

however, and this is not an administrative tribunal. If that were to be applied to this organization, there would have to be a change. As it now stands, if the organization were acting in bad faith or denying the legitimate interest of a substantial group of persons in an arbitrary way, they would be able to have it reviewed by the Courts. If the words are changed as you have suggested, then it would mean taking the administrative law and applying it to this body or the Board of Directors, which would mean it would be subject to review in the courts so far as every by-law was concerned on the issue as to whether or not it complied with the act.

Senator Grosart: And what is wrong with that?

Mr. Golden: There is nothing wrong with it, but the tendency in administrative law is to create an area of administrative competence.

Senator Grosart: And administrative irresponsibility is a very bad trend.

Mr. Golden: I only cite this because this appears to be Government policy—to create areas of administrative responsibility. Therefore, to change the language in this way would go against the general trend and could create endless litigation. The results would be not any different. If the courts were to determine that somebody had been arbitrarily dealt with under an abuse of that clause, they could still interfere, but if it was not an abuse and was simply a question of interpreting the statute, and with one issue being raised after the other, having regard to the multitude of by-laws, there is liable to be an endless review. I have had some very hard-nosed debates with people in both the federal and provincial governments about this tendency. I am acting for an organization that has this option facing it at the moment.

Senator Grosart: I cannot agree with you at all on this. You say you do not want to be faced with endless litigation, but surely the whole purpose of litigation is to protect rights that might otherwise be in jeopardy. To me that is an extraordinary statement to use—“endless litigation.”

Mr. Golden: It is the standard language.

Senator Grosart: It is not standard at all. It is used here and in some of the newer acts, but there are many, many statutes that do not use this language. I speak strongly on this

because I feel strongly about it. You could have a situation arising where a minister or the executive of any body could say “the act says we can do this if we deem it to be necessary, and this is in accordance with the provisions of the act.” Surely a court should decide whether they are *intra vires* of their own act.

Senator Hollett: Why not say this: The union may, from time to time, make such by-laws, rules and regulations, not contrary to law, as may be necessary.

The Law Clerk: I would like to make this observation because it is my duty as I conceive it, to limit myself to a legal basis and not to go into the realms of policy, and in my view either form of wording would do the trick.

Senator Grosart: What trick?

The Law Clerk: Either wording would be legal.

Senator Grosart: It would be legal of course, but anything that is passed by Parliament is legal.

The Law Clerk: Yes, but this whole question will shortly be reviewed by the Senate, and probably by this committee if the motion concerning statutory instruments standing in the name of Mr. Martin carries. For a number of years now we have had very few private bills. This is the standard form for these private bills but it is a matter for the committee to say whether there is to be a change in that language, and, as I say, the whole subject will shortly be under a general review. However, whether we should make such a decision here and now is not for me to say.

Senator Grosart: I am going to move that clause 6(1) be amended and that the words “it deems” in line three be deleted and the word “are” substituted therefore. I realize that this is not the proper form of amendment, but if the chairman will take the revised clause 6(1) as read, then that is my motion.

I would urge this on all honourable senators. This is a good place to make a start. The fact that this whole question will come before the Senate and probably before this committee is not really relevant to my point, because that discussion will refer only to ministerial power and authority under orders in council. I cannot for one minute accept the proposition