

Government Orders

The bill, as agreed to in principle at second reading, has nothing whatever to do with the calculation of the number of seats for each province, but is entirely confined to the determination of the boundaries within each province for each of the districts after the calculation has been done in conformity with section 51 of the Constitution Act, 1867. The Constitution Act could have been amended in the bill that was put before the House but it was not.

If I may review for you, sir, the legislative history of this bill, Your Honour will recall that there was a motion brought before the House instructing the procedure and House affairs committee to undertake a study in relation to various matters outlined in the motion which included a review, if necessary, of section 51 of the Constitution Act in so far as the allocation of seats among provinces was concerned.

The committee did this study and filed a report in the House with the draft bill in it. The draft bill contained no reference to section 51 of the Constitution Act. The bill that the government subsequently introduced in response to a concurrence motion on the committee's report is Bill C-69 and it also contains no reference to section 51 of the Constitution Act.

What we have here is an opportunity, afforded by the hon. member in putting this motion, to make changes to other acts which in my view are outside the principle of the Electoral Boundaries Readjustment Act which is currently before the House. It is a whole new act but it deals with the adjustment of electoral boundaries, not with the assignment of seats to provinces. It is a different matter and is dealt with in a different statute and always has been dealt with in a different statute.

The amendment proposed by the hon. member for Bellechasse is a backdoor attempt to amend section 51 of the Constitution Act. He has used the word notwithstanding but it does not get the proposer of the amendment off the hook. It is an attempt to amend another act which is in no way open for amendment by Bill C-69 as agreed to in principle at second reading.

The amendment goes beyond the principle of the bill as agreed to at second reading and opens up an entirely different subject not dealt with by the bill before the House.

• (1345)

I would like to quote from Beauchesne's sixth edition, citation 698 which says in part:

An amendment which is out of order on any of the following grounds cannot be put from the chair:

(1) An amendment is out of order if it is irrelevant to the bill, beyond its scope or governed by or dependent upon amendments already negatived.

(8)(a) An amendment may not amend a statute which is not before the committee.

There are various references in support of each of those citations.

I suggest to you, Mr. Speaker, that had this amendment been put in the committee after second reading of the bill, that is, not in its prestudy, but in its own study or in its own draft bill, in an amendment to the bill, as committee chair, I would have had no option but to rule it out of order because in my view it is beyond the scope of the bill.

It should be pointed out that attempts to use the word notwithstanding in order to sneak in a back door amendment to a statute not before the House is not a new device, nor is it one that the House has accepted.

In earlier years, previous governments were sometimes called to order for trying to legislate through estimates. This is an unacceptable process whereby statutes other than appropriation acts were amended by adding words or items in the estimates. One of the more frequent patterns of attempting to do this was to insert words in the item that notwithstanding such and such an act, the following shall be done or not be done, as the case may be.

I checked the precedent for this. On March 10, 1971 at pages 4126 and 4127 of *Hansard*, Mr. Speaker Lamoureux rendered a decision in respect of the supplementary estimates (c) for the financial year ending March 31, 1971. In a ruling on a motion that was brought forward by the President of the Privy Council, Mr. MacEachen, to refer these supplementary estimates to committee, Mr. Speaker Lamoureux ruled that certain of the supplementary estimates were not properly before the House because they purported to amend statutes through the estimates process and therefore went beyond what estimates could do.

The words that were used in the estimates fit the description of the words being used in this amendment. As Mr. Speaker Lamoureux pointed out on page 4126:

Let us, if you will, examine the items singled out by the hon. members. The first one is vote 35c. It proposes to amend the Pension Act and the Civilian War Pensions and Allowances Act. The vote proposes to repeal schedules A and B of the Pension Act and substitute therefor new schedules A and B as found in vote 35c.

I could go on but I do not need to read it all. The point is that the Speaker found the estimates were seeking to amend statutes and of course those statutes were not before the House for amendment. The Speaker held, I think very properly, that the practice of amending statutes by the estimates was out of order. He made that ruling on page 4127. He said that "in view of the situation created by the new rules, these items are not before the House in proper form". He declined to allow them to go to committee.

Mr. Speaker, if that was the view then, I suggest that same view must apply to this amendment. What the hon. member for Bellechasse is trying to do is amend the Constitution Act,