

*Correspondence on Surcharges*

**Mr. Smith (Simcoe North):** I would read it, but it would take a long time. Then Mr. Ralston went on:

The law officers of the crown I understand give the opinion that this section 5 is invalid.

Mr. Guthrie: Yes, that is the opinion of the law officers of the crown.

On that occasion, notwithstanding what was said by the hon. member for Bonavista-Twillingate and the hon. member for Essex East, the opinion of the law officers of the crown was not produced.

**Mr. Pickersgill:** It was given in the house.

**Mr. Smith (Simcoe North):** It was not.

**Mr. Pickersgill:** You have just read it.

**Mr. Fleming (Eglinton):** That was the substance.

**Mr. Speaker:** Order. The hon. member has the floor. Let us not have cross-fire argument here.

**Mr. Smith (Simcoe North):** Only the consensus or the result was given. The detail of the opinion was not given. It was not asked to be produced. Mr. Ralston did not ask that it be produced. The opinion of Mr. Tilley, who was engaged as outside counsel, was given.

The next precedent quoted by the hon. member for Essex East appears at page 1427 of current *Hansard*. He said:

But we have as perhaps the most recent precedent in this house the action taken by Mr. St. Laurent when he was minister of justice. In May of 1942 the hon. member for Huron (Mr. Cardiff), and the present member for that constituency, moved for a copy of all opinions rendered by the Department of Justice with reference to the power of the governor in council under the War Measures Act—

And Mr. St. Laurent tabled those opinions.

I think it would be interesting if we looked at the complete exchange which took place in the house, as reported in volume III of 1942 *Hansard* at page 2290. The motion was as follows:

Mr. Cardiff:

For a copy of all opinions rendered by the Department of Justice with reference to the power of the governor in council under the War Measures Act to conscript men for service in any theatre of war.

Mr. St. Laurent replied:

I have been advised by the departments of government concerned to say that they do not object to the production of the opinions mentioned in this motion, but it will be done without prejudice to the general rule which is stated in Bourinot, at page 250, as follows:

"As a rule the opinions of the law officers of the crown are held to be 'private communications' when given for the guidance of ministers, and may be properly refused by the government."

Mr. Hanson (York-Sunbury): The question is largely academic now.

Mr. St. Laurent: With that reservation, for the convenience of hon. members I table the return at once.

Mr. Speaker, that made me curious to find out why the matter was largely academic, and I looked at the *Journals of the House of Commons* for May 11. There I found that the government apparently had doubts as to the legality of the act, and on that day Mr. Mackenzie King moved for leave to introduce bill No. 80, to amend the National Resources Mobilization Act of 1940. Subsequently that act became law, in 1942, and is to be found in the statutes of Canada for that year, chapter 29, page 131. There was certainly no precedent established there.

The next instance the hon. member for Essex East referred to was the emergency conservation regulations and legislation of 1942. He was referring to the then minister of finance, Mr. Abbott, and at page 1428 of the current *Hansard* the hon. member said:

It was not rejected. As my hon. friend knows, it was an oral opinion. Perhaps by this time my hon. friend understands that it is not possible to produce, by way of a document, an opinion that has been given orally; that was the situation in 1948.

Mr. Speaker, that was not the situation in 1948. The opinion was not an oral opinion.

**Mr. Martin (Essex East):** Would my hon. friend permit me to point out, in his most interesting argument, that the minister of justice—

**Some hon. Members:** Order.

**Mr. Martin (Essex East):** Just a minute.

**Mr. Speaker:** Order.

**Mr. Martin (Essex East):** Mr. Speaker, the hon. gentleman is permitting a question.

**Mr. Speaker:** If the hon. member has a question to ask, he may interrupt; but he cannot interrupt to argue the point with the hon. member. I think that he readily understands.

**Mr. Martin (Essex East):** I was just asking my hon. friend, who has no objection to my putting a question to him, does he not recall that the minister of justice said that he had examined the files of the department and found that there was no written opinion in the matter now being referred to?

**Mr. Smith (Simcoe North):** I will quote the minister of justice; and I assume I am correctly quoting the hon. member for Essex East when he claims there is no written opinion.

**Mr. Martin (Essex East):** I do not know. But the minister of justice said there was not one.