

Privilege

before the courts and not to have it affected by things said in this House is to me and to the government paramount.

Hon. Herb Gray (Windsor West): Mr. Speaker, the Minister of Justice has read into the record Citation 335 of Beauchesne which says:

Members are expected to refrain from discussing matters that are before the courts or tribunals which are courts of record. The purpose of this sub judice 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.

I think we should ask what is the fundamental purpose of this convention? The citation gives us the answer. It is to protect the parties to the proceeding. We are dealing here with a criminal proceeding. Who are the parties in a criminal proceeding? Certainly, there is a party in the person of the accused, but is there another party in the person of the Crown. Certainly in the British and Canadian system of justice there is the convention that the Crown never wins and the Crown never loses. The duty of the Crown is to put forward before the court all the evidence that is relevant to the case.

So I submit, Mr. Speaker, that in reality in a criminal proceeding there is essentially only one party, and that is the accused. And if that is the case, then I submit that the kinds of questions intended to be asked by the member for York Centre could not, and were not intended, to prejudice in any way the ability of the accused in the case in question to get a fair trial. Instead they related directly to the administration of justice, to the responsibility of the government in that important area of government activity, in particular, the relationships between the relevant ministers, their senior advisers and the RCMP.

Now, if that is the case, then I submit that the questions intended to be asked by the member for York Centre were not the kinds of things intended to be covered by the precedent read into the record by the Minister of Justice because they were not intended to, in any way, affect the party to a criminal proceeding, namely, the accused. They are not intended, in any way, to prejudice, to in any way harm the ability of the accused to have a fair trial.

So I ask you, Sir, to make a distinction in applying the *sub judice* convention in criminal matters with respect to whether or not the questions relate to the accused, the conduct of the accused and so on, or whether they relate to collateral matters of the kind intended to be raised by the member for York Centre. I say to you if the latter is the case then the questions that the member for York Centre intended to ask certainly should be ruled in order.

Certainly there is no disagreement on either side of the House that questions should not be allowed that would prejudice the ability of the accused in a criminal case to get a fair trial. But, if it could be found that questions were not intended for that purpose and would not have that purpose, then I submit they should be permitted.

I respectfully submit that if the intention of the convention with respect to *sub judice* is to protect the accused, then there are certainly grounds for you to accept the questions intended to be asked by the member for York Centre and make the kind of distinction that I have placed in argument before you. I submit, therefore, that even accepting the various rulings on this matter as summarized by the citation in Beauchesne, it is certainly open to you to exercise your discretion and accept the questions which the member for York Centre wishes to ask about this very important matter.

Mr. Rod Murphy (Churchill): Mr. Speaker, I would like to speak on this matter. It was my intention in Question Period also to ask questions on this matter.

If I can refer to another place and another time, I was the vice chairperson of the Manitoba Police Commission in the seventies. We recognized that we had to make a distinction between matters that were before the courts and our obligations to investigate the actions, decision-making and policies of the various police forces in the province of Manitoba. Even when a matter was before the court, we decided that we could look into the actions of the police forces in the province of Manitoba.

I would submit to you, Mr. Speaker, that we are in exactly that same situation today. As my colleagues in the opposition and my Leader, the hon. member for Oshawa, have indicated, we are not looking at the specifics of the court case in regard to Mr. Small. What