

*National Defence Act Amendment*

glossed over as though it was unworthy of debate. We do not have the right to gloss over something which so radically affects the lives of the officers and men who have volunteered to serve and, if necessary, to give their lives in defence of this country. The judge advocate general, Brigadier Lawson, in his evidence before the committee concerning this clause pointed out that in his opinion it is law. We accept that, and I am not talking about the legality of it at all.

• (3:40 p.m.)

It may be of some interest to some people to pursue this matter in the courts of our country, particularly from a civil rights point of view. There are two sections in the Canadian Bill of Rights which it is interesting to look at in connection with this clause, though other hon. members will deal with this aspect of the matter in more detail. The judge advocate general pointed out that he thought we had better be very careful about his advice. I should like to refer the committee to a question and answer exchange reported at page 2077 of minutes of proceedings and evidence No. 32 for March 14. The question put by the hon. member for Calgary North was as follows:

I do not think it was ever considered that a lawful duty would be to put an infantry battalion commander in the command of a ship.

Mr. Lawson: It certainly would have been a legal duty, Mr. Harkness, no matter how foolish it might have been.

Mr. Harkness: No, but I say, I do not think that to go and command a ship could even have been interpreted as one of that infantry officer's lawful duties.

Mr. Lawson: Oh yes; I would say it would, sir.

Mr. Harkness: Under the naval provisions he is responsible for the safety of the ship, but he has no background, or training, or means of being responsible for the safety of that ship.

Mr. Lawson: Oh, I agree with you, it would be a very foolish—

Mr. Harkness: Well, that is why I do not think that it even would be legal.

Mr. Lawson: Well, no: I think in law, this would be a lawful duty.

Surely, Mr. Chairman, this comment speaks for itself. If I may extend this point, though I do not want to belabour it, there are international marine laws which have some bearing on the matter. I am referring to certain marine laws which exist under maritime law.

According to article 10.07 of Queen's Regulations the following regulations apply:

(a) No officer or man may be transferred from one list to another without his consent.

(b) No man can be transferred from one trade to another without his consent.

[Mr. Forrestall.]

This same article prescribes for each of the three services respectively. In each case consent is required. Therefore it follows that if consent of the individual for a transfer within a service is required, in view of the existence of section 26 of the National Defence Act there does exist a very reasonable doubt that when this bill is enacted it will be in fact be legal. As I mentioned, it is already in conflict with certain provisions under maritime law with regard to the lawful duties of a captain of a ship. It is in contradiction to section 26 of the present act. While the brigadier says that parliament is an end unto itself, and this may be so, I suggest that we are overlooking certain moral obligations. Indeed, we must accord respect to the laws of countries other than our own, and I make this point in connection with our obligations under maritime law.

I hope that some serving officer will have the courage, the determination and the guts to take this question to the Supreme Court of Canada under the Bill of Rights to find out whether the bill is legal. On the other hand, I hope all of them do not do so because I understand the Supreme Court is very busy at this time of year. However, it has been suggested that this might happen.

Whether the bill is legal or not, anybody who has read the evidence given at the committee hearings, has sat and listened to this debate and has bothered to inform himself—a tremendous amount has been written and said about this bill—must be driven to the firm conclusion that there is no doubt in light of the evidence that it is morally wrong to move members of the armed forces, arbitrarily without their consent and without their exercising an option, from the force in which they voluntarily elected to serve and perhaps die for their country to some other force. It is equally as immoral as giving a lieutenant in the army command of a ship or giving the command of a ship or an aircraft to any unqualified person.

I feel that the government has arbitrarily broken a very basic term of the contract entered into with these serving men. The minister should find in his heart some grounds for giving these men a choice. Let the men decide whether or not this is what they want to do. If he did so I think the minister would find that the vast majority of them would willingly serve in the new force because they would have the knowledge that they did so voluntarily. It is this business of having this rammed down their bloody