

Government Orders

section 51, by amending this bill and by simply saying that notwithstanding and it is changed so this and such happens.

Successive Speakers have found this was an unacceptable device because the word notwithstanding did not disguise the real purpose which was to amend another act not opened by the estimates process. The same rule must apply in respect of this act.

The provisions of the Constitution Act 1867 are in no way opened up by Bill C-69. The word notwithstanding does not disguise the fact that the only purpose of the proposed amendment is in fact to open those provisions of another act which would have not been opened by the bill and which should therefore not be opened up by this amendment.

I invite Your Honour to rule that the amendment is out of order and not properly before the House at this time.

• (1350)

[Translation]

Mr. François Langlois (Bellechasse, BQ): Mr. Speaker, thank you for recognizing me on the point of order raised by the hon. member for Kingston and the Islands.

If you read Motion No. 4 in the Notice Paper, you will see it relates directly to clause 16 of Bill C-69. So much so that subsection 16 (2) says:

(2) On receipt by the Chief Electoral Officer of a return referred to in subsection (1) in respect of a decennial census, the Chief Electoral Officer shall calculate the number of members of the House of Commons to be assigned to each of the provinces, subject and according to the provisions of section 51 of the *Constitution Act, 1867*.

The amendment I proposed, which is in the Notice Paper, would be added to this.

However, when they refer to section 51 of the Constitution Act, 1867, in subsection 16 (2), what are they referring to? Certainly not the text adopted in 1867 by the Westminster Parliament, pursuant to the Imperial Act which created the federative kind of constitution we know today.

Section 51 of the Constitution Act, 1867, referred to in subsection 16 (2) of Bill C-69 which is before us, refers to a legislation adopted by this Parliament, which received assent on March 4, 1986. At that time, the federal Parliament of Canada, acting on its own pursuant to section 44 of the Constitution Act, 1982, did adopt the provisions of section 51 of the Constitution Act, 1867.

With your permission, I will table the 1986 legislation, that is chapter 8 of the 1986 Statutes, to show how this new section 51 was introduced and became part of an act entitled Representation Act, 1985. It is highly appropriate, when we talk about electoral redistribution, to establish a fundamental rule which will apply right at the beginning, which will govern the provinces, and then to say to the officer or the chief returning officer:

before making any other distribution, you must consider that 25 per cent of the seats must be assigned to Quebec. It is in that same spirit that the amendment has been moved today.

To make matters clear, Representation Act, 1985, was challenged in our courts. It was challenged in a case called *Campbell vs. Attorney General of Canada*—which is reported in 1988, 49 *Dominion Law Report, 4th Edition*, p. 321—where the British Columbia Court of Appeal, comprised of five judges in this particular case, decided: “That the Federal Parliament had all the authority to vote the above-mentioned act in 1985, that it did not need the support of the provinces, that the proportionality criteria in representation should be understood within the Canadian dynamics of proportionality, where there were Senate clauses, where deviations were made, and that this act, even at the time, did not affect the proportionality criteria”. This opinion from the British Columbia Court of Appeal is most interesting.

Now, what about the way we have to deal with this bill? Section 44 of the Constitution Act, 1982, which concerns amendments, reads as follows: “Subject to sections 41 and 42”—where the consent of the provinces is required—“Parliament”—which means us—“may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and the House of Commons”. As the Campbell case indicates, we are well within federal jurisdiction here. Section 44 does not specify a particular procedure. I may recall that unlike other amendments that may be made with the support of the provinces, in this case we can amend the relevant provisions through a bill.

• (1355)

When I move a motion in amendment that refers to the Constitution Act, 1867, as Parliament was in 1985 when it passed the 1985 readjustment legislation, I am well within the scope of this debate, and I submit, with respect, that my motion in amendment is entirely admissible at this stage.

We are merely establishing a basic rule, one of many basic rules in this kind of legislation, rules according to which the commissions may deviate by up to 25 per cent and special circumstances may be taken into consideration when establishing certain electoral districts. Establishing an additional rule that would guarantee Quebec 25 per cent of the seats is, I respectfully submit, Mr. Speaker, just another rule to add to the bill that would make it more comprehensive. I submit this with all due respect, Mr. Speaker.

Mr. Milliken: Mr. Speaker, for the purpose of clarification, I certainly agree with what the hon. member said about the authority of the Parliament of Canada to amend laws and to amend the section of the Constitution Act we have been discussing.