

*Water Resources Programs*

This, of course, would be subject to the minister convincing us privately or in the House that we had made a mistake. I think the next step must be that when committees, after due and careful deliberation and after hearing departmental officials, change or strike out a clause, we must then determine in the House who individual members support, the committee, the minister or the civil servants behind the minister.

Why were the words struck out? I will summarize them. They said that in a prosecution it is sufficient proof of the offence to establish that it was committed by an employee or an agent of the accused. That, in my opinion, creates absolute liability. But if there is any doubt about it one could simply add the words "knowingly or not," which would make it clear beyond all dispute. The first few words which require the prosecution to establish that the offence was committed by an employee or agent of the accused perhaps are necessary but certainly create considerable difficulty for the prosecution.

The words regarding whether or not the employee has been prosecuted are in my opinion unnecessary and completely surplusage. If the clause stopped there, the law would be clear and would spell out clearly, I submit, "Thou shalt not pollute". The plea of lack of knowledge and that he exercised due diligence to prevent pollution should, I submit, affect only the amount of penalty. There are plenty of precedents for absolute liability, such as, for example, the provincial liquor laws and our own breathalyzer provisions in the Criminal Code.

● (5:50 p.m.)

The last four lines start with the word "unless." These are the words that were struck out in committee. It reads, "unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission." I expect that the intended purpose was to prevent the accused from arguing under the first part that he did not have a guilty mind. I do not think this is necessary. I think the earlier words create absolute liability, and it would not be necessary in that case to prove *mens rea*. These words, headed as they are by "unless," wipe out the first part and constitute a built-in defence for each polluter.

The accused need only establish that he did not have knowledge and that he exercised due diligence. I submit that all he needs to do is post signs throughout the plant prohibiting

pollution and say that he had taken trouble constantly to advise the people how wrong pollution was. I submit that the defence of a broken valve or stuck valve is all too obvious. On a second offence the accused could simply demonstrate that it was a different valve in a different department. It would seem he would have one go at pollution for each valve in each department.

I submit the same could apply to a ship crossing, say, Lake Ontario. A valve goes and there is a string of pollution behind the ship. The captain is charged. He says, "I have warned my stockers and engineers that they were not to do it. I did not know. There are signs up everywhere." So there is his defence. A week later he is caught again, and it is a different valve in a different part of the engine-room so there is another defence. I point out to hon. members that in a criminal case we must prove it beyond all reasonable doubt, and if someone has a built-in defence that he need only show that he did not know and had exercised due care, I submit there is no way he will be convicted unless he goes on day by day in spite of all the efforts to stop him.

I submit that in this type of offence we cannot afford to be soft. In many types of offences, for example in liquor laws, the man who commits the offence does it where we can all see him or have a chance to see him. Even with someone who would break into our home we have a reasonable chance that we would see him or that a neighbour would see him. This offence, however, goes on inside a factory where we are not invited, and in some cases cannot get in without a pass to look, let alone examine and inspect, where the man who owns the plant has absolute control. I submit that we should word the legislation in such a way that there is absolute liability, so that our intentions and the law are clear that the waters are not to be polluted.

Finally, Mr. Speaker, may I say that two days earlier, on May 5, the same committee struck out old clause 20 which was replaced today by new clauses 20, 21 and 22 on the adoption of amendment No. 19. On that occasion the hon. member for High Park (Mr. Deakon) and I were accused of knocking the teeth out of the act. We had headlines such as, "Grits Mutiny and Destroy the Act." The last such headline appeared in Toronto about two weeks ago, saying we had 30 years to live because the hon. member for High Park and the hon. member for Peel South kicked the teeth out of the act by knocking out the

[Mr. Chappell.]