

Privilege—Mr. Crosbie

Mr. Crosbie: I would just like to quote one or two sections from page 46 of the judgment, where the learned judges say this:

The division of powers prescribed by the Constitution excludes federal jurisdiction over provincial autonomy within their legislative competence, and thus a proper request to Her Majesty's parliament in Great Britain to change such fundamental aspects of the Constitution can only be made after the provinces have agreed to such change.

Reference is made to a "proper" request, Madam Speaker. That means that the full appeal court of the province of Newfoundland has said that this resolution now before this House is improper. What the government is asking the hon. members of this House to do is to engage in an impropriety. In other words, this is a conspiracy to cause the hon. members of this House to commit an illegal act, an impropriety, and that is the finding of our Supreme Court.

Before we go any further in Parliament with these proceedings, every member of this House should read the judgment of the Newfoundland Court of Appeal. Then they will understand what the nature of the objections on this side of the House have been to this whole process and procedure.

Continuing with the judgment handed down today, the judgment quotes the learned Mr. Justice Ivan Rand—and I cannot think of a greater judicial authority in Canada—said as reported at page 26:

Legislatively, a unique situation has been created.

He was discussing the Statute of Westminster.

The British parliament has in effect become a bare legislative trustee for the dominion.

Then our court went on to say this:

We adopt that statement fully with the important addition that the parliament of Great Britain is a 'bare legislative trustee' for both the federal Parliament and the provincial legislatures in relation to the matters within their respective legislative competence. Any amendment enacted by the parliament of Great Britain affecting the legislative competence of either of the parties, without the party's consent, would not only be contrary to the intentment of the Statute of Westminster, but it could defeat the whole scheme of the Canadian federal Constitution.

For the government to proceed with this resolution is to ask the members of this House to join it in a conspiracy which could defeat the whole scheme of the Canadian federal Constitution. What could be more threatening to the privileges of members of this House than to be invited to go ahead and assist this government in an act which has been found ultra vires and without the jurisdiction of the Parliament of Canada?

We have ample precedent as to what happened in a previous situation where hon. members were not put in the position of having their privileges breached. I refer to Bill C-60. I have in my hands the Senate report on the Constitution, 1978-79. I wish to quote from page 1:6:

Essential parties to any form of wide-ranging constitutional reform are the provincial governments. Their negative reaction to Bill C-60 is well known.

Then it goes on to say where it was expressed:

Following a challenge, by expert witnesses, of the claimed legal right of Parliament—

Who claimed this legal right? Why, the very government that today claims the same legal right, and has done so for the last six months, that has tied up this honourable chamber, claims which are now found to be improper and illegal.

Following a challenge, by expert witnesses, of the claimed legal right of Parliament to proceed unilaterally on the proposals regarding the monarchy and the House of the federation, the Joint Committee of the Senate and House of Commons on the Constitution adopted a resolution recommending that the question be referred to the Supreme Court of Canada for decision. Shortly afterwards, the Minister of Justice announced that the question in so far as it concerned the House of the federation would be so referred.

There we have an incident occurring several years ago where the same government, in the same way, on a matter of considerably less importance but still important, attempted to tell this House of Commons and our brethren in the Senate that the proposals were *intra vires*. Because of a lot of opposition to that position, the matter was referred to the Supreme Court of Canada, with the result that the court held that it was *ultra vires* and outside the powers of this chamber.

My hon. colleague the hon. member for St. John's East quoted a very pertinent part of the judgment, which I will not quote again, about attempting to do indirectly what one cannot legally attain directly. Let me read one further section from page 49 which is of great moment to members of this House:

'The framers of the British North America Act decided in their wisdom that Canada should not be a unitary state, but a federal one. Canada, however, could in effect be converted into a unitary state if that act could be amended simply at the request of the Canadian Parliament without the concurrence of the provinces. The requisites of the Constitution in a federal state by which the legislative authority of the federating parties are defined, and supremacy circumscribed, must be strictly enforced if the rights of minorities are to be adequately protected'.

That is why we have struggled on this side of the House. We want to protect the rights of the minorities and the Supreme Court of Newfoundland has done the same.

Some hon. Members: Hear, hear!

Mr. Crosbie: I have been invited by the government opposite to do this, and this is what the Supreme Court of Newfoundland has said:

'Undoubtedly, the Canadian Houses of Parliament have the constitutional authority, of their own accord, to request the parliament of Great Britain to amend the British North America Act in matters of federal concern only, but in our opinion it has no such authority to request an amendment that would directly alter provisions of that act affecting federal-provincial relations or the powers, rights or privileges secured by the Constitution of Canada to the provinces, without first obtaining the consent of the provinces to such amendment.'

Is it any wonder why the Prime Minister (Mr. Trudeau) ran for cover today? He has to get out of this illegal situation in which he has placed this House. But we cannot trust him to do that. We cannot trust him to stop this illegal procedure, to cease breaching our privileges. We have to ask you, Madam Speaker, to force him, by your ruling, to remove this illegality, this illegal conspiracy, from the Order Paper of this House. We must ask you to make sure that the Prime Minister has no option but to withdraw the motion he has put before the House because of its illegality.

I have just one last quotation.