

issued its judgment today where it takes a different view of what flows from section 51A of the Constitution as a result of the use of the appointment powers of section 26. With respect, the government takes the view that on that point, on the point of whether New Brunswick is or is not entitled to another seat, the court in New Brunswick is in error. For that reason we wish to appeal that decision.

I think it would be highly inappropriate for Parliament to act on a statement of the law until all of the recourses for appeal have been proceeded with.

The judgment has just come down today. The Government of Canada has not made a decision as to exactly what route for appeal will be sought. It may be that it would be appropriate to refer to the Supreme Court of Canada. It may be appropriate simply to appeal to the New Brunswick Court of Appeal. I would like to have that decision made based on a judicious and thoughtful review of the circumstances.

I am not aware of this issue being raised in any of the other provinces. There is litigation pending with respect to the use of section 26 in the province of British Columbia, and there is ongoing litigation in Ontario on a different point. Whether those who had judgment in Ontario will wish to appeal the decision based on 51A is something I am uncertain of. They did indicate some wish to do so but appear to have withdrawn that.

I have never suggested that there was not an arguable issue here. It was the view of the government—and we acted on the view—that the use of section 26 did not require the election of another member of Parliament in New Brunswick. I think we should seek a clarification of this in the courts, but I would underline again that at no time has any court, either in Ontario or New Brunswick, indicated that as a result of the use of those appointment powers or any of the implications flowing from section 51A this House is improperly constituted.

It is the tradition in our law that we do not execute judgments until we have exhausted all of the avenues of appeal. I would respectfully suggest that the hon. member's comments about the need to act on that judgment

Privilege

are premature until all of the avenues of appeal and a definitive clarification of the law has been obtained.

Mr. Waddell: Mr. Speaker, there is some reason in procedure for what the minister is saying. I understand the minister has just got the decision today. The minister would indeed want to look at it, as she said. She would want to consider what she is going to do with it. I understand and appreciate that. That seems to me to be sensible.

What is concerning me—and I say this to the minister—is that just about anybody in the country may now want to challenge one of the laws that we have passed as saying that the House was improperly constituted. That presents some difficulty.

I would be prepared to put this off until tomorrow, to bring the point back after the minister has had a little time, as she asked for, to consider what position the government will take. I understand it is reasonable for the government to have at least a bit of time, but time is of the essence here and I would be prepared to have this matter recalled tomorrow.

Mr. John Nunziata (York South—Weston): Mr. Speaker, I rise on the same question of privilege. The minister seems to be dealing with this matter in a very summary fashion. I do not think the minister and the government appreciate the gravity and the consequences of the decision of the court.

This Parliament, in my respectful submission, was properly constituted at the time of the last general election in 1988. There was a certain action that was taken recently by the Prime Minister and the government to appoint senators. The whole question of the Senate situation in the province of New Brunswick has caused the court to render an opinion and call into question the appointments made by the Prime Minister.

• (1510)

Mr. Speaker, I would ask you to consider the consequences of a future court with perhaps this case on appeal, such as the Supreme Court of Canada, deciding that yes, in fact from the moment the Prime Minister appointed the eight additional senators this Parliament was improperly constituted. I would ask you to consider