



COMPANION TO THE RULES
OF THE SENATE OF CANADA

Second Edition

November 2013

Ce document est disponible en français

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SPEAKER'S FOREWORD

The Senate is the only upper house among the legislative bodies in Canada. It remains, to a great degree, a self-regulating body, with senators largely responsible for managing its proceedings, often assisted by the Speaker and the house leaders. It is, therefore, essential that senators have available the tools allowing them to acquire an understanding of Senate practices and procedures. These procedures have developed over the almost 150 years since Confederation, with many being originally based on the processes followed by the Legislative Council of the United Province of Canada before 1867.

The *Rules of the Senate* are the foundation of the Senate's procedures, but do not by themselves provide a full understanding of how the institution functions on a day-to-day basis. Actual practice often reflects features shared, at least in part, with other Westminster-type parliaments, and various procedures are only partly expressed in the written provisions. The Rules have been interpreted over the years by decisions from the chair, which must be taken into account if one is to fully appreciate how the Senate operates.

To understand how the Senate conducts its business, a document such as the *Companion to the Rules of the Senate* is invaluable. It provides readily accessible explanations and references to which senators can quickly turn, when required, without having to undertake the sometimes time-consuming process of tracking down rulings and authorities that may be relevant. In most cases, the references found in this document should be sufficient. In other cases, senators may choose to use the Companion as a starting-point, and pursue research on a particular point in greater depth. In either situation, senators can always turn to the professional and discrete services of the table officers for more information or assistance.

The first edition of the Companion, published in 1994, was prepared after significant changes were made to the Rules in 1991. Between 1994 and 2012 there were numerous changes to the Rules, making it increasingly difficult to link text found in the 1994 edition of the Companion with the Rules as they were in force at any particular time. Even more seriously, the Companion did not provide information on rulings given after 1994. It also did not reflect new resources as they became available, such as the procedural works prepared by the Canadian House of Commons and more recent editions of other works.

Even before the complete revisions to the *Rules of the Senate* in late 2012, an update to the Companion would have been useful. Those revisions made it essential. The substance of the Rules did not change dramatically, but the language used and the arrangement of provisions differ significantly. It became too difficult to link text in the 1994 version of the Companion with the Rules as they exist now.

The initiative to prepare an updated version of the *Companion to the Rules of the Senate* is both timely and desirable, and is commended to all senators and other interested users.

The Honourable Noël A. Kinsella
Speaker of the Senate

CLERK'S INTRODUCTION

The purpose of the *Companion to the Rules of the Senate* is to provide senators with additional sources of information with respect to Senate parliamentary procedures. The *Rules of the Senate* derive from constitutional and statutory sources, as well as parliamentary conventions, traditions and usages, and the practices adopted from time to time. The status of individual rules is relevant in terms of their legal implications and the procedures for amending them. Among others, the Rules reflect such underlying principles as the central role of Parliament, the rule of law and the independence of each chamber in our bicameral system. The Senate operates within a constitutional environment including the *Canadian Charter of Rights and Freedoms*. Therefore, since 1982, Parliament's historic privileges and immunities must be balanced with the rights and freedoms guaranteed to individuals in the Charter.

The adoption by the Senate in 2012 of a completely revised version of the *Rules of the Senate* has prompted this publication. The Companion has been significantly updated to reflect the major changes and advances in procedure in the Senate in the almost 20 years since the first edition was produced, especially the wealth of resources available in the form of Speaker's rulings. Among the significant differences between the first and second editions is that the English and French versions of the second edition are in separate volumes as opposed to the original two column format. This version of the Companion takes account of developments up to November 7, 2013.

Following the structure of the *Rules of the Senate*, the Companion is divided into 16 chapters. Each chapter begins with an overview of the subject matter of the chapter, explaining its general contents. The chapter is then broken down into discrete boxes reproducing the text from the *Rules of the Senate*, including headings, marginal notes, lists of exceptions and references. In most cases there is one rule per box, but there have been variations where appropriate. In this way, the full text of the *Rules of the Senate* in all its details is exactly reproduced in the Companion. Immediately below the box containing text from the Rules is a reference that identifies the equivalent provisions from the March 2010 version of the Rules.

The Commentary comes next. It explains the purpose of the rule and its operation. Though not cited specifically, much of this explanatory material is based on the planned manual of Senate procedure that is in preparation. Given the bicameral reality of the federal Parliament, the Commentary frequently includes comparative information relating Senate practices to those of the House of Commons. The Commentary also has a brief chronology of the rule, including when it was introduced into Senate practice, and information about how it has been amended before reaching its current form.

The most varied portion of the Companion is the part dealing with Related Citations and Extracts. Here are found relevant passages from a range of parliamentary authorities from Canada, the United Kingdom and Australia. The Canadian texts include the 1916 edition of Bourinot, the 6th edition of Beauchesne and the 2009 version of *House of Commons Practice and Procedure*. The principal British text cited is the 24th edition of Erskine May, though there are some references to other sources. With respect to Australian parliamentary resources, the manuals of each of the federal houses are used exclusively.

The most significant enhancement is the far greater use of Speaker's rulings, most of which date from after the publication of the first edition of the Companion. Relevant passages from rulings provide information about how provisions have been interpreted by the Speaker when confronted with a point of order. With respect to questions of privilege, the rulings cited focus on the elements of the process, the usual requirement for notice and the criteria by which the Speaker can determine whether an alleged

question of privilege appears prima facie to warrant further consideration by the Senate. It can be assumed that a ruling was not appealed unless there is an indication to the contrary.

Ellipses do not reflect the omission of preceding or following text. The capitalization and other formatting in quotations have generally not been changed, but text in the Commentary follows current practices for Senate publications. Previous rule numbers have been updated to reflect the current *Rules of the Senate*, with these changes clearly indicated by brackets.

I would be remiss if I did not express my deep thanks to the Speaker of the Senate, the Honourable Noël A. Kinsella, for his support of this project. During his more than seven years in the chair he has delivered more than one hundred rulings, providing clarification about the operation of Senate procedure and balancing the various principles underlying our parliamentary system of government. The user will find Speaker Kinsella's decisions woven throughout the body of this work.

While this Companion has been prepared as a tool, it does not in any way replace the actual *Rules of the Senate*, the Speaker's rulings on points of order and questions of privilege raised by senators, and the decisions of the Senate itself. All of these must be taken into account, and works on parliamentary procedure also consulted, for the fullest possible understanding of Senate procedure.

A project of this nature has obviously involved many individuals who dedicated many hours in addition to their other responsibilities. I would particularly like to thank Charles Robert, Principal Clerk of Chamber Operations and Procedure; Heather Lank, Principal Clerk of Committees; Cathy Piccinin, Deputy Principal Clerk of Committees; Jill Anne Joseph, Director of Internal Audit and Strategic Planning; and Till Heyde, Chamber Operations Clerk. Our work could not have advanced as well as it did without the expertise of Michael Lukyniuk, built up during his lengthy experience in the parliamentary field. I would also like to thank all the table officers, committee clerks and others who contributed to updating and improving the Companion, either in the early stages or by reviewing the product as it neared completion. I also want to express particular appreciation to the translators for their excellent work. Thanks to the contribution of all these individuals, we have a product that will be of use to senators, their staff, the Senate Administration, and anyone interested in following and understanding Senate proceedings.

Gary W. O'Brien
Clerk of the Senate

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Appendix I: Terminology

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Appendix III: Cabinet Ministers Being Members of Senate Committees

Appendix IV: Procedure for Dealing with Unauthorized Disclosure of Confidential Committee Reports and Other Documents or Proceedings

CHAPTER ONE: APPLICATION OF RULES AND PRACTICES

This chapter establishes the context in which the *Rules of the Senate* govern the proceedings of the Senate and its committees. The proceedings of the Senate are also controlled by the Constitution, federal statutes, practices and rulings delivered by the Speaker. This chapter deals with the authority and status given to the Rules and the direction to be followed in unprovided cases (rule 1-1), the relationship between the Rules and the rights and privileges of the Senate (rule 1-2), and, finally, the temporary suspension of a rule (rule 1-3).

RULE 1-1	
Primacy of Rules	1-1. (1) The <i>Rules of the Senate</i> shall govern the proceedings of the Senate and its committees and shall prevail over any practice and the appendices to these Rules.
Unprovided cases	1-1. (2) In any case not provided for in these Rules, the practices of the Senate, its committees and the House of Commons shall be followed, with such modifications as the circumstances require. The practices of other equivalent bodies may also be followed as necessary.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 1-1(1): Rule 1(2)

Rule 1-1(2): Rule 1(1)

COMMENTARY

Rule 1-1 establishes that the *Rules of the Senate* take precedence over any normally followed practices or the appendices to the Rules. In cases not provided for in the Rules reference may be made to the practices of the Senate, Senate committees, the Canadian House of Commons and other legislative bodies in determining how to proceed. Reference is, for example, sometimes made to the Parliament of the United Kingdom, the Parliament of Australia or provincial legislatures. As the Speaker has explained, “When we find it necessary to draw guidance from the practices of another Westminster system, we do so. However, it is important that we recognize that it is our own responsibility to regulate this house” (see *Journals of the Senate*, September 25, 2012, p. 1551).

With respect to the primacy of the Rules, reference can also be made to rule 12-26(1) which establishes that the *Senate Administrative Rules* govern the financial operations of Senate committees. With respect to unprovided cases, rule 12-32(3) establishes specific provisions respecting proceedings in a Committee of the Whole, and rule 12-20(4) prohibits Senate committees from adopting “procedures inconsistent with the Rules or practices of the Senate.” While committees are often said to be “‘masters of their own proceedings,’ this is only true insofar as they comply with the *Rules of the Senate*” (see Speaker’s ruling of September 16, 2009, *Journals of the Senate*, p. 1234, cited below).

A rule adopted on December 17, 1867 stated: “In all unprovided cases, the Rules, Usages and Forms of Proceeding of the House of Lords are to be followed” (rule 113). On May 2, 1906, the rule was changed to read: “In all cases not provided for hereinafter, or by Sessional or other Orders, the Standing

Rule 1-1

Orders, Rules, Usages and Forms of Proceeding of the Lords' House of the Imperial Parliament, in force for the time being, shall be followed, so far as they can be applied to the proceedings of the Senate or any committee thereof" (rule 1).

On December 10, 1968 (see *Journals of the Senate*, p. 515, effective on August 1, 1969), the rule was amended so that reference would be to the rules and proceedings of the Parliament of Canada. The Special Committee on the Rules gave the following explanation for the change:

This revision does not preclude reference to the great Parliamentary authorities such as Bourinot, May, or Beauchesne. The Senate is master of its own House, and with the Canadian experience of over 100 years, there is no usefulness in referring to the Lords House of the Imperial Parliament. (See *Journals of the Senate*, November 28, 1968, p. 444.)

The rule was further amended on November 26, 1975 (see *Journals of the Senate*, p. 592), and June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). This included replacing the Latin term *mutatis mutandis* in English by the term "with such modifications as the circumstances require."

RELATED CITATIONS AND EXTRACTS – RULE 1-1

Bourinot's Parliamentary Procedure, Fourth Edition, p. 201:

In the legislative councils of Upper and Lower Canada, the rules were, from the first, based on the practice of the House of Lords, as far as the constitution of the house and the circumstances of a new country permitted; and the same course was pursued in 1841 by the legislative council of United Canada, and in 1867-8 by the Senate.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 3:

§2. Procedure in the Canadian House of Commons is derived from many sources – the *Constitution Act* (formerly the *British North America Act*), statute, written rules and tradition. Standing Order 1 also provides for reference to the custom and precedent of the House of Commons of Canada and the tradition of other jurisdictions so far as they may be applicable to the House.

Annotated Standing Orders of the House of Commons, Second Edition, p. 1:

Standing Order 1 stipulates that in the conduct of public business, when a question of procedure arises which was not foreseen or provided for in the Standing Orders or other Orders of the House, the Speaker or Chairman is to base his or her ruling first on the usages, forms, customs and precedents of the Canadian House, on parliamentary tradition in Canada and then in other jurisdictions, as it could be applied to the Canadian House. This is not to specifically refer to codified rules or Standing Orders of other jurisdictions, but only to the tradition upon which they are based.

Pages 4-5:

Standing Order 1.1 gives the Speaker the authority to modify the application of certain Standing Orders or practices of the House and its committees in order to allow Members with disabilities to

participate fully in the proceedings of the House. This could involve, for example, exempting a Member from the requirement to stand while speaking.

La procédure parlementaire du Québec, Third Edition, pp. 51-52:

By virtue of their constitutional parliamentary privileges, legislative assemblies derived from the British model, such as Québec's National Assembly, have exclusive power to govern their internal affairs without any outside interference. It is this power that enables assemblies to adopt written rules establishing the procedure under which they will function. While the Standing Orders of such assemblies contain the essential elements of the rules of parliamentary procedure, a number of rules are drawn from other sources, including the Constitution, statutes, special orders, precedents, usage and doctrine. Parliamentary law, however, derives from unwritten rules that "are being used, not to codify existing practice, but rather to trim and adjust historic traditions to modern needs."

...

Despite the particular nature of parliamentary law and the exclusive power of the President of the National Assembly to interpret that law, the President must always bear in mind the order of precedence governing the rules of parliamentary law as set out in Standing Orders 179 and 180, which codify the sources of parliamentary procedure in the National Assembly. In this respect, parliamentary law does not differ greatly from the other branches of law that make up our legal system.

[Footnote: Standing Orders 179 and 180 read as follows:

179. The proceedings of the Assembly shall be conducted in accordance with:

- (1) the statutes;
- (2) these Standing Orders and rules for the conduct of proceedings;
- (3) such other orders as the Assembly may from time to time make.

180. In deciding all questions of procedure not so provided for, resort shall be had to the usages and precedents of this Assembly.]

Speaker's Ruling: Unprovided Cases

Journals of the Senate, February 21, 2001, pp. 78-83:

... It is [Senator St. Germain's] contention that no Senate precedent exists to guide this House to properly identify the Leader of the Opposition. Senator St. Germain then made reference to rule [1-1(2)] of the *Rules of the Senate* that sanctions recourse to the practices of other Parliaments in all unprovided cases. Senator St. Germain then cited the British House of Lords and the Australian Senate as sources for guiding precedents. According to the Senator, the practice in both Parliaments would appear to be that the political leadership in the Lower House is mirrored in the Upper House. That is to say, there is a direct correlation in the recognized leadership of the Official Opposition in the Upper House with that of the Lower House. Indeed, evidence would suggest that they are almost always of the same party affiliation, notwithstanding the relative numerical strength of party membership in the Upper House.

...

In this particular case, I have looked closely at the precedents mentioned by Senator St. Germain which are also explained more fully in the document that he tabled February 6. ... The first example that he referred to in his presentation was that of the British Parliament. The Senator makes the case that in Westminster, the opposition leadership in the House of Lords is determined by reference to the

political composition of the House of Commons. I think that this is a correct account of how the system operates in the United Kingdom Parliament.

Should there be any doubt in the United Kingdom as to which party should be recognized as the Official Opposition based on parity, the Speaker of the House of Commons is authorized under statute to make a final and conclusive determination. In all other instances, however, the Speaker has no role to play. Under the same law, the *Ministerial and other Salaries Act*, the Lord Chancellor is given the same authority to determine the Official Opposition in the House of Lords, but this authority must be exercised by way of reference back to the decision made in the House of Commons. These provisions of the Act date back to 1937 and I am unaware of any occasion where the Speaker or the Lord Chancellor had to resort to it; nor did Senator St. Germain indicate that it had ever been used. In any case, it is the view of the Senator that I as Speaker can exercise the same authority through the provisions of rule [1-1]. I do not accept this proposition. Moreover, my position appears to be shared by my counterpart in the “other place”. In a ruling that was made February 26, 1996 dealing with the status of the Bloc Québécois, Speaker Parent explained that “Unless the House wishes, either in the rules or in legislation, to give the Speaker precise powers and guidelines by which to designate the official opposition, I must state at the outset that I do not feel it is within my power to make such a decision ...” The Speaker went on to acknowledge the *status quo* incumbency of the Bloc Québécois as the Official Opposition.

...

Australia was another jurisdiction that Senator St. Germain raised as a possible model. There too, it seems a correlation exists between the identity of the Official Opposition in the Senate and the House of Representatives. ... As [Senate Clerk Assistant of Procedure] Dr. Rosemary Laing describes it: “The fact is that while the position of Leader of the Opposition in the Senate has to date been determined by reference to the party in opposition in the lower house, changing circumstances in the future may well lead to a different outcome. ...”

...

... [P]recedents prove that there need not be a corresponding relationship in the political composition of the House of Commons and the Senate. Our parliamentary system continued to function even though the Senate had an Opposition that did not match the Official Opposition in the House of Commons when it was the Bloc or the Reform Party. Parliament is flexible enough to accommodate this possibility. This is because, in large measure, the Senate and the House of Commons are, and remain, independent, autonomous bodies performing roles that are complementary to each other.

Whether the identity of the Opposition in the Senate will change or ought to change at some point in the future is not for me as Speaker to decide unless I should be authorized to make such a decision.

Whereupon the Speaker’s Ruling was appealed.

The question being put on whether the Speaker’s Ruling shall be sustained, it was adopted on division.

Speaker’s Ruling: Committees as “Masters of Their Own Proceedings”

Journals of the Senate, September 16, 2009, p. 1234:

...While committees often operate informally, they remain bound by the *Rules of the Senate*. Committees cannot follow any procedure whatsoever that they set for themselves. The phrase *mutatis mutandis*, in the context of our practices, means that the Rules apply in committee, unless they

contain an exemption or there is a clear reason why they cannot. While committees are often said to be “masters of their own proceedings,” this is only true insofar as they comply with the *Rules of the Senate*.

RULE 1-2

Privileges
unaffected

1-2. These Rules shall not limit the Senate in the exercise and preservation of its powers, privileges and immunities.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 1- 2: Rule 2

COMMENTARY

Parliamentary privilege may be defined as “The rights, powers and immunities enjoyed by each house collectively, and by members of each house individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Privileges include: freedom of speech in the Senate and its committees, exemption from jury duty and appearance as witness in some cases, and, in general, freedom from obstruction and intimidation” (Appendix I, Terminology). Rule 1-2 provides that the Rules do not limit the powers and privileges of the Senate.

A rule covering this point was first adopted by the Senate on May 2, 1906, and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

For further information on parliamentary privilege, see text on Chapter 13 of the Rules. Reference can also be made to works such as *House of Commons Procedure and Practice*, Second Edition, 2009, Chapter 3, pp. 59-160; *Erskine May Parliamentary Practice*, Twenty-Fourth Edition, 2011, Chapters 12-17, pp. 203-305; Joseph Maingot, *Parliamentary Privilege in Canada*, Second Edition; and W. F. Dawson, “Privilege in the Senate of Canada,” paper presented to the Annual Meeting of the Canadian Political Science Association, June 1966.

RELATED CITATIONS AND EXTRACTS – RULE 1-2

Constitution Act, 1867:

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities or powers exceeding those at the passing of such Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

Parliament of Canada Act:

4. The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise

- (a) such and the like privileges, immunities and powers as, at the time of the passing of the *Constitution Act, 1867*, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and
- (b) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 203:

Parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament; and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute.

Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members.

RULE 1-3

Suspension of a rule **1-3.** (1) Except as otherwise provided, any rule or part of a rule may, with leave of the Senate, be suspended without notice.

EXCEPTION
Rule 4-3(3): No leave to extend tributes

Explanation of suspension **1-3.** (2) A Senator who seeks leave of the Senate for the suspension of a rule or part of a rule shall state the rule or part of the rule to be suspended and provide an explanation.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 1-3: Rule 3

COMMENTARY

When it is the desire of the entire Senate to proceed in a manner contrary to or inconsistent with its Rules, provisions may be suspended temporarily without notice. For example, if the Senate wishes to adopt all three readings of a bill in a single sitting, as may be the case with urgent legislation such as a back-to-work bill, it may, by leave of all senators present, suspend the application of the rules of notice. Leave to suspend normal notice requirements is regularly granted at the end of one sitting week so that the Deputy Leader of the Government can move a motion for the next sitting day different from that

provided for in rule 3-1(1). Rule 1-3 specifically allows for the suspension of a rule without notice, but with the consent of all the senators then present. A request for leave is granted if no dissent is expressed. A senator seeking leave should provide an explanation for the request. Something done with leave does not constitute a binding precedent.

Rule 4-3(3) is an exception to this provision. It prohibits a request for leave to extend Tributes.

This provision was first adopted on April 6, 1876 (as part of rule 18). On December 10, 1968, it was made a separate rule for “clarity of presentation” (see *Journals of the Senate*, p. 444, effective on August 1, 1969). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). At the same time the term for leave in French was changed from “permission” to “consentement.”

RELATED CITATIONS AND EXTRACTS – RULE 1-3

House of Commons Procedure and Practice, Second Edition, p. 259:

... [S]ome Standing Orders explicitly allow the House to suspend the operation of other Standing Orders. It is also common for the House, at any given time, to set aside its rules with the unanimous consent of all Members then present in the House, so that something can be done which would otherwise be inconsistent with the Standing Orders. ... Furthermore, the House can adopt a special order to supersede a previously adopted special order.

John B. Stewart, *The Canadian House of Commons*, p. 33:

... [W]ith the exception of a few elemental points dealt with in the [Constitution] Act, the House is master of its own proceedings. When a session shall begin and end is decided by the governor general as advised by the prime minister; but what the House does while in session, and how it does what it chooses to do, are matters to be decided by the House itself. ... This principle means that the House can change its established procedures freely to suit new needs and conditions. It means that the House is not bound by its own practices and rules: since those practices and rules are its own the House in particular cases can waive their requirements with the consent of those members who are present. This it often does, especially with regard to the notice requirement and the rule that bills ordinarily are not to move forward through more than one stage at a sitting.

Speaker’s Rulings: Leave to Suspend a Rule

Journals of the Senate, November 2, 1999, p. 61:

Every time leave is sought during Routine of Business, it is a request to suspend the notice normally applicable under rules [5-5 or 5-6]. Leave is granted once it is determined that no Senator present in the Chamber disagrees with the request. If only one Senator refuses leave, the affected item cannot be considered before the required notice period has lapsed. Furthermore, when leave is granted, the adoption of the report or motion is moved immediately, unless the leave request proposes to postpone consideration of the report or motion to later in the day.

Journals of the Senate, May 11, 2000, pp. 592-593:

Senator Kinsella noted that accepting the request for leave means, according to [Appendix I], approval to do something or to proceed in some particular fashion “without [dissent expressed].” Normally, what is requested involves the suspension of a rule in whole or in part. This is done routinely every Tuesday, for example, when the Deputy Leader of the Government seeks leave to move without the required notice, a motion respecting the hour the Senate will sit on Wednesday. Instead of meeting at 2:00 p.m. Wednesday, the Senate usually agrees to meet at 1:30 p.m. and to adjourn by 3:30 p.m. in order to allow committees to sit. Leave is also used sometimes to suspend the rule on a deferred vote in order to hold the recorded division at a time more convenient than 5:30 p.m. as specified in Rule [9-10(2)]. In both cases, leave is used not just to suspend the notice requirement, but to offer something else in place of the relevant rules for the purpose of allowing the Senate to conduct its business more conveniently and effectively.

Based on these examples, I do not find it procedurally objectionable to have a request for leave to suspend the rules limiting the time for debate combined with a proposal to fix the time of the extension. Indeed, following the model of the House of Lords that Senator Kinsella mentioned it might be useful and advantageous to the Senator, who is requesting more time, to indicate how much time is needed in order to improve the likelihood of a favourable response. Moreover, such an approach would, I think, be in keeping with the intent of Rule [1-3] regarding the suspension of any particular rule. According to this rule, the purpose of any proposed suspension should be “distinctly stated.” As much as possible, I have usually permitted an explanation so long as it did not involve any prolonged discussion. This I think is a sensible approach that could serve the Senate well until the rules of debate are revised.

Journals of the Senate, April 24, 2007, pp. 1363-1364:

Despite these mandated time limits on debate, it remains possible to extend the time for an individual senator’s debate through leave. Originally, such requests were without any restriction. This then led to objections that too much time was being monopolized when leave was granted. Speaker Molgat acknowledged this situation in a ruling made on May 11, 2000, when he addressed a point of order similar to this one. Referring to rule [6-3(1)], Speaker Molgat recognized that:

There is no doubt that the current rule is restrictive. With growing frequency, requests are being made to extend the time for debate and the question and comment period that can follow a speech. Only rarely are these requests denied. This practice, in turn, may now be giving rise to a sense of frustration. This appears to be evident based on the objections that have occasionally been raised by some Senators who find the process too open-ended.

...

In summary, it is my ruling that a request seeking leave to extend debate is procedurally acceptable. Equally, it is competent for the senator requesting leave, or for any other senator, to specify the length of time for that extension. In all such cases, however, the leave of the Senate is required to suspend the limits of debate established by our rules.

CHAPTER TWO: THE SPEAKER, ORDER AND DECORUM

This chapter describes the roles and duties of the Speaker as well as the rules pertaining to the maintenance of order and decorum in the Senate. For instance, it establishes the right of the Speaker to participate in debate (rule 2-3); it provides for his or her replacement in the chair as presiding officer (rule 2-4); it describes how points of order and questions of privilege are to be considered, and the appeal of rulings (rule 2-5); it authorizes the Speaker to interrupt proceedings in order to restore order (rule 2-6); it describes the rules of decorum to be respected during the sitting (rules 2-7 and 2-8); and it describes the recognition of distinguished visitors (rule 2-11) and participation by ministers in debate (rule 2-12).

The Senate meets in a chamber located at the east end of the Centre Block. The Senate Chamber is decorated with sculptures and eight large paintings depicting scenes from the First World War. The thrones of Canada are found at the north end of the chamber. They are used during certain state ceremonies such as the opening of Parliament. For normal sittings the Speaker's chair is located in front of the thrones.

The Senate Chamber



- A – Dais with throne and Speaker's chair
- B – Government benches
- C – Opposition benches
- D – Table with clerks and mace
- E – Public galleries
- F – Debates reporters

The Speaker

RULE 2-1

Speaker's duties

2-1. (1) The Speaker shall:

- (a) preside over the proceedings of the Senate;
- (b) rule on points of order, the prima facie merits of questions of privilege, and requests for emergency debates; and
- (c) preserve order and decorum.

Conflict of Interest Code for Senators

2-1. (2) For greater certainty, the Speaker's authority with respect to the *Conflict of Interest Code for Senators* is limited to those provisions of the Code expressly incorporated in the *Rules of the Senate*.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-1(1): Rules 18(1) and (2), 43(12), and 60(8)

Rule 2-1(2): Rule 18(2.1)

COMMENTARY

Rule 2-1 first acknowledges that the primary function of the Speaker is to guide the proceedings of the Senate as its presiding officer. The rule then identifies other roles of the Speaker.

The office of the Speaker of the Senate was patterned closely on the office of the Lord Chancellor, who until recently was Speaker ex officio of the House of Lords. The Senate Speaker is appointed by the Governor General, on the advice of the Prime Minister, rather than elected by senators. The Speaker of the Senate, unlike the Speaker of the House of Commons, is not given any specific powers or responsibilities by the Constitution. Originally, the Speaker of the Senate was not given any power to enforce the *Rules of the Senate* because the Senate prided itself on being self-governing and on the equality of all its members. The Speaker only intervened in debate when requested by another senator. However, a series of incidents in the 1890s and the early years of the twentieth century led to a re-evaluation of this position and, eventually, a desire to give the Speaker more authority. By changes adopted in 1906 the Speaker received authority to preserve order.

Other changes in recent years have brought the office of the Speaker of the Senate closer to that of the Speaker of the House of Commons, though there are still differences. These include the right to appeal decisions of the Speaker (rule 2-5(3)), the Speaker's right to participate in debate (rule 2-3) and the Speaker's right to vote like any other senator (*Constitution Act, 1867*, s. 36, and rule 9-1). Also refer to W.F. Dawson, "The Speaker of the Senate of Canada," *The Table*, vol. 38 (1969), pp. 20-32.

As the presiding officer, the Speaker calls out the headings of Routine Proceedings and the items on the Notice Paper, recognizes senators to speak, puts questions to a vote, and announces the results of votes. The Speaker also reads messages from the Governor General and the House of Commons, and introduces visitors in the Senate galleries. The Speaker has also noted that there exists an authority, rarely exercised, for the chair to facilitate the Senate's work by splitting a complicated motion (see Speaker's statements of November 4 and 5, 2013).

The Speaker of the Senate is not ex officio a member or chair of the body responsible for the Senate's internal administration, the Standing Committee on Internal Economy, Budgets and Administration. Rule 2-1(2) limits the Speaker's role in relation to the *Conflict of Interest Code for Senators* to matters specifically included in the Rules. The Speaker does not interpret the Code itself. Rule 15-7 contains provisions relating to declarations of private interest pursuant to the Code, and rules 12-27 to 12-31 contain provisions relating to the Standing Committee on Conflict of Interest for Senators.

The Speaker of the Senate ranks fourth in the Order of Precedence, after the Governor General, the Prime Minister and the Chief Justice of the Supreme Court. In addition to duties as presiding officer, the Speaker is often called upon to participate in different activities, both within and outside Canada.

Rule 2-1 reflects elements of the provision adopted on December 17, 1867, which stated that "The Speaker stands uncovered when speaking to the Senate, and if called upon to explain a Point of Order or Practice, he is to state the Rule applicable to the case, and also to decide the Question, when required, subject to an appeal to the Senate" (rule 10). A new rule was added on May 2, 1906, which read: "The Speaker preserves order and decorum, and decides questions of order, subject to an appeal to the Senate. In explaining a point of order or practice he states the rule or authority applicable to the case" (rule 16). In the opinion of the committee that drafted the 1906 rule change, this new rule was "the most important change recommended ... and your Committee are pleased to report that upon this same point there was no difference of opinion" (see *Journals of the Senate*, July 6, 1905, p. 317). Other elements of these provisions are now found in rules 2-5, 2-6 and 2-7. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 2-1

Constitution Act, 1867:

34. The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

Conflict of Interest Code for Senators (2012):

7. Procedural matters referred to in this Code that are expressly provided for in the *Rules of the Senate* are under the jurisdiction and authority of the Speaker rather than the Senate Ethics Officer.

