department and keeping her apprised of what they were doing. In other words, they are providing her with information that might trigger the mechanism being established in this bill. However, the fact that some are doing it is no guarantee that all will. The likelihood is that those who are not voluntarily providing this information are the very ones who should be providing it.

The minister's testimony indicates that while there might be a hardship involved for some manufacturers, it is not so substantial that it cannot be overcome. In fact it is being overcome. However, there is no guarantee that it is going to be overcome by those manufacturers against whom the bill should be directed. They should be affected by its provisions if we are serious about protecting the environment from hazards which may be caused by new products or new projects. We very much need that kind of guarantee, but we do not have it.

The major fault in this bill is that there is no means to trigger the mechanism which we are establishing. We must rely on blind luck, a little bird to perch on the minister's shoulder, or some other unlikely intervention to trigger the mechanism. There are other faults. As others have mentioned there is no operative clause in the bill to establish the schedule which the bill refers to throughout its base. I hope the minister, when she speaks later, will indicate her intention to amend the bill in such a way as to introduce an operative clause which will enable the establishment of the schedule, something which is necessary to the whole effectiveness of the machinery we are discussing.

● (1520)

There is another fault, if I may point to it. Again I am referring to Clause 4. Clause 4 is permissive, not mandatory. Thus, whenever the minister is visited by this little bird, this ubiquitous bird, she "may"—though she is not obliged to—take certain steps. I should like to know why the operative word in this clause is not mandatory. What circumstances would prevent the minister from taking action? Why is parliament not told of the circumstances which would prevent the minister from acting? There is no reason for bringing in this legislation if the minister, having been given the power, does not show any inclination to use it. I do not suspect the motives of the present Minister of the Environment; I believe that given the necessary power she would exercise it. But why should the word "may" appear in this context rather than the word "shall"? If the powers we are considering are not to be used, we are wasting time discussing them here, and later, in committee.

There are two other serious restraints in the consultation clause of the bill before us, that is, clause 5. Here, it is worth pointing out, mandatory language is used. When we talk about reference by the minister to the provinces and to other departments we find the word "shall" being used. But we use only the junior word "may" when it comes to ministerial action. The hon. lady may take action or not, but having decided to take action it is mandatory that she should consult with the provinces, and so on. Why should we use permissive language when it comes to putting the law into force, and later mandatory language with regard to processes which may very well limit the effectiveness of action once it has been decided upon?

[Mr. Clark (Rocky Mountain).]

The two parties set out in the bill with which the minister is required to consult are first the provinces, and second "any departments or agencies of the government of Canada as may be appropriate". There are obviously difficult questions of jurisdiction involved here vis-à-vis the provinces. In this context it is worth noting that, whenever a difficult question of jurisdiction arises regarding the control of natural resources, the federal government shows no hesitation about moving in; but when a difficult question of jurisdiction arises regarding the environment, hon. gentlemen opposite get bogged down with lawyers and excessive caution. Consultation with the provinces may be necessary in this case, but the language of the bill points to an interesting inconsistency in the approach taken by the federal government.

I should like to quote briefly at this point from a commentary on the bill prepared by the Canadian Environmental Law Association. I ask the indulgence of the House to read into the record two paragraphs from that report:

> Lawyers within the federal Department of Justice seem to have an unreasonable sense of trepidation in allowing that the federal government can make any environmental regulations. The consultative process required with the provinces before any substances are designated to make this act effective is reminiscent of the consultative constraints contained in the Canada Water Act. It is perhaps relevant to note that the Canada Water Act, although enacted in 1970, has been used only once to make any particular contaminant illegal.
>
> The Justice Department's constitutional "experts" appear again to have written legislation which looks powerful on paper but will be difficult, if not impossible, to put into effective practice (assuming the government really wants to put it into practice, which is another question).

That is the view of the Canadian Environmental Law Association. That is how it regards the approach taken by the federal government toward the admittedly difficult question of federal-provincial jurisdiction.

The other requirement to consult has to do, not with other governments, which have clear rights in law, but instead with departments or agencies of the Government of Canada.

It is easy to understand why there should be consultation with the provinces; it is much less easy to understand why consultation with other departments of government should be considered so important that the unusual step is taken of writing it into the statute. It is fair to say—and I say this as a layman, not as a lawyer, that it is probably justifiable to read the word consultation in this context as synonymous with the word veto. The fear I have—and it is shared by others who have watched the Department of the Environment act in other fields—is that the experience of the past may be repeated in connection with this requirement to consult with other agencies and departments.

We may have to conclude that this mandatory requirement to consult with other agencies and departments is in fact a provision which would allow those other agencies and departments to exercise a veto against actions which the Department of the Environment might be taking in the interests of the people of Canada.

Some hon. Members: Hear, hear!

Mr. Clark (Rocky Mountain): This mandatory requirement to consult with other departments or agencies in order that they may be in a position in practice to exercise