members of the House of Commons would want to join with me in expressing our most sincere condolences to President Reagan and to the American people and the hope that his recovery will be speedy and complete.

Some hon. Members: Hear, hear!

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POINT OF ORDER

MR. CLARK—THE CONSTITUTION—APPEAL TO SUPREME COURT—PROPRIETY OF PARLIAMENTARY CONSIDERATION OF RESOLUTION

The House resumed consideration of the point of order of Mr. Clark.

Right Hon. Joe Clark (Leader of the Opposition): To get back to the matter before you, Madam Speaker, the first question I raise for Your Honour to decide is: When the issue is the same and the court is the same, does the fact that the process is different make so overwhelming a difference that what would be illegal for us to do if this government had acted becomes legal for us to do because it was another government which got the same question to the same court? That is very much a question of judgment.

I remind Your Honour of your words on Friday when you said, and I quote:

Sub judice is a convention which is "a voluntary restraint imposed by the House upon itself in the interests of justice and fair play", as stated in Citation 335 of Beauchesne's fifth edition.

I think that is absolutely correct. The Chair will have to decide whether justice and fair play have to do with the substance of the question rather than with how many steps it took to raise the question or how many steps it took to get a contentious question before the court which must ultimately decide it.

I want to go back, if I might, to the principle of sub judice in our parliamentary system, and I would like to cite briefly from the nineteenth edition of Erskine May, page 427. The general principle is stated as follows:

Matters awaiting the adjudication of a court of law should not be brought forward in debate, subject to the right of the House to legislate on any matter—

In other words, that does not preclude the right of this Parliament to act on matters which might be before the courts in the application of existing law. But, when there are questions which relate to the substance of that law, the principle stated by Erskine May is quite clear:

Following the first report of the Select Committee on Procedure, 1962-63, the House passed a Resolution—

That was on July 23, 1963.

_-which set out the rule in detail. This resolution bars references in debate—

As well as in motions and questions.

—to matters awaiting or under adjudication in all courts exercising a criminal jurisdiction and in courts martial from the moment the law is set in motion by a charge being made to the time when verdict and sentence have been announced, and again—

This is germane.

—when notice of appeal is given until the appeal is decided—

There is then some reference to courts martial, which is not relevant here.

The resolution of 23 July 1963 also applies to the civil courts, and in general it bars reference to matters awaiting or under adjudication in a civil court from the time that the case has been set down for trial or otherwise brought before the court, as for example by notice of motion for an injunction; such matters may be referred to before such date unless it appears to the Chair that there is a real and substantial danger of prejudice to the trial of the case; the ban again applies when notice of appeal is given until judgment is given.

So the appeal procedure, which is the matter we are dealing with here, is very much within the practice cited by Erskine May.

On 28 June 1972 the House came to a further resolution, that notwithstanding the resolution of 23 July 1963 and subject to the discretion of the Chair, reference may be made in questions, motions or debate to matters awaiting or under adjudication in all civil courts, in so far as such matters relate to a ministerial decision which cannot be challenged in court except on grounds of misdirection or bad faith, or concern issues of national importance such as the national economy, public order or the essentials of life; and that in exercising its discretion the Chair should not allow reference to such matters if it appears that there is a real and substantial danger of prejudice to the proceedings—

Prejudice to the proceedings of the court is a matter to which I want to turn some attention now. I find it difficult to think of a prejudice to the proceedings of the court that is more dramatic or substantial than exporting the question to another country before our courts can decide on it. In my opinion, there is a very real and substantial danger, to quote the authorities, if the question that the Supreme Court wants to decide is rushed out of our country before the court has had a chance to consider it.

● (1520)

We received today from the Minister of Justice (Mr. Chrétien) a very clear indication, if the government get their way in pushing this matter through the House of Commons and if you decide it is legal for this matter to remain before the House, it is their intention to get this question out of the country before the Supreme Court can begin consideration of it on April 28. That seems to me to be a real and substantial danger of prejudice of the most extreme kind. I cannot think of prejudicing a court's decision in a more dramatic way than to, in effect, kidnap the question and get it out of the country before that court can become seized of it.

We are told part of the reason for this is that there is a timetable problem in Westminster; they want to deal with it more quickly. Well, I think we as Canadians, as a sovereign Parliament, have the right to ask why the timetable of Westminster should prevail over that of a Canadian court.

Some hon. Members: Hear, hear!

Mr. Clark: Now, Madam Speaker, that is one question I would ask you to turn your attention to—whether or not the process of getting the question before the courts makes a significant difference. Then, if you find the process does not matter, I ask you to find whether or not there is the kind of