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Journals

(Unrevised)

Legislative Assembly

Province of New Brunswick

Hon. Herménégilde Chiasson
Lieutenant-Governor

Speaker: Hon. Michael Malley

Friday, May 5, 2006

Third Session of the 55th Legislative Assembly
Fredericton, New Brunswick

Friday, May 5, 2006.

10 o'clock a.m.

Prayers.

Mr. Speaker delivered the following ruling with respect to a point of order raised by Hon. Mr. Harrison on April 26, 2006:

Honourable Members:

Following Question Period last Wednesday, the Government House Leader rose on a point of order and argued that the Member for Moncton North was pursuing a line of questions on a matter that is before the courts. The Government House Leader referred to Standing Rule 49 as the basis for his argument that Members should not raise matters that are before the courts.

The Opposition House Leader spoke on the point of order and argued that the line of question pursued by the Member for Moncton North does not deal with matters before the courts, but concerns the conduct and actions of government officials.

Standing Rule 49(b) of the Standing Rules states as follows:

49 In debate, a Member shall be called to order by the Speaker if the Member

(b) refers to any matter that is the subject of a proceeding

(i) that is pending in a court or before a judge for judicial determination, or,

(ii) that is before any quasi-judicial body;

where it is shown to the satisfaction of the Speaker that further references would create a real and substantial danger of prejudice to the participants.

Notwithstanding its fundamental right and duty to consider any matter if it is thought to be in the public interest, the House imposes a restriction upon itself in the case of matters awaiting or under adjudication in a court of law. This practice is known as the *sub judice* convention and it is embodied in Standing Rule 49. The rule is a voluntary restraint imposed by the House upon itself in the interest of justice and fair play. The rule applies to motions, references in debates, and questions, but does not apply to Bills.

The application of the rule during question period is discussed at page 428 of *House of Commons Procedure and Practice*:

"...the responsibility of the Chair during the question period should be minimal as regards the sub judice convention...the

responsibility should principally rest upon the Member who asks the question and the minister to whom it is addressed...while all Members share in the responsibility of exercising this restraint, the Speaker is the final arbiter in determining whether a subject matter raised during the consideration of oral questions is *sub judice*. As Speaker Parent noted in a 1995 ruling, the approach of most Chair occupants has been to discourage all comments on *sub judice* matters, rather than to allow Members to experiment within the limits of the convention and to test the Speaker's discretion, given that it is speculative to determine how a comment might influence a matter before the courts. ...if a question to a Minister touches upon a matter that is *sub judice*, it is likely that the Minister will have more information concerning the matter than the Speaker and can determine whether answering the question might cause prejudice. The Minister could refuse to answer the question as is his or her prerogative.

Special care should always be exercised to ensure that a matter that is before the courts is not prejudiced by comments in the House. I would ask all Honourable Members to take special care in not referring to matters that are before the courts. This caution applies to those who ask questions and to those who answer questions.

Following Oral Questions, Mr. Lamrock rose on a point of order and requested an explanation regarding why Mr. Jamieson had been called to order when posing a question to a Minister, as the Member had directed his questions through the chair and had referred to the Minister in the third person. Hon. Mr. Harrison spoke on the point of order. Mr. Speaker acknowledged that a Member is not required to directly pose questions in the direction of the Speaker, and ruled the point well taken.

The following Bill was introduced and read a first time.

By Mr. Murphy,

Bill 62, *An Act to Amend the Municipalities Act*.

Ordered that the said Bill be read a second time at the next sitting.

Hon. Mr. Harrison, Government House Leader, announced that it was the intention of government that the House resolve itself into a Committee of Supply to take into further consideration the estimates of the Department of Public Safety, followed by those of the Office of Human Resources.

The House, according to Order, resolved itself into a Committee of Supply with Mr. C. LeBlanc in the chair.

At 12.30 o'clock p.m., the Chairman left the chair to resume again at 1.30 o'clock p.m.

1.30 o'clock p.m.

The Committee resumed with Mr. C. LeBlanc in the chair.

And after some time, Mr. Betts took the chair.

And after some further time, Mr. C. LeBlanc resumed the chair.

And after some further time spent in Committee of Supply, Mr. Speaker resumed the Chair and Mr. C. LeBlanc, the Chairman, after requesting that Mr. Speaker revert to Presentations of Committee Reports, reported that the Committee had had under consideration the matters referred to them, had made some progress therein and asked leave to sit again.

Pursuant to Standing Rule 78.1, Mr. Speaker then put the question on the motion deemed to be before the House, that the report be concurred in, and it resolved in the affirmative.

And then, 4.30 o'clock p.m., the House adjourned.