

*Official Languages*

relations. I believe it to be unconstitutional, undesirable and, in the light of the other grave problems confronting us, most frivolous.

Aside from my personal belief that this measure is unconstitutional, I think that parliament must give serious consideration and weight to the position taken by several of the provinces that the bill is unconstitutional. We may disagree with the views of the provinces but we cannot take exception to their right to hold those views and their equal right to challenge this bill on the basis of those views. The provincial governments had the counsel of their law officers in this regard just as, one presumes, the Prime Minister and his colleagues had the advice of the principal law officers of the government that this measure is constitutional.

I suggest to the house, Mr. Speaker, that we will achieve little if we adopt the line taken by some of the more fervent supporters of this legislation, particularly some members of the cabinet and of the parliamentary press gallery, who condemn provincial premiers and others as insincere obstructionists when they voice honest criticisms. To criticize or even question, however honestly, this measure is to call down invective and malicious distortion on your head. This is part of the behavior I alluded to earlier.

By adopting an arrogant and arbitrary attitude with regard to this bill, the government has made sure that the bill will be considered with a maximum of emotion and a minimum of mind. Considering what the British North America Act provides, fails to provide and actually prohibits, I question the constitutionality of this measure. My starting point for argument is Section 133 of the B.N.A. Act which reads as follows:

Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any person or in any pleading or process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

This Act of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

Thus we see that both French and English are constitutionally established and are to be used in the parliament of Canada and the legislature of Quebec. The law says no more and no less. Nowhere in the B.N.A. Act is

[Mr. McIntosh.]

there any reference that French and English are established as the official languages of the government of Canada. I refer to "government" as contrasted to "parliament", the two being obviously quite different entities. Yet, without a shadow of constitutional authority, clause 2 of Bill C-120 which is the declaratory clause of the bill says:

The English and French languages are the official languages of Canada for all purposes of the Parliament and Government of Canada, and possess and enjoy equality of status and equal rights and privileges as to their use in all the institutions of the Parliament and Government of Canada.

Surely it is obvious that this language goes far beyond the language of the original Section 133 of the B.N.A. Act. It must be obvious that it effectively changes the substance and import of this section and that it clearly represents an amendment to Section 133. On that ground alone it would appear, even to one who is not a lawyer, that the bill as presently constituted represents an attempt to amend the constitution, and is, therefore, beyond the power of parliament. This attempt to amend the constitution in violation of constitutional law and practice is emphasized even more in subsequent clauses of Bill C-120. Clauses 3, 5 and 7 merely reinforce the unconstitutional approach laid down in clause 2.

Section 133 of the B.N.A. Act sets out quite clearly and distinctly the official position of the two languages. Any attempt to change this section by a simple act of the Parliament of Canada, is, in my view, unconstitutional.

Another section of the B.N.A. Act explicitly prohibits the federal government from acting in certain spheres. Section 91(1) forbids the government to tamper with language questions. This situation was brought about by means of an amendment to Section 91 of the B.N.A. Act, engineered in 1949 at the request of the St. Laurent government. In part the amended section now reads:

—it is hereby declared... the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say—

1. The amendment from time to time of the Constitution of Canada except as regards... the use of the English or the French language—

**The Acting Speaker (Mr. Richard):** Order, please. It being four o'clock, in accordance with the special order made earlier this day a motion to adjourn the house at this time is deemed to have been moved and seconded. Therefore, the question is that this house do now adjourn.