such as restaurants dependent exclusively upon daily public patronage as the very lifeblood of their existence. When, however, the restraining influence of conciliation and arbitration is removed, the result can easily become disastrous. Force is substituted for negotiation and under such circumstances picketing becomes a weapon of coercion directed against the employer to compel his employees to become members of a labour organization simply as a means of protecting his own business and their livelihood.

An interesting by-product of the Supreme Court decision now actually happening—it has now ceased to happen—in Vancouver involves an establishment in which the employees quite voluntarily, without undue influence on the part of the employer, refused unanimously to give the rights of certification to a union seeking to represent them in negotiations with the employer. Despite this blanket refusal, a picket is or was in continuous attendance at the premises of this employer communicating "a statement of fact" to the public, the fact being that the establishment does not have a union agreement. We respectfully submit to your comittee that this is an unreasonable abuse of the rights of the individual and is apparently made possible through the Supreme Court decision to which reference has already been made.

May I pause for a moment to digress for the purpose of making this comment. It is possible, in fact highly probable, that the Supreme Court decision does not enunciate any new principle but may spotlight a principle which is already present there, but it has been used in this particular case as an argument.

For the foregoing reasons we respectfully recommend that your committee earnestly consider if possible a revision of the Criminal Code with a view to outlawing picketing until due processes of negotiation and arbitration have been explored under appropriate provincial legislation. Again may I repeat this is just a statement of the layman. I do not know whether it is within the competence of parliament or if it is within the competence of the Criminal Code to do that, but that is what we would like to see done.

This recommendation is offered, not from any desire to restrict the legitimate rights of labour organizations as such nor the freedom of their members as individuals. Freedom, as we have already suggested, in a democratic state is predicated upon the responsibility as well as privilege limited by moral concepts which recognize the rights of others.

We believe that public opinion has long since sanctioned the idea of collective bargaining and the ultimate use of the strike and the picket line where processes of negotiation have ended in deadlock. But we also believe that these are measures of last resort the use of which should be restrained by reasonably adequate safeguards. It is in the spirit that this memorandum is respectfully submitted.

May I make one additional comment.

It is conceivable, and not highly improbable, that this measure could be used in the case of a jurisdictional dispute. Let us take a hypothetical case, hypothetical for the purposes of this argument, but it is not hypothetical in history. A union and an employer may have reached an agreement, but there may be a dispute between that union and another as to the rights of certification. The union and the employer may have reached an amicable understanding, but the rival union under this rule could easily parade a picket line stating "This establishment does not have a contract with our particular union." In the point of view of the public, who know nothing of the merits of the dispute, you can see the result would be serious.

That substantially is our case. Mr. Gorman, our counsel, has suggested a remedy which does not fall along the lines of the suggestion we have made. Now we are in your hands. We shall be glad to amplify this if you wish by answering any questions. I do want to repeat that there is no existing union contracts involved in this brief. That is not our purpose. We merely ask adequate safeguards before the use of the picket is permitted. That, sir, is our case.

The CHAIRMAN: Would you care now, Mr. Gorman, to have members of the committee submit questions?

Mr. GORMAN: That would be agreeable.

Mr. CANNON: Do you know if there is any precedent creating an exemption to the general law, allowing other businesses an exemption of that kind for any special reasons?

Mr. GORMAN: Not at the present time. The present draft section 366 is almost a redraft of the present section 501 in respect of picketing. The only change that appears now is that it is no longer an indictable offence to watch and beset. Up to 1934 watching and besetting was defined as an indictable offence and in present section 501, the saving proviso, which we are dealing with here and which appears as subsection (2) of section 366 of the draft, is paragraph (f) of section 501 of the Code. Now, up to 1934 that paragraph did not appear, so that watching and besetting was an offence. Well, in 1934 what is now subsection (2) was enacted and it provides that a person who attends at or near or approaches a dwelling house or place for the purpose only of obtaining or communicating information does not watch or beset within the meaning of this section. Now there is no exception to that saving proviso, but up to the year 1934 it did not exist at all.

Mr. CANNON: Thank you.

The CHAIRMAN: Any further questions?

