

*Point of Order—Mr. Clark*

With reference to the whole question of proceeding before the Supreme Court of Canada has had an opportunity to adjudicate on the process of what were we are doing in this resolution, Professor Cohen said:

That would be very, very unwise to do, very unwise of Parliament to say: we stop talking about a particular subject because it is before the Court of Appeal of Manitoba or Newfoundland or Quebec because of the way it can be abused.

However, when the matter is before the Supreme Court of Canada that is a different kettle of fish. There I am not so sure that I would want to see a serious public debate about an issue of this kind while the case is pending before the Supreme Court—

This is a very important and telling argument out of the mouth of an expert brought forward by the Government of Canada whose representative in the House, the government House leader, is arguing that we should proceed with this resolution, notwithstanding the fact that the Supreme Court of Canada is dealing with the constitutionality of the process on a resolution which admittedly moves in areas of acknowledged provincial jurisdiction. Certainly that is not the question before Madam Speaker. The question is whether or not we should be proceeding in this House while the very issues we are discussing are being decided by the Supreme Court of Canada.

● (1700)

The question on the process which is being carried out by the government, with its mere majority and not by unanimous consent, is of serious consequence to the future of our country. We in the official opposition have opposed this measure and we make no apology about that.

We can look back to an analogous situation in 1978 when the government had a constitution package called Bill C-60. That was a bill before the House. It was an actual bill as opposed to a resolution. It was a bill which dealt with matters totally and exclusively within the jurisdiction of the federal government. In that bill there was no attempt made, at least on the face of it, to interfere with the rights of the provinces. If we look back to the precedents with respect to that bill, we will see that the government respected the convention which had been established. The government respected the expert witnesses who were brought forward before the committee and who made reference to the Supreme Court of Canada with respect to amendments to the Senate of Canada.

I would like to point out, Madam Speaker, that while the matter was referred to the Supreme Court of Canada, the consideration by Parliament of amendments to our Constitution was then suspended. That was the proper way to deal with the matter. It was the proper convention and an appropriate decision on the part of the government. But the opposite is happening now, notwithstanding the fact that this matter is coming up within the month to be determined by the Supreme Court of Canada. The government is proceeding before determining whether the process it is using is, in fact, valid and within its jurisdiction.

The first point I wanted to make to you, Madam Speaker, is to reinforce the point that we are not talking here about a bill. We are talking about a motion. If we are to use Beauchesne as a guide to what the traditions of Parliament are with respect to

this matter, then let us read Beauchesne very carefully. Let us make sure that we understand that we are not talking about legislation in the strict and literal sense of the word. We are talking about a resolution which will lead to an address to Her Majesty the Queen and to the British Parliament. It asks these parties to take some steps in the name of Canada and its provinces.

In this particular instance I suggest to Your Honour that there has never been, and should not be, any question as to whether the Supreme Court of Canada is about to adjudicate whether or not what we are doing is proper and legal and we should proceed. I agree with those members on both sides of the House who have said that Parliament, and the Supreme Court of Canada representing the judiciary, are separate on the division of powers. There is a separate role to play where the courts have the constitutional ability to determine whether or not the process going on in the House of Commons is valid and constitutional. The House of Commons should defer to the court until it is able to make a decision on the whole process which is taking place in the House of Commons.

I wanted to make that point because I think it is quite important to understand that we are not talking about a bill here. The hon. member for Winnipeg North Centre raised points to the effect that Parliament has a right to pass bills and that we should not be constrained with respect to court actions which are taken. He said that somehow we can proceed with legislation and bills before the House, which is very much different from what we are facing today. What we are facing today is a resolution, not a bill. The court is considering what is happening in the House of Commons and whether or not what we are doing is within our competence. That is a very different proposition from the one pointed out by the New Democratic Party House leader in his defence of the government.

I also want to reinforce that point by giving a different interpretation to you, Madam Speaker, with respect to the reference made by the hon. member for Winnipeg North Centre. He referred to events which took place on April 12, 1948, as entered in the *Journals* of this House. You will recall, Madam Speaker, that was with respect to a reference of a bill to the Supreme Court of Canada, withdrawing that bill temporarily from the jurisdiction of Parliament. In that context the Speaker at that time was looking not at a bill but at a resolution, or motion, to establish a special committee, as the hon. member pointed out.

The decision that was rendered at that time was that a question cannot be before two public bodies at the same time. I suggest that is a very interesting, analogous situation, but it does not have the same weight with respect to the issue now before us. I have a quite different interpretation of the decision reached at that time from that of the hon. member for Winnipeg North Centre. The reason my interpretation differs is that in that instance what was attempted was to look at ways in which the House can protect civil liberties and human rights, and at the same time ask the court to make an adjudication with respect to the ability of the House of Commons to deal with that issue. The Speaker at that time was