

mentary Rules and Forms, fifth edition, wherein Subsection (3) reads as follows:

The convention applies to motions, references in debates, questions and supplementary questions, but does not apply to bills.

It applies to motions, and that is with what we are dealing here. We are not dealing with a bill. We are dealing with a motion, a resolution, a unique situation in which the Parliament of Canada, by this joint resolution, addresses itself to the Parliament of the United Kingdom and asks it to take legislative action.

In the press conference which he held last week, the Prime Minister (Mr. Trudeau) indicated that once the matter gets out of the Parliament of the United Kingdom, the Supreme Court of Canada will have no jurisdiction over the matter. The contention of the Prime Minister last week was that we wanted to get this matter through because the Supreme Court of Canada, at that point, will not have the jurisdiction to judge or pass on the constitutionality of a bill or legislation of the Parliament of the United Kingdom. So it is an unusual and unique situation.

We must ask ourselves what is the role of the Supreme Court of Canada and what is the role of the House of Commons and Parliament at this point in time. Certainly the role of the House of Commons is to ensure the resolution of the motion we are sending to the United Kingdom in fact is within the jurisdiction of the House of Commons. If a simple resolution was brought forward—perhaps for the purposes of illustration this is an extreme example—to abolish the Senate or to abolish the provinces, in both cases Your Honour would give some serious consideration, if the matter was attacked in the courts, as to whether or not it should be postponed until the courts determine the constitutionality of either of those particular resolutions.

I should like to quote no less an authority than Mr. Justice Huband of the Court of Appeal of Manitoba who addressed himself to the question of the reference we are now discussing. During the course of his judgment, he said:

It would be unthinkable if Her Majesty acted upon a request of the provincial legislatures to assent to provincial legislation purporting to limit the scope of powers conferred upon the federal government under the British North America Act. The Queen would not heed such a request, and if by chance assent were granted, the courts would deem it an error, and would rule such legislation ultra vires in spite of Her Majesty's assent. The converse is also true. If Her Majesty acted upon the request of the federal authority to assent to federal legislation purporting to limit the legislative powers enjoyed by the provinces, such legislation would be struck down.

This is part and parcel of the decision of Mr. Justice Huband of the Court of Appeal of Manitoba. The matter has now been received, the notice of appeal has been received, and the order has been made in the Supreme Court of Canada with respect to the hearing of this appeal. This was not done unilaterally; this was a consent order which the Attorney General of Canada, who is sitting across the aisle this afternoon, concurred in and consented to. The government agreed to this appeal proceeding. Also it agreed to the terms of the appeal, the date on which it will be heard, the participants and the intervenors, the dates of filings of facta. Every aspect of

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this matter has been concurred in; the order was with the concurrence of the Attorney General of Canada.

So where do we find ourselves? We find ourselves in a situation which has been referred by Professor Cohen—

Mr. McGrath: A government expert.

Mr. Hnatyshyn: As the hon. member for St. John's East (Mr. McGrath) points out, Professor Cohen was an expert presented on behalf of the federal government's position. In the course of his evidence before the parliamentary committee with respect to the whole matter—

Madam Speaker: I apologize for interrupting the hon. member, but I must put the subject matter of the questions to be debated this evening.

PROCEEDINGS ON ADJOURNMENT MOTION

[English]

SUBJECT MATTER OF QUESTIONS TO BE DEBATED

Madam Speaker: Order, please. It is my duty, pursuant to Standing Order 40, to inform the House that the questions to be raised tonight at the time of adjournment are as follows: the hon. member for Laval (Mr. Roy)—Income Tax—Inquiry whether decisions concerning Canadians working abroad will be respected; the hon. member for Hamilton-Wentworth (Mr. Scott)—Health and Safety—Measures to eliminate hazard of infant crib deaths; the hon. member for Saskatoon West (Mr. Hnatyshyn)—Grain—Compensation to farmers for embargo on shipments to Russia.

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POINT OF ORDER

MR. CLARK—THE CONSTITUTION—APPEAL TO SUPREME COURT—PROPRIETY OF PARLIAMENTARY CONSIDERATION OF RESOLUTION

The House resumed consideration of the point or order of Mr. Clark.

Hon. Ray Hnatyshyn (Saskatoon West): Madam Speaker, I gather we are not having private members' hour today.

Madam Speaker: No.

Mr. Chrétien: You are just buying time.

Mr. Hnatyshyn: It allows me to carry on without breaking my train of thought. I would not want to think up new and more cogent arguments over the supper time, because what I am about to say now will be devastating to the position of the government House leader.