

*National Film Act*

just come into the house, and I do not know whether there has been any discussion of the subject. In any event, I think there was a great deal of dispatch the other day in the passing of a bill in this house which was accepted generally as a tremendous step forward in connection with the right of action against crown corporations. When one looks at the matter more closely, I begin to wonder whether or not there has been very much of an advance at all. Right of action as against the crown is still dependent upon the issue of a fiat excepting within the circumscribed limits of amendments similar to the one in question in this act. Section 10, subsection 2, now reads:

Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the board on behalf of His Majesty, whether in its name or in the name of His Majesty, may be

(a) brought or taken against the board, without the governor general's fiat, or

(b) brought or taken by the board, in the name of the board in any court that would have jurisdiction if the board were a corporation that is not an agent of His Majesty.

I submit that the section as now framed will not cover any action in tort. I read it again:

Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the board . . .

The words "obligation acquired or incurred by the board" merely cover the right to civil action and do not in fact cover the question of proceedings in tort.

**Mr. St. Laurent:** Not criminal proceedings, but civil proceedings.

**Mr. Diefenbaker:** I am speaking of civil proceedings. If the Prime Minister will read the Exchequer Court Act, as I remember it, provision is made in section 19 and following that the exchequer court shall have certain exclusive powers to try actions as against the crown. As I read the section in the bill, and I do so with the greatest of deference to those who drafted it, I do not think it would cover a civil libel action or an action of that type in tort against the national film board. If a person were libelled in consequence of a film issued by the board I submit it would not be covered by the wording of this section. I think the law officers of the crown should be asked whether or not this section in fact covers such a case. I think the present wording will only cover contractual rights or obligations acquired or incurred in the name of His Majesty, and in fact is not an advance along the road of granting to the private citizen the right of proceeding against the crown without a fiat.

The bill already passed by the house is now before a committee of the other place.

[Mr. Diefenbaker.]

I do not know what conclusion they are going to come to or whether or not the matter has arisen at all. Nevertheless I believe consideration should be given to the question whether or not this section in fact only goes a part of the way that the draftsmen believed, and I presume intended, that it should go. Whether or not it was intentional, while hon. members believe the bill already passed actually extends beyond the contractual liability of a crown corporation to the right of action by a private citizen, nevertheless as it is at present constituted any person who wanted to take proceedings by way of libel or slander, alternative actions for defamation, or on other torts, would find that he still required a fiat from the attorney general.

Having made that statement I suggest to the minister that the law officers should be consulted, for either they intended that it should cover torts such as I have mentioned, or by its draftsmanship they intended that it should not. If it does not cover torts the right of action is of no great consequence and would in fact amount to a very small step forward toward the point where ultimately the individual in this country, in his actions against the crown, will be on the same footing he enjoys in his actions against private citizens.

**Mr. Stewart (Winnipeg North):** Twenty minutes ago I asked the minister a simple, easy, elementary question, which has not been answered. Perhaps he was talking to someone else and did not hear me, or perhaps he has forgotten. This was the question. Does this board have the same autonomy as the Canadian Broadcasting Corporation?

**Mr. Winters:** This board is not being set up as a crown company in the same way as the Canadian Broadcasting Corporation. My hon. friend will see in the act that the board is set up in a capacity which enables it to exercise general control over its operations, but that the minister in turn has control over the board. Section 3 of the act provides:

For the purposes of this act and subject to its provisions, the minister shall control and direct the operations of the national film board.

**Mr. Diefenbaker:** Since sitting down I have been informed that the legal adviser to the other place has given a tentative opinion similar to my view on that section. I was not aware of that at the time I was speaking. Either the minister intends that an individual shall have full rights as against a crown emanation or crown corporation or whatever one may call the film board, or he does not. If it is intended to grant the individual that full right, and the law officer of the crown in the other place doubts that the section contained in the act amending the