

*Water Resources Programs*

course it would not be criminal law. It would be an attempt to regulate a particular activity.

**Mr. Greene:** With or without consent?

**Mr. Brewin:** I am not going to get into a discussion on that question. Professor Gibson then attempts to justify this legislation under the general powers of the federal government to regulate under the peace, order and good government provisions of section 91 of the BNA Act, but this peace, order and good government part of our constitution is a weak reed upon which to lean. The courts have always been leary of using these general powers to justify legislation which encroaches on what would normally be provincial fields, except in clear-cut cases of national emergency such as war. I want to point out that I am not saying that in these matters of constitutional law it is necessary that my view is right or wrong, although I do claim some experience in this field, or that the Attorney General of Ontario and his committee are necessarily right or wrong, but I do say that if we happen to be right then the efficacy of this legislation will be ruined by the constitutional doubt which exists here, and the litigation which will follow may eventually cause the legislation to be thrown on the scrap heap by the courts.

Why should we endanger the efficient enforcement of the law by having resort to dubious and probably unconstitutional measures? If there were no other reason for adopting this amendment than to avoid the constitutional pitfalls, then the amendment should be adopted. I urge upon the minister that he consult his colleague, the Minister of Justice (Mr. Turner), and reconsider the language of clause 8 in light of the constitutional limitations of this Parliament.

I do not pretend that the language I have put forward is necessarily perfect. Perhaps some amendment of it would be desirable. But I do say that the legislation proposed by the government is extremely dubious as to its constitutional validity and it is irresponsible for the government to ask Parliament to pass, on such a vitally important subject, legislation which is subject to these very serious doubts.

I would like to hear a reasoned speech from the Minister of Justice. The Minister of Energy, Mines and Resources (Mr. Greene) is himself a learned man and would be capable of performing this service himself, but he does not have that constitutional responsibility.

[Mr. Brewin.]

I hope that before the debate ends the Minister of Justice will silence the doubts that have been put on the constitutionality of this legislation both by myself and by the legal authorities of the provinces because, I repeat, it would be tragic if this central-core provision of clause 8 were eventually to be set aside by the courts and we were to be told we had not the power to do this.

● (8:40 p.m.)

Mr. Speaker, there are other reasons why the amendment I have proposed should be adopted. The key to dealing with pollution is adequate enforcement. The explanation of the terrible situation we are in with regard to pollution is not the lack of laws but that they have not been adequately enforced. A straight definition of what is prohibited, without opening it up to local conditions, without the application of licence fees, is simpler and more capable of enforcement. I believe the people of Canada as a whole are beginning to be aroused on the subject of pollution. They welcome the notion that pollution, as defined by reasonable standards, should be clearly prohibited, and not tolerated.

**Some hon. Members:** Hear, hear!

**Mr. Brewin:** In effect, the present provisions of clause 8 tolerate the dumping of waste into waters that are a public heritage. There are levels of pollution that are completely unacceptable. These levels of pollution should not be allowed for the payment of any discharge fee. They should be banned clearly and unequivocally.

Mr. Speaker, because I know that the minister in charge of this legislation is an Anglican, I propose to read from an excellent article in the *Canadian Churchman* of May 8, 1970, dealing with the subject. I would recommend this article to the minister. The whole issue is devoted to pollution and page 8 describes the situation we have reached. I understand that nearly everybody who has spoken in this debate has referred to local waters in their own constituencies. I am going to refer to a local water which I think is the most notoriously polluted water in all Ontario, the Don River, which separates my riding and that of the hon. member for Broadview (Mr. Gilbert) from the central part of the city of Toronto. The article referred to states:

In November a group of citizens held a "funeral" for Toronto's Don River, which is polluted five times beyond the safe level for swimming.