

Senator Hayden: I had raised in the Senate the question that I did not think, in any proceedings under this bill, once it becomes law, it should be possible to bring into issue the merits of the expropriation authority, the general policy which led to the decision to expropriate.

I thought that was a matter for the minister. He has his responsibility to his fellow ministers and to Parliament and this issue should not be left to be decided in what I would call administrative proceedings such as would take place with a hearing officer, to have him reviewing the merits of the policy.

I had indicated that in Ontario the former Chief Justice McRuer, in his very elaborate report, had dealt with this question of expropriation. The Ontario act in this regard, which was enacted a couple of years ago, recognizes that principle which was enunciated by Chief Justice McRuer, that is, the authority, the policy behind the decision to expropriate, should not be reviewable by any administrative tribunal.

Whether the Ontario statute accomplishes that will be something which the courts will have to decide over the years but at least they have in Ontario specifically limited the subject matter of the hearing, where they make it the "taking of the land". The Ontario act in section 7(5) reads:

The hearing shall be by means of an inquiry conducted by the inquiry officer who shall inquire into whether the taking of the lands or any part of the lands of an owner or of more than one owner of the same lands is fair, sound and reasonably necessary in the achievement of the objectives of the expropriating authority.

That language was designed to keep the question of policy being considered by an administrative tribunal such as this inquiry has provided. I spoke about this in the Senate. This bill which we have before us really touches on this in three places, as you will see in the amendments.

I discussed my ideas with Mr. Hopkins, our Law Clerk, and he produced this first draft. In essence, he proposes to add, in three places in the bill, the language of the Ontario act. In that way, we are hoping to limit the authority of the administrative officer to an inquiry that centres around the taking of the land, but not the policy that lay behind the decision to take the land.

I present these amendments but, in line with what you, Mr. Chairman, have suggested, I think it is perfectly in order that the Justice Department should have a look at them in the context of the whole bill, rather than that we should just put them in here today as amendments, without necessarily establishing the correlation to the rest of the bill. So I would be perfectly satisfied if the committee saw fit to approve in principle of what we are seeking to accomplish and

then move on from there and ask Mr. Munro to go ahead and study it. If he can make a better job of it or if there is some correlation required, the pride of authorship would not be upset, I feel, in Mr. Hopkins, and would not be upset in me.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: No.

The Acting Chairman: May I suggest that in addition to the expression "the taking of the land or any part thereof" there be added "or any interest therein", in view of the fact that the present bill does cover the interest of tenants now.

Senator Hayden: That is right.

The Acting Chairman: That is just a thought of an extra point which may be needed, and there may be others. Mr. Munro, could we get your reaction to these three proposed amendments, before calling upon the senators to express their views.

Mr. C. R. Munro, Assistant Deputy Attorney General, Department of Justice: Mr. Chairman and honourable senators, I can try to explain the reasoning behind the bill in its present form. It is that not only the basic objectives of the Government is a matter of policy but also the selection of the actual site, the decision as to what piece of land to take, is also a matter of Government policy. Since it is a matter of policy, it must be the responsibility of the Minister of Public Works, under the statute, who after all is answerable for whatever policy decisions he makes in this respect.

While it is something for the minister to decide, we recognize that of course the minister and also his departmental officials may not be aware of all the relevant facts which would have a bearing on whether site A or site B should be taken. It was with that in mind that we provided this rather elaborate procedure, to give an opportunity to anyone who has any particular objection to any particular site to come along and state his objection at a public hearing, be represented by counsel and so on. In this way, the minister, before he proceeds with his intention to expropriate, will have had before him all the relevant factors.

The hearing officer has no responsibility on the question of policy. He has no responsibility to anybody at all. If he makes a recommendation as to what site should be taken, he makes it untrammelled by any considerations that the minister might have to take into account.

It was thought also that if the hearing officer were to make a recommendation it would in a very real sense fetter the minister in the decision that he has to make. For example, suppose the inquiry officer makes a public statement and publicly reports what his recommendation is, that he does not think that the