Senate Administrative Rules (2004), Chapter 5:01:

4. During a sitting of the Senate, every member of the staff of the Senate in the Chamber shall observe the direction of the Speaker or the Senator acting as the Speaker in preference to any direction received from any other source of authority.

House of Commons Procedure and Practice, Second Edition, p. 313:

When in the Chair, the Speaker embodies the power and authority of the office, strengthened by rule and precedent. He or she must at all times show, and be seen to show, the impartiality required to sustain the trust and goodwill of the House. The actions of the Speaker may not be criticized in debate or by any means except by way of a substantive motion. Such motions have been moved against the Speaker or other Presiding Officers on rare occasions. Reflections on the character or

actions of the Speaker — an allegation of bias, for example — could be taken by the House as breaches of privilege and punished accordingly.

Speaker's Ruling: Authority of Chair

Journals of the Senate, May 28, 2013, p. 2560:

[The Speaker of the House of Commons] went on to state that “The authority of the Chair is no greater than the House wants it to be.” The Speaker is the servant of the house, assisting it in conducting its business in an orderly manner that balances, as far as possible, many divergent interests.

In the Senate, given the limited authority of the chair, this is even more evident. Honourable senators are themselves responsible for how business is conducted, and retain final control of proceedings through the right to appeal decisions of the Speaker.

Speaker's Statements: Complicated Motions

Journals of the Senate, November 4, 2013, p. 126:

So the Speaker does not take the initiative to divide a question, but a member of the assembly may ask the Speaker, when it comes to the point of putting the question, “Please divide the question,” and it is at the discretion of the Speaker whether to do it or not.

... When we are at that point, I ask the house, "Are you ready for the question?" and the house says "Yes." I then ask the question, and I, or any Speaker have to be satisfied that the question being put to the house is fully understood. That is why sometimes, if there is a complicated motion, Speakers have — indeed, as recently as a few weeks ago in the House of Commons — divided a question. It would be at that point, when the question is put to the house. Obviously, I listened to the debate here as well. As long as we are satisfied that we know what we are voting on, and I think everybody is, there is no need to divide even the most complicated of questions. But if there is confusion, sometimes it is helpful. It is more a technique to be helpful to the chamber when making a decision.

Journals of the Senate, November 5, 2013, pp. 139-140:

During yesterday's sitting an honourable senator made a formal request that I exercise the authority of the Speaker to split the vote on Government motion five.

Senator Fraser questioned this process. As I indicated at that time, there is a practice in parliamentary procedure allowing the separation of a complicated question for the purposes of a vote on different elements of the motion. This is done to better capture the sense of the house when taking a decision, but can only be done if the motion contains two or more distinct propositions that would, if decided separately, be coherent.

I have considered the request carefully in light of the seriousness of the issue on which the Senate will now vote. Dividing a vote, honourable senators, is a rare practice. In the Senate, we do not have any known cases of using this parliamentary practice. It is appropriate, under rule 1-1(2), to look to the

procedures in other parliamentary chambers, in particular the Canadian House of Commons.

In that place, on October 17, 2013, the Speaker gave a ruling specifically touching on this point. That ruling referenced pages 562 and 563 of the second edition of *House of Commons Procedure and Practice*. A number of past cases were also mentioned. Based on those precedents, the Speaker of the Commons noted that "the Chair must always be mindful to approach each new case with a fresh eye, taking into account the particular circumstances of the situation at hand. Often, there is little in the way of guidance for the speaker and a strict compliance with precedent is not always appropriate."

Honourable senators, in my consideration of Government motion five, I note that it deals with a single broad topic — the suspension of three senators — but also that it has been drafted in such a way that it can be split for the purposes of voting. It thus meets the basic criterion.

I have also considered, as I listened very carefully, the extensive debates in the Senate on this motion and on other proposals to suspend the senators. This leads me to conclude that, in this case, it is appropriate to split the motion for the purposes of voting. This will give honourable senators the opportunity to decide upon the distinct proposals contained in the motion.

In light of the request that has been made, I am directing that votes on the different elements of Government motion five be held separately as follows:

There will be four separate votes on the main motion. The first vote will deal with the suspension of Senator Brazeau. The second vote will then deal with the suspension of Senator Duffy. The third vote will deal with the suspension of Senator Wallin. The fourth and final vote will deal with the introductory provisions of the motion, confirming certain powers of the Internal Economy Committee.

Accordingly, I will now begin with the first of the four questions.

RULE 2-2

Speech from the Throne reported **2-2.** The Speaker shall report the Speech from the Throne after a pro forma bill has been read a first time at the beginning of a session.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-2: Rule 8

COMMENTARY

Rule 2-2 stipulates the role of the Speaker at the opening of a new parliament or session, when he or she reports the Speech from the Throne to the Senate after a pro forma bill has been introduced. A detailed description of these historic ceremonies is found in "Forms and Proceedings" under Related Citations and Extracts below.

On December 17, 1867, the Senate agreed that "On the first day of the Meeting of a New Parliament, or of any subsequent Session, His Excellency having opened the Session by a gracious speech to both Houses, and Prayers being said, some bill is read *pro forma*; the Speech from the Throne reported by the

Speaker, and a Committee of Privileges, consisting of all the Senators present during the Session, is appointed” (rule 1).

On May 2, 1906, the rule was amended to read:

On the first day of the first session of a new Parliament, or of any subsequent session when the House of Commons have no Speaker, the Senate meets at thirty minutes before the hour named for the opening of the session: prayers are said; and new senators, if any, are introduced, and take the oath of allegiance and their seats. His Excellency the Governor General or his Deputy being seated, the Commons attend in response to a message to that effect conveyed by the Gentleman Usher of the Black Rod, and are directed to choose a Speaker.

His Excellency or his Deputy, as the case may be, retires; and the Senate adjourns to a time thirty minutes before that fixed for the delivery of the Governor General’s speech.

On the second day of any such session as aforesaid or on the first day of any other session, His Excellency opens the Session by a gracious Speech to both Houses; and, Prayers being said, a Bill is read *pro forma*; the Speech from the Throne is reported by the Speaker, and a Committee of Privileges, consisting of all the senators present during the session is appointed (rule 6).

On December 10, 1968, the words “On the second day of any such session as aforesaid or on the first day of any other session” were deleted “because of modern-day practice of only one day opening of Parliament” (see *Journals of the Senate*, November 28, 1968, p. 447, effective on August 1, 1969).

On May 26, 1970, the rule was amended to read:

On the first day of each session of Parliament, a bill is read *pro forma*, the Speech from the Throne is reported by the Speaker and a Committee of Privileges, consisting of all the Senators present during the session, is appointed to consider the orders and customs of the Senate and privileges of Parliament.

The rule was again amended on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), when reference to the Committee on Privileges was deleted. In its place, the Committee on Standing Rules and Orders became the Standing Committee on Privileges, Standing Rules and Orders (now the Standing Committee on Rules, Procedures and the Rights of Parliament). The current rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

For information on the pro forma bill, see rule 10-1.

RELATED CITATIONS AND EXTRACTS – RULE 2-2

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 94:

It is then the invariable practice in the Commons, as in the Senate, before the speaker reports the speech to the house, to introduce a bill *pro forma* and move that it be read a first time. This practice is observed in assertion of the right of parliament to consider immediately other business before proceeding to the consideration of the matters expressed in the speech.

[Footnote: ...The English resolution of the 22nd March, 1603, orders this procedure, “That the first day of every sitting, in every parliament, some one bill, and no more, receiveth a first reading for form’s sake.”]

House of Commons Procedure and Practice, Second Edition, pp. 368-369:

The Speech from the Throne imparts the causes of summoning Parliament, prior to which neither House can embark on any public business. It marks the first occasion, after a general election, or a prorogation, that Parliament meets in an assembly of its three constituent parts: the House of Commons, the Senate and the Sovereign, or the Sovereign’s representative.

... Before proceeding to the consideration of the Speech from the Throne, the House gives first reading to the *pro forma* Bill C-1, *An Act respecting the Administration of Oaths of Office*. Typically, the Bill is introduced by the Prime Minister; it receives first reading but is not proceeded with any further during the session. Its purpose is to assert the independence of the House of Commons and its right to choose its own business and to deliberate without reference to the causes of summons as expressed in the Speech from the Throne.

... The Speaker reports to the House on the Speech from the Throne, informing the House that “to prevent mistakes” a copy of the Speech has been obtained; its text is published in the *Debates*. A motion is then moved, usually by the Prime Minister, for the Speech from the Throne to be considered either “later this day” or on a future day; it is usually adopted without debate or amendment.

“Forms and Proceedings,” *Rules of the Senate* (1990), pp. 48-54:

The historic and impressive ceremonies of the opening of a new Parliament of Canada are in their essentials based on those followed by the Parliament of Westminster. There are some exceptions attributable to circumstances peculiar to Canada; for example, the Queen’s role at the opening of the Parliament of Canada is usually taken by the Governor General, Her Majesty’s personal representative in Canada.

Preliminary Proceedings

The Senate meets at the call of the bell at least thirty minutes before the time set for the opening of Parliament. There is no Speaker’s procession because the senators have not been officially informed of the appointment of a new Speaker of the Senate.

The new Speaker, capped and gowned, enters the Chamber and occupies the Clerk’s chair at the head of the Table. When the senators have taken their seats and the doors have been closed, the commission appointing the new Speaker is read by the Clerk of the Senate. See *Journals of the Senate*, 1984-85, p. 2.

When a new Speaker is also a new senator his commission as a senator must first be read by the Clerk Assistant. See *Journals of the Senate*, 1963, p. 2.

After being escorted to the Chair by the Leader of the Government and the Leader of the Opposition in the Senate, the Speaker reads the prayers.

The Mace is placed upon the Table.

The Senate bell is rung.

The Speaker informs the Senate that a communication has been received from the Administrative Secretary to the Governor General indicating the time at which the First Session of the new Parliament will open.

If there are any new senators, they are then introduced and sworn in.

If there is no further business and the time set for the arrival of the Deputy of His Excellency the Governor General has not yet been reached, the Senate is adjourned during pleasure to reassemble at the call of the bell. If the time for his arrival has been reached, the Senate is adjourned during pleasure to await his arrival, and the Speaker takes a seat at the right of the Throne.

After the Deputy of His Excellency the Governor General arrives, the Speaker commands the Gentleman Usher of the Black Rod to proceed to the House of Commons and acquaint the members of that House that it is the desire of the Deputy of His Excellency the Governor General that they attend him immediately in the Senate Chamber.

After the members of the House of Commons have arrived, the Deputy's commission, if not already upon the *Journals of the Senate*, is read by the Clerk Assistant. The Speaker then says that His Excellency the Governor General does not see fit to declare the causes of his summoning the present Parliament of Canada until a Speaker of the House of Commons has been chosen according to law.

The members of the House of Commons then return to their Chamber to elect a Speaker. The Deputy of His Excellency the Governor General retires, and the sitting of the Senate is resumed.

The Speaker then informs the Senate of the time at which the Governor General will formally open the First Session of the new Parliament. The Senate then adjourns until a designated time.

Opening of First Session

The Speaker's procession, led by the Gentleman Usher of the Black Rod, enters the Chamber. The Speaker takes the Chair.

The Senate then adjourns during pleasure to await the arrival of His Excellency the Governor General. After the arrival of His Excellency the Governor General, the Speaker of the Senate commands the Gentleman Usher of the Black Rod to proceed to the House of Commons and acquaint the members of that House that it is the pleasure of His Excellency the Governor General that they attend him immediately in the Senate Chamber.

After the members of the House of Commons have arrived at the Bar of the Senate, the Speaker of the Commons says in English and French:

May it please Your Excellency:

The House of Commons has elected me their Speaker, though I am but little able to fulfil the important duties thus assigned to me.

If, in the performance of those duties, I should at any time fall into error, I pray that the fault may be imputed to me, and not to the Commons, whose servant I am, and who, through me, the better to enable them to discharge their duty to their Queen and Country, humbly claim all their undoubted

rights and privileges, especially that they may have freedom of speech in their debates, access to Your Excellency's person at all seasonable times, and that their proceedings may receive from Your Excellency the most favourable construction.

The Speaker of the Senate then addresses the Speaker of the House of Commons in English and French as follows:

Mr. Speaker:

I am commanded by His Excellency the Governor General to declare to you that he freely confides in the duty and attachment of the House of Commons to Her Majesty's Person and Government, and not doubting that their proceedings will be conducted with wisdom, temper and prudence, he grants, and upon all occasions will recognize and allow their constitutional privileges. I am commanded also to assure you that the Commons shall have ready access to His Excellency upon all seasonable occasions and their proceedings, as well as your words and actions, will constantly receive from him the most favourable construction.

His Excellency the Governor General then reads the Speech from the Throne. When the Speech has been read, the Secretary to the Governor General delivers a copy to the Speaker of the Senate and a copy to the Speaker of the House of Commons.

The members of the House of Commons then withdraw.

His Excellency the Governor General retires, and the sitting of the Senate is resumed.

The Deputy Leader of the Government presents a *pro forma* bill, upon which no further action is taken. (The purpose of the *pro forma* bill is to demonstrate the right of the Senate to deliberate without reference to the causes of summons expressed in the Speech of the Throne.) See *Bourinot*, Fourth Edition, p. 94.

The Speaker then informs the Senate that His Excellency the Governor General has caused to be placed in his hands a copy of the Speech from the Throne, and the Deputy Leader of the Government moves that the Speech from the Throne be taken into consideration on a certain date.

The Deputy Leader of the Government then moves that certain senators be appointed a Committee of Selection to nominate (a) a senator to preside as Speaker *pro tempore*, and (b) the senators to serve on the several select [i.e., standing or special Senate] committees during the session, and to report with all convenient speed the names of the senators so nominated.

The Senate then adjourns to a designated time and date.

Opening of Subsequent Sessions

The proceedings at the opening of a second or subsequent session are the same as at the First Session, with the omission of such parts as are peculiar to the opening of Parliament.

Speaker's Ruling: Established Practice for Opening of Parliament

Journals of the Senate, October 29, 2002, p. 126:

... As Honourable Senators will recall, certain proceedings did take place on September 30 following established practice. In accordance with the *Rules of the Senate*, the pro forma bill is introduced and read a first time and I met my obligation to report the Speech from the Throne. In addition, the Deputy Leader of the Government moved the motion for the creation of the Committee of Selection. During these proceedings, the mace was present in the Chamber, but not on the Table which had been removed temporarily. So far as I can determine, the Table has been removed at every opening since 1920 when the Senate first occupied this Chamber. Indeed, whenever there is a "large" opening, Senators' desks are also taken away and replaced by rows of benches. The Speaker's Chair is also removed for part of the day so as not to obstruct the Governor General's access to the Throne. These modifications to the Chamber including as well the installation of platforms for cameramen are now an established part of the preparations related to the opening ceremonies of Parliament. None of these modifications, including the absence of the Table, undermine the legitimacy of the Senate's brief sitting following the Speech from the Throne. The mace is present even if not on the Table. This is the minimum requirement and it is sufficient. As *Marleau and Montpetit* at page 238 explains with respect to the mace in the House of Commons: "The Mace is integral to the functioning of the House;

since the late seventeenth century it has been accepted that the Mace must be present for the House to be properly constituted."

RULE 2-3

Participation of Speaker in debate	2-3. The Speaker may participate in any debate except when hearing arguments on a point of order, a question of privilege or a request for an emergency debate, on each of which the Speaker is required to rule. To participate in a debate, the Speaker shall leave the chair.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-3: Rules 55(2) and (3)

COMMENTARY

This rule provides for the participation of the Speaker in debate except on a point of order, a question of privilege or a request for an emergency debate, all of which are issues on which he or she is required to decide. If the Speaker wishes to speak, he or she leaves the chair and calls on another senator to preside. In practice, however, the Speaker rarely takes part in debate in order to protect the impartiality of the chair. Nevertheless, the fact that the Speaker of the Senate can participate in debate and vote on all motions underscores the differences with the Speaker of the House of Commons, who does not participate in debate and only votes in case of a tie.

The role of the Speaker of the Senate was patterned, in certain respects, on that of the Lord Chancellor in the House of Lords. The Speaker was originally expected to be partisan when necessary; indeed on two occasions in the period following Confederation the Speaker was also a minister without portfolio. Given these circumstances, the Senate did not initially give the Speaker any specific powers to

enforce the Rules unless a matter of order was raised by a senator. The Speaker's role has evolved, however, and generally become more non-partisan. The Rules were amended in 1906 to give the Speaker the role of preserving order and decorum, and to decide points of order.

A rule adopted on December 17, 1867 stated: "The Speaker stands uncovered when speaking to the Senate, and if called upon to explain a Point of Order or Practice, he is to state the Rule applicable to the case, and also to decide the Question when required, subject to an appeal to the Senate" (rule 9). On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the rule was amended, and a separate provision adopted with regard to the powers and duties of the Speaker (now rule 2-1). Another rule was also adopted with regard to the Speaker addressing the Senate. It read: "The Speaker stands uncovered when speaking to the Senate; and if he proposes to address the House on any question other than one of order, leaves the Chair" (rule 50). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), and added requests for emergency debates to the items on which the Speaker does not debate.

For further information on the Speaker leaving the chair, see rule 2-4.

RELATED CITATIONS AND EXTRACTS – RULE 2-3

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 165-166:

The speaker presides over all the deliberations of the Senate, except when the house goes into committee of the whole, and then he must call another member to the chair. He also may leave the chair during the sitting and may call upon any senator to take the chair during his temporary absence. He has in all cases a vote, which is the first recorded on the side on which it is given, and he decides questions of order when called upon for his decision. If he wishes to address the house he leaves the chair – like the lord chancellor in the House of Lords – and speaks from the floor like other members, but this is a privilege which is rarely exercised. He stands uncovered when speaking to the Senate, and if called upon to explain a point of order or practice, he is to state the rule applicable to the case, and also to decide the question when required, subject to an appeal to the Senate. Like the speaker in the Commons he presents to the house all papers, returns, and addresses which he has received and which ought to be laid before that body.

Odgers' Australian Senate Practice, Thirteenth Edition, pp. 139-140:

Although the President, once elected, may continue to be an active member of a party, the duties of the office, both inside and outside the chamber, must be carried out in an impartial manner. Thus, to some extent, the President is distanced from day-to-day party political activity.

The President has the right of any senator to participate in debate, and did so regularly in the early years of the Senate. Presidents now rarely participate in debate unless on a matter concerning the Senate or the Parliament. One such instance occurred in 1986, when President McClelland took the unprecedented step of introducing a bill, the Parliamentary Privileges Bill 1986. In tabling a draft of the bill for senators to examine before formally introducing the bill, the President said he was taking this step because of the fundamental importance to both Houses of the matters dealt with by the bill, which included maintaining the absolute right of freedom of speech in Parliament. The President also participates in committee hearings on the bi-annual Appropriation (Parliamentary Departments) Bills and (where applicable) in committee of the whole proceedings on those bills.

The President also has the right to exercise a deliberative vote on all matters in the Senate or in committee of the whole, but when in the chair of the Senate is not compelled to do so. When the votes in the Senate are equally divided the question passes in the negative. This provision of a presiding officer having a deliberative and not a casting or deciding vote was enshrined in the Constitution to ensure that the states should have equal voting strength. ...

The ceremonial duties of the President include participation in the opening of Parliament and visits by foreign Heads of State. The President also represents the Senate at international conferences, leads some parliamentary delegations to other nations and receives parliamentary delegations visiting Australia.

RULE 2-4

When Speaker leaves the chair **2-4.** (1) When leaving the chair during a sitting, the Speaker shall call upon the Speaker *pro tempore* or another Senator to take the chair and preside as Speaker either until the Speaker resumes the chair or for the remainder of the sitting.

Absence of Speaker **2-4.** (2) When the Senate is informed by the Clerk of the unavoidable absence of the Speaker, the Speaker *pro tempore* or, in the absence of the Speaker *pro tempore*, another Senator chosen by the Senate shall preside as Speaker until the Speaker or the Speaker *pro tempore* resumes the chair.

Acts valid **2-4.** (3) Every act done by the Speaker *pro tempore* or any Senator occupying the chair as Speaker under this rule shall have the same effect and validity as if the act had been done by the Speaker.

REFERENCE

Parliament of Canada Act, *sections 17-19*

EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-4(1): Rules 10 and 55(3)

Rule 2-4(2): Rule 11

Rule 2-4(3): Rule 12

COMMENTARY

If the Speaker must leave the chair during a sitting, he or she may choose any senator to take the chair and preside over the proceedings for the remainder of the sitting or until the Speaker returns. The Speaker typically turns to the Speaker *pro tempore*.

If the Speaker is unavoidably absent at the start of a sitting, the Clerk informs the Senate, and the Speaker *pro tempore*, chosen at the beginning of each session, then presides over the Senate. In this situation the Speaker *pro tempore* parades into the Senate as would the Speaker, but before the Speaker *pro tempore* takes the chair and reads Prayers, the Clerk advises the Senate of the Speaker's absence, as follows:

Honourable senators, it is my duty to inform the Senate that the Honourable the Speaker is unavoidably absent. Pursuant to rule 2-4(2) the Honourable Senator _____, the Speaker *pro tempore*, will preside.

For subsequent successive sittings that the Speaker is absent and the Speaker *pro tempore* will preside, the Clerk is not required to advise the Senate of the absence.

If both the Speaker and Speaker *pro tempore* are absent, the Clerk will advise the Senate of this fact. The Senate will then choose a senator to act on behalf of the Speaker. In this situation there is no parade. The Clerk and table officers enter the chamber from behind the Speaker's chair along with the Usher of the Black Rod and the Mace Bearer. When quorum is present, the Clerk advises the Senate that both the Speaker and the Speaker *pro tempore* are absent and then presides over the election of an Acting Speaker. This motion is normally moved by the Leader of the Government and seconded by the Leader of the Opposition, although both must be present to do so. Typical wording is as follows:

The Clerk: Honourable senators, pursuant to rule 2-4(2), it is my duty to inform the Senate that the Honourable the Speaker and the Honourable the Speaker *pro tempore* are unavoidably absent.

Government Leader: Honourable senators, I move, seconded by the Honourable Senator [Leader of the Opposition's name], that during the absence of the Honourable the Speaker and the Honourable the Speaker *pro tempore*, the Honourable Senator _____ do preside as Speaker.

The Clerk: Honourable senators have heard the motion. Is it your pleasure to adopt the motion? Adopté/Carried.

When the motion is adopted, the Acting Speaker comes forward from his or her assigned seat, takes the chair and reads Prayers. For subsequent successive sittings during which both the Speaker and the Speaker *pro tempore* are absent, the Acting Speaker will parade into the chamber and the sitting will otherwise proceed as normal. Unlike the Speaker and the Speaker *pro tempore*, an Acting Speaker does not wear any distinctive gown.

The Speaker *pro tempore* is nominated in a report of the Committee of Selection at the beginning of each session (see rule 12-2(1)(a)). The Speaker *pro tempore* will usually also serve as chair of Committees of the Whole, although this is not always the case. The text on rules 12-32 and 12-33 provides additional information on Committees of the Whole.

At the time of Confederation, there were no provisions allowing for the Senate to function if the Speaker was absent. To accommodate unavoidable absences, the Speaker would be removed from office and a new Speaker appointed, sometimes for only a few days. When the normal incumbent could again take the chair, he would then be reappointed as Speaker (see W.F. Dawson, "The Speaker of the Senate of Canada," *The Table*, vol. 38 (1969), p. 23).

In 1894 a Canadian statute was passed to allow the Senate to choose a senator to preside when the Speaker was absent. Because of doubts about the power of the Senate to allow another senator to perform the duties of an officer appointed by the Crown, the British Parliament passed an act in 1895 to validate the 1894 Canadian statute. These provisions have since been incorporated into the *Parliament of Canada Act*.

A rule adopted on May 2, 1906 (rule 9), first dealt with the Speaker leaving the chair during the course of a sitting and calling on another senator to preside (an element of what is now rule 2-3). The rule has a statutory basis as it embodies the provision of the *Parliament of Canada Act* mentioned above, which provides for the designation of an Acting Speaker when the Speaker leaves the chair during a sitting.

In 1982 the Standing Committee on Legal and Constitutional Affairs studied the establishment of a position of Deputy Speaker of the Senate. The committee concluded that the establishment of a deputy speaker on a “permanent” basis would require a legislative change. This said, since the Senate could choose any senator to preside as Speaker during any unavoidable absence, the committee proposed that the Senate could choose the same senator to preside for each absence and could also, for the sake of convenience, make its choice known at the start of each session by way of a motion indicating which senator would regularly replace the Speaker on a *pro tempore* basis. The committee thus recommended that the *Rules of the Senate* be amended to include a reference to the Speaker *pro tempore*. The report was presented to the Senate on May 6, 1982, and adopted on May 12, 1982. The matter was then referred to the Standing Committee on Standing Rules and Orders, which further examined the proposal for a Speaker *pro tempore* and concurred with the recommendations made by the Legal and Constitutional Affairs Committee. On June 9, 1982, the *Rules of the Senate* were amended to provide for the selection of a senator to preside as Speaker *pro tempore* (see *Journals of the Senate*, p. 2201).

The current wording of these provisions was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 2-4

Parliament of Canada Act:

17. Whenever the Speaker of the Senate, from illness or other cause, finds it necessary to leave the chair during any part of the sittings of the Senate on any day, the Speaker may call on any senator to take the chair and preside as Speaker during the remainder of that day unless the Speaker resumes the chair before the close of the sittings for that day.

18. Whenever the Senate is informed of the unavoidable absence of the Speaker thereof by the Clerk at the table, the Senate may choose any senator to preside as Speaker during such absence and that senator thereupon has and shall execute all the powers, privileges and duties of Speaker until the Speaker resumes the chair or another Speaker is appointed by the Governor General.

19. Every act done by any senator acting pursuant to section 17 or 18 has the same effect and validity as if the act had been done by the Speaker.

Bourinot’s Parliamentary Procedure, Fourth Edition, pp. 164-165:

In case of the unavoidable absence of the speaker during the session, it was necessary from 1867-1894 to appoint a new speaker for the time being. When the former returned his re-appointment was made known to the house with the usual formalities.

In 1894 a statute was passed to provide for a deputy speaker in the Senate in the case of the unavoidable absence of the speaker. Doubts were raised as to the power of the Senate under the [Constitution] Act to allow another senator to perform the duties of an officer appointed by the

Crown, and the question was referred to the law officers of the British government. Their report led to the passage of an imperial Act “for removing doubts as to the validity” of the act in question. As in the House of Commons, every act done by a senator, called to the chair under the provisions of the statute, “shall have the same effect and validity as if the act was done by the speaker himself.”

Speaker’s Rulings

RULE 2-5

Arguments	2-5. (1) The Speaker shall hear arguments before ruling on a point of order or a question of privilege. When the Speaker has heard sufficient argument to reach a decision, a ruling may be made immediately or the matter may be taken under advisement. The Senate shall then resume consideration of the item of interrupted business or proceed to the next item, as the circumstances warrant.
Explanation of rulings	2-5. (2) In ruling on a point of order or a question of privilege, the Speaker shall give the reasons for the ruling and cite any rules, practices or authorities on which the ruling is based.
Appeals of rulings	2-5. (3) Any Senator may appeal a Speaker’s ruling at the time it is given, except one relating to the expiry of speaking time. The appeal shall be decided immediately using the ordinary procedure for determining the duration of the bells.

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 2-5(1): Rule 18(3)
- Rule 2-5(2): Rules 18(2) and 43(12)
- Rule 2-5(3): Rule 18(4)

COMMENTARY

A point of order may be raised when a senator “believes that the rules, practices or procedures of the Senate have been incorrectly applied or overlooked during the proceedings” (Appendix I, Terminology). In contrast, a question of privilege may be raised when a senator believes that one of the rights, powers or immunities necessary for either the Senate or a senator to discharge their duties has been infringed.

When hearing arguments relating to a point of order or question of privilege, the Speaker alone determines when there has been sufficient argument to make a ruling or to take the matter under advisement (rule 2-5(1)). On occasion, there has been agreement to allow argument on a point of order or question of privilege to continue at a later sitting (see, for example, *Journals of the Senate*, February 26, 2013, p. 1940; December 8, 2011, p. 719; February 9, 2011, p. 1201; May 28, 2008, p. 1101; October 27, 2003, pp. 1223-1227; November 27, 2001, p. 1019; May 29, 1996, pp. 252-255; and May 8, 1991, p. 2489). The Rules also specify that points of order and questions of privilege cannot be raised during Routine Proceedings or Question Period (rule 4-11(3)). They further indicate how points of order or questions of privilege relating to a matter that occurred during Routine Proceedings are to be handled (rules 4-11(1) and (2)).

When delivering a ruling, the Speaker will state the reasons for his or her decision, together with references to any rule or other written authority relevant to the case. Rule 13-3(1) provides certain tests that prima facie questions of privilege must meet. They must:

1. be raised at the earliest opportunity;
2. directly concern the privileges of the Senate, one of its committees or a senator;
3. seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available; and
4. seek to correct a grave and serious breach.

Decisions of the Speaker are subject to an appeal at the time they are delivered (rule 2-5(3)), except for decisions on the expiry of time in debate. The wording for an appeal of a ruling by the Speaker is now "whether the Speaker's ruling shall be sustained." Since the wording is in the positive, a tie vote results in the ruling being overturned (rule 9-1) (see, for example, *Journals of the Senate*, March 31, 2009, p. 419). If a recorded division is requested on an appeal, the bells are rung for 60 minutes, unless there is leave for a shorter period.

The Speaker's role in deciding points of order and questions of privilege has evolved over time. A rule adopted on December 17, 1867, stated that "The Speaker stands uncovered when speaking to the Senate, and if called upon to explain a Point of Order or Practice, he is to state the Rule applicable to the case, and also to decide the Question, when required, subject to an appeal to the Senate" (rule 10). On May 2, 1906, a new rule was adopted which gave more authority to the chair and read: "The Speaker preserves order and decorum, and decides questions of order, subject to an appeal to the Senate. In explaining a point of order or practice he states the rule or authority applicable to the case" (rule 16). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 2-5

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 97-98:

§319. Any Member is entitled, even bound to bring to the Speaker's immediate notice any instance of a breach of order. The Member may interrupt and lay the point in question concisely before the Speaker. This should be done as soon as an irregularity is perceived in the proceedings which are engaging the attention of the House. The Speaker's attention must be directed to a breach of order at the proper moment, namely the moment it occurs. A point of order may be taken after a debate is concluded and the Speaker is about to put the question to a vote or after the vote has been taken – in fact, at any time, but not so as to interrupt when the Speaker is addressing the House. Even the provisions in the Standing Orders that action must be taken "forthwith" or "forthwith without debate" with respect to certain proceedings do not bar a Member from raising a point of order when a serious irregularity occurs.

