

provision of which requires lawyers to encourage public respect for the administration of justice, I move, seconded by the hon. member for Cambridge (Mr. Speyer):

That this House hereby adjourns the debate on the constitutional package until the highest court in the land can decide if it is legal.

Madam Speaker: Is there unanimous consent for this motion?

Some hon. Members: Agreed.

Some hon. Members: No.

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• (1415)

BUSINESS OF THE HOUSE

CONDEMNATION OF OFFICIAL OPPOSITION—MOTION UNDER S.O. 43

Mr. John Campbell (LaSalle): Madam Speaker, I rise under the provisions of Standing Order 43. As you know, Madam Speaker, the business of governing Canada is grinding to a halt as a result of the petulance and pique of the Leader of the Opposition (Mr. Clark) and his colleagues preventing Parliament from doing its work. I therefore move, seconded by the hon. member for London-Middlesex (Mr. Bloomfield):

That this House condemns the tyranny of the minority in this House as exemplified by the Conservative party.

Some hon. Members: Hear, hear!

Madam Speaker: Is there unanimous consent for this motion?

Some hon. Members: Agreed.

Some hon. Members: No.

ORAL QUESTION PERIOD

[English]

THE CONSTITUTION

RULING BY SUPREME COURT OF NEWFOUNDLAND ON CONSTITUTIONAL RESOLUTION—POSSIBLE LAUNCHING OF APPEAL

Right Hon. Joe Clark (Leader of the Opposition): Madam Speaker, my question is for the Prime Minister. Can the Prime Minister tell the House of Commons whether he intends to instruct his officials to launch an appeal in the Supreme Court of Canada from the decision rendered yesterday by the Supreme Court of Newfoundland, a decision which finds the government's constitutional resolution illegal?

Right Hon. P. E. Trudeau (Prime Minister): Madam Speaker, the position the government has taken after hearing

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the decision rendered yesterday by the court in Newfoundland and after learning, at the end of last week, that the Supreme Court of Canada had decided to hear the constitutional case before the end of this month, was to express the hope that these two cases would be brought before the Supreme Court of Canada, as well as the judgment of the Quebec Court of Appeal, if it is rendered in time. In other words, we would like to have the Supreme Court of Canada adjudicate all the cases which were brought before the courts by the provinces. How that will be done, I cannot say at this stage.

REQUEST FOR ADJOURNMENT OF DEBATE ON CONSTITUTIONAL RESOLUTION

Right Hon. Joe Clark (Leader of the Opposition): Madam Speaker, I am sure the Prime Minister would not want this Parliament to be put in the position of voting on an illegal matter.

Some hon. Members: Oh!

Mr. Clark: We on this side of the House certainly do not want this Parliament to be put in the position of voting on an illegal matter, which is the situation now.

Some hon. Members: Hear, hear!

Mr. Clark: In light of that, and in order to protect and respect the rule of law in the country, I wonder if the Prime Minister would consider adjourning debate on the constitutional resolution, which has been presented to the House of Commons and to the Senate, so that we can get on with the other important business of the country. Will he consider adjourning this debate until the Supreme Court of Canada has decided the legality of the government's position, and then bring the question back to Parliament for whatever limited debate would be necessary, after the Supreme Court of Canada had ruled what constitutional matters it is lawful for the federal Parliament to decide?

Some hon. Members: Hear, hear!

Right Hon. P. E. Trudeau (Prime Minister): Madam Speaker, the Leader of the Opposition makes the assumption that Parliament would be voting on an illegal matter. I do not recall him making the assumption that the matter was legal after the Court of Appeal in Manitoba had made a favourable decision.

Some hon. Members: Hear, hear!

Mr. Trudeau: I think that establishes, once again, that the opposition is not as interested in establishing the legality as it is in causing delay.

Some hon. Members: Hear, hear!

Mr. Trudeau: The point is that we on this side are interested in knowing whether the measure is legal or not. That is why I made the suggestion, my offer, yesterday. The whole point is

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we do not know, in light of the Newfoundland decision, whether the matter is legal or not.

● (1420)

We thought it was legal after the Manitoba decision, and we thought it had been legal before; but now there is a doubt. That is why we are putting to the opposition a proposition which would permit us to determine whether a specific bill, a specific resolution—a joint resolution, as it would be—is legal or not. I repeat, if it is judged not to be legal, then we will not press for its passage in the United Kingdom.

Mr. Stevens: Very big of you!

Mr. Crosbie: Fantastic concession!

Mr. Trudeau: Well, the counterpart of that fantastic concession, as the hon. member for St. John's West called it, would be that, if the matter is legal, then I would hope that the opposition would withdraw their opposition.

Mr. Crosbie: Not likely. Why should we? We oppose this process. It is unconstitutional. It is against the spirit of the Constitution.

Mr. Trudeau: I hear the hon. member for St. John's West saying that he opposes the process, and that it is unconstitutional. That is why I am suggesting that we have the courts determine whether his opinion or ours is right.

Mr. Clark: Madam Speaker, the Prime Minister and the country know that the Prime Minister made his suggestion yesterday because he had no alternative.

Some hon. Members: Hear, hear!

Mr. Clark: He is trying to pretend that a position he is forced to take is an offer, when, in fact, all he is doing is admitting that he has been put in a box by the Supreme Court of Newfoundland which has decided that his constitutional position is illegal. That is now the law of Newfoundland. That is now the position with which this Parliament is faced.

The Prime Minister said that there was some doubt. There is no doubt, as it stands in relation to the decision of the Supreme Court of Newfoundland. That court has decided that it is illegal. This government is asking this Parliament to proceed with a matter which has been declared to be illegal by a court.

Will the Prime Minister of Canada seriously consider adjourning debate on this matter until the Supreme Court of Canada can assure the Prime Minister of Canada and this Parliament that what the Prime Minister is proposing is, in fact, legal or otherwise? Let me say to the Prime Minister that it makes no sense at all for him to say that he would not ask the British parliament to act on a matter which is illegal, but he wants the Canadian Parliament to act on a question which is illegal.

Some hon. Members: Hear, hear!

Mr. Clark: My question is quite simple. Why will the Prime Minister not apply to the Canadian Parliament the same practice which he applies to the British parliament? Why will he not adjourn discussion of this resolution until the Supreme Court of Canada has decided whether it is legally proper for the Parliament of Canada to act alone on the resolution?

Some hon. Members: Hear, hear!

Mr. Trudeau: Madam Speaker, the Right Hon. Leader of the Opposition says that we have been put in a box by the Newfoundland decision. I repeat the same question. Why did he not find himself in a box by the Manitoba decision?

Mr. Hnatyshyn: It is a hypothetical judgment.

Mr. Trudeau: The Manitoba decision was to the effect that our action was legal, and we continue to act and the opposition continues to oppose. Therefore I argue that legality is really not what interests the Leader of the Opposition. It is obstruction that interests him. The Leader of the Opposition makes a suggestion that we adjourn the debate so that the Supreme Court could be seized—with what, Madam Speaker?

An hon. Member: Whatever you refer them to.

Mr. Trudeau: It would be seized with something which the court of Manitoba, through the voice of its Chief Justice, said was hypothetical. We must seize the court with something certain.

● (1425)

Let me read, if I may have the permission of the House, what Chief Justice Freedman of the Manitoba Court of Appeal said. We had long readings from the Newfoundland judgment yesterday. If the House would bear with me, I should like to read a very important point which permits me to answer the question of the Leader of the Opposition. I quote Chief Justice Freedman as follows:

We therefore face a real likelihood that the amendments sought in the proposed resolution may be altered, deleted, or supplanted by other amendments before the resolution is deemed ready for transmission to Her Majesty. In this situation there is a danger that if we answer Question 1... we may later find that we have answered matters no longer before us and have not answered matters that emerged in their stead. The Court should not be exposed to the risk of such an adventure in futility.

The Supreme Court, in the past, has also frequently objected to receiving matters referred to it because of their hypothetical nature. Let me remind the House that we have now a resolution, with a proposed amendment from the hon. member for Provencher.

