

Supreme Court of Canada. Obviously, the answer to those suggestions was in the negative. Did the federal government at any time consider initiating a reference to the Supreme Court?

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, we have not done so.

Senator Fairbairn: Honourable senators—

Senator Doody: One more “final” question?

Senator Fairbairn: —is such action under consideration by the federal government?

Senator Murray: Honourable senators, it is not. I do not exclude any possibility, but the matter is not under consideration at the moment.

OPINION OF LAW OFFICERS OF THE CROWN ON ALBERTA
ELECTION PROCESS—REQUEST FOR COPY

Hon. H.A. Olson: Honourable senators, can the Leader of the Government get us a copy of the legal advice supplied to the government? The minister has given us two sentences from that statement. One of those sentences said that the basis for finding the action ultra vires is that the Legislature of Alberta does not have any constitutional authority to make laws respecting the Senate of Canada. That means that we have an act on the statute books of Alberta that is ultra vires. The provincial government has unconstitutionally taken action with respect to one of the federal institutions when it had no right to do so. That, I think, is the essence of the statement. By the way, I should point out that it cost Alberta taxpayers approximately \$3.8 million for the legislature to carry out what it did “ultra viresly,” as has been pointed out.

This is a mess. We do not want illegal acts promulgated in Alberta. Surely someone in this country is the custodian of our Constitution, and that is probably the federal government. If we could have a copy of this statement by the law officers of the Crown, we would know who is responsible for our Constitution and for the activities flowing from it, such as actions of provincial legislatures. So it would be useful if we could have a copy of that opinion so that someone could take action and “clean up our act.”

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, first, I am glad that even the two sentences that I have uttered by way of paraphrase or summary have been sufficient to convince or persuade the honourable senator that our legal advisers are right. Clearly he accepts their opinion.

With regard to the second part of the question, the answer is no, and I believe that I am supported by ample precedents when it comes to declining to table a legal opinion from the Department of Justice. I have done what I was asked to do yesterday, which is to paraphrase in a sentence or two—

Senator Frith: “Synopsized” I think is a better word.

Senator Murray: Yes, I synopsized in a sentence or two the opinion we received from our advisers.

[Senator Fairbairn.]

ULTRA VIRES ALBERTA STATUTE—FEDERAL GOVERNMENT
ACTION

Hon. H.A. Olson: Honourable senators, I have a final supplementary question—although I have said that before only to follow with other questions.

According to the minister, the perhaps penultimate minister short of the Prime Minister, responsible for federal-provincial affairs and the Constitution—certainly he has been the leading minister in federal-provincial matters—we are going to stand idly by and not do anything when we know that the Province of Alberta has on its statutes an act that is ultra vires its authority.

● (1500)

Hon. Lowell Murray (Leader of the Government and Minister of State for Federal-Provincial Relations): Honourable senators, again, there are many precedents where provinces have passed legislation which the federal government regarded as ultra vires but did not take any initiative on its own in the courts. The honourable senator will recall the case of Bill 101 passed by the Quebec Legislature. The Prime Minister of the day was invited to invoke the power of disallowance, which he declined to do, but it was clearly the view of the legal advisers to the government that Bill 101 was ultra vires. The Solicitor General of Canada so argued in the courts after somebody else had brought a case and after a delay of some years.

I am not saying that nothing will be done; I am just resisting the more impetuous and emotional impulses of the honourable senator.

Senator Olson: I would just like to have a clean statute that is intra vires in the province of Alberta. The Leader of the Government has convinced me that there is at least one act—and there may be more—that is in ultra vires.

I would ask the Leader of the Government: Who is the custodian of the Constitution of Canada; who sees that it is adhered to? It is the supreme law of this country, is it not?

Senator MacEachen: Pierre Trudeau, of course!

Hon. Dan Hays: Honourable senators, further to this question of the constitutionality of the Alberta Senatorial Selection Act, I now see how the minister can say that it is unconstitutional if the opinion of the law officers is based on the Constitution as it is.

However, has the minister sought an opinion, and, if he has sought it, what opinion was given on whether or not the Alberta Senatorial Selection Act would be intra vires if the Meech Lake Accord were part of the Constitution?

Senator Murray: I am sure they have thought about that, honourable senators, but they would probably decline to give an opinion on what is still a hypothetical question.

Senator Hays: Being a lawyer myself, I can understand how they might say that. I believe it would be within the power of the minister to insist, and perhaps I could conclude my question by asking him to do so.

Senator Murray: I will take the matter under advisement and consider whether there is any further information or advice I can bring in to the Senate.