§320. If attention is called to a breach of order in the course of a division, the Speaker has directed that the division be completed.

§321. A point of order against procedure must be raised promptly and before the question has passed to a stage at which the objection would be out of place. *Journals*, February 20, 1911, p. 190.

...

§323. (1) Questions of order are decided only when they arise and not in anticipation. The Speaker is bound to call attention immediately to an irregularity in debate or procedure and not wait for the interposition of a Member.

(2) Hypothetical queries on procedure cannot be addressed to the Speaker from the floor of the House.

...

§324. The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege. *Journals*, July 8, 1969, pp. 1319-1320.

...

§327. The Speaker or the Chairman of a Committee of the Whole ought not to consider the consequences of the adoption or rejection of a motion or an amendment nor is it their concern whether Ministers of the Crown or private Members are proceeding fast enough with their bills or motions. All the Speaker has to do is to see that the rules of procedure are observed. The House will decide what course to follow after the Members who sponsor measures have introduced and explained them. Vague motions, if properly worded, cannot be ruled out if they are relevant.

§328. A ruling would indicate that the Speaker has some general responsibility for the operation of the House.

“The immediate question which faces the chair is whether the motion moved yesterday by the Hon. Parliamentary Secretary to the President of the Privy Council is acceptable or not. I recognize that if we are to adhere rigidly to recent precedents, including my own ruling of November 24, 1986, the motion would have to be ruled unacceptable. The House is nevertheless facing an impasse which it has been unable to resolve for itself. There comes a time when the Chair has to face its responsibilities. When circumstances change and the Rules of Procedure provide no solution, the Chair must fall back on its discretion in the interests of the House and all its Members. This may require the Chair to modify or vary an earlier decision.” *Debates*, April 14, 1987, p. 5120.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 455-456:

It is the duty of the Speaker to intervene to preserve order, though he may refrain from intervening if he thinks it unnecessary to do so. If he does not intervene, however, whether for the above reason or because he has not perceived that a breach of order has been committed, it is the right of any Member who thinks that such a breach has been committed to rise in his place, interrupting any Member who may be speaking, and direct the attention of the Chair to the matter. A Member speaking to order must simply direct attention to the point complained of, and submit it to the decision of the Speaker. If the Speaker is of the opinion that the words or conduct complained of are disorderly, he will call upon the Member to conform to the rules of the House.

Speakers have exercised discretion over the taking of points of order and have indicated at what point in the proceedings they are prepared to hear them. ...

Doubtful cases may arise upon which the rules of the House are indistinct or obsolete or do not apply directly to the point at issue. The Speaker will then usually give a ruling to cover the new circumstances, although he has on occasion referred the matter to the judgment of the House.

The Speaker has deprecated the practice of Members raising points of order on political issues which have nothing to do with the Chair, and has expressed the hope that points of order will not be used as an extension of question time.

Speaker's Rulings on Points of Order

Matter Presumed to Be in Order Unless Clear Argument Made Against

Journals of the Senate, February 20, 2007, p. 1097:

... It is not my place as Speaker to conjecture, but rather to do my utmost to maintain the role of the Senate, so long as it involves no trespass on the privileges of the other place or on the financial initiative of the Crown. Once again, I find compelling the comments of Speaker Molgat when ruling on Bill S-13:

Let me begin with this general proposition. It is my view that matters are presumed to be in order, except where the contrary is clearly established to be the case. This presumption suggests to me that the best policy for a Speaker is to interpret the rules in favour of debate by senators, except where the matter to be debated is clearly out of order.

Journals of the Senate, February 24, 2009, p. 125:

In situations where the analysis is ambiguous, several Senate Speakers have expressed a preference for presuming a matter to be in order, unless and until the contrary position is established. This bias in favour of allowing debate, except where a matter is clearly out of order, is fundamental to maintaining the Senate's role as a chamber of discussion and reflection.

(Also see rulings of April 16, 2013, *Journals of the Senate*, pp. 2075-2076; April 8, 2008, *Journals of the Senate*, pp. 742-743; February 20, 2007, *Journals of the Senate*, pp. 1095-1098; and April 2, 1998, *Journals of the Senate*, pp. 577-582.)

When to Raise a Point of Order

Journals of the Senate, April 24, 2007, p. 1369:

... [A]ny Honourable Senator, being of the opinion that an item on the Order Paper is not procedurally correct, should ask that the matter be resolved first, before entering into debate on the merits of the motion. I would, therefore, ask Honourable Senators to bear this in mind in the future.

Journals of the Senate, February 24, 2009, pp. 129-130:

Before addressing the merits of the specific case, the matter of when a point of order can be raised requires some clarification. A ruling of February 26, 2008, noted that "A point of order ... can be raised at any point during debate." Unlike a question of privilege under rule [13-3(1)], timing is not

always a critical issue. Although it is preferable that a point of order be brought to the Senate’s attention as soon as a senator becomes aware of the issue, it is not an absolute requirement that the matter be raised at the first possible instance. This said, the matter must be raised before the question has passed to a stage at which the objection would be out of place—for a bill this would be before a decision at third reading. A point of order certainly can be raised on a bill reintroduced in a new session.

Order and Decorum

RULE 2-6	
Interruption of proceedings	2-6. (1) The Speaker may interrupt any proceeding in order to restore order or enforce the Rules.
Suspension of sitting	2-6. (2) In the event of grave disorder, the Speaker may suspend the sitting of the Senate for up to three hours.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-6: Rule 18(1)

COMMENTARY

Since 1906, the Rules have provided the Speaker with the authority to preserve order and decorum, and to enforce the Rules. On June 18, 1991, changes gave the Speaker the power to act in matters of order and decorum “without a want of order or decorum being brought to his or her attention” (then rule 18(1), now part of rule 2-6(1)). This rule also gave the Speaker the authority to suspend a sitting for up to three hours. This provision was used to suspend the sitting when security was at risk because of an earthquake on June 23, 2010. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

There are numerous other rules dealing with the Speaker’s roles and responsibilities. Without attempting to be exhaustive, the following references illustrate these powers: calling on another senator as a temporary replacement (rule 2-4(1)); recalling the Senate early when adjourned or extending a period of adjournment (rules 3-6(1) and (2)); ordering the withdrawal of strangers (rule 2-13(2)); determining whether a prima facie case of privilege has been established (rule 13-6(5)); declaring whether a situation constitutes a matter of urgent public importance for the purpose of holding an emergency debate (rule 8-3(5)); ensuring that notices do not contain unbecoming expressions or offend the Rules (rule 5-4); and calling a senator to order (rule 2-7(4)).

RELATED CITATIONS AND EXTRACTS – RULE 2-6

House of Commons Procedure and Practice, Second Edition, p. 594:

The Speaker is charged with maintaining order in the Chamber by ensuring that the House’s rules and practices are respected. These rules govern proper attire, the quoting and tabling of documents in

debate, the application of the *sub judice* convention to debates and questioning in the House, and the civility of remarks directed towards both Houses, Members and Senators, representatives of the Crown, judges and courts. In addition, it is the duty of the Speaker to safeguard the orderly conduct of debate by repressing disorder when it arises either on the floor of the Chamber or in the galleries, and by ruling on points of order raised by Members. The Speaker's disciplinary powers are intended to ensure that the debate remains focussed and they permit the Chair to order the withdrawal of Members who persist in behaving inappropriately. Nonetheless, while it is the Speaker who is explicitly charged with maintaining the dignity and decorum of the House, Members themselves must take responsibility for their behaviour and conduct their business in an appropriate fashion.

House of Representatives Practice, Sixth Edition, p. 541:

In the event of grave disorder occurring in the House, the Speaker, without any question being put, can suspend the sitting and state the time at which he or she will resume the Chair; or adjourn the House to the next sitting. On four occasions when grave disorder has arisen the Chair has adjourned the House until the next sitting. The Chair has also suspended the sitting in such circumstances on eight occasions.

Speaker's Rulings: Senate is a Largely Self-Regulating Body

Journals of the Senate, March 11, 2009, p. 266:

While the Speaker does have authority, under Rule [2-6(1)], to intervene to keep order, the tradition here is that senators themselves are to a great extent responsible for maintaining order. In practice, the Senate is largely self-regulating, and Speakers have been careful not to be too heavy-handed.

Journals of the Senate, September 25, 2012, p. 1551:

When we find it necessary to draw guidance from the practices of another Westminster system, we do so. However, it is important that we recognize that it is our own responsibility to regulate this house. It is not the responsibility of the Speaker directly, although, ... the Speaker has been given certain responsibilities under the Rules to do certain kinds of things. One of those responsibilities is to maintain order.

RULES 2-7 and 2-8

When Speaker in the chair **2-7. (1)** After the Speaker has taken the chair:

- (a) Senators shall bow to the chair when entering, leaving or crossing the chamber;
- (b) no one shall pass between the chair and the Senator who is speaking; and
- (c) no one shall pass between the chair and the table.

When Speaker rises **2-7. (2)** When the Speaker rises, all other Senators shall take their seats or remain seated.

When Speaker addresses the Senate	2-7. (3) When addressing the Senate, the Speaker shall stand head uncovered.
Senator called to order	2-7. (4) When the Speaker calls a Senator to order, the Senator shall cease speaking until the point of order has been resolved. The Senator may participate in debate on the point of order.
When Speaker leaves the chamber	2-7. (5) When the Senate adjourns, Senators shall stand until the Speaker has left the chamber.
Speaker may leave the chair	2-7. (6) When the sitting is suspended or the bells are ringing, the Speaker may leave the chair for the duration of the suspension or the bells.
Disruption during sitting	2-8. When the Senate is sitting, it is not permitted: <ul style="list-style-type: none"> (a) for Senators to engage in private conversations inside the bar, and if they do, the Speaker shall order them to go outside the bar; (b) to use an electronic device that produces any sound in any part of the chamber, including the public galleries, unless the device is used as a hearing aid; and (c) to smoke.

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 2-7(1): Rules 19(1) and (2)
- Rule 2-7(2): Rule 18(5)
- Rule 2-7(3): Rule 55(1)
- Rule 2-7(4): Rule 50
- Rule 2-7(5): Rule 16
- Rule 2-7(6): New provision
- Rule 2-8: Rules 19(3), (4) and (5); and 96(8)

COMMENTARY

Certain rules and customs are followed in the Senate in order to ensure that debate takes place in an orderly fashion and that appropriate respect is shown to the Speaker and the institution. These rules of decorum prescribe the conventions to be respected when the Speaker enters and leaves the chamber, when senators move about the chamber, when the Speaker addresses the Senate, when the Speaker rises to call a senator to order, or when the Speaker leaves the chair during a suspension or during the ringing of the bells for a vote. In addition, there are other rules of decorum to be respected within the chamber. For example, senators wishing to hold private conversations must go outside the bar, the use of electronic devices making sounds is prohibited and smoking is not permitted. The Speaker has also cautioned senators on the use of exhibits.

Some of these rules date from the establishment of the Senate in 1867, while others were introduced, regrouped or rephrased over time (the primary dates being December 10, 1968, and June 18, 1991). For instance, one rule adopted on December 17, 1867, stated that “Senators when entering, or crossing the Senate Chamber, bow to the Chair; and if they have occasion to speak together, when the Senate is sitting, they go below the Bar, or else the Speaker stops the business under discussion” (rule 12). This

rule was amended on April 6, 1876 to read “Senators may not pass between the Chair and the table. When entering, leaving or crossing the Senate Chamber, they bow to the Chair. If they have occasion, when the Senate is sitting, to speak together, they go below the Bar, otherwise the Speaker stops the business under discussion” (rule 19). Other rules adopted on December 17, 1867, stated that “The Speaker stands uncovered when speaking to the Senate, and if called upon to explain a Point of Order or Practice, he is to state the Rule applicable to the case, and also to decide the Question, when required, subject to an appeal to the Senate” (rule 10), and “When the Senate adjourns, the Senators keep their places until the Speaker has left the Chair” (rule 11).

In 1986, a rule prohibiting smoking was initially drafted to apply only to meetings of Senate committees but was amended so that the prohibition was also applied to meetings of the Senate. It was adopted on May 13, 1986 (see *Journals of the Senate*, p. 1349). Currently, rule 2-8(c) applies to the chamber, and rule 12-21 covers this point in relation to committees.

In 1991, another rule was adopted providing that “A Senator called to order by the Speaker shall discontinue speaking and may not speak further, except on the point of order, until the point of order has been decided” (rule 51). Also in 1991, a rule was adopted prohibiting the use of electronic devices that produce sound (rule 19(4)), with the exception of hearing aids. A number of points of order were raised between 2004 and 2006 relating to the use of electronic devices by senators while in the Senate Chamber. In 2004 the Speaker ruled that “as long as the electronic device does not make any sound it does not offend our rules.” Several complaints were subsequently raised by senators that some devices caused electronic interference with the Senate’s sound system. The Speaker then concluded that the interference constituted a breach of decorum according to rule 2-8(b) and outlined remedies to prevent future disruptions (see rulings below).

All of these rules, which pertained to the demeanour of senators on the floor of the Senate Chamber, were grouped together with the current wording as rules 2-7 and 2-8, and adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). On November 7, 2012, rule 2-7(6), concerning the Speaker leaving the chair during a suspension or during the ringing of the bells, was added as a new provision (see *Journals of the Senate*, p. 1706).

RELATED CITATIONS AND EXTRACTS – RULES 2-7 and 2-8

House of Commons Procedure and Practice, Second Edition, pp. 637-638:

A number of rules and traditions are enforced by the Speaker in order to ensure that debate proceeds in a civil and orderly manner. A Member must be in his or her place to take part in any proceedings in the House. ... In order to prevent unnecessary interruptions when a Member is speaking, no other Member is to cross between the Chair and the Member who is addressing the Chair. The only interruption permitted is for a Member to raise a point of order.

As nothing should come between the Speaker and the symbol of his or her authority (the Mace), no Member is to pass between the Chair and the Table, or between the Chair and the Mace when the Mace is being taken off the Table by the Sergeant-at-Arms. A Member must sit down when the Chair Occupant rises. When Members cross the floor of the House, or otherwise leave their places, they should bow to the Speaker. When the House adjourns, Members are expected to stay in their seats until the Speaker has left the Chair, although in practice most Members merely pause, whether standing or sitting, during the procession out of the Chamber.

In the Chamber, Members may refresh themselves with glasses of water during debate, but the consumption of any other beverage or food is not allowed. Smoking has never been permitted in the Chamber. The use of cellular phones or cameras of any kind is not permitted in the Chamber. Since 1994, Members have been permitted to use laptop computers in the Chamber provided that their use does not cause disorder or interfere with the Member who has the floor.

The Speaker usually turns a blind eye to the many incidental interruptions, such as applause, shouts of approval or disapproval, or heckling that sometimes punctuates speeches, as long as disorder does not arise. Members have been called to order for whistling and singing during another Member's speech. Excessive interruptions are swiftly curtailed, particularly when the Member speaking requests the assistance of the Chair. Speakers have consistently attempted to discourage loud private conversations in the Chamber and have urged those wishing to carry on such exchanges to do so outside the Chamber.

La procédure parlementaire du Québec, Third Edition, p. 347:

In short, the Chair has a great deal of discretion in determining what constitutes a breach of decorum or encroaches on another Member's freedom of expression. Insofar as a Member's behaviour does not contravene the Standing Orders and is neither offensive nor degrading to the National Assembly or one of its Members, it will not generally be considered by the Chair to be a breach of decorum. The wearing of pins or badges is thus permitted as long as the message conveyed meets these criteria. The Chair has stated that the wearing of a badge or a pin is a well-established democratic tradition and that allowing Members to display their support for a cause or a social, humanitarian or political movement is an important facet of freedom of expression.

While the Standing Orders do not impose a dress code on Members, they do provide that Members must contribute to the maintenance of decorum. It is customary for Members to dress in neat, appropriate clothing such as business attire and avoid wearing clothes or accessories that could undermine decorum in the Assembly or infringe on another Member's freedom of expression.

Food and drink are strictly forbidden in the Chamber and the ancient custom of banging on the desks is no longer allowed in the House and has not been for a very long time.

Speaker's Rulings: Electronic Devices

Journals of the Senate, February 12, 2004, p. 92:

Senator Kinsella quoted rule 19(4) [see current rule 2-8(b)]. The operative words are "No person, nor any Senator, shall bring any electronic device which produces any sound..."

The rule continues as follows: "...whether for personal communication or other use..." Those are the operative words.

As to devices that fit within that rule, the rule speaks for itself – that is, devices that do not make any sound. This particular rule is the only one, I believe, that is relevant – although I have not checked Beauchesne. However, for our purposes, honourable senators, I will make the ruling based on our

own rules that cover the subject, that is, that as long as the electronic device does not make any sound it does not offend our rules.

Journals of the Senate, May 16, 2006, pp. 155-156:

Honourable Senators, a point of order was raised by Senator Corbin concerning the electronic interference with the sound system caused by certain handheld cell phones and Blackberries. This is not the first time this objection has been raised. In fact, on at least 4 occasions, going back to March 9, 2005, the effects of these devices on our sound system has been the subject of complaint.

Many honourable Senators contributed to the discussion on the point of order. Most concentrated on the annoying effect of the interference. A few Senators expressed concerns about the propriety of using these devices at all, as it raises the question of whose words are being expressed by the Senator and distracts the attention of Senators from what is being discussed in the Chamber.

... My understanding is that these wireless devices use different radio frequencies, depending on which company is supporting them. The radio frequency used by certain suppliers causes interference with our audio system.

... [B]ased on the information received from staff, it would appear that shutting down these devices is the only sure way we can be certain that the rule will not be offended. While I recognize that this dependence on cell phones and Blackberries is not so easily overcome, I have asked the Table to distribute to each Honourable Senator's desk a document that details the devices that do, and do not, interfere with our sound system. I have also had this list circulated by way of letter to the office of each Senator. While it would be desirable if all Honourable Senators would use the suppliers who do not cause interference, I understand that the service levels individual Senators require may be better met by other non-compatible companies.

Honourable Senators who bring into the Senate Chamber any electronic device that produces any sound are at risk of causing a disorder. Honourable Senators who possess a device that is not compatible with our sound system are at greater risk, if the said device is not powered down or disabled before they enter the Senate Chamber. If Honourable Senators neglect to do so, it compounds the interference by shutting off the device only when the realization comes that it is causing a problem, since the process of shutting them off sends even greater amounts of data strings that will increase the level of interference.

Speaker's Ruling: Exhibits Prohibited and Distribution of Documents in the Senate

Journals of the Senate, November 6, 2012, pp. 1696-1697:

On November 1, a point of order was raised about the use of a document by the Honourable Senator Maltais during debate on Bill S-210, which deals with the commercial seal hunt. The senator requested and received leave that the document be tabled and distributed to all senators in the chamber. Later in the sitting, some honourable senators argued that the one-page photograph of a seal consuming a fish constituted an exhibit used to support the senator's position. Under normal practice

the use of an exhibit is out of order. Subsequently, when it was clarified that leave had indeed been sought and granted, the focus of discussion shifted to what the proper practices are.

General parliamentary usage does not permit exhibits. At page 612 of the second edition of *House of Commons Procedure and Practice*, it is noted that “Speakers have consistently ruled out of order displays or demonstrations of any kind used by Members to illustrate their remarks or emphasize their positions. Similarly, props of any kind, used as a way of making a silent comment on issues, have always been found unacceptable in the Chamber.” This prohibition is generally followed in the Senate. Debate by definition involves the spoken word. Reference materials such as notes on paper or tablets, or books, may be used by senators to assist them when speaking, as long as they are not disruptive and do not produce sound. Notes may be necessary for prepared interventions, but are generally not appropriate for remarks that should be extemporaneous, such as supplementary questions. Other physical objects that are employed with the goal of reinforcing a point, or that are unduly distracting, are to be avoided. Their use would, as in the case that gave rise to the point of order, require leave.

A second issue related to this point of order has to do with the general distribution of documents in the chamber. Distributing such materials to all senators during the sitting can be disruptive. Materials are only given out to all senators in a limited range of cases, including most notably when the Senate gives leave to take a bill or committee report into consideration later in the same sitting. Any other documents would only be distributed to all senators in the chamber if there is leave to do so, as happened with Senator Maltais. I would remind honourable senators that committee reports that are not for consideration later during the same sitting are not handed out as a matter of course, but can be requested from the pages. Prior to the sitting, only official publications are put on all senators’ desks. Departures from these general practices are upon direction from the Speaker.

RULE 2-9

Disputes between Senators	2-9. (1) The Senate may intervene to resolve any dispute between Senators arising from a debate or other proceeding in the Senate or in any committee.
Redress of grievance	2-9. (2) Senators who consider themselves to have been offended or injured in the Senate Chamber, a committee room or any of the rooms belonging to the Senate may appeal to the Senate for redress.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-9(1): Rule 54

Rule 2-9(2): Rule 52

COMMENTARY

This rule is in keeping with the notion that the Senate is a largely self-regulating body. While the Speaker may intervene in matters relating to points of order and decide whether an issue constitutes a

prima facie case of privilege, it is the Senate itself that enforces actions such as censure or the assertion of its rights. It may also be noted that both questions of privilege and points of order relating to committee matters are sometimes dealt with in the Senate itself, without having been reported by the relevant committee. Cases have, for example, been raised on June 7, 1999 (point of order about participation of non-members in subcommittees); November 3, 2003 (point of order about meetings outside usual timeslot); November 4, 2003 (question of privilege about a committee meeting while decision on previous point of order is outstanding); October 20, 2005 (question of privilege about the absence of notice for a committee meeting); May 29, 2007 (question of privilege about insufficient time to get to meeting to participate in proceedings); April 21, 2009 (question of privilege about the establishment of a subcommittee); September 16, 2009 (question of privilege about events at committee meetings); October 28, 2009 (question of privilege about witnesses who left before questioning was completed); June 5, 2012 (point of order about a committee meeting while a Committee of the Whole was meeting); and October 25, 2012 (question of privilege about the chair adjourning a committee meeting on own authority).

In 1867, two rules dealt with this matter. One stated that “Any Senator conceiving himself offended or injured in the Senate, in a Committee room, or in any of the rooms belonging to the Senate, is to appeal to the Senate for redress” (rule 15). The other provided that “The Senate will interfere to prevent the prosecution of any quarrel between Senators, arising out of Debates or Proceedings of The Senate or any Committee thereof” (rule 17). The latter rule was amended on May 2, 1906 (see *Journals of the Senate*, pp. 136-137) to read: “The Senate may interfere to prevent the prosecution of any quarrel between senators arising out of a debate or proceeding of the Senate, or any committee thereof” (rule 49). The wording was again amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). Finally, in 2012 the two rules were combined into rule 2-9 with new wording and adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 2-9

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 373:

It is also for the house to consider what course it ought to take with reference to any disorderly conduct of members in the lobbies. The attention of the house may be called to the matter when the speaker is in the chair. The jurisdiction of the house to deal with members so offending is undisputed.

... If a member should send a hostile message to another on account of the words used in parliament it will be the duty of any member, on being informed of the fact to call the attention of the house to the matter, “as a breach of one of its most important privileges, that there shall be perfect freedom of speech in its debates”.

Standing Orders of the House of Lords (2013):

33. For avoiding of all mistakes, unkindnesses, or other differences which may grow to quarrels, tending to the breach of peace, it is ordered, That if any Lord shall conceive himself to have received any affront or injury from any other Member of the House, either in the Parliament House, or at any Committee, or in any of the rooms belonging to the Lords House of Parliament, he shall appeal to the Lords in Parliament for his reparation; which, if he shall not do, but occasion or entertain quarrels, declining the justice of the House, then the Lord that shall be found therein delinquent shall undergo the severe censure of the Lords House of Parliament.

Speaker’s Ruling: Senate is a Largely Self-Regulating Body

Journals of the Senate, March 11, 2009, p. 266:

While the Speaker does have authority, under Rule [2-6(1)], to intervene to keep order, the tradition here is that senators themselves are to a great extent responsible for maintaining order. In practice, the Senate is largely self-regulating, and Speakers have been careful not to be too heavy-handed.

Distinguished Visitors, Invited Persons and Strangers

RULE 2-10	
Former Senators and current members of House of Commons	2-10. Former Senators and current members of the House of Commons who wish to hear the debates may use the seats reserved for them outside the bar.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-10: Rule 126

COMMENTARY

The Senate reserves places just outside the bar in the chamber for former senators and members of the House of Commons who wish to follow the proceedings. Places are also available in the galleries overlooking the north and south ends of the chamber for members of the Parliamentary Press Gallery, distinguished visitors and the general public who wish to follow the proceedings during a sitting. Once Prayers are read at the beginning of a sitting, the galleries are opened.

On April 6, 1876 (see *Journals of the Senate*, p. 168), the Senate adopted the following rule: “Seats are reserved without the Bar of the Senate Chamber, for members of the House of Commons who may be desirous of hearing the debates” (rule 104). The wording was revised on December 10, 1968 (rule 106) (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). On April 27, 1988 (see *Journals of the Senate*, p. 2352), the words “former members of the Senate and” were added. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 2-10

Speaker’s Ruling: Members of the House of Commons Sitting within Bar

Journals of the Senate, October 29, 2002, p. 125:

In the matter of the MP who took a seat within the bar, this was clearly a violation of tradition and also the *Rules of the Senate*. Members of the other place when they come to the Senate to witness Royal Assent or to hear a Speech from the Throne as they did on September 30 should always remain behind the bar. Rule [2-10] reserves several places “without the bar” for former Senators or Members

of the House of Commons who wish to follow the proceedings of the Senate during a sitting. At no time ought members to take a seat inside the bar. Senator Prud'homme indicated that a Senator invited the member to take a seat. Other senators, however, objected and the Government Whip was successful in persuading the member to leave. This incident should not have happened, yet it provides one more reason to prepare and distribute some documentation explaining the traditions and practices that are to be observed at the opening of a parliamentary session.

RULE 2-11

Distinguished visitors	2-11. A Senator who wishes to call attention to the presence in the gallery of a distinguished visitor shall give the Speaker written notice to that effect. The Speaker may then inform the Senate accordingly and offer words of welcome.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-11: Rule 22(5)

COMMENTARY

Provision is made in the Rules for drawing the attention of the Senate to distinguished visitors in the gallery. Senators must give prior written notice to the Speaker, who may make an announcement to the Senate. The Senate has no restriction on whom the Speaker may recognize in the gallery – for example, retired senators, foreign dignitaries and other public figures have been recognized. Senators themselves should refrain from recognizing or alluding to individuals in the gallery.

This provision was first adopted by the Senate on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 2-11

House of Commons Procedure and Practice, Second Edition, p. 327:

During a sitting, the Speaker may draw the attention of the House to the presence of distinguished visitors seated in the gallery of the House. Generally, this takes place immediately following Question Period, though the Speaker has also recognized visitors prior to Question Period and even during Question Period. In most cases, the visitors recognized are seated in the Speaker's Gallery. No Standing Orders exist to define what types of visitors the Speaker shall recognize.

RULE 2-12

Participation of ministers in chamber	2-12. (1) When a bill or other matter relating to the administrative responsibility of the government is being considered by the Senate, a minister who is not a Senator may, on invitation of the Senate, enter the chamber and take part in debate.
Rules and practices apply	2-12. (2) Anyone who is invited to enter the chamber and take part in debate is subject to the Rules and practices of the Senate.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-12: Rule 21

COMMENTARY

Rule 2-12 provides for ministers who are not senators to be invited to take part in debate in the Senate. A separate rule, 12-32, deals with the more common situation of ministers participating in the proceedings of a Committee of the Whole, as well as other witnesses before a Committee of the Whole. By practice, a minister will usually sit at a senator's desk near the Leader of the Government's place, while other individuals will sit at a convenient location in the central aisle.

This rule was adopted on July 11, 1947. In introducing the motion for amending the Rules to allow ministers to enter the Senate Chamber for discussing a government bill or other government matter, Senator Robertson stated:

... There seems to be a desire on the part of ministers who are sponsoring important legislation to introduce it in the house of which they are members. Apparently they feel that in its initial stage they can do justice to it better than anyone else. That condition has existed for a long time.

I may say that early in the session I contemplated bringing to the attention of the Senate the desirability of doing something about this matter, in regard to which there has been so much talk. As early as 1868 the distinguished gentlemen who occupied the offices of leader of the government and leader of the opposition in this house concurred in a suggestion to amend the rules so as to permit the introduction of more legislation in this house. The amendment proposed would have allowed ministers of the government to introduce legislation in the Senate, and to participate in debate on it.

...

What I am proposing, honourable senators, contains nothing new. I have hurriedly looked through the records and I find that so long ago as 1868 the very matter which I am suggesting for your consideration was before the Senate. It came before this house in 1868, 1874, 1879, 1882, 1908, 1918, 1921, 1931, and 1934; but I cannot find that a formal change of our rules to permit this proceeding was ever made. The motion I am proposing is, so far as I remember, in the exact phraseology of one which was proposed about the year 1934, but was not proceeded with. In 1944, probably as a result of unanimous consent, the then Minister of National War Services, the Honourable J. G. Gardiner, was accorded the privileges of this house. ...

(*Debates of the Senate*, 1947, pp. 572-574).

The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

There are relatively few cases of ministers who were not senators having participated in proceedings of the Senate, as opposed to proceedings of a Committee of the Whole, which is more common. Some cases include March 16, 1948; March 28, 1949; November 8, 1949; May 13, 1952; June 10, 1952; June 17, 1952; and June 23, 1952. F.A. Kunz, in *The Modern Senate of Canada*, indicates that some of these appearances involved the Government Leader extending an invitation to the minister without formal authorization from the Senate (p. 193). He then goes on to note that the practice of inviting ministers to participate in proceedings of the Senate itself, as opposed to Committees of the Whole, fell into disuse (p. 197).

RELATED CITATIONS AND EXTRACTS – RULE 2-12

House of Commons Procedure and Practice, Second Edition, p. 285:

Strangers are not permitted on the floor of the House of Commons when the House is sitting.

