

interim period, they will be in a frightful state of confusion, subject to two regulatory bodies—that is, the Canadian Transport Commission and the one provided in this legislation. Therefore, would it be unreasonable to suggest that in this particular bill the air transport industry be exempted so that confusion will not arise during the interval, which might be a year—who knows?

The Chairman: Senator Laird, before the minister answers, rather than using the word “exempt”, which is not the most popular word in the minister’s vocabulary, as appears from statements he had made from time to time, would it accomplish the same result if it were stated that this bill is not intended to deal with the transport industry? That would not be an exemption, but it would be effective.

Senator Laird: I do not care about the semantics, Mr. Chairman, as long as the effect is there of not putting them into a state of confusion.

The Chairman: No, because the minister’s statement, as to what he would be ready to undertake, I would interpret to mean that no effort would be made until the question is resolved as to which way the regulations should proceed, but the provisions of this bill would not be applied, or it is not intended that they should be applied to the transport industry.

Senator Laird: That would be satisfactory, because then it would be a matter of record before this committee.

Senator Flynn: Except that if six persons were to lodge a complaint, or something of that nature, the commission would have no choice but to look into it.

Hon. Mr. Ouellet: I will ask the Director of Investigation, Mr. Bertrand, to answer these two questions. There is, I understand, jurisprudence on which the transport company could hang its hat, so maybe Mr. Bertrand could elaborate a little on that.

Mr. Robert J. Bertrand, Assistant Deputy Minister, Competition Policy, and Director of Investigation and Research, Department of Consumer and Corporate Affairs: If you recall the discussion we had during the last meeting of this Senate committee, there was a great deal of reference to the regulatory activity of the CTC, its power of examination and the fact that it does examine. I believe your counsel and the chairman made the point that it was, subject to examination, controlled by the CTC. By applying your reasoning and the way the argument developed last week, and by applying the farm product marketing case in the Supreme Court and the McRuer decision in the *Canadian Breweries* case in the Ontario Supreme Court, you would find that airlines as such would be exempt.

Now, the other aspect is that by which you say we should exempt all transportation. I should remind you that under the present legislation transportation of goods is covered by the act, so you are really suggesting that what is covered presently should not be covered, rather than saying that the extension to services should not extend. If I read you correctly, I believe you would like to see the present act amended to remove completely the transportation of goods.

Senator Laird: And passengers.

Mr. Bertrand: But passengers are not covered at the moment.

Mr. Cowling: I believe that is why the airline industry has come forward at this time. There might have been a case for saying they were covered under the old act, because they do transport goods, although I do not have the figures on it, but I assume they are still largely engaged in the transportation of passengers. Therefore, that aspect of their business is to be regarded as the provision of a service, which is why they came forward at this time with that problem.

Senator Laird: I know the mood of this committee with respect to relying on case law, Mr. Chairman. It has shown a certain amount of suspicion that case law may not be applicable and if there is a doubt about the situation it should be dealt with legislatively.

The Chairman: Yes. Circumstances alter cases, and judges today may well, in the light of developments which have taken place in the interim over a period of years, reach, in their reasoning process, a different conclusion, because their case law has been upset from time to time. We find over the years, if you study the reports of the Privy Council when they were the last court of appeal for Canada, that it became necessary to find distinctions, explanations and differences. In the beginning, when the subject matters to be dealt with were not great, they may have used language that committed themselves further than was necessary in order to make the immediate decisions.

Senator Laird: That is what is worrying me.

The Chairman: The minister has said he will undertake. If we accept that undertaking, we have to know what it means, and how it can be given other than by saying in the bill that it is not the intention of the bill at this time to cover the field of transportation. Is that wording too broad?

Hon. Mr. Ouellet: I think it is, Mr. Chairman, because basically the Combines Investigation Act already covers a part of the operation. Secondly, I am quite prepared to meet some of the fears expressed by members of this committee by saying, for the new area now covered, that in order to clarify the situation we will undertake to have an in-depth study and come up with a positive conclusion one way or the other on phase two. But basically we assume that competition is expected in the air transport industry and that the industry should conduct itself accordingly.

I hope and believe that everyone here accepts this understanding. Whether it is monitored by the Director of Combines and Research or whether by the CTC is a question that has to be clarified. I am quite prepared to ensure that it will be clarified in the course of the coming months.

Therefore, by the time we introduce phase two of our competition policy we will know exactly whether it should be regulated through the CTC or under the umbrella of the Combines Investigation Act.

Senator Macnaughton: Mr. Chairman, does the minister mean that he would agree to suspend the application of the act pending introduction of phase two?

Hon. Mr. Ouellet: We believe there is a genuine misunderstanding. My impression here is that because of the courts’ jurisprudence, the air transport company might not fear the extent of this legislation; but because of a potential danger, we might clarify it more definitively at the next phase.