

Point of Order—Mr. Clark

have a clear question of privilege to present to me. What he has said up until now has nothing to do with privilege. I can help him only by saying that if he wants to help his constituents he can continue to ask questions, to probe or discuss this matter at times when the House is debating these questions, but not through the device of raising a question of privilege.

Mr. Mayer: With all due respect, Madam Speaker, how am I to ask questions of a minister responsible for the Canadian Wheat Board when he is not present in the House? Can I then give you notice, Madam Speaker, that I would like to raise this question as a point of order at a later date?

Madam Speaker: The hon. member may raise a point of order when he wishes to.

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POINT OF ORDER

MR. CLARK—THE CONSTITUTION—APPEAL TO SUPREME COURT

Right Hon. Joe Clark (Leader of the Opposition): Madam Speaker, I am rising on a matter discussed in question period today which dealt with the propriety of the question whether the constitutional resolution should be before the House of Commons at a time when the Supreme Court of Canada is seized with a question having to do with that very resolution.

The House will recall that in an exchange earlier today I asked if the Prime Minister of Canada (Mr. Trudeau) would respect the rules of this House and the traditions of the Supreme Court of Canada and withdraw the resolution until the matter with which the court has now been seized is resolved. The Prime Minister, while not answering my question, invited me to present the case in the House of Commons before yourself, Madam Speaker, as to whether it is appropriate to have simultaneous consideration of the constitutional resolution by the Supreme Court of Canada and the House of Commons.

I am now responding to that invitation by the Prime Minister to argue that point of order, to argue that it is inappropriate for these two institutions, under our rules and practices, to be simultaneously considering the same question.

At the time of the publication of the government resolution on the Constitution, there were a number of objections raised by a number of provinces. Certain provinces brought three specific questions before the Manitoba Court of Appeal. Those questions began to be heard in early December, I believe. The deliberations proceeded, and the decision handed down showed a three to two decision against the province of Manitoba and the other provinces which were raising questions regarding the legality of the constitutional resolution. Hon. members of the House who paid attention to that constitutional matter will remember that the justices in that court were very evenly divided because there were some very real questions of law which remained to be resolved. As a consequence of that decision, an appeal was brought before the Supreme Court of Canada by the government of Manitoba and others. That

appeal was accepted by the Supreme Court of Canada and that court now stands seized with the same constitutional question on the resolution which is now before the House of Commons.

The matter which must be considered and decided by the Chair is whether it is appropriate, under the rules relating to questions which are sub judice, for this House of Commons to be considering a matter which is under challenge, which is under consideration by the Supreme Court of Canada. It may well be that an attempt will be made by the justices of the Supreme Court to have priority given to that question so that there can be a speedy dispatch of the appeal now before it. That matter is out of our hands, although it is my understanding that efforts will be made to ensure that it will come before the Supreme court with some dispatch.

In this House we have dealt with questions pertinent to the rule that matters which are sub judice—before the courts—cannot be discussed here in the House of Commons. It is a rule with some specific applications, but it has never been raised in the precise circumstances that I intend to raise today. I will come to that later in my argument.

Very frequently, questions have not been allowed to be put in the House because those questions were before the courts. On other occasions, there have been actions which the House wanted to take but was precluded from taking because those matters were before the courts. The basic principle is set out in Beauchesne's Parliamentary Rules and Forms, which I quoted earlier today, citation 338(4). I will read that citation and then emphasize the particular principle which is most important. That citation says:

The reference of a bill to the Supreme Court of Canada withdraws that bill temporarily from the jurisdiction of Parliament. If the constitutional situation of human rights is submitted to the Supreme Court, it thereby becomes sub judice and cannot be considered by a committee of the House until the court has given its decision. The question cannot be before two public bodies at the same time.

I repeat, the question cannot be before two public bodies at the same time.

An hon. Member: Nonsense.

Mr. Clark: An hon. member of the New Democratic Party says "nonsense". He is the hon. member for Broadview-Greenwood (Mr. Rae). Perhaps he will write his own edition of parliamentary rules and forms—

An hon. Member: What you are saying is constitutional nonsense.

Mr. Clark: Most of us prefer Beauchesne to the hon. member for Broadview-Greenwood.

Some hon. Members: Hear, hear!

Mr. Clark: If he were to associate himself with Beauchesne on constitutional matters, he would be in better company with constitutional matters than he has been in some of his more recent associations.

Some hon. Members: Hear, hear!