

Railway Act

should have normal access to compensation through the courts. There does not appear to be any useful purpose served by any exception to this right, as preserved in Section 338.

While the Hon. Member who moved the motion proposes that the maximum level of compensation to victims of fires started by any railway operation, as set out in the Railway Act, be increased to reflect current replacement costs for damaged property, the exception introduced by the Act, regardless of limits on liability, is an anachronism. The Hon. Member's proposal is pertinent in that this section of the Railway Act appears to have outlived its usefulness. Any change should take into consideration the possibility of deleting it in its entirety rather than modifying it as proposed. In any event, it would be preferable to deal with the modernization of the Railway Act in a co-ordinated manner rather than in a piecemeal fashion as entailed by the Hon. Member's motion.

The change proposed by the Hon. Member should be considered in conjunction with a general review of railway legislation, which is presently under way at Transport Canada. In due course, such a review could be laid before the House and Members could then have ample opportunity to examine this amendment, and any other that may be considered appropriate, in the context of a comprehensive legislative proposal.

We now come to the question of how members are to vote on this matter. In the city from which you and I come, Mr. Speaker, about 12 days ago I gave an impassioned plea for having Members vote according to their consciences and the interests of their constituents other than when a question of confidence in the Government is at issue. It would be abjectly hypocritical for me on a motion as tepid as this one to urge government Members to vote against it.

There is no question whatsoever that this motion does not involve confidence in the Government. No Hon. Member in the House would pretend that it did. I would be the worst kind of hypocrite, with a capital "H", if I were to go around asking my colleagues to vote against it. They have heard what I have had to say on behalf, if you like, of the Government, but I have enough respect for them and you, Mr. Speaker, that I would ask them to vote exactly the way they feel so as to be in accordance with their consciences on this matter.

Mr. Nelson A. Riis (Kamloops—Shuswap): Mr. Speaker, I must say I listened with a great deal of delight to the comments made by the Parliamentary Secretary to the Minister of Transport (Mr. Kilgour). Indeed, I found his remarks very encouraging. The type of leadership he has just demonstrated with respect to his position of responsibility indicates that something as positive and contributory as the motion before us ought to be supported by all sectors represented in the House. I am happy to be able to speak to the motion following the Hon. Member. I am very encouraged by his comments.

As he has indicated, at the turn of the century when the Railway Act was being formulated there was the recognition

then that with railway locomotives being what they were at the time, spewing out smoke and ash, fires were relatively commonplace as trains moved back and forth across Canada.

In 1903, the Parliament of the day, through the Statutes of Canada, Chapter 58, Section 239 of the Railway Act, indicated that \$5,000 would be an appropriate sum to expect a railway to pay if in fact a locomotive caused a fire. I suspect that back in 1903, \$5,000 was sufficient moneys to compensate for damages incurred as a result of a fire by a locomotive pulling a train. But if one were to factor in the cost of living and the inflation rate since 1903, I suspect that the figure would be at least close to \$100,000, although perhaps not that high. It would be close to \$100,000 in order to reflect what would be a typical piece of compensation in an average fire caused by a locomotive. However, as the Parliamentary Secretary has indicated, and as have other Hon. Members, with the change of locomotives to diesel, and in some cases to electricity, fires that are caused by railways today tend to be caused by other means and not necessarily by the locomotive of a train. To confine the compensation offered to fires that are created only by locomotives does not recognize the reality of the changing modes of transportation technology and, quite frankly, the changing realities of our rail system.

We all know, particularly those of us who have rural areas in our constituencies with rail lines running through them—and I am honoured to have both Canadian Pacific and Canadian National travelling through the constituency of Kamloops—Shuswap—that fires are occasionally started by careless personnel and by the malfunctioning of brakes on twists and turns throughout the mountainous region of British Columbia. Sparks can fly off and cause fires. I suppose there are probably other ways of causing fires as well.

What the motion before us does is simply to suggest that in the opinion of this House the Government should consider the advisability of introducing legislation to amend the Railway Act to provide for increased compensation to victims of fires set by railway operations in order to reflect current replacement costs on items lost through property damage.

• (1720)

The motion is a thoughtful one and is to urge the Government to put into motion a process by which this suggestion could be considered. As the Parliamentary Secretary to the Minister of Transport has indicated, certainly an updating of this section of the Railway Act is in order.

In the case of liability where there is a claim on the basis of negligence, I suspect that a different matter will exist. Then, through due process of the courts, people can pursue justice and expect from the railway a reflection of the case that an individual could then present.

The onus is always on the farmers, or whoever lost property as a result of a fire, to establish that the railway was negligent according to Subsection 338(2). In addition to this process being expensive and lengthy, it would be extremely difficult to