In his little book "The Road to Serfdom", Hayek writes:

> Nothing distinguishes more clearly conditions in a free country from those in a country under arbitrary government than the observance in the former of the great principles known as the Rule of Law. Stripped of all technicalities, this means that government in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and to plan one's individual affairs on the basis of this knowledge.

More recently, a British statesman, our contemporary, the Right Honourable Enoch Powell, wrote:

> It is not only in this country that government shows an increasing tendency to try to regulate the nation's economic affairs not by law . . . [It] has an engaging appearance, but it conceals the germs of tyranny . . . On both sides of the Atlantic, for instance, we have recently seen government . . . behaviour . . . open to the gravest objections.
>
> First, if the citizen has a duty, he ought to be able to ascertain in precise terms what it is, so that he knows if he is fulfilling it or not . . .

He continues:

> Again, it is manifestly unfair not to place all concerned under the same degree of constraint . . . The main point, however, is that in a free society the citizen ought not to be constrained . . . except in accordance with the law and by due process of law. Certainty, generality, impartiality—these are the essential characteristics of the obligations which government can impose on its citizens wherever the rule of law prevails.

I fear that what I say about the rule of law falls on some deaf ears, ears that do not care to hear about the nationalization of our liberty, because those ears are connected to minds that were nationalized long ago.

I must vigorously oppose the plan to concentrate in the hands of a tribunal of experts legislative, executive and judicial power, all rolled into one arbitrary power. It is argued that a judge of an ordinary court is not able adequately to understand the anti-monopoly law. If he cannot, how can anyone expect a businessman or anyone else to understand a law that a judge supposedly cannot understand? What sort of law would that be? The answer is: no law at all, but arbitrary power.

Through this bill the government wants to give the Restrictive Trade Practices Commission the power to issue arbitrary, incomprehensible edicts to run every part of the economy that has not already fallen under some other type of government control. Even the *Globe and Mail* was moved this week to editorialize about the RTPC and its powers. It mentioned that the RTPC, for example, was to be enabled to make orders, that it was to be able to modify or prohibit certain trade practices, yet be independent of the government. The *Globe and Mail* mentioned the MLW-Worthington case and observed:

> It is possible that the government would have been very happy to have this case taken off its hands by a commission.

The editorial concludes:

> Governments should . . . not hide behind appointed bodies.

We have had examples of that. Just last year we found the government hiding behind the skirts of the Food Prices Review Board.

Mr. Atkey: What about the CTC?

Mr. Clarke (Vancouver Quadra): Yes. Questions have been raised about the rights that a person appearing before the RTPC would have, for example, whether the privilege of solicitor and client would be respected, and whether a person would have the right to cross-examine the RTPC's statisticians. But an even more important question arises: Would there be a right to cross-examine the RTPC's commissioners themselves about their theories of economics and other relevant matters? I am sure there would not be. Thus the whole concept of an impartial court is abandoned.

One of the great virtues of our ordinary courts is that the judges are not experts on engineering, or medicine, or economics. They are experts on one subject: the law. Because a judge is not an expert in economics, he can listen impartially to economists testifying as expert witnesses on both sides of a case. His attention to their testimony and his eventual decisions are not prejudiced by his own views on economics, because he has none. If a judge happens to be an economist as well, then he is qualified to appear as an expert witness, as an economist, and be cross-examined on his expert testimony. But then he should disqualify himself from presiding as a judge over a case in which his ideas as an economist, which would not be scrutinized under cross-examination, would affect the outcome. Let the experts appear as witnesses, but let the judges be impartial.

At present the RTPC is an advisory and investigatory body, a group of specialized policemen. Let them investigate, let them advise, let them bring charges in court in accordance with law; but do not let them usurp the powers that properly belong only to a court.

American anti-trust policy is a failure. It does not protect the market place from government interference. It often protects privileged competitors from the competition of more efficient competitors, and the consumers suffer. It makes a mockery of people's rights under the rule of law. Under the American anti-trust regime, if a man charges prices above his competitors', then there is evidence of monopoly power. If his prices are the same as his competitors', then there is evidence of price fixing. And if his prices are below his competitors', then there is evidence of predatory price cutting and intent to monopolize. Often this government reacts to imitate developments in the United States. I see no good reason to transplant American anti-trust policy into Canada.

Not every part of the bill before us is bad, but some of the parts would more properly appear in acts other than the Combines Investigation Act. Here I am thinking about the misleading advertising provisions, which probably should belong with the sections of the Criminal Code relating to fraud. Some clauses of the bill deal with refusal to supply, consignment selling, tied selling and resale price maintenance. None of these practices, if employed by businessmen, can create a monopoly because none of these practices has anything to do with having the power to stop a new competitor from manufacturing anything he chooses and from dealing with whomever chooses to deal with him. These clauses may well do a great deal of harm, by restricting people's ability to compete effectively.

Other problems may arise, too. If the federal government too effectively prohibits people from voluntarily agreeing to resale price maintenance by private contract, then we may see some groups of businessmen bringing political pressure to bear on provincial governments to compel resale price maintenance. I understand that some