[Footnote: There have been rare exceptions. In 1944, the House twice agreed to permit the Minister of National Defence, who was newly appointed and not an elected Member, to address the House during a sitting.... In addition, the House met in a secret session at which the Minister was present and participated...]

RULE 2-13

Strangers ordered to withdraw	2-13. (1) When, during a sitting of the Senate or a Committee of the Whole, a Senator objects to the presence of strangers, the question “That strangers be ordered to withdraw” shall be decided immediately.
Prior motion not required	2-13. (2) The Speaker or chair may, on their own initiative, order strangers to withdraw.
Clearing of galleries	2-13. (3) When strangers are ordered to withdraw, the public galleries shall be cleared, but individuals authorized to be in any part of the chamber during a sitting shall continue to have access to it.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 2-13: Rule 20

COMMENTARY

A “stranger” is defined as anyone who is not a senator or an official of the Senate. This includes members of the House of Commons, diplomats, departmental officials and journalists, as well as members of the public. Strangers are admitted to the galleries but may be removed if there is a disturbance or if the Senate so orders (see *Glossary of Parliamentary Procedure*, Seventh Edition, p. 66).

Rule 2-13 provides two ways in which strangers may be ordered to withdraw from the Senate or a Committee of the Whole – through the adoption of a motion “That strangers be ordered to withdraw” moved by a senator and not subject to debate or amendment, or under the initiative of the Speaker or chair. Normally, cases of disturbances in the galleries are handled under the initiative of the Speaker. A motion to order the withdrawal of strangers may be moved if the Senate wishes to proceed to a secret meeting; however, there are no known instances of such meetings in the Senate.

The right to exclude strangers is a part of the privilege of control over proceedings. Its constitutional status was recognized by the Supreme Court of Canada in its decision in *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319.

Protocols and other necessary measures have been established under the authority of the Speaker to ensure security in the chamber. Normally, when strangers are ordered to withdraw, staff having duties requiring their presence still have access to the chamber. This includes, for example, the table officers, the Usher of the Black Rod, the Mace Bearer, interpreters and Debates reporters.

In 2010, the Speaker ruled on a point of order relating to the presence, during the previous sitting, of a senator who was on leave of absence and was therefore considered as a stranger. The Speaker explained that what is now rule 2-13(1) provides that the presence of strangers should be promptly raised by any senator who notices the matter (see ruling of March 11, 2010, under Related Citations and Extracts).

On December 17, 1867, a rule was adopted providing that “Any Senator may, at any time, desire the Senate to be cleared of strangers, and the Speaker immediately gives directions to the proper officers to execute the order, without debate” (rule 13). The rule was revised on April 6, 1876, as follows: “If at any sitting of the Senate, or in Committee, any member shall take notice that strangers are present, the Speaker or the Chairman (as the case may be) shall forthwith put the question That strangers be ordered to withdraw, without permitting any debate or amendment; Provided, That the Speaker or the Chairman may, whenever he may think fit, order the withdrawal of strangers from any part of the Senate” (rule 11). The wording of the rule was amended on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 2-13

Senate Administrative Rules (2004), Chapter 5:01:

4. During a sitting of the Senate, every member of the staff of the Senate in the Chamber shall observe the direction of the Speaker or the Senator acting as the Speaker in preference to any direction received from any other source of authority.

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 194:

The sergeant-at-arms maintains order in the galleries and lobbies of the house. The orders and arrangements of the house with reference to the admission of strangers are carried out by him. The senators have a gallery devoted exclusively to themselves; the speaker also gives admission to a gallery of his own. The public in general is admitted to other galleries by tickets distributed to members by the sergeant-at-arms. Strangers are not obliged to withdraw from the galleries when a division takes place. In the session of 1876 the Commons – and the Senate, also – adopted as a standing order the following resolution which was first proposed by Mr. Disraeli in 1875 in the English House of Commons:

“If, at the sitting of the Senate (or house), any member shall take notice that strangers are present, the speaker or the chairman (as the case may be) shall forthwith put the question, ‘That strangers be ordered to withdraw,’ without permitting any debate or amendment; provided that the speaker, or the chairman, may, whenever he thinks proper, order the withdrawal of strangers.”

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 37:

§144. The Sergeant-at-Arms or the House protective staff, with or without an express direction from the Speaker, have removed from the galleries of the House strangers behaving in a disorderly manner. When the disorder has continued, the galleries have been cleared by the Speaker's direction. Under Standing Order 158, strangers who misconduct themselves or who refuse to withdraw when so ordered are to be taken into custody by the Sergeant-at-Arms.

§145. Whenever the House decides to sit in secret sessions, as it did on April 17, 1918, February 24, 1942 and on November 28, 1944, strangers are cleared from the galleries, or if the House has agreed to sit in secret on a certain day, the gallery doors are not opened to the public after the Prayers.

Annotated Standing Orders of the House of Commons, Second Edition, p. 34:

... [W]hen a Member wishes a secret or restricted meeting of the House (or of a Committee of the Whole), he or she may propose "That strangers be ordered to withdraw". Such a motion is not debatable or amendable and the Speaker has some discretion in deciding whether or not to allow the motion to be put. If the motion is agreed to, the Speaker must then, with the help of the Sergeant-at-Arms if necessary, ensure that the wishes of the House are respected.

The Speaker may also order the withdrawal of strangers at his or her own discretion. Very often, however, the Sergeant-at-Arms or members of the protective staff have, without an express order from the Speaker to do so, escorted from the gallery any persons behaving improperly (see also Standing Order 158).

House of Representatives Practice, Sixth Edition, p. 114:

In the past the motion 'That strangers be ordered to withdraw' (without expectation that it would be agreed to) was frequently moved as a delaying or disruptive tactic. The standing orders no longer explicitly provide for such a motion, although there is nothing to prevent an equivalent motion being moved, and there remains provision for a Member to call attention to the unwanted presence of visitors.

On three occasions during World War II strangers were ordered to withdraw to enable the House to discuss in private certain matters connected with the war. On the first of these occasions in committee, the Chairman of Committees stated that he did not regard Senators as strangers. However, on the next occasion the Speaker ruled that Senators would be regarded as strangers but that the House could invite them to remain and a motion that Senators be invited to remain was agreed to. The Speaker then informed the House that members of the official reporting staff were not covered by the resolution excluding strangers, whereupon a motion was moved and agreed to 'That officers of the Parliamentary Reporting Staff withdraw', and the recording of the debate was suspended.

La procédure parlementaire du Québec, Third Edition, p. 365:

The Assembly may, if necessary, decide to meet in camera. ... Barring this, however, all sittings of the Assembly are open to the public.

This said, the Supreme Court of Canada has ruled that due to their collective parliamentary privilege, legislative assemblies are not accessible of right, and strangers can be expelled from any area of the Assembly.

Speaker's Ruling: Stranger Present

Journals of the Senate, March 11, 2010, pp. 67-68:

... I also would like to draw the attention of honourable senators to rule 20(1) [now see rule 2-13(1)] which reads as follows:

If at any sitting of the Senate, or in Committee of the Whole, a Senator shall take notice that strangers are present, the Speaker or the Chairman (as the case may be) shall forthwith put the question "That strangers be ordered to withdraw", without permitting any debate or amendment.

A senator who, pursuant to the rules ... is on a leave of absence or suspended under rule [15-5], is in a very real sense, a stranger.

The point I am making is that, as your chair, I did not observe Senator Lavigne in this place, nor was it drawn to the chair's attention. Senator Wallace has drawn it to our attention, and it is a fact that in the record his name appears as being present. We could refer to guidance from Beauchesne's, the sixth edition at page 97, which points out, in paragraph 321:

A point of order against procedure must be raised promptly and before the question has passed to a stage at which the objection would be out of place.

The fact is that Senator Lavigne, apparently, took his place in the Senate although improperly, as has been pointed out by Senator Wallace. This discussion is now all on the record and, unless honourable senators feel that we have to expunge the name from those present yesterday, I suggest that the record now makes the matter clear.

CHAPTER THREE: SITTINGS OF THE SENATE

Chapter 3 of the Rules describes the schedule for the start and the adjournment of sittings of the Senate. This includes the provisions for evening suspensions (rule 3-3) and for the resumption of items of business that were under consideration at the time of adjournment (rule 3-5). It details the authority given to the Speaker to recall the Senate during a period of adjournment or to extend a period of adjournment (rule 3-6). It also establishes the quorum needed for a meeting of the Senate and describes the process to be followed when a quorum is not present (rule 3-7).

Sittings

RULE 3-1

Ordinary time of meeting	3-1. (1) Except as otherwise ordered by the Senate, the Senate shall meet at 2 p.m. on Mondays through Thursdays and at 9 a.m. on Fridays.
Adjournment Friday to Monday	3-1. (2) Except as otherwise ordered by the Senate, when the Senate adjourns on a Friday, it shall stand adjourned to the following Monday.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 3-1(1): Rule 5(1)

Rule 3-1(2): Rule 14

COMMENTARY

Rule 3-1 provides that the Senate meets at 2 p.m. from Monday to Thursday, and at 9 a.m. on Friday, although in practice it usually meets from Tuesday to Thursday on most sitting weeks, with Monday and Friday meetings taking place at busier periods of the year. Meeting times may be adjusted; for example, when the Senate meets on a Monday it sometimes decides to begin in the evening.

The Senate does not have a prescribed calendar of sittings. Under the Rules every week is potentially a sitting week. However, since much of the work of the Senate is dependent upon the flow of business from the House of Commons, sittings of the Senate are affected by the Commons calendar. This flow often results in an initial slow period followed by a demanding schedule before longer adjournment periods, prorogation or dissolution. Although not required by the *Rules of the Senate*, the party leaderships in the Senate approve a calendar of sitting days, subject to change without notice, based on the House of Commons sitting calendar, but with the addition of extra sittings just prior to the summer and winter adjournments.

The Senate will sometimes adopt a sessional order early in a session that on certain days it will vary from the start times in rule 3-1. See rule 3-4 for some recent examples.

On December 17, 1867, the time for the ordinary meeting of the Senate was set at 3 p.m. The hour of sitting was changed to 2 p.m. on May 26, 1970 (see *Journals of the Senate*, p. 393). The wording of the rule was amended on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 3-1

House of Commons Procedure and Practice, Second Edition, pp. 373-374:

The House of Commons calendar sets out a schedule of adjournments of a week or more and thereby provides for sittings, or sitting periods, throughout the year. It comes into effect at the beginning of a session; in other words, the government is not bound by the Standing Orders in considering plans for the timing and length of sessions. The calendar works in conjunction with other Standing Orders providing for daily meeting and adjournment times, and setting out certain days when the House does not sit, most of the days in question being statutory holidays or days deemed to be non-sitting days.

Standing Orders of the House of Commons (June 2011):

28. (1) The House shall not meet on New Year’s Day, Good Friday, the day fixed for the celebration of the birthday of the Sovereign, St. John the Baptist Day, Dominion Day, Labour Day, Thanksgiving Day, Remembrance Day and Christmas Day. When St. John the Baptist Day and Dominion Day fall on a Tuesday, the House shall not meet the preceding day; when those days fall on a Thursday, the House shall not meet the following day.

(2)(a) When the House meets on a day, or sits after the normal meeting hour on a day, set out in column A, and then adjourns, it shall stand adjourned to the day set out in column B, except as provided for in paragraph (b).

A	B
The Friday preceding Thanksgiving Day.	The second Monday following that Friday.
The Friday preceding Remembrance Day.	The second Monday following that Friday.
The second Friday preceding Christmas Day.	The last Monday in January.
The Friday preceding the week marking the mid-way point between the Monday following Easter Monday and June 23.	The second Monday following that Friday or, if that Monday is the day fixed for the celebration of the birthday of the Sovereign, on the Tuesday following that Monday.
June 23 or the Friday preceding if June 23 falls on a Saturday, a Sunday or a Monday.	The second Monday following Labour Day.

(b) The Speaker of the House shall, by September 30, after consultation with the House Leaders, table in the House a calendar for the following year setting out the sitting and non-sitting weeks between the last Monday in January and the Monday following Easter Monday.

RULE 3-2	
Speaker enters chamber	3-2. (1) The Speaker shall enter the chamber at the time the Senate is scheduled to meet.

Bells ring before meeting	3-2. (2) The bells to call in the Senators shall begin ringing no later than 15 minutes before the time the Senate is scheduled to meet and shall stop when the Speaker sees that a quorum is present.
Lack of quorum at time of meeting	3-2. (3) If a quorum is not present within two hours after the time the Senate is scheduled to meet, the Speaker shall declare that the Senate is unable to sit due to a lack of quorum and shall leave the chair until the next sitting day.
	<i>REFERENCE</i> Constitution Act, 1867, <i>section 35</i>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 3-2(1): Rule 5(3)

Rule 3-2(2): Rule 5(2)

Rule 3-2(3): New provision

COMMENTARY

The bells calling senators to a sitting start ringing at least 15 minutes prior to the time scheduled for the opening of the sitting. In practice, the bells only start 15 minutes before the sitting and continue to ring until the Speaker sees the presence of a quorum of 15 senators, including the Speaker (see rule 3-7(1)). If a quorum is not present within two hours of the scheduled time of meeting, the Speaker will declare that the Senate is unable to sit due to a lack of quorum and will leave the chair until the next sitting day.

Rule 5 in 1867 stated: “If thirty minutes after the time of meeting, fifteen senators, including the Speaker, are not present, the Speaker takes the Chair and adjourns till the next sitting day; the names of the Senators present being taken down by the Chair.” This rule was repealed on December 10, 1968, as it was “not in accordance with practice,” and a requirement for a quorum at the beginning of a sitting was added (see *Journals of the Senate*, p. 448, effective on August 1, 1969).

In 2012, rule 3-2(3) dealing with the lack of a quorum at the start of a sitting was adopted. The current wording of rule 3-2 was adopted at the same time, on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 3-2

House of Commons Procedure and Practice, Second Edition, p. 391:

At the time the House is scheduled to meet, a count of the House is taken by the Speaker. If fewer than 20 Members are present, the Speaker may adjourn the House until the next sitting day. The Speaker may take such an initiative only before the House has been called to order. Once the sitting has begun, “control over the competence of the House is transferred from the Speaker to the House itself ... the Speaker has no right to close a sitting at his own discretion.” There are no known instances of this having happened at the beginning of a sitting and, in practice, the bells summoning Members to the House at the start of a sitting are not silenced until a quorum exists, often some minutes after the appointed meeting time.

[Footnote: In practice, the bells summoning Members to the House at the start of a sitting continue until a quorum exists, usually five to ten minutes after the stated time of meeting. However, it is for the Chair to determine a reasonable waiting time before adjourning the sitting. On occasion, the bells have rung for several minutes, even for 20 or 25 minutes, before a quorum was found.]

House of Representatives Practice, Sixth Edition, p. 270:

If a quorum is not present when the Chair is taken at the commencement of each sitting, and if within five minutes, the bells having been rung, a quorum is still not present, the Speaker adjourns the House until the next sitting day. This is subject to the proviso that if the Speaker is satisfied there is likely to be a quorum within a reasonable time the Speaker announces that he or she will take the Chair at a stated time. If at that time there is not a quorum, the Speaker adjourns the House until the next sitting day. No Member may leave the Chamber while the bells are ringing or until a quorum is present.

<i>Interrupted Business</i>	
RULE 3-3	
Evening suspension at 6 p.m.	3-3. (1) Except as provided in subsection (2) and elsewhere in these Rules, if the Senate or a Committee of the Whole has not concluded its business at 6 p.m., the Speaker or the chair shall suspend the sitting until 8 p.m. During this suspension, the mace shall remain on or under the table as the circumstances warrant.
	<i>EXCEPTIONS</i> <i>Rule 4-2(8)(b): Evening suspension delayed when Senators' Statements extended</i> <i>Rule 7-4(2): Debate to continue beyond ordinary time of adjournment and no evening suspension</i> <i>Rule 16-1(4): Adjournment delayed after receipt of message</i>
Voting at 6 p.m.	3-3. (2) If a standing vote is scheduled for, or in progress at, 6 p.m., the sitting shall not be suspended until the vote has been taken and any consequential business has been concluded.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 3-3: Rule 13

COMMENTARY

If the Senate is still sitting at 6 p.m., the rules require a suspension of the sitting until 8 p.m. If a standing vote has been ordered at 6 p.m. or is in progress, the sitting is not suspended until the vote and all related business are completed. When the Senate does suspend pursuant to rule 3-3(1), the bells to call the senators ring for 15 minutes prior to the 8 p.m. resumption. For more information regarding standing votes, see Chapter 9.

The provisions of rule 3-3(1) also apply to sittings of a Committee of the Whole (see rule 12-32(3)). A decision of the Senate is required to allow a Committee of the Whole to sit through the normal suspension from 6 to 8 p.m., since it cannot suspend rule 3-3(1) on its own (see, for example, *Journals of the Senate*, November 3, 2003, pp. 1304-1305; and April 18, 2007, p. 1345). Since the evening suspension forms part of the sitting, committees cannot sit during the suspension unless they have received special permission (see Speaker's ruling of June 5, 2012, at p. 1343 of the Journals, quoted under text for rule 12-18(1)).

The Senate often decides, with leave, to continue sitting until business is completed. This is referred to as "not seeing the clock." On occasion, the Senate has, with leave, decided to see the clock as if it were 6 p.m., even though it was earlier, and suspended the sitting until 8 p.m. (see *Journals of the Senate*, December 12, 2006, p. 954; June 19, 2007, p. 1775).

There are a number of exceptions to rule 3-3. If the time for Senators' Statements is extended under rule 4-2(8)(a), the start of the evening suspension is delayed by the time of the extension (rule 4-2(8)(b)). When a motion to allocate time is under consideration, the 6 p.m. suspension does take place (rule 7-3(2)), but it does not occur when an item of Government Business subject to time allocation is under debate (rule 7-4(2)). When the Senate receives a message from the Crown setting the time for a ceremony, the evening suspension does not take place until the ceremony has concluded (rule 16-1(4)).

In 1867, the rule read: "If, at six o'clock, the business be not concluded, the Speaker leaves the Chair until half past seven" (rule 8). On March 29, 1894 (see *Journals of the Senate*, p. 34), the rule was amended by adding at the end of the sentence the words "the Mace being left on the Table" (rule 4). On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the rule was further amended to read: "If, at six of the clock in the afternoon, the business be not concluded, the Speaker or the Chairman of the Committee of the Whole leaves the Chair until half-past seven of the clock; the Mace being left on or under the table, as the case may be. Provided that, if at the said time, a division has been ordered, the Speaker or the Chairman shall not leave the Chair until such division has been taken and any formal business immediately consequent thereon has been completed" (rule 13). The rule was altered on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), when the hour of 8 p.m. was substituted for that of 7:30 p.m. Another amendment to the wording was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording of rule 3-3 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 3-3

Bourinot's Parliamentary Procedure, Fourth Edition, p. 214:

As soon as six o'clock arrives during a sitting, and it is intended to continue business in the evening, the speaker leaves the chair, and resumes it at [8] p.m. in the Senate ... the mace is left on the table, and the house is considered still in session.

House of Commons Procedure and Practice, Second Edition, p. 397:

Although the proceedings of the House run continuously from the beginning of a sitting through to its adjournment, the House may agree to a pause, called a "suspension". Suspensions are common and may be initiated for any number of reasons, as they are a simple method by which the House is able to manage its time as it sees fit. When a sitting is suspended, the Speaker leaves the Chair but the Mace

remains on the Table, thus indicating that the House is still constituted. Sittings of the House are routinely suspended with the intention of resuming the proceedings sometime later that day.

RULE 3-4

Ordinary time of adjournment **3-4.** Except as otherwise provided or ordered by the Senate, if the Senate is sitting at 4 p.m. on a Friday or at midnight on another sitting day, the Speaker shall interrupt the proceedings and declare the Senate adjourned until the next sitting day without the question being put.

EXCEPTIONS

Rule 7-3(1)(c): Procedure for debate on motion to allocate time

Rule 7-4(2): Debate to continue beyond ordinary time of adjournment and no evening suspension

Rule 8-4(8): Extension of sitting if required

Rule 9-9: Adjournment suspended during vote

Rule 9-10(7): No adjournment until after deferred vote

Rule 13-7(6): Continuation of debate on motion on case of privilege beyond ordinary time of adjournment on first day of debate

Rule 13-7(10): Where Orders of the Day not completed

Rule 16-1(4): Adjournment delayed after receipt of message

EQUIVALENCE WITH MARCH 2010 RULES

Rule 3-4: Rules 6(1) and (2)

COMMENTARY

Although the Senate may sit until 4 p.m. on Friday, or midnight on other days, the usual practice is for the Senate to sit several hours in the afternoon to complete its work and then adjourn. Should the Senate sit until midnight, or 4 p.m. on a Friday, rule 3-4 requires the Speaker to adjourn the Senate without putting a question to that effect. Even though an adjournment time is stipulated in the Rules (i.e., midnight or 4 p.m., as the case may be), there are a few notable exceptions when the Senate will continue beyond those times, such as for a deferred vote (rule 9-10(7)), if a standing vote is requested (rule 9-9), or when notice has been given that the Sovereign, the Governor General or a deputy will arrive at the Senate at a specified time (rule 16-1(4)). Provisions for extending the adjournment time also apply for time allocation procedures (rules 7-3(1)(c), and 7-4(2) and (6)), for the consideration of a motion relating to a case of privilege on the first day of debate (rules 13-7(6) and (10)), and in relation to an emergency debate (rule 8-4(8)).

The Senate will sometimes adopt a sessional order that on certain dates it will vary from the adjournment schedule as set out in rule 3-4. Two recent examples are:

(a) *Journals of the Senate*, October 18, 2011, p. 240:

That, during the remainder of the current session,

(a) when the Senate sits on a Wednesday or a Thursday, it shall sit at 1:30 p.m. notwithstanding rule [3-1(1)];

- (b) when the Senate sits on a Wednesday, it stand adjourned at the later of 4 p.m. or the end of Government Business, but no later than the time otherwise provided in the Rules, unless it has been suspended for the purpose of taking a deferred vote or has earlier adjourned;
- (c) when the Senate sits past 4 p.m. on a Wednesday, committees scheduled to meet be authorized to do so, even if the Senate is then sitting, with the application of rule [12-18(1)] being suspended in relation thereto; and
- (d) when a vote is deferred until 5:30 p.m. on a Wednesday, the Speaker shall interrupt the proceedings, if required, immediately prior to any adjournment but no later than the time provided in paragraph (b), to suspend the sitting until 5:30 p.m. for the taking of the deferred vote, and that committees be authorized to meet during the period that the sitting is suspended.

(b) *Journals of the Senate*, April 15, 2010, p. 238:

That, for the remainder of the current session,

- (a) when the Senate sits on a Wednesday or a Thursday, it shall sit at 1:30 p.m. notwithstanding rule [3-1(1)];
- (b) when the Senate sits on a Wednesday, it stand adjourned at 4 p.m., unless it has been suspended for the purpose of taking a deferred vote or has earlier adjourned; and
- (c) when a vote is deferred until 5:30 p.m. on a Wednesday, the Speaker shall interrupt the proceedings, immediately prior to any adjournment but no later than 4 p.m., to suspend the sitting until 5:30 p.m. for the taking of the deferred vote, and that committees be authorized to meet during the period that the sitting is suspended.

A rule establishing a time for automatic adjournment was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording of rule 3-4 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RULE 3-5

Item under debate at adjournment	3-5. (1) Any item of business under consideration at the ordinary time of adjournment shall be an order of the day for the next sitting.
Orders of the Day not disposed of at adjournment	3-5. (2) When the Senate is adjourned, any order of the day not then disposed of shall be an order of the day for the next sitting.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 3-5(1): Rules 6(3) and (4)

Rule 3-5(2): Rule 27(2)

COMMENTARY

This rule provides that when any item of business is under discussion at the time the Senate is required to adjourn it is placed on the Order Paper for resumption of debate at the next sitting. In

practice, an item of Other Business either stands in the name of the senator who was speaking, if the speech was not completed and the senator's time had not expired, or of no senator. An item of Government Business does not stand in any senator's name (see rule 6-10(1)). In the same manner, any item of business standing on the Order Paper that was not decided upon at the time of adjournment remains on the Order Paper for the next sitting.

Items of Government Business remain on the Order Paper until they are disposed of, but items of non-government business are dropped if they are called for 15 sitting days without being proceeded with (rule 4-15(2)).

This rule was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording of rule 3-5 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

Adjournment Periods

RULE 3-6

Recall of Senate during adjournment	3-6. (1) Whenever the Senate stands adjourned, the Speaker may, if satisfied that the public interest so requires, recall it to meet earlier than the date and time stipulated in the adjournment order.
Adjournment extended	3-6. (2) Whenever the Senate stands adjourned, if the Speaker is satisfied that the public interest does not require the Senate to meet at the date and time stipulated in the adjournment order, the Speaker shall, after consulting the Leader of the Government, the Leader of the Opposition and the leader of any other recognized party, or their designates, determine an appropriate later date or time for the next sitting.
Notification of recall or extension	3-6. (3) When the Senate is recalled or an adjournment period is extended, the Speaker shall cause each Senator to be notified by the most effective means available of the date and time of the next sitting and, in the case of a recall, the reason.
Non-receipt of notification	3-6. (4) The non-receipt by any Senator of notification of the revised date and time of the next sitting does not affect its validity.
Recall or extension if Speaker absent	3-6. (5) In the absence of the Speaker, or when the office of Speaker is vacant, the Clerk may act for the purposes of this rule.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 3-6: Rule 17

COMMENTARY

If, during a period of adjournment, the Speaker is satisfied that it is in the public interest, he or she

may recall the Senate for an earlier date than established at the time of adjournment. The recall can be to a day or an hour on which the Senate would not otherwise sit. For example, on Saturday, June 25, 2011, the Senate was recalled to sit on Sunday, June 26, at 11 a.m., to deal with back-to-work legislation.

Conversely, if the Speaker is satisfied that the public interest does not require the Senate to meet on the date established at adjournment, he or she shall consult with the leaders and set a later date for the next sitting. For example, on June 23, 2010, once the Senate had automatically adjourned after a suspension due to an earthquake and the subsequent operation of a sessional order, the Speaker determined, after the necessary consultations, that the adjournment should be extended to Monday June 28, 2010, thereby avoiding sitting on a holiday. The rule does not set a minimum notice period.

Rule 3-6(3) requires that the Speaker inform senators of a recall or an extension of the adjournment by the most effective means available. In recent cases senators were notified by email. If any senator does not receive a notification, it does not invalidate the recall or extension (rule 3-6(4)). If the Speaker is absent or the office is vacant, the Clerk of the Senate is authorized to perform these duties (rule 3-6(5)). In the case of a recall, the notification must indicate the reason (rule 3-6(3)).

Provisions relating to recalls were first adopted on November 26, 1975 (see *Journals of the Senate*, p. 592), and amended on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), giving the Speaker the authority to extend the time of adjournment, subject to certain conditions. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 3-6

House of Commons Procedure and Practice, Second Edition, pp. 379-380:

When the House stands adjourned during a session, the rules provide the means by which the House may be recalled prior to the date originally specified, to transact business as if it had been duly adjourned to the earlier date. This process usually begins with a government request made in writing to the Speaker, setting out reasons why it is in the public interest to recall the House. The request may be made at any time. The decision to recall is taken by the Speaker, after consultation with the government and once the Speaker is satisfied that the public interest would be served by an earlier meeting of the House. The rule makes no reference to criteria other than the public interest. Should the Speaker be satisfied of the need for the recall, the rule further provides for the Speaker to give notice of the day and hour of the resumption of the session. Normally, the Speaker requests a period of time following the notice (the practice is a minimum of 48 hours) in which to notify Members individually and allow for their travel time. Depending on the circumstances, a *Special Order Paper and Notice Paper* (in addition to the regular *Order Paper and Notice Paper*) may be published at the request of the government.

When a decision is taken to recall the House, the Speaker advises the Clerk of the House and asks that the necessary steps be taken to resume the session. Should the Speaker be unable to act due to illness or other reason, deputy presiding officers may act in the Speaker's place for the purpose of this particular Standing Order. The Clerk then ensures that all is made ready for the resumption of the sittings.

Quorum

RULE 3-7

Quorum of 15 **3-7. (1)** A quorum of 15 Senators, including the Speaker, is required for the Senate to sit and conduct business.

REFERENCE

Constitution Act, 1867, *section 35*

Bells for quorum call **3-7. (2)** A Senator may at any time draw the attention of the Senate to a possible lack of quorum. The Speaker shall then cause any Senators nearby to be summoned and, if a quorum is not found within five minutes, the Speaker shall order the bells to ring for no more than 15 minutes.

Lack of quorum during sitting **3-7. (3)** If a quorum has not been found after the bells have rung for 15 minutes, the Speaker shall adjourn the Senate until the next sitting day without the question being put.

Business adjourned if lack of quorum **3-7. (4)** When the Senate adjourns for lack of a quorum, any item of business then under consideration, except an emergency debate, shall be an order of the day for the next sitting.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 3-7: Rule 9

COMMENTARY

A quorum is the number of senators, including the Speaker, necessary to constitute a meeting of the Senate. The *Constitution Act, 1867*, s. 35, states:

Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers.

The rule provides that any senator may direct the Speaker's attention to the fact that a quorum is not present. The Clerk will proceed at once to a count, and senators in adjoining rooms will be called into the chamber. If a quorum is not present within five minutes, the bells are rung for not more than 15 minutes. If, at the end of 15 minutes, a quorum is not present, the Speaker will adjourn the Senate until the next sitting day. Any item under consideration at that time, except an item relating to an emergency debate under rule 8-4(1), is automatically placed on the Orders of the Day for consideration at the next sitting.

The names of the senators present when the Senate is adjourned for want of a quorum are not recorded in the Journals (see *Journals of the Senate*, May 15, 2007, p. 1533; and June 11, 1914, p. 491).

The Commentary on rule 3-2 provides historical information relating to quorum. Sections (2), (3) and (4) of rule 3-7 were added on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and sections (2) and (3) were further amended on June 23, 1993 (see *Journals of the Senate*, p. 2280). The current

wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 3-7

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 88-89:

§281. (2) While the count of the House is taking place no point of order or question of privilege will be considered by the Chair. *Debates*, May 5, 1982, p. 17067.

