

Railway Act

Section 338.1 of the Railway Act establishes the liability of railway companies for fires started by railway locomotives. Where the railway company has used "modern and efficient appliances" and has not otherwise been guilty of any negligence, the compensation for property damage by fires started by locomotives is limited to \$5,000.

This section of the Railway Act was first written before 1910 and was subsequently revised in 1919. At the time it was considered appropriate to establish liability for fires in the Act because the early steam engines were prone to setting fires even when operated with all due regard to safety and in accordance with proper operating procedures and because insurance was not widely held by property owners. While fires still originate on railway property, these are more likely to be caused by sparks generated by train brakes or by wayside maintenance activities than by locomotives, although diesel locomotives have been known to emit sparks which start fires. However, Section 338 has been used in a more general sense in relation to fires started by trains, without determining whether they originated from the locomotive. Insofar as regulatory control over railway company activities is concerned, Section 221 of the Railway Act gives the Canadian Transport Commission the power to make orders and regulations governing prevention and control by railway companies of fires along railway rights of way.

Section 338 of the Railway Act does not prevent or prejudice any action or claim against a railway company for failure to use "modern and efficient appliances" or for other negligence relating to fires. Therefore, with the exception of this section, there is no legislated limitation on railway company liability.

It is difficult to see any reason why claims for damage caused by fires originating on railway property should not be handled through the courts as civil cases. A person whose property is damaged by a fire started by a railway company should have normal access to compensation through the courts. There does not appear to be any useful purpose served by any exception to this right, as preserved in Section 338.

While the Hon. Member proposes that the maximum level of compensation to victims of fires started by any railway operation, as set out in the Railway Act, be increased to reflect current replacement costs for damaged property, the exception introduced by the Act, regardless of limits on liability, is an anachronism. The Hon. Member's proposal is pertinent in that this section of the Railway Act appears to have outlived its usefulness. However, any change should take into consideration the possibility of deleting it in its entirety rather than modifying it as proposed. In any event, it would be preferable to deal with the modernization of the Railway Act in a coordinated manner rather than in a piecemeal fashion as entailed by the Hon. Member's motion.

● (1720)

The change proposed by the Hon. Member should be considered in conjunction with a general review of railway

legislation, something which is presently under way at Transport Canada. In due course, such a review could be laid before the House and Hon. Members could then have ample opportunities to examine this amendment and any others that may be considered appropriate in the context of a comprehensive legislative proposal.

Mr. Gordon Taylor (Bow River): Mr. Speaker, I am very happy to have the opportunity to speak on this particular motion. I think it is a very timely motion and I would like to thank the Hon. Member for moving it. This type of debate is useful, particularly since changes to the legislation have taken so long that everything in the Act is now out of proportion.

The resolution is quite confined. It talks about amending the Railway Act to provide for increased compensation to victims of fires set by railway operations in order to reflect current replacement costs. Actually, the motion deals with fires started in some way or other by trains and does not involve anything else.

If I were to have one criticism of the motion, I think it would be that it is too limited. It should be expanded. I would like to give one or two examples of why I think it should be expanded. In spite of that criticism, I am sure this debate will be very valuable to the Government and the Minister responsible when preparing the new legislation. In that light, I think we should give the House examples and illustrations of things pertaining to this motion so that we will not leave any one particular item out when the new legislation comes in.

The first fire I recall that was started by a train occurred when I was about nine or 10 years old. It was a very, very dry summer that year. The wheels of a train apparently hit something on the track and set a spark. That spark got into the grass and spread like prairie fire. You know how fast a prairie fire spreads when the tinder is dry, Mr. Speaker.

This particular fire destroyed the home of a man, though it was not very much of a home. Everyone called it his shack and it was located in a mining area. However, it was his home. I do not think he ever received anything for it. There was simply no way that he could go to court. There was no one to represent him and he did not receive anything. He lost his home. While his neighbours assisted him to find a place to live, I believe the man was very badly treated.

Sometimes the reasons for fires starting are questioned. I remember an accident in southern Alberta, an area now represented by the Hon. Member for Medicine Hat (Mr. Porter). Again, it was a very dry summer. At that time, I was connected with the Alberta Highways Department. The grass was so dry that it was almost impossible to realize how fast a fire like that could spread.

I recall one time when several new boys came into my Boy Scout troop. We were going camping and one of the things the boys had to do was to start a fire without a match. I was showing them two or three ways to do this. I took two sticks and rubbed them together. The boys told me that I would never start a fire that way. I said: "Well, let's see". I had a