

matters would be persuasive to yourself, Your Honour, to any parliamentarians, or to any Canadians.

Those who did appear were quite consistent in what they said. They warned of the dangers to our system of allowing the government to proceed in the way it is now trying to proceed—to get the question out of the country before its constitutionality has been decided by the Supreme Court in this country.

The sub judge rule has been raised in this House in a variety of forms before. Some cases are clear and Your Honour ruled on one of them on Friday. But some cases are not so clear. This is one of them, in my judgment. It is brand new. There is obviously no obstacle to Parliament acting to change a law which it chooses to change if that law is within the jurisdiction of this Parliament. That is beyond dispute. But precisely what is in dispute today? What is at issue before the Supreme Court of Canada is whether the matter we are being asked to enact is sufficiently within our jurisdiction to allow us to pass it in a way that the Canadian courts would not strike down if they were given the chance to strike it down.

● (1550)

I repeat, this government has very recently tried to act beyond its jurisdiction on the Senate case. When the Supreme Court became seized of that case, it decided that the government was acting illegally, that it was trying to do something that it should not be allowed to do, and so the Supreme Court stopped it. The government is now stopping the courts from stopping the government because it will not let the question go to the courts.

Some hon. Members: Hear, hear!

Mr. Clark: The principle of the sub judge rule has been to protect the courts; the principle of the sub judge rule has been to uphold the law, including—although this is a new aspect of it—the constitutional law; when one level of government tries to act in a way that is beyond its jurisdiction, it then finds a device by which it can sneak the question out of the country before its constitutionality has been decided.

What is in question here is whether the resolution before the House is within the legal competence of Parliament to pass. That is exactly the question which is now before the Supreme Court of Canada.

Through our long practice in this place and in Parliament, we have established that when there is a conflict between what the courts can do and what Parliament can do, we have acted, in the past, to protect the courts and to protect the law. Authorities on this brand new question—which it falls to Your Honour to decide—have expressed deep concern about the effect on the courts. These are not passing authorities. They are not men on the Clapham omnibus. I believe I have correctly cited that. These are former chief justices of the Supreme Court of British Columbia. These are distinguished legal authorities. These are people who have made a life work of their study of and respect for the courts of the land. They are concerned that there could be damage done to the respect for the legal tradition, respect for the courts of the land,

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respect for the authority of the Supreme Court of Canada, if this Parliament acts on a matter, the legality of which that court wants to decide before Parliament can consider the question.

My argument to you, Madam Speaker, is that just as the Senate provision should not have been discussed by this Parliament while it was before the Supreme Court of Canada, so should this resolution not be discussed or considered by this Parliament while the Supreme Court of Canada is seized of this resolution. I want to protect the Canadian way of doing things.

Some hon. Members: Hear, hear!

Mr. Clark: We have argued here before about federalism and the damage this measure does to the Canadian partnership. We have argued, too, about the damage that closure does to the Canadian way of parliamentary debate. What we are arguing now is that there is another institution being menaced by the proposal this government is bringing forward, and that is the Supreme Court of Canada. I respectfully submit that it is important for you, Madam Speaker, to decide a complex question—a question which you would probably not have to face but, nonetheless, a complex question—as to whether this Parliament is being asked to act in a way that damages the Supreme Court of Canada and abandons the Canadian way.

In my submission, that is what we are being asked to do and that is wrong. I hope you find, Madam Speaker, that the proposal put before the House of Commons by the Government of Canada—that we should ignore and consequently endanger respect for the Supreme Court of Canada—should be put down, and that this debate should be stopped until the Supreme Court has had the right to decide. We have all sorts of other matters to discuss. We would like to talk about inflation. We would like to talk about energy policy. We would like to talk about housing.

Some hon. Members: Hear, hear!

Mr. Clark: There is not a lack of will in this House to deal with the real issues which are facing Canadians, but the government controls the agenda of the House. The government has been pushing forward a bill which we have argued, in the past, was not high on the priorities of individual Canadians who face high rates of inflation and unemployment in the country today. We have argued that in the past, but our argument now is that there is another dimension to what the government is doing. That other dimension is that if it persists in its action, then it will damage, perhaps very deeply, another institution of this country, the Supreme Court of Canada. We do not want that court avoided. We do not want that court damaged.

I make my case and appeal to Your Honour to make a decision which will respect the practices of Parliament, respect the Canadian way and protect the right of the Supreme Court of Canada to discuss a question which should be before it, rather than allow this government to rush that question out of