

*Speaker's Ruling***POINTS OF ORDER**

QUESTION PERIOD—SPEAKER'S RULING

The Speaker: Colleagues, on March 31, the member for Crowfoot raised a point of order concerning answers given by the Minister of Justice in response to questions posed during question periods on March 27 and March 29. I would like to thank the hon. member for Crowfoot, the hon. Minister of Justice, the chief government whip and the hon. member for Kindersley—Lloydminster for their contributions to the discussion.

The hon. member for Crowfoot contended the Minister of Justice had contravened the sub *judice* convention by commenting on a case under appeal in the Alberta courts, and in so doing could have compromised the outcome of the case. Making reference to several citations from Beauchesne's sixth edition and to the case of Regina v. the Atlantic Sugar Refineries Co. to support his arguments, the hon. member requested that the Chair review the matter and determine whether or not the minister had contravened the sub *judice* convention.

[Translation]

The hon. Minister of Justice responded that nothing he had said in relation to the case offended the convention, and maintained that there was a difference between commenting on the facts of a case while the case was before a court, and stating the government's opinion about the ruling which had been rendered by a court.

Under the sub *judice* convention, it is accepted practice that, in the interests of justice and fair play, certain restrictions be placed on the freedom of members of Parliament to make reference in the course of debate to matters awaiting judicial decisions. Similarly, it is understood that such matters should not be the subject of motions or questions in the House.

As I commented last Friday, we use the word "convention" when referring to matters which are sub *judice* (that is, under the consideration of a judge or court), as no "rule" exists to prevent Parliament from discussing such matters.

[English]

In Canada, the First Report to the House of the Special Committee on Rights and Immunities of Members, presented on April 29, 1977, remains the definitive study of the sub *judice* convention. This special committee was chaired by Mr. Speaker James Jerome. In its report, the committee gave a lengthy explanation of the purpose of the convention. With the indulgence of the House I would like to quote from the committee's report, issue No. 1, at page 1:4:

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 in a case awaiting or undergoing trial and persons who stand to be affected by the outcome of a judicial inquiry. It exists to guarantee everyone a fair trial and to prevent any undue influence prejudicing a judicial decision or a report of a tribunal of inquiry.

• (1515)

[Translation]

The sub *judice* convention itself is poorly defined and its interpretation is usually left to the Speaker. The difficulty that I face as Speaker is that any attempt to determine when a comment might have a tendency to influence something can be at best speculative rather than preventative, that is, I cannot make such a determination until after the comments have been made. Hence, it has been the approach of most Chair occupants to discourage all comments on sub *judice* matters, rather than allow members to experiment within the limits of the convention and test the Speaker's discretion.

[English]

As stated in the special committee's report, Issue No. 1, at page 1:12:

Your Committee is of the opinion that precise regulations concerning the application of the sub *judice* convention cannot be evolved and that it would be unwise to attempt to do so. Your committee recommends that the Speaker should remain the final arbiter in the matter, that he should retain the authority to prevent discussion of matters in the House on the ground of sub *judice*, but that he should only exercise his discretion in exceptional cases where it is clear to him that to do otherwise could be harmful to specific individuals. In exercising this discretion your committee recommends that when there is a doubt in the mind of the Chair, a presumption should exist in favour of allowing debate and against the application of the convention.

As to the matter raised by the hon. member for Crowfoot, I have reviewed the question period exchanges. I have reviewed them many times and the points raised by hon. members during the discussion on the point of order. I cannot conclude the Minister of Justice contravened the sub *judice* convention by stating the federal government disagreed with the decision of a court and planned to challenge the decision.

[Translation]

Let me make one additional comment. While the ultimate authority to judge on these matters rests with the Chair, I must emphasize that All members of the House must share the responsibility in exercising restraint when it seems called for. Again, I quote from the special committee's report, issue No. 1, at page 1:12: "It is the view of your committee that the responsibility of the Chair during the question period should be minimal as regards the sub *judice* convention, and that the