

## UNEMPLOYMENT INSURANCE ACT

### MATERNITY BENEFITS—INQUIRY WHETHER AMENDMENT PLANNED

**Mr. Chas. L. Caccia (Davenport):** Madam Speaker, my question is for the Minister of Employment and Immigration. It has to do with the eligibility requirements for maternity benefits under the Unemployment Insurance Act. In view of the fact that in 1980 an estimated 17,000 women were denied maternity benefits under the Unemployment Insurance Act, even though they were eligible to receive regular benefits, would the minister inform this House if there are plans to amend the act in order to provide expectant mothers in the labour force with an equitable law? If so, when does he propose to proceed with a bill to amend the present act?

**Hon. Lloyd Axworthy (Minister of Employment and Immigration):** Madam Speaker, as I have indicated in the House before, there is a review of the Unemployment Insurance Act being presently undertaken. The findings of that review are now being considered. Certainly the issue of the "magic ten rule" relating to maternity benefits is a major topic in that review. I hope to have results some time this spring which could be made public for consultation with interested groups and members of the House. As soon as we come to an agreement with respect to the direction to take in the unemployment insurance area, certainly in the area of maternity benefits, we would then be prepared to propose legislation. I do not see that happening until we have had an opportunity to have some form of public consultation.

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● (1450)

## THE CONSTITUTION

### INQUIRY WHY RESOLUTION NOT REFERRED TO SUPREME COURT

**Hon. James A. McGrath (St. John's East):** Madam Speaker, my question is supplementary to the question raised by the hon. member for Kingston and the Islands. Given the Prime Minister's replies in the House today to the effect that the provinces were using the courts as a delaying tactic and that he conveyed this impression to the British minister in December, why did the government not accept the option of short-cutting this so-called delaying process and refer the matter to the Supreme Court, as it did in the case of Bill C-60?

**Right Hon. P. E. Trudeau (Prime Minister):** Madam Speaker, for the very simple reason that we do not believe that it is up to the courts to decide this question, but that it is essentially a political question. That is the position of this government. What I did say to Mr. Pym, although it was not part of the answer I gave a moment ago, was that once the BNA Act was patriated with an amending formula and a charter of rights, any citizen can attack, if he wishes, any law which he believes to be ultra vires or illegal in some way. He can go to the Supreme Court and it will decide whether any

## Oral Questions

part of the law is ultra vires. The courts make such decisions constantly. I believe there are some 30 cases before the Supreme Court right now dealing with constitutional matters. This matter would merely constitute one more case. If a citizen or a group of citizens does not want to be bound by the charter and wishes to prove that the charter is not legally binding, they can always take action in the courts.

Of course, our view is to the contrary, and all precedent is to the effect that when the Parliament of Canada submits a request to the British parliament, the British parliament has no choice but to pass the resolution in the form presented by the Canadian Parliament.

**Mr. McGrath:** Madam Speaker, regardless whether the government looks upon this matter as a political question or a question of law, the fact remains that six provinces have decided, on a question of law, on the question of the process, to take the federal government to court. The point I wish to make is that the federal government could have taken the question to court itself as it did in the case of Bill C-60, and the question could be based on the unilateral process of the government.

Did the Prime Minister discuss this with the British minister? Obviously, if he were to convey the impression that the provinces were using the courts as a delaying tactic, then the obvious question from Mr. Pym or from anybody else would be, "Why don't you take it to court?" Whether or not that question was raised, did the Prime Minister tell the British minister why the government was not taking the matter to court itself?

**Mr. Trudeau:** Madam Speaker, I just told the hon. member why we were not taking the matter to court.

**Mr. McGrath:** I know, but did you tell the British minister?

**Mr. Trudeau:** Madam Speaker, I cannot recall whether or not I told the British, but I am prepared to tell them now that this is our view. In so far as the comparison to Bill C-60 is concerned, the point raised by the hon. member has been made before and I have answered it before. Bill C-60 purported to have the federal government, within the powers it has under Section 91 of the Constitution, do certain things within its jurisdiction. Until that time we had believed that amendment respecting the Senate was under federal jurisdiction. When we were challenged that perhaps section 91 did not authorize us to change the Senate as a matter of federal jurisdiction, I said that I was prepared to test that contention in the courts. It is up to the courts to interpret Section 91 as it is written.

This is our position and it will remain as our position when the charter of rights is brought home. If the courts want to interpret the charter of rights and believe that it is ultra vires, I will stand by their judgment. But first let us get the charter and the Constitution to Canada so that the courts in Canada may say what they believe is the law.