

Energy, Mines and Resources

● (2130)

The privileges which would come from this provision are very significant ones. Most Canadians are not aware of what "agent of Her Majesty" means. It is an expression which appears very Archaean and innocuous, but it conveys very significant privileges.

Perhaps the best way for me to explain to members of the House is to refer them to the uranium cartel case which is currently before the courts. I will not comment on the merits of the case. Hon. members on this side of the House have raised them on a number of occasions, but suffice it to say that the government finally agreed that a number of uranium companies should be charged with price-fixing for contravening the provisions of the Combines Investigation Act. That is a criminal offence, and the case included both private sector companies and two companies which were owned by the Government of Canada. One of them was Eldorado Nuclear, and the other was Uranium Canada.

When that matter came before the courts, the two Crown corporations pleaded in their case that they could not be charged because, as agents of Her Majesty, they were immune from the criminal law. Indeed, in a decision made by the Ontario Supreme Court on this case, the court found as follows:

It is clear that the long-standing historical immunity of the Crown or its agent is not to be lightly dispensed with. Section 16 of the Interpretation Act was in force before the commencement of the period specified in the charge, prior to the incorporation of U.C. and prior to the inclusion of Eldorado under the protection granted by section 3 of the Government Companies Act. Whatever the intention of Parliament relating to the application of the Combines Investigation Act to these companies, adequate time has expired to permit this to be done. Nothing has been done and at present there is no language in the Combines Investigation Act which purports to make that statute binding upon Her Majesty or to affect Her Majesty's rights or prerogatives in any manner. The language of section 16 is, on the other hand, clear and unambiguous. (See *The Canadian Broadcasting Company and The Attorney-General for Ontario*, supra, particularly the judgment of Rand J. at pages 198 and 199).

The judge said:

In my opinion then, section 16 is a complete answer to all submissions made by the Attorney General here, and I find that the Combines Investigation Act is not binding upon either of the applicants. In this regard, the conduct complained of in these charges, assuming it is capable of proof, cannot be characterized as criminal and there exists no foundation upon which these charges could be validly laid or prosecuted under the Combines Investigation Act.

What does this mean? This means that when the government includes a provision for automatically granting agent of Her Majesty status to these Crown corporations, it sets two standards. There is one standard for the private sector and for all ordinary Canadians and another standard entirely for the government. It says that federal corporations which operate as agents of Her Majesty are above the combines law and that they can engage in price-fixing. They can engage in the sort of manipulation which would lead to charges being laid in the private sector. In other instances they could engage in false and misleading advertising. A Crown corporation can be exempt from prosecution under statutes dealing with false and

misleading advertising. They can be immune from other criminal prosecution as agents of Her Majesty.

It is intolerable to any Member of Parliament who is concerned about respect for the rule of law to accept a situation whereby automatically all new Crown corporations incorporated under this bill would automatically be given that immunity. There must be one standard of law in Canada, and if the government chooses to put in place combines legislation designed to ensure that price fixing does not exist, designed to ensure that one cannot engage in false and misleading advertising and designed to ensure that practices in the marketplace are fair and scrupulous, how can it with any justification seek to exempt its own companies from maintaining the same standards of behaviour we would expect of private sector companies? If private sector companies violate the Combines Investigation Act or if they violate other criminal legislation, charges are laid against them and they are prosecuted in the courts. Yet what we find in the Eldorado and Uranium Canada case is that the government using the fact that the two Crown corporations were agents of Her Majesty, and the corporations have declared themselves immune from the application of the criminal law.

Mr. Benjamin: That is baloney. Come off it! You know better.

Mr. Beatty: If he says that, the hon. member clearly has not read the decision of the Ontario Supreme Court.

Mr. Benjamin: Tell that to Peter Lougheed and Bill Davis.

Mr. Beatty: I regret that the hon. member would make such an attack on the Ontario Supreme Court. Surely it is incumbent upon a Member of Parliament, including the hon. member for Regina West (Mr. Benjamin), to respect a decision by the Ontario Supreme Court which very explicitly says what the law of the land is today.

Mr. Benjamin: Humbug.

Mr. Beatty: It may very well be that the hon. member for Regina West believes that Crown corporations should be above the law and should be able to engage in improper and illegal activities with impunity and immunity.

Mr. Benjamin: None is above the law.

Mr. Beatty: Unlike government members, members of the Progressive Conservative Party in the opposition believe such behaviour is intolerable.

The position we put forward to the House tonight is that when the government enters into the marketplace of the country, the government should not ask for standards of its own behaviour which were more lax than the standards which apply to everyone else. The government should be prepared to set an example which goes well beyond the standards of behaviour expected of everyone else. How can we expect to see respect for the rule of law in this country if the government says: "What we do is all right, but if you engage in the same sort of behaviour, we will lay criminal charges against you?"