

Oil and Petroleum

layman who is concerned for justice and civil liberties would be: How can this statement be reconciled with the Bill of Rights and with Canadian common law, in that a person, whether he be a corporate person or an individual, is innocent until proven guilty? This clause says that where a corporation is guilty, whether or not that corporation has been prosecuted or convicted, any officer, director or agent who has acquiesced in, participated in, assented to, authorized or directed activities related to that supposedly illegal aspect is guilty.

On April 7, the Minister of Justice reported to the House that under the provisions of the Standing Orders of the House of Commons he had examined a Senate bill, under section 3 of the Canadian Bill of Rights, which contained a clause which although not identical to clause 29(2) of this bill is quite similar. After examination it was the judgment of the Minister of Justice that the clause put into Bill S-10, an act to amend the Feeds Act, was in fact contrary to the Bill of Rights and therefore had to be disallowed. That clause provided:

Where a corporation has been convicted of an offence under this act, the chief executive officer of the corporation shall be presumed to be guilty of an offence under subsection 10(1) unless he establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

I am surprised, yet not surprised—considering from whence the bill emanated—that reasonable Canadians would in fact acquiesce to that kind of language in the law of the land, which clearly puts the onus on the person accused to prove his innocence and is totally out of step with any of our Canadian traditions and, obviously, totally contrary to the Bill of Rights. The Minister of Justice did the right thing in disallowing it.

I ask the Minister of Energy, Mines and Resources whether he has received the judgment of the Minister of Justice in respect of clause 29(2), where a director, officer or agent of a corporation who has merely acquiesced in some activity is guilty of an offence of which the corporation is guilty whether or not the corporation has been prosecuted or convicted. I cannot understand how there can be a situation where a corporation is guilty and a corporate person is guilty without there having been a prosecution or conviction. How does one establish guilt if there has been no prosecution or conviction?

The statement that an employee of a corporation, because he in some way participated in an activity, might be presumed guilty, and on the statement that the corporation is guilty when it may not have been prosecuted and convicted, is at least bad language. I feel that I must reiterate, as a layman, that I think this clause is contrary to our traditions and the Bill of Rights. I ask the Minister of Energy, Mines and Resources if he has obtained from the Minister of Justice a legal opinion on this clause and if he can explain to the committee how a corporation could be found guilty, with no prosecution or conviction, and therefore an employee immediately found guilty as a result.

Mr. Macdonald (Rosedale): I would refer to questions raised by hon. members with respect to the Deputy Attorney General or the Attorney General of Canada sitting down and writing a long opinion-letter on a bill submitted for consideration by parliament. This bill represents the

[Mr. Andre.]

considered opinion of the legal advisers of the Crown. I do not use the term "law officers of the Crown" but, rather, "legal officers of the Crown". In their judgment, it is constitutional. The Deputy Attorney General has examined it, and in his judgment the bill does not in any sense violate the Canadian Bill of Rights; therefore it has been introduced in parliament.

● (1230)

The hon. member's second question suggests that in some way the standard onus in criminal cases has been shifted to the accused to prove that he is innocent, rather than the Crown having to prove his guilt. Of course, the onus is not shifted; it continues to rest with the Crown to prove the particular officers guilty of any of the offences set out in the bill.

The next question is, how it is possible for an officer to be guilty of an offence, and the corporation not guilty? This is related to the vicarious liability of corporations. There could be a situation where a corporation could establish, in its defence, that the officer in question was acting beyond the scope of the authority given to him by his responsibilities: for example, against specific instructions that he was to abide by the direction of parliament in this particular statute.

In those circumstances, the corporation could well establish its defence against prosecution under the statute. Under those circumstances, there might not be a prosecution but the officer in question could be found guilty in an action corresponding to the offences here but which he was not authorized to engage in by the corporation: in that sense he would have been acting beyond the scope of his authority—acting illegally—and the legal liability would be his, not that of the corporation.

Mr. Baldwin: I understand, Madam Chairman, that this question is raised in connection with the examination of bills for the purposes of the Canadian Bill of Rights Act. I should like to call the attention of the minister to the terminology of the offensive clause which the Minister of Justice filed when an amendment was brought in at the other place. It was not in the bill originally produced by the minister but was put in by the other place. I would ask the minister to put this wording side by side with the wording in clause 30, which is the clause that has to be read in conjunction with clause 29 of the bill we are considering. Section 10(1.2) of Bill S-10 reads:

Where a corporation has been convicted of an offence under this act, the chief executive officer of the corporation shall be presumed to be guilty of an offence under subsection 10(1) unless he establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

The parallel there is too striking to be allowed to pass. Clause 30 of the bill before us reads:

In a prosecution for an offence under this division, it is sufficient proof of the offence to show that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission.

Those words are nearly identical, Madam Chairman. Of course, there is obviously the difference that where there has been a conviction under Bill S-10, the Feeds Act, it is