

objected to the diversion of the flood waters of the Columbia into the Fraser, which is wholly situated within the province, is there any present legislation which would require compliance?—A. No.

Q. Would the federal government have the right or the authority or be in a position to introduce such legislation in the future?—A. You mean, I presume, would parliament have power to enact legislation to compel or to require some person to divert that stream into the Fraser?

Q. Yes, which is a river entirely within a province.—A. Let me put it this way. The Fraser is a river entirely within the province.

Q. Yes.—A. But the Columbia is not a river that is entirely within the province. The Columbia river is an international river. I have indicated two or three times that I did not think that the province of British Columbia would have the authority to compel the diversion of that stream, because it would affect rights outside the province of British Columbia. Then, applying a principle that every constitutional lawyer in this country now accepts, I think, if the province has not the power to legislate in that way, then it follows that parliament has that power.

Q. Let me just get the answer straight. That means that the federal parliament could introduce legislation. It could—I use the word advisedly—force the provincial government to allow water to be diverted into a provincial river?—A. I would not put it in those words. One government does not force another government. That is not the appropriate term.

Q. I used that term, but can the federal parliament require a provincial government to allow the diverting of an international river into a provincial river?—A. The federal government does not go to the provincial government and say, "You must do this." That is not the way a federation works.

Q. That was not my question.—A. No, that was the way you put it.

Q. I just wanted an answer to the question.—A. As I understood you, you asked whether parliament could force the provincial government to allow the diversion. I do not think that that is a question I can answer.

That was the opinion of Mr. Varcoe before this committee in 1955. He was then the deputy minister of justice. I ask you whether you would not concede that that opinion by the then deputy minister of justice questions the ability of the federal government to compel a provincial government to divert water from an international river.

Mr. STRAYER: Mr. Turner, I am grateful for your research, but I suggest with respect that that is all irrelevant to what I said this morning and this afternoon. I was not speaking in terms of diversions, forced upon the province, into another provincial river. I was speaking in terms of building a diversion system out of the province of British Columbia into another province, and I pointed to the specific jurisdiction on which I suggested the parliament of Canada could rely. I pointed to 92 (10) (a), among others, to which I said Mr. Justice Duff referred in the Water Powers decision in the Supreme Court of 1929 as being authority for the Dominion to construct some sort of connection between one province and another. Clearly, the authority is there.

You were quoting, Mr. Varcoe's statement, I take it, with approval. I do not find anything to quarrel with as I heard the statement, but I would like to read it over at some time. Mr. Varcoe was speaking in terms, however, of compelling a province to do something.