

Federal Court

Mr. Brewin: So he should be.

Mr. Otto: The court might say that it does not believe the document has anything to do with federal-provincial relations. So, we would be placing the judiciary in a legislative position. In this case, it would be deciding what should be the policy of the government. Let us go further and suppose there is correspondence between a provincial government and the federal government which, at the instigation of the province, is meant to be kept secret. This government, in effect, says to the province that it has a certain relationship with the province and if the province desires information or correspondence between the two of them to be kept secret, this desire will be honoured. As a result of this understanding there is much more correspondence and freedom of expression.

However, if the provinces have requested secrecy and the government should be forced to disclose the information or documents to a court, the court might decide there should be no secrecy. Then, what is the situation in respect of the pledge that has been given? In other words, the consequence of this amendment obviously would be that communications between provincial governments and the federal government would be couched in such careful terms, in the knowledge that they might become public, that provincial-federal discussions would be meaningless. I, therefore, say that the hon. member for Greenwood should reconsider his position and I support the government's position on this amendment.

Mr. Brewin: I have no intention of reconsidering my position.

Mr. Robert McCleave (Halifax-East Hanis): Mr. Speaker, I wish to make clear that I support the amendment proposed by the hon. member for Greenwood (Mr. Brewin). I believe the arguments of the hon. member and of the hon. member for Calgary North (Mr. Woolliams) are strong and valid arguments. I should like to add briefly to them. We are dealing with justice. People go to court presumably in the hope that they will receive justice. I cannot see anyone being satisfied if, when he goes to court, he cannot obtain a document and therefore cannot present his full case to the judge. I believe it is invidious to give anyone the power to withhold information, because it might make a few red faces in Ottawa or in the provincial capitals, which might make a great deal of difference to a person's case. This strikes at the very notion of justice.

I agree that we would not want our courts to become circuses such as happens too often in the United States. There should be a power to turn down mischievous requests. In any event judges probably have this power. I say that this Parliament would be committing a wrongful act if it were to give this power to any minister of justice, because it strikes at the very heart of justice itself.

Now, let me give a few specific examples of how I believe litigants could be placed in a very invidious position in respect of the conduct of their cases. My

[Mr. Otto.]

honourable and learned friend from Calgary North has mentioned the dealings of pipeline companies whose pipelines extend across provincial boundaries. Such companies are under the jurisdiction of at least one national body and presumably, because the provinces have the natural resources which are being dealt with and carried in the pipeline, there is a flow of information back and forth between the federal and provincial governments.

There might be a situation where someone, whose case depends very much on some federal or provincial decisions, might wish to obtain such decisions so that he could present them to the court. His request could be turned down by the Minister of Justice, and that would make a mockery of his case. As a matter of fact, he could have initiated a case, spent thousands and thousands of dollars in retaining lawyers and obtaining documents, only to find when he got into court that his whole case collapsed because the Minister of Justice sitting in Ottawa refused to produce the document on which his case was based. I say that should not happen. As I say, I can see it happening in many cases involving business because in matters of trade the federal government has a responsibility under the constitution.

We have mentioned the situation in respect of the movement of natural resources, which are a provincial responsibility, across provincial boundaries. Let us take the illustration further and relate it to what everybody is talking about in Canada today, the tragic events in the province of Quebec. There may be situations in which people will decide to take action against someone in an effort to obtain redress for the loss of their civil liberties. I suppose under other parts of this subclause the minister could deal with such people peremptorily and knock out their case by refusing to disclose documents on the ground that they would be injurious to national defence or security. There seem to be a strange variety of crimes being committed in Canada these days under both headings.

In any event, I believe I am making my point concerning the power of the minister. I am not referring to this minister because I do not want to be in an *ad hominem* position in this argument. I am just saying that a minister of justice, to preserve the political aplomb of himself and his associates or some friend in some provincial capital, could use his power and any ideal of justice would become very secondary. I think it is invidious and insidious.

I certainly support the hon. member for Greenwood in his efforts to knock out this provision. I hope the Minister of Justice, who does listen to reasoned argument and who is a first-rate fellow to deal with, even at this stage will change his mind and instruct his parliamentary secretary to say, "yes, you fellows on the other side have made your point and we accept the argument".

• (3:40 p.m.)

Mr. F. J. Bigg (Pembina): I support the amendment moved by the hon. member for Greenwood (Mr. Brewin), which was supported also by the hon. member for Calgary North (Mr. Woolliams) and the hon. member for