

Criminal Law Amendment Act, 1985

crimes" and hence these proposed motions, all of which are identical, clearly are contrary to our practices as set forth in Beauchesne's Fifth Edition, Citation 773(1), which reads:

An amendment is out of order if it is irrelevant to the Bill, beyond its scope or governed by or dependent upon amendments already negated.

And this was given ample support by Erskine May's Twentieth Edition at page 555, which reads:

An amendment is out of order if it is irrelevant to the subject matter or beyond the scope of the Bill or if it is irrelevant to the subject matter or beyond the scope of the clause under consideration.

Furthermore, Mr. Speaker, I think there are serious grounds for doubting whether these amendments are relevant to the clause which they seek to amend.

Motions 9 through 12 appear to be attempting to amend the Fugitive Offenders Act and the Extradition Act which are not now before the House. Such amendments in my submission, are out of order inasmuch as they are contrary to the provisions of Beauchesne's Fifth Edition, citation 773(8)(a), which reads:

An amendment may not amend a statute which is not before the committee.

You will, of course, be aware that the rules which apply to the admissibility of an amendment in committee apply equally at the report stage, Mr. Speaker. I would refer you to Beauchesne's Fifth Edition, Citation 792, which reads:

The moving of motions in amendment to a public Bill at the report stage is governed by the practice or tradition which has developed whereby only the same class of amendments which were moved at the committee stage may be moved at the report stage.

I may say that I make this argument on the basis of the procedural argument. It has nothing whatsoever to do with a question of policy. Allusion has been made by both the Hon. Member for York Centre (Mr. Kaplan) and the Hon. Member for Burnaby (Mr. Robinson), whose constituency I have visited on a number of occasions—

Mr. Robinson: You are welcome back.

Mr. Hnatyshyn:—in support of the Hon. Member to make sure that he returns. I simply say, Mr. Speaker, that, as you know, if unanimous consent is sought this Government has taken early and strong initiatives in terms of this whole question of resolving the matter of war criminals in Canada and war criminals. We have set up a commission headed by the distinguished jurist, Mr. Justice Deschenes. I think from that point of view you will understand why we think that excellent work which has already commenced must be carried on. Accordingly, it would not only be inappropriate but presumptuous of us to make a decision on this basis with respect to a most important issue. I share the recollection of the Hon. Member for Burnaby in questioning the Hon. Member for York Centre when he was Solicitor General and I recall very clearly the position he took as part of the three-person committee of Cabinet with respect to this issue in which he indicated that retroactivity was not acceptable to him at that time. I say that with the greatest respect to the Hon. Member and I think we want to have this matter dealt with by the commission.

Accordingly I do not think that unanimous consent would be forthcoming.

Mr. Speyer: I rise on the same point of order, Mr. Speaker.

Mr. Speaker: I will recognize the Hon. Member for York Centre (Mr. Kaplan) first.

Mr. Kaplan: Mr. Speaker, reference has been made to decisions in which the Members who have spoken indicated that I participated. I want to indicate to them that there was a considerable development of policy during the period I was Solicitor General and that development of policy was in the direction of taking over firmer action against war criminals in Canada.

I recall earlier opinions to the effect that nothing could be done, including extradition, issued by former Governments. These were changed in the early years by bringing arguments to the attention of law officers of the Crown. I feel at this time that there is a sufficient development of legal opinion to justify—

Mr. Speaker: I have allowed the Hon. Member to speak for an obvious reason, which was that somehow matters of debate entered into a matter of procedural argument. I cannot imagine how that would be possible here in this sort of Chamber.

Further procedural argument? The Hon. Member for Cambridge (Mr. Speyer).

Mr. Chris Speyer (Parliamentary Secretary to Minister of Justice): Mr. Speaker, at the outset of your remarks you seemed to indicate a distinction between the different groupings. Indeed, arguments were made by the official critic for the Liberal Party and for the New Democratic Party. All of these groupings were dealt with together. My friend, the President of the Privy Council (Mr. Hnatyshyn), spoke with respect to the first grouping of four. That was really the core of the amendments dealing with war crimes.

The other following three groupings are derivatives of the first one. No individual argument has been made yet to the points that you raise, indirectly or by implication, with respect to the second grouping, namely Motions 5 through 8 and also Motions Nos. 12 to 15. I would like to have an opportunity to debate those particular motions at the appropriate time.

Mr. Speaker: The Hon. Member's argument to some degree is well founded. I indicated that I was prepared to hear the admissibility issues with regard to Motions Nos. 1 to 4 and Motions Nos. 9 to 12 at the same time. As far as I am concerned, I have heard the arguments with regard to the matters I have raised and I am now prepared to rule.

● (1530)

I have sympathy to some degree for the arguments being made by the Hon. Member for York Centre (Mr. Kaplan). The question the Speaker has to consider—and I am now indulging in a minor *obiter dictum*—is: When is an amendment an amendment and when is it a subamendment? In my