

ments that they were in opposition to what was being done because of the constitutionality question. This may have been badly reported in the press, and that is where I read it, but I would like to know whether you have had some discussions with the provinces on this matter.

Mr. Gibson: No, senator, I have not taken part in any discussions specifically with representatives or with the counterparts of my department at the provincial level.

Senator Godfrey: I have two questions arising out of clause 4 and what the minister said previously. My first question is this. If the C.P.R. wants to get a ruling, can they apply right away when this act becomes effective, or do they have to wait until they are considering such an acquisition? I gathered from what the minister said that they could apply right away.

Hon. Mr. Gillespie: If they want to establish their eligibility or non-eligibility, and if they want a ruling on it, then they can apply right away.

Senator Godfrey: The second point is that you said that the ruling would remain in force for two years. I am puzzled over the wording in the last paragraph of clause 4. It does not say "the lesser of two years or as long as the facts remain unchanged," and I cannot really follow that wording at all. It could be interpreted that it might provide for five years as long as the facts remain unchanged.

Hon. Mr. Gillespie: As I have indicated to you and to others, I am a firm believer in legal advice when it comes to a matter of law and its interpretation, so perhaps, once again, Mr. Gibson would comment on this.

Senator Godfrey: I would have thought that it would be confined to the lesser of two periods, but it does not say that at all.

Mr. Gibson: I must say that that was the point raised at the meeting of the Canadian Bar Association to which I referred. The rebuttal of the point made at that time, not by me but by a member of the profession, was that the facts of such a situation, and on which such an opinion would be based, are normally of such a nature that the danger of their remaining stable and unchanged for more than two years is so remote as to make the question not really relevant.

Senator Godfrey: That is no answer to my question.

Senator Buckwold: Mr. Chairman, I made a note when the minister was speaking with reference to real estate. He said it is not the intention to screen the acquisition of the property itself. At least, I think that is what he said. First of all, what is meant by "property"? Does it involve buildings and land, or land only? Would it involve farm land? I am really looking for information here. If an individual came in and wanted to buy an apartment building, would that have to be screened? And what is the situation about a piece of vacant land or farm land?

Hon. Mr. Gillespie: I think, once again, I am going to seek legal advice here because we are talking about legal concepts, rather than what might be described as business concepts, when we talk about property and businesses. Clearly, the acquisition of vacant land is not the acquisition of a business. The screening process is concerned only with the acquisition of a business by a non-eligible person. Acquisition of vacant land is not acquisition of a business. Acquiring vacant land for the purpose of de-

velopment might very well be. I think that is probably as far as I should go in legal interpretation, and I would ask Mr. Gibson if he would care to comment further on the distinction between property, on the one hand, and a business, on the other.

Mr. Gibson: I am not sure that I can elaborate in much more detail on that particular concept. The definition of "business", included in the bill on page 3, provides that it includes:

... any undertaking or enterprise carried on in anticipation of profit;

The opinion that I have expressed in this connection, in relation to this bill, is that the holding of property for investment is not in itself the carrying on of an undertaking or an enterprise and, therefore, would not constitute a business within that expression.

Now, the question of fact that arises as one moves from the mere holding of property for investment towards what would clearly be recognized as the carrying on of a business, the carrying on of an undertaking or enterprise for profit, is a very difficult one; and with regard to the point at which one steps over the line, as I am sure many honourable senators are aware, there is a large body of case law, particularly in the Income Tax Act. It is a very difficult area. I would hate this afternoon, without having more notes than I have before me now, to set up precise criteria.

Senator Buckwold: I am even more confused now. If my colleague owned a piece of land somewhere—I assume as an investment, because I suppose generally one must regard the ownership of land as involving an investment possibility—I gather from what the minister said at the outset that the ownership of that vacant land would not be subject to the terms of this act if it was not determined to be a business in a land holding company or something like that. Is that correct?

Mr. Gibson: Yes.

Senator Buckwold: If there was an apartment on that land and a foreign owner wanted to buy it, and it was worth more than \$250,000, would it have to be screened?

Mr. Gibson: Mr. Chairman, I think the facts that I have been given are not sufficient for me to answer that question.

Hon. Mr. Gillespie: I think it depends on the scale of the operation. I might interject at this moment by putting on the record my intention to issue guidelines with respect to questions of real estate under the terms of clause 4(2) of the bill, and then to elaborate on these guidelines. I would expect that these guidelines would spell out, with as much clarity as is possible, the operative factors which distinguish business from property. They would help to identify the circumstances when an acquisition of property or real estate would not be subject to review because it is not a business. One example I can give here is that if a person were to buy a farm as an operating business, then technically that would be reviewable. But if a person were to buy a farm, that is to say a piece of land and not the business, that would not be. It would be that kind of clarity and distinction I would hope to be able to put out in the guidelines.

I feel that one of the considerations underlying the committee's recommendations is the fear of a possible