

Mr. Munro: There are all kinds of people, sir, down here on Sparks Street who are doing precisely that. They have been there for years.

Senator Hayden: What conclusion am I to draw from that?

Mr. Munro: The point is that in fact people do use their property. They are allowed to remain on their property, sometimes for years, after an expropriation.

Senator Hayden: I know, but that is a matter of agreement. We are not discussing that.

Mr. Munro: But even when there is no agreement . . .

Senator Hayden: I would not load a store up with inventory if I expected to be pushed out tomorrow, unless I had some understanding.

Mr. Munro: In any event, sir, it seems to me that it should not be a requirement that the compensation be paid at the end of the 90-day period.

The Acting Chairman: Thank you, Mr. Munro, and I apologize for not having called upon you before asking for the views of members of the Committee.

Honourable senators, do I understand that the amendments suggested by Senator Choquette meet with your approval in principle, and we should ask the Department of Justice to prepare the necessary amendments, and the consequential amendments, if necessary?

Hon. Senators: Agreed.

The Chairman: Would you be good enough to do that, Mr. Munro?

Mr. Munro: Yes, sir.

The Acting Chairman: Honourable senators, as I understand the situation, it will be necessary for us to adjourn this hearing . . .

Senator Flynn: Mr. Chairman, may I mention that I did give a warning in the house that I was not entirely satisfied with subclause (1) of clause 36. I would like the committee to express a view on that. I suggest that the rule be that in all cases judicial costs be paid by the expropriating authority, unless the opposition or the contestation be judged to be entirely futile. I do not like this discretion here, because when you read subclause (1) you will come to the conclusion, I think, that we are going to continue with the present practice, that when the expropriated party fails to get more than the offer made by the expropriating authority he has to bear the costs. In my opinion this is not fair, because it may be a matter of opinion or of a few thousand dollars. If you have the expropriated party

bear the costs you are in fact penalizing him and decreasing the compensation to which he is entitled. I suggest therefore that this subclause (1) should be re-drafted in that way, that unless the contestation of the expropriated party is futile, in all cases the costs should be borne by the expropriating authority.

The Acting Chairman: Would you accept the word frivolous?

Senator Flynn: Yes.

The Acting Chairman: Because futility might go to the question of the amount.

Senator Flynn: Yes.

Senator Choquette: There is a danger also, Mr. Chairman, that the presiding judge, using his discretion, might be guided by our courts in civil matters. I pointed this out when I spoke to the question. We all know that in an automobile accident, for instance, where the defendant decides that a certain amount would be fair compensation and deposits it in court and the case is disposed of, if the court allots an amount less than that which has been deposited the defendant is saddled with the costs. I say this in support of the suggestion made by the honourable Leader of the Opposition that there would be a danger of the presiding judge, when asked to use his discretionary power, basing his decision on those principles that are well known throughout the country.

Senator Flynn: Principles which should not apply in a case such as that.

The Acting Chairman: Mr. Munro, would you express your views in this regard?

Senator Cook: Would "frivolous" include fraudulent?

The Acting Chairman: I would think so, yes.

Mr. Munro: The object of the provisions of the bill as presently drafted is to require a person to act reasonably in bringing proceedings against the Crown. As a practical matter, the way it works out, in my experience at any rate, is that there are exceedingly few cases, an extremely small percentage, in which the court does not award at least a little more than the Crown's offer, the Crown paying the costs under the legislation as it now stands. Therefore the prospects of a party ever having to pay costs under clause 36, subclause (1) as it stands now are almost negligible.

Senator Flynn: I will not subscribe to that, because this act will appear to the court to be more generous than the system which now prevails. Therefore they may want to apply this more strictly than has been the case in the past.