

*Constitution Act, 1867*

Member could be permitted to correct his first statement so as not to be on the record as having made a statement he did not intend to make with respect to Parliament expanding across the river, because, to my knowledge, Parliament has not.

I am surprised, Mr. Speaker, that this Bill is now before us, that it was accepted by the Table officers. Presumably it was examined for legality before being presented to the House. I do not feel it would stand the test in the courts, with all due respect. If it became law despite its unconstitutionality—because I am satisfied it is unconstitutional—it would be tested in the courts of the land. I am sure of that. Even the most recent constitutional documents which eventually became the Constitution Act of 1982 provide adequate justification for my comments. I can go back earlier than that to the British North America Act of 1867 where again there is a provision suggesting that this is an unconstitutional document.

It has been brought to us, Mr. Speaker, improperly and I intend to demonstrate that. I will choose the most recent document, which of course is not the law of the land, and look at this particular Bill against the background of the Constitution of 1982, as I must. This is a Bill which has to mesh or be found not to mesh with that particular Act. I draw your attention, Mr. Speaker, to Part V, Section 38(2) of the Constitution Act of 1982 wherein the following is found, and I will paraphrase it in order to make it a readable sentence: An amendment made under subsection 1 that derogates from the proprietary rights, or any other rights or privileges of the legislature, or government of a province, shall require resolution supported by a majority of the Members of each of the Senate and the House of Commons, and, Mr. Speaker, the Legislative Assembly is required under subsection 1.

You will notice that the wording of this particular Bill before us, which was presented by the Hon. Member for Hull, purports to declare that the national capital of Canada, "... shall consist ...". This is a declaration of the House of Commons. Presumably, he would expect it to be declared also by the other place, otherwise it could not become law. But are we legally competent in face of what I have just cited, Mr. Speaker, to make any such declaration? I contend that we are not. We are acting beyond the powers that this particular Parliament of ours possesses under a law which was passed by this Parliament and approved by the legislatures of the provinces. I suggest to you, therefore, Mr. Speaker, that Bill C-206 is faulty, is before us improperly and is merely inviting a ruling by the Supreme Court of Canada to declare it *ultra vires*.

● (1640)

More than that, Mr. Speaker, the following is to be feared. I feel that legislation of this Parliament should be aimed at doing something positive to hold the country together. If one of the provinces were to contest this Bill before the Supreme Court of Canada, should it become law, the only result would be acrimony. Why are we considering a Bill which would produce acrimony in the country? Surely we have had enough of that. Legislation should not do that. I have suggested, as has the Hon. Member for Edmonton West (Mr. Lambert), that

this is more than invasion of provincial jurisdiction; it is an invasion of municipal jurisdiction.

The Constitution of 1982 has all sorts of appendices. One of them is what I still call the BNA Act of 1867. It describes the exclusive powers of the provincial legislature. One of them is property and civil rights. We are dealing with property here. This is incorporating the property of two provinces into a single unit. This is offensive to the BNA Act of 1867, Section 92(13). Property and civil rights are dealt with there and, to the best of my knowledge, that has not been withdrawn.

Section 92(8) deals with the exclusive jurisdiction of provincial legislatures. How can this Parliament dare—and I use the word advisedly—to consider legislation which derogates from Section 92(8) of the Constitution of Canada? It is invading a provincial jurisdiction by presuming to say that Ottawa and Hull are part of the national capital under the jurisdiction of this Parliament. That is absolute effrontery. The Member who proposed this Bill should have had the good grace to suggest that it would be expedient, once this Bill had been passed, to request the authority of the provinces to accede to the wishes of Parliament. However, this Bill purports to declare that something shall happen. There is nothing more affirmative than that. There is no concession or recognition that there is any other jurisdiction at all.

To whom would the residents of this capital pay their provincial tax? He had not thought of that, had he? The taxes in the Province of Quebec are a little high and people may not want to pay them in Quebec. Perhaps they could pay their taxes to the federal authority which now declares that this incorporated area is the capital of Canada rather than paying provincial tax. It worries me, Mr. Speaker, that we are considering a Bill beyond the powers of this Parliament to consider.

I would like to refer to Section 43 of the Constitution Act of 1982 which was proclaimed in front of this building. This Bill purports to amend the Constitution of Canada. I was surprised to hear the Member for Gander-Twillingate say there was going to be an Order in Council. This is now an Order in Council; this is a legislative Act being proposed.

**Mr. Baker:** Mr. Speaker, I rise on a point of order. The hon. gentleman is misquoting. If he had been listening carefully he would have known I was quoting the Hon. Member for Hull.

**Mr. Munro (Esquimalt-Saanich):** Mr. Speaker, I withdraw. The Hon. Member for Hull ought to have known better. There is no Order in Council here at all. This would be a legislative Act if it were accepted in its present form.

Section 43 of the Constitution Act of 1982 reads:

An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including

(a) any alteration to boundaries between provinces—

That is virtually what this would do. It would ignore the boundary between the Provinces of Ontario and Quebec. The section goes on to say:

(b) any amendment . . . may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions