

Oral Questions

However, section 147 of the same act provides a direct link, I suggest, with section 26, under which the new senators were appointed, as it provides that no senators above 10 could be appointed in the province of New Brunswick, and I stress province and not maritime division, except under section 26.

In view of this direct linkage, will the minister not reconsider the government's decision and refer the whole matter to the Supreme Court of Canada so that these legal arguments can be fully and completely aired?

Hon. Kim Campbell (Minister of Justice and Attorney General of Canada): Mr. Speaker, as the hon. member will recall, when the issue was first raised in the House, which I believe was Friday of last week, I indicated that the issue was an arguable one. There are a number of provisions in the Constitution which have to be reconciled. Having reviewed all of those provisions and their various relations to one another, we are confident that our position is the correct one. If the hon. member is not, he has recourse to the courts.

Mr. Tom Wappel (Scarborough West): Mr. Speaker, it is very easy to say that we have recourse to the courts but as the highest law officer of the Crown, I would like the minister, and I put the question to her, to consider the section which specifically states: "That only 10 members can be appointed to New Brunswick" and "the representation of each of those provinces shall not be increased at any time beyond 10, except under the provisions of this act for the appointment of three or six additional senators under the direction of the Queen", which is now four or eight.

The linkage is clear; you cannot appoint to the province of New Brunswick more than 10 senators under section 26. Will you not put that question to the Supreme Court of Canada?

Hon. Kim Campbell (Minister of Justice and Attorney General of Canada): Mr. Speaker, once again, I can appreciate why members on that side of the House are very uncomfortable with what is going on now and are seeking issues to try and deflect attention from what they really stand for, which is the supremacy of an unelected Senate over the House of Commons. I have been quite happy to concede that there are arguable issues and to state the position of the government, and I would state

this point. I would like to quote a senior member of this parliament from a previous time:

This tendency that whenever there is something controversial you shovel it to the courts is not that of responsible government. A responsible government makes up its mind, does what it thinks is right, and if it is constitutionally wrong, it is for the courts to decide.

I am sorry the hon. member finds that arrogant because that is a quotation from February 15, 1981, of his new leader, the Hon. Jean Chrétien.

Ms. Audrey McLaughlin (Yukon): Mr. Speaker, my question is for the Prime Minister. The opinion that the stacking of the Senate to ram through the GST is unconstitutional is increasing every day.

Some hon. members: Oh, oh.

Ms. McLaughlin: I have here a legal opinion which says that not only is the Prime Minister in violation of section 51(A) of the Constitution Act, 1867, by creating more senators from New Brunswick than members of the House of Commons, but that he is also in violation of the Constitution Act, 1982, because section 41(B) states in effect that the appointment of the eleventh senator from New Brunswick amounts to an amendment of the Constitution of Canada, requiring unanimous consent of the provinces and of Parliament. The Prime Minister does not have that.

I ask the Prime Minister, will he show real confidence in his decision and make a reference to the Supreme Court?

Right Hon. Brian Mulroney (Prime Minister): Mr. Speaker, I explained to my hon. friend yesterday that the government acted pursuant to legal advice from the most senior law officers of the Crown. It followed the constitutional provision, Her Majesty did the same. All of the actions taken were following this kind of advice from the senior law officers of the Crown. It may very well be that my hon. friend has a different point of view. Clearly that appears to be the case. That is what the courts are for.

If my hon. friend wishes to contest—

An hon. member: Send it to the court.

Mr. Mulroney: Mr. Speaker, I am trying to respond to my hon. friend. If she has a different—

Ms. McLaughlin: Send it to the Supreme Court.