Not very long ago there was another bill before this House which attempted to change the nature of the Senate of Canada. Questions were raised as to whether it was proper for the Parliament of Canada, acting alone in relation to a federal institution like the Senate, an institution in which the provinces had a very real concern, to proceed with that bill.

The government at that time decided that the question of constitutionality was sufficiently important that it would exercise its right to refer that question directly to the Supreme Court. After that reference was followed through, the Supreme Court decided in fact that what this government had tried to do to the Senate was illegal; it did not possess the powers under our Constitution to proceed as it had intended.

During the time that matter was before the Supreme Court of Canada, debate on the question was suspended in this House. We did not consider in this chamber a matter, the constitutionality of which was before the Supreme Court of Canada. As I say, the Government of Canada, knowing that the constitutionality of what it was proposing was very much in question, had the option to do that in this case. It declined to do so. I believe you will treat this belief as you will.

• (1510)

I believe the reason the federal government declined to act in this case, as it did in an earlier case when there was an accusation of illegality about its actions, was that it believed what it was doing was not constitutional and it did not want the Supreme Court to stop the matter as the Supreme Court stopped the Senate matter.

The first point I want to ask the Chair to consider today is the question whether there is any significant difference caused by the fact that this question of the legality of Parliament's action is before the Supreme Court of Canada as a consequence of a reference made by a provincial government as distinct from a reference made by the national Government of Canada. I think that that is a very important point and one on which I want to elaborate. As the House knows, and as the Chair knows, only governments have a right of reference. A private citizen cannot make a reference as to the constitutionality of a question. As the Leader of Her Majesty's Official Opposition, I cannot make that kind of reference. Only governments can make that reference, and each provincial government in our system of two orders of government can make that reference only to the superior court in its jurisdiction. In other words, it is not possible for a province to make a direct reference to the Supreme Court of Canada. Provinces make direct references only to the highest courts in their jurisdiction. Only the Government of Canada can make a direct reference of the constitutionality of a question it is debating to the Supreme Court of Canada.

As I say, the matter I want to raise is whether the question of directness and indirectness is germane. What has happened here is that a number of provinces exercised their right under our law and practice to make a reference as to the constitutionality of this measure to the superior court in their jurisdiction. It happened to be the superior court in the province of Manitoba. They had nowhere else to go, nor did anyone else have anywhere else to go. The only people who could have brought the matter to the Supreme Court of Canada directly were representatives of the Government of Canada, and they declined to do that. They preferred to run through something that may not be legal rather than exercise their exclusive right to have the legality of what they were doing referred directly to the Supreme Court of Canada.

The point I want to make here is that the question on which the Supreme Court of Canada will begin consideration on April 28 and the question with which it is seized is the same question which would have been referred by the federal government had the federal government referred it. The question is the same. The court is the same. The only difference is the process of getting that question to that court.

To summarize again, the federal government can take one step to get this question of the legality of its actions to the Supreme Court of Canada. A province has to take two steps to get the same question to the same court. If the federal government had acted, Parliament would be precluded from talking about this question.

I want to dwell on that for a moment. If the federal government had made the reference which Manitoba has made, and if the question which is now before the court was before the court because the government in Ottawa moved it there rather than because governments of the provinces moved it there, then we would be denied the opportunity to debate that question in this House. We would be precluded from having the opportunity to debate that question in the House. All that is at stake here is not the nature of the question and not the nature of the court but the nature of the process by which the matter got there. It got there through the provinces by two steps: first, by going to the highest court in their jurisdiction, and then, on appeal, going to the Supreme Court of Canada.

The question which Your Honour will have to decide is: When the question is the same and when the court is the same, does the fact that it takes two steps to get a reference to that court rather than one step change the practice absolutely? I argue as strongly as I can that when we are dealing with a question of importance so fundamental to our system as the legality of the actions of Parliament or the integrity of our country on the constitutionality of things, this Parliament should not alow a very minor question of process to change the practices which exist in this House.

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PRESIDENT OF THE UNITED STATES

ASSASSINATION ATTEMPT—CONDITION OF PRESIDENT

Right Hon. Joe Clark (Leader of the Opposition): If I might impose upon the House, I have just been advised that, contrary to earlier reports, the attempted assassination of President Reagan this afternoon did result in President Reagan being wounded. He was hit in the left chest. I am sure