Combines Legislation and Engineers

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Some of you may have read of the recent actions of the Federal Minister of Consumer and Corporate Affairs, The Honourable Herbert E. Gray, in introducing into the House Bill C-7, an "Act to Amend the Combines Investigation Act and the Bank Act, and to repeal an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code". If you think that is double-talk which could have no interest for the engineering profession, you'd only be half right. Bill C-7, which has now received second reading and has been referred to the Standing Committee on Finance, Trade and Economic Affairs, could well have an impact on the engineering profession in Canada quite as dramatic as, for instance, the introduction of professional licensing years ago.

How could such an upheaval come about? Here are the principal changes which could affect the Association, the engineer in independent practice, the employee engineer.

The basic action of the Bill is to extend the provisions of the Combines Investigations Act to all services and service industries including the professions. By definition in the Bill, 'product' includes both articles and services; "service means a service of any description, whether industrial, trade, professional, or otherwise". This takes in nearly all services offered by engineers. Under Section 32 of the Bill, an offence is committed if there is 'undue' limiting of competition; the penalty—two years in jail.

Directly involved would appear to be all agreements or arrangements between professional engineers with respect to competitive matters; all arrangements or agreements with respect to similar matters sponsored or carried out by the Association. Outlawed then would be any Association activities which might limit the number of persons entering the profession; involve the establishment of minimum fee schedules or rates of payment for services; or the establishment of standard forms of agreement for engineering services. Of course there are exceptions to the foregoing; it would still be legal to exchange statistics, or credit information, to define terminology used in a trade industry or profession, to restrict advertising; to join together on measures to protect the environment.

'Bid-rigging' becomes a specific offence. It is an agreement or arrangement between persons whereby one or more agrees not to submit a bid or where there is collusion in submitting bids. This 'offence' would not affect the Association itself, but would affect individual engineers or engineering companies in competitive situations.

Re-sale Price Maintenance provisions suggest that an offence would be committed if an engineering company indicated to any of its suppliers (as for instance architects, soils engineers) that it would no longer do business with some other person—perhaps another firm of engineers.

While perhaps unlikely, the 'monopoly' terms might apply to an engineer or to an engineering firm which might, in a particular geographical market area, enjoy 'substantial or complete control of ... the class of business in which they are engaged".

Misleading advertising provisions will also give engineers cause for thought. While direct advertising may be relatively minimal, the provisions against any misleading statements apply equally to such things as brochures and other documents designed as promotional pieces or for the solicitation of business.

As you will have noted, most of the adverse possibilities relate to the Association itself, or to engineers offering services to the public. However, even the employee-engineer may find himself in violation of the terms of the proposed Act, in certain employment circumstances. While the Bill makes it quite 'legal' for two professional engineering bargaining units certified under provincial labour law to enter into agreements or arrangements that they would each bargain with their respective employers for a certain salary or wage, such is not the case in 'voluntary' situations. If a unit were voluntarily recognized as a bargaining unit by an employer, and that unit did include some engineers of managerial status or who were otherwise disqualified, then the unit would not be eligible for certification under the Labour Relations Act, and would not, therefore, enjoy the same exemption as the legal unit would. In these circumstances, the collective bargaining activities of all the employee-engineers might constitute an illegal agreement. Accordingly, groups of professional engineers who wish to bargain collectively, and who have not been certified as bargaining units under the Labour Relations Act, must ensure, if they are seeking voluntary recognition from their employer, that no members of the group would be disqualified by the Labour Relations Board, if the unit were to apply to the Board for certification.

Many representations have been made to the Federal Government, both by provincial and national engineering bodies, including APEO and CCPE, and by provincial governments, including Ontario. Meetings with the Honourable Ronald Basford, regarding his version, Bill 256, and with the Honourable Herbert Gray, regarding his versions, Bills C-227 and C-7, have thus far produced only verbal acknowledgement of the points made by the engineering profession—no indications of ameliorative action have yet been seen.

Canadian Council has asked for permission to appear before the Standing Committee on Finance, Trade and Economic Affairs later in May, understanding from the Minister that changes in the Committee stage might be considered. In the meantime, watch for the 'progress' of this Bill in the House. It may be most important to your future.