

Fisheries Act

Whether that feeling is correct or incorrect constitutionally, I make no comment.

When that situation exists, there must surely be a heavy onus on the federal government when it proposes substantial and substantive changes to the Fisheries Act to go through the consultative process. In my view that process in connection with Bill C-38 was a failure.

It particularly disturbs me when I find that probably the consultative process with provincial ministers of fisheries was satisfactory but was unsatisfactory with provincial ministers of environment and resources. That has to be completely inexcusable. If one can consult and secure the concurrence of a provincial minister of fisheries, and apparently the provincial minister of the environment perceives he was not consulted, that is not an acceptable situation.

Point number two is the interpretation of this legislation. I suffer the advantage or disadvantage, and I am not sure which, of looking at this legislation through the eyes of a lawyer. I construe it strictly. Maybe in this case it is a disadvantage. The history of the Fisheries Act, as I understand it, was an interpretation that is much broader and much more liberal than might be construed by someone with legal training, reading it as a lawyer might read it.

If the tendency was to interpret this legislation strictly according to legal tenets, it may be in some difficulty. I remember very well one clause that I read as imposing strict liability on a group of people or potential defendants. However, I was assured in committee that that was not the case, that to be guilty or to offend this particular section would require if not intent at least negligence. I will be interested in seeing how the courts interpret that section.

Groups of people may be perfectly innocent of any intent or negligence and may be found guilty under these sections. The owner of a deleterious substance, he who has control over that substance or he who permitted that substance to fall into a waterway, any one of the three are jointly and severally liable under that section. I sincerely hope that some reason will prevail in terms of the interpretation of that section.

I sincerely hope that in terms of the constitutional analysis of this legislation that we will not wind up with the situation about which fears were expressed by some departmental deputy ministers and other provincial witnesses. They suffer a very reasonable fear that, because of certain principles of constitutional law, certain provincial and environmental legislation may become invalid. That disturbs me very much. I wonder whether we should have been more persistent in committee in insisting that provision be made in the legislation that would indicate an intent not to occupy certain provincial fields. However, that will be left to the courts.

The final point is the implementation of this legislation. If it is implemented with a heavy hand there will be some serious difficulties. I have no hesitation in supporting legislation designed to catch and punish him who wilfully pollutes or him whose negligence is such that he simply does not care about environment and pollution. I have no hesitation in supporting

[Mr. Jarvis.]

strong legislation in that regard. However, I have serious reservations about the ability to use this legislation under the guise of fisheries to determine the course of development, construction, non-construction, preservation or desecration of land that would normally be the responsibility of the provincial and municipal governments.

If a heavy hand were applied under this legislation, the location of industry could easily be controlled under this act. That has not been and I hope it never becomes the history of the Fisheries Act, but I point out that serious potential danger.

For example, the environmental protection service, which to my knowledge has never used the act in that fashion, should not become zealous and seek to catch in the same net the wilful or negligent polluter, innocent polluters who make mistakes or those who have no control over the mistakes of others such as the owner of a deleterious substance who had no control over and was not negligent in permitting that substance to pollute.

In closing, I say again that my colleagues in this party want a strong and enforceable Fisheries Act. It is needed. Amendments to this legislation were needed. I hope that the consultative process will be restored. It has been damaged in some degree in Bill C-38. I hope the consultative process under the act, including the amendment passed tonight, will be used wisely and often. I hope the act will be interpreted not as a lawyer would interpret it but in a more liberal fashion. Finally, I hope it will be implemented with reason. If we are going to fight pollution in this country, co-operation and consultation are much better than penalty.

I say again that the government is very fortunate to have secured the co-operation, assistance and input of other parties in this House in view of the history of this legislation in which I, if I were a government member, would take no great pride.

Mr. Stuart Leggatt (New Westminster): Mr. Speaker, I will not take too much time of the House because I am very concerned that we pass this bill on third reading tonight. I think it is a very useful piece of legislation.

● (2140)

The hon. member for Perth-Wilmot (Mr. Jarvis) summed it up very well when he pointed out that the legislation has all-party support. The approach the government has taken in drafting the bill and in being fairly reasonable in committee with respect to amendments was a wise one. I know some of the opposition amendments succeeded. The value of the bill is not merely its capacity to put some clout into protecting fish habitat; the real value of the bill, and I am not sure the government understand it yet, is that it says something about valuing our renewable resources. It places a premium on our renewable resources. The measure before us happens to deal with fish, but we can all think of other resources on which a higher premium ought to be placed, for example, our forests. With this bill, the debate on the nature of an industrial society has been moved forward.