An hon. Member: Oh, come on, Madam Speaker, this—

Mr. Trudeau: The hon. member for Provencher has moved that we delete a very important part of this resolution, notably the part dealing with the referendum and amending procedure. If we go to the courts now, would we go with or without the amendment having been adopted? If we went in the present state and the court made this kind of statement, then we would

have no solution. The court would say that there is an important amendment, there is another important amendment from the NDP, and we heard yesterday that the Tories want to introduce an amendment relating to property and certainly an amendment relating to the equality of sexes and to aboriginal rights. There are many amendments.

What would the Leader of the Opposition do if the court adjudicated on this hypothetical case? Would he then be prepared to pass that resolution judged legal by the Supreme Court, or would he say, "Give us a few more days. We have a couple more amendments to move."? If the latter, would he then say, "On these new amendments, nobody knows whether they are going to be legal or not. Let's go to the Supreme Court again to see if they are going to be legal." That is why, Madam Speaker, we have made a proposal to go to the courts, as it is our duty as legislators, with something certain. It has happened frequently in the past, and I have more than half a dozen instances in the past—

Some hon. Members: Order, Madam Speaker.

Mr. Trudeau:—in the past ten years where the Supreme Court has judged that Parliament acted in an ultra vires sense. This might or might not be the case. All I am saying is that our proposal has the advantage of going to the courts with something certain and final. If it is legal, that settles the matter; if not, it also settles the matter.

Why does the Leader of the Opposition, if he is interested in justice and right, not accept this course?

Some hon. Members: Hear, hear!

Mr. Clark: Madam Speaker, I will not take a great deal of the time of the House pointing out to the Prime Minister that in relation to Bill C-60 he adopted exactly the procedure that he rejects in this case.

Some hon. Members: Hear, hear!

Mr. Clark: He knows there is nothing hypothetical about the Newfoundland Supreme Court decision.

Some hon. Members: Hear, hear!

Mr. Clark: What we are doing is proposing a way by which the Parliament of Canada could get on with the business of Canada rather than debating a matter which might be illegal.

I ask for the third time, is the Prime Minister prepared to consider adjourning this debate on a resolution which has been declared illegal by the Supreme Court of Newfoundland, to allow Parliament to get on with other business and to permit us to come back to consider this question, or those elements of this question which the Supreme Court finds legal, taking whatever limited time is necessary after the Supreme Court of Canada has decided which parts of the government's proposal are within the competence of this Parliament of Canada to enact?

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• (1490)

Mr. Trudeau: Madam Speaker, let us try to understand that proposal. The Leader of the Opposition says there is nothing hypothetical about what has been in front of the court of Newfoundland. The court of Manitoba, on the contrary, found that it was hypothetical.

Mr. Crosbie: It made a judgment.

Mr. Trudeau: But let me take the Leader of the Opposition's proposal. The resolution, according to this proposal, as I understand it, would go to the Supreme Court now in its present form, presumably without the Provencher amendment; presumably without the Indian amendment, and presumably without the amendment on women. It would be going with something not hypothetical but something absolutely final.

Mr. Baker (Nepean-Carleton): That would be your choice.

Mr. Trudeau: If it is not going to be hypothetical, it has to be something which exists now if we adjourn the House. If we go with something that exists now, and the Supreme Court of Canada judges it to be legal and intra vires, is the opposition prepared to say that the very next day or days, without any further amendment, that thing will be passed and sent to the United Kingdom?

Some hon. Members: No.

Mr. Trudeau: They say no.

Some hon. Members: Oh, oh!

Mr. Trudeau: Therefore it means they want to change it in some way. That establishes our point.

Mr. Andre: How do you know what a judge is going to say?

Mr. Trudeau: It is hypothetical until we have made a final decision, and that settles the matter.

Some hon. Members: Hear, hear!

REPORTED WARNING BY BRITISH GOVERNMENT OF IMPOSITION OF ONE-YEAR HOIST

Hon. Jake Epp (Provencher): Madam Speaker, I direct my question to the Minister of Justice. However, I tell the Prime Minister that no matter what face he wants to put on the situation—

Some hon. Members: Oh, oh!

Mr. Trudeau: Is that my question or his?

Mr. Epp:—he has a matter which has been judged illegal by the Supreme Court of Newfoundland now, and he has to deal with it now.

Some hon. Members: Hear, hear!

