

*Private Members' Business*

Certainly where the environment is concerned governments have a leading role to play in a partnership with a corporate world and the public as a whole. What does this motion precisely propose? Although the exact wording is a little confusing I think it seeks legislation that would do two things. In the first place it would create some kind of positive obligation on the part of every unit of government, department, agency, branch or what have you to ensure that its decisions or actions do not produce harmful environmental effects.

Second, the motion would give standing to any member of the public to sue the responsible government body where any such governmental act, decision or omission had occurred resulting in a harmful environmental effect.

These are quite radical proposals which must be carefully looked at even if the ultimate goal they seek to achieve is unquestionably admirable. I suggest that there are major problems with this proposal. In the first place there was an absolutist ideology attached to the hon. member's motion that any activity or omission on the part of the Crown resulting in a failure to protect the environment would be actionable.

What exactly would that include? Would it include a decision by the Minister of Communications under the Radiocommunication Act to issue a technical certificate allowing a company to set up a television transmitter in a specific location where it would entail chopping down a few trees? What if those trees are on the company's own property? What if the trees were dead and needed to be cut down anyway? Are we heading off in the direction of turning a governmental failure to protect the environment into some kind of tort. If so what is the duty of care on the part of the Crown here and what standard of care is to be applied?

One thing I am afraid of is that if this motion is given effect it would take Crown liability way beyond what it is today and make virtually any decision of a government body vulnerable to a civil action.

Over the last 10 or 15 years the courts have struggled with just such a question pertaining to the exercise of public functions mostly at the municipal level.

• (1930)

In their wisdom the courts have distinguished between policy decisions on one hand and operational decisions on the other. The importance of this distinction lies in the fact that the courts have consistently refused to attach liability to the policy decisions. Among other things, government bodies are required to make choices as to public priorities, how the hierarchy of public policy interest is to be arrayed, how public money is to be spent or how scarce resources are to be allocated.

These questions are the essence of government. These are what we elect politicians to decide on. They are beyond the reach of the courts which is the way I believe it should be.

I mention this because I am fearful that in its fervour to enhance environmental protection the end result of this motion will be to paralyze governmental bodies in terms of performing their functions and fulfilling their mandates.

Speaking of mandates, I think that the hon. member simply does not realize that one effect of his motion will be to force environmental protection, whatever that means, to be written into the mandate of every functioning federal entity. Legally this will be necessary if environmental considerations are to become a valid and enforceable concern of the Minister of Communications or the CRTC or the Merchant Seamen Compensation Board or the Civil Aviation Tribunal and so on.

The motion further raises some constitutional concerns which I am afraid need to be addressed. Our Constitution Act does not assign environmental protection exclusively, either to the federal government in criminal law or banking or navigation and shipping for example, or to the provinces. Environmental protection is a shared responsibility between both levels of government. One obvious implication of this is the absolute necessity of extensive co-operation and consultation between the federal government and the provinces in this field.

I would therefore suggest that it would not be appropriate for either level of government to introduce radical changes in the law pertaining to the environment and environmental protection without prior discussion and consultation.