

**Some Hon. Members:** No.

**The Acting Speaker (Mr. Paproski):** All those in favour of the motion will please say yea.

**Some Hon. Members:** Yea.

**The Acting Speaker (Mr. Paproski):** All those opposed will please say nay.

**Some Hon. Members:** Nay.

**The Acting Speaker (Mr. Paproski):** In my opinion the nays have it.

*And more than five Members having risen:*

**The Acting Speaker (Mr. Paproski):** Pursuant to Standing Order 114(11), the recorded division on the proposed motion stands deferred.

• (1730)

The next motion to be considered is Motion No. 8.

**Mrs. Sheila Finestone (Mount Royal)** moved:

Motion No. 8

That Bill C-136 be amended in Clause 2 by adding immediately after line 8 at page 3 the following:

“(3) For greater certainty, subsection 2(2) of this Act applies to closed-circuit transmissions carried on a distribution undertaking.”

She said: Mr. Speaker, I want to say that just having arrived from our Jewish New Year celebrations and finding that a new Bill has been printed, it is taking me a few minutes to find the numbers that go together.

**Mr. Edwards:** Happy New Year.

**Mrs. Finestone:** I thank the Hon. Member, Mr. Speaker.

This amendment deals with closed-circuit transmissions. The concern here is with respect to the definition of closed caption, the closed caption system under the Broadcast Act. One matter with which we have been concerned, which also relates to the amendment to Clause 7 which was just defeated, something which I hope the Government will reconsider, is that the CRTC brings its concerns to our attention from long periods of experience. It is as a result of this experience that it is able to highlight the concerns that it has as a regulatory body. This quasi-judicial body is made up of very knowledgeable people who bring to our attention some errors that have occurred in its view and from its experience. This is another one of those concerns which it has brought to our attention as have TV Ontario and McCarthy and McCarthy, legal counsel to the Agency for Tele Education in Canada.

One matter I have tried to bring to the attention of the Minister with this motion is that one element of Bill C-136 is the new definition of “broadcasting” which includes distribution not only by radio waves—and we have evolved technologically speaking since, and the Minister has talked about being

### *Broadcasting Act*

technologically neutral in these Bills—but by other means of telecommunication. The implication upon federal-provincial jurisdiction is uncertain. I have mentioned to the Minister many times the concern for this lack of clarity between federal and provincial jurisdiction.

Here again, other means of telecommunications defined further in Clause 2 brings closed-circuit operations and systems under the Act. I do not think that that was the Minister's intention. It is quite likely that closed-circuit transmission on hybrid systems would be constitutionally under federal jurisdiction. Such systems involve the distribution of closed-circuit services through systems which would also distribute broadcast signals, that is, a cable television system or a MATV system. I do not believe that that is what the Minister wanted to do.

While the constitutional authority of the federal Government over closed-circuit services of hybrid systems has not been specifically addressed by the courts, most of the precedents point to federal jurisdiction. The legislative committee was advised that the situation deals with purely closed-circuit systems, for example, systems used to monitor the safety and security of one's apartment building. It is a system which might monitor a play-yard outside of one's place of residence where one's child might be playing. It is a system which monitors a swimming pool in which one takes one's daily constitutional. All these are on closed-circuit television systems that are not in the true and traditional sense of the word “television” programming. It is a different form that offers a service that is outside what I believe were the concepts of broadcasting which the Minister has considered. These are systems which are not used for retransmission of conventional off-air broadcast signals. They are under provincial jurisdiction.

McCarthy and McCarthy stated that under Bill C-136 while purporting to apply to such operations, it would probably be held to be inoperative by the courts on the basis of the federal-provincial division of powers in the Constitution. The law firm went on to state that so long as a purely closed-circuit system did not cross provincial boundaries it would not appear to be subject to federal jurisdiction. As well, the CRTC has expressed concern regarding closed-circuit systems being subject to CRTC jurisdiction. In order to prevent the reopening of old legal issues I have made this amendment to bring clarity to the place of the closed-circuit system within our television broadcasting system, that which can legally fall under the federal jurisdiction and that which is purely provincial in matter and should not in any way, shape, or form be trapped in the over-all broad definition of broadcasting as we presently see it under the Bill. This motion is in the interests of clarity only. It is to ensure that we do not fall into an unnecessary legal harangue. I bring this amendment to the attention of the Minister for serious consideration and approval.