

saying that if the matter is before the court then it would be inappropriate for the House to deal with it. I think those circumstances are very supportive of the question raised by the Right Hon. Leader of the Opposition in his outstanding presentation to you this afternoon, Madam Speaker.

I submit that this is a situation which we in Parliament must look at, not only from the point of view of our own rules of procedure, since we are a political body, but also from the point of view that what we are doing will allow us to proceed under the rule of law. I say that with all seriousness at this point of time in our history. If we do not operate under the rule of law we will have legal anarchy in our country.

Another point I wish to develop briefly for the Chair's consideration is that you must be cognizant of the expert advice which was given to the members of the committee, not only by those witnesses brought forward by the government but also by those who were brought forward by the opposition parties, witnesses who were acknowledged experts in their field. The point they make is a very interesting one, particularly since they exposed a unanimous point of view.

If we proceed with this resolution and it goes to the Parliament in the United Kingdom, if in its wisdom that body passes the package which it has been requested to pass, and if in its wisdom the Supreme Court of Canada determines that the process was not within the competence of the Parliament of Canada, then we would have a situation of legal anarchy. There would be legal chaos in our country and the rule of law would be prejudiced. When the Right Hon. Leader of the Opposition refers to the fact that by proceeding we attack the judicial system and the Supreme Court of Canada, he is quite right. What we do by our action is put the Supreme Court of Canada in an impossible situation.

The argument put forward in the Kirby memorandum, and in the Prime Minister's own words in his press conference last week, is that the Supreme Court of Canada is not seized with an interpretation of the jurisdiction of the legislation because it is a statute of the United Kingdom. So what happens is that we get the United Kingdom passing a bill which says, "We wash our hands of any further responsibility on constitutional matters and, incidentally, here is your charter of rights, here is your amending formula, here is your bill, your Canada Act. Au revoir, goodbye, and good luck, Canada". That is the end of it. They have no further legislative powers. If the Supreme Court of Canada finds that we, in effect, had no jurisdiction to make that resolution, what would happen to our judicial system? What would happen to the Supreme Court of Canada?

● (1710)

**An hon. Member:** It's a prejudice to all Canadians, every Canadian.

**Mr. Hnatyshyn:** Every Canadian would be subject to the abuse that has been perpetrated upon them because of the fact that we moved against a convention which should be observed by the House of Commons and our Parliament, that we should

not move until such time as the Supreme Court of Canada has decided the question.

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

**Mr. Hnatyshyn:** The rationale of the government is mystifying because its action is a complete reversal of what it is suggesting in its package. What the government is saying is that henceforth matters with respect to the Constitution, as defined in the constitutional package, will be outside the purview of Parliament. In other words, the courts will be responsible for interpreting the package, and legislators will not be able to take steps, collectively or individually, that would go against the principles contained in the constitutional package. But now, when we are talking about the whole process and whether the courts should adjudicate at this point in time, the reverse argument is used by the government. It says that it is a political question; the courts have no role in this process. The government cannot have it both ways. The House of Commons cannot have it both ways. We must decide whether the rules are consistent, whether the courts have the right and the ability to adjudicate not only upon the constitutionality of laws, but also the processes within Parliament. Nobody disputes that. No one in this House would stand in his place and deny that the court has a recognized and fundamental role to play. Under our Constitution, under the British parliamentary tradition, in any democratic system, the court must have the ability to adjudicate upon what is happening within the House.

How can the government House leader, in all seriousness, argue, before the courts of this land have the chance to say that what we are doing is proper, that the courts should not be referred to before we take the next step on this process? I make no apology for it. If the courts say it is within the jurisdiction of the House of Commons to proceed, that is fine. We have had the courts speak on this matter. We may not agree with the decision which has been taken by the government and the way in which it has moved, but at least the courts have spoken on this matter.

What is the situation if the courts find against this matter, and we have already acted and cannot undo what we have done? I do not subscribe to the position taken by the Minister of Justice. When he was asked about this very matter, he said there would be absolutely no purpose in having this matter go to the Supreme Court of Canada. We should move on it; it is a political issue. The Minister of Justice said at that time, in response to a question, "I do not want this question to go to the Supreme Court of Canada because the courts are unreliable". Unreliable!

**Some hon. Members:** Shame, shame!

**Mr. Hnatyshyn:** I would have expected the Attorney General and Minister of Justice of this country to have shown a far higher regard for the judicial process. The Minister of Justice is a Shawinigan lawyer. He is the best kind of lawyer: he is a country lawyer. He knows of the value of an independent judiciary in a properly democratic country. The fact is that