

that even if that is desirable in a public statute it is therefore desirable in a private bill.

I think the principle of accountability to the terms of the statute by the courts is essential. I cannot fully agree with Mr. Golden's contention, although I know what he is speaking of, that the courts have the authority to go beyond the wording of the statute. The executive could quite properly come into court and say, "The statute says that if we deem it necessary we have the power to do such and such a thing." The court might decide whether it is the right or wrong thing to do, but I suggest, the court would not say, "You don't have the power to do it." They might say, "You have exercised your power in a wrong way". What I am saying is that you should not have the power to go beyond what is necessary to implement the provisions of the statute.

Senator Hollett: Would not the words "not contrary to law" take care of the situation?

Senator Grosart: No, not at all. There must be some reason for its being there. It seems rather redundant to me, because I cannot see where any act of Parliament can give power to something that is contrary to law. I am concerned about something that might be quite legal under the terms of this act. Let us take an example. Let us assume you decided to raise your fees without consulting your members...

Mr. Atkinson: We cannot do it. Our by-laws outline the procedure under which these may be raised. It is a voluntary organization and therefore a member who chooses to do so can opt out.

Senator Grosart: That is a very poor answer. You are talking like a capitalist who says "If you don't want to buy my goods at the price I am asking, you don't have to buy them at all." The point I am making is that the individual may want to stay in to make sure that you stay within the law.

Mr. Atkinson: But he has the right to do that because in order to adjust the fees the membership must do so at an annual convention. That is a democratic decision that is made.

Senator Grosart: Well, I may have taken a bad example in that one, but obviously there are things that the executive might do, and they could say "We deem these things to be necessary" and if somebody at an annual general meeting were to say, "I do not think that

that is necessary" then they could say, "I am sorry, but just read the act. It says 'we deem it necessary'", and that would be the end of it.

Mr. Golden: The problem really in the context of this legislation is considerably narrower than that. I realize your concern, and I am very deeply aware of it and I have been debating it for some time. In this case it has to do with the by-law-making power out of which flow the rules and regulations related to the by-laws. Now certain by-laws may be enacted for a specific purpose and the area of judicial concern creates a difference. The courts have said on many occasions, and here I am summarizing the language of many different decisions, that they do not want to sit as a court of appeal from every body who makes decisions and some of them have considerably more power than we find here. After all, you can resign from the National Farmers Union, but you cannot resign from a body such as the Commodities Board in Ontario. Many cases have come from these commodity boards where they have been given the power to determine what is in the best interests of the marketing of a particular commodity. If they decide it is in the best interests for marketing to send one of their members to Palm Beach, then that is an area that the court will not interfere with. If, however, they had done it in bad faith in denial of natural justice, a matter which deprives persons of the right to operate under the Constitution and to deal with their executive in the normal way, the courts will interfere. They do not want statutory power to be used in an arbitrary and unfair way, but to enter into the realm of policies of the organization.

It is not a mandatory corporation. The membership is not mandatory but falls in line with the area of private associations. In that area the courts will be extremely reluctant to interfere. They would be equally reluctant under the other language, so I am not taking any great stand on it, except to point out that the one area invites the courts to deal with policy and the other does not. The policy area is what the courts are invited to deal with, but they do not wish to do so.

Senator Grosart: I do not care how reluctant the courts are. If somebody says this body is *ultra vires* the act the court has no option. That is what they are there for. If a citizen appears before the court and says this organization to which I pay dues is acting