By Mr. MacInnis:

Q. Mr. Hougham, you mention, I think, in various places in your brief that picketing should only be used as a means of last resort. Well, isn't that in effect today in all our labour legislation, that the right to strike is forbidden until the parties concerned and the union have exhausted every legal requirement provided in the law?—A. That, Mr. MacInnis, is the spirit and intent of labour legislation, but it is our opinion that that spirit and intent has been nullified by the Supreme Court decision.

Q. I would not agree. I do not think the Supreme Court decision nullified the provisions in any of the labour codes, either federal or provincial.—A. I am not competent to answer on legal grounds.

Q. I am not competent, either, from the legal point of view, but that is my opinion.—A. But in actual practice—you and I both come from that part of the country, Mr. MacInnis—over in North Vancouver within very recent

weeks a place has been picketed without any reference whatsoever to the Industrial Conciliation and Arbitration Act. None of the machinery has been used. The pickets have simply appeared.

Q. At such place as you mentioned, was there ever an attempt made by labour to organize the place and was the attempt unsuccessful?—A. My understanding of that situation, subject to correction, is that there was a union in that place up until about two years ago, but in the interim there has been no union and no negotiations or any attempt to establish a union on the premises. I say that subject to correction. I may be wrong, but that is my impression.

Mr. NOSEWORTHY: You have no other instance of any union taking advantage of this Supreme Court decision to place pickets before an establishment without having due process of law. You have just the one example?

The WITNESS: As far as I know. In other words, in justice to the unions, I think I ought to say that up to now I know of no particular instance in which they have used this weapon which is now placed in their hands. But they advertise quite openly that it is there for their use if they want to use it. In other words, the threat is inherent in their approach.

Mr. NOSEWORTHY: You do not think that the end result of your brief and your appearance here might be to convey to the unions across the country that there is an opportunity there for picketing which they have not been availing themselves of?

The WITNESS: I do not think they need any advisement this side of the grave.

Mr. MACINNIS: Would you take the reverse of your case? Would you take the position that an employer could not give publicity to the fact, and this is what the pickets do? They give publicity to the fact that there is no organization here. Would you make it so that the employer could not give publicity to the fact that he was not hiring organized labour?

The CHAIRMAN: You mean a counter picket?

Mr. MACINNIS: I mean indicating it in any way, by a notice in the papers, for example?

The WITNESS: That is quite a reasonable statement, but I would point this out to you; that it would be possible to a company with fairly large resources. But to a small operator it would not be possible. He is not in that kind of position. He is helpless and I am concerned particularly with the hundreds of small operators who are trying to make an honourable living out of the restaurant business. In a very large establishment in which you have capital resources which would enable you to buy advertising and that sort of thing, it might be different. But obviously, when you start a counter-picket line you are asking for trouble.

By Mr. Noseworthy:

Q. Your request is that we outlaw picketing until the unions have taken the due process of law?—A. That is right, until they have taken advantage of the union machinery which is available today.

Q. If we did that for the unions, then you would be agreeable that we should do likewise for the employers, and that they would not be permitted to announce to the public that they are carrying on a non-organized organization. I have seen advertisements by employers announcing to the public the fact that in this town, or in this village, you can carry on your business because we have no labour unions. I have known towns in Canada which have advertised that fact to Americans, urging them to establish their business in that particular place because there were no trade unions there.

They implied that it was a town where cheap labour might be employed. Now, if you are going to deny labour a certain right, are you going to forbid the employer that same right?—A. I am speaking as an individual, and I feel that a policy of that kind would not be followed by management. It is not in line with management procedure and I would question its value in the long run to any employer who would use it. But apart from that—I do not want to evade your question—but I cannot imagine a restaurant or any retail service establishment of any kind which would do that as a sheer matter of self interest. They just would not do it. That is all. It is not conceivable. If it were conceivable, then I say that it would be right. I would say that what is right in one place must be right in another.

Q. You will admit that there are restaurants which will carry on a business with unorganized labour as long as they possibly can in order to try to keep their prices up?—A. That is right. Some do, but I think if you were to study the operations of restaurants, generally, you would discover that the successful people are not the people who pay the low wages. You would discover that the people who survive in the competitive struggle in the restaurant industry are the people who practise an enlightened labour policy.

