

British North America Act

[Text]

Mr. Deputy Speaker: Perhaps the Chair might read to the house the amendment proposed by the hon. member for Villeneuve.

[Translation]

I move, seconded by Mr. Gauthier, that the following words be added to section 94A after the words "to any such matter": but this amendment to the British North America Act does apply only to those provinces who will ask for it.

[Text]

Would hon. members care to offer comments for the guidance of the Chair in rendering a decision as to the acceptability of the amendment?

[Translation]

Mr. Favreau: Mr. Speaker, I think that this amendment is decidedly out of order. In fact, if we read its wording carefully, we realize that it applies to the provinces. I think it is important that we should all read the text of this amendment at once. It wants to add, in the text of the resolution, after the words "to any such matter", in the last line of the new wording of section 94A, that the address ask Her Majesty to request the parliament of the United Kingdom to approve the following words:

However, this amendment to the British North America Act will apply only to the provinces which ask it.

If such an addition to the wording of section 94A were adopted, we would be faced with a constitutional nonsense which would contradict entirely the purpose, the scope and the framework of the amendment requested by the resolution introduced by the right hon. Prime Minister.

In fact, the purpose of the new section 94A is to allow the parliament of Canada to legislate. Now, the proposed addition to that amendment provides that the amendment, that is the new section 94A, will apply only to the provinces upon request.

This would take away any meaning that the new section 94A might have, because section 94A, which deals essentially with the powers of the federal parliament to legislate as far as pensions and miscellaneous provisions are concerned, cannot apply, from the constitutional view point, to the provinces even if a province requests it.

I would think that what was meant—but surely it is not for me to draft an amendment to a measure introduced by the government—

[Mr. Caouette.]

is that if an act is passed under the constitutional amendment, that act will apply only to the province which requests it and, at that time, it will not be clear either if the request must be made before that act is passed by the parliament of Canada or after.

But, I wish to point out that, in any case, the text must be read as it now stands. It is intended to apply to the provinces, when they request it, a constitutional provision which can apply only to the federal parliament, according to the general text of the British North America Act.

That is why I submit that the amendment is entirely out of order, because it is contrary to the very nature of the subject matter and also because it would render meaningless the aim and object of the resolution now under consideration.

Besides, in practice, if that amendment could be taken to mean that it should apply to an act to be passed by the federal parliament under the new section 94A, that would make the procedure so complicated that, to all practical purposes, it would become inapplicable.

Furthermore, Mr. Speaker, I point out that all the provinces have given their approval and that the province—that is Quebec—which had decided to proceed by means of a resolution introduced in the legislature, did so, and that the Quebec legislature has now approved that resolution, that is approved "entirely" the request for an amendment.

Therefore I submit that first, this motion in amendment is unacceptable because it is out of order as regards the constitution and the rules of the house; second, even if it were in order, the amendment should be rejected as it proposes a procedure that is inapplicable, if not inextricable.

Mr. Rémi Paul (Berthier-Maskinongé-Delaudière): Mr. Speaker, I think that the mover of this amendment is thinking of the practical aspect of any legislation which might subsequently arise from the possible amendment to section 94A of the British North America Act.

It is not often that I share the views of the Minister of Justice, but I agree with the remarks he just made, because the point is that we must consider tonight the constitutional aspect of the problem.

Under the proposed amendment, the Canadian parliament is asked for the power to sanction the wish of the house, to enable the federal government to legislate in some precise matters.