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## Should the Board of Commerce Be Retained?

Publicity More Effective than Penalties—Review of the Organization and Work of the Board—Parliament's Power to Create Independent Body—Function was to Administer Combines Investigation Act—Why the Provincial Attorneys-General Objected—Board Might be Effectively Reorganized

By W. T. JACKMAN, M.A.

AT the time the legislation was passed in the summer of 1919, making provision for the constitution of a board of commerce, and, in fact, for some years before that, the necessity of some governmental agency to regulate certain affairs connected with the industrial life of this country had been felt by those who were fully aware of the methods that were being pursued in various lines of business. The futility of the Combines Investigation Act of 1910, as a protection to the public had been apparent for many years; and the great industrial development through combinations of all kinds during the years 1909 to 1912 had been accompanied by many evils.

It was stated by those who put the Combines Act of 1910 upon the statute books, that effective publicity is one of the most potent forces for the elimination of objectionable practices; and it was anticipated that the means provided in the act for securing such publicity would go far toward removing the evil excrescences of the body commercial. In this, however, there was great disappointment. Those who were expected to take advantage of the terms of the act to initiate proceedings in the case of any combination supposed to be unduly enhancing prices or unreasonably restraining trade found that the machinery provided, though ostensibly simple, was not such as could be employed successfully; and after the only great case tried under the act had been decided there was no further invoking of the statute. It is evident that the government of that day was acting with the firm purpose of restraining combinations from injurious exploitation of the public, so that many of the features of the United States system which were antagonistic to the public welfare might be avoided in Canada.

### Why the Board Was Instituted

But the legislation of 1910, which left the initiative against any combination to be taken by a few private citizens, could not be given effect readily. The public has an abhorrence of the law in general; they have learned that in cases which seemed to be absolutely clear in regard to the justice of the claim the outcome has been too often disappointing. Moreover, in cases in which there should be an investigation of the affairs of an industrial combination, from which the public is to benefit, the initiative should be taken and the expense borne by the government, representing the public, or by some body to which the government has delegated authority. For some years the people waited for their representatives to take action along these lines and establish the appropriate authority to guard their interests.

Then, too, a few of the commercial classes were desirous of having some regulative body organized which would put

an end to some of the uncommercial practices and raise the standard of business morality. It was felt that there ought to be in Canada an organization which would do for business here what had been done in the United States by the Bureau of Corporations and its successor, the Federal Trade Commission—a system which would repeat for industry the good work which had been done by the Board of Railway Commissioners of Canada for the field of transportation. With these objects in view the Board of Commerce was constituted.

### Its Powers

A few words are necessary in regard to the legislation under which the board acts. By the statutory authority the board is "empowered and directed to restrain and prohibit the formation and the operations of combines," and the expression "combine" refers to those combinations dealing in articles of commerce which have, in the opinion of the board or its representative, "operated, or are likely to operate, to the detriment of . . . the public, consumers, producers or others." Combines, then, include a great variety of business organizations, not only those which are material, like trusts, mergers and monopolies, no matter how these may be effected, but also contracts, agreements or arrangements which have or are designed to have the effect of preventing or limiting production in the economic sense, or of lessening or preventing competition, or of restraining or injuring commerce.

According to a member of the board, who was responsible for the drawing of the act, "The key-note of this act is that a combine is not necessarily an evil thing." In other words, a combination or an agreement of certain persons to do a particular thing, even though the combination incidentally injures some individuals or firms, is not necessarily a bad thing, if the result is to the advantage of the rest of the people. Price-fixing agreements or other species of arrangements are not necessarily offensive. As a result of this legislation, the legality of such things depends upon whether they are or are not in the interest of the public. Of course, this is nothing new, for there was a distinct recognition of this point of view in the Combines Investigation Act of 1910. But the legislation of 1919 specifically states that the consumers are not alone to be protected; the combination which acts as a detriment to any class, whether consumers, producers or others, comes within the scope of the board, provided the combination is one with relation to an article of commerce. It is seen, therefore, that the board was intended to regulate the relations of all classes engaged in the production and distribution of articles which enter into trade, except combinations of workmen for their own protection. What combinations are lawful for the welfare