

West Coast Ports Operations Act

Mr. Robinson (Burnaby): Mr. Chairman, perhaps the Minister did not hear the question. Would he indicate and confirm to the House, if I could have his attention, that working men and women are subject to terms of imprisonment under the Clause which is presently being debated? Is that the intent of the Minister?

Mr. Caccia: I do not think it is the Minister's role to interpret the law. The Bill is before the House. Once passed, it will then be for the court to implement it.

Some Hon. Members: Oh, oh!

Mr. Robinson (Burnaby): The constituents we represent are entitled to know, in dealing with this legislation, precisely what are the sanctions contained in it. This is a very serious question because if one looks at the provisions of the Bill under Clause 2, for example, any slowdown in work, any failure on the part of the union to forthwith notify and any failure to comply with an order or request made pursuant to the collective agreement, leaves the individuals in question open to punishment for contempt of court.

What precisely does the Minister of Labour intend by this provision? Does he intend to give the courts of the country the power to throw those individuals who have violated these sections in jail? If not, he should make that clear. If that is his intention, the people of the country, and particularly Hon. Members of Parliament, have a right to know it. What is the Minister's intention? Is imprisonment intended to be one of the sanctions which will be imposed for contempt of court?

Mr. Caccia: Again, the court has the power to set its own penalties for employer and employee organizations in cases of contempt.

Mr. Robinson (Burnaby): I ask the Minister to answer a very simple question. Under the powers accorded to the court, is it the Minister's intention that those powers should include the power of sentence to a term of imprisonment, either definite or indefinite?

Mr. Caccia: In some cases this would be within the discretion of the court.

The Deputy Chairman: Shall Clause 7 carry?

Some Hon. Members: Agreed.

Some Hon. Members: No.

Clause 7 agreed to, on division.

On Clause 8—*Order against employer.*

Mr. Gamble: Mr. Chairman, I have a question for the Minister of Labour. He will recognize that the words "agent of the employer" appear in Clause 8(1) on three occasions. Also he will know that it is not defined in the Bill and, accordingly, we are thrust back on the general law of the agency in determining who these people are. Also I suspect that he will know that this liability concept is not new to federal statutes, but it is new to the extent that it applies to agents rather than to officers and directors of corporations.

What troubles me—and I wonder whether the Minister has directed his attention to this issue—is that an employer may be liable where an offence apparently has been committed and where the employer has failed or refused to comply with the provisions of the Act, whether or not the director, officer or agent is identified. While it is quite permissible not to identify the officer or director, surely the employer should be entitled to know the identity of the agent who is neither an officer nor a director of the employer. The one defence which surely must be available to the employer is the defence of "he was not my agent". How can the employer say, "he was not my agent" when under the terms of Clause 8 the Crown need not identify the name of the alleged agent?

Mr. Caccia: Mr. Chairman, the advice that I am receiving is that this would not be imposed on a person who could not be established to be the agent of the employer. This would not be a question of identifying the person by name, if I understand correctly, but of identifying the function of that individual.

Mr. Gamble: This is a serious matter because of the penalties involved. It does not say that he is not to be identified by function. It says whether or not the officer, director or agent is identified. Having regard to the process of the issuing of a summons or an indictment, the person allegedly acting as an officer, director or in this case agent, is generally named in the instrument which gives rise to the commencement of the court proceedings. I quite understand, as I have indicated, how it is possible to leave out the name of the officer and director and specify the office that the person may hold or the fact that the person may be a director, but how can the Minister simply say that an agent of the employer failed to do something? The obvious defence in all these cases is surely—"he was not my agent". But very clearly, if one has regard to the particulars of the defence, the Crown need never identify him. Surely if it is the intention of the Government to identify at least the name, then let it be spelled out where the word "identify" is placed in the section. The Clause should read that the function of the agent need not be identified but the agent must be identified by name, because that is what the Minister is telling the House.

I pause to comment about the fact that this is an extension of the general provisions of liability imposed upon corporate entities by the Crown where the actions of the directors or the actions of the officers become the responsibility of the employer corporation, but here we are starting on a new path of vicarious liability without giving to the accused so much as an opportunity to say, "that was not my agent", a defence which, quite frankly, is very common in civil matters.

Mr. Caccia: Mr. Chairman, may I defer to the most distinguished legal adviser available in the Chamber tonight.

Mr. MacGuigan: Mr. Chairman, I hesitate to rise after that introduction, but it seems to me that when we look at the words closely, "... to show that an officer, director or agent of