

*Competition Tribunal Act*

extracts billions of dollars from the pockets of individuals, while at the same time wealthy Canadians and big companies get off almost scot-free. There are those who avoid paying taxes for years at a time. I suggest that that is the only topic that is more important than this matter of competition which is before us in Bill C-91.

There are a few topics I have looked forward to discussing in this Parliament with more anticipation than this particular topic because I have made a study of the development of market controlling companies in the years around the turn of the century. I have also had an interesting time looking at the development of the laws of this land which are supposed to provide for competition. In looking at the early development of competition law in this country I have seen just the sort of behaviour by Governments which the Conservative Government is serving up in Bill C-91.

One of the remarkable things about Canadian consideration of competition is the fact that a Canadian Act, the Act of 1889, is actually older than the Sherman Act, which was passed a couple of years later. The remarkable thing is that at the national level the Canadian Parliament was ahead of the American Congress almost 100 years ago in looking at the threats to competition that faced companies.

One of the most interesting questions that faces one in looking at the situation of that first attempt to deal with competition is the question of whether the attempt of 1888-89 was in fact a serious one. There are colleagues of mine in the historical profession who are convinced that it was not a serious attempt. I, for my part, in reading very carefully what was said in the House of Commons in 1888-89 in the last century, as well as what was said in the Senate, have come to the conclusion that it was a serious attempt by some Members of Parliament. It was a serious attempt which is very much like the efforts that the Member for York-Scarborough (Mr. McCrossan) and the Hon. Member for Don Valley East (Mr. Attewell) have been making in the last days. It is always interesting to hear back-benchers speak up and try to influence the policy of Government.

It is distressing and depressing to see the way in which these Members fail as Governments yield time after time to the pressure of big business and refuse to legislate effectively. That is why I look back a hundred years in scanning something of the history of competition law in this country. It is a very similar process and situation time after time of Governments yielding to pressure with the result that there is not any effective law.

One of the evidences that I see in 1888 that convinces me that N. Clarke Wallace—who was the leader at the time of this effort to control combinations in restraint of trade—is the fact that he had a select committee struck to look at the situation. That select committee included not a single big city lawyer, not a single representative of the corporate interests of Canada in the 1880s. Instead, it included a variety of business people, people who were involved in trade in small towns; some millers, a few lawyers from outlying areas and a farmer or two.

That mix of Members of Parliament that he put forward in 1888 looked at the question of whether there were already then companies that had a sufficiently strong position in the Canadian economy to necessitate a law to restrain them in their getting together in combinations against the interests of consumers. The fact that he struck that kind of a committee is one of the reasons that I am convinced that N. Clarke Wallace really wanted a strong law. I do not have anything like the time to explain and explore what he did at the time, but let me say that the sad fact is that he put forward a Bill in 1888 and in 1889 presented it again, but because it was too late in 1889 to carry it through, before the House of Commons had passed something, that Bill of his had been transformed into something else. Before the Senate had passed the version that he had to settle for, we had the law which ended up in the 1890s in the Criminal Code. We had all that paraphernalia of having to restrain competition unduly, which has been a delight to lawyers ever since, and which has allowed the business people of this country to combine together in various ways with impunity. There has been very little successful prosecution.

The fact that that happened in 1889, almost a hundred years ago, suggests at the very beginning what the difficulties of Members of Parliament would be. Governments yielded to these business interests, and the result was that there was no effective law.

There were some interesting developments in the 1890s in an attempt to strengthen the law. Those Members of Parliament, and a few Senators too, who thought that the law should be stronger, made diligent attempts year after year to try to amend the Act, to strike out this adjective “unduly”, which was particularly restrictive on prosecutions. One of the most amusing incidents occurred in the Senate. It became clear that if a Bill could not pass the Senate, there was no point to passing it in the Commons. When one year a Senator put a measure forward and used arguments about the importance of Senate action regarding a combination between undertakers and casket manufacturers being one of the agreements amongst business people that cost consumers money, he seems to have appealed to a concern of some of the Senators who were, after all, near their last days and a little concerned about the cost of funerals. The Bill actually passed the Senate that year and got absolutely nowhere in the House of Commons, as a demonstration that the Government was going to ensure that if the Senate actually slipped up that way and passed it the Commons would not have the chance to make it the law of the land.

The difficulty that faced legislators in those days was their conviction that the reason there were such agreements among Canadian companies is that we had a tariff, and behind the Customs Tariff barriers companies were able to get together and rip off the consumers who were buying their products. All of those Liberals who were free traders in those days of course wanted to take care of the Customs Tariff, to get rid of the national policy which they were blaming for all of this. Wallace, of course, believed in the national policy and was not