

*Speaker's Ruling*

New Democratic Party. I wish to speak to this in some detail, and I will return to it in a few moments.

I would, however, like to thank the hon. member for his submission. As well, I would like to thank the hon. government House leader and the hon. member for Ottawa—Vanier for their comments. All were helpful to the Chair.

I would first like to make a few remarks concerning the *sub judice* convention and the right of the House to legislate. Then I will deal with the citation in Beauchesne's.

[Translation]

It is accepted practice that, in the interests of justice and fair play, certain restrictions should be placed on the freedom of members of Parliament to make reference in the course of debate to *sub judice* matters and that such matters should not be the subject of motions or questions in the House. Though poorly defined, the interpretation of this convention is left to the Speaker. In Canada, the word "convention" is used as no "rule" exists to prevent Parliament from discussing a matter which is *sub judice*, that is "under the consideration of a judge or court". The acceptance of a restriction is a voluntary restraint on the part of Parliament to protect an accused person or other party to court action or judicial inquiry from suffering any prejudicial effect from public discussion of the issue. While certain precedents exist for the guidance of the Chair, no attempt has ever been made to codify the practice in Canada. Though the First Report to the House of the Special Committee on Rights and Immunities of Members, presented to the House on April 29, 1977, provides some guidance for the Chair, uncertainty still surrounds Canadian practice.

• (1510)

[English]

The purpose of the *sub judice* convention is twofold: to protect interested parties in a court proceeding and to maintain a separation and mutual respect between the legislative and judicial branches of government.

In Canada there are some situations in which the application of the *sub judice* convention has been fairly straightforward. All of the principal procedural authori-

ties, including Erskine May, Bourinot and Beauchesne, agree that the convention does not apply to bills as the right of Parliament to legislate must not be limited.

This has been confirmed in the House by a ruling of October 4, 1971. In that ruling Speaker Lamoureux noted that no legal proceeding initiated in a court of law in Canada, be it by way of writ of mandamus or any other writ, should prevent the House of Commons or Parliament from continuing or even initiating the discussion of legislation.

In that same ruling he also pointed out that should the House take the view that the *sub judice* convention applied to bills, the whole legislative process might be stopped simply by the initiation of a writ or legal proceedings in one or other of the courts of Canada. This, he noted, would place Parliament in an intolerable situation.

[Translation]

Where criminal cases are concerned, the precedents are consistent in barring reference to such matters before judgment has been rendered and during any appeal. As I noted on Monday, I have had to deal with the *sub judice* convention with respect to criminal matters before, and I think that position is quite clear.

[English]

Our practices as regards civil cases are less certain, however. The Chair has warned on various occasions of the need for caution in referring to matters pending judicial decisions whatever the nature of the court.

However, on February 11, 1976 Speaker Jerome ruled that no restriction ought to exist on the right of any member to put questions respecting any matter before the courts, particularly those relating to a civil matter, unless and until that matter is at least at trial. This view I reiterated in a ruling given on December 7, 1987.

As the debate on the budget is generally wide-ranging and touches upon all aspects of the government's budgetary policy, members are at liberty to debate or not debate whatever aspect of the motion they choose. Therefore I must rule that the *sub judice* convention does not apply in the present circumstances.