Mr. CAMERON: In this case which you quoted, Mr. Hougham, the union involved had not proceeded to the last resort before informing the public?

The WITNESS: Oh yes, they did, sir. They had gone through the process of industrialization and arbitration acts and conciliation boards, and so on, and there was a dispute, in fact. They would not accept the award of the conciliation board.

The CHAIRMAN: Who could not accept it?

The WITNESS: The union. So in that particular case they had used the machinery which was available to them at that time.

By Mr. Cameron:

Q. They were involved then in a legal struggle?—A. That is right.

Q. So that the ordinary law in regard to picketing would have been available to them?—A. Yes. You will have to read this evidence to get it. It is too long for me to summarize.

Q. Is this opinion expressed here on the bottom of the brief germane to the decision of the court?—A. Yes, because it is a principle in the law.

Q. Or was it just simply a statement which the lawyers call obiter dicta, something which is not necessary to the determination of the point involved, because they were on a legal strike and they had their normal legal rights. —A. I had better not try to get into that because if I did, I would have about 57 pages of evidence of the Supreme Court of Canada to deal with.

Q. Accepting this view as laid down by the Supreme Court of Canada, then any individual can go out in front of any restaurant with a placard and say "This restaurant is unfair to labour"; and that person would have a perfectly legal right to do so. Is that not what you are saying?—A. That is what I am saying, yes. You would have to follow the various processes through which this thing went. There was an injunction, and then it went to the Supreme Court of British Columbia and then to the Appeal Court, and finally it arrived here.

Q. Yes. But a statement of the law would have nothing whatever to do with the strike whatsoever. It was just a person exercising what you say is his legal right, that is, to walk up and down in front of a restaurant and to say "This restaurant is unfair to labour", or whatever the statement was he wished to make.—A. They should not exercise that right until they have exhausted all other means.

Q. The Supreme Court said you did not have to do that, and that you could walk up and down in the street with any statement, just so long as there seemed to be a basis for the statement.—A. That is right.

By Mr. Macnaughton:

Q. May I ask you this: the effect of this proposed amendment which you suggest would be to protect retail establishments generally, would it not?—A. Yes sir.

Q. And that is what is meant by "place of business of a person supplying goods or services?"—A. Yes sir.

Q. Restaurants, stores, etc.?—A. That is correct. I think you have on file a letter from the Canadian Retail Federation which supports the stand taken by us.

The CHAIRMAN: I do not recall it.

The WITNESS: We have a copy of it, so it is either already here or on its way.

Mrs. MONTGOMERY: It was mailed on April 2.

The CHAIRMAN: Not to me.

The WITNESS: I make the statement that the Canadian Retail Federation is in sympathy with the position which we take.

By Mr. Cannon:

Q. The only thing is that the remedy suggested on the last page of your brief would be more unfavourable to labour in the sense that there would be less traffic than with the remedy suggested in the letter of April 8, which would amend the law and exempt entirely from picketing all retail establishments. The other remedy which you suggest is that there should be no picketing unless the process of negotiation has been gone through and it would be applicable to the whole labour situation. Do you think it would be fair?—A. My comment on that is, as our counsel suggests to us, that desirable as our approach may be, there is no question of the constitutional possibility of it. But aside from that information, I do believe our remedy would be the sort of remedy we would like to have.

Q. It could be done by either the provinces or the dominion. If the dominion has not got the power, your remedy would be to go to the provinces and get an Act?—A. That again becomes a legal question which is very debatable and I shall not wander into it.

Mr. MACINNIS: I think we would have to see the Supreme Court judgment —or at least the lawyers here would have to see it so that they could evaluate these things before we could come to an opinion.

Mr. GORMAN: I should like to refer the members of the committee to the citation of the case which has been referred to. It certainly points up the problem which faces persons in a business such as the restaurant business. The citation is 1951 Supreme Court Reports at page 763. The name of the case is "Robert Williams versus Aristocratic Restaurants, 1947 Limited". I refer particularly to the judgment of Mr. Justice Kellock.

