

Energy Supplies Emergency Act

these would not apply, that is, the expropriation proceedings?

Mr. Macdonald (Rosedale): Mr. Speaker, the specific will apply over the general, and the specific in this regard is clause 26 and the right that the allocation board would have to designate to a pipeline company that in the public interest a particular connection might be desirable. On this basis, the provisions of clause 26 of the bill, joined with those of clause 29, would indicate that the allocation board could issue this particular instruction which would be executed by the National Energy Board under its jurisdiction.

In this respect I would say that for the pipeline companies and the "biggies"—the transportation companies, and so on—there is a special regime in that they have a special regulatory regime. What we are really talking about in this amendment, to pick a few words from it, is the loss or damage to property, or the partial or total divestment of any right having pecuniary value, suffered in Canada by an individual resident. In that sense we are talking about the cause of action that an individual might have, and in that sense clause 26, taken together with clause 29, clauses 27 and 28, provides that this kind of major corporation, already subject to federal regulation, be dealt with under a special regime. We are talking about a basic action by a major oil company which might be taken for the purpose of extending the obligation to pay, and on that basis I would argue that as between the parties involved in this matter, rather than being borne by the general taxpayer it should be borne by the companies.

Mr. Lawrence: Mr. Speaker, I am sorry, but perhaps I am not making my point clear to the minister. What I am really asking about is the case of a very troublesome and time-consuming acquisition of an oil pipeline right-of-way. The minister knows, as I know, that this has happened in the past. As a matter of fact, this is the very basis of some of the expropriation procedures and safeguards written into both provincial and federal statutes.

We are by no means trying to delay this bill. Rather, we are trying to accede to the minister's wishes and intent. There is a worry in the minds of some of us that this clause could be used by the government in an attempt to wipe out some of the expropriation safeguards and procedures which now exist. If the minister says that in the event of a national emergency, the government may need to deal otherwise with these safeguards, that is one thing; but I have not heard him say that. I should like to hear him say that, if it is what he really means.

The whole thing comes down to the point that in the event these new procedures can be set up by order in council, at the very least or at the minimum there should be some reference to the judicial system in this country regarding these matters. If the minister wants to disabuse me of my fears, I would ask him to please do so.

● (2200)

Mr. Macdonald (Rosedale): Mr. Speaker, clause 26(5) specifically provides for the situation in which the National Energy Board can exercise its powers, naturally, subject to the other provisions of the National Energy Board Act which provide for appropriation and compensation rights.

[Mr. Lawrence.]

The power to be executed by the National Energy Board in terms of protecting security of supply of individuals is, of course, subject to the provisions of the act in relation to acquisition and compensation for property that may be acquired from individuals.

Mr. David Lewis (York South): Mr. Speaker, I learned some time ago that interpretation of the law given by members of parliament whether they are ministers of the Crown, or other members, is not necessarily the interpretation which may later be made either by a court or a tribunal, and therefore to engage in any attempt to do that kind of thing seems to me not very valuable.

What I was struck by is that the hon. member for Regina East (Mr. Balfour) could not have written this amendment which he supported. Some of the general statements he has made with regard to the principles of law involved and the philosophy of law involved, one cannot be against or criticize, subject to my philosophical bias that too much of our law is concerned with the defence of property rights and too little with the defence of human rights as against property rights. However, aside from that prejudice which I have always had as a lawyer, I cannot find fault with the general principle. But I suggest to him that if he reads the amendment which he proposed, there simply is no change presented by the amendment in any of the areas with which he dealt.

What does the amendment do? First of all it seeks to define the deprivation of property. It does not define it: it simply says that the term "deprivation of property" includes something else. I am darned if I can see that the "something else" added is any clearer than the phrase "deprivation of property". I would much sooner leave the phrase for any tribunal rather than clutter up the words with a new phrase which has no more meaning than the first one. I do not see what we accomplish except create a great deal of legal confusion. This may help lawyers, but it will not help the people affected. What else does it do? Then it says that the governor in council shall, by order, establish a tribunal. That is not new. It is exactly what the provisions of the bill now say.

Mr. Balfour: There is quite a difference.

Mr. Lewis: No. I may suggest to my friend from Regina East that according to well established practice concerning legal interpretations, when you use the word "may" in respect of something to be done by Her Majesty, which is what "governor in council" means, it is exactly the same as using the word "shall". We use the word "may" in respect of Her Majesty as a courtesy, but the word involves a duty.

From my not very wide experience in the courts I could cite for the hon. member a number of cases dating back to the sixteenth century which make it very clear that there is no difference on that point. The word "may" used in respect of Her Majesty, or the governor in council or any agency of that sort, has exactly the same effect as the word "shall". It is merely a form of wording. So I am not impressed by this change.

What else is changed? Nothing at all. The fact is that the tribunal, in the amendment, is to be set up by order in council in the same way as in the present clause. It says