

*B.N.A. Act—Second Report*

procedure which this province would suggest in connection with amendments to the Canadian constitution I would say that I have been following with intense interest the proceedings of your committee. The question of what if any provision is to be made for amendment of the Canadian constitution from time to time is a question which ultimately must be decided by conferences between the governments of the provinces and the government of Canada with the possibility of a previous preliminary interprovincial conference. In view of this fact it would appear to be unwise for the provinces to be giving their views before a committee of the House of Commons. With due deference might I be permitted to suggest that the proper procedure is for your committee to pursue its present inquiry and to make a report to the House of Commons which I presume will either be accepted or amended or merely received without binding the government to accept the proposals of the committee and with this report available the provinces could then give consideration as to what attitude they desired to take and perhaps discuss the matter amongst themselves and thereafter join with the federal government in a general conference. The report of your committee would serve as the basis of discussion around which would take place the ultimate solution of this problem. We realize that the question is one of great national importance and should be decided in the welfare of Canada free of all political considerations and we are certainly prepared to do our share towards the facilitating of a solution but we feel that we must look after the interests of the province and think that the procedure I have outlined would be the proper course for us to adopt at this time." Signed by T. C. Davis, Attorney General.

Alberta.—"Re amendment B.N.A. Act. Alberta government appreciate desire of committee to have views of all provinces before it on this very vital question but considers approach to question should be through interchange of views at interprovincial conference." Signed by Mr. Lymburn.

British Columbia.—"Reference your wire twenty-seventh to attorney general requesting written submission from the government of this province to your committee it is the opinion of the government that amendment of the constitution is too important a matter to be dealt with in manner suggested. It is not thought that satisfactory conclusions can be reached either federally or provincially until a conference of the provinces and the dominion is held when full discussion may be had and matters properly debated. Other than stating that the right should be secured to amend our constitution in Canada this province respectfully declines to make submission to your committee, neither will it feel bound by any report which may be made by your committee." Signed by T. D. Pattullo.

In no case did the authorities of these provinces signify any desire to present their views to your committee, either in writing or orally.

The committee recognizes that there is a divergence of opinion with respect to the question of whether or not the British North America Act is a statutory recognition of a compact among the four original provinces of the dominion and as to the necessity or otherwise of provincial concurrence in amendments. Without expressing any opinion upon that question, the committee feel that in the present case and at the present time it is advisable in

[Mr. Turnbull.]

the interest of harmony and unity that there should be consultation with the provinces with respect to the adoption of a definite mode of amendment or the enactment of amending legislation which might seriously alter the legislative jurisdiction of the provinces and the dominion.

Many interesting suggestions were made. Dr. Kennedy, professor of law at Toronto university, suggested that a royal commission should be appointed to study the workings of the act, with a view to recommending a re-arrangement of powers if thought necessary.

Dr. Ollivier, K.C., LL.D., joint law clerk of the House of Commons suggested that:

(a) Obsolete sections should be dropped.

(b) Certain sections should be subject to amendment without consultation of the provinces.

(c) Certain sections should be amended only with the concurrence of a majority of the provinces.

(d) Certain sections might be amended with the consent of one province only.

(e) Other sections should be amended only on consent of all the provinces.

Dr. Scott, professor of civil law at McGill university, expressed the view that as the dominion parliament represented the population of the provinces, ordinary amendments should be made upon a majority vote of both houses and amendments affecting minority rights should be approved in addition by all provincial legislatures, in order to become law.

Professor Rogers, professor of political science at Queens university, suggested that a dominion-provincial conference or a national convention might appoint a committee to draft an amended constitution to be thereafter approved by the conference or convention and subsequently by the dominion and provincial legislatures. He was of the opinion that the question of consulting the provinces was a matter of political expediency rather than one of legal right.

Doctor Arthur Beausiesne, C.M.G., K.C., clerk of the House of Commons, would have a new constitution drafted by a constituent assembly composed of delegates representing the various provinces and the dominion, made up of all classes of people. The constitution so drafted would be thereafter adopted by the dominion and the provinces, approved by the King, and the present act thereupon repealed.

The committee recognizes the urgent necessity for prompt consideration of amendments to the British North America Act with reference to a redistribution of legislative power and to clarify the field of taxation.

It is further of opinion that the conference hereafter proposed should carefully consider the adoption of a recognized yet flexible method of amendment.

In view of the fact that the several provinces did not feel it advisable to give the committee the benefit of their views with respect to the method of procedure to be followed in amending the constitution, the committee is of the opinion that before any decision upon the subject matter of the resolution is finally made, the opinions of the provinces should be obtained otherwise, if at all possible, and for that reason recommends that a dominion-provincial conference be held as early as possible in the present year to study the subject matter of the resolution. The proposed conference should have ample time in which to study every phase of the question.