

**Senator Roblin:** Well, I suppose you would say to the burglar that he should go out and find out whether or not he is breaking the law. My honourable friend really seems to be presenting us with an absurd situation. He is saying that the government does not know what the rules are. He is saying, "We are going to ask somebody to do something that might break the rules; but we are going to make that person take the onus of getting some clearance with respect to the matter." It seems to me, in the first place, that the government ought to know what are the rules. They made them, after all. They ought to know what are the rules; and if they ask someone to break those rules, then they should make sure that the clearance is given by the government and that it does not become an onus on the person concerned. The position taken by the minister is completely unworkable.

**Hon. Mr. Gillespie:** We are not asking them to break the law. We are asking them to implement a mandatory allocation program. There are a number of ways in which the industry is going to be involved in this. Clearly this is for the protection of the individual who is trying to comply with a request or order in an emergency situation. I would emphasize "in an emergency situation" which, with respect, I do not believe the honourable senator understands.

**Senator Roblin:** Well, I am darned sure that it is going to be an emergency situation for the person concerned. If he has broken the law and the Combines Investigation Act comes down on him, he will understand all right that it is an emergency. I think the minister is completely on the wrong course here. If the government asks somebody to do something which it thinks may be unlawful, then it has the onus to make sure that the person is permitted by law to do what is provided for. Suppose—it is a very far-fetched instance, but it is possible, I suppose—that the person who did something unlawful at the minister's request would not get the clearance, because somebody else would not give it to him. There is no guarantee in this statute that anyone would. So I do not know where the minister's logic leads him. I think it does not lead him very far.

**Senator Forsey:** The minister says, Madam Chairman, that they are not going to ask anybody to breach the law. But the subclause clearly says:

—or course of action that might cause him to contravene the *Combines Investigation Act*—

If you are contravening an act, it seems to me you are breaching it. I haven't looked up *Roget's Thesaurus*, but it seems to me that it amounts to the same thing. Clearly it doesn't say that the minister will order them, but he may order something that may contravene the law. So that particular part of the minister's reply doesn't seem to me to meet the point raised by Senator Roblin.

**Senator Smith (Colchester):** Honourable senators, I have not engaged in any discussion this afternoon because of the time constraints that are upon us, but this is such an outrageous requirement, in my opinion, that I really cannot refrain from making a comment or two. Really this means that the board or the minister, as the case may be, or some of these

shadowy characters who may or may not be designated to enforce the law, may require someone to do something which is against the provisions of some law which is mentioned here, or some law which is not mentioned here.

First, the person who is responsible for carrying out that unlawful act, if it is one, has to retain counsel to discover whether or not it is likely to be unlawful. If he is left in doubt about it, then surely the only thing he can do is delay until he can get some reasonably certain advice on it. He then has to go and apply to someone for an order which will exempt him from any action or prosecution which might be taken under the statute which he broke—all this at his expense, all this at great delay. It is inevitable that there would be great delay.

Granting for the moment, as I am quite prepared to do for just this particular part of the discussion, that the onus of protecting himself should be left with the person who breaks the law, why would it not be perfectly simple to deal with the situation as subclause 21(3) deals with the question of contractual obligations, namely, by providing that the person who breaks the law may defend himself on the basis that what he is charged with doing is something that he was required to do by someone who had authority to require him to do it. That at least would avoid the difficulty of delay, the difficulty of not knowing whether or not you are going to break the law, and of trying to find out before you do it.

If you could show that what you did was a necessary action in order to comply with an order given by a person in authority, then you would be safe. Surely that would be a much more expeditious and less costly method of procedure for the person in trouble and would result in far less delay in getting him to do the thing that he was being ordered to do.

**Hon. Mr. Gillespie:** I agree with the honourable senator that his approach would, or could, involve less delay. On the other hand, I think it could also involve much more abuse; indeed, I think it could encourage abuse. If members of the industry were, in effect, given carte blanche, as I understand your proposal to be, they could enter into restrictive agreements of virtually any kind, and then later plead that they were using these restrictive agreements and arrangements to conform to a request by the minister. In those circumstances there could be significant abuses.

● (1610)

What we have done in this particular provision is say, "We recognize that in complying with the request it will be necessary for you to sit down with your competitors from time to time and discuss prices, market shares, quantities that will be shipped to particular markets, and those kinds of questions. We will ask you, when you receive a particular request for implementing a particular measure, to tell us if you feel you are going to involve yourselves in any activity which would be contrary to the Combines Investigation Act." That would be placing some onus, unquestionably, on the individual to decide how much joint action he feels is needed to implement the particular request, and whether or not that joint action would be likely to contravene the Combines Investigation Act. It puts