Mr. ROBICHAUD: Is that a dissenting judgment?

Mr. GORMAN: No, it is not. It is at page 788, and incidentally, there is only one dissent, and that was by Mr. Justice Locke.

Mr. NOSEWORTHY: In your brief, in paragraph 4, you refer to an attached appendix of photostatic copies of an article.

The WITNESS: That was the original document which was filed with the chairman.

The CHAIRMAN: We have a photostatic copy of the original. We only have the one.

Mr. NOSEWORTHY: There is a copy?

The CHAIRMAN: This is news from a union publication apparently. It says here that the journal will not be responsible for views expressed by correspondents. It does not state what publication this appeared in.

The WITNESS: It is the "Catering Review".

By the Chairman:

Q. It reads "Catering Industry Employee" up at the top. And then there is another one from "The Catering Industry Employee", a chat on the craft. Is this "Catering Industry Employee" a publication which is put out by any particular union?—A. Yes, in the United States.

Q. In the United States, and it has a circulation in Canada with which this union is affiliated?—A. Yes. That raises the point. Local 28 of the Hotel and Restaurant Employees Union is affiliated with the American Federation of Labour. I think they call it by the same name in the United States.

Q. It is not affiliated with either of the two leading unions there?—A. Yes, I think so.

Mr. MACINNIS: Yes, the American Federation of Labor.

The WITNESS: I thought it was.

The CHAIRMAN: Now it may be well, since you have raised the point of the Canadian Retail Federation, to say that I have looked up correspondence that has come in to me and has not yet been submitted to the subcommittee, and I find a letter from the Canadian Retail Federation. It is dated April 2nd and arrived on my desk sometime after the 3rd or 4th. With your pleasure, I will read that letter so that it may be part of these proceedings.

Agreed.

This letter is addressed to myself and dated at Toronto, April 2nd, 1953. It reads:

> On Tuesday next, the Canadian Restaurant Association will be making representations before your committee. The subject of their representations will be the use of picketing. The restaurant association is one of the organizations which, through affiliation, go to make up the Canadian Retail Federation, representative of over 32,000 retail companies in this country.
>
> We would like to take this opportunity to generally support the position taken by the restaurant association. As in their case, the federation is particularly concerned with the practice which was the subject of a decision handed down by the Supreme Court of Canada in 1951. The particular case was that of Aristocratic Restaurants (1947) Ltd. vs. Williams et al. In this decision the Supreme Court of Canada ruled that the men carrying signs in front of the restaurant involved were merely advertising a true statement; that they were merely informing people that the employees of the particular restaurant were not members of the union they represented and that they were only indulging in their constitutional rights in so doing.
>
> It is the sincere belief of the Canadian Retail Federation that the practice indulged in in that case and in others is, regardless of technical definition, in effect picketing. It certainly achieves the practical results of picketing and is particularly harmful to a business such as a restaurant or a retail store because people hesitate to cross the picket line.

It should be understood, of course, that in the case to which we are referring negotiations were still going on at the time of the so-called picketing and indeed involved a completely different unit of the restaurant chain to the one which was actually being 'picketed'.

As we understand it, the situation now is that this procedure is not, according to the Criminal Code, included in what as a layman I might describe as picketing. Therefore, such actions are not affected by the provincial labour codes. We earnestly urge upon you that a practice which has all the effects of picketing and which is extremely harmful to the business concerned and which can be carried on at any stage of negotiations or even before they begin should be recognized as being what, in practice, it is—actual picketing.

If, in the opinion of your committee, our arguments are valid and you consider that the Criminal Code is the appropriate vehicle for the purpose, we would respectfully ask that you make such recommendations as the committee's legal experience would indicate to be necessary to have this particular practice identified in the law as what it actually is—that is to say, a form of picketing.

Your sympathetic consideration of this is respectfully requested.

Sincerely yours,

E. F. K. Nelson,
General Manager,
Canadian Retail Federation

Mr. MACINNIS: Could I ask a question whether Mr. Hougham or Mr. Gorman, purely for information, know what the decisions in this case were in the lower courts before it reached the Supreme Court of Canada.

Mr. GORMAN: The trial judge held that there was no offence and did not grant an injunction.

