

finding or taken the action as the case may be? It is a little narrower, is it not?

Mr. Gibson: To take one example, the authority of the minister under clause 8(3) of the bill is to demand information in circumstances in which he has reasonable and probable grounds to believe that certain circumstances exist. In my opinion, the authority of the court would enable it to judge as to the existence of the reasonable and probable grounds on which the minister purported to act.

Senator van Roggen: With regard to Mr. Gibson's remarks in connection with appeal, I have to confess that I am not terribly impressed and feel that this is not really relevant to what many of us were thinking about as to appeal. I feel Mr. Gibson has pointed out to us that the courts can intervene to see that the minister does his job properly; but that is all. There is no right of appeal in the act, and I do not believe the senators should feel that because of Mr. Gibson's remarks there is a broad area of appeal. If the acquisition is not by a non-eligible person, or if it is not the acquisition of control, or if it is not a Canadian company, the minister should not be involved at all.

As I gather from his remarks, all Mr. Gibson is saying is that if the minister gets off on a wrong track on one of those facts, the court can set him straight. The main item of concern to anyone desiring the right of appeal, however, is the minister's decision as to whether or not something is "of significant benefit to Canada", and there is no right of appeal insofar as that judgment is concerned.

Therefore, with respect, I am not terribly impressed with this information we have been given that a writ of *mandamus* may be obtained ordering a public official to do his job properly. That can always be done. Why, Mr. Minister, are you completely opposed to any judicial review or appeal of your decision as to whether or not a foreign take-over should be permitted?

Hon. Mr. Gillespie: First of all, I would make this distinction between my decision and the decision taken. I would make the distinction that mine would be a recommendation, rather than a decision, to the Governor in Council. The second point that I should like to make is that a decision—

Senator van Roggen: Excuse me, Mr. Minister. That recommendation to the Governor in Council is to the Cabinet, so there is an appeal to the Cabinet.

Hon. Mr. Gillespie: What I will put to the Cabinet is the recommendation that either the investorship should be allowed or disallowed. I think that the decision which would then be taken by the Governor in Council is a policy decision, not a decision in law. For that reason, I do not think that particular decision should be reviewable by the courts.

Senator van Roggen: So we have come to the point where every foreign acquisition, over and above the dollar limits in the act, becomes a complete policy decision of the government?

Hon. Mr. Gillespie: That is correct.

Senator van Roggen: As to whether this is an advantage, the criterion "of significant benefit to Canada" could mean almost anything, I would suggest, in the eyes of the beholder. My point is, how does someone, wanting to

invest in Canada, establish to you that there is "significant benefit" in building, for instance, a motel in Vancouver?

Hon. Mr. Gillespie: If he were a non-eligible person, and the second part of the building has been proclaimed in respect of a new business, if he were not in the hotel business he would have to make an application and say, "This is what I am proposing to do. This is the size it is going to be. It is going to create this much employment and have these effects." That would be the course which I anticipate he would have to take.

Senator van Roggen: I think I can see the difficulty of having the courts interfere in that type of policy judgment. We have had enough difficulty in the Combines Investigation Act, trying to define "significant benefit". However, I wanted to make the point that there is, basically speaking, no right of appeal of the substance of an application by someone for an acquisition.

The Chairman: Senator van Roggen, the minister, before he arrives at the point where he decides to, say, recommend against or for, has to do certain things under the act, all of which—Mr. Gibson may agree with me—might be the subject matter under section 18. That is, he has to decide that there is an acquisition of capital. He has to decide the factors that are enumerated and the facts of the case set into those factors. If you have the kind of case where you think his conclusions are wrong, it appears to me, as a lawyer—but Mr. Gibson is the professional witness here—that you would have to say whether, in those circumstances, section 18 could be invoked on the ground that you are entitled to relief because there is no acquisition of capital, or the statement of facts does not conform or is not related to the factors that the minister might follow.

This is an indirect way of getting that recommended disallowance, but that would be a way of doing it.

Mr. Gibson: I think I did mention that opportunity in my statement. Certainly, I agree with Senator van Roggen. It was not my intention to suggest that there was an appeal for judicial review of the determination of "significant benefit". I agree with you, Mr. Chairman, on these other issues, that there would be access to the courts for judicial review.

Senator van Roggen: Which would make sure that the minister did not try to rule on something that he was not entitled to rule on under the act.

Senator Cook: My question may not be appropriate here, but it is one that seems to arise out of the discussion. Was any consideration given to the setting up of an independent authority to advise the minister, apart from having it as a departmental matter?

Hon. Mr. Gillespie: You mean a tribunal such as the Anti-dumping tribunal?

Senator Cook: A tribunal such as that suggested in Australia. Just to quote from the Prime Minister of Australia:

Foreign takeover proposals judged by the Government to warrant detailed investigation as to whether they would be against the national interest will be referred to an independent authority—including official Government representation—which will analyse each such proposal and report on it to the Government.