

Hon. Mr. Ouellet: I suspect that you know very well, from legislation, that officials in the department are asked to prepare a case for the Department of Justice who make the decision whether or not to prosecute. I cannot give you an answer, because it will depend on the merits of the case. To be very frank about this, if a case of a minor nature takes too long to prepare, it is obviously not a very good case.

Senator Flynn: But if you wanted to proceed with it you would have to do so by way of indictment. You would have no choice.

Hon. Mr. Ouellet: I doubt very much that after two years a misleading advertising conviction would have the same deterrent effect, or would be of great significance.

Senator Flynn: You want us to have faith in the Department of Justice.

Hon. Mr. Ouellet: I am simply stating that from my experience we know right from the very beginning whether there is a case, and whether there is any substance to the case or not. Also, it does not take very long to prepare a case on one of these summary conviction matters.

The Chairman: Well, I think we have your point of view, Mr. Minister. You have endeavoured to justify the two-year period within which the summary conviction method might be followed. Certainly, two years is considerably longer than six months, but where you can proceed by summary conviction or by indictment, then whether you go one way or the other, I would think, depends on your opinion of the gravity of the offence.

The investigation involved can sometimes be a very long procedure in that it takes a considerable period of time to gather the evidence, conduct the hearings, following which the director makes a report to the Restrictive Trade Practices Commission which then holds a hearing and which in turn makes a report to the minister. In that course it is up to the minister to make a decision to prosecute or not to prosecute once he has received that report.

True, the director can short-circuit that process by referring the subject matter not to the Restrictive Trade Practices Commission but to the Minister of Justice. There are methods of short-circuiting the procedure, but one hates to see a prosecution by indictment, because the time for prosecuting on summary conviction has run its course. It may well be that if the time had not run out, it would have been a summary conviction prosecution.

Hon. Mr. Ouellet: Your explanation is accurate, Mr. Chairman, and you are quite right in saying that the final decision as to whether the offence will be proceeded with by way of summary conviction or by way of indictment is the decision of the Attorney General of Canada.

The Chairman: But he may have no choice by the time it gets to him.

Hon. Mr. Ouellet: Except that if it is a case dealing with misleading advertising—and I believe those are mainly the cases that could be prosecuted by way of summary conviction—then those cases are easily prepared in a fairly short period of time.

The Chairman: Yes, but your range of authority covers a much broader field than misleading advertising. I would be inclined to agree with you that in respect of a misleading advertising offence, where you could not make up your

mind in six months whether to prosecute or not, you should forget about it.

Senator Connolly: Because of the nature of the offence.

The Chairman: Yes.

Hon. Mr. Ouellet: But we have the choice to prosecute by way of indictment or by way of summary conviction in respect of misleading advertising cases, but not on conspiracy cases or various other offences.

The Chairman: I think we have shaken this one.

Senator Flynn: We have not shaken the minister.

Mr. Cowling: In fairness to the minister, I think he agrees with it, but as he said earlier it was really as a result of a suggestion, or an opinion, from the Department of Justice that it went to two years. If I am right, perhaps we should ask a representative of the Department of Justice to appear.

Hon. Mr. Ouellet: I should point out that I made the final decision myself in presenting the amendment. As I said earlier, I did receive the view of the Department of Justice and also the view of the Law Reform Commission, out of which came this compromise, which it was felt would be acceptable, acknowledging the fact that this committee had expressed some fear that the six-month period would be too short and the fact that the Law Reform Commission expressed the other extreme, that being that it should not be an open-ended period. In trying to arrive at a compromise between those views, we decided that it should be a two year period.

The Chairman: What is the next item?

Mr. Cowling: Mr. Chairman, I am in your hands. An important item for the committee, and one which has not been dealt with in the House of Commons at all, is the proposal with respect to the air industry. This committee had a hearing quite recently on that. The transcript of that committee meeting has just come out, and I am not sure whether the minister has had a chance to look at it yet. It is issue No. 57.

Senator Flynn: Mr. Chairman, this is only part of the general problem affecting the regulated industries. If we were to settle the whole problem, we would then settle the problem of the air industry. Is that not correct?

The Chairman: In my view, yes.

Senator Flynn: We might as well deal with the whole problem, then, rather than just this aspect of it.

Senator Connolly: This one is pretty typical of the whole problem.

Senator Flynn: Yes, but it is only one of the industries affected.

The Chairman: It is the whole problem of regulated trades and industries.

Senator Flynn: That is right.

The Chairman: That is the general question.

Senator Flynn: I do not see why we should give preferred treatment to IATA. If there are others in the same situation, we should try to solve the whole problem; not