

*Privilege—Mr. McGrath*

1. If the amendments to the Constitution of Canada sought in the "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada", or any of them were enacted, would federal-provincial relationships or the powers, rights or privileges granted or secured by the Constitution of Canada to the provinces, their legislatures or governments be affected and, if so, in what respect or respects?

2. Is it constitutional convention that the House of Commons and Senate of Canada will not request Her Majesty the Queen to lay before the Parliament of the United Kingdom of Great Britain and Northern Ireland a measure to amend the Constitution of Canada affecting federal-provincial relationships or the powers, rights or privileges granted or secured by the Constitutions of Canada to the provinces, their legislatures or governments without first obtaining the agreement of the provinces?

3. Is the agreement of the provinces of Canada constitutionally required for amendment to the Constitution of Canada where such amendment affects federal-provincial relationships or alters the powers, rights or privileges granted or secured by the Constitution of Canada to the provinces, their legislatures or governments?

The fourth question was the one submitted by the government of Newfoundland; it deals specifically with the terms of union. It reads:

4. If Part V of the proposed resolution referred to in question 1 is enacted and proclaimed into force could

(a) the Terms of Union, including terms 2 and 17 thereof contained in the Schedule to the British North America Act, 1949 (12-13 George VI, c. 22 (U.K.)), or

(b) section 3 of the British North America Act, 1871 (34-35 Victoria, c. 28 (U.K.))

be amended directly or indirectly pursuant to Part V without the consent of the government, legislature or a majority of the people of the province of Newfoundland voting in a referendum held pursuant to Part V?

On each question the Court of Appeal of the Supreme Court of Newfoundland unanimously ruled in favour of the provinces. I intend to place before Your Honour arguments indicating that this decision directly affects my privileges as a member of this House. Today I am speaking to a matter of personal privilege. I should like to refer to Beauchesne's fifth edition, Citation 16, which reads in part as follows:

The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its members and the vindication of its own authority and dignity.

Also in that citation Beauchesne refers to Sir Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, nineteenth edition, 1976, at page 67.

It bears repetition to note what Beauchesne said, that the House cannot perform its function without the unimpeded use of the services of its members and by each House for the protection of its members and the vindication of its own authority and dignity. I am being asked, as a member of this House, to do something which the courts have ruled to be illegal. That speaks directly to what Beauchesne had to say. Obviously, it is something that I cannot do. I cannot stand in my place and vote on a resolution that has been declared to be ultra vires and, hence, illegal. To do so would be flying in the face of the trust I have of the people who elected me to represent them here. But, more particularly, I would be flying in the face of the solemn obligation that I have as a member of this House to uphold the rule of law.

● (1530)

**Some hon. Members:** Hear, hear!

**Mr. McGrath:** In its unanimous decision the Newfoundland Appeal Court stated:

By attempting to secure from the Parliament of Great Britain an amendment that would affect the fundamental rights of the provinces without first obtaining the consent of the provinces, the Canadian Houses of Parliament would be arrogating to themselves an authority they do not possess, an authority that would negate the plenary and exclusive power of the provinces to legislate on matters within their competence and would provide access for Parliament into the provincial domain from which they are constitutionally excluded. They would, in fact, be asserting a jurisdiction that would enable them to obtain indirectly what they cannot legally obtain directly.

**Some hon. Members:** Hear, hear!

**Mr. McGrath:** I might say that is practically word for word the position that the hon. member for Provencher (Mr. Epp), and those of us who are associated with him, took when we participated in the deliberations of the Special Joint Committee on the Constitution.

Finally, I would like to quote again from the judgment of the Newfoundland Court of Appeal:

The framers of the British North America Act decided in their wisdom that Canada should not be a unitary state, but a federal one. Canada, however, could, in effect, be converted into a unitary state if that act could be amended simply at the request of the Canadian Parliament without the concurrence of the provinces.

As I have indicated, Madam Speaker, you have already ruled on the very important point of order raised by my leader, the Right Hon. Leader of the Opposition. I do not think I would be out of order if I were to repeat that the pith and substance of the question of privilege I want to place before Your Honour goes right to the privileges of the members of this House; that is, whether or not we as Members of Parliament should be called upon to vote on a measure which has, in fact, been ruled to be illegal by the unanimous decision of one of the federally-appointed superior courts of this nation.

**Some hon. Members:** Hear, hear!

**Mr. McGrath:** The fact that the court is the Supreme Court of my own province gives this matter an added dimension in terms of its direct impact on those of us, the seven of us in this House, who represent Newfoundland constituencies. How can I be asked to vote on a measure that the highest court in my own province has unanimously ruled to be illegal? As I said, to do so would be a betrayal of my trust.

There is another point I wish to raise, Madam Speaker. I referred Your Honour today to the exchanges between the Right Hon. Leader of the Opposition, the Right Hon. Prime Minister (Mr. Trudeau), my colleague the hon. member for Provencher and myself, because they are very germane to the point I want to make at this time. If the federal government decided—and this would be a normal thing for it to do—to appeal the decision of the Newfoundland Supreme Court to the Supreme Court of Canada, then we would have ipso facto a reference by this government of its resolution to the Supreme