

*Oral Questions*

ment which brought 1,000 jobs onstream by resurrecting this company in the city of Brantford and protecting the existing dealer network. It was certainly not through following the policies the Hon. Member and his Party are advocating.

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**THE CHARTER OF RIGHTS**

## APPLICATION TO CABINET DECISIONS

**Hon. Edward Broadbent (Oshawa):** Madam Speaker, I have a question for the Prime Minister concerning the Government's decision on the Cruise, and beyond that the much broader question about the applicability of the Charter of Rights to a range of Cabinet decisions. Yesterday the Minister of Justice, in a statement outside the House, implied that decisions by the Cabinet affecting the rights of citizens can be made independent of the Charter. Section 32(1)(a) of the Charter says that. This Charter applies to the Parliament and Government of Canada in respect of all matters within the authority of Parliament.

Would the Prime Minister confirm that what this means is that decisions by the Cabinet affecting rights are exactly the opposite to what the Minister of Justice has said, and indeed they do come within the framework of the application of the Charter of Rights?

**Hon. Mark MacGuigan (Minister of Justice):** Madam Speaker, as I am sure the hon. gentleman knows, there is a tradition which has been built up over generations in our society that there are certain kinds of questions which are not reviewed by the courts. If the Hon. Member wants to attach those to decisions which were traditionally made by the prerogative of the Crown, by the executive, in many cases that would be the situation. But the fact is that in light of the Charter that boundary line may need to be re-established. That is what the courts are about and that is why we are asking for an appeal in the case to which I am sure my hon. friend is referring, to try to clarify what this boundary line is.

**Mr. Broadbent:** Madam Speaker, some Members in this Parliament, when they voted, including, I thought, the Prime Minister of Canada, believed that we needed a Charter of Rights in fact and in part to put checks on executive decision making. That is what the Charter was all about, I say to the Minister of Justice.

## GROUNDS UPON WHICH CRUISE MISSILE DECISION WAS MADE

**Hon. Edward Broadbent (Oshawa):** I ask the Prime Minister again, and I ask him not to shift responsibility to the Minister of Justice, if the Government wanted to ignore its own Charter of Rights when it dealt with the Cruise issue, why did it not act under the terms of Section 33 of the Charter, the "notwithstanding" Section, and bring a Bill before Parliament for debate on the Cruise, and by such action avoid the Charter

but by such action act correctly and legally, instead of what it is doing now.

**Right Hon. P. E. Trudeau (Prime Minister):** Madam Speaker, the Hon. Member is asking for an interpretation of the Charter. He knows perfectly well that, first of all, it is not within the rules for the Government to express legal opinions.

**Mr. Broadbent:** The Minister just did it. He did it outside the House yesterday.

**Mr. Trudeau:** Madam Speaker, the courts are the proper forum to determine the meaning of the Charter. The Charter has been tested in the courts several times already, by various parties. I think it is natural for the Government to test the limit of its authority and see how the courts will interpret it. I am not here to give an interpretation of the Charter. I want it to have the fullest authority possible, but surely that is not dependent on me; that will depend on the courts, and that is where it will be decided.

## SECTION 33 OF CHARTER

**Hon. Edward Broadbent (Oshawa):** Madam Speaker, I ask for a very straight answer from the Prime Minister on this question. Would he agree that in the interesting negotiating process that led up to the establishment of the present Charter one of the compromises reached was Section 33, the purpose of which was to give parliamentary bodies, this Parliament, or parliament at the provincial level, the right, if you like, to go around the Charter, but that executive action would still remain within the framework and be covered by the Charter, and that it was so written that way? If he agrees that was the process which led to the present writing, would he also agree that what the Government ought to have done if it wanted to remain clearly away from the claims of the Charter was to have brought a Bill before the Parliament of Canada?

**Right Hon. P. E. Trudeau (Prime Minister):** Madam Speaker, the Hon. Member shows a grave misunderstanding of the intentions of the Government. It certainly did not want to go around the Charter. It did not propose Section 33, but it was compelled to accept Section 33. In fact Section 33 was put forward by the NDP Leader in Saskatchewan who felt that Governments should be able to extract themselves from the operation of the Charter. That was the origin of Section 33. We do not like it on this side. We hope that some consensus in Canada will eventually get rid of Section 33 which was put in the Charter by virtue of an NDP Government.

**Mr. Broadbent:** What about Sterling Lyon and a few others?

**Mr. Trudeau:** Well, we can talk about Sterling Lyon and a few others as the Hon. Member asks, if he wants to ask me questions about Sterling Lyon, but now he is talking about Section 33. I think it is a regressive Section but it was necessary to reach a compromise, as he knows, because some Premiers did not want the full Charter.