

debate was tardy, and someone at that moment, quite appropriately, asked the chairman of the Committee of the Whole to call for the vote. The chairman of the Committee of the Whole, recognizing his responsibility to be impartial and to call for that vote, called for the vote. You may recall that the government of the day was defeated.

**An hon. Member:** By two votes.

**Mr. Mackasey:** By one or two or 25. The important point is that the chairman of the committee had the sense of dedication, integrity and an awareness of his impartiality and did what was the appropriate thing, to call for the vote.

In the final analysis, Madam Speaker, in 1968 it was the fault of the government of which I was a member that someone did not rise in his place at eight o'clock to continue the debate. If there is an error tonight, it does not lie with the Speaker, but with members opposite who for one reason or another did not see fit at eight or five after eight to continue with the order of business we were discussing at five o'clock.

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

**Madam Speaker:** Perhaps I may summarize the situation. I do not need to recall the facts. Everyone knows I was here and waited and nobody rose, and that is very important; nobody rose. I looked around the House. The only indication to the Speaker that there are no more speakers is the fact that no one rises.

An hon. member on this side referred to the fact that I used my discretion and that perhaps I used it a bit too strictly. My discretion was not at stake. I did not use my discretion. There were no more speakers. I want to make that very, very clear. If I had used my discretion I am sure I would feel much more uncomfortable than I do now. When one uses one's discretion, of course, there is a judgment call. But I made no judgment call in this particular circumstance. There were no other speakers. There was one member present on this side of the House. He did not rise to speak and, therefore, I had to continue the proceedings. I had no other choice, and I repeat that.

If I am the custodian of the rights of members in this House, it is not by extending courtesies right and left that I will preserve those rights. My guidance, and my only guidance, lies in the rules, and I must apply them as well as I understand them. I may fail in this, but tonight I do not think I am failing. I must apply them as well as I understand them. I must comply completely with those rules and, when necessary, to look at usages and practices in order to integrate these usages and practices with the rules of the House of Commons. I repeat it, I used no discretion tonight.

The first point of order raised by the Right Hon. Leader of the Opposition has been disposed of. No second point of order can be entertained on that particular question because it is not before the House. The Right Hon. Leader of the Opposition could raise a point of order, which he did and which I heard and disposed of because it followed the deliberations of this

*Point of Order—Mr. Clark*

afternoon, namely, the question period. That is admissible and I heard the right hon. gentleman. The only course I can follow now is to continue the proceedings. If the right hon. gentleman at some other time feels he can bring in a new point, he can do so. I told him that I would rule, probably narrowly, after again looking into the arguments he gave me, on the question of sub judice which he raised today in the House of Commons. Once I have done that, and if the right hon. gentleman is not satisfied, then at the proper time it is open to him to raise another point of order.

**Mr. Clark:** Madam Speaker, I rise on a fresh point of order.

**An hon. Member:** Sit down.

**Some hon. Members:** Oh, oh!

**Mr. Clark:** There is a great deal of shouting around the House, Madam Speaker, but I shall try to overcome it and make my point of order. I raise it now because it flows, as did the earlier, separate point of order I raised, from the proceedings in the question period today. This is the first opportunity I have had to raise this particular point of order flowing from the question period today, and flowing in response, as my earlier one did, from the request by the Prime Minister that I make my points on the matter that was argued during an exchange between the Prime Minister and myself in the question period today.

As you will recall, Madam Speaker, there was reference to rule No. 338(3) of Beauchesne's having to do with the question of matters which are sub judice. That particular reference in Beauchesne's, with which you will be familiar, reads as follows:

The convention applies to motions, references in debates, questions and supplementary questions, but does not apply to bills.

The reason it does not apply to bills is that there has never been, in the practice of Parliament, a desire to try to limit the capacity of Parliament to legislate on a matter which was before the Supreme Court of Canada, if Parliament wanted to bring in new legislation which would create new law.

What we are dealing with here is different from precedent in two cases, and different from what was argued before in two elements. The first is that we are dealing here with a resolution, not with a bill. The second is, and this is the nub of the question, and obviously a matter you will want to consider with the utmost care, we are dealing with a matter which may very well be beyond the competence of the Parliament of Canada to pursue in any event. We are dealing with a matter which may be beyond the constitutional competence of the Parliament of Canada. Indeed, it is precisely that question, as to the competence of the Parliament of Canada to deal with a matter which is before us, which is now being brought by—

**Madam Speaker:** I am very sorry, but I must interrupt the hon. member. Even though he now says he is raising a new point of order which flows from the deliberations of the day, namely, question period, the proper time to do that is before I