

The provincial Crown, as a prerogative, has property title rights in provincial property, just as the federal Crown, as a prerogative, has property title rights in federal property. These rights can only be legislated upon by the appropriate legislature and then only with the consent of the federal or provincial Crown, as the case may be.

It may be difficult to determine when the federal government, by legislation, impinges upon the provincial legislative field; however, it is not so where the federal legislature impinges upon a provincial Crown prerogative. One need only look to see if there is a record showing that the provincial Crown has consented to this impingement upon the prerogative. If there is no consent, then the infringement is invalid. While it may be argued that the federal government, by legislation of parliament, can bind the provincial Crown in matters not involving the prerogatives that are within the legislative competence of parliament, there is no doubt that the federal government, through parliament, cannot bind a provincial Crown prerogative without the consent of the provincial Crown. Indeed, parliament cannot, by legislation, bind the federal Crown prerogative in a matter of property rights without the consent of the federal Crown.

● (1520)

Clause 3 purports to extend all the provisions of the bill to Her Majesty in right of a province. This may or may not be constitutionally correct with respect to certain of the provisions of the bill, but so many of the provisions which purport to affect the provincial Crown prerogative of property rights in gas and oil or any incidence of those property rights are invalid. Even those which affect the federal Crown prerogative in property are invalid without the Crown's consent, although this can be cured in the present instance by the Crown giving its consent before or during third reading.

This amendment to clause 3 serves to point out the dependency of the federal government upon provincial government consent, through the provincial Crown prerogative, to many of the bill's provisions. It is curative, also, and should be adopted by the government; otherwise, if the act is subsequently challenged on this point, it will be held totally or partially invalid. The amendment provides for obtaining the consent. Probably, the provincial Crown could not give its consent to federal legislation without legislative authority from the provincial legislature.

That, Mr. Chairman, in careful language is the explanation for having moved this amendment. Going back to layman's language, I simply say we can make this a better act that will not be challenged by anyone if we add this phrase that I have read to the committee, and I will read it again:

—where the legislative authority of the Parliament of Canada does not extend to bind Her Majesty in right of a province, then to the extent that Her Majesty in right of a province consents thereto.

In the particular situation in which we find ourselves, where we have before us a bill to put into legal effect the machinery to carry out the purpose of an agreement arrived at between the 11 heads of government last March 27, there should be in there a statement that there should be consent from the provinces. The provinces whose

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resources are affected in this instance are primarily four in number. Alberta and Saskatchewan, Manitoba to a lesser degree, and British Columbia, which wants gas prices up but not oil prices, have already indicated their position with regard to having their oil and gas prices controlled. It all boils down to the fact that if this clause were put in, before anything is done with this legislation we would expect some indication from these provinces which I think should come through a statutory provision or resolution passed in their legislatures. As a substitute for that, there could be an order in council of those four provinces saying that they consent to the terms of this agreement arrived at by the heads of the provinces and the federal government last March 27.

The best argument I can make as an individual, supported by at least the party of Her Majesty's Opposition, to try to get across the idea that we would like to see action taken in this very necessary field of price and supply allocation is that it be done within the framework and under the umbrella of the constitution which we have in Canada. There is no question about whether my amendment will achieve this purpose. The question we now have to decide is, will the members of the committee accept this proposal and make this good legislation?

The Chairman: I am sure hon. members took notice of the amendment of the hon. member for Qu'Appelle-Moose Mountain. Before I decide whether the amendment is in order and put it to the committee, I invite the opinions of hon. members as to its acceptability. I prefer at this time to reserve expressing my views on the amendment, although my first reaction is to put it to the committee. I do not want hon. members to feel that the Chair is not open to expressions of opinion as to the acceptability of the amendment, and if there are hon. members who have views they wish to express, they may do so. The Chair has to be very careful about commending the proposed amendment; there is the danger that it might be making a legal judgment or constitutional interpretation on the implication or application of this piece of legislation.

The hon. member for Qu'Appelle-Moose Mountain spoke of the consent of Her Majesty. This bill does not deal with property of Her Majesty in her own right which would be transferred with her consent. It is very difficult for the Chair to get involved in the intricate aspects of this kind of proposition. In any event, if there are any comments I invite hon. members to make them and I will then make an immediate decision.

Mr. Baldwin: Mr. Chairman, unless there is sustained argument on matters which are very complex in nature and issues which are difficult such as this—and Your Honour said he had an inclination to put the motion—it is usually sound to follow your first inclination.

The Chairman: Does the hon. member wish to speak on the procedural aspect of this amendment, or on clause 3?

Mr. Douglas (Nanaimo-Cowichan-The Islands): Mr. Chairman, at this time I do not want to deal with either the acceptability or the substance of the amendment. If the minister is going to speak on this matter, I want to ask whether, for the edification of a non-member of the legal profession, he would begin by explaining clause 3 itself