

Ever since the decision of the privy council it has been the intention that parliament should acquire the necessary power to enact a bill of the kind which will be introduced when the address is voted in this parliament and the necessary amendment made at Westminster to the British North America Act. Always we have tried to get the approval of the several provinces to an amendment of this kind, but it is only recently that unanimity has been signified in the matter. The objection which was raised by certain provinces, and more particularly in my own province by the then premier, was that it would be possible to establish unemployment insurance by concurrent or enabling legislation of the provinces as well as of the dominion. Needless to say we should have been very glad to accept that view had we thought that such a course was feasible, but the views of the officers of the crown have always been that this could not be done. When it is said, for instance, that old age pensions have been established by way of concurrent legislation, I would point out that there is all the difference in the world because we merely contribute to the amount which is spent by the various provinces for old age pensions; we contribute as much as seventy-five per cent, but there is no provision for contributions by employers and employees, and there is not the same necessity for our invading the provincial jurisdiction as there would be in establishing a scheme of unemployment insurance. The two cases are altogether different. Indeed if, as has often been suggested and even recommended by labour unions, the old age pensions scheme should be made a contributory one, the British North America Act would have to be amended to provide for a national contributory scheme.

As to the methods of cooperation in the legislative field which we have considered one after the other, the first that suggests itself is for the provinces to delegate to parliament their powers in relation to unemployment insurance. But there are several objections to that. It is extremely doubtful that such delegation would be legally effective, because by such action parliament cannot acquire jurisdiction. Lord Watson is reported to have observed during the argument of *Canadian Pacific Railway Company v. Notre-Dame de Bon Secours*, (1899) A.C. 367:

I think we must get rid of the idea that either one or other (parliament or the provincial legislature) can enlarge the jurisdiction of the other or surrender jurisdiction.

In the case of the Live Stock and Live Stock Products Acts, this method of delegation was resorted to and the courts have held the cooperative scheme to be unconstitutional.

[Mr. E. Lapointe.]

The provincial legislature may delegate its legislative powers, as has recently been held by the privy council in the case of *Shannon v. Lower Mainland Dairy*, and, conceivably, some central body, say the dominion commission, could be vested with legislative power by each of the nine provinces. But I think, first, that most of the provinces would strongly object to delegating such a power to a body not responsible to them.

Secondly, there is the objection that at any time any province may withdraw the power that she has delegated. A third objection is that the sum total of provincial powers is probably insufficient, constitutionally, to establish a national system. For instance, can Quebec raise money by a levy which may be used to pay benefits outside of Quebec? If Quebec cannot do so then its delegate on the federal commission, as I have mentioned, could not, merely by reason of the fact that it is the delegate also of eight other provinces.

Other recognized methods of cooperation are known as legislation by reference, conjoint legislation and conditional legislation.

The first two are almost identical. The first is a method whereby parliament enacts a statute which is then adopted by the provinces by reference. By the second mode of procedure both parliament and the legislature would enact the same act in the same terms. These two methods have been resorted to when doubt exists as to which legislature, the central or the local, has authority. The danger of this reasoning lies in the possibility that both statutes may be invalid because each exceeds the power of the enacting legislature. The example I have given of Quebec having no right to levy taxes within the province to be used to pay expenditure in the rest of Canada applies here. Such a taxing provision would be unconstitutional, just as a dominion act to impose taxation on Quebec citizens to be spent in Quebec would be invalid. Another objection is that in the enforcement of the law a difficulty would arise as to which one of the two statutes should be used and we might select the one which the court would declare unconstitutional. Then again, in the case of legislation by reference the provincial act would be bad if the dominion act was bad, since the latter was a nullity and the provincial act based on it would also be a nullity.

Conditional legislation is another mode of procedure, whereby legislation of a legislature operates upon the fulfilment of a condition. For instance, if all the nine provinces were enacting a similar insurance scheme in identical terms which would become operative as the