

*Crown Liability*

I take it we are on common ground as to what we hope to achieve in the bill. We hope to achieve unlimited liability in respect of torts in so far as the crown is concerned. There are limitations in some respects later on in the bill, but so far as its general enactment is concerned my understanding is that it is intended that there should be no limitation whatever upon the liability of the crown in respect of torts committed by servants of the crown.

**Mr. Garson:** Perhaps the liability could be stated with somewhat greater precision than the hon. member has just stated it. There is a limitation. That limitation is the one imposed by the provincial laws. But the intention is to make the federal crown liable to the full extent to which a person in a private capacity would be liable under the provincial law.

My hon. friend says an argument of that sort could be made. He has just finished making it, in fact. But if he does not mind my saying so, I think it is a somewhat specious argument. I do not think it would get very far if challenged. The language is clear when it states that the crown is liable in tort for the damages for which, if it were a private person of full age and capacity, it would be liable (a) in respect of a tort committed by a servant of the crown.

I suggest to my hon. friend that a tort in any province is what the law of that province says is a tort. And what might be a tort in one province might not necessarily be a tort according to the law of another province. But in a given case in a court in the province in which the tort has been committed and action is being held, I do not think any judge would have difficulty in deciding what "tort" means there.

In proof of the reasonableness of that argument—because I admit I cannot prove it is right, due to the fact that it has never been tested; nor can my hon. friend prove that his argument is right because, as I say, there has been no decision made on this legislation—we have in the Exchequer Court Act and have had for many years section 19, which defines a claim against the crown as follows:

The exchequer court shall also have exclusive original jurisdiction to hear and determine the following matters: . . .

(c) Every claim against the crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the crown while acting within the scope of his duties or employment upon any public work.

There is no reference to any provincial law at all. This section is applied from province to province. I have heard of no difficulty experienced in that regard in the exchequer

[Mr. Fleming.]

court. We think, on the basis of the experience of the Exchequer Court Act, that we do not have to worry much about the wording which has been adopted in the crown liability act.

**Mr. Fleming:** I should like to raise a further point, relating to liability in respect of torts committed by members of the armed forces of the crown, or what would otherwise be torts if they were committed by civil servants of the crown.

It seems to me this bill is lacking in that it does not make some provision with respect to that subject. I have not heard put forward any explanation as to why the bill does not deal plainly with it. There are detailed provisions in the United Kingdom act, the crown proceedings act of 1947, in relation to this subject. Section 10 of the United Kingdom act has extensive provisions in relation to injuries suffered by persons as the result of wrongs for which members of the armed forces, while on duty, have been responsible.

We are not dealing with the converse case. The converse case is dealt with in section 4 of the bill, where some wrong is suffered by a person such as a member of the armed forces, who then has the right to pension. I am not dealing with that case but rather with a wrong or damage suffered by some person which, if it had been committed by a private individual, would be considered a tort. In this instance it is committed by a member of the armed forces.

On previous occasions when this subject has been under discussion I have drawn attention to some of the orders in council passed during the war dealing with this matter. I do not need to review them in detail. There were wartime orders in council, and there were orders in council passed under the War Measures Act subsequent to the cessation of hostilities.

For instance, I have before me a certified copy of order in council PC 43/1880, passed on May 14, 1947. And I have another one, PC 254½/2727, passed on May 28, 1949. I had some experience in this connection several years ago as the result of being consulted by a citizen who had sustained substantial damage in consequence of acts on the part of members of the armed forces which, if they had been committed by private persons, would have been definitely tortious.

This was the case of a man holding a fishing licence in lake Ontario. He had his nets out, suspended by floats; and although this area was not within the range of the ships on which naval ratings were then being trained, nevertheless they did engage in gunnery practice over his licensed area, with