

control cannot in the opinion of the undersigned be constitutionally exercised upon the principle of substituting the judgment of the Dominion Executive for that of the local legislature, in relation to matters which are strictly confined to the field of local self-government.

The Honourable Ernest Lapointe, the last Minister of Justice to recommend a series of disallowances, shared the opinions I have cited. In 1938 he said:

As I said last year, touching the question of unfairness or injustice, I share on this point the views expressed by Sir Allen Aylesworth when he was Minister of Justice. It is for the electors of the province to decide whether the legislation is unfair or unjust and to vote against the government that enacts such legislation.

To prove to you that I do not really belong to ancient times because of the dates of my citations, I will come closer to our own times. The Right Honourable John Diefenbaker, speaking as Prime Minister on the refusal of the government to disallow a Newfoundland statute said, in 1960:

Whatever one's feelings with respect to legislation passed by provincial legislatures may be, however much one may dislike it, the gradual development has been that the federal government, through the Governor General in Council, does not exercise that power where there is on the face of it an apparent conformity with the legislative authority of the legislature which passes it.

Honourable senators, considering the evolution in the exercise of the power of disallowance and the opinions of the men responsible for that exercise over the years, I submit that Senator van Roggen cannot say to the federal government that there is a "clear duty imposed upon it by the B.N.A. Act"—those were his words—to disallow the measure to which he objects. If it affects purely local property rights and does not affect the rights and interests of people outside the province, I submit that disallowance would be contrary to the evolving conventions of our Constitution. Moreover, as Senator Manning pointed out, the cost in terms of disruption of federal-provincial relations would be excessive.

Now, I have said that the power of disallowance has not been exercised for 30 years. The last time it was exercised was on the recommendation of the Right Honourable Louis St. Laurent in the matter of Alberta legislation affecting the sale of land to "Enemy Aliens and Hutterites". That is how the legislation read. But, the fact that it has not been exercised does not mean that it is no longer a part of the Constitution. Of course it is still a part of the Constitution.

In the absence of enforceable constitutional guarantees, disallowance may at some time be necessary to protect fundamental civil liberties or minority rights. It may be necessary to protect the rights of residents of other provinces who have no political remedy against the government responsible for the legislation. It might also have to be used in a case where provincial legislation interferes seriously with the operation of federal legislation and policy and the problem cannot be solved by intergovern-

mental compromise. I submit, however, that, if used at all, it must be only in the most unusual circumstances. Otherwise, in the words of Professor D. V. Smiley, a student of Canadian federalism, it "would almost inevitably inhibit the kinds of federal-provincial collaboration that are necessary if the federal system is to operate in a tolerably effective manner." This, honourable senators, is a risk we cannot afford to take.

Hon. Mr. Forsey: I wonder if the Honourable Senator Goldenberg, to whom I apologize for my interruptions, would mind answering one question. What would he say about the possibility of the exercise of, or the desirability of exercising, the power of disallowance in case of a provincial legislature extending its own life for a prolonged period which, of course, it can perfectly well do within its powers? In fact, provincial legislatures have repeatedly done this, though not, I admit, for any prolonged period. Would he consider it desirable that the power should be exercised if the legislature in effect took away from the electors of the province their power of dealing with the legislature?

Hon. Mr. Goldenberg: It might be desirable, but I think it might also be dangerous. Of course, this was one of the possibilities for which we wished to provide in the political rights section of the Victoria Charter, which was rejected. There was a specific provision. As I say, it might be desirable but I think it would be highly dangerous unless, of course, a province decided to abolish elections.

Hon. Mr. Forsey: Surely if the legislature were to extend its own life for a prolonged period it might be necessary to protect the rights of the electors to elect a new legislature within a reasonable time.

Hon. Mr. Flynn: What about the federal Parliament? It did it once. What is the remedy?

● (2040)

Hon. Mr. Forsey: Oh yes, but we have a constitutional provision for that, in section 91, head 1.

Hon. Mr. Laird: I am still confused. I received the impression from Senator van Roggen that there was machinery available, presumably in the B.N.A. Act, to, in effect, disallow a bill even though it had not received royal assent. That is the impression that I received. Is there any such machinery?

Hon. Mr. Goldenberg: I think that Senator van Roggen had in mind the power of reservation. The Lieutenant-Governor does not give his assent but reserves it for the Governor General in Council to decide whether or not it should be assented to. The Governor in Council can assent in lieu of the Lieutenant-Governor, or do nothing, and the legislation, in the latter case, would be inoperative.

Hon. Edward M. Lawson: Honourable senators, I think I should speak to this very briefly, since it appears that I was somewhat responsible for causing this mini-political storm which took place in British Columbia.

I want at the outset to thank Senator Goldenberg for his crash course on the Constitution and on the subject of disallowance, because it is something about which I am totally unfamiliar. I did not have the benefit of any legal authorities, or the excellent material that we have had before us this evening. I was simply relying on my know-