

*The Constitution*

The mandate of the committee was twice extended at the request of the opposition; first until February 6 and then until February 13. Second, the opposition agreed that this was sufficient time for the committee to complete its work. Lastly, at least three million citizens were able to watch the debates, live or taped, on television.

[*Translation*]

The decision we are about to make for the future of our country after more than five months of sustained political debates will appear very clear to all Canadians. What does it involve? Its first objective is to correct historical anomaly, the last remnant of an obsolete colonial status. Canada is one of the seven most important countries in the western world. Next June, it will host the annual conference of the big seven and will sit with the United States, Japan, France, Great Britain, Western Germany and Italy. However, it has less control over its constitution than Vanuatu, the Seychelles or Santo Domingo.

[*English*]

Those who do not believe what I have just said or who think it is far-fetched only have to read the conclusions in the report of the foreign affairs committee of the British parliament to realize that all imperial pretensions are not dead.

I am referring, of course, to the view of a few hon. members and not to the view of the British government. Yet the fact remains there are a few who believe that Canada remains at the mercy of the Parliament which is not responsible, directly or indirectly, to the citizens of this country.

[*Translation*]

Several people, when the present move was initiated, concluded that it was meaningless and would not significantly alter the status of Canada. If the purpose were only to rid once and for all the minds of some parliamentarians of our colonial past, it would still be worthwhile. But we cannot reject all the responsibility for our present state on our mother country. It is because of our failure to agree on the means to control the fundamental changes in our Constitution that Westminster retained its colonial trusteeship. As a matter of fact, in 1931, when the Parliament of London, through the Statute of Westminster, wanted to grant its former colonies their constitutional independence, Canada, and Canada only, asked for that power to remain in London, since it could not agree on an amending procedure for the Act of 1867. This is what Mr. Ernest Lapointe, the then minister of justice, confirmed in the House on May 11, 1931, and I quote:

In that matter the imperial parliament is not really a dominating power; it acts as a trustee and as a guarantor, and merely gives effect to the will of the Canadian people.

And let us not think that the 1867 Constitution has never been amended. Quite the contrary. Since 1867, Westminster has brought in 21 amendments. How were these amendments made? In three cases, 1893, 1927 and 1931, Westminster amended the Constitution on its own to allow for a technical

reform. In all other instances dealing with major changes, a request was presented either by the Canadian government, as in 1871 and 1875, or, since then, by the Canadian Parliament. Never has the British parliament refused an amendment on the basis that provincial consent had not been obtained. On the other hand, never has the British parliament accepted an amendment requested by a province. Thus in 1868, when Nova Scotia wanted out of confederation in accordance with a unanimous resolution by its assembly and a petition by 36 of the 38 assembly members, Britain replied that the Government of Canada was the only representative of the interests of the confederation before the imperial parliament. Only in one instance, in 1907, did the British parliament modify the terms of a resolution passed by the Canadian Parliament. The Canadian amendment was to increase federal subsidies to the provinces as a final and unchangeable rule, but London removed that condition because in the opinion of Sir Winston Churchill, then parliamentary under-secretary for the colonies, it seemed totally inappropriate in the legislation since Parliament could not relinquish its sovereignty and its power to amend acts.

Since 1931, spokesmen for the British government have always considered that Westminster was duty bound to agree to the requests of the Canadian Parliament. Thus, in 1940, when the unemployment insurance amendment was debated in London, the British Solicitor General stated, and I quote:

[*English*]

We square the legal with the constitutional position by passing these acts only in the form that the Canadian Parliament require and at the request of the Canadian Parliament.

My justification to the House for this bill—and it is important to observe this—is not on the merits of the proposal, which is a matter for the Canadian Parliament; if we were to embark upon that, we might trespass on what I conceive to be their constitutional position. The sole justification for this enactment is that we are doing in this way what the Parliament of Canada desires to do.

● (1610)

**Some hon. Members:** Hear, hear!

**Mr. Joyal:** He continues:

I do not know what the view of the provincial parliaments is—It is sufficient justification for the bill that we are morally bound to act on the ground that we have here the request of the Dominion Parliament and that we must operate the old machinery which has been left over at their request in accordance with their wishes.

[*Translation*]

In 1943 when Quebec objected to the adoption of the amendment aimed at redistributing the seats in the House of Commons, the Secretary of State for Dominion Affairs, Mr. Atlee, declared, and I quote:

[*English*]

I have no information as to any province objecting, but, in any case, the matter is brought before us by an address voted by both Houses of Parliament, and it is difficult for us to look behind that fact.