

minister responsible to Parliament should take that responsibility and it should not be left to a judge.

Mr. Eldon M. Woolliams (Calgary North): At the outset, I should like to agree with the hon. member for Greenwood (Mr. Brewin) on this particular point. I am not concerned about the exclusion of the other two or three types of documents, that is those relating to international relations, national defence or security, but I am concerned with federal-provincial relations. I appreciate the argument of the Minister of Justice that the executive would have knowledge as to what might affect federal-provincial relationships. Surely, if there were any question of confidentiality, then in the usual course of the production of documents, as stated by the hon. member for Greenwood, the production of documents could be held in camera by the court. Let me deal with some examples.

We are moving into a new field. Let us take for example the National Energy Board which has authority over pipelines which have become more important with the development of our country. Natural gas, coal, and no doubt wheat in the very near future, will be moved by pipelines. This often involves federal-provincial relations. It may be that litigation involving a citizen and the Crown might require a document, the production of which the lawyer representing the citizen felt to be necessary. If for some reason the executive felt there might be some injury to federal-provincial relationships as a result of the production of such a document, surely during argument it could be presented to the judge for examination. I have absolute confidence that if a judge were asked to keep the document confidential there would be no disclosure. I do not think we should give the minister this kind of power. This seems to be a catchall clause for anything the Crown does not want produced.

What a citizen is litigating with the Crown he is fighting a very powerful organization. He is fighting all the brains of the law officers of the Crown.

Mr. Turner (Ottawa-Carleton): Thank you.

Mr. Woolliams: They are well briefed and they know how to win cases. They know what evidence is necessary and what evidence is not necessary. I have found, through my experience in tax cases, and I know my friend the Minister of Justice has had this experience as well in tax cases and expropriation cases, that these Crown officers do not like to disclose many of the cards they are holding.

I am concerned that this expression "federal-provincial relations" will mean that many documents, if not all documents, falling under that category will be excluded. The pertinent part reads:

When a Minister of the Crown certifies to any court by affidavit that the production or discovery of a document or its contents would be injurious to...federal-provincial relations... shall be refused—

In other words, this shall be left solely to the discretion of the Crown or the minister. This gives the state too

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much power. I am thinking of pipelines and litigation with regard to railways and national parks, which certainly involve federal-provincial relations when deals are made. I have had a little discomfort in that field and I do not intend to get into that.

On these grounds, I support clause 41(2) if the minister would withdraw that part, as suggested by the hon. member for Greenwood in his amendment No. 14. I would ask the minister to reconsider it. Surely, he is one man who I think, because he is a young minister with aims and objectives, would endeavour to appoint top men to the judiciary. He has shown his ability in that regard. Surely a judge should have the right to make this decision rather than to leave it to an executive of this powerful state.

Mr. Steven Otto (York East): Mr. Speaker, this discussion so far has been on a very legalistic plane. It seems that we should consider what we are legislating here. I was quite surprised to hear the minister give the impression that our law now stems from the precedents he quoted. Normally, legislation does not follow the courts, the courts follow the legislation.

The arguments presented by the minister about the sensitivity and the very delicate nature, in a federal state such as this, of federal-provincial relations were interesting, I think, in so far as security is concerned, they rank equally to international affairs in some cases. Certainly in the situation which exists today, there is a great deal of discussion between the province and the federal government. It is not always advisable that all these discussions should be made public. We then get into a certain phase of this argument on the amendment which is this.

• (3:30 p.m.)

The hon. member for Greenwood (Mr. Brewin) wants the court to decide whether or not a document is or should be considered privileged. We in this House of Commons do not have this privilege at all because the parliamentary system is based on the idea of ministerial responsibility, and the government falls or stands with the ministers' decisions. So here, we are faced with a situation in which this House can be, and often is, refused information of this same nature by the minister because it is confidential. The courts, on the other hand, would be in a much better position because at any time they could have all or any documents. If we were to follow the course suggested, we would have to reconsider the whole idea of parliamentary government. I am not suggesting for a moment that we should stay with the exact system we have now, but if there is to be a change then we should not limit our consideration to just what is contained in the amendment but should broaden it to cover the whole field.

I put this to the hon. member for Greenwood. Let us suppose that the amendment carried. Then, if there should be no disagreement between the minister and the courts there would be no problem. But let us suppose there is disagreement. Then the minister, a minister of the Crown representing the people who elected this government, is in a secondary position to the court.