to inform the House that amendments to the RCMP Act will be brought forward soon.

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POINT OF ORDER

MR. CLARK—THE CONSTITUTION—APPEAL TO SUPREME COURT—PROPRIETY OF PARLIAMENTARY CONSIDERATION OF RESOLUTION—RULING BY MADAM SPEAKER

Madam Speaker: The Right Hon. Leader of the Opposition (Mr. Clark) raised a point of order on Friday which he continued yesterday. It relates to the fact that the Supreme Court of Canada is seized with more or less the same point that the House is discussing as contained in the joint resolution on the Constitution. The matter was very ably argued by all hon. members and by the right hon. member, who took part quite at length in the debate.

There are essentially two matters or two issues which have been raised, the sub judice aspect and whether the Speaker may rule on the constitutionality of the joint resolution.

With regard to the sub judice aspect, at the outset it should be made quite clear that any practice or convention of the House to discontinue or not initiate discussion on a matter for the reason that it was then before the courts would have to be a voluntary or self-imposed practice or convention because the Bill of Rights of 1688, which is part of the law of the Parliament of Canada, provides that:

—freedom of speech and debate and proceedings in Parliament may not be questioned . . . in any court or place out of Parliament.

Sub judice is such a practice or convention. It is one that the House has imposed on itself to avoid discussing matters which are then under judicial consideration or before the courts.

Sir Robert Peel probably best summed up the essence of the convention when he said in 1844:

—that the right of Parliament as the highest court in this land to discuss what it will cannot be limited, but that good taste and sense of fair play should in some circumstances limit the exercise of that right.

The purpose of the practice is to avoid any discussion in the House which might have a prejudicial effect on an accused or on the parties to a civil action, since it might influence a jury or witness when they read of it in the newspapers or see it on television. It is rightly doubtful that judges are liable to be influenced by anything spoken in the House.

In respect of criminal matters it is clear both here and in the United Kingdom that once a person has been charged in the courts in a criminal matter, it is the correct practice not to permit the matter to be raised in the House.

In respect of civil litigation matters the United Kingdom House in 1963 laid down a rule that once the case is set down for trial, the issues should not be raised in the House.

The position of the Canadian House in this respect appears to provide more latitude. In 1976 the Speaker said, and I quote:

—in any event 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.

In 1971 the United Kingdom House resolved to allow references to be made to matters awaiting or under jurisdiction in all civil courts, subject to the discretion of the Chair and provided that there is no real and substantial danger of prejudice to the proceedings. This seems to provide even more and wider latitude.

In this context, in the same year, 1971, the Speaker of the Canadian House felt that the traditional position that a member while speaking must not refer to any matters upon which a judicial decision is pending, as set out in Beauchesne:

—should be interpreted as narrowly as possible. I doubt very much if the Chair should be called upon to intervene whenever a member refers to a matter which is before the Courts.

Furthermore, whatever self-imposed practice exists both in the United Kingdom and Canadian chambers in respect of matters that are before the courts, it is settled both here and in the United Kingdom that the practice would not be applied in the case of a bill, that is, while the House is involved in the legislative process—and I insist on that word. In other words, the House will not for any reason stop discussing outside events while embarked on the legislative process. Otherwise, it would mean that the courts could bring parliamentary proceedings to a halt, whereas one of the corporate rights of the House is to manage its internal affairs without their interference.

● (1510)

The proceedings in Parliament relating to the proposed address to the Queen contained in the proposal presently before the House is not only a parliamentary procedure in Canada but is also part of the legislative process in respect of constitutional amendment. The address contains the proposed bill and the process being undergone comes within the exception referred to by Erskine May, in that the practice of sub judice is not applied to the legislative process.

With respect to issues beyond those relating to Criminal Code offences or traditional civil litigation, the present rule in the U.K. House is that subject to the discretion of the Chair, reference may be made in the House to matters awaiting or under adjudication in all civil courts in so far as such matters concern issues of national importance, such as the national economy, public order or the essentials of life. Of course, if the matter is before the courts by virtue of a resolution of the House of Commons, the sub judice convention would no doubt be invoked, but only then. It is trite to say that the subject matter of the minister's resolution is an issue of national importance.

With respect to the discretion which is left to the Chair, it is interesting to note that both Erskine May and the report of the Special Committee on Rights and Immunities tabled in the House April 29, 1977, more or less suggest or recommend that the Speaker should only exercise the discretion of invoking the convention in exceptional cases where it is clear to the Speaker that to do otherwise could be harmful to specific individuals.