(3) The only occasion when the Speaker takes the initiative in this matter is at the opening of the sitting before Prayers or after the customary interruptions. If a quorum is not then present the Speaker refrains from calling the House to order until a reasonable number are present.

§282. While the House is being counted the doors remain open and Members can come in during the whole time occupied by the counting. Sir John Bourinot, *Parliamentary Procedure and Practice in the Dominion of Canada* (4th ed., 1916), p. 218.

§283. A Member need not remain in the House after giving notice that a quorum is not present.

...

§285. If notice is taken by a Member that there is not a quorum present in a Committee of the Whole, the Chairman follows the course pursued by the Speaker in the House. If twenty members are not present, the Committee rises and the House is resumed. On the report from the Committee the Speaker counts the House and if there is not a quorum proceeds according to the Standing Order.

§286. If, after a division, it appears that the aggregate of the votes on each side, with the Speaker and the Members present who did not vote, do not make up a quorum, the question remains undecided and the House will have to be adjourned.

CHAPTER FOUR: ORDER OF BUSINESS

The rules in Chapter 4 pertain to the sequence and items of business transacted in the Senate on a regular basis. A sitting of the Senate is divided into two main parts. The first part includes: Prayers (rule 4-1), Tributes (rule 4-3), Senators' Statements (rule 4-2), Routine Proceedings (rule 4-5), Question Period (rule 4-7), and Delayed Answers (rule 4-10). The second part consists of the Orders of the Day, followed by motions and inquiries on the Notice Paper (rule 4-12). These rules also establish the priority given to different items of business.

<i>Prayers</i>

RULE 4-1

Prayers	4-1. The Speaker shall proceed to Prayers as soon as a quorum is seen.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-1: Rule 5(4)

COMMENTARY

Once a quorum is present at the start of a sitting of the Senate, the following prayer is read by the Speaker in both official languages:

Almighty God, we beseech thee to protect our Queen and to bless the people of Canada. Guide us in our endeavours; let your spirit preside over our deliberations so that, at this time assembled, we may serve ever better the cause of peace and justice in our land and throughout the world. Amen.

Seigneur Dieu, daigne protéger notre reine et bénir les Canadiens. Dirige-nous dans nos travaux; fais que ton esprit anime nos délibérations pour qu'ainsi assemblés, nous servions toujours mieux la cause de la paix et de la justice dans notre pays et dans le monde. Amen.

Senators, table officers and other persons present stand during the reading of Prayers. The doors to the chamber and galleries remain closed. After Prayers the Speaker directs that the doors be opened.

Prayers have always been read in the Senate at the opening of its sittings. In 1868, a resolution was adopted which read as follows: "That the practice which prevails in the Parliament of England, and which has been adhered to by the Legislative Councils of Canada and the other Provinces now forming the Dominion, since the establishment of their Constitutions, of opening their daily sittings with prayer to the Almighty God, should not be discontinued by this Senate" (see *Journals of the Senate*, April 24, 1868, p. 228). A chaplain was appointed by the Governor General to read the prayer until 1901, when the Speaker began to do so. In 1905, a special committee was established to recommend the form of a prayer, and its report was adopted by the Senate (see *Journals of the Senate*, July 18, 1905, p. 383). The wording of the prayer has changed several times since then. Reference to Prayers has always been found in the Rules; the current wording of rule 4-1 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 4-1

House of Commons Procedure and Practice, Second Edition, pp. 415-416:

Prior to the doors of the Chamber being opened to the public at the beginning of each sitting of the House, the Speaker takes the Chair and proceeds to read the prayer, after it has been determined that a quorum ... including the Chair Occupant is present, and before any business is considered. While the prayer is being read, the Speaker, the Members and the Table Officers all stand. The prayer is by custom read partly in French and partly in English. When the prayer is finished, the House pauses for a moment of silence for private thought and reflection. At the end of the moment of silence, the Speaker orders the doors opened. At this point, television coverage of the proceedings commences and the public may enter the galleries.

Although the practice of reading a prayer at the start of each sitting was not codified in the Standing Orders until 1927, it has been part of the daily proceedings of the House since 1877.

Senators' Statements and Tributes

RULE 4-2	
Senators' Statements	<p>4-2. (1) Except as otherwise provided, after Prayers the Speaker shall call for Senators' Statements.</p> <p><i>EXCEPTIONS</i> <i>Rule 4-4(1): Emergency debate request instead of Senators' Statements</i> <i>Rule 8-3(1): Order of debate</i></p>
15 minutes for Senators' Statements	<p>4-2. (2) Except as provided in paragraph (8)(a) and elsewhere in these Rules, the period for Senators' Statements shall not extend beyond 15 minutes.</p> <p><i>EXCEPTIONS</i> <i>Rule 4-3(1): Tributes</i> <i>Rule 4-3(4): Acknowledgements of tributes</i></p>
Senators' Statements limited to three minutes each	<p>4-2. (3) A Senator making a statement shall be limited to one intervention, of no more than three minutes.</p>
Priority to oral notice of question of privilege	<p>4-2. (4) A Senator who has provided written notice to the Clerk of a question of privilege, and who intends to proceed with that question later in the sitting, has priority to give oral notice of the question during Senators' Statements.</p>
Subject matter of Senators' Statements	<p>4-2. (5)(a) During Senators' Statements, Senators may, without notice, raise matters that they believe should be brought to the immediate attention of the Senate.</p>

Limitations on Senators' Statements	4-2. (5)(b) Statements should not relate to an order of the day but should relate to matters of public interest that could not otherwise be brought to the immediate attention of the Senate under its Rules and practices.
No debate on Senators' Statements	4-2. (6) Matters raised during Senators' Statements shall not be subject to debate. Senators who are making statements are bound by the usual rules governing the propriety of debates.
No motions during Senators' Statements	4-2. (7) During Senators' Statements, no motions shall be received.
Extending time for Senators' Statements	4-2. (8)(a) At the request of either whip, the Speaker shall, at an appropriate time during Senators' Statements, seek leave of the Senate to extend Statements. If leave is granted, Senators' Statements shall be extended by no more than 30 minutes.
Evening suspension delayed when Senators' Statements extended	4-2. (8)(b) If, as a consequence of this extension, the Senate has not concluded its consideration of the Orders of the Day by 6 p.m., the beginning of the evening suspension shall be delayed for a time equal to the additional time provided for Senators' Statements.

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 4-2(1): Rule 22(1)
- Rule 4-2(2): Rule 23(6)
- Rule 4-2(3): Rule 22(6)
- Rule 4-2(4): Rule 22(3)
- Rule 4-2(5): Rule 22(4)
- Rule 4-2(6): Rule 22(4)
- Rule 4-2(7): Rule 22(9)
- Rules 4-2(8): Rules 22(7) and (8)

COMMENTARY

After Prayers, if no request has been made for Tributes under rule 4-3(1), the Speaker will call for Senators' Statements. The rule allows any senator to speak once for up to three minutes on matters relating to national, provincial or local concerns in the 15-minute period which precedes Routine Proceedings. Senators' Statements should not be subject to debate and should not relate to an item on the Orders of the Day. Speakers have also cautioned senators to make statements in a courteous and dignified manner appropriate to the chamber of sober second thought. Motions may not be proposed during this period, which therefore eliminates the possibility of standing votes and motions for senators "to be now heard" (see rule 6-4). However, points of order may be raised during Senators' Statements since this period is not part of Routine Proceedings (see Speaker's ruling on October 26, 2006, under Related Citations and Extracts).

Rule 4-2

At the request of one of the whips, the Speaker may seek the leave of the Senate to extend the time provided for Senators' Statements for not more than 30 minutes. If leave is granted and the Orders of the Day are not completed by 6 p.m., the evening suspension will be delayed by a period of time equal to the extension provided for Senators' Statements.

In the event that an application for an emergency debate is received, the Speaker will not call for Senators' Statements (see rules 4-4(1) and 8-3(1)), unless required for Tributes or oral notice of a question of privilege. Instead, the Senate will hear the reasons for the request. More information on emergency debates is provided in Chapter 8.

In the event that a written notice of a question of privilege is received pursuant to rule 13-4(1), a senator must also give oral notice during Senators' Statements. The Speaker will normally recognize any such senator first. More information on the procedure for raising questions of privilege is provided in Chapter 13.

These provisions were first adopted by the Senate on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). Amendments were adopted on June 27, 2000, to prevent limit statements at each sitting to one per senator (see *Journals of the Senate*, p. 796), and on April 1, 2003, to add provisions relating to Tributes (see *Journals of the Senate*, pp. 631-632). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). Included in the 2012 amendments was a change which used the words "no motions shall be received" in rule 4-2(7) in place of "no standing vote shall be permitted," to eliminate any suggestion that a motion could be moved during this portion of the sitting without a standing vote being possible.

RELATED CITATIONS AND EXTRACTS – RULE 4-2

House of Commons Procedure and Practice, Second Edition, pp. 422-423:

In 1983, when the procedure for Statements by Members was first put in place, Speaker Sauvé stated that:

- all questions raised must be on matters of concern but do not necessarily have to be on matters of urgent necessity;
- personal attacks are not permitted; and
- congratulatory messages, recitations of poetry and frivolous matters are out of order.

These guidelines are still in place today, although Speakers tend to turn a blind eye to the latter restriction.

Since 1983, additional restrictions have been placed on these statements. The Speaker has cut off an individual statement and asked the Member to resume his or her seat when:

- offensive language has been used;
- a Senator has been attacked;
- the actions of the Senate have been criticized;
- a ruling of a court has been denounced;
- the character of a judge has been attacked; or
- a song has been sung.

The Speaker has also cautioned Members not to use this period to make defamatory comments about non-Members, nor to use the verbatim remarks of a private citizen as a starting point for a statement, nor to make statements of a commercial nature.

The opportunity to speak during Statements by Members is allocated to private Members of all parties. In according Members the opportunity to participate in this period, the Chair is guided by lists provided by the Whips of the various parties and attempts to recognize those Members supporting the government and those Members in opposition on an equitable basis.

Speaker's Rulings on Senators' Statements

The Speaker has been called upon to rule on Senators' Statements on several occasions. A number of these rulings dealt with the use of "personal, sharp or taxing" language, which is prohibited under rule 6-13(1). The Speaker has explained that it is difficult to intervene until a statement is completely delivered, and by then it is too late; this is why each senator must assume responsibility for maintaining order and decorum (see, for example, rulings in Journals of the Senate, May 7, 2008, pp. 1043-1045; May 12, 2009, p. 661; June 3, 2010, pp. 488-489; September 25, 2012, p. 1551; October 2, 2012, p. 1586; February 5, 2013, pp. 1881-1882; February 14, 2013, p. 1922; and March 20, 2013, p. 2022, not all quoted below). Other rulings have dealt with the question of raising points of order during Senators' Statements (October 26, 2006), statements on the subject matter of an oral notice of a question of privilege (May 17, 2007), and statements anticipating an order of the day (December 8, 2010).

Use of Statements

Journals of the Senate, June 3, 2010, pp. 488-489:

Rule [4-2(5)], requires that a matter raised during Senators' Statements must be one the senator considers should be brought to the urgent attention of the Senate. The rule also requires that the issue be one of "public consequence" that cannot be raised through other means. This gives senators considerable freedom in determining issues to raise as statements.

The rule does, however, also impose some limits on statements. First, a statement must not anticipate any Order of the Day. Second, matters raised during statements are not to be the subject of debate. Finally, statements must respect the usual rules governing the propriety of debate, which would include rule 51 prohibiting "personal, sharp or taxing speeches." When framing their statements, honourable senators should be aware of these limitations, which are built into the very structure of rule [4-2(5)].

In practice, Senators' Statements are normally used to comment on events, accomplishments, or anniversaries that the senator giving the statement views as important. This includes, for example, paying tributes or offering congratulations to distinguished Canadians or international figures.

I again ask all honourable senators to remember that this chamber functions best when its business proceeds in a courteous and dignified manner. All honourable senators have a part to play in ensuring that this continues to be the case; they should show care in framing remarks, to ensure a useful and

respectful exchange of ideas and information, without giving offence. The possibility of using the caucuses and the usual channels for consultations to address the appropriate topics for statements has been raised in the past, and could again be used to ensure that there is a clear understanding of the purpose of Senators' Statements.

Journals of the Senate, September 25, 2012, p. 1551:

When it comes to Senators' Statements, I find it very difficult to be *a priori* in exercising judgment. It is much easier to exercise the *a posteriori* judgment, which is to hear the statement and then reflect upon it. If the Speaker were to get up and adjudicate in mid-stream upon an honourable senator's statement, he or she might have missed the point completely and be dutifully sent to the gallows, and quite properly.

It is very difficult for the Speaker to intervene until the three minutes are over. However, I would say the Speaker should be more disciplined in ensuring it is only three minutes if he or she hears things that are being said that could lead into the area of debate.

Reflections on Proceedings

Journals of the Senate, February 5, 2013, pp. 1881-1882:

Last December 14, 2012, Senator Tardif rose on a point of order after Question Period to complain about a Senator's Statement made earlier in the sitting by Senator Duffy. In that statement, Senator Duffy claimed that certain remarks made during the previous day's debate on Bill C-300 had been against him personally and had violated the prohibition against "personal, sharp or taxing speeches" contained in rule 6-13(1). In her objection, Senator Tardif denied that any rule had been broken. Further discussion on the point of order was largely focussed on what had happened during proceedings on Bill C-300, both in committee and in the Senate, rather than on Senator Duffy's use of a statement to raise a point of order.

In order to assist the Senate, I intend to limit myself to the issue of the proper use of Senators' Statements and Rules 4-2(5) and 4-2(6), which spell out certain limitations with respect to them. First, statements are for matters that senators believe should be brought to the immediate attention of the Senate. Second, a statement should not relate to an order of the day and should relate to a matter that cannot otherwise be brought to the immediate attention of the Senate. Finally, and certainly relevant to this case, matters raised during statements are not subject to debate.

The Senator's Statement subsequently challenged by the point of order of Senator Tardif asserted that the *Rules of the Senate* prohibiting certain behaviour had been breached. Regardless of any merits to the claim, it would have been more appropriate to raise the alleged breach as a proper point of order and not through a Senator's Statement. Had this been done, which is our established practice, it would have allowed for a review of the claim through exchanges among senators. This in turn would have led to a ruling as to whether a breach of order had actually occurred. This is how alleged points of order are routinely raised and resolved in the Senate.

Of course, it is also the case that points of order involving speeches are most usefully raised when the alleged offending remarks are made, so that the breach, if real, can be limited. When this is not done and the complaint is raised as a point of order after the event, it is more difficult to take corrective action since the remarks are already part of the record. In either case, raising the complaint as a point of order allows for a review by the Senate of the alleged breach of its rules or practices. A Senator's Statement does not allow for this, since it cannot be the object of debate. Instead, it is an assertion of an offence without any possibility of an evaluation since debate is not possible under Senators' Statements. This is not a proper use of the Senators' Statements.

I trust that this will help guide the Senate as to how such issues should be dealt with in the future.

Point of Order Permissible During Senators' Statements

Journals of the Senate, October 26, 2006, p. 560:

... Last Thursday, just after Senator Stratton gave oral notice during Senators' Statements, Senator Fraser sought to challenge the notice on a point of order. I responded by explaining that it was not possible to raise a point of order at that time. When I made this statement, I was working under the impression that Senators' Statements are part of the daily Routine of Business and that, in accordance with rule [4-11], points of order or questions of privilege are prohibited until we come to Orders of the Day. This, I think, is a view which is widely accepted and which appears to be reinforced by some of the language of our rules and operating documents, including the Order Paper. As I was preparing this decision, however, I looked more closely at the *Rules of the Senate* and I have come to a different position. Contrary to what I had previously believed, Senators' Statements are not, in fact, part of the daily Routine of Business. This is evident from a careful reading of rule[s] 4-2 and 4-5]. The fifteen minutes allocated to Senators' Statements are not part of the thirty minutes allowed for the Routine of Business which begins with the Tabling of Documents and continues through Presenting Petitions which is called immediately prior to Question Period. My revised understanding as to the proper boundaries of the Routine of Business has been supported by a previous Speaker's ruling made December 11, 1997. ...

Statements Relating to an Oral Notice of a Question of Privilege

Journals of the Senate, May 17, 2007, p. 1549:

At the end of Question Period on Wednesday, May 16, 2007, Senator Tardif rose on a point of order to object to statements made by Senators Angus and Cochrane. ... [S]he noted that Rule 22(4) [now see rule 4-2(5)(b)] states that, when making statements, "a Senator shall not anticipate consideration of any Order of the Day."

... Rule 44(3) [now see rule 13-7(2)] is in turn quite clear that a putative question of privilege is taken up after the Senate has completed consideration of the Orders of the Day or by 8:00 p.m., whichever is earlier. By its very language, stating that consideration of a putative question of privilege will occur "when the Senate has completed consideration of the Orders of the Day," it is clear that, under [Chapter 13], this does not fall into the category of items included in the Orders of the Day. A putative question of privilege, rather than being an Order of the Day, is an opportunity for a senator,

providing certain conditions respecting notice are met, to raise an urgent matter relating to privilege.

... Senators Angus and Cochrane were expressing themselves, in accordance with Rule [4-2(5)(b)], on a matter they considered to be of public consequence. This is distinct from, although it may be close to, the more argumentative process characteristic of debate. This issue happened to relate to the question of privilege of Senator Tkachuk, of which he had given oral notice only moments earlier. There is nothing to prohibit several senators addressing the same topic during Senators' Statements, just as can be the case during Question Period. Furthermore, giving oral notice does not deprive another senator of the opportunity to make a statement before the matter has been taken up by the Senate.

The statements in question did not, therefore, violate Rule [4-2(5)(b)] and were in order.

Statements Anticipating an Order of the Day

Journals of the Senate, December 8, 2010, p. 1064:

I want to begin by thanking Senator Comeau for raising the matter because I had intended to rise, under rule [2-6(1)], to express certain disquiet from the chair on both Senators' Statements and Question Period. The rule on Senators' Statements that we all understand is clear. We cannot anticipate items that are on the Order Paper. Sometimes statements are made that cannot help but come close to the line. I think there is enough generosity in the chamber to recognize that.

However, equally, during Question Period, while we do not have an equivalent to rule [4-2(5)(b)], which as Senator Comeau cited does not allow us to anticipate items on the Order Paper, we ought not to be raising questions around items that are on the Orders of the Day. I would like to recall, from the parliamentary procedural literature, paragraph 410 in Beauchesne's 6th Edition, at page 122, dealing with "Oral Questions". Item 14 states:

(14) Questions should not anticipate an Order of the Day although this does not apply to the budget process.

As all honourable senators know, there have been a number of questions in the past little while that did deal with bills or other items on the Orders of the Day. I simply wish to conclude by saying that I invite all honourable senators to be careful about the statements and to give some reflection to what the procedural literature suggests. Whether or not this is something that the Rules Committee might want to look into and specify in the rules will be a judgment that the committee can make.

Statements as Subject of Debate

Journals of the Senate, March 20, 2013, p. 2022:

On Thursday, February 14, Senator Tardif rose on a point of order to object to the statement made earlier in the sitting by Senator Boisvenu. According to the Deputy Leader of the Opposition, the statement made by Senator Boisvenu was inappropriate under the terms of rule 4-2(6) which explains "that matters raised during Senators' Statements shall not be subject to debate". Senator Tardif sought guidance on the proper content and use of statements.

In the exchanges that followed involving Senator Carignan and Senator Cowan, it is clear that there are at least two alternative views about the nature and character of statements. According to Senator Carignan, the purpose of rule 4-2(6) is to prohibit any debate arising from a statement whether or not there is agreement about the point of view expressed in the statement. From Senator Cowan’s perspective, however, the nature of the subject matter should have a role in determining whether it is appropriate as a statement or whether it should be presented in the form of an inquiry or motion.

...

In reality, the practice of having Senators’ Statements has been a feature of the daily sitting since 1991. The rules governing statements have remained fundamentally the same even with the recent revision of the *Rules of the Senate*. The criteria used to determine the subject matter of a statement are not particularly restrictive. The only clear limitation is that the subject of a statement should not relate to an order of the day. This is explained in rule 4-2(5)(b). This rule and 4-2(5)(a) also propose that statements should relate to matters of public interest that a senator believes should be brought to the immediate attention of the Senate. What “immediate attention” means is somewhat difficult to determine precisely. A qualification is raised in rule 4-2(5)(b) when it suggests that no alternative means be available for bringing the matter to the attention of the Senate. As Senator Cowan pointed out the subject matter of a statement could be presented in the form of a motion or an inquiry. While this would certainly open the matter up to debate, it would also require notice of either one or two days. If the matter is urgent and immediate, this delay might be unacceptable.

As currently written, the Rules do not provide the Speaker with guidance to determine whether the subject matter of a statement is of such a nature that only through a statement can it be brought to the immediate attention of the Senate. Nor do I believe the Senate would want the Speaker to exercise such authority. This is better left to the judgment of individual senators and to the Senate as a whole. If there is need to refine the rules with respect to Senators’ Statements, this is best left to the Standing Committee on Rules, Procedures and the Rights of Parliament. The committee can recommend through a report to the Senate any changes that could better clarify the criteria for determining any further limitations on the subject matter of statements. It would then be up to the Senate to decide whether to accept any recommendations to the rules respecting Senators’ Statements.

RULE 4-3

Tributes	4-3. (1) At the request of either the Leader of the Government or the Leader of the Opposition, the period for Senators’ Statements shall be extended by no more than 15 minutes for the purpose of paying tribute to a current or former Senator.
Tributes limited to three minutes each	4-3. (2) The Speaker shall remind the Senate that each Senator offering a tribute shall speak only once and for no more than three minutes.

No leave to extend tributes	4-3. (3) No Senator shall seek leave of the Senate to extend Tributes after the 15 minutes have expired.
Acknowledgements of tributes	4-3. (4) After tributes are given to a current Senator, that Senator may speak, and the time for this acknowledgement shall not be counted in the time provided for Tributes.
Tributes in publications	4-3. (5) Tributes, including any acknowledgement, shall appear under the heading “Tributes” in the <i>Journals of the Senate</i> and the <i>Debates of the Senate</i> .
No bar to other tributes	4-3. (6) Nothing in this rule prevents tributes being offered to a current or former Senator, or any other person, by other means than through the period designated for Tributes.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-3(1): Rule 22(10)

Rule 4-3(2): Rule 22 (11)

Rule 4-3(3): Rule 22(12)

Rule 4-3(4): Rule 22(13)

Rule 4-3(5): Rule 22(14)

Rule 4-3(6): Rules 22(15) and (16)

COMMENTARY

At the request of either the Government or the Opposition Leader, Tributes are made following Prayers during an extended 15 minute period of Senators’ Statements. Practice is that the Speaker should be given prior written notice allowing sufficient time for arrangements to be made with respect to notifying family members and for preparing a reception in the Speaker’s Chambers when required. The purpose of Tributes is to acknowledge the service or life of a departing or deceased senator. Normally Tributes are paid to only one individual per sitting. Each senator paying tribute may speak only once and for no more than three minutes. The Rules do not permit the extension of time for Tributes beyond the prescribed 15 minute period, but at times there is leave to use a part of regular statements for Tributes, delaying the acknowledgement until all Tributes have been completed. The senator to whom tribute is being paid may respond, without a time limit, after all Tributes have been completed. When a senator resigns from the Senate, he or she sometimes makes a brief statement prior to Tributes, informing the Senate of the date that the resignation will take effect.

Senators can also use statements, inquiries, motions or other proceeding to pay tribute, and these methods can also be used for distinguished figures and international figures.

These provisions were first adopted on April 1, 2003 (see *Journals of the Senate*, pp. 631-632). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 4-3

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 502-503:

Tributes may be paid, before other business commences, on the occasion of the death (or occasionally retirement) of distinguished members of the House or of public servants. Decisions about whether to pay tributes are made by the Leader of the House after consultations with the other party leaders. The House may also show its respect to the memory of a deceased statesman by an extraordinary adjournment.

RULE 4-4	
Emergency debate request instead of Senators' Statements	4-4. (1) Except as provided in subsection (2), Senators' Statements shall not take place when the Clerk receives notice of a request for an emergency debate. The Speaker shall instead proceed immediately after Prayers to consider the request for an emergency debate, and once that request has been decided, the Speaker shall call Routine Proceedings.
When tributes or notice of a question of privilege	4-4. (2) When the Clerk receives notice of a request for an emergency debate, Senators' Statements shall be called immediately after Prayers if necessary for either Tributes or oral notice of a question of privilege under the provisions of chapter 13 of these Rules. After the Tributes or the oral notice the Speaker shall immediately proceed to consider the request for an emergency debate.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-4(1): Rule 22(2)

Rule 4-4(2): New provision

COMMENTARY

In the event that an application for an emergency debate, pursuant to rule 8-1, is received, the Speaker will normally not call for Senators' Statements. Instead, the Senate will hear the reasons for the request and, once the request has been decided, the Speaker will call Routine Proceedings. If, however, a request for Tributes or a written notice of a question of privilege has been received, the Speaker will call for Senators' Statements to hear the tribute or the oral notice of a question of privilege. Once the tribute or oral notice of a question of privilege has been heard, the Speaker will then hear the request for an emergency debate. More information on emergency debates is provided in Chapter 8.

This provision was first adopted by the Senate on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). A provision was added to allow the hearing of any tribute or oral notice of a question of privilege before a request for an emergency debate on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). At the same time the current wording was adopted.

RELATED CITATIONS AND EXTRACTS – RULE 4-4

Speaker’s Ruling: Procedure for Requesting Emergency Debate

Journals of the Senate, December 11, 1997, pp. 346-347:

We have not reached the daily Routine of Business because it is clear under the rules that questions of urgent importance must come before statements. ...

Honourable senators, all I have to work with is the rule book. You ask where we are in our business. In response, I would refer you to ... rule 60(4) [now part of rule 8-3(1)] which states:

When the Senate meets, after a notice or notices [of requests for an emergency debate] has or have been received and distributed ... the Speaker shall, instead of calling “Senators’ Statements,” recognize the Senator or Senators who gave notice, in the order in which their notices were received.

At this point, we have not reached the daily Routine of Business. The very purpose of an urgent debate is to prevent the Senate from going into Routine Business. It is a motion meant to supersede the business of the Senate for that day. The motion must be on an urgent matter.

In reading that rule, honourable senators, I can only conclude from the fact that it states, “notice or notices,” that it is proper to receive more than one.

Routine Proceedings

RULE 4-5

Routine Proceedings

4-5. After Senators’ Statements, or after dealing with any requests for an emergency debate, the Speaker shall call Routine Proceedings in the following order:

- (a) Tabling of Documents;
- (b) Presenting or Tabling Reports from Committees;
- (c) Government Notices of Motions;
- (d) Government Notices of Inquiries;
- (e) Introduction and First Reading of Government Bills;
- (f) Introduction and First Reading of Senate Public Bills;
- (g) First Reading of Commons Public Bills;
- (h) Reading of Petitions for Private Bills;
- (i) Introduction and First Reading of Private Bills;
- (j) Tabling of Reports from Interparliamentary Delegations;
- (k) Notices of Motions;
- (l) Notices of Inquiries; and
- (m) Tabling of Petitions.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-5: Rule 23(6)

COMMENTARY

This rule enumerates the list of 13 headings to be called by the Speaker during Routine Proceedings on each sitting day. Since the purpose of the Routine Proceedings is to bring items to the attention of the Senate either for future consideration or for information, debate is not permitted unless leave is given. It is essentially a time for the Senate to receive documents and organize its future business.

On April 6, 1876 (see *Journals of the Senate*, p. 168), the following rule was adopted: “At each daily sitting of the Senate, the Speaker shall call for, in the following order: 1. Presentation of Petitions; 2. Reading of Petitions; 3. Notices of Motions; 4. Motions; 5. Orders of the Day” (rule 12).

On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the order of business was revised in the Rules as follows: (i) Presentation of Petitions; (ii) Reading of Petitions; (iii) Reports of Committees; (iv) Notices of Inquiries and of Motions; (v) Inquiries; (vi) Motions; and (vii) Orders of the Day (rule 19).

On December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), the daily order of business was altered by adding Question Period. The Committee recommending the change stated in its report, “This incorporates a long standing tradition and practice which should be spelled out in the order of business” (see *Journals of the Senate*, November 28, 1968, p. 450). As well, “Notices of Inquiries and of Motions” were divided into two distinct categories.

On June 18, 1991 (see *Journals of the Senate*, pp. 180-181), Routine Proceedings were significantly changed. Proceedings which traditionally had taken place under the item “Presenting Petitions” (for example, the tabling of documents and introduction of bills), were given their own individual rubrics. Government Business was, for the first time, distinguished from Other Business. Additional changes were adopted on June 23, 1993 (see *Journals of the Senate*, p. 2280). A new heading, “Government Notices of Inquiries,” was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), as well as new wording, which was then slightly adjusted on May 28, 2013 (*Journals of the Senate*, pp. 2567-2568).

The 13 headings under Routine Proceedings are called out by the Speaker in English and French, and any senator may be recognized without having to give prior notice. The maximum time allowed for Routine Proceedings is 30 minutes from the time the first heading is called. No points of order or questions of privilege may be raised during this period (rule 4-11). Any standing vote requested during Routine Proceedings is deferred to 5:30 p.m., with the exception of dilatory or procedural motions which are decided without debate.

The categories of business under Routine Proceedings are:

Tabling of Documents – This heading is used for the Leader or Deputy Leader of the Government to table documents required by statute or an order of the Senate, or any papers dealing with the responsibilities of the government. The Speaker may also table documents required by the Rules, or reports from parliamentary officers. Any other senator, with leave, may also table documents (see rule 14-1).

Presenting or Tabling Reports from Committees – At this stage in Routine Proceedings committees that were authorized by the Senate to undertake studies or to examine a bill can present or table their reports (see rules 12-22 and 12-23). Reports from standing committees or the Committee of Selection can be put on the Orders of the Day for the next sitting, while reports from special committees can be put on the Orders of the Day for two days hence (see rules 5-5(f) and 5-6(1)(e), as well as the definitions of “Sitting day” and “Notice period” in the Terminology in Appendix I).

Government Notices of Motions – Only the Leader or Deputy Leader of the Government, or a minister in the Senate, can give notice on behalf of the government. Motions usually require one or two days’ notice before they can be moved. Examples of such notices of motions include motions to authorize the National Finance Committee to examine the estimates, for the appointment of a parliamentary officer or to change the sitting schedule of the Senate.

