

*Point of Order—Mr. Clark*

**Mr. Knowles:** Who is on trial?

**Mr. Baker (Nepean-Carleton):**

—and persons who stand to be affected by the outcome of a judicial inquiry.

If my friend, the hon. member for Winnipeg North Centre, was to be affected by it, then he would have that protection. If the province of Ontario was to be affected by it, it would be entitled to it. If the province of Manitoba and the province of Saskatchewan were to be affected by it, they would be entitled to it.

**Mr. Knowles:** Who is on trial?

**Mr. Baker (Nepean-Carleton):** The hon. member for Winnipeg North Centre is interrupting me in an uncharacteristic fashion.

**Mr. Knowles:** Who is on trial?

**Mr. Crosbie:** You are on trial.

**Mr. Baker (Nepean-Carleton):** If the hon. member for Winnipeg North Centre will contain himself, I will get on with the question of who is on trial. Paragraph 3 goes on to say:

It exists to guarantee everyone a fair trial and to prevent any undue influence prejudicing a judicial decision—

It does not say who is on trial. It says “a judicial decision”. The Supreme Court of Canada is a judicial body. That stands.

—or a report of a tribunal of inquiry. It is important to emphasize that it is a convention and not a rule. It is a voluntary restraint imposed by the House upon itself in the interest of justice and fair play, but which the House is free to disregard should it so resolve.

There has been no resolution of the House to disregard or stand aside the principles of justice and fair play.

Then the report goes on—and this raises a point for the hon. member for Winnipeg North Centre with respect to who is on trial—in paragraph 4 to say:

A definition of “prejudice” is not easily formulated. An attempt was made by a select committee of the British House of Commons—

It should apply here. If we are going to send our Constitution to Great Britain to be decided, perhaps we can regard some of our decisions in the light of the Parliament to which we are going to send our fundamental documents. It says this:

“In using the word ‘prejudice’ your committee intend the word to cover possible effect on the members of the court, the jury, witnesses and the parties to any action. The minds of magistrates, assessors, members of a jury and of witnesses might be influenced by reading in the newspapers comment—

And so on.

The research efforts of the Committee have not succeeded in providing a more precise definition. What effect a parliamentary discussion may have on “the court, the jury, the witnesses and the parties to an action” is not easy to determine. One thing that can be stated with certainty is that courts in interpreting statutes have no regard for anything that might have been said in the course of parliamentary debate.

That is with respect to statutes, because they deal with words of precision. We are dealing with conventions in the case of a reference to the Manitoba court. That is the issue. Finally, it says—

**Madam Speaker:** May I interrupt the hon. member to tell him that it would be in his own interest if he could address the particular question we are dealing with here. I know the citation to which the hon. member is referring very well; he is referring to the effect that might have on individuals. He is referring to commentary in Parliament concerning individuals who might be on trial. With respect to such cases I have some citations which say that the House would exercise some discretion, although it is open to the House in some cases to comment on them. I would like the hon. member to refrain from pursuing that line, because it seems to me quite clear that is with reference to civil or criminal cases but perhaps not too germane to the particular situation we are discussing now.

● (1640)

**Mr. Baker (Nepean-Carleton):** Madam Speaker, with respect—and I will have to point the argument because I want to put it to you—I think the sub judice rule has been almost beyond dispute with respect to criminal cases. The difficulty has always arisen in the interpretation of the rule with respect to civil cases. There have been some civil cases where it was allowed, some where it was not, and in considering the appropriateness of this House proceeding while the issue is before the Supreme Court of Canada, one has to consider what it is. It is a reference put to the Supreme Court as set out by the Right Hon. Leader of the Opposition in a civil proceeding under the reference provisions and rules of practice in the Manitoba Supreme Court. It is a civil proceeding.

Now, I put it to you that there is a party involved; there can be a prejudice involved, and that is the issue of the rule. That is why the report of this Parliament put it precisely this way. I do not think there is any doubt as to the rule. It has always been the practice in this House, and it is the rule, that a matter which is the subject of a judicial inquiry is outside the purview of the House during the proceedings. So the rule is not limited to criminal or civil matters; rather it is wide ranging and includes an inquiry. As the Leader of the Opposition has said, it is new ground and includes a reference to the Supreme Court of Canada on a matter before a provincial court.

The rule evolves, it moves ahead. This is the first time this has been considered in this context. That does not say that this process is not subject to the sub judice rule. In fact, the burden would be on those attesting otherwise, because the object of the rule is to ensure that the interests of the parties are not affected by a proceeding in the Parliament of Canada. That was the essence of the case and that is the burden on the Chair.

It has applied, Madam Speaker, in many civil cases. The report refers to one in 1938, one in 1973 and another in 1966. The reports are replete with them. So I have to say that the sub judice rule is a dynamic thing. It is not narrow, as the member for Winnipeg North Centre and the government House leader seemed to argue; it is a dynamic concept that moves as it is applied.

I can think of no place where it ought to apply more fundamentally, more strongly and firmly than in a matter