Mr. ROBICHAUD: In what court?

Mr. GORMAN: In the Supreme Court of British Columbia. The Court of Appeal of British Columbia reversed the trial judge and did order an injunction, and that decision was reversed in the Supreme Court of Canada. If it is of interest to the committee, I might just read the head note which sets out the facts of the case. It says—

Mr. CANNON: What was the judgment of the Court of Appeal of British Columbia? Was it a unanimous judgment or was there a dissent?

Mr. GORMAN: It was not a unanimous judgment, there was one dissent by Mr. Justice Robertson of the Court of Appeal.

Mr. MACINNIS: I did not get the point clear. Did the decision in the British Columbia Court of Appeal go in favour of Local 28?

Mr. GORMAN: No, it went against them. I quote from Canada Law Reports, Part IX—1951, at page 763:

> A trade union, certified pursuant to the Industrial Conciliation and Arbitration Act, R.S.B.C. 1948, c. 155, as the bargaining authority for the employees of one of the employer's five restaurants, known as unit No. 5, failed to negotiate a collective agreement with the employer. Conciliation proceedings were then taken pursuant to the Act but the report made thereunder was rejected by the union. Although under the Act the union remained the bargaining agent for unit No. 5, it lost all its members among the employees therein; and none of the employees in unit 6 and 7 was a union member. The union picketed these three restaurants by having two men walk back and forth on the sidewalk

in front of them each bearing a placard to the effect that the employer did not have an agreement with the union. No strike vote was taken among the employees and in fact no strike occurred. The action by the employer to enjoin this picketing and for damages was dismissed by the trial judge but was maintained by a majority in the Court of Appeal for British Columbia.

Mr. MACINNIS: Thank you.

The CHAIRMAN: Any further questions?

Mr. CHURCHILL: Just one, Mr. Chairman. From a study of the Supreme Court case, are you prepared to say whether or not this summary in the trade union magazine is a correct statement of the ruling of the court?

Mr. GORMAN: I think it is; yes, sir. Incidentally, if I may just review the two points that were raised in this case. First of all, the action of the employers was based on two things: first, section 501 of the Criminal Code, and, secondly, the larger allegation that what was being done was a common law nuisance, and as I read the judgment of the judges of the Supreme Court of Canada three of them dealt with the Criminal Code aspect of it, Mr. Justice Kellock, Mr. Justice Rand and Mr. Justice Kerwin. They went about it this way. They said the plaintiff is asking for an injunction and he alleges two grounds on which it can be granted, first, that the actions complained of are contrary to the Criminal Code, and then they examined section 501 and they found that it was what was in effect watching and besetting, but then they looked at the saving provision which was in subsection (*g*) and it says that a person who attends merely for the purpose of giving information, communicating information, does not watch and beset. They said, therefore, since that was all that was being done in this case there was no watching and besetting and therefore there was no offence against the Code, so they refused to grant an injunction on that ground, and then they considered whether it was in fact a common law offence of nuisance and without making a definite finding on that question they examined section 3 of the Trade Unions Act of British Columbia, which provides—it is set out in the judgment—that no trade union or association shall be enjoined for persuading or endeavouring to persuade by fair or reasonable argument, without unlawful threats, intimidation or other unlawful acts, a workman, artisan, labourer, etc., at the expiration of any existing contract, not to renew the same with or to refuse to become the employee or customer of any such employer.

So that the injunction was refused on the two grounds. My submission is that if the saving provision of section 501 and subsection (2) of the proposed section had excluded from its terms such industries as the retail industry and the restaurant industry, then the Supreme Court would have granted the injunction. And that is in fact what is being asked for here. On the other question, it was my opinion, and I gave it as such to the association, that this committee of the parliament of Canada would not deal in the Criminal Code with questions of whether or not all processes of negotiations and conciliation had been complied with. I think that is properly the subject of the labour legislation of either the province or the dominion. The relief that is sought by industries in the category of that which is appearing before you today can be granted by the amendment suggested.

Mr. MONTGOMERY: I gather from your submission, Mr. Gorman, that your interpretation of that judgment is now such that any union may place a professional picket in front of any type of business on any street in any city in Canada if the employees in the business are not signed up with the union.

