

Some hon. Members: Agreed.

Some hon. Members: No.

● (1420)

ORAL QUESTION PERIOD

[English]

THE CONSTITUTION

RULING BY SUPREME COURT OF NEWFOUNDLAND ON CONSTITUTIONAL RESOLUTION—GOVERNMENT POSITION

Right Hon. Joe Clark (Leader of the Opposition): Madam Speaker, my question is for the Prime Minister, who will know that the Newfoundland Supreme Court today ruled unanimously that the federal government—and I wish to quote from the ruling—“has . . . no authority to request an amendment that would directly alter provisions of the British North America Act affecting federal-provincial relations or the powers, rights or privileges secured by the Constitution of Canada to the provinces without first obtaining provincial consent.” Those are words from the unanimous ruling of the Supreme Court of Newfoundland this morning. So the Newfoundland Supreme Court has declared the Prime Minister’s constitutional resolution illegal.

Does the Prime Minister intend to continue to force through this Parliament of Canada a resolution which the Supreme Court of Newfoundland has declared illegal?

Right Hon. P. E. Trudeau (Prime Minister): Madam Speaker, naturally, we are somewhat disappointed by the judgment of the Supreme Court of Newfoundland, but it is certainly a very important one. The Right Hon. Leader of the Opposition suggests we should not act because the court decided we were acting illegally. I remind the Right Hon. Leader of the Opposition that he did not reach the contrary decision when the Manitoba Court of Appeal decided we were acting legally. He did not then agree to pass the resolution which is before the House.

These two decisions which are in conflict, and the fact that the Supreme Court of Canada has now decided that it would hear the appeal from Manitoba, and presumably any other appeals which are brought before it on this subject, before the end of April, leads me to remind the House of what some of the judges in the Manitoba case said, including the Chief Justice. They said that as long as the resolution was not out of the House the first question put to the court was hypothetical, indicating that it would prefer to judge not on a hypothetical bill but on a real bill. As a result of that, I wonder if we could not agree to pass the resolution and make sure the Supreme Court of Canada is acting, not on a hypothetical case, but on a real case, and agree to respect the decision of the Supreme Court.

Some hon. Members: Hear, hear!

Oral Questions

REQUEST FOR DECISION BY SUPREME COURT BEFORE RESOLUTION SENT TO BRITAIN

Right Hon. Joe Clark (Leader of the Opposition): Madam Speaker, the Prime Minister will recall that the decision of the Manitoba Court of Appeal was three to two. The decision of the Newfoundland Supreme Court was a unanimous decision against the federal government. The Prime Minister will also recall his own Kirby memorandum in which there was cited a judicial opinion by the Department of Justice to the effect that a law passed by the U.K. Parliament to patriate the Constitution with an amending formula and other changes could not be successfully attacked in the Canadian courts. In other words, the legal opinion that the Government of Canada has, which it will not make available to Parliament, is that if it can get this question out of Canada, then the Supreme Court of Canada cannot act on any decision that the British Parliament might take. That is why he is trying to get this question out of the House.

Some hon. Members: Hear, hear!

Mr. Clark: I would like to ask the Prime Minister if the Government of Canada intends to appeal this unanimous decision of the Newfoundland Supreme Court. If so, will the Government of Canada await the decision of the Supreme Court of Canada on its own appeal before it forces this resolution through Canada and tries to export this question, this Canadian question, from our country to another parliament?

Some hon. Members: Hear, hear!

Right Hon. P. E. Trudeau (Prime Minister): Madam Speaker, I just indicated that we have had one appeal court render in favour of the resolution. There is still a decision to be rendered by the Appeal Court of Quebec. That is why I am taking this matter very seriously.

● (1425)

I repeat the suggestion to the Right Hon. Leader of the Opposition and to other hon. members of this House, keeping in mind the statement of the Chief Justice of Manitoba and other justices’ statements that they did not want to rule on a hypothetical case, that we give to them—

An hon. Member: Yeah, refer it to the Supreme Court.

Mr. Trudeau: —a resolution which will obviously be taken into account by the Supreme Court of Canada, not as a hypothetical thing but as a real thing.

The Leader of the Opposition suggests that this party is trying to hasten the resolution over to Britain so that the Supreme Court of Canada will not have a chance to judge on it.

An hon. Member: That’s right.

Mr. Trudeau: Well, hon. members over there say, “that’s right”, and so on. I am prepared to suggest that if we can