

*Statutory Instruments Act*

with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada.

In other words, as the situation existed in these provinces and the United Kingdom in 1867, the Royal prerogative is continued and has become capable of being exercised by the Privy Council here unless and until the Parliament of Canada alters, varies or amends it. I think there is no question that the Privy Council have the right to do so under any constitutional system of responsible government. At some time, and this is not the time to do it, I hope to introduce a measure to clarify the relationship between the executive branch of government, the Governor in Council and the Parliament of Canada. Far too long, in my view, the government has taken upon itself the exercise of powers, allegedly under prerogative rights. This exercise of powers should be challenged, and there should be some clarification. Hopefully these things are worked out in a constitutional and democratic democracy, as we have in the past by precedent, practice or common law.

When you find governments, in particular this government, exercising the kind of authority the Prime Minister (Mr. Trudeau) and his Cabinet have been exercising, I think it is time we had some clarification of what their rights are in relation to the rights of the Parliament of Canada. This is a collateral issue which I now raise in order to bring it to the attention of the House and, hopefully, the country, so that something may be done. The fact remains, and this was declared unequivocally by expert witnesses who appeared before the special committee on Statutory Instruments, that whatever the rights of the executive might be under the prerogative, they were always susceptible of being altered or curtailed by the Parliament of Canada. I hope the minister will not disagree with that. The Parliament of Canada is not going to be too rapid in its attempt to do this because usually the government has an obedient majority which will see that its rights are not curtailed. Somehow it happens that it is always the opposition which wants to curtail the rights of the party in power.

In addition to that, these expert witnesses pointed out that these prerogative rights may be curtailed. My hon. learned friend, the hon. member for Edmonton West (Mr. Lambert), started to develop that argument. The Parliament of Canada, irrespective of the rights of the Governor in Council, under section 12 of the British North America Act, did in fact act by designating the ways and means by which there could be an official Canada Gazette in which regulations and statutes could be published in order to give them the force of law.

In many instances there is a right to enact regulations, Orders in Councils, and decrees, but they remain ineffective unless and until they have been published. They can only be published in some publication which has the assurance of being the officially designated organ for that purpose. Our Parliament did make such a designation.

[Mr. Baldwin.]

Having done so, it has assumed the right to deal with what might have been part of the Royal prerogative, and having done so that right does not flow back to the government. To that extent, the hon. member for Edmonton West is quite correct.

In simple words, there has been a hiatus between 1969 and now, that is from the government organizational bill until this attempt to rectify this omission or what can be interpreted as an attempt to rectify an omission. I must part company with the minister when he suggests that clause 48, which was read out by the hon. member for Edmonton West, does give this right. This is the right dealing with the appointment of an officer, *persona designata*, to exercise certain authority and perform certain duties. This is not the case at all, and one would have to stretch and torture the ordinary meaning of these words to suggest that they confer any right on the minister or the appointed official to establish another publication which would have the force of an official Canada Gazette in which these respective orders and regulations must be published. That is the point I make.

It may well be the better part of wisdom for this House to pass clause 10, as it may be necessary to remedy that omission; that is the problem we are facing. The government attempts to show progress by bringing forward many organizational bills. We now have another one before us. I suggest you do not make progress merely by turning your watch ahead 24 hours. You must make progress in many more effective ways. The minister should review the situation and consult with his advisers, perhaps other than the legal ones. I suggested the other day that I would not in any event accept the advice of the Minister of Justice. That was not because he is not a good lawyer, but because he is the Minister of Justice and I would not be entitled to it. Perhaps his legal advisers are wrong, and they have been wrong in the past. It has been my fortune to successfully appeal judgments of various courts. In some cases, officials of the Department of Justice have advised their agents to continue prosecution and higher courts upheld my appeals. Fortunately, they are right most of the time, but there are times when they have been wrong and this may be one of those times.

I urge the Minister of Justice to review this matter. It is difficult to admit that we are not always right. I have been a married man a long time and I find it difficult to admit that I am wrong. As a practising lawyer, and as a member of the Opposition, it is difficult to admit one is wrong. The minister may also find it difficult to admit he is wrong. If he is wrong and clause 10 is now to have a retroactive effect, we should have a look at it to see what that effect will be. We must consider what its total impact will be, particularly having regard to the very important proceedings which have taken place before the courts in the province of Quebec. If we decide, with full knowledge of the facts, that it is competent and proper for us to review the submission we will do so. I do not feel this rather casual manner of bringing this before us will result in obtaining a debate in the House. There-