

and without Canada, compelling adaptations in domestic administrative policies as well as in external relations.

It is now plainly evident that we urgently need a militia act of the 1939 model. Obviously the 1904 model is quite unsafe from the point of view of the preservation of Canadian unity. As a matter of fact, some parts of this legal vehicle date back to 1868. Canada is no longer a colony but a self-governing dominion within the British commonwealth of nations, and we should no longer tolerate a law that maintains colonial traditions with regard to vital issues. I submit that now is the time to overhaul this legislation and not when we are in the midst of a war crisis.

I have four purposes in mind with regard to the amendments I propose. The first is to ensure parliamentary control of the armed forces of the dominion. The second is to ensure prior parliamentary sanction for any act of participation in external war or in any military commitment relating thereto. The third is to restrict the power now vested in the governor general of imposing compulsory service on all the male inhabitants of Canada, and to ensure prior sanction of parliament for compulsory mobilization. The fourth is to ensure that the government of Canada shall have the undisputed right to appoint senior officers in command of Canadian forces on active service.

Section 4 of the act as it now reads declares that the command in chief of the armed forces of Canada, or of the militia, shall be vested in his majesty. In that respect it complies with the constitutional requirements of the British North America Act. But the section goes beyond that. It declares that this authority shall be exercised and administered by his majesty or by the governor general as his representative. My amendment simply proposes that the command in chief shall continue to be vested in his majesty but shall be exercised and administered by the governor general acting by and with the advice of the king's privy council for Canada.

I submit that the prerogatives of the crown in Great Britain have been restricted by the Army (Annual) Act of Great Britain. As a matter of fact, it is a fundamental requirement of the British constitution that the prerogative of the crown with respect to the armed forces shall be under the control of parliament. In the preamble of the Army (Annual) Act it is declared that it shall be unlawful for the sovereign to maintain armed forces in the United Kingdom except by sanction of parliament. I again direct the attention of the

(Mr. MacNeil.)

house to the fact that the intention of parliament in regard to this section was made very clear in 1904. Parliament then rejected an amendment similar to that which I propose. Because of the constitutional status, parliament refused then to make a clear-cut declaration of the right of the government of Canada or the ministers of his majesty in the dominion to exercise authority and control over the armed forces of the dominion.

It is, of course, absurd to suppose that the sovereign would personally exercise command. It is equally absurd under our present constitutional status to suppose that His Excellency the Governor General would personally exercise command. The only reason I can discover for retaining the section in its present form is to permit the crown to recruit in the dominion for service abroad. That was done during the South African war; the South African contingent was recruited by order of the crown by voluntary enlistment, although some contribution was made by the government of Canada towards the expenses of the Canadian contingent.

This practice was followed in the great war. As I stated last night, it is recorded in the official war history that his majesty ordered that his royal highness the then governor general might recruit by voluntary enlistment in Canada for service abroad. If the Canadian expeditionary force was not authorized under the provisions of the Militia Act—and the Minister of National Defence (Mr. Mackenzie) raised this point last year—it certainly became possible because of the interpretation of this particular section. Such action, if followed, leads inevitably to participation in external war without the prior sanction of parliament. For the moment I am not arguing whether it is right or wrong; I am submitting that under our present constitutional status there should be a clear-cut declaration in the act that the authority of the crown is exercised in the dominion with respect to the armed forces of the dominion only by his majesty acting on the advice of his ministers in the dominion.

This section must be considered also with regard to the provisions of the Naval Service Act, because under that act the governor in council is authorized or given power to place the naval services of the dominion at the disposal of his majesty for service abroad with the royal navy. It must also be noted in this connection that the Army Act of Great Britain is made applicable to Canada. Again I am going to read this section, and I am

going to keep on reading it until I secure some attention for this extraordinary section. Section 69 reads:

The Army Act for the time being in force in Great Britain, the king's regulations, and all other laws applicable to his majesty's troops in Canada and not inconsistent with this act or the regulations made hereunder, shall have force and effect as if they had been enacted by the parliament of Canada for the government of the militia.

I have tried to get a copy of the Army Act as amended to date. I have applied to all the usual sources, the king's printer and the library of parliament, to get a copy of this act which is incorporated in the statutes of Canada, and I cannot get a copy. The only Army Act I can learn about is that of 1881. That act has been amended annually by the Army (Annual) Act of Great Britain. It is most extraordinary that an act under which sentence of death may be passed upon a Canadian is not made available to members of the Canadian House of Commons. I notice in the *Canada Gazette* of January 14, 1939, that the Minister of National Defence promulgates the king's regulations and orders of the Canadian militia under P.C. 2974, dated November 29, 1939, and in those sections relating to discipline or the enforcement of discipline in the Canadian militia they quote sections 45, 46, 49, 50, 138 and 181 of the Army Act of the United Kingdom. It is most extraordinary that the exact terms and provisions of the Army Act thus made applicable to the Canadian forces are not openly stated. Whatever action may be contemplated under the provisions of that act should be clearly made known at this time. I submit that the existence of a section of that kind is quite incompatible with our constitutional status as declared at the imperial conference of 1926 and by the Statute of Westminster. I am not arguing for the moment whether it is right or wrong for the crown to recruit in this dominion for the British forces; but whatever action is taken in that regard should receive the sanction of parliament and should be determined solely by his majesty's ministers in the dominion.

Section 8 of the act contains the feature of compulsory military service. Again I am going to read it. It says:

All the male inhabitants of Canada, of the age of eighteen years and upwards, and under sixty, not exempt or disqualified by law, and being British subjects, shall be liable to service in the militia: Provided that the governor general may require all the male inhabitants of Canada, capable of bearing arms, to serve in the case of a *levée en masse*.

My amendment proposes that authority for general mobilization in the event of a *levée en masse* shall be exercised by the governor in council, and only after parliament has passed an act authorizing such action.

Referring to the existing sections of the act, I point out that for the purpose of military service the entire male population of Canada, is divided into four classes, the first class being those between the ages of eighteen and thirty who are unmarried or widowers without children. The act goes on to say that the militia of Canada shall be divided into active and reserve; that the active militia shall consist of (a) corps raised by voluntary enlistment and (b) corps raised by ballot. I refer to section 14.

Section 23 provides that the governor in council shall have power to make regulations necessary for the enrolment of persons liable to military service. Section 24 states:

When men are required to organize or complete a corps at any time, either for training or for an emergency, and enough men do not volunteer to complete the quota required, the men liable to serve shall be drafted by ballot.

Mr. MACDONALD (Brantford City): Does the hon. member's bill amend that section?

Mr. MacNEIL: No, I do not deal with that; I deal with the governing section, the section relating to general mobilization.

Mr. MACKENZIE (Vancouver): Is the hon. gentleman's bill exactly the same as his bill of last year, No. 84?

Mr. MacNEIL: Exactly the same.

In section 25 the governor in council is given power to make regulations, among other things to determine "every other matter and thing not inconsistent with this act, and necessary to be done in the enrolling, balloting, warning and bringing into service of such number of men as are required at any time."

Then it goes on to say that any man balloted and notified for service may be exempt under certain conditions.

Mr. MACDONALD (Brantford): May I ask the hon. member if he has any objection to these sections?

Mr. MacNEIL: I am certainly pointing out that they are obsolete; that they were designed and drafted in 1868 and 1883, and again in 1904. In my amendment I propose to deal with the matter in the simplest possible way, by amending section 8 dealing with compulsory general mobilization. I point out also that in the act upon which this act was based, which perpetuates the principle of the act of