

have regard to the legal opinion of the Minister of Justice, in so far, of course, as it does not affect any question of principle upon which we stand. I am speaking now altogether of the framing of the sections, the forms of expression, after once the principle has been determined. But my friend, the Deputy Minister of Justice, used language in this memo, which, I understand, I am at liberty to use?

Mr. FITZPATRICK. I look upon it as the statement of a public officer which is free to every member of the House, and bearing in mind that he was the draughtsman of section 15.

Mr. R. L. BORDEN. I am aware of that. My hon. friend the Minister of Justice will stand by section 16 and will not deny himself the right of claiming that he is the draughtsman of that section. I shall read certain observations of the Deputy Minister of Justice, in this opinion, which seems to me to illuminate very greatly the question to which I have just now been adverting—the question as to whether or not the Act of 1875 constitutes a compact to which regard must be had when we are framing a constitution for the new province; and I do not think anything has been said or quoted by any hon. gentleman on this side which is more absolutely destructive of the position of the government in this regard than are the words of the deputy minister to which I now call attention. In referring to clause 15, he says:

The criticism of the clause is, I think, largely, if not altogether, founded on misapprehension. It is, as I understand it, suggested that these words may enlarge or limit the constitutional powers of parliament or the legislature of Alberta. They can, I submit, have no such effect.

He is dealing with clause 15, which contains a reference to certain laws now in force in the Territories, and the question was whether or not, by the language of section 15, those would be continued as a part of the constitution of the Northwest Territories, so that they could not be changed afterwards, either by the parliament of Canada or the legislature of a province. It is necessary that I should state that, in order that hon. gentlemen on both sides may realize the full significance of the words of the deputy minister. I shall begin again the quotation, in order not to interrupt the continuity of Mr. Newcombe's opinion:

The criticism of the clause is, I think, largely, if not altogether, founded on a misapprehension. It is, as I understand it, suggested that these words may enlarge or limit the constitutional powers of parliament or of the legislature of Alberta. They can, I submit, have no such effect. The Northwest Territories Act, so far as it affects constitutional powers, is merely a delegation by parliament to the assembly of the Territories of certain legislative authority for the government of the Territories provisionally. The territorial assembly is, with all its con-

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stituent authority, by the provincial Acts abolished, and two new legislative bodies are established with provincial powers. They differ in their nature from the Territorial assembly, and are in no proper sense successors to it. It cannot, I think, be argued that because the Territorial assembly had certain legislative powers, the provincial legislature, in the absence of provisions to the contrary, must thereafter have the same powers. A provision in the Northwest Territories Act, for instance, that the Territorial assembly may legislate in respect of education, could not, by reason of the clause in question, be held to confer any power with respect to education upon the provincial assembly. First, because it is no application whatever to the provincial assembly, and secondly, because the constitution and powers of the provincial assembly are comprehensively provided by the express provisions of the provincial Act.

Nothing more forcible or severe could be said with regard to the Act of 1875. The Deputy Minister of Justice, in giving this opinion, was dealing with the question of legislative power. He said that we cannot because a certain power was possessed by the Territorial assembly argue, under section 15, that any similar power shall be possessed by the provincial legislature. Tenfold stronger, it seems to me, is the argument that we cannot in any sense argue that, because there is a restriction upon the legislative assembly of the Territories, that same restriction shall continue as a restriction upon the legislatures of the new provinces. The argument is more forcible in the case of a restriction than in the case of a power. He continued—I omit some portion referring to my contention as to section 15—

The other section to which Mr. Borden refers is section 14 of the Northwest Territories Act with regard to education. This seems to be a case where it is clearly otherwise provided by this Act, inasmuch as the provincial Acts contain express provisions determining the provincial powers with regard to education, but if they did not contain any such provisions I do not see how it could be argued that a power, which the Territorial assembly had, can without apt words be made to apply to the two provincial assemblies; they are not continuations of the Territorial assembly; they derive no powers by reference to its constitution; they are new bodies created in the execution of special powers by parliament, and there is no room for the application to them of the laws previously defining the constitution of the Territorial assembly.

Now, I venture to submit that the observations of so eminent a lawyer as the Deputy Minister of Justice, concurred in, as they seem to be with respect to section 15, by my hon. friend the Minister of Justice, apply with even more force to the argument which has been made by the government as to the necessity for embodying the Act of 1875 in the constitution of the new provinces. As has been forcibly pointed out by Mr. Newcombe, the legislative assembly of the province is not the successor of the legislative assembly of the