

Hon. Jacques Flynn (Leader of the Opposition): When?

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

An Hon. Senator: Explain.

• (2010)

Senator Hastings: We are planning meetings in Alaska with government officials, industry officials and community associations, and the purpose of the motion is to permit us to visit Juneau, Alaska, for meetings with the Governor of Alaska and state officials with respect to the construction of the Alaska pipeline.

Senator Flynn: When are these meetings planned to take place?

Senator Hastings: The first week of June.

Senator Flynn: The best time of the year.

Motion agreed to.

QUESTION PERIOD

[English]

THE CONSTITUTION

EFFECT OF JUDGMENT OF SUPREME COURT OF NEWFOUNDLAND

Hon. Jacques Flynn (Leader of the Opposition): Honourable senators will not be surprised that I have for the Leader of the Government in the Senate a question on the judgment rendered today by the Supreme Court of Newfoundland.

My first question is: Has the government decided to alter its course of action with regard to the constitutional package? More specifically, has the government decided to appeal to the Supreme Court of Canada?

Hon. Raymond J. Perrault (Leader of the Government): Honourable senators, I had anticipated the question with respect to the decision rendered by the Newfoundland court today.

Senator Flynn: I grant you that.

Senator Perrault: Honourable senators, may I quote, in part, from remarks which have been made today by the Right Honourable the Prime Minister? I believe they shed some light on the situation as it exists. He said:

—we are somewhat disappointed by the judgment of the Supreme Court of Newfoundland; but it is certainly a very important one.

He went on to say that two decisions have now been made which are in conflict. One decision, rendered by the Manitoba Court of Appeal, ruled in favour of the federal government.

Senator Flynn: It was a three-to-two decision.

[Senator Hastings.]

Senator Perrault: Yes, three to two, by majority; and the Newfoundland court ruled in favour of the provinces.

This is what the Right Honourable the Prime Minister said:

These two decisions which are in conflict, and the fact that the Supreme Court of Canada has now decided that it would hear the appeal from Manitoba, and presumably any other appeals which are brought before it on this subject, before the end of April,—

I must say, that is sooner than had been anticipated.

—leads me to remind the House what some of the judges in the Manitoba case said, including the Chief Justice.

The Prime Minister went on to say:

They said that as long as the resolution was not out of the House the first question put to the court was hypothetical, indicating that it would prefer to judge not on a hypothetical bill but on a real bill.

• (2015)

The Prime Minister continued:

As a result of that, I wonder if we could not agree to pass the resolution and make sure the Supreme Court of Canada is acting, not on a hypothetical case, but on a real case, and agree to respect the decision of the Supreme Court.

However, he went on to say this—

Senator Flynn: A little later.

Senator Perrault: Yes, a little later, but to complete his statement, he said:

I am prepared to suggest that if we can agree on some form of time allocation which would not only get the resolution approved with the amendment dealing with women's rights—which I believe have been pressed from various sides of the House—and an amendment which has been discussed on aboriginal rights—

Then, after being interrupted, he continued:

If the honourable members opposite do not want to approve the resolution another way, my offer will still stand, that we get a resolution from the Supreme Court of Canada in return for which the government would certainly undertake not to press the United Kingdom to pass the resolution until it has seen the judgment of the Supreme Court of Canada,—

Then the Right Honourable the Prime Minister stated:

If the Supreme Court renders in favour of the resolution, I take it that it would settle the matter and we could put an end to this debate which has been going on for several months. Of course, if it renders against us, the government would have to admit that it cannot proceed in the United Kingdom with the resolution in this form.

That is where matters stand. There are reports that the Commons house leaders have agreed to meet. I understand that some meetings involving house leaders may have already taken place to discuss the Prime Minister's further proposal which he made today, to have Parliament deal with the

resolution by Easter, and to decide whether this suggestion is acceptable to the other parties in the House of Commons.

Senator Flynn: Honourable senators, I have a supplementary question. Notwithstanding the problem of the parliamentary process, with regard to the appeal which the Supreme Court of Canada will hear at the end of April, would the government consider intervening directly and putting its own questions forward in order to cover the entire problem of the constitutional package?

