

MR. THACKER—ALLEGED ILLEGALITY OF CONSTITUTIONAL RESOLUTION

Mr. Blaine A. Thacker (Lethbridge-Foothills): Madam Speaker, I rise to speak on this question of privilege in respect of which I hope you will find a *prima facie* case. I hope never in my lifetime or in yours will we again face what we are facing today. We are, indeed, in tough times. The government, as a result of this resolution, has put us in the position that we are really in a fight for the hearts and minds of Canadians.

I am sure, Madam Speaker, you are feeling the loneliness of high judicial office, because you really are on your own. You have joined an elite group of men and women across this country who are occupying positions at a high judicial level. I am sure you have a much clearer understanding of Beckett and his relationship to the Crown.

The issue before you in my question of privilege is whether or not Parliament can pass a law which in its present form is illegal. I submit to you that in your high judicial capacity you stand fifth in line in this nation, starting with the Governor General, the Prime Minister (Mr. Trudeau), the Chief Justice of the Supreme Court of Canada, the Speaker of the Senate and then you as Speaker of this House. In that very unique and high position you are bound to know, by virtue of the concept of judicial notice, that the present constitutional resolution is illegal.

Up until two days ago we were involved in this battle for the hearts and minds of Canadians. The government has a view as to what it wants to do in terms of an amending formula, an entrenched charter and a referendum. We on this side, of course, have a different view of what Canada is as we perceive it. Even when the Manitoba Court of Appeal made its ruling the resolution was still legal because it had not been declared illegal. However, as of two days ago when the Newfoundland Court of Appeal ruled, that constitutional provision became illegal. You are bound by that through judicial notice.

It follows from the Newfoundland decision that all of us find ourselves in a very unique capacity; some in their capacity as ordinary members of the House, some in their capacity as lawyers, some as former members of a cabinet and members of the Privy Council, existing cabinet ministers and you, Madam Speaker, in your high capacity, fifth in order in this nation in terms of precedent. It is within that context that we find ourselves involved in this question of privilege.

I stand by that position in asking you to find a *prima facie* case and refer the question to a committee. If you were to find a *prima facie* case, all these questions of privilege would go before a committee where we could debate this whole matter. This is a precedent and a first in the entire history of this country, as I understand it, in that we have a resolution which has been referred to the Supreme Court while it is still being debated in the House.

The perfect analogy, which I do not believe you have considered yet, would be Bill C-60. As you know, it came before this House and went to a committee. There were some problems and it was referred to the Supreme Court of Canada.

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The Supreme Court found it to be illegal and the bill then died. The analogy with the position we are in today would be, if the day after the Supreme Court of Canada declared Bill C-60 ultra vires of Parliament the government had reintroduced Bill C-60 in the House, in effect asking members to continue to debate the bill even though the Supreme Court had declared it illegal.

● (1610)

I think under those circumstances we would all be in a terrible dilemma in terms of constitutional law, yet that is exactly the point that we find ourselves at today. You have pointed out, Madam Speaker, that we are protected and, in terms of ordinary criminal law or civil law, that is true; but it is not true in terms of our general reputation in the community. Just as members who are clerics, men of God who have made a direct oath to their faith that they will uphold laws—

An hon. Member: Five minutes.

Mr. Thacker: —that are higher than the legal standard. We have a very low political standard in this country, a legal standard that is somewhat higher, and a moral standard which is much higher; and I think we would all agree we should operate at the moral standard. Many people operate at the legal standard, and there are some who operate only at the political standard.

I am saying to you, Madam Speaker, that if you find there is a *prima facie* case this question can go before the committee; the whole concept that has been declared ultra vires could be dealt with, and I would think out of that would flow a new Standing Order, a new understanding among us as to how we would handle this legislation. Therefore, if you do find a *prima facie* case, I will make the appropriate motion.

Madam Speaker: I want to say to the hon. member that despite my high office I am not bound by judgments such as the one to which the hon. member has been referring. I am not bound to concur that something that is going on in this House is legal or illegal in the face of a judgment made by a court.

The hon. member referred to Bill C-60 and its submission to the Supreme Court of Canada. I want to remind him that it is not the Speaker who determined that a reference concerning that bill should go to the Supreme Court of Canada. Although he cites that particular case, I think he defeats his own argument since that was not the Speaker's action but somebody else's, and quite properly so.

As for anything done by this House that would cause damage to his reputation, I am sure he is quite able to defend his reputation to his constituents should he be attacked in the way that members normally are attacked in the course of debate in this House. I can do nothing to protect his reputation; that would be perhaps extending my responsibility quite a bit. All I can do is protect my own. I cannot find a *prima facie* case in the hon. member's question of privilege.

I now call upon the hon. member for Annapolis Valley-Hants (Mr. Nowlan), who is not in the House.