*Point of Order—Mr. Clark*

On Friday Your Honour ruled on a very limited question with respect to the forms that were used, that is to say, bills as against motions, and that kind of thing. The question I am raising today does not have to do with forms; instead, it has to do with the nature of the government's initiative and whether it is inappropriate for Parliament to pursue the discussion of that initiative while the question is being considered by the Supreme Court of Canada. The government wants to proceed on a process which the court has not decided is legal. That question is very much before the courts. There was a very preliminary decision in the Manitoba Court of Appeal where the question was decided very narrowly—three to two. There is no clear legal opinion on that question. If there were, the Supreme Court would not be seized of it. The Supreme Court is seized with it and we will not have a clear legal opinion until after April 28. We want to ensure that the resolution will still be in Canada for the courts to be judging on a Canadian question rather than passing opinions on a matter that has been exported to another country.

By proceeding with the resolution, by refusing to exercise its right with respect to a reference and by threatening closure again, as it has imposed closure before, the government wants to get the question out of the country before the courts can decide. I make the point again that action may well put this fundamental Canadian question beyond the Canadian courts forever. It may well never come back here, which could create for us, in our country, some very real legal problems.

I do not intend to quote at length from the proceedings before a committee of this House, but Professor La Forest in his presentation to the joint committee established by this House to look into this matter asked a question which you, Madam Speaker, and the rest of us must consider. He asked:

—what would be the situation if Canadian courts decided that the act was not valid because it has not been properly presented to the British Parliament? The act would be valid in the United Kingdom—

But there would be some question as to its legality here. The government believes it could not be challenged, but according to Mr. La Forest:

We would be left in a judicially created limbo from which it would be hard if not impossible to extricate ourselves by legal means.

There is a way around this. The way around that legal limbo is just to wait awhile to let the Supreme Court decide whether or not what the government is asking us to do is legal.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** There were other quite important observations made in the testimony before the joint committee. One question was put to Mr. Justice Clyne, the former chief justice of the Supreme Court of British Columbia, which had to do with whether or not it would be appropriate for Parliament to be considering the matter while the courts were considering it. His answer was categoric. He said:

I think my own opinion is clear, that if the matter is before the courts then action should be suspended until the courts rule.

That was the answer of Mr. Justice Clyne, the former Chief Justice of the Supreme Court of British Columbia and a jurist

respected for his reputation as much as for the positions which he has occupied.

Professor Cohen, who is a very distinguished Canadian jurist, was brought before the committee as a government witness and as an expert. In answer to a question posed by my colleague, the hon. member for Wellington-Dufferin-Simcoe (Mr. Beatty), he said:

In answer to your question I must say that politically I think it unwise of Parliament to proceed helter skelter with a piece of legislation when before the Supreme Court of Canada the same problem is now in issue.

I think it does something to the respect for the court—

I remind you, Madam Speaker, how important that is to the sub judice rule. He went on to say:

—something for the respect of the legal system. I am not willing to go that far for the provincial courts because, certainly on a reference case, because I think the reference can be abused as a technique for halting the work of Parliament.

He said "abused as a technique." We are now beyond that.

**Some hon. Members:** Hear, hear!

**Mr. Ouellet:** Beyond that!

**Mr. Epp:** Listen to what he has to say.

**Mr. Clark:** I will not comment on the hon. member's former associations with the courts.

**Mr. Ouellet:** Go ahead!

**Mr. Clark:** The fact is that we are not dealing here with a matter that has now been confined to a reference to a province. We are now dealing with a matter which has moved beyond a reference raised by a province. That was the only way it could be raised, since this government refused to raise it in the Supreme Court of our land. It has moved on to become a question of which the Supreme Court of Canada is seized.

Professor Cohen went on to say:

Having said that, Mr. Beatty, I am reluctant to really go much deeper into this because it is almost a case by case situation, but the general principle I think that ought to be a guideline for all of us is this. Do we do anything which brings the work of the supreme tribunal into any disrepute or give it the attribute of appearing to be second rate in its importance, and that we should not do.

So said Professor Cohen and so I say to you, Madam Speaker.

**Some hon. Members:** Hear, hear!

**Mr. Clark:** You will recall from the long debates in this House that one of the questions of contention relative to the joint committee was that many of us believed that there should have been more experts allowed to testify on these very questions of constitutionality. We sought to do that, as did others. The government insisted upon very stringently limiting the number of constitutional experts who could come before that committee. Thus, the kind of questions you are being asked to consider today, Madam Speaker, are those kinds of questions which were not explored *en profondeur* before the committee. This was as a result of the government deciding to limit the number of expert witnesses whose views on these