

*Public Lands Grants Act*

a provincial government or some other government of Her Majesty. The transfer of the right of management or administration is technically different from the sale of the land. When lands are sold there is a change in title. However, all public lands are vested in the crown, which is one and indivisible. The transfer of lands between one government of the crown and another does not involve a change in title. Transfers between governments of Her Majesty merely pass from one government to another the right to control the disposition of lands.

I might point out that the transfer of a publicly owned lot of land from the government of Canada to, for example, the government of the United Kingdom, does not in any way affect sovereignty. The transferred to remain within the jurisdiction of Canada as much as if a private individual had sold it to the government of the United Kingdom.

I should perhaps further point out that this bill has nothing to do with the transfer of lands to any government outside of the Commonwealth. It deals only with transfers from the government of Canada to provincial governments or other governments of Her Majesty.

Now, because an ordinary sale to a private individual is technically different from the transfer of administration to another government of the crown, the method of transfer is different. In an ordinary sale letters patent are issued transferring the title to the purchaser, letters patent being the form of deed used in conveyances by the crown. But because there is no transfer of title when administration is passed to another government of the crown the courts have long held that letters patent or a deed should not be used. The proper method according to the courts is for the transferring government merely to pass an order in council transferring the right of administration and control. This is the method which has been used by the government of Canada for many years.

The present section 4 (a) of the Public Lands Grants Act authorizes the sale of lands, but does not authorize the government of Canada to transfer the administration of public lands to another government of the crown. Nevertheless, such transfers were made as it was not thought that statutory authority was necessary. However, in a recent case in the Supreme Court of Canada, referred to in the explanatory notes in the bill, some of the judges said that transfers to the provinces by order in council are not valid unless the governor in council has the express authority of parliament to make such a transfer. It is to remove any doubt as to

the validity of such transfers that it is proposed by this bill to give the governor in council the authority to transfer lands to the crown in the right of a province or in some other right.

**Hon. Paul Martin (Essex East):** There need not be much time spent, I take it, on this bill. The minister, I assume, has had the advice of the law officers of the crown, based on the case of the Attorney General of Canada versus Higbie, although up until this case was decided I take it from what the minister has said in explanation of the bill there has always been a judicial view that the proper way to transfer land from the crown in the right of Canada to the crown in respect of one of Her Majesty's dominions was by order in council and not by a grant provided for in a deed.

The case to which the explanatory note directs our attention has indicated a different view, and I assume it is because of this that the government has found it necessary to meet the technical objections involved in the transfer of land from Her Majesty in the right of Canada to Her Majesty in the right of some other jurisdiction, I take it that would include the provinces as well as any other jurisdiction under the crown outside of Canada and within the British commonwealth. The minister said in his explanation, however, that a transfer to Her Majesty was not to be regarded as an infringement of Canadian sovereignty. I assume that this bill does not change that situation. A grant under the old method, that is through order in council, certainly did not involve any challenge to Canadian sovereignty. The minister's observation was simply by way of a gratuitous, although valuable, explanation, and was not in any way directed to this particular bill. The minister nods, so I take it my observations are correct.

**Mr. Hazen Argue (Assiniboia):** Mr. Speaker, I think the information that has been given by the Minister of Public Works is valuable and that this is merely a case, according to the advice of the Department of Justice and according to the ruling of the supreme court, of giving to the governor in council a right to transfer to the crown at some other level this land, and to do so by means of an order in council. We are pleased, Mr. Speaker, to support the passage of this bill at this time because we think it is a measure which has been deemed, by the courts, to be necessary, and also to facilitate the departure of the minister on his very important assignment.

**Mr. Martin (Essex East):** Can the minister just answer this question? I do not know the