

*Point of Order—Mr. Clark*

**Hon. Walter Baker (Nepean-Carleton):** Madam Speaker, in respect of the point of order argued so eloquently by the gentleman who has now become the deputy House leader of the government, the hon. member for Winnipeg North Centre (Mr. Knowles), I have to say with respect—

**Mr. Knowles:** You call that respect?

**Mr. Baker (Nepean-Carleton):**—that his point of view was narrow indeed. I should like to raise some points in rebuttal and to refer Your Honour to a precedent which has not been referred to in the course of the discussion during this debate. This is a precedent of the Canadian House of Commons on the matter of sub judice.

● (1630)

If I may say so, I think the hon. member for Winnipeg North Centre was wrong—of course, the government House leader was wrong as well to adopt the argument of the hon. member for Winnipeg North Centre—when he said that the Chair will not decide a question of law or stand in the place of the Supreme Court. I listened very carefully to the argument put forward by the Right Hon. Leader of the Opposition (Mr. Clark), and that is not what he said at all. He was not arguing that Your Honour should stand in the place of the Supreme Court of Canada. He was arguing precisely the reverse, that is, that the Supreme Court of Canada is another institution, an institution which ought to be respected by the rules, precedents and practices of the House of Commons. That is the first point, and I think it speaks for itself.

The second matter he argued—and I thought he was becoming a bit of an advocate before a court rather than a parliamentarian in Parliament—was that the court would have the opportunity to deal with the constitutional matter after it had been decided in a foreign country, as put by the Right Hon. Leader of the Opposition. The court would have a chance to deal with it, but that, of course, is wrong. At least it is wrong in so far as the Kirby memorandum is concerned, and I believe it is wrong in so far as the Pitfield memorandum is concerned. It is also apparently wrong in so far as the Department of Justice is concerned because the Department of Justice has given an opinion which I presume it would advance in a court of law. It certainly advanced it to the government and to the Privy Council. The opinion of the Department of Justice is that precisely the opposite is true and that after the foreign country, Great Britain, has dealt with it—Westminster—and it comes back to Ottawa, it is beyond the purview of the courts. That is what the Department of Justice said. If there was any assertion made on the floor of this House, it was the assertion made by the Minister of Justice (Mr. Chrétien) himself to his own colleagues as to the propriety and importance of the sub judice rule. I have to agree that we have to look at each case on its merits, and to the Chair the opinion given by the Department of Justice is an important consideration.

In speaking of the sub judice convention, the hon. member for Winnipeg North Centre referred to two publications on the

customs, traditions and precedents of the House. He referred to the sub judice conventions as set forth in Beauchesne and May. I suggest there are other matters on sub judice to consider which ought to give Your Honour pause with respect to the importance of this argument. I am referring to a report of the House of Commons itself. It is the report of the special committee of this House on rights and immunities of members of the Thirtieth Parliament of 1976 to 1977. The committee was composed of some rather distinguished members and former members of this House. One was the former member for Peace River, Mr. Ged Baldwin. Another was Mr. Gordon Fairweather, who is now the chairman of the Canadian Human Rights Commission, and yet another was the hon. member for Winnipeg North Centre himself.

**Mr. Nowlan:** Oh, no.

**Mr. Baker (Nepean-Carleton):** The report was unanimous. I think it is important that Your Honour consider this report of the House of Commons. Just to put it in context, the order said in part:

That a Special Committee of the House to consist of Mr. Speaker—

This was a committee chaired by the Speaker.

—and seven other members be appointed to review the rights and immunities of members of the House of Commons, to examine the procedures by which such matters are dealt with by the House and to report on any changes it may be desirable to make.

The committee held a number of meetings on how the rights and immunities of members were affected by the sub judice convention or related directly to that. During the course of those proceedings, the committee received the assistance of Mr. Alistair Fraser, a former distinguished Clerk of this House of Commons, Mr. Phillip Laundry, the director of the research branch of the Parliamentary Library, and Mr. Norman B. Willans, a legal research officer with the Library of Parliament.

The matter with which we are dealing is very important. It is not something we can treat lightly. I will read part of the report because it does demolish some of the things which have been said about where the rule of sub judice applies. Paragraph 3 of the report reads in part as follows:

The freedom of speech accorded to Members of Parliament is a fundamental right without which they would be hampered in the performance of their duties. It permits them to speak in the House without inhibition, to refer to any matter or express any opinion as they see fit, and to say what they feel needs to be said in the furtherance of the national interest and the aspirations of their constituents. This basic parliamentary freedom is to some extent limited by the sub judice convention. Under the convention as it has developed over the years members are expected to refrain from discussing matters that are before the courts. No distinction has ever been made in Canada between criminal courts and civil courts for the purpose of applying the convention. It has also had application to certain tribunals other than courts of law. The purpose of the convention is to protect the parties—

Litigants.

—in a case awaiting or undergoing trial—

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

**Mr. Baker (Nepean-Carleton):** Then the report goes on to broaden it even more than that.