Government Notices of Inquiries – At this point in Routine Proceedings the government can give notice of an inquiry that it is initiating. Inquiries are a means to prompt a debate on an issue that will not involve a decision or vote by the Senate. The notice period for all inquiries is two days. As with all Government Business, these notices of inquiries remain on the Order Paper either until concluded or until the end of a session.

Introduction and First Reading of Government Bills – This heading is used for the introduction of Senate Government Bills. In addition, when a message has been received from the House of Commons with a Commons government bill, that message is read by the Speaker at this time. The introduction and first reading of a bill occurs without notice, debate or vote. If a message is received from the House of Commons with a government bill during the course of a sitting, the Speaker will read it when received, after which it will immediately receive first reading, rather than waiting for the next sitting.

Introduction and First Reading of Senate Public Bills – Senators may introduce non-governmental public bills under this heading. Introduction and first reading also occurs without notice, debate or vote.

First Reading of Commons Public Bills – This category of business is for non-governmental public bills from the Commons brought to the Senate by message. Usually a senator from the same party that introduced the bill in the Commons will sponsor it in the Senate. The Speaker reads the message, and first reading follows without notice, debate or vote. If a message is received from the Commons with this type of bill during the course of the sitting, the Speaker will read it at a convenient time, after which it receives first reading.

Reading of Petitions for Private Bills – This heading is used once a petition that was previously presented under “Tabling of Petitions” at an earlier sitting has been certified correct as to form by the Examiner of Petitions. The petition is read aloud in the chamber by a clerk at the table, and the accompanying bill can then be introduced (see rule 11-2).

Introduction and First Reading of Private Bills – Once a petition for a private bill has been read by the clerk at the table under the heading “Reading of Petitions for Private Bills,” the sponsor of the bill may introduce the accompanying bill and it is given first reading (see rule 11-2), again without debate or vote.

Tabling of Reports from Interparliamentary Delegations – This heading is used for reports tabled by senators who have travelled abroad or within Canada on officially recognized parliamentary delegations representing the Senate or Parliament. These reports are tabled for information purposes only.

Notices of Motions – At this point notice can be given of motions that are not items of Government Business (see rules 5-1 to 5-7). As already noted, most notices require either one or two days' notice. Non-government notices of motions appear on the Notice Paper and remain there until moved. If such a notice has been called and not proceeded with for 15 sittings it is automatically dropped and a new notice would have to be given.

Notices of Inquiries – This category is used to give notice of an inquiry that is not initiated by the government. Inquiries are a means to prompt a debate on an issue that will not involve a decision or vote by the Senate. The notice period for all inquiries is two days. Notices of inquiries that are not from the government appear on the Notice Paper and remain there until the sponsor initiates debate. If such a notice has been called and not proceeded with for 15 sittings it is automatically dropped and a new notice would have to be given.

Tabling of Petitions – This heading is used by senators to table petitions either asking Parliament to redress a grievance or take an action, or seeking a private bill. When a senator tables a petition to the Senate, he or she may make a brief factual statement about its content (subject-matter, where it originated, number of signatures, etc.) (see rule 11-1).

RELATED CITATIONS AND EXTRACTS – RULE 4-5

House of Commons Procedure and Practice, Second Edition, pp. 425-426:

As the Speaker calls each item in Routine Proceedings, Members who wish to bring forward matters rise in their place and are recognized. Usually they will have previously indicated to the Chair or the Table their wish to raise an item. The amount of time required to complete Routine Proceedings varies from day to day depending on the number of items dealt with under each rubric.

Speaker's Ruling: Leave to Move Motion During Routine Proceedings

Journals of the Senate, November 2, 1999, pp. 60-61:

The Routine of Business in its current form has been a feature of Senate practice since 1991. In that year, amendments were made to the *Rules of the Senate* setting out the order in which different items of Routine of Business would be called after Senators' Statements. The sequence of Routine of Business is stated in rule [4-5]. ... [R]ule [4-11(3)] stipulate[s] that no point of order or question of privilege can be raised during Routine of Business and [rule 4-6(1)] that any requested standing vote be deferred to 5:30 p.m. unless it is in relation to a non-debatable motion moved without notice. Other provisions ... seek to fix the time when Question Period will take place and when Orders of the Day shall be called if the time for Routine of Business is extended.

The items of Routine of Business include the presentation of reports from standing or special committees, Government notices of motion, as well as notices for motions proposed by other

senators. Normally, Chairs simply present their reports and senators just give notice of their motions. On occasion, however, leave will be sought to consider a committee report either immediately or later the same day. Similarly, under notices of motion, a committee Chair will seek leave to move a motion allowing a committee to meet at a time when the Senate might still be sitting. ...

Every time leave is sought during Routine of Business, it is a request to suspend the notice normally applicable under rules [5-5 and 5-6]. Leave is granted once it is determined that no senator present in the Chamber disagrees with the request. If only one senator refuses leave, the affected item cannot be considered before the required notice period has lapsed. Furthermore, when leave is granted, the adoption of the report or motion is moved immediately, unless the leave request proposes to postpone consideration of the report or motion to later in the day.

When the question on the report or motion is placed before the Senate, it is subject to debate. The fact that notice is required for these items makes it clear that they are debatable. No committee report or substantive motion presented to the Senate for adoption is exempt from the possibility of debate. That there is often little or no debate on motions moved with leave during Routine of Business does not mean that they cannot be debated. Only motions that can be moved without notice are non-debatable.

Once debate has begun, all the rules relating to debate are applicable including the possibility of raising a point of order. This is because, in agreeing to grant leave and put the question, the Senate has, in effect, stepped out of Routine of Business for the duration of the debate until it is decided or adjourned. In my view, the restriction imposed by rule [4-11(3)] preventing points of order or questions of privilege being raised during Routine of Business does not apply during the debate because the Senate is no longer in Routine of Business.

If, in addition, a standing vote is requested at the conclusion of any debate, rule [4-6(1)] states that the vote will be deferred to 5:30 p.m. the same day unless, of course, there is leave to hold it at another time. There is another subsection ... that also remains pertinent even when there is a debate. Rule [4-7] provides that not later than thirty minutes after the first item of Routine of Business is called, the Senate will proceed to Question Period. It is possible, therefore, that proceedings on Routine of Business or a debate on an item during Routine of Business will be interrupted for the purpose of the Question Period. ... This proceeding also included a standing vote which, according to my reading of rule [4-6(1)], should have been delayed until 5:30 p.m. There is no indication that leave was given to take the vote immediately. Leave might have been implicit given the understanding that Royal Assent was scheduled later the same afternoon. Thereafter, the Senate proceeded to Orders of the Day without reverting to Routine of Business.

Speaker's Ruling: Leave to Adopt a Bill at Third Reading During Routine Proceedings

Journals of the Senate, February 23, 2005, pp. 491-492:

The *Rules of the Senate* are clear as to the order and sequence of the Routine of Business. ...

Thus far, I have described what the Senate does as a matter of course when it follows standard practice. This flow of business, however, can be altered by a suspension of the rules by leave of the Senate. Rule 3 [now see rule 1-3] states that "any rule or part thereof may be suspended without notice by leave of the Senate".

This in fact, is what happened on February 10. Under “Presentation of Reports from Standing or Special Committees” ... the Chair of the Committee on Aboriginal People, Senator Sibbeston, presented the report on Bill C-14 without amendment. In accordance with rule [12-23(2)], I then asked when shall the bill be read a third time. Senator Sibbeston was prepared to move the routine motion for third reading at the next sitting, but before I put his motion, Senator St. Germain suggested that the bill be given third reading now in view of “exceptionally special circumstances”. ... Accordingly, I asked if the Senate would grant leave for this. Once it was clear that the Senate had consented, Senator Sibbeston proceeded to move third reading of Bill C-14, seconded by Senator St. Germain. The motion was adopted immediately and so the bill passed.

...

Of course, none of these instances, including that of February 10, constitute a precedent. By definition, what occurs by leave can never be a precedent; it can never be considered binding on the Senate, obliging it to follow what was done by leave as if it were a rule. ...

... Accordingly, it is my ruling that what occurred with respect to Bill C-14 on Thursday, February 10 was out of the ordinary, but not out of order. It was the unanimous will of the Senate to proceed as it did and, I as Speaker have no authority to prevent the proceeding or to overrule it.

RULE 4-6

Standing votes deferred during Routine Proceedings	4-6. (1) Except as provided in subsection (2), any standing vote requested during Routine Proceedings shall be deferred until 5:30 p.m. the same day.
Dilatory and procedural motions during Routine Proceedings	4-6. (2) Dilatory and procedural motions may be moved without notice and must be decided without debate. Any standing vote requested on such motions during Routine Proceedings shall be taken in accordance with the ordinary procedure for determining the duration of bells. The time taken for a vote on such motions shall not count as part of Routine Proceedings.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-6(1): Rule 23(3)

Rule 4-6(2): Rule 23(4)

COMMENTARY

This rule provides that if any standing vote is requested during Routine Proceedings, it is automatically deferred until 5:30 p.m. on the same day unless it is a dilatory or procedural motion. Dilatory and procedural motions do not require notice and are not subject to debate (see below for definitions). If a standing vote is requested on a dilatory or procedural motion, the vote is taken immediately and is subject to the ordinary procedure for determining the duration of bells (rule 9-5). It is preceded by a 60 minute bell, unless the whips agree on a shorter time and the Senate grants leave for

their proposal. For more information on voting, see Chapter 9. The time taken for such votes is not counted as part of the 30-minute period for Routine Proceedings.

Dilatory motions dispose of the original question either for the time being or permanently. These include non-debatable motions to adjourn the Senate, to adjourn debate and to postpone consideration of a question until a certain day. *Procedural motions* are non-debatable motions dealing with routine matters necessary to move an item of business forward. These include motions for setting the day for second or third reading of a bill, for referring a bill to committee, and for setting the day for the consideration of a committee report. The Terminology in Appendix I defines different types of motions.

This rule was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

Question Period

RULES 4-7, 4-8 and 4-9	
Start of Question Period and limit of 30 minutes	4-7. Except as otherwise provided, Question Period shall begin no later than 30 minutes after the Speaker calls the first item of Routine Proceedings. The time provided for Question Period shall not exceed 30 minutes. <i>EXCEPTION</i> <i>Rule 4-6(2): Dilatory and procedural motions during Routine Proceedings</i>
Oral questions	4-8. (1) During Question Period, a Senator may, without notice, ask a question of: (a) the Leader of the Government, on a matter relating to public affairs; (b) a Senator who is a minister, on a matter relating to that Senator’s ministerial responsibility; or (c) a committee chair, on a matter relating to the activities of the committee.
No debate during Question Period	4-8. (2) There is no debate during Question Period, and only brief comments or explanatory remarks shall be allowed.
Supplementary questions	4-8. (3) Supplementary questions may be asked.
Oral questions answered in writing	4-9. If a question cannot be answered immediately, it may be taken as notice and answered at a later time in writing.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-7: Rules 23(7) and (8)

Rule 4-8(1): Rule 24(1)

Rule 4-8(2): Rules 24(4) and 42

Rule 4-8(3): Rule 24(2)

Rule 4-9: Rule 24(3)

COMMENTARY

Question Period normally takes place every sitting day and begins, at most, 30 minutes following the start of Routine Proceedings, unless a delay is caused by a standing vote on a dilatory or procedural motion (rule 4-6(2)). The time provided for this accountability exercise lasts no longer than 30 minutes.

Questions can be directed to the Leader of the Government with respect to public affairs, or to a minister in the Senate with respect to his or her ministerial responsibility. Questions can also be directed to a committee chair with respect to activities of that committee. When asking a question, it is normal practice for senators to start by saying “Honourable senators, my question is addressed to ...,” or similar words.

The rules of conduct and decorum apply to Question Period. Only brief explanatory remarks may accompany questions or answers; however, they should not give rise to debate. Supplementary questions on the same subject are permitted. Although the Opposition Whip frequently provides the Speaker with a list of senators who wish to ask questions, the Speaker is not bound to follow this list, and he or she may recognize other senators who indicate their interest in posing a question.

When an answer cannot be readily provided to an oral question, it can be taken as notice and answered at a later time in writing (see rule 4-10(3)). Questions that seek statistical or more detailed information, or to which a written answer is desired, may be sent in writing to the Clerk of the Senate for inclusion in the *Order Paper and Notice Paper* (see rule 4-10).

For much of its history no formal written rules existed in the Senate which permitted the asking of oral questions, although the practice, in some format, did exist. When a formal Question Period was first recognized on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), a rule was established that senators could ask questions of the Leader of the Government (rule 20). The rule was amended to its present content on June 14, 1977 (see *Journals of the Senate*, pp. 649-650), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 4-7, 4-8 and 4-9

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 310-311:

The practice which has long prevailed in parliament of putting questions to the ministers of the Crown concerning public matters and of receiving information across the floor of the house, has for many years been regulated in the Commons by precise rules. Greater latitude is allowed in the Senate than in the House of Commons but even there a debate is not in order, though explanatory remarks may be made by the senator making the inquiry and by the minister or other senator answering the same. Observations upon any such answer are not allowed. ...

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 119:

§403. The House recognizes two broad categories of questions – the oral question, which the Standing Orders recognize as dealing with matters of urgency, and the written question, which is designed to seek detailed information from the Ministry. While under the rules all oral questions could properly be placed on the Order Paper, not all written questions (e.g., those addressed to more than one Minister) could properly be asked during the daily Question Period.

...

§406. A question may not be asked of a Member who is no longer a Minister, seeking information with regard to transactions during that person's term of office.

Annotated Standing Orders of the House of Commons, Second Edition, pp. 119-121:

... Most of the guidelines which apply to Question Period are founded in practice, usage and tradition. ...

...

... [W]hile it is not the Chair's responsibility to determine the length of answers given during Question Period, in the interest of fairness, questions should be as concise as possible in order to encourage answers of similar brevity and thereby allow the Chair to recognize as many Members as possible. ...

Speaker's Rulings Concerning Question Period

The Speaker has frequently ruled on matters relating to Question Period. In relation to committees, the Speaker has clarified the types of questions that may be asked on the "activities" of committees (November 13, 1980) and on upcoming work (March 20, 2007). A ruling has also addressed questions asked of subcommittee chairs (September 29, 2010). The Speaker has explained that questions on party or political responsibilities may not be in order (October 31, 2006), that the scope of questioning on public affairs is broader than on administrative responsibilities (April 8, 2008), and that senators should avoid discussing matters or proceedings currently before the courts or quasi-judicial inquiries (May 5, 2009). The Speaker has also clarified how senators are recognized (May 29, 1996) and the use of supplementary questions (November 19, 2009).

Questions Relating to Committees

Journals of the Senate, November 13, 1980, pp. 522-523:

[Rule 4-8(1)(c)] permits questions relating to the "activities" of a committee. Beauchesne, on the other hand, prohibits questions relating to the "proceedings" of a committee. In my view there is no inconsistency between these two concepts. In fact, each complements the other.

The "activities" of the committee would obviously be the specific things that are done by the committee, such as the holding of meetings, the election of a chairman, the calling of witnesses, the hiring of staff, advertising, and any other matter relating to the manner in which the committee conducts its proceedings. These are all "activities" of a committee.

...

May states that [the term "proceedings in Parliament"] means "some formal action, usually a decision, taken by the House in its collective capacity." "This is naturally extended," according to

May, “to the forms of business in the House which takes action, and the whole process, the principal part of which is debate, by which it reaches a decision.”

... Though the word “activity” has a very broad meaning, and can encompass every form of action, joined to the word “committee” its meaning is considerably limited. A committee acts as such when it passes resolutions, reaches decisions on rules, statements, reports and so on. In other words, the activity of a member of the committee including its chairman, or a witness appearing before it, or a person connected with it in any way or working for it, is not considered to be the activity of the committee unless the committee makes its own the position adopted by one of those persons.

Journals of the Senate, March 20, 2007, p. 1161:

... General issues about planning and upcoming work are included in the broad category of committee activities.

Rule [4-8(1)] establishes that a very wide range of questions may be posed during Question Period. By contrast, rule [4-2(5)(b)] is quite explicit that Senators’ Statements shall not anticipate any Order of the Day. The lack of such a restriction in rule [4-8(1)] and its broad wording suggest that questions can cover the full range of public affairs, whether or not they anticipate an item on the Orders of the Day. It is also interesting to refer to page 420 of *House of Commons Procedure and Practice*, by Marleau and Montpetit, which notes that the House of Commons has permitted questions anticipating an Order of the Day since 1997.

Journals of the Senate, September 29, 2010, pp. 781-782:

... Ministers — and this would also apply to chairs of committees — may: answer the question, defer their answer, take the question as notice, make a short explanation as to why they cannot furnish an answer at that time or say nothing.

...

However, regrettably, your chair was in error, and he apologizes, for I ought not to have allowed the question of the Honourable Senator Downe to the chair of the subcommittee because the subcommittee reports to this house through the chair of the committee. Therefore, I apologize for my lack of attention.

Questions Relating to Public Affairs

Journals of the Senate, October 31, 2006, pp. 675-677:

On October 19, 2006, Senator Murray rose on a point of order to challenge the propriety of a question put to Senator Fortier during Question Period. Senator Murray believed that the question should not have been permitted. In his opinion, it was a question relating to Senator Fortier’s political responsibility for Montreal and was outside his ministerial functions.

...

In Senator Fortier’s Commission of Appointment as a minister of the crown, he is identified as the Minister of Public Works and Government Services. The Commission does not mention any regional responsibility for the region of Montreal. I therefore conclude that duties assigned by the Prime

Minister to Senator Fortier outside his department are political in nature and are outside his direct administrative responsibilities for Public Works and Government Services Canada.

Journals of the Senate, April 8, 2008, pp. 742-743:

Question Period in the Senate is ... not the same as that in the other place. The Leader of the Government has broader responsibility for answering questions than any other single Cabinet Minister. Moreover, the atmosphere here tends to be calm and reflective, as befits the high respect Honourable Senators have for each other, despite their range of views on many issues.

In considering Senator Murray's first point, that the recent questions do not relate to the administrative responsibilities of the Government, we must take into account the different roles for the Leader and any other Ministers in the Senate that have already been noted. The latter are only answerable for their "ministerial responsibilities"... and is similar to the restriction noted at page 426 of *House of Commons Procedure and Practice*, where Marleau and Montpetit state that questions should be "within the administrative responsibility of the government or the individual Minister addressed."

However, rule [4-8(1)(a)] clearly gives the Leader of the Government in the Senate a larger role. The Leader can be asked questions about "public affairs" in general. This is a very broad term, in keeping with the expansive responsibilities encompassed by that position. The Senate has not chosen to narrow its meaning or to develop guidelines as to acceptable questions.

We must be cautious, therefore, about imposing restrictions on questions to the Leader that appropriately apply to those asked of other Ministers in the Senate. ...

...

... In the absence of clear guidance from the Chamber itself, Senators rely on their own understanding of "public affairs." Senators should only ask questions that they believe are, in fact, related to "public affairs." Similarly, the Leader should only answer questions that she believes to be related to "public affairs." Senators themselves are best positioned to determine whether a question is appropriate, and how it should be answered.

Journals of the Senate, May 5, 2009, p. 560:

As has been noted in a number of rulings, there is considerable latitude during Question Period in terms of what constitutes "public affairs." ... The general practice in Parliament has been to avoid discussing matters or proceedings currently before the courts or quasi-judicial inquiries. This is referred to as the *sub judice* convention.

While the convention has not been codified, procedural literature indicates that, although not binding, parliamentarians should be cautious about making reference to the proceedings, evidence, or findings of a commission before it reports.

Applied to Question Period, parliamentarians should exercise due restraint in terms of the questions they ask and the answers they provide.

Recognizing Senators During Question Period

Journals of the Senate, May 29, 1996, pp. 251-252:

I refer honourable senators to rule 33(1) [now see rule 6-4(1)] which states:

When two or more Senators rise to speak at the same time, the Speaker shall call upon the Senator who, in the Speaker's opinion, first rose.

There is no specific rule regarding Question Period. This rule relates to speeches, but I have been following that rule for Question Period. The problem arises because, frequently, a number of senators rise, and those who are seated [on] the front benches have no idea who has risen in the back benches. From my view of the chamber, it is apparent.

Insofar as seniority is concerned, I regret that I cannot show any preference to Senator Phillips. The rule is clear that my decision must be based on which senator, in my opinion, rose first.

Whether various caucuses prepare lists of speakers or questioners is not within my domain. I recommend that matter be raised within caucus; it is not a matter for the chair. If I do receive a list, I follow it to the extent that it applies to the party which has submitted the list, not to the extent that I apply it to the Senate as a whole, including the independent senators. ...

Supplementary Questions

Journals of the Senate, November 19, 2009, pp. 1471-1472:

All honourable senators have the right to raise questions. The time by our rules is limited. The chair feels uncomfortable knowing that a number of senators who have indicated they would like to ask questions are being trumped by many supplementary questions. In fairness to all honourable senators who have the right to ask questions, it is important that we review the ground upon which supplementary questions are in order.

... The point is that bona fide supplementary questions must really be targeted and focused on information that has been apprehended as a result of the response by either a chair of a committee or the minister in the house. I simply draw this to the attention of honourable senators.

Written Questions and Delayed Answers

RULE 4-10	
Written questions	4-10. (1) Any question to which an answer in writing is requested or that seeks statistical information or other information not readily available shall be sent in writing to the Clerk and published in the <i>Order Paper and Notice Paper</i> on the day following receipt and subsequently on the first sitting day of each week until answered.

Replies to written questions	4-10. (2) The reply to a question on the <i>Order Paper and Notice Paper</i> shall be tabled in the Senate and a copy shall be provided to the Senator who asked the question.
Delayed Answers	4-10. (3) Written replies to oral questions or to written questions shall be given as Delayed Answers at the end of Question Period.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-10(1): Rule 25(1)

Rule 4-10(2): Rule 25(2)

Rule 4-10(3): Rule 23(8)

COMMENTARY

Rule 4-10(1) provides that senators may submit written questions to the Clerk of the Senate for a response by the government. Written questions are then assigned a number and placed on the *Order Paper and Notice Paper*, remaining there until answered. Unlike the House of Commons, the *Rules of the Senate* do not provide that a senator may request a response to a written question within 45 days of its filing. A list of all unanswered written questions submitted is published in the *Order Paper and Notice Paper* for the first sitting day of each week. Rule 4-10(2) provides that replies are tabled in the Senate during Delayed Answers, which takes place immediately after Question Period, but are not published in the *Debates of the Senate*. A copy of the answer is given to the senator who asked the question. If a reply is not tabled before a prorogation or dissolution, and it is still desired, the written question must be resubmitted in a subsequent session or Parliament.

Rule 4-10(3) provides that when an answer cannot be readily provided to an oral question, it can be taken as notice. Once the answer to a question is prepared, it is also tabled under Delayed Answers. Answers to such questions are published in the *Debates of the Senate*, but are not recorded in the Journals and do not become sessional papers. There is no requirement in the *Rules of the Senate* for an answer to be provided nor is there a specified time limit that must be respected.

Provisions for written questions were introduced on June 14, 1977 (see *Journals of the Senate*, pp. 649-650), and the rule for delayed answers was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording – including a clarification concerning the publication of written questions in the *Order Paper and Notice Paper* – was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 4-10

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 496:

Questions and motions are expected to be worded in accordance with the practice of the House. The Clerks at the Table are available to assist Lords in drafting questions and motions, and the advice tendered by the Clerks should be accepted. However, there is no official who has authority to refuse a question or motion on the ground of irregularity. Lords are responsible for the form in which their questions and motions appear in the House of Lords Business, subject to the sense of the House which is the final arbiter.

Speaker's Rulings on Written Questions and Delayed Answers

There have been several rulings by the Speaker relating to rule 4-10. They have explained that a prorogation or dissolution eliminates the requirement for the government to reply to an unanswered question (May 9, 1996); that Delayed Answers should not be given orally or during Question Period (May 3, 2005 and May 10, 2006); and that an incomplete or contradictory answer does not constitute a contempt of the Senate (November 23, 2005).

Effect of Prorogation on Delayed Answers

Journals of the Senate, May 9, 1996, pp. 191-193:

On Thursday, March 28, 1996 Senator Nolin put a question to the Deputy Leader of the Government regarding the status of some questions that were still unanswered when the first session was prorogued. ...

... Before going any further with my ruling, I want to make clear what I have been asked to rule on. Senator Nolin has asked about the status of delayed answers which arise when notice is taken of an oral question asked during Question Period as stipulated under Rule [4-9]. ...

...

I have reviewed the authorities and discussed this matter with the Table Officers who are charged with the responsibility of preparing the Senate's records including the Order Paper and the Notice Paper. The authorities and the Table Officers both confirm that virtually all items standing on the *Order Paper* die with a prorogation. ...

...

... Written questions ... are among the casualties of a prorogation and they disappear from the *Order Paper*. Like bills, they must be re-introduced; they are not reinstated automatically.

Delayed answers fall into another, but similar, category to written questions. In fact, they are more ephemeral since they never actually appear as a specific item on the *Order Paper* and they do not have any existence except in the understanding between the Government and the Opposition. With respect to both written and delayed answers, there is nothing in our Rules obligating the Government to provide a response within a certain period of time, if at all, and there is certainly no provision for their automatic reinstatement after a prorogation.

Delayed Answers Given Oral Responses

Journals of the Senate, May 3, 2005, p. 826:

The *Rules of the Senate* provide for two circumstances that might lead to a delayed answer. The first relates to Written Questions that Senators place on the *Notice Paper* as outlined in Rule [4-10(1)].

The second occurs when an oral question cannot be answered during Question Period. Rule [4-9] allows a Senator to whom such a question is addressed to take the question "as notice".

The practice that has developed over the years is that when Delayed Answers is called, the Deputy Leader of the Government will table written responses, a copy of which is also provided to the Senator who asked the question. It is clear, therefore, that Delayed Answers is not an extension of Question Period.

... What occurred April 19, 2005 does not fall squarely within this pattern. Senator Austin provided an oral answer to a question that had been asked originally on April 13 by Senator Comeau. In making his answer, to which there was no written version, Senator Austin also suggested that he was prepared to answer additional questions. On both counts this is a departure from the usual practice.

As Speaker I am bound to apply the rules that maintain recognized practices. With respect to Delayed Answers this means that, at a minimum, a written version of the response either to a previously unanswered oral question or to a written question standing on the *Notice Paper* must be prepared for tabling with a copy being given to the Senator who asked the question. In addition, upon request, it is possible for the written response to be read into the record. On no account, however, without the express leave of the Senate to suspend the rules, can the time provided for Delayed Answers become an occasion to extend Question Period.

Journals of the Senate, May 10, 2006, pp. 134-135:

Delayed Answers are called at the end of the thirty minutes allowed for Question Period. It is at this time that answers to written questions on the Order Paper are presented. This is also when oral questions asked at a previous sitting can be answered. In either case, dealing with written or oral questions, the response is given in writing, one copy is tabled with *Hansard* and another is given to the Senator who asked the question. Much of this has come about through practice and through rulings of the Chair.

... Honourable Senators, what occurred last Wednesday seems to me to fall outside of our usual practices. The rationale for prohibiting debate during Question Period and for creating Delayed Answers is due, in part, to the limited time given to Question Period. The thirty minutes allotted for questions and answers is to promote the immediate exchange of information about the policies of the Government or the work of a committee. Giving answers during Question Period that had been taken as notice at a previous sitting, detracts from this purpose and is a departure from established practice. Any response to questions asked at a previous sitting should be treated under Delayed Answers in the same way that all written questions are answered. These answers should be in writing with copies for the Table as well as for the Senator who asked the question. Upon request, these written answers can be read aloud so that they are incorporated into the *Debates*.

Answers to Written Questions Contradictory

Journals of the Senate, November 23, 2005, p. 1302:

While the Senator has made a good case that the information received from the NCC is not consistent with the information it has provided elsewhere, I do not see how this, in itself, is a matter of privilege or contempt. As the Senator herself stated at the opening of her intervention, parliamentarians often

complain that answers from the government are slow or incomplete. None of these instances would normally give rise to a question of privilege. In addition, no evidence was presented to suggest that these errors or inconsistencies were deliberate. I am also uncertain about whether it is the information that was provided to the Senator or to the other parliamentarian that is inaccurate. Had a compelling case been made that the NCC had sought to deliberately mislead the Senator, my ruling would have been different. As it happens, however, with respect to this case, there are other means readily available to seek some clarification about the NCC information. For example, the matter could be taken up again by another written question or perhaps through a Senate committee hearing officials from the NCC. These alternative approaches would be in keeping with the traditional oversight function of the Senate and would be more suitable than having the matter considered as a contempt.

Points of Order and Questions of Privilege

RULE 4-11

Points of order relating to Routine Proceedings or Question Period

4-11. (1) A point of order relating to:

- (a) a bill that was introduced during Routine Proceedings shall be raised after the second reading of the bill has been moved;
- (b) an item for which notice was given during Routine Proceedings shall be raised after the item has been moved for adoption or, in the case of an inquiry, once debate has begun; or
- (c) any other matter arising during Routine Proceedings or Question Period shall be raised at the beginning of the Orders of the Day.

Questions of privilege relating to Routine Proceedings or Question Period

4-11. (2) A Senator may raise a question of privilege relating to:

- (a) a notice given during Routine Proceedings only at the time the order is first called for consideration; or
- (b) other matters arising during Routine Proceedings or Question Period under the provisions of chapter 13 of these Rules.

Points of order and questions of privilege not allowed during Routine Proceedings or Question Period

4-11. (3) During Routine Proceedings and Question Period, it shall not be in order to raise any point of order or question of privilege.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-11: Rule 23(1)

COMMENTARY

This rule prohibits the raising of points of order and questions of privilege during Routine

Rule 4-11

Proceedings and Question Period. The rule specifically provides that a point of order relating to a notice should be raised when the item is moved or debate begins, while a question of privilege relating thereto should be raised when the notice is called. A point of order relating to a bill can only be raised after the motion for second reading has been moved. Speakers have explained that this is because the argument “should be anchored to the proceeding that is being questioned” (see ruling of March 5, 1997, *Journals of the Senate*, p. 1067-1069, quoted below).