Mr. GORMAN: I should qualify my answer by saying provided there is in the province protective legislation such as is contained in section 3 of the Trade

Unions Act of British Columbia which prevents their being enjoined from what is called a common law nuisance, which is what the picketing would be.

Mr. MACINNIS: Mr. Montgomery used an expression, and I do not know whether it should be used without proof that there is such a thing as you refer to—professional pickets. I know the unions pretty well and I do not know of any unions that hire professional pickets.

Mr. MONTGOMERY: Under the interpretation, as I understand it, of the example given to us, what would there be to stop a union from hiring what you might call professional pickets?

The WITNESS: May I be permitted to make a comment on that, Mr. Chairman?

While perhaps the term professional picket might be a misnomer, I think it is generally understood that quite frequently pickets are employed to work for an organization with which those pickets have no connection. The pickets may have no connection whatsoever with the industry which employs them. They may pick up a longshoreman who has no job to do that day, and parade him outside a restaurant. To that extent I suppose he might be considered to be a professional picket.

Mr. MACNAUGHTON: Do you mean a labour commando?

The WITNESS: Whatever the term is.

Mr. MACINNIS: I have heard of professional strike breakers, but I have never heard of professional pickets!

Mr. MONTGOMERY: The idea is that they could employ anybody to parade up and down in front of a place of business?

Mr. NOSEWORTHY: Would you indicate whether or not in your opinion the circumstances under which employees may organize in a retail establishment are very different from the ordinary industrial plant, and whether it is very difficult for a union, or perhaps I should say it is more difficult for a union to observe all the processes of arbitration, conciliation, and so forth, in the case of a small restaurant than in the case of an ordinary industrial plant? What I am trying to get at is this: is there any basis for the union's right to picket a small plant such as a restaurant without going through all the due processes of conciliation as they would in the case of an industrial plant?

Mr. GORMAN: I suppose the answer to that would have to vary from province to province depending on the labour legislation in effect, and affecting the particular industry. But I think the main point to be made is that the effect on a business such as a restaurant business, or a retail business of a picket parading in front of such business is much more forceful than it would be if the picket were in front of a large plant. While, in fact, they may be merely communicating information, the fact is that it is much more harmful to the retail business. Customers may have an alternative restaurant to which to go. If they see a picket in front of one restaurant, they will certainly go to the other, in most cases, merely to save themselves inconvenience or at least through the fear of some possible trouble which may be completely non-existent. Customers of such a business have alternatives and they can be very easily persuaded to choose from alternatives.

Mr. NOSEWORTHY: While that is true, you will admit that it is more difficult in a union to organize a small restaurant and to pass through the various processes of law than it is in a larger plant.

Mr. GORMAN: I would think so, yes.

Mr. MACINNIS: The law applies in the same way to the small industry as it does to the big one. Whatever would be illegal in a large industry would likewise be illegal in a small one, as far as the law is concerned.

The WITNESS: As I apprehended the original purpose of picketing, it was designed to prevent strike breakers from entering a plant and taking the jobs of those who were on strike. I think that is a fair inference. But that is an entirely different situation to placing a picket outside of an establishment where people are being served meals and persuading them not to buy those meals. You may say it is alike in spirit, and perhaps you would be right, but in the final result it is naturally different. In the original case which I cited, and that of an industry, the end may justify the means. But in the latter case, the end result may be to put the person completely out of business, as it has actually done.

Mr. NOSEWORTHY: It seems to me that before we make a decision on this question we should get an opinion from the Department of Labour and possibly from the trade unions.

The CHAIRMAN: We shall consider this matter very carefully. Now, then if there is nothing further, I want to express to you, Mr. Gorman, and through you to the members of your delegation, our appreciation for the assistance which you have given to this committee. I want to thank you sincerely for the trouble you have gone to and for the very efficient manner in which you have presented your brief.

Mr. GORMAN: On behalf of the members of the delegation here present and the whole of the association I wish to express my thanks to you and to the various members of the committee for the very courteous hearing you have given to us this morning.

The committee adjourned.