

Family Allowances

examination and report. This resolution passed and the report of the committee was adopted on June 6, submitting the evidence of various witnesses on the subject and recommending that:

"(a) As this proposal is new in Canada, and requires more careful consideration, no immediate action shall be taken; and

(b) that before the next session of parliament the question of jurisdiction in matters of this nature as between the dominion and the provinces be considered by the government;

(c) that 500 copies in English and 500 copies in French of this report and evidence be printed in blue book form and that standing order No. 64 be suspended in relation thereto."

In case the matter might otherwise escape your attention, I thought it well to direct your notice to the paragraph marked "b" in these recommendations.

Yours very truly,

Peter Heenan.

Honourable Ernest Lapointe, K.C., M.P.,
Minister of Justice,
Ottawa.

The answer from the deputy minister to Mr. Heenan is dated April 23, 1930, and reads:

Dear Mr. Heenan:

I have the honour to refer to your letter of the 16th January last addressed to the Honourable the Minister of Justice calling attention to the report which was made on the 31st May, 1929, by the select standing committee on industrial and international relations (pursuant to resolution of the House of Commons dated 13th February, 1929) and adopted by the House on the 6th June, 1929, upon the question of granting family allowances. The House having approved of the committee's recommendation set out in paragraph (b) of the report "that before the next session of parliament the question of jurisdiction in matters of this nature as between the dominion and the provinces be considered by the government," I have, accordingly, considered the question and now desire to submit my opinion of it.

2. The order of reference required the committee merely to inquire into and report upon "the question of granting family allowances." It was not, accordingly, called upon to consider, and did not consider, any particular system of family allowances but simply received and reported the evidence upon the general subject of the various witnesses who appeared before it. In the circumstances, it is necessary to consider the question of legislative jurisdiction in relation to this subject, as between the dominion and the provinces, with reference to the various systems of family allowances which have been adopted in other countries.

3. While there is considerable diversity in the organization and extent of family allowance systems in different countries, the family allowance may be described generally as a periodical payment to the worker, over and above his ordinary wages, in respect of his family rather than of the work done. It represents an attempt to apply the social principle of "payment according to need" to a certain extent as a corrective of the tendency of ordinary economic laws to favour the principle of "equal pay for equal work", without regard to the family obligation of married, as distinguished from unmarried, workers.

[Mr. St. Laurent.]

4. Broadly, the various systems of family allowances fall into three categories, viz., (1) voluntary schemes established in industries either (a) on the initiative of the employers alone or (b) by collective agreements between employers' and workers' organizations; (2) voluntary schemes under which the state pays family allowances and bears the whole cost from its ordinary revenues; and (3) compulsory schemes established by law.

5. In the case of voluntary schemes of the first class mentioned above, a common fund is usually instituted by a group of employers and from it allowances are paid at uniform rates and on uniform conditions to all workers with dependent children employed in any of the undertakings attached to the fund. As the establishment of such schemes does not depend on legislative action, no question of legislative jurisdiction arises in relation to them.

6. In the case of a voluntary system of the second class mentioned above, legislative action is, of course, required, but, again, the scheme being voluntary, no question of legislative jurisdiction, as between the dominion and the provinces, arises, each being fully competent to appropriate from its revenues such moneys as it might deem proper for the purpose of paying such allowances and to determine the conditions on which any moneys so appropriated should be expended.

7. In the case of a compulsory system established by law, the allowances are provided out of contributions exacted from employers under regulations sanctioned by the law-making authority. Such laws may apply to particular industries, or even to parts of an industry, or they may, on the other hand, provide for a general scheme applicable to all industries in the state. The imposition upon the employers concerned of an obligation to make contributions to a common fund out of which family allowances should be paid and the definition of conditions under which the employees concerned would be entitled to receive allowances would be essential features of any compulsory system moulded upon the lines of the compulsory systems which have been established elsewhere. It is, therefore, clear that legislation providing for the establishment of a compulsory system of family allowances would be directly concerned with the civil rights of both the employers and the employees affected by it. Legislative jurisdiction with relation to the subject matter is, consequently, vested primarily in the provincial legislatures under the powers conferred by section 92 of the British North America Act, 1867, in relation to either or both of the enumerated heads "Property and civil rights in the province" (head No. 13), and "Generally all matters of a merely local or private nature in the province" (head No. 16).

I am, accordingly, of the opinion that the provincial legislatures are exclusively competent to set up a compulsory system of granting family allowances, subject to the following qualifications, viz:

(1) With regard to commercial or industrial enterprises or undertakings which are subject to the exclusive legislative jurisdiction of the dominion parliament, it would, no doubt, be within the competence of the dominion parliament to establish a compulsory system of family allowances for the benefit of persons employed in such enterprises or undertakings by way of legislation which might be regarded as truly ancillary or necessarily incidental to the exercise of the dominion's exclusive legislative authority