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Speaker: The Honourable Peter Milliken

**Privilege
Order Paper Question No. 151**

[Speaker's Ruling]

The Speaker: I am now prepared to rule on the question of privilege raised on Wednesday, September 28, 2005 by the hon. member for Delta--Richmond East concerning the reply to Question No. 151 on the order paper.

I would like to thank the hon. member for Delta--Richmond East for raising this matter, as well as the hon. Parliamentary Secretary to the Leader of the Government in the House for his interventions.

The hon. member for Delta--Richmond East stated that the government's response to his question was that it could not provide an answer because the matters raised therein were presently before the courts. The hon. member charged that the government was withholding information necessary for the execution of his parliamentary duties and was misleading the House. He therefore asked that I find a prima facie breach of privilege.

The following day, the hon. Parliamentary Secretary to the Leader of the Government in the House of Commons rose to reply to these allegations. He responded that the government declined to provide the information sought because it wished to protect the integrity of the judicial process. He also denied that there had been any attempt to interfere with the parliamentary work of the hon. member for Delta--Richmond East. The hon. Deputy Leader of the Government in the House of Commons tabled a piece of correspondence in relation to this matter.

On October 3, the hon. member for Delta--Richmond East rose again in the House to reply to the comments put forward by the hon. parliamentary secretary. In his argument, the hon. member for Delta--Richmond East referred to the 1977 report of the Special Committee on Rights and Immunities of Members. He cited the following statement from paragraph 13 of the report:

It is clear...[that] no restriction ought to exist on the right of any member to put questions respecting any matter before the courts particularly those relating to a civil matter, unless and until that matter is at least at trial.

Finally, the hon. member argued that a minister has the obligation to justify any refusal to answer a question on sub judice grounds. He suggested that, in the present case, the government had not provided sufficient justification for its refusal, particularly since the matter is a civil case not yet gone to trial.

I have reviewed the presentations on this question and have looked at the relevant precedents. Certainly, disagreements over responses to written questions are not new. In fact, the hon. member for Delta--Richmond East has himself raised several questions of privilege relating to written questions.

[Translation]

Our practices with respect to replies to written questions are clear. The government may indicate in a response that it cannot supply an answer to a written question. To illustrate this, I refer hon. members to a ruling given by Speaker Lamoureux on May 5, 1971, found at page 5515 of the Debates, where he said,

It is correct, of course, to state as a general principle that a member should not be impeded in the discharge of his parliamentary duties. I suggest that this in itself does not create an obligation on the part of the government to supply any and all information sought by a member, either by way of an oral question or a written question. Indeed, there are many precedents to indicate that from time to time ministers have refused to answer questions on the grounds that it would not be in the public interest to do so.

[English]

In addition, as I indicated on February 9, 2005, when the hon. member for Delta—Richmond East raised a similar point, the Speaker does not have the authority to review government responses to written questions.

In this instance, however, the hon. member has asked me to rule on whether the government is interpreting the *sub judice* convention properly.

So, it may be helpful for me to describe the convention briefly. The *sub judice* convention is a practice whereby hon. members refrain from making reference in debate to matters awaiting judicial decisions, whether it be before a criminal court, civil court or court of record. This convention also applies to motions and to oral and written questions.

Although the Speaker's role in enforcing this convention has not been defined in our rules, the Chair does exercise a certain discretion in these matters. Thus, on numerous occasions the Chair has warned of the need for caution in referring to matters pending judicial decisions.

In 1977, the Special Committee on the Rights and Immunities of Members recommended that the Chair play a limited role during question period with regard to the *sub judice* convention. This recommendation can be found in paragraph 23 of the special committee's report which the hon. member for Delta—Richmond East cited in part. Specifically, the committee stated:

The minister could refuse to answer the question on these grounds, bearing in mind that refusal to answer a question is his prerogative in any event. It is the view of your Committee that the responsibility of the Chair...should be minimal as regards the *sub judice* convention, and that the responsibility should principally rest upon the Member who asks the question and the minister to whom it is addressed.

By extension, this principle also applies to written questions and their responses.

That being said, I agree with the comments of Madam Speaker Sauvé on December 16, 1980, comments cited by both the hon. members who intervened, that there could be instances where refusal to answer a question amounts to improper interference with a member's duties. However, I do not believe that is the case in the present matter and I acknowledge that it is in the best interests of the House to have questions answered as completely as possible.

Indeed, Speaker Parent stated this very well in a ruling on February 9, 1995 at page 9426 of that day's Debates:

It is incumbent upon all those involved on both sides of the process-- the members formulating the questions, House officials reviewing those formulations, the individuals drafting the replies and the ministers of the crown tabling those replies in the House--to ensure that every care is taken so that these exchanges remain as fruitful and as useful as possible.

In conclusion, then, I do not believe that the Chair can determine whether the government has interpreted the *sub judice* convention properly. Nor is it the Chair's responsibility to oblige the government to answer a question when the government has stated that it is unable to respond because the matter is before the courts, as is the case in this instance.

Therefore I do not find that the matter raised by the hon. member for Delta—Richmond East constitutes a *prima facie* question of privilege.

I thank the hon. member, however, for his continued vigilance in these matters.

Mr. John Cummins (Delta—Richmond East, CPC): Mr. Speaker, I appreciate your comments and certainly accept them but I wonder if you could clarify a couple of points for me.

I fully understand that it is the minister's prerogative to either answer or to refuse to answer a question but I am somewhat concerned about the point that was made. As you know, in this instance the government stated that it was unable to respond to my question because the matters were before the courts of British Columbia.

Mr. Speaker, if that rationale or that excuse, for want of a better word I guess, is to be used, I wonder if you could provide some guidance on that. In particular, I have four questions for you that I think would help to give some clarification and definition to this response.

First, are there occasions when it is inappropriate for the government to claim that it was unable to answer because a matter was before the courts?

Second, when would such occasions arise that it would be inappropriate to claim that a matter was before the courts?

Third, is it necessary for the actual subject matter of the question to be before the courts in a trial that is underway?

And fourth, is there a difference between a criminal and a civil trial on this issue?

Mr. Speaker, those questions are not meant to be a challenge but to be for clarification. I am obviously troubled by the government's response to these issues. Personally, I think when questions are asked we are entitled to complete answers. I understand full well that all members tell the truth, but I wonder if you could just clarify that issue for me, please.

The Speaker: The hon. member has posed four questions. What I would suggest is that he read the ruling that I just made again. I think he will find that the answers are there in the most fulsome way. There are citations about all kinds of precedents involved in this matter that he can look up too. There are quotations from authorities on the subject that will have footnotes galore on this issue that he can look at and satisfy himself as to the response that the Chair has given to his questions.

However I think I dealt with all the issues, perhaps in a less direct way than he would have liked but in a way that I believe is thorough and that will allow future Speakers to make decisions on these matters as the cases arise.

I have made a finding in respect of his case based on answers to, I believe, all four of the questions he posed. If he goes through the ruling I think he will find it a gold mine of information on this subject. I encourage him to read it.