

Canada Pension Plan

this to be added on top, it might not be very well received by the individuals of that province. All other things apart, it might be a considerable political problem for the province concerned. It might very well be that there would have to be litigation; I do not know. In any event, there would certainly be consultation and there would be great difficulty in bringing in a very dissimilar plan when this plan has been in operation for some years.

It was for this reason, I think, that all provinces took such a tremendous interest in this legislation and so many dominion-provincial meetings were held with such deep and detailed discussion. While what the hon. member has suggested remains a possibility—considering the nature of the legislation and the nature of politics and indeed the fact that people have a comfortable feeling when they know what their future holds so far as social legislation is concerned—considering all these factors I suggest it is highly unlikely that anything will be done and it is not something for which this committee can make adequate preparation now.

Mr. Baldwin: I think the minister has given the best answer she can. I do not think anything else can be said. However, I would be derelict in my duty if I did not bring this matter to the attention of the house and indicate that this probability does exist. I emphasize that last June the same thought occurred to me so I asked the Prime Minister a question on orders of the day. I asked him if he did not think it would be far more satisfactory to have attempted to secure, in view of this co-operation that existed between the provinces and the federal government, a consequential amendment to section 94A which would have settled this matter beyond any doubt and placed in the hands of the federal government the primary responsibility which I think is probably necessary to effectively discharge the duty of any government which attempts to implement a national pension plan.

Now, let me just make one more statement here. There was one problem I mentioned which I believe the minister failed to understand as I heard her answer. If a province introduced a plan that was not comparable, the political consequences to any government of that province may be disastrous because the people would be faced with the cumulative effect of the two plans. If you carefully read, and take a logical interpretation of section 94A, that is not the case, especially when you read these words:

—but no law made by the parliament of Canada in relation to old age pensions shall affect the operation of any law present or future of a provincial legislature in relation to old age pensions.

The only meaning you can derive from that is that once a province does legislate a plan which is not comparable, automatically the federal legislation has no effect in that province. The primary responsibility then falls upon the province. This would be the effect of section 94A in a situation of that kind. The federal legislation would not apply at all because it would then be a case where the federal legislation was affecting the operation of a provincial scheme, and therefore the provincial scheme only would be in effect, not the federal scheme. Under those conditions, what happens to the pensions of the Canadian contributors, what happens to the funds?

Miss LaMarsh: The constitutional argument is a perfectly respectable one as put forward by my friend. He made the suggestion that perhaps this matter might have been clarified in order to give jurisdiction to one authority. I must say that this idea occurred to a lot of people at the time, but the 11 governments were not unanimous on this question. The interpretation that he has placed upon the section is very well recognized and one made by very many constitutional lawyers.

However, there are opposite opinions quite violently disagreeing with this interpretation. There are constitutional lawyers who are of the opinion that the federal government, once in the field, has, in effect, occupied it. It is not my role, at this juncture in my life, to choose between those opinions. This second opinion was given by no less an august personage than Mr. Bora Laskin, of the University of Toronto, who was my professor of constitutional law. He holds very strongly to the view that, if federal legislation were there, it would take priority over provincial legislation.

Be that as it may, I hope, and fully expect, we will never find out which particular view is correct. One thing would have to be borne in mind should such a tragedy come to pass, and that is that those individuals of Canada who were a part of the plan, who had made their contributions, and indeed probably made other private financial arrangements to fit in with the anticipated benefits for their retirement years, would have to be guaranteed by the federal government, preferably in co-operation with the province or even without that co-operation, that the benefits which they had already accumulated would not be lost.