

Which, I interpolate, are the regulating clauses.

—as the Board considers necessary for the purpose of carrying out a mandatory allocation program for a controlled product.

So one sees that the power of regulation, which is provided under the mandatory energy clause, is really quite sweeping in its application.

If you look through this bill, you will find other places where the same comment might apply. If you refer to clause 20, which deals with setting up the rationing system, you will find the same kind of all-inclusive catch-all regulating power. I refer to subclause 20(*l*). It does the same thing; it gives power to regulate—

—such other matters or things, whether or not of a like kind to those referred to in paragraphs (*a*) to (*k*), as the Board considers necessary for the purpose of carrying out a rationing program.

If you turn to clause 26(5) of the bill, you will see another extraordinary power which provides that the National Energy Board may be vested with any powers it needs to do what it is told by the allocating people, even if it requires a change, a violation, a trespass, an addition, or whatnot to the statute that governs that body.

Under this bill you are, in effect, conveying to the board the power to make substantive law—not the power of a subordinate body to make law, I suggest, but the same power that Parliament has. Not only that, under this bill, if the board finds it necessary, it may overrule half a dozen statutes. I read some of them into the record yesterday in the course of my remarks. I will not repeat them because members of this committee are familiar with them.

I think I can safely say that the powers conveyed by this bill are exceptional; they are extraordinary; they go far beyond what is found in most statutes. There may be others that are as bad. I suspect the War Measures Act is not much better, but it would surprise me if there are many statutes of the Canadian Parliament which ride as roughshod as this with respect to powers of regulation.

What particularly concerns me in clause 9 is that the board is given the power to delegate all of these extraordinary powers. Subclause 9(2) states:

The Board may by order delegate, in whole or in part, to any person, body or authority any of the powers or duties of the Board arising out of any regulation under this Act, and such delegated person, body or authority may exercise the powers and shall perform the duties so delegated.

We have, in the first place, a bill which conveys extraordinary powers of regulation; power to override the statutes; power to rewrite the law in some instances; and it compounds the situation, in my view, by permitting this board to redelegate all these excessive powers to another body or person, or to anybody they like.

[Senator Roblin.]

You may have some views about the necessity of the original power to make regulations, et cetera, that are in this bill on account of the emergency nature of the situation, but I think you need have no reservation about the undesirability of permitting this redelegation of powers by the board to somebody else in their full force, effect and plenitude. The house was made aware yesterday that Parliament has on previous occasions, taken a very critical view of such a redelegation of powers. It is a principle fundamental to our law that a delegate cannot delegate. Here we are doing it in spades, and I do not think it is even necessary or desirable.

Consequently, I am moving an amendment that Bill C-42 be amended by striking out clause 9, subclause (2), on page 5 and by renumbering the remaining subclauses accordingly and by amending where necessary all references in the bill to the renumbered subclauses. I have copies of this amendment in French and in English for those who may be interested.

● (1230)

The Chairman: It is moved by Senator Roblin:

That Bill C-42 be amended

(a) by striking out subclause 9(2) on page 5;

(b) by re-numbering the remaining subclauses accordingly; and

(c) by amending, where necessary, all references in the bill to the re-numbered subclauses.

Shall the amendment carry?

Senator Forsey: Madam Chairman, before the amendment is put to a vote, there are certain supplementary observations I should like to make upon it.

I think we would all agree that there are certain administrative actions which any board of this sort must delegate to particular people, but that the whole power of the board—every bit of it, every part of it—should be capable of subdelegation, as it is under this subclause, it seems to me absolutely fantastic. I have never seen anything like it in any statute before. Perhaps there is something comparable somewhere, but it certainly strikes me with the force of a thunderclap.

And I want to reiterate what Senator Roblin said just now.

—may delegate . . . in whole or in part, to any person—

The groom of the backstairs.

—body or authority any of the powers or duties of the Board arising out of any regulation under this Act, and such delegated person, body or authority may exercise the powers and shall perform the duties so delegated.

I don't see how you could draft anything more all-inclusive, more comprehensive, than that. You really scarcely need a board at all. All you need to do is set up one person and say, "Here he is. He has all the power to do everything necessary." That seems to me a most amazing clause to insert in any bill to come before Parliament.

I strongly support the amendment moved by Senator Roblin. If he hadn't moved it, I think I should have moved it myself. Fortunately, I have been spared that unfortunate duty.