

*Combines Investigation Act*

he means that then they would be able to deal with investigations of this sort in an easier and quicker manner than possible under the act at the moment; yet I cannot for the life of me—I hope the hon. member for Restigouche-Madawaska will clear this point up—see how that is possible. I say that because the minister himself said that there are no substantial changes in the legislation, only changes designed for clarification purposes. There was nothing to do with additional research facilities, or with additional investigatory powers given to the officials of the branch, or with additional staff; it is merely the same act only clarified.

I think the hon. member for Restigouche-Madawaska does not have a correct understanding of the bill. Certainly if his understanding is correct, I for one would appreciate it very much if he was able to direct my attention to the clauses of the bill which he thinks give added powers of investigation, and so forth, because I have not yet been able to find any.

I would also like to make one other comment which deals with the references in the bill to the application of section 32 and the amendments thereto. That is the section dealing with combinations, agreements and conspiracies which are in restraint of trade, enhanced prices, and things of that nature. Some presentations were made before the banking and commerce committee to the effect that perhaps these amendments are a subtle way of bringing in the so-called specific detriment aspect which courts have refused to consider up to now. The courts have taken the view, and the witnesses appearing before the committee also took the view, that the courts should not be called on to assess any specific detriment to the public of any agreement or conspiracy which the parties charged may have entered into. The courts and the economists take the position that this is a task too difficult for the courts to deal with, and that if we are to bring before the courts such cases and insist that the courts make an assessment as to the specific detriment caused by any such conspiracy, and so on, the courts would be doing nothing else than listening to arguments of opposing counsel about theoretical concepts of economics or competition and it would be almost impossible to assess what the specific detriment was.

Dr. Skeoch, who is now professor of economics at Queen's University and for some years was senior economist in the combines investigation branch, had some thoughts in this regard which I think will be of interest. He was senior economist to the combines investigation branch of the Department of

Justice for about seven years, and prior to that was senior economist with the Canadian wheat board. Dr. Skeoch made a reference to this specific detriment question on page 432 of the minutes of proceedings, where the brief which he read was reproduced, and he said as follows:

To suggest, as the brief of the Canadian metal mining association on Bill C-59 did, that our courts are capable of determining the effects of interferences with competition because they "deal with complex subjects, such as those relating to income tax, customs and patents, and weigh technical evidence submitted to them by specialists and experts" is to fail to understand the nature of the issues under consideration. The courts are not required to assess the incidence of the income tax, to determine its effect on the level of savings and investment and the like, all of which would be involved in determining the effects of the income tax. Nor are they required to determine whether our patent laws promote or hinder innovation and development, either in general or in a specific case.

It might be added that if parliament were to enact legislation requiring the courts to forecast the trend of stock market prices, the hilarious reception such an enactment would receive can easily be imagined. Yet to determine the specific effects of combines restricting competition would be a far more complex matter.

This is not quite so clear a reflection of the government's attitude in this regard as was Bill No. C-59 of last year. If I may be allowed to make one or two references to that bill, I submit it indicates government attitude, but much has since been covered in the bill before us. On page 4 of Bill No. C-59, the proposed new section 19 (1)(a) with respect to the restrictive trades commission reads as follows:

(a) where it appears that a conspiracy, combination, agreement or arrangement has existed, shall include a finding whether or not the conspiracy, combination, agreement or arrangement relates in whole or in part to any of the matters specified in subparagraphs (i) to (v) of paragraph (a) of subsection (2) of section 32 and, if not, shall include a finding whether or not the conspiracy, combination, agreement or arrangement, in the opinion of the commission, has operated, or is likely in the foreseeable future to operate to the specific and substantial detriment of the public—

Et cetera.

Then in the proposed changes last year to section 32, which is the section setting out certain offences in relation to trade—that is the conspiracy, combination, agreement or arrangement section about restricting trade, limiting facilities for production, and so on—subclause 2 reads:

In a prosecution for an offence under subsection (1), it is a defence if the accused...

(b) also establishes that the conspiracy, combination, agreement or arrangement has not operated and is not likely to operate to the specific detriment of the public, whether consumers, producers or others.

May I point out that these references to last year's bill make express reference to the