Any other points of order arising from Routine Proceedings or Question Period ought to be raised at the beginning of Orders of the Day; and any other question of privilege arising from Routine Proceedings or Question Period ought to be raised under the procedures outlined in Chapter 13 of the Rules. The rules relating to the hearing of points of order and questions of privilege, and the decisions of the Speaker, are also found in rule 2-5.

This rule was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181) and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 4-11

Speaker’s Ruling: Points of Order During Routine Proceedings

Journals of the Senate, March 5, 1997, p. 1068-1069:

... First of all, I want to address the issue of when this point of order should be raised. Rule 23(1) [now see rule 4-11] states in part that:

Any question of privilege or point of order to be raised in relation to any notice given during [Routine Proceedings] can only be raised at the time the Order is first called for the consideration by the Senate.

Thus, the first appropriate opportunity to raise this point of order as to whether it is procedurally acceptable to proceed to third reading of Bill C-29 would be when that item is actually called the first time. The reason behind this rule, as I perceive it, is that points of order should be anchored to the proceeding that is being questioned, in this case the third reading of Bill C-29. ...

...

The question being put on whether the Speaker’s Ruling shall be sustained, it was adopted on the following division: ...

Speaker’s Rulings: Points of Order Permitted Prior to Routine Proceedings

Journals of the Senate, December 11, 1997, pp. 346-347:

It is in order to raise a point of order now because we have not reached the daily Routine of Business. If the honourable senators would look at rule 23(1) [now see rule 4-11(3)], it is clear.

During the time provided for the consideration of the daily Routine of Business and the daily Question Period, it shall not be in order to raise any question of privilege or point of order.

We have not reached the daily Routine of Business because it is clear under the rules that questions of urgent importance must come before statements. I have not called Senators' Statements, so we are not into the daily Routine of Business.

Honourable senators, all I have to work with is the rule book. You ask where we are in our business. In response, I would refer you to page 65, rule 60(4) [now see rule 8-3(1)] which states:

When the Senate meets, after a notice or notices has or have been received and distributed pursuant to sections (1) and (2) above, the Speaker shall, instead of calling "Senators' Statements," recognize the Senator or Senators who gave notice, in the order in which their notices were received.

At this point, we have not reached the daily Routine of Business. ...

Journals of the Senate, October 26, 2006, p. 560:

... Last Thursday, just after Senator Stratton gave oral notice during Senators' Statements, Senator Fraser sought to challenge the notice on a point of order. I responded by explaining that it was not possible to raise a point of order at that time. When I made this statement, I was working under the impression that Senators' Statements are part of the daily Routine of Business and that, in accordance with rule [4-11(3)], points of order or questions of privilege are prohibited until we come to Orders of the Day. This, I think, is a view which is widely accepted and which appears to be reinforced by some of the language of our rules and operating documents, including the Order Paper. As I was preparing this decision, however, I looked more closely at the *Rules of the Senate* and I have come to a different position. Contrary to what I had previously believed, Senators' Statements are not, in fact, part of the daily Routine of Business. This is evident from a careful reading of rule[s] 4-2(2) and 4-5]. The fifteen minutes allocated to Senators' Statements are not part of the thirty minutes allowed for the Routine of Business which begins with the Tabling of Documents and continues through Presenting Petitions which is called immediately prior to Question Period. My revised understanding as to the proper boundaries of the Routine of Business has been supported by a previous Speaker's ruling made December 11, 1997. ...

Speaker's Ruling: Point of Order Relating to Notice of Motion

Journals of the Senate, October 8, 2002, p. 41:

... Let me begin by noting that I neglected to mention last Thursday that under rule [4-11(1)(b)] the point of order is somewhat premature. The rule explains that a point of order in relation to any notice given during the daily Routine of Business can only be raised at the time the order is first called for consideration by the Senate.

Orders of the Day and Notices

RULE 4-12

Orders and notices called after Question Period

4-12. At the end of Question Period and the tabling of any delayed answers, the Speaker shall proceed to call, in the following order:

- (a) Orders of the Day; and
- (b) Motions and inquiries on the Notice Paper.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-12: Rule 23(8)

COMMENTARY

As mentioned in the introduction to this chapter, a sitting of the Senate is divided into two main parts. The first part has been described in the preceding rules of this chapter. The second part consists of the Orders of the Day (rules 4-12 to 4-16) followed by motions and inquiries on the Notice Paper (see Chapter 5). These comprise the bulk of the Senate’s agenda, dealing with such matters as bills, reports of committees, motions and inquiries.

Once Question Period and the tabling of delayed answers are completed, the Speaker calls “Orders of the Day,” and a clerk at the table calls each item that can be considered in the order in which they appear on the Order Paper (or, for Government Business, the order the Government Leader or Deputy Leader may announce – see rule 4-13(3)). As each item on the Order Paper is called, the Senate can decide whether to proceed with the item (i.e., debate it, adopt it or reject it), or to stand it (i.e., not deal with it at that sitting). If any senator objects to standing an item, some other action – debate, a motion to adjourn debate, or a decision on the item – would be required. Once all the items under Orders of the Day have been called and dealt with, the Speaker calls the items on the Notice Paper (i.e., non-government notices of motions and inquiries). They are dealt with in a similar fashion. Once an item on either the Order Paper or the Notice Paper has been called and the Senate has moved on to the next item, leave is required to revert to the earlier item during the same sitting.

As described in the following rules, Orders of the Day is divided into two main categories: Government Business (rule 4-13) and Other Business (rule 4-14).

RELATED CITATIONS AND EXTRACTS – RULE 4-12

John B. Stewart, *The Canadian House of Commons: Procedure and Reform*, p. 71:

The term ‘orders of the day,’ although now opaque, is still important. The British House found that once a bill had been introduced it was desirable to let members know in advance when each of the main questions on the bill would be debated and decided, especially if the bill was important or controversial. To achieve this the House established the practice of making an order specifying the day, sometimes even the hour, for the next main motion in the bill’s progress. If that motion carried,

the House, again by motion, specified the date for the next stage. ... In 1811, a major move was made when Monday and Friday were set aside for dealing with ordered business, as distinct from motions of which members had given notice. This meant that thereafter there were 'order days' and 'notice days'.

Since then the distinction between 'order business' and 'notice business' has been pushed into the background as a result of the segregation of government business from private members' business. Nonetheless, the basic idea of an agenda established by orders, although ordinarily submerged, is still retained for those kinds of business that normally require more than one day, e.g., the passing of bills, supply business and ways and means business. As we saw, after the first reading of a public bill the speaker asks, 'When shall the said bill be read a second time?' The usual answer is 'At the next sitting of the House.' A second reading motion is then added under Government Orders or Public Bills, and that motion may be moved at the next sitting if reached.

Bourinot's Parliamentary Procedure, Fourth Edition, p. 226:

The rule which requires a strict adherence to the order paper is absolutely necessary to prevent surprise. So rigorously is it enforced in the imperial parliament that even when it has been admitted that a day has been named by mistake, and no one has objected to the appointment of an earlier day, the change has not been permitted. It is quite irregular, even if a member proposes to conclude with a motion, to introduce and attempt to debate a subject which stands on the orders for another day.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 110-111:

§371. (1) It is a fundamental rule that, with the exception of certain matters dealt with under Routine Proceedings, no question can be considered by the House unless it has been previously appointed either by a notice or a regular Order of the House. The paper known as *Order Paper and Notices*, is the official agenda printed on the responsibility of the Clerk of the House, containing all the proposed questions set out in accordance with the Standing Orders. All the proposed proceedings of the House are recorded in abbreviated form in that paper. To add to, or suppress from it, any proposal which the House has ordered would constitute a serious infringement on the privileges of the House of Commons. If any serious errors are made they may be corrected by the House only in open sitting with the Speaker in the Chair. When an Order of the Day has been read, it must thereupon be proceeded with, appointed for a future day, or discharged.

(2) An Order of the Day is a proceeding which may only be dealt with as an outcome of a previous Order made in the House itself, except for measures requiring the immediate consideration provided for in Standing Order 55.

(3) The successive stages of bills are Orders of the Day since the House at each stage makes an Order and appoints a date for the consideration of the next stage, and without such Order, the bill cannot be further advanced. A question or motion becomes an Order of the Day if the debate upon it be adjourned and the House orders the continuance of it on a subsequent date.

RULE 4-13	
Priority of Government Business	<p>4-13. (1) Except as otherwise provided, Government Business shall have priority over all other business before the Senate.</p> <p><i>EXCEPTIONS</i> <i>Rule 8-4(1): Adjournment motion for emergency debate</i> <i>Rule 13-6(1): Consideration of question of privilege</i> <i>Rule 13-6(2): When question of privilege without notice considered</i> <i>Rule 13-7(2): Debate on motion on case of privilege</i></p>
Consideration of Government Business	<p>4-13. (2) Except as provided in subsection (3), Government Business, including items on notice, shall be called in the following order, with Senate bills preceding Commons bills as appropriate, and items otherwise called in the order most recently proceeded with:</p> <ul style="list-style-type: none">(a) Bills – Messages from the House of Commons;(b) Bills – Third Reading;(c) Bills – Reports of Committees;(d) Bills – Second Reading;(e) Reports of Committees – Other;(f) Motions;(g) Inquiries; and(h) Other.
Ordering of Government Business	<p>4-13. (3) Government Business shall be called in such sequence as the Leader or the Deputy Leader of the Government shall determine.</p>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-13(1): Rule 27(1)

Rule 4-13(2): Rule 26(1)

Rule 4-13(3): Rule 27(1)

COMMENTARY

Rule 4-13 establishes the priority given to Government Business over all other business before the Senate and lists the items found under the heading Government Business. Prior to 1991, there was no distinction between Government Business and non-government business on the Order Paper. Government Business is divided into eight categories (reflecting an ordering according to the progress of bills, reports of committees that are not related to bills, and then motions and inquiries, including those on notice). Movement within each category occurs in accordance with various rules and practices that have developed over the years.

Under rule 4-13(3), the Leader or Deputy Leader of the Government can indicate the order in which Government Business will be called. If the government leadership does not specify an order for the consideration of its business, all items are called in the order that they appear on the Order Paper. The

Deputy Leader normally announces the order of Government Business prior to the calling of the items on the Order Paper by the reading clerk.

As mentioned, Government Business takes precedence over all other items of business. If, however, Government Business has not been completed by 8 p.m. (noon on Friday), it will be interrupted if required to deal with (i) a motion moved earlier in the sitting in relation to a case of privilege, (ii) an emergency debate or (iii) the consideration of a question of privilege. Government Business resumes once these items have been dealt with, if the Senate does not adjourn. This interruption and the resumption of business also occur if the Senate is considering Other Business at 8 p.m. (noon on Friday). See Chapters 8 and 13 for further details.

On March 29, 1894 (see *Journals of the Senate*, p. 34), the Senate adopted the following rule: “The Orders of the Day, which at the adjournment have not been proceeded with, are considered as postponed until the next sitting day, to take precedence of the Orders of that day, unless otherwise ordered” (rule 12). On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the following priority was established: “(1) Orders of the Day for the third reading of Bills. (2) An Order of the Day which, at the time of adjournment was under consideration. (3) Orders of the Day which at the time of adjournment had not been reached. (4) Remaining Orders of the Day” (rule 20). This rule remained virtually unmodified until June 18, 1991 (see *Journals of the Senate*, pp. 180-181), when priority was given to the consideration of Government Business. The current wording – including a clearer structure for Government Business – was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 4-13

House of Commons Procedure and Practice, Second Edition, pp. 477-478:

The sequence of Government Orders as listed on the *Order Paper* does not reflect precedence: it is an administrative breakdown showing the different categories of government business or projected government business in chronological sequence. Items eligible for consideration under Government Orders include all the orders made by the House at previous sittings relating to the items of government business then before the House (including, for example, bills introduced and ordered for a second reading, motions whose notice requirements have been met, and any order for resuming debate on an item).

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 331:

In principle, the control of the distribution of the time available to the House rests with the House itself. In practice the House has by standing orders delegated this control, with some exceptions for Opposition and private Members’ business and other minor reservations, to the Government. This control is the result of a process which has continued over nearly two centuries, whereby an increasing proportion of the time of each session has been at the disposal of the Government. ...

Speaker’s Rulings: Government Business

On occasion, the Speaker has been called upon to clarify items which constitute Government Business; for example motions to concur in committee reports on the estimates (June 16, 1998 and May 31, 2005) and a motion calling on the government to ratify a treaty (November 27, 2002). The Speaker has also noted that a motion under Government Business should not directly target an item or items of Other Business (October 30, 2013).

Journals of the Senate, June 16, 1998, p. 842:

I would then refer honourable senators to the *Order Paper* and Notice Paper No. 74 for today, Tuesday, June 16. On page 5, honourable senators will see in the list under Government Business, Reports of Committees, item No. 1:

Consideration of the Fifth Report of the Standing Senate Committee on National Finance
(*Supplementary Estimates (A) 1998-99*) ...

I remind honourable senators that the consideration of Supplementary Estimates is proceeded with by way of a motion moved by the government. It is government business and it appears under Government Business on the Order Paper, not under Other Business.

Journals of the Senate, November 27, 2002, p. 219:

I would like to rule on the point of order named by Senator Kinsella yesterday concerning the motion of Senator Robichaud, P.C. “that the Senate call on the government to ratify the Kyoto Protocol on Climate Change”. Senator Kinsella questioned whether it is appropriate that it be placed under “Government Business” on our *Order Paper*.

It is my view that it is within the sole discretion of the Government to determine what is Government Business.

In the other place — Government Business — is defined as any bill or motion introduced in that House by a Minister or Parliamentary Secretary. ...

...

In the Senate, our practices are very much the same. Once the Leader or the Deputy of the Government gives oral notice under “Government Notices of Motion”, the item is then placed under the appropriate heading of Government Business and can be called for debate at the discretion of the government in accordance with Rule [4-13(3)] once the required notice has lapsed.

... Last Thursday, November 21, the Deputy Leader gave notice of this motion under Government Notices of Motions. This provides sufficient evidence for me to determine that the Government is the sponsor of this motion.

As to the form of the motion, here again, I believe that the Government has some discretion. That is to say — it need not be in the form of an Address, as was suggested yesterday. In fact, this is not without precedent. In 1966, a similar kind of motion was debated in both Houses of Parliament with respect to the Auto Pact.

Journals of the Senate, May 31, 2005, p. 944:

Those honourable senators who have examined the Order Paper appreciate that the eleventh report of the Finance Committee deals with the estimates.

I rule that proper notice has been given. The reports are on the Order Paper and because they deal with the estimates, they are government business. An error has been made in printing the Order Paper, placing them under Other Business. It is an error and it is correctible by simply noting the error and proceeding to place the reports under Government Business.

Journals of the Senate, October 30, 2013, pp. 102-105:

Yesterday, after Senator Martin moved Government motion 4, Senator Fraser rose on a point of order. She questioned the propriety of this motion.

Government motion 4 is what can be called a "disposition motion." These are motions establishing specific procedures to determine how the Senate will deal with a particular item or items of business. Such motions are uncommon, but a ruling of April 28, 2004, indicated that they are generally in order. That ruling stated that a motion of this type is not a violation of our Rules and practices. As the ruling noted, "Since the Senate has complete control over the disposition of the motion, it maintain[s] its fundamental privilege to determine its own proceedings."

This particular disposition motion proposes to establish a process to deal with motions 2, 3 and 4 under Other Business. These motions propose to suspend Senators Brazeau, Wallin and Duffy. They were brought forward at the initiative of Senator Carignan. He moved the suspension motions as his own proposals, not as initiatives of the Government. He has been quite clear on this, and proceedings in the Senate have gone forward on that basis.

Any suspension motion is difficult, honourable senators. No senator would deny that. These motions require that the Senate, as a body, consider disciplinary actions. This is part of how we can maintain the reputation of this chamber and public confidence and trust in one of the basic institutions of our system of governance.

Debate on the motions to date has been vigorous and productive. Many senators have participated, and they have done so in a respectful and serious manner. I wish to thank honourable senators. The process has been dynamic, informative and instructive, not repetitive. The debate has captured the attention of the Canadian public. It has provided information that was previously unknown or not well understood, helping us to better appreciate the work that remains to be done to improve our internal administrative operations.

As I noted in a ruling last week, suspension is a mechanism available to the Senate. Our debate has referenced the use of suspension in other Westminster Parliaments, where it has been exercised with caution, so as not to prejudice external proceedings.

In a court of law there are detailed rules and processes to govern proceedings. In considering the matter of suspension, the Senate is following its longstanding parliamentary Rules and procedures. In a parliamentary body like the Senate, with the very word Parliament coming from *parler*, to speak, we use debate to reach the best possible result. Debate is at the heart of what we do, and it has been the means to explore and evaluate the suspension motions.

Honourable senators, Senator Fraser recognized that disposition motions, although unusual, are available under the practices and procedures of the Senate. She noted the 2004 case to which reference has already been made. Her concern was not about the motion, but the fact that it was brought forward as a Government proposal targeting non-Government business. As such, she

asserted, it violates the basic distinction in our Rules between Government Business and Other Business. She characterized this distinction as one of the most important to be found in our Rules. As she explained, a motion can be either a Government motion or a non-Government motion, but it cannot fall into both categories. Senator Fraser argued that, with disposition motion number 4, the Government is seeking to do indirectly what it cannot do directly. She felt this is a dangerous precedent, and must be ruled out of order.

Honourable senators, later, Senator Cowan spoke to support Senator Fraser. He emphasized the importance of respecting Rules and normal processes. He called for caution if the Senate is to lay aside its Rules, practices and precedents. In this vein, he argued, our Rules make a clear distinction between Government and Other Business, giving the Government certain tools to advance its business. The Leader of the Opposition said these provisions should be respected.

For her part, Senator McCoy expressed dislike for the regularity with which the Senate is asked to set aside its Rules and its practices, especially when the effect is to truncate debate artificially. After all, she noted, debate is what we do. Instead, she asked the Speaker to give his guidance as to how the Senate might proceed, and encouraged us to take the necessary time to consider what we are doing.

A number of other senators also questioned whether the time taken in debate thus far is really so extraordinary, given the importance of the issues under discussion.

Senator Martin argued that while the suspension motions are under Other Business, she did not accept that this prevents the Government from proposing a timeline. The Senate can amend, accept or reject the timeline the Government has proposed. Both Senator Martin and, later, Senator Carignan argued that unlimited debate is not always desirable. In particular, Senator Carignan was concerned that while the questions of suspension are pending, the business of the Senate, and particularly Government Business, is being hampered. He suggested that there will be continual questions about the participation of the three senators. For this reason, he argued that a level of certainty is required, to help bring the debate to an end within a reasonable timeframe.

At the very outset, let us be clear that disposition motions are part of our practice. The core issue here is that the proposal by Senator Martin dealing with disposition has been brought forward as a Government motion, though it would determine the course of proceedings on the three suspension motions, which are Other Business.

If the disposition motion is accepted as an item in the category of Government Business, time allocation could be applied to the motion. If the Senate agrees to this, the Government would then be able to limit debate on items in the category of Other Business using specific powers that are now clearly reserved only for Government Business.

Since 1991 the Senate has made a distinction between the categories of Government Business and Other Business.

Honourable senators, Appendix I of the Rules defines Government Business as:

A bill, motion, report or inquiry initiated by the Government. Government business, including items on notice, is contained in a separate category on the Order Paper, and the Leader of the Government or the Deputy Leader may vary the order in which these items are called.

Other Business, on the other hand, is:

Items of non-Government business on the *Order Paper and Notice Paper*. These may include bills, motions, reports or inquiries. Unless the Senate otherwise orders, items of Other Business are called in the order in which they are printed, which is determined by the Rules.

Honourable senators, Rule 4-13(1) establishes that Government Business shall have priority over all other business before the Senate. Furthermore, rule 4-13(3) allows the Leader and Deputy Leader of the Government to vary the order of Government Business from that published in the *Order Paper and Notice Paper*.

Other Business, however, is called in its published order, unless the Senate decides otherwise. There are numerous other references in our Rules to the different provisions that apply to Government Business and Other Business. For example, items of Government Business remain on the Order Paper until they are disposed of, but items of non- Government business are dropped if they are called for fifteen consecutive sitting days without being proceeded with. Should motions 2, 3 and 4 not be addressed for 15 consecutive sittings, they too would drop.

In addition, it is significant to note that under Chapter 7 of our Rules, the Government has, as already mentioned, the option of initiating the time allocation processes in relation to items in the category of Government Business.

Honourable senators, there is a coherence in our Rules. Government Business has priority, and there are mechanisms to facilitate its dispatch. As to Other Business, the Senate follows more traditional practices, so that debate is more difficult to curtail. The disposition motion currently before the Senate appears to cross the boundaries between these two categories.

A proposal of this type could, in the long term, distort the basic structure of Senate business, allowing the Government's time allocation powers to, in effect, be applied to items of Other Business. To avoid the long term risks to the integrity of the basic structure of our business, it would be preferable to find a solution to this particular case that avoids establishing such a far-reaching precedent.

Given the Government's important role, it has specific means, already discussed, to secure the dispatch of its business. But even under Other Business, there are ways to seek to curb or limit debate and to come to a decision. The most obvious is by moving the "previous question," which forestalls further amendments, but is only available on the main motion.

Honourable senators, my concern as Speaker in this case goes beyond the specifics of this particular point of order. All senators have an obligation to the long term interests of the Senate, to maintain the integrity of its traditions and practices, especially open debate within a clear structure, that have been hallmarks of the Senate since its very beginning. The changes that have been made over the years to modernize our practices, and to establish mechanisms to facilitate the dispatch of Government Business, were made after consideration and reflection. This approach should not change. At the same time, I am aware that the Speaker's preoccupations cannot trump the judgment of the Senate itself, which always remains the final arbiter of any point of order or question of privilege.

Given my concerns, I would strongly urge the Leaders of the Government and Opposition to work out a timeline that would find a solution to the current challenges facing the Senate, without fundamentally distorting the integrity of the basic structure of our business. As chair, I am more than willing to offer any assistance I can.

Honourable senators, this ruling is based on a thorough examination of the matter, including a full review of the Rules, precedents and procedural literature. I have also considered advice from senior advisors, over several meetings in a short period of time. The issues raised are complex, important and sensitive, and could have profound effects on how the Senate works in the future.

All senators must consider the appropriate way to respond to the challenges posed in this point of order, since the Senate is a largely self-regulating chamber. Thus far we have conducted ourselves in a manner that does credit to the upper house of Canada's bicameral Parliament, applying the basic approach we have at our disposal, namely debate, thoughtfully and carefully.

Honourable senators, through a disposition motion or other means it is possible to propose a way to end debate. The suspension proposals have been moved as non-Government initiatives. To allow a process that could result in the application of the Government's time allocation powers to non-Government business is not in keeping with the current Rules and practices.

Whatever the final outcome on this specific point, the chair remains available to assist the Senate in finding a solution. The ruling is that Senator Martin's motion is out of order and is to be discharged.

(Accordingly, the Order of the Day for resuming debate on motion No. 4 under "Government Business", was discharged.)

RULE 4-14

Consideration
of Other
Business

4-14. Except as otherwise ordered by the Senate, Other Business shall be called in the following order, with items called in the order most recently proceeded with:

- (a) Bills – Messages from the House of Commons (with Senate bills preceding Commons bills);
- (b) Senate Public Bills – Third Reading;
- (c) Commons Public Bills – Third Reading;
- (d) Private Bills – Third Reading;
- (e) Senate Public Bills – Reports of Committees;
- (f) Commons Public Bills – Reports of Committees;
- (g) Private Bills – Reports of Committees;
- (h) Senate Public Bills – Second Reading;
- (i) Commons Public Bills – Second Reading;
- (j) Private Bills – Second Reading;
- (k) Reports of Committees – Other;
- (l) Motions;
- (m) Inquiries; and
- (n) Other.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-14: Rule 26(2)

COMMENTARY

The Orders of the Day for Other Business are called in order by a clerk at the table, unless otherwise ordered by the Senate. They include items of non-government business and are arranged into 14 categories consisting of bills, committee reports, motions and inquiries. As with Government Business, the order of items within each category is adjusted in light of practice.

This provision was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), when a distinction was established between Government Business and Other Business. The current wording – including a clearer structure for the categories of items – was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RULE 4-15

Item not
disposed of

4-15. (1) Any item not called when the Senate adjourns, except a motion to adjourn the Senate for an emergency debate, shall be carried over to the next sitting.

Items dropped
after 15 sitting
days without
being
considered

4-15. (2) Except as otherwise ordered by the Senate, any item of Other Business on the Order Paper and any motion or inquiry on the Notice Paper that have not been proceeded with during 15 sitting days shall be dropped from the *Order Paper and Notice Paper*.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-15(1): Rule 27(2)

Rule 4-15(2): Rule 27(3)

COMMENTARY

As the Senate proceeds through the Orders of the Day, items are called for consideration and either proceeded with or stood. Rule 3-5(2) provides that if an item has not been disposed of when the Senate adjourns it is an order of the day for the next sitting; an item under debate when the Senate adjourns would therefore be carried over to the next sitting (rule 3-5(1)). If, by the time of daily adjournment, an item has not yet been called, rule 4-15(1) provides that it will also remain on the Order Paper for the next sitting (unless it is a motion to adjourn the Senate for an emergency debate). In this manner, items of Government Business can remain on the Order Paper until they are eventually decided upon or until the end of the session. However, rule 4-15(2) provides that items Other Business are dropped from the *Order Paper and Notice Paper* after being called for 15 sitting days without being proceeded with. The number of sittings that an item of Other Business has been stood is indicated in brackets beside the item's number on the *Order Paper and Notice Paper*. The Speaker has indicated that an item of Other Business that has been proceeded with once is not exempt from the 15 days starting again (see ruling below).

On March 29, 1894 (see *Journals of the Senate*, p. 34), the Senate adopted the following rule: "The Orders of the Day, which at the adjournment have not been proceeded with, are considered as postponed until the next sitting day, to take precedence of the Orders of that day, unless otherwise ordered" (rule 12). This rule was amended on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), when a distinction was established between Government Business and Other Business. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 4-15

Speaker's Ruling: Application of rule 4-15(2) for items of "Other Business"

Journals of the Senate, February 27, 1992, pp. 554-555:

The question before the Chair therefore is whether an item having been "proceeded" with *once* becomes exempt from the provisions of Rule [4-15(2)]. In other words, when an order has had some action taken on it once, such as the adjournment of debate, is it any longer subject to a parliamentary clock to count the number of sittings thereafter in which action is not taken?

...

Regarding the provisions of Rule [4-15(2)], the wording is clear that "any" item under "Other Business", "Inquiries" and "Motions" is dropped if it has not been proceeded with during fifteen sittings or unless previously ordered otherwise. It would seem to the Chair that the word "any" would include an item which was subject to a proceeding of the Senate at one time but which had experienced no action for fifteen sittings thereafter. This is the case of the item standing in the name of the Leader of the Opposition.

Regarding the intention of those proposing the rule, I note the comment made by the Honourable Senator Kinsella as indicated on page 1:75 of the *Proceedings of the Committee on Standing Rules*

and Orders dated June 4, 1991. Regarding the new Rule [4-15(2)], he stated “The purpose of this proposed change is to avoid having items on the Order Paper for months on end. As a newcomer to the Senate, it often strikes me that items sit there for a very long time. If it is serious “Other Business”, then let us deal with it within a proper timeframe. However, it will not prevent the senator from reintroducing that matter.”

To permit any adjourned item to stand beyond the fifteen sittings would, in the opinion of the Chair, go against the stated objective of Rule [4-15(2)] which is to encourage Senators to deal with business within a certain timeframe.

RULE 4-16

Orders of the Day to be called at 8 p.m. or noon **4-16.** (1) The Speaker shall call the Orders of the Day no later than 8 p.m., or noon on Fridays.

Possible interruption at 8 p.m. or noon **4-16.** (2) When the Orders of the Day are only first called at 8 p.m., or noon on a Friday, they shall be immediately interrupted, if required, for the purpose of dealing with any of the following in this order:

- (a) a motion moved earlier in the sitting relating to a case of privilege;
- (b) an emergency debate; or
- (c) presentation of a question of privilege.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 4-16: Rule 23(5)

COMMENTARY

Rule 4-12 provides that after Question Period and the tabling of delayed answers, the Speaker proceeds to call the Orders of the Day. However, if earlier proceedings have been prolonged, rule 4-16(1) provides that no later than 8 p.m. (or noon on a Friday), the Speaker will interrupt proceedings and call for the Orders of the Day.

Rule 4-16(2) provides that if the Orders of the Day are only first called at 8 p.m. (or noon on a Friday), they will be immediately interrupted, if required, for the consideration of a motion moved earlier in the sitting relating to a case of privilege (rule 13-7(2)), an emergency debate (rule 8-4(1)) or the presentation of a question of privilege (rule 13-6(1)). If more than one of these is to be considered, they will be taken up in the order just listed.

This rule was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the current wording was adopted, with wording to clarify the order of items in rule 4-16(2), on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

CHAPTER FIVE: NOTICES, MOTIONS AND INQUIRIES

This chapter describes the manner in which a senator gives notice of a motion or inquiry (rules 5-1 to 5-4), as well as the notice periods required for different items (rules 5-5 to 5-7). It also lists debatable and non-debatable items (rule 5-8). The chapter concludes with a description of the rules relating to motions to adjourn the Senate (rule 5-13).

Giving Notice

RULE 5-1

Notice given orally and in writing

5-1. A Senator who wishes to move a substantive motion or raise an inquiry shall prepare a written notice and read it aloud during Routine Proceedings. The Senator shall then sign the notice and send it immediately to the Clerk at the table, who shall cause it to appear on the *Order Paper and Notice Paper*.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-1: Rules 56(1) and (2)

COMMENTARY

The purpose of notice is to give senators time to prepare for debate. For motions requiring notice and inquiries (see rules 5-5 and 5-6), oral notice is given during Routine Proceedings, either under “Government Notices of Motions” for government motions, or under “Notices of Motions” for all other motions. In a similar manner, oral notice is given for inquiries under “Government Notices of Inquiries” or “Notices of Inquiries.” A notice of motion or a notice of inquiry must be in writing, and, after being read aloud by the senator, a signed copy is brought to the table. The usual practice is that notices are submitted in both English and French. To assist the conduct of business during the sitting, the Speaker is often informed ahead of time through the Chamber Operations and Procedure Office that a senator intends to give a notice.