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Mr. Epp: Nevertheless, there is another matter beyond the legal question, and that is the judgment made by the Supreme Court of Newfoundland that the government cannot change the federation through indirect means, which obviously it is prohibited from doing through direct means. That being the case, I would like to ask the Minister of Justice this question. After his return from Britain, and in view of the news of today, was he or any minister of the government warned that the British government, regardless of when the British government would get the resolution before it, was contemplating a one-year hoist?

Right Hon. P. E. Trudeau (Prime Minister): Madam Speaker, the member from Manitoba made some remarks to me. I presume he was asking a question of me. I put to him the same consideration that I put to his leader. He says that the Newfoundland Court made certain decisions. I would point out to the hon. member that the appeal court of his own province made contrary decisions, which establishes that there is some doubt as to where the legality lies. I do not think, in fairness, that he can quote only one judgment when we have two contradictory ones. That is why our proposal is to go to the Supreme Court of Canada so that the Supreme Court can adjudicate in a final way as to which of these contradictory decisions is the right one.

Some hon. Members: Hear, hear!

Mr. Epp: Madam Speaker, I simply say to the Prime Minister that he could do that right now and give the reference.

As the Minister of Justice still has not had an opportunity to answer my question because of the Prime Minister's intervention, may I ask him whether or not that warning, namely, the warning that the British government would use a one-year hoist regardless of when it would receive the proposition, was given to him or to any other minister? As well, I remind the minister of the question that I asked him on his return from London, that the British parliament could not deal with the matter while it was before the Canadian Supreme Court. On those warnings we have asked the minister about, could he now answer those questions specifically?

[*Translation*]

Hon. Jean Chrétien (Minister of Justice and Minister of State for Social Development): Madam Speaker, to the first question I answer unequivocally that at no time was it indicated that the British government intended to postpone the introduction of the House of Commons and Senate resolution in the British Parliament. Mr. Pym and I discussed the timing, and I am convinced that when we send the resolution of the Parliament of Canada to the British parliament, it will act as Mrs. Thatcher said it would, quickly and in accordance with the precedents and the law.

[*English*]

BUSINESS OF THE HOUSE

OPPORTUNITY TO AMEND CONSTITUTIONAL RESOLUTION WITH REGARD TO STATUS OF WOMEN AND NATIVE RIGHTS

Mr. Edward Broadbent (Oshawa): Madam Speaker, my question is for the Prime Minister. Yesterday he made it clear that the constitutional resolution would be kept in Canada until the Supreme Court of Canada—

Miss MacDonald: No, he didn't.

Mr. Baker (Nepean-Carleton): Too bad, Ed.

Some hon. Members: Oh, oh!

Mr. Broadbent: —made a ruling on its legality.

Mr. Nowlan: You weren't here.

Mr. Broadbent: He also said that two proposed amendments from the New Democratic Party, one affecting the equality of women and one affecting native rights, ought to be included in that final resolution. In that he added to the commitment previously made by the Minister of Indian Affairs and Northern Development and the Minister of Justice.

In order to ensure that these important amendments, to which the government has committed itself, are included in the final resolution, I ask the Prime Minister what steps is the government prepared to take in the House, given the procedural delays which have occurred, to ensure that they are in fact included?

Right Hon. P. E. Trudeau (Prime Minister): Madam Speaker, I am somewhat puzzled by the question asked by the Leader of the New Democratic Party. There is before the House now a proposal for allocation of time, which would permit us within a reasonable period—a few days—to dispose of the amendment of the hon. member for Provencher and to move the amendment concerning native rights, and hopefully an amendment concerning equality of the sexes, since it appears that all sides of the House would like to see those included.

There is a motion before the House now. The hon. member is asking me what steps we are prepared to take. At three o'clock we would like to get on with this motion and deal with it, Madam Speaker. That is the only answer I can give to the Leader of the New Democratic Party. But, in order to do that, we have to have the official opposition cease its attempts to hijack Parliament.

Some hon. Members: Hear, hear!

Mr. Broadbent: Madam Speaker, given the commitments which the government has made on these two important amendments, and given the House is in fact being blocked from proceeding with these measures, an action which members of my party agree is taking place—

Mr. Huntshyn: Isn't that something?