

tant point. We raised some serious constitutional questions about the power of parliament to assign to the Federal Court a criminal jurisdiction. Section 46 of the act seeks to do this. I do not have the details before me, but attention to a very serious breach was drawn by an eminent constitutional authority, on behalf of the Canadian Bar Association, I believe.

My colleague from York-Simcoe and I wanted to question the experts or law officers who advised the minister. All we now have is the minister's own assertion that he is satisfied with the advice of his officers. That is not good enough, and that particular point concerns me.

My colleague from York-Simcoe has said with regard to this important question of constitutionality that parliament cannot grant a criminal jurisdiction to the Federal Court, and that is what the act attempts to do. He said that the matter should be referred to the Supreme Court of Canada for a ruling before these provisions come into force. That is the purport of the amendment.

Someone can say, "But this is novel!" So what? There is always a first time. After all, Your Honour's predecessor on a couple of matters in which, I suggest, the procedural arguments were in my favour but in which he did not feel they were, said, "I am going to treat the matter as a first time and rule in such and such a way." I did not particularly care for his rulings because they went against the weight of the authority of precedents set elsewhere, not in this House. But he said that this was a first effort, as it were, in this House, and Mr. Speaker ruled as he saw fit. That was quite within his power.

I suggest to you, Mr. Speaker, that it is within your power to rule that such an amendment as this is acceptable. That is all Your Honour has to decide. Your Honour cannot rule on the legality, or on whether parliament can refer a matter or put a bill in suspension because part of it involves a constitutional question with regard to which there is grave doubt.

I say that it is the duty of the opposition, indeed of all members of this House, to question propositions in a statute which may be unconstitutional. Those of us who are lawyers would be remiss in our duty if we casually let such propositions go unchallenged. Our colleagues in the profession, who have the right to do so, could readily point the finger at each and every one of us and ask "Where were you when this matter was under examination? What opinion did you have? Is there or is there not constitutional authority?" If the answer were to be "Well, that did not bother us", then each and every one who said so would be derelict in his duty. Therefore, Mr. Speaker, I am going to put it quite plainly on that basis.

● (2010)

My colleague is questioning the constitutionality. Your Honour cannot rule on the constitutionality, but can accept a motion which deals with the question of constitutionality. If the procedure is put forward to the Supreme Court of Canada, which is the authority to rule on constitutional points, so be it. I submit that even if the argument is that this is the first time this has happened, my colleague has the right to put forward the motion, and it is not out of order.

Combines Investigation Act

[Translation]

Mr. Serge Joyal (Maisonneuve-Rosemont): Mr. Speaker, the amendment moved by the hon. member for York-Simcoe (Mr. Stevens) raises one of the most interesting questions for constitutionalists and I cannot help answering the invitation put to me by the hon. member for Edmonton West (Mr. Lambert) and give my advice as a lawyer on the constitutionality of the bill and on the implications the amendment would have on Canadian legislation if it were adopted as moved by the hon. member for York-Simcoe.

But before dealing with the contents of the amendment itself, I would like to point out, Mr. Speaker, that in my opinion this amendment is inadmissible at this stage of the discussion. As a matter of fact, the amendment refers to one of the conditions for the coming into force of the bill in its present form, and these conditions are clearly defined in clause 31 of the bill. Now, the amendment as moved by the hon. member for York-Simcoe refers rather to clause 12 of the bill.

Consequently, if one refers to authors of doctrines, to Beauchesne's Parliamentary Rules and Forms, Citation 406, it is clearly established that an amendment which is not directly linked to the conditions governing the coming into force of a bill as stated in the bill is out of order. This opinion is brought forward again by May, on page 510, who says that an amendment must be declared out of order if it is not properly related to the clauses it is meant to amend. Therefore, Mr. Speaker, the amendment should be declared out of order.

However, in the wording of the amendment there is an extremely important principle which is the right to refer to the Supreme Court. This right goes back very far in history. In the Middle Ages, when parliaments were meeting, they did not enjoy the privilege of drafting legislation.

They would petition the sovereign for their rights—he would consult judges and magistrates—and ask him to draft the bills. It was only much later that parliaments took upon themselves the right to phrase the bills themselves before submitting them to the approval of the sovereign who could only either accept or reject them but not alter them.

The contents of the amendment which the hon. member for York-Simcoe (Mr. Stevens) has proposed would result in delaying the enactment of this legislation until the Supreme Court would rule upon the constitutionality of clause 31.1 of Part IV of the bill.

Evidently the hon. member is referring to section 55 of the Supreme Court Act of Canada, which was introduced for the first time when the Supreme Court was created in 1875, and to a section which was amended in 1891 when the act which set up the Supreme Court in Canada was rewritten.

Section 55 of the Act clearly states that any significant question of law or facts concerning the interpretation of the British North America Acts or the constitutionality or interpretation of any federal or provincial legislation may be referred by the Governor in Council to the Supreme Court for hearing and consideration.