

Privilege—Mr. Nowlan

This precedent of five minutes will come back to haunt all hon. members in the House. It is difficult to try to develop any type of legal argument on something as substantive as a rule of law.

Some hon. Members: Oh, oh!

Mr. Nowlan: I hear the interjections. Do not push, my friends, for unless there is good will one can pervert a prostitute, or the role of anybody, if one wants to; but the point of the matter is that we will not do it. The reason this matter is so unusual and extraordinary is that we all know, regardless of where we sit in the House—even the Prime Minister (Mr. Trudeau) must admit this—that there is a cloud on the status of the resolution before the House. Certainly a most conservative assessment of it would indicate that it has a taint to it. The fact of the matter, in terms of the rule of law which we are trying to explain in certain points of order and questions of privilege, is that as a member of the House for a few years I am being put in the position of being contaminated by debating and/or eventually voting on a tainted resolution, in view of the judicial expressions of the Supreme Court of Newfoundland and also some of the judges of the Supreme Court of Manitoba.

I should like to refer to one of the eminent constitutional authorities in Canada, Robert MacGregor Dawson, in his book entitled "The Government of Canada". At page 88 he attempts to define the rule of law, which reads as follows:

● (1630)

The following comment of Professor Corry on the rule of law in Great Britain is equally applicable to Canada:

"For a long time now, Parliament has been granting to officials special powers to take action not justified under the ordinary law and it has been limiting the right of the citizen to have the actions of officials scrutinized by the judicial power. Yet there has been no general removal of officials from judicial surveillance and it remains true in most cases that anyone who asserts that he has been wronged by the action of a government official—

That is the basis of my question of privilege.

—can bring that official before the courts of law to answer for his conduct. The official may justify himself by pointing to an act of Parliament which gives him a special privilege to do what he has done. But he cannot turn aside the complaint merely by asserting an exalted official status and an inscrutable executive expediency in what he has done. The state can throw away the conscript's life but it cannot conscript him in the first instance on the plea of high policy or public expedience except as supported by a law sanctioned by Parliament. The rule of law, although qualified today by the grant of special powers to officials, remains an indispensable instrument for ensuring that government remains servant."

That is basically the core of what I would like to argue here in the few minutes you have allowed me, Madam Speaker. Here, in effect, the exalted officials are really those in the government who have put before the House a resolution that the judicial process, the check and balance in our system, has said is wrong. Whatever pejorative you wish to use, there is a taint to it. By members being forced to debate or vote on it before that taint is cleansed, they are being contaminated.

I agree with Your Honour, there has never been a position as extraordinary as this, at least that I have heard about. I have talked to several constitutional authorities in the last

couple of days. I asked them if there was ever such an experience in the British House, although you cannot apply the British case because they are not a federation. But in the history of the Parliament of Canada with respect to debating and voting on a proposition which has been ruled illegal by the superior court in one province and by a divided judgment in another, this is certainly an extraordinary circumstance. That is the reason members have presented you with so many questions of privilege, because the matter is so fundamental.

You can turn on the national news and see people in El Salvador shooting each other—there is no rule of law. In Iran they revolt and rebel because there is no rule of law. In Poland the people have a general strike in order to tell the government there is something wrong with the rule of law. The only bullets we have, Madam Speaker, are words. That is what we have been using. That is why members on this side have been exercised with respect to this fundamental issue.

Some hon. Members: Hear, hear!

Mr. Nowlan: We cannot call the Prime Minister and cabinet ministers before the bar of the House. But according to the rule of law, as set out by MacGregor Dawson and Corry, there is something wrong where members have to debate a question which two courts of the land question, one unanimously and one by divided decision.

The time allotted to me has almost run out, Madam Speaker, and I will not trespass. In conclusion, there is another element which has not been mentioned. With respect to the rule of law, what happened to Mr. Nixon, to the south of us, after he took on his oath? He did not observe the very simple oath of the presidency, which is almost as simple and as short as our oath as members, which says that we will do things according to law. Yet the very chamber which makes law is now forced to debate, and perhaps vote on, something which has been determined to be illegal.

This is the other element which has not been mentioned yet, Madam Speaker. Let us assume that this House makes a determination on the resolution. What is to prevent the government of the day, or of the next day, bringing in an amendment to the Supreme Court Act to change the composition of that court, doing what Franklin Delano Roosevelt tried to do in the "new deal" process—he wanted to stack the court? It is fundamentally wrong for this House to be placed in the invidious position of putting, in perpetuity, fundamentals into a new Constitution when the next day the Prime Minister could change the whole composition of the court to make sure he gets the proper interpretation from the court.

The other point is, we do not know what is before the court. By Parliament ruling and voting now on the resolution, we could be prejudicing other—

Mr. Orlikow: Time!

Mr. Nowlan: —matters that are in process in other jurisdictions. For those reasons, Madam Speaker, I believe you must, in an extraordinary way, go to the basic rule of law which