

editorial

The constitutional muddle

It seems that Canadian politics has been stalled for the last year solely on the issue of the constitution; and due to Monday's Supreme Court judgement, the paralytic inability of the government to do other things may continue, with other dire consequences also ensuing.

Trudeau decided to go ahead and unilaterally patriate the constitution with an entrenched bill of rights, after yet another attempt to obtain provincial agreement failed. The great political fight that followed for the next six months is not the subject of this editorial; however, we pick up the story again just before Parliament recessed for the summer.

In a magnificent piece of political compromise, Pierre, Joe and Ed agreed to limit debate, await a supreme Court ruling, and have two more days of Commons debate. Trudeau then hoped to be able to take the proposal to London.

Lawyers for the Conservatives and the eight opposing provinces battled with the government's lawyers in attempts to sway the Supreme Court justices who were expected to bring forth a quick decision in the spring.

Wonderful, said the people of Canada. Those in favor of patriation said when the unilateral move would be declared constitutional, it would pass in parliament due to the government's majority and would then be speedily returned by Britain. Those against the bill said if the court would rule it unconstitutional, the issue would die. In either case, almost everybody wanted the government to return to tackling the immediate economic issues; after all, nobody would lose their homes over a piece of paper tucked away in Westminster.

Admittedly though, it would perhaps be better if they never got around to the issue of cut-backs!

There were three principal questions before the court. Firstly, does the proposal effect provincial rights? The judgement handed down Monday was unanimously, yes; but not surprizingly so as even the federal government had conceded this. The second question was; is there a convention that agreement with the provinces is needed? Here the judgement was six to three in favor. The third question was; is parliament bound by that convention? The court split this up into two segments. They ruled six to three that as far as conventions are concerned it is unconstitutional; however, they also voted seven to two that legally, the federal government can go ahead.

From this, it can be seen that the provinces and Conservatives have won a political victory and lost a legal one, while the government has won a legal victory and lost a political one.

Both sides are claiming victory; Minister of Justice, Jean Chretien, said soon after the ruling: "For 54 years all the governments have tried to get unanimity to resolve the problem, and we have come to the conclusion that it was not possible; so we decided to proceed the way we have proceeded, and we intend to finish the job." Premier Hatfield, who supports the resolution later backed Chretien up by saying, "The supreme court's decision clearly gives the federal government the right to proceed with its constitutional proposals." Trudeau, in Korea, said he was relieved at the outcome, and felt that Quebec did something unconventional when it held its referendum, and that he now has full legal backing, which is what counts.

Joe Clark attacked this by claiming that conventions are part of our way of life. He cited part of the long judgement text, saying written and unwritten parts of the constitution make the whole, and that even the prime-ministership and elections

are not written down. He said "For the government of Canada to try and proceed with its resolution would be destructive of national unity, and would be absolutely wrong for this country," and vowed to fight to the end.

Gary Allen, professor of political science at UNB, shares Clark's opinion saying, "Trudeau will come back arguing the supremacy of parliament in order to get a piece of legislation that effectively destroys the supremacy of parliament"; however, he does feel that the legal argument holds weight. "... basically, the Liberals won the battle, they may well have lost the war," he said in a Monday interview.

Clearly there are valid arguments on both sides for victory. The people; however, can by no means claim to have won. It appears that due to a technicality, and the wishy-washy nature of the ruling, we may be in for another fall of constitutional wrangling which will obscure other issues.

Clark has pointed out that a fourth part of the supreme court ruling, which states that the proposal would allow the federal government to change Newfoundland's terms of union, may necessitate a change in the proposal. And if the proposal is changed, the agreement to limit debate would be annulled as it specifies no amendments. Sneaky politicians!

It seems now that when Parliament reconvenes later in the month, at least several weeks of filibustering by the Conservatives will be in order. Even so, the government's majority will probably successfully pass the legislation.

Meanwhile provincial political trouble is again brewing. In Quebec, Rene Levesque called an emergency sitting of the National Assembly to obtain a unanimous resolution to keep fighting. Surely we have

had enough problems in that province.

Over in Britain, opposition is heating up. The United Kingdom has no written constitution: theirs is wholly based on convention. With the court ruling and heavy provincial lobbying, it will be difficult if not impossible for the package to pass. Whatever the outcome, U.K.-Canadian relations are certain to deteriorate.

Is the constitution really worth a worsening economy, an increased risk of Quebec separation and bad relations with a trusted ally? There are only two things that could stop this: Backing off by the Liberals or a federal-provincial conference resulting in agreement. Knowing Trudeau, the former is extremely unlikely; and would the latter come to pass after half a century?

The sad fact remains that the possibility of this worst-case scenario could have been prevented if the judgement had been all one-way. If it had been pro-federal, the provinces would have had no line of attack; and if pro-provincial, Trudeau could not have legally continued.

The interesting thing is that Chief Justice Bora Laskin, supposedly the most experienced, and one other, dissented with the majority and opted for the federal side on the main issue of conventionality. It is hard to blame the supreme court for the outcome, but considering dissent did exist, the justices' frames of reference and personal opinions must have come into play. Considering this, could they not have agreed, knowing the consequences, not to disagree for the good of the country. In reality, whatever happens to the constitution and whoever wins, it could not be worse than continued wrangling.

As former Newfoundland premier Joey Smallwood put it on Monday, "The court decisions are clear as mud." In fact they could put us all right in the middle of it.