

*Aeronautics Act*

subsection at one time attempted to make foreign air lines liable to user charges while they were flying beyond the territorial limits of Canada. This feature has now been removed.

**Mr. Turner:** With respect, Mr. Speaker, it does not apply to flights beyond the territorial limits of Canada. It only applies to flights within Canada, not on the high seas.

**Mr. Nielsen:** As I read the legislation it does not make it clear that international carriers would not be responsible for paying charges for the use of facilities when flying over Canada because, as I understand it, Canada has territorial jurisdiction from the ground up in law.

There is an even more fundamental objection to the principle upon which this subsection is based, and that objection springs from the ordinary canons of tax law. This is a field in which the minister has more experience than most having regard to his background in the profession. I think he will agree with me that under ordinary canons of taxation a tax must be certain and must be equitable.

**Mr. Turner:** This is not a tax; it is a charge.

**Mr. Nielsen:** The minister says this is not a tax but it is a form of a tax. This is the imposition of charges for the use of facilities.

**Mr. Turner:** It is a charge for services rendered.

**Mr. Nielsen:** It is a charge particularly for the use of radio facilities on the basis of availability, and it is only that point I am dealing with now. I am not dealing with the availability of airports or charges for the rental of space, buildings or hangars at airports. I am only dealing with the availability of services which may or may not be used by any aircraft using Canada's air space and which are simply there by virtue of the fact that they permeate the very atmosphere.

I do not think it can be said that a tax in the form of a user charge is certain if liability is based upon the vague criterion of the availability of some government service. Who is going to determine in a given instance whether a service is available? I direct this question to the minister. The minister knows as well as I that a service, particularly those provided in the field of electronics by way of navigational aids to aircraft using Canadian air space, may or may not be available at any given time. How are you going to establish

whether it is available at a given time? Even if it can be ascertained that a service is available, why should a charge be imposed if the user has no need of it? Is it the intention of the minister to make a regulation imposing a standard charge on all aircraft using Canadian air space simply because a service is available and whether or not the aircraft using that air space wants to use the facility? It seems to me that that would be wrong in principle.

I believe this is particularly so since the Department of Transport has attempted to impose such user charges under the Financial Administration Act because they did not have any specific legislation before under which they could impose these charges. They tried to use the vehicle of the Financial Administration Act for that imposition of charges, which was an illegal use of that act. They called them radio facility fees and charged \$64 a flight as far back as January of 1960. These charges were levied against flights of international air lines which at all times were well beyond the territorial jurisdiction of Canada.

Such radio facility fees were based on the criterion of availability and that criterion has been carried over into this bill. As examples, one can cite the Pan-American flight from New York to Bermuda, the S.A.S. polar flights from Europe to Alaska and Japan passing over the Russian side of the north pole and the Swissair flights from Switzerland to New York, diverted toward the Canadian coast because of the holding of military air exercises. This is another interesting consideration in respect of the imposition of these charges. What about the flight from Toronto to Chicago partly using Canadian air space and partly using United States air space?

• (4:10 p.m.)

I understand that the United States has not imposed any similar charges for the use of facilities provided over their country. What happens in this instance with respect to the international carrier on the one hand and the domestic carrier on the other? I could in this respect mention the newly inaugurated flight from Montreal to Chicago.

**Mr. Turner:** It does not apply to this kind of flight. It applies to flights over Canada.

**Mr. Nielsen:** The minister says it does not apply to this kind of flight. This is the kind of thing that has to be made clear. The