Some views have been expressed to the effect that the Manitoba case does not cover the whole question. My suggestion is that the government should intervene in order to solve the whole problem. Notwithstanding what the Leader of the Government has quoted from the Prime Minister, it seems to me that, despite the fact that it is only a proposal before Parliament, the government's position is exactly the same today as it was with regard to Bill C-60, when reference was made to the Supreme Court on that specific question. I do not see any difference between the situation in which we find ourselves today and that which existed with regard to Bill C-60.

Senator Perrault: Honourable senators, may I say that, particularly in view of the fact that the Honourable Senator Flynn is a former Minister of Justice, consideration will certainly be given to the views he has expressed this evening. It may be that there is a difference of opinion as to whether the Manitoba terms of reference were sufficiently broad, but certainly Senator Flynn's views will be given careful consideration and the suggestion will be taken as notice.

Senator Flynn: May I ask the Leader of the Government whether consideration has been, or will be, given to the alternative of postponing the debate on the resolution until the Supreme Court has ruled in a definite manner? Perhaps then the government can achieve an agreement on an appropriate allocation of time in the other place and in this house.

• (2020)

Senator Perrault: Honourable senators, consideration appears to have been given to that possibility in recent hours, but there is one concern of the government, and that is that any resolution which is ultimately referred to the Supreme Court of Canada should be as complete as possible.

It is our view that the amendments with respect to women's rights and aboriginal rights should be included in any reference to the Supreme Court of Canada. Thus, the present view of the government is to opt to refer the resolution to the Supreme Court of Canada, in its complete and final form, after Parliament has rendered its judgment on it, rather than refer an incomplete resolution to the Supreme Court of Canada.

Senator Flynn: That is what I was suggesting. I am not trying to limit the scope of any questions that might be put before the Supreme Court of Canada. They should be made as wide as possible, but I suggest that the amendments really do not bear on the essence of the problem which the Supreme Court would have to deal with. In any event, I am not

proposing any restriction. On the contrary, I am proposing that the government should intervene to put the question as widely as possible.

Senator Perrault: Honourable senators, I believe we all understand the point which is being advanced by the Leader of the Opposition. However, the government is sensitive to the fact—and I repeat the words that I used earlier this evening—that the Chief Justice of the Manitoba Court of Appeal said that the first question put to the court was hypothetical, to quote his words. He then indicated that the court would prefer to rule on a real bill and not on a hypothetical bill. We want to make sure that the bill which goes to the Supreme Court of Canada is complete, final and reflects the views of the Parliament of Canada.

Senator Flynn: Honourable senators, I suggest that the concern of the Manitoba Court of Appeal would not be the concern of the Supreme Court of Canada, in view of its ruling in the Senate reference.

Senator Perrault: Honourable senators, there again is a differing viewpoint advanced by the Leader of the Opposition. However, some would maintain most vigorously that the two cases are not directly comparable. In any case, surely Parliament can end the impasse and can deal in an orderly way with the constitutional resolution and then get on with the task of dealing with some of the other problems facing the country. I know that honourable senators will be fully co-operative in making sure that this resolution is given fair and complete debate in the Senate.

GRAIN

NEGOTIATIONS RE CROWSNEST RATES

Hon. Nathan Nurgitz: Honourable senators, I have a question to direct to the Minister of State for the Canadian Wheat Board.

Last week the railways apparently made a new proposal to the federal government which would serve, I assume, as a form of alternative to the renegotiation of the Crownsnest rate, something which the Minister of State for the Canadian Wheat Board has said the government was not anxious to get into too quickly. Is the minister aware of this proposal, and, if so, would he inform the Senate of his views on it?

Hon. Hazen Argue (Minister of State for the Canadian Wheat Board): Honourable senators, I am aware of the proposal, in the sense that I have read the newspaper reports. I am not otherwise aware of the proposal.

As I recall, what I read in the newspapers would indicate that it is really not much different from the proposal we received in the past. I am certainly willing to make inquiries to see if I can get any proposal that they may have made and make any comments on it that would seem appropriate.

I think the situation with regard to the Crownsnest rate is quite clear. The Prime Minister has said that he and his government would not wish to fiddle with the Crownsnest rate