On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the following rule pertaining to notice was adopted: “When a senator wishes to give notice of an inquiry or motion, he reduces the notice to writing, signs it, reads it from his place during a sitting of the Senate, and hands it in at the Clerk’s table. This rule does not apply to motions with respect to Bills, nor to motions dealing with reports of committees, nor to formal, routine, subsidiary or incidental motions, notice of which, when necessary, may be given by word of mouth, or by any means which places such motions among the Orders or on the notice paper for any day” (rule 21). The rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and on December 3, 1985 (see *Journals of the Senate*, p. 849), to bring it into conformity with modern usage. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 5-1

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 292-293:

The determination or opinion of a legislative body is expressed by the adoption of a motion or resolution, proposed by some member in accordance with the rules of procedure.

The Speaker, as presiding officer, puts the motion and it is decided by the votes of the members. When a member proposes to bring any matter before either house with a view of obtaining an expression of opinion thereon he must make a motion. When the time arrives at which the motion may be made he may speak in its favour before he actually proposes or “moves” it, but a speech is only allowed upon the understanding that he speaks to the question, of which he has given due notice, and that he concludes by proposing the motion formally.

... The Senate rules on the subject of Notices of Inquiries and of Motions are quite explicit and very full. ... These rules may be summarized as follows: – The notice must be in writing, signed by the senator, who may read it during a sitting and hand it to the Clerk. Certain exceptions to this rule are allowed. A senator may give notice for another senator.

John B. Stewart, *The Canadian House of Commons: Procedure and Reform*, pp. 39-40:

A maxim now followed so thoroughly that it ranks as a principle is that *if possible the House is not to be taken by surprise*. There is now almost no important proceeding that can be initiated without notice.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 166:

§542. (1) A modification of a notice of motion standing upon the *Notice Paper* is permitted, if the amended notice does not exceed the scope of the original notice. Sir Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (20th ed., 1983), p. 377.

Annotated Standing Orders of the House of Commons, Second Edition, p. 203:

To bring a proposal before the House with a view to obtaining a decision on it, a motion is necessary. Notice of the motion is required, although this requirement varies according to the type of motion; indeed, many motions are specifically exempted from notice. All motions must be in writing, however, and once proposed to the House by the Speaker, may only be withdrawn by unanimous consent. Most motions are open to debate, although several, including many of those for which no notice is required, are not.

Odgers' Australian Senate Practice, Thirteenth Edition, p. 220:

Motions cannot be moved unless at least one sitting day's notice has been given, except for motions which the standing orders authorise to be moved without notice. Notice of a motion is given by a senator stating its terms to the Senate and handing a signed copy to the Clerk, ... at the time provided in the routine of business for the giving of notices. Notices cannot be given at any other time except by leave of the Senate, but an exception to this rule is a notice of motion to refer a matter to one of the legislative and general purpose standing committees.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 496:

Questions and motions are expected to be worded in accordance with the practice of the House. The Clerks at the Table are available to assist Lords in drafting questions and motions, and the advice tendered by the Clerks should be accepted. However, there is no official who has authority to refuse a question or motion on the ground of irregularity. Lords are responsible for the form in which their questions and motions appear in the House of Lords Business, subject to the sense of the House which is the final arbiter.

Speaker’s Ruling: Purpose of Notice

Journals of the Senate, June 21, 1995, p. 1092:

... The purpose of giving notice is to enable Honourable Senators to know what is coming so that they can have an opportunity to prepare. Why else would there be notice? They must have an opportunity to get themselves ready for the discussion. It is not meant to delay the work of the Senate. It is simply meant to bring order.

Speaker’s Ruling: Notice to Describe Content of Motion

Journals of the Senate, October 26, 2006, pp. 557-558:

In assessing the meaning of notice, which is central to the determination of this point of order, it is essential to look to the purpose of the particular notice required. I feel it appropriate to consider not just rule 43 [now see, in particular, rule 13-4], but other Senate rules as well as current practices that provide a better sense of what notice is meant to be and the purposes that it serves. Part VI of the *Rules of the Senate*, from rule 56 through 59 [now see, in particular, rules 5-1, 5-2, 5-3, 5-5, 5-6 and 5-7], is all about notices. Not only do these rules identify the period of a notice, either one or two days when notice is required at all, but they also confirm that the content of the notice must be meaningful. For example, as rule 56(1) [now see rule 5-1] states: “when a Senator wishes to give notice of an inquiry or a substantive motion, the Senator shall reduce the notice to writing, sign it, read it during a sitting of the Senate ... and send it forthwith to the Clerk at the Table.” Similarly, rule 56(2) [now see rule 5-1] requires that a Senator seeking to propose an inquiry shall “as part of the notice under this rule give notice that he will call the attention of the Senate to the matter to be inquired into.” It is not adequate, as a notice, to state simply an intention to move a motion or to propose an inquiry. To suggest otherwise would seriously distort the meaning and intent of the notice. As an example, who would accept as adequate notice a Senator’s declaration to move a motion without any indication of its content or to have a committee undertake a study without knowing what it was about? Notice must include some content indicating the subject being proposed for debate and decision.

The merit of this proposition is evident from any review of the authorities that are often used to guide the understanding of Senate procedures. Marleau-Montpetit’s *House of Commons Procedure and Practice* at page 464, explains that the purpose of notice “is to provide Members and the House with some prior warning so that they are not called upon to consider a matter unexpectedly.” Motions for which notice is routinely required usually seek to solicit a decision of the Senate, either to order something be done or to express a judgment on a particular matter. Such motions are always subject

to debate and the notice is required in order to allow parliamentarians to inform themselves of this upcoming debate and to prepare themselves should they wish to participate in the debate. ...

RULE 5-2

Subject of inquiry – restriction	5-2. An inquiry shall not relate to any bill or other matter that is currently an order of the day.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-2: Rule 57(2)

COMMENTARY

An inquiry is “a procedure used for the purpose of drawing the attention of the Senate, through debate, to a particular matter” (Appendix I, Terminology). No decision or vote is taken by the Senate on an inquiry. As such, inquiries are a distinct, and frequently used, feature of Senate procedure. This rule prohibits an inquiry relating to a bill or other order of the day.

This provision was first adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137). The current wording clarified the meaning of the rule and was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 5-2

House of Commons Procedure and Practice, Second Edition, p. 560:

The moving of a motion was formerly subject to the ancient “rule of anticipation” which is no longer strictly observed. According to this rule, which applied to other proceedings as well as to motions, a motion could not anticipate a matter which was standing on the *Order Paper* for further discussion, whether as a bill or a motion, and which was contained in a more effective form of proceeding (for example, a bill or any other Order of the Day is more effective than a motion, which in turn has priority over an amendment, which in turn is more effective than a written or oral question). If such a motion were allowed, it could indeed forestall or block a decision from being taken on the matter already on the *Order Paper*.

While the rule of anticipation is part of the Standing Orders in the British House of Commons, it has never been so in the Canadian House of Commons. Furthermore, references to past attempts to apply this British rule to Canadian practice are inconclusive.

House of Representatives Practice, Fifth Edition, p. 497:

The intention behind the rule [of anticipation] is to protect matters which are on the agenda for deliberative consideration and decision by the House from being pre-empted by unscheduled debate. The Speaker’s ‘reasonable time’ discretion is to prevent the rule being used mischievously to block debate on a matter.

The words ‘a subject which appears on the Notice Paper’ are taken as applying only to the business section of the Notice Paper and not to matters listed elsewhere — for example, under questions in writing or as subjects of committee inquiry.

...

There has been a tendency in recent years for rulings concerning anticipation to be more relaxed. After a long period of sittings the Notice Paper may contain notices and orders of the day on many aspects of government responsibility, with the result that an overly strict application of the rule could rule out a large proportion of subjects raised in debate, Members’ statements or questions without notice, or topics proposed for discussion as matters of public importance. In a statement relating to matters of public importance Speaker Child, who had at the previous sitting accepted a matter which dealt with a subject covered in legislation listed for debate as an order of the day, indicated that, in her view, the discretion available to the Speaker should be used in a very wide sense.

In general, the approach taken by the Chair has been that it is not in order while debating a question before the House to go into detailed discussion of other business on the Notice Paper. However, incidental reference is permissible. Where the topic of a matter of public importance has been very similar to the subject matter of a bill due for imminent debate, the discussion has been permitted, subject to the proviso that the debate on the bill should not be canvassed, or that the bill not be referred to in detail.

(Note: As indicated in the sixth edition, at pp. 512-513, practice in the House of Representatives in relation to the rule of anticipation is now even less restrictive.)

RULE 5-3

Notice for
absent Senator

5-3. A Senator may give notice on behalf of another Senator not then present with the permission of the absent Senator. The written notice shall include the names of both Senators.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-3: Rule 56(3)

COMMENTARY

Rule 5-3 provides that a notice may be given by one senator for another, if the senator on whose behalf notice is given is absent. The written notice contains the names of both senators.

On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the following rule pertaining to notice was adopted: “A senator, on being duly requested, may give notice for any other senator not then present, by putting the name of such senator on the notice, in addition to his own” (rule 22). The rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and on December 3, 1985 (see *Journals of the Senate*, p. 849), to bring it into conformity with modern usage. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RULE 5-4

Objectionable notice	5-4. The Speaker shall not allow a notice that contains an unparliamentary expression or contravenes any rule or order of the Senate to appear on the <i>Order Paper and Notice Paper</i> .
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-4: Rule 64

COMMENTARY

This rule provides that any notice containing unparliamentary language or that is contrary to a rule or an order of the Senate will be disallowed by the Speaker and not published in the Notice Paper.

A rule adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137) stated: “Any notice containing unbecoming expressions, or which offends against any rule or order of the Senate, if not amended by the senator giving the same, is not allowed by the Speaker to appear on the notice paper” (rule 26). The wording of this rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and once again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

See also rule 6-13 concerning the use of unparliamentary language in debate. For further information on unbecoming expressions, see Beauchesne’s, Sixth Edition, pp. 142-150; and *House of Commons Procedure and Practice*, Second Edition, pp. 618-620.

RELATED CITATIONS AND EXTRACTS – RULE 5-4

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, p. 166:

§541. As the *Notice Paper* is published by authority of the House, a notice of motion, or of a question to be put by a Member, which contains unbecoming expressions, infringes its rules, or is otherwise irregular, may, under the Speaker’s authority, be corrected by the clerks at the Table. These alterations are submitted to the Member who gave the notice, or if necessary to the Speaker. A notice which is wholly out of order, may be withheld from publication on the *Notice Paper*. If the irregularity is not extreme, the notice is printed but reserved for future consideration.

House of Commons Procedure and Practice, Second Edition, p. 549:

If necessary, the procedural staff of the Clerk of the House will consult with the sponsoring Member with regard to any modifications to the text of the motion required in order to make it conform procedurally to the rules and practice of the House. Rarely has the Speaker been called upon to intervene. The notice of motion found to be admissible is inserted under the appropriate heading in the *Notice Paper*. ...

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 399:

A notice of motion which contains unbecoming expressions, infringes the House’s rules, or is

otherwise irregular, may, under the Speaker's authority, be corrected by the Clerks at the Table. The alterations, if necessary, are submitted to the Speaker, or to the Member who gave the notice. A notice which is wholly out of order may be withheld from publication on the Notice Paper. If the Clerk at the Table decides that a motion should be withheld, he informs the Member concerned. If the Member does not accept that view, he should ask for the matter to be referred to the Speaker. If the Speaker decides to uphold the view of the Clerk the Member is informed, and if the Member is still dissatisfied he may seek to see the Speaker to argue his case further. If, at the end of this process, he is still dissatisfied, he can raise the matter in the House, and if he disagrees with the Speaker's ruling he can challenge it by a motion. The object of this procedure is to save the time of the House.

Page 496:

Questions and motions are expected to be worded in accordance with the practice of the House. The Clerks at the Table are available to assist Lords in drafting questions and motions, and the advice tendered by the Clerks should be accepted. However, there is no official who has authority to refuse a question or motion on the ground of irregularity. Lords are responsible for the form in which their questions and motions appear in the House of Lords Business, subject to the sense of the House which is the final arbiter.

House of Representatives Practice, Sixth Edition, pp. 296-297:

The standing orders direct the Speaker to amend any notice of motion which contains inappropriate language or which does not conform to the standing orders. The House in effect places an obligation on the Speaker to scrutinise the form and content of motions which are to come before the House. The Speaker's action in so amending a notice cannot be challenged by a motion of dissent, as the Speaker is exercising an authority given by the standing orders rather than making a ruling.

... It has been ruled that a notice of motion practically incorporating a speech cannot be given. In 1977 the Speaker referred to the form of notices (then given orally), noting that notices which were inordinately and unnecessarily long continued to be given, and that Members were tending to use notices to narrate a long argument rather than to put a concise proposition for determination by the House. The Speaker said that if Members continued to misuse the procedure he would have to intervene to have Members reform their notices or to have the Clerks eliminate the argument and unnecessary statements. The view and direction put forward by the Speaker were adhered to and came to constitute the practice of the House.

Speaker's Ruling: Unparliamentary Language in Notice

Journals of the Senate, February 16, 2004, pp. 123-125:

On Wednesday, February 11, Senator LeBreton gave notice of an inquiry, the purpose of which was to call the attention of the Senate to the "culture of corruption pervading the Liberal government currently headed by Prime Minister Paul Martin." Prior to Orders of the Day, Senator Milne rose on a point of order to object to the language of the notice. ...

...

Without exception, every parliamentary institution, whether the "other place" or assemblies and legislatures across the country and throughout the Commonwealth, must deal with the matter of orderly debate and unparliamentary language. In the Senate, rule [6-13(1)] prohibits "All personal,

sharp or taxing speeches.” This rule has been part of our practice since 1867. In addition, as a preemptive measure, rule 64 [now see rule 5-4] provides that “a notice containing unbecoming expressions or offending against any rule or order of the Senate shall not be allowed by the Speaker to appear on the *Order Paper*.”

The 6th edition of *Beauchesne’s Parliamentary Rules and Forms*, a standard Canadian authority for many years, provides a list of words or expressions which involved an intervention by the Speaker of the other place because they were considered by some members to be intemperate or unparliamentary. Among the words listed on page 149 is the word “corrupt.” In reviewing *Beauchesne’s* further, I found, as a cautionary note, a passage indicating that “no language is, by virtue of any list, acceptable or unacceptable. A word which is parliamentary in one context may cause disorder in another context, and therefore is unparliamentary.” This then is one guide which I have used in sorting out the merits of this point of order.

Last May, an event occurred in the Senate which relates in some measure to what the Senate is confronting now. During its study on the code of conduct, the Committee on Rules, Procedures and the Rights of Parliament heard from a witness who made a reference to the public perception of corruption in government and in Parliament. Senator Carstairs, then the Leader of the Government, made a reference to these remarks which led to numerous exchanges between the Senator and others in this Chamber including Senator Lynch-Staunton, the Leader of the Opposition. While no one sought the retraction of the word on the basis of its unparliamentary nature, it clearly offended many and led to numerous pointed exchanges. My purpose in mentioning this incident is that the word “corruption” does convey a charged meaning and should only be used with caution.

...

Even though I have the authority as Speaker under rule [5-4] to disallow the inquiry that was proposed by Senator LeBreton, I do not feel it would be in keeping with the traditions of the Senate to actually exercise this authority in this case. Instead, I will rely on the good judgment of Senators who choose to participate in this debate to refrain from using any language that is unparliamentary in its context.

Notice Periods

The Rules provide for three basic durations for notice. One day’s notice is required for motions listed in rule 5-5, two days’ notice is required for inquiries and for motions listed in rule 5-6, and no notice is needed for a final category of motions (see rule 5-7). In addition, most motions to rescind previous decisions of the Senate require five days’ notice (see rule 5-12); motions for the adjournment of the Senate for an emergency debate require written notice to be sent to the Clerk before a sitting (see rule 8-1(2)); and a senator wishing to raise a question of privilege may do so with written notice prior to a sitting (see rule 13-4(1)) or, in certain limited situations, during a sitting without notice (see rule 13-5).

RULE 5-5

One day's
notice for
certain motions

5-5. Except as otherwise provided, one day's notice is required for any motion, including the following motions:

- (a) to suspend a rule or part of a rule;
- (b) for the third reading of a bill;
- (c) to appoint a standing committee;
- (d) to refer the subject matter of a bill to a standing or special committee;
- (e) to instruct a committee;
- (f) to adopt a report of a standing committee or the Committee of Selection;
- (g) to adjourn the Senate to other than the next sitting day;
- (h) to correct irregularities in an order, resolution or vote;
- (i) to rescind a leave of absence or suspension ordered by the Senate; or
- (j) any other substantive motion.

EXCEPTIONS

Rule 5-6(1): Two days' notice for certain motions

Rule 5-7: No notice required

Rule 5-12: No motions on resolved questions, five days' notice for rescission

Rule 8-1(2): Giving notice for emergency debate

Rule 12-32(1): No notice required for Committee of the Whole

Rule 13-4(1): Written notice of question of privilege

Rule 13-5: Question of privilege without notice

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-5: Rules 58(1) and (2), and 136(3)

COMMENTARY

Rule 5-5 lists ten types of motions which require one day's notice. This time period is also the general default for any motion for which another period of time is not specified. After a senator gives notice of such a motion (see rule 5-1), it can be moved on the next sitting day.

With regard to the adjournment of the Senate to other than the next sitting day (rule 5-5(g)), the Speaker has ruled that when the Senate adjourns during pleasure — in practical terms this means that the sitting is suspended — the adjournment is not a regular adjournment and the notice requirements of rule 5-5(g) do not apply (see *Journals of the Senate*, June 25, 1975, p. 434).

A provision regarding one day's notice was first adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137) as rule 24. Originally, the rule also provided that one day's notice was required for:

1. any substantial amendment to a private bill;
2. the consideration of substantial amendments made to a public bill by a Committee of the Whole;
3. the adoption of a report, not merely formal in its character, from any standing committee; and

4. that the Senate resolve itself forthwith into a Committee of the Whole.

On December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), it was agreed that the Senate may resolve itself into a Committee of the Whole without notice (see current rules 5-7(o) and 12-32(1)). It was also agreed at that time that any substantial amendment to a bill reported by a committee requires one day's notice. On November 26, 1975 (see *Journals of the Senate*, p. 592), it was agreed that the section "for the adoption of a report, not merely formal in its character, from any standing committee" be amended to read "for the adoption of a report from any standing committee." It was further amended to include standing joint committees on June 23, 1993 (see *Journals of the Senate*, p. 2280). On June 18, 1991 (see *Journals of the Senate*, pp. 180-181), it was agreed to adopt a rule which required one day's notice for the correction of irregularities or mistakes in an order, resolution or other vote of the Senate subject to a two-thirds vote. On June 19, 2012 (see *Journals of the Senate*, p. 1429), the requirement for a two-thirds vote was removed at the same time that the current wording of rule 5-5 was adopted (effective from September 17, 2012). The 2012 amendments also removed the requirement for one day's notice for a substantive amendment to a bill reported by a committee (see rules 5-7(a) and 6-8(a)), with a subsequent change relating to the Committee of Selection on May 28, 2013 (*Journals of the Senate*, pp. 2567-2568).

RELATED CITATIONS AND EXTRACTS – RULE 5-5

House of Commons Procedure and Practice, Second Edition, p. 555:

Some items of business require a notice period of 24 hours. As with the 48 hours' notice, it is not timed by the clock. For written notices, the 24-hour notice requirement simply means that a motion may be proposed once it appears in both the *Notice Paper* and the *Order Paper* (the text of the motion appears simultaneously in the *Order Paper* and the *Notice Paper*). For example, if it is filed at 6:00 p.m. on Monday, it may be taken up at 10:00 a.m. on Tuesday. For oral notices (accompanied by a written text), if it is given at any time during a sitting of the House, the motion may be taken up on the next sitting day.

RULE 5-6

Two days' notice for certain motions

5-6. (1) Two days' notice is required for a motion:

- (a) to amend these Rules;
- (b) for an address to the Governor General not merely formal in character;
- (c) for an order of the Senate for any papers or documents not relating to a bill or other matter that is an order of the day;
- (d) to appoint a special committee;
- (e) to adopt a report of a special committee; or
- (f) for the second reading of a bill.

Two days' notice for inquiries

5-6. (2) Two days' notice is also required for an inquiry.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-6: Rule 57

COMMENTARY

Rule 5-6 lists six types of motions requiring two days’ notice and also specifies that inquiries require two days’ notice. “Two days’ notice” means a notice where a sitting day intervenes between the day on which the notice is given and the day on which the motion or inquiry is made. In calculating the notice period, the practice is to include all *potential* sitting days as provided in the Rules and orders in effect at the time the notice is given, and not only the days that the Senate actually sits (see definitions of “Sitting day” and “Notice period” in the Terminology in Appendix I). This practice is a consequence of the fact that the Senate usually decides on the date of the next sitting at the end of the last sitting day in a week. Therefore, weekdays on which the Senate does not sit will, in some cases, count towards fulfilling the notice requirement.

The basic elements of this rule were first adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137) (then rule 23). The rule was amended on June 23, 1993, to include notice for the adoption of a report of a special committee (see *Journals of the Senate*, p. 2280). The current wording of this rule was amended on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 5-6

House of Commons Procedure and Practice, Second Edition, p. 553:

In practice, the 48 hours’ notice requirement is not exactly 48 consecutive hours, but refers instead to the publication of the notice once in the *Notice Paper* and its transfer the next day to the *Order Paper*. For example, a Member might give notice at 6:00 p.m. on a Tuesday and be free as early as 10:00 a.m. on Thursday to proceed with his or her motion (the notice having appeared in the *Notice Paper* on Wednesday and in the *Order Paper* on Thursday).

RULE 5-7

No notice required

5-7. Notice is not required for a motion:

- (a) for an amendment or a subamendment;
- (b) to refer a question under debate to a committee;
- (c) to adjourn the consideration of a question to a certain day;
- (d) for the previous question;
- (e) to read the Orders of the Day;
- (f) to adjourn the Senate, except in the case of an emergency debate;
- (g) to adjourn a debate;
- (h) to consider a Commons amendment to a public bill, either immediately or at a later time;
- (i) to appoint or to order a committee to prepare the Senate’s reasons for disagreeing with a Commons amendment to a public bill;
- (j) to introduce and give the first reading to a bill;
- (k) to postpone, discharge or revive an order of the day;

- (l) to consider at a future sitting any document that is on the table;
- (m) to table papers, when proposed by the Leader of the Government or another Senator who is a minister;
- (n) to reconsider, while a bill is under consideration, any element of the bill already agreed to;
- (o) to resolve the Senate into a Committee of the Whole; or
- (p) that is of a merely formal or uncontentious character.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-7: Rule 59

COMMENTARY

Rule 5-7 lists 16 types of motions for which notice is not required. It is much broader than rule 6-8 which deals only with motions that may be received without notice during the course of a debate. Provisions relating to motions without notice were adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137), and originally included a provision that no notice was required for a motion to adjourn the Senate for the purpose of bringing up a question of urgent public importance, as well as a provision that notice was not required for the ordinary adjournment of the Senate at the close of business of the day. The rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), by adding that notice is not required for a motion “that the Senate resolve itself into a Committee of the Whole.”

In 1979, the Speaker ruled that the “referral of a question to a committee” (then rule 59(2)) did not apply to the referral of an inquiry to a committee during the course of a debate. In his ruling, the Speaker referred to the definition section of the Rules, which defined a question as “a proposal presented to the Senate or a committee thereof by the Speaker for consideration and disposal in some manner” (then rule 4(7)(c)). To refer an inquiry to a committee then required notice (see *Journals of the Senate*, November 22, 1979, pp. 176-178).

On April 16, 2013, the Speaker ruled that it is possible to move that a motion dealing with a case of privilege under rule 13-7 be referred to a committee (see *Journals of the Senate*, pp. 2075-2076; portions of this ruling are quoted in text relating to rule 13-7).

On June 18, 1991, this provision was amended by deleting the section on bringing up a question of urgent public importance (see *Journals of the Senate*, pp. 180-181). This procedure was replaced with a new rule on emergency debates, now found in Chapter 8. It was also agreed in 1991 to delete the provision regarding adjourning the Senate at the close of business of the day and to replace it with what is now rule 5-7(f).

Previously, the rule contained a provision stating that a question of privilege could be raised without notice. As explained in a ruling by the Speaker (see *Journals of the Senate*, March 25, 2010, p. 165), this provision was for issues of privilege arising during the course of a sitting. In 2012, this provision was removed from the list of items not requiring notice, as it is found in rule 13-5, dealing with the raising of questions of privilege without notice in certain limited circumstances. The current wording of rule 5-7 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

See Appendix I, Terminology of the Rules for definitions of many of the terms used in rule 5-7.

RELATED CITATIONS AND EXTRACTS – RULE 5-7

Bourinot's Parliamentary Procedure, Fourth Edition, p. 293:

No notice is required for ... motions ... such as, of an amendment to a question; for the committal of a question; for the postponement to a certain day; for the previous question; for reading the order of the day; for the adjournment of a debate; for the purpose of bringing up a matter of urgent public importance; for the consideration of Commons' amendments to public bills; for the appointment of a committee to prepare reasons for a disagreement with a Commons' amendment; raising a question of privilege; the first reading of a bill; for the discharge, removal or postponement of an order of the day and other motions of a merely formal and uncon[tentious] nature.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 394:

Certain procedural motions for the transaction of business may be made without notice. These include motions made under Standing Order No 63 immediately after second reading, that a bill be committed to a Committee of the whole House, a select committee or a joint committee. ...

Motions arising out of a matter of privilege, ... are also moved without notice. A motion for a message to the Lords requesting the return of a bill which was incorrect, due to irregularities in divisions, has been allowed to be moved without notice as a matter of privilege, as has a motion to return a bill to the Lords to permit the insertion of the privilege amendment ...

With the exceptions stated above, it is the almost invariable practice of the House that notice should be given of substantive motions.

Speakers' Rulings on Motions Without Notice

The rulings below describe situations relating to rule 5-7. The Speaker ruled that no notice was required for moving a motion to proceed to the reading of Orders of the Day during Routine Proceedings (October 30, 1990) and for the consideration of a Commons amendment to a public bill (June 21, 1995). The Speaker also clarified the meaning of motions of a "formal or uncontentious character," for which no notice is required (April 21, 1988 and June 28, 2005). The Speaker has addressed subamendments (May 21, 2013) and the effect of a motion to refer a question to committee (April 16, 2013).

Subamendments (rule 5-7(a))

Journals of the Senate, May 21, 2013, p. 2536:

From a strictly procedural point of view, the parliamentary practice is that a subamendment is not able to enlarge the amendment that is before the house. In providing some support for a clear practice from the literature, *Beauchesne's Parliamentary Rules and Forms*, at paragraph 580, states:

Rule 5-7

(1) The purpose of sub-amendment (an amendment to an amendment) is to alter the amendment. It should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment.

...
From a purely technical point of view, the subamendment having been challenged is not in order.

Referring Question to Committee (rule 5-7(b))

Journals of the Senate, April 16, 2013, p. 2076:

... Motions to refer the question under consideration to committee are not common, but they do arise on occasion. When such a motion is before the Senate, debate is on the motion to refer the question to committee, although in point of fact this debate may be far-reaching. If the motion is adopted, the matter goes to that committee for study. If the motion is defeated, debate on the original motion resumes.

Reading Orders of the Day (rule 5-7(e))

Journals of the Senate, October 30, 1990, pp. 1875-1878:

Earlier today, a point of order was raised that the motion to proceed to the reading of the Orders of the Day can only be moved when a question is under debate and not when the item "Presentation of Petitions" has been called. ...

This citation has been the object of some controversy, not only in the Senate but in the other place as well. ...

...
It should be noted that the Senate does not have a rule equivalent to Standing Order 59 of the House of Commons. A motion for reading the Orders of the Day is permitted in the Senate, however, pursuant to Rule [5-7(e)], which states that such a motion may be moved without notice. If this motion could only be moved when a question is under debate, the effect would be that the motion becomes, for all practical purposes, non-operational, since no motion is normally moved under the items which precede the Orders of the Day, specifically "Presentation of Petitions", "Reading of Petitions", "Reports of Committees", "Notices of Inquiries", "Notices of Motions", and "Question Period". It is not the opinion of the Chair that the Senate would want as part of its procedures and practices a motion which can never be moved.

It seems that a motion for reading the Orders of the Day is in order if moved under the item "Presentation of Petitions" and whether or not debate on another motion is proceeding. The Chair therefore rules against the point of order.

Whereupon, the Speaker's Ruling was appealed.

...
The Senate divided ...
Therefore, the Speaker's Ruling was sustained.

Amendments to Public Bills (rule 5-7(h))

Journals of the Senate, June 21, 1995, pp. 1092-1093:

... [N]o notice is required to deal immediately with amendments to a public bill from the House of Commons. No notice is required at all.

What are we dealing with here? We are dealing with amendments the Senate passed some weeks ago. They are not new amendments. The subject-matter is well known to the Senate. We are prepared, under our Rules, to deal immediately with new amendments coming from the House of Commons. Therefore, it does not appear logical that we should insist on notice to deal with amendments which are from this House in the first place.

Formal or Uncontentious Motions (rule 5-7(p))

Journals of the Senate, April 21, 1988, pp. 2325-2326:

It appears to me that with respect to this motion most of the arguments centered around the logic of the motion.

It is not for the Chair to decide whether or not a motion is logical. For example, if a motion was proposed saying that “if it rains tomorrow the Senate will adjourn at three o’clock”, the Chair would be bound to put such a motion and the Senators would decide on the merits of the motion.

With respect to the procedural problem of attaching a condition to a motion, in this instance the House of Commons is not bound to deal at all with the Senate’s resolution. It appears to me that Senator Flynn is suggesting that if the House will deal with the resolution, certain events would follow which the Senate agrees with. If that is the desire of the Senate, I feel the Chair cannot stand in its way.

The Chair, however, has other procedural concerns about this motion. Rule [5-7(p)] states that no notice is required for “motions of a merely formal or uncontentious character.” It appears that this motion cannot be characterized as merely formal or uncontentious. It therefore requires some advance notice. This shortcoming disturbs the Chair, and it is for this reason that I must rule the motion of Senator Flynn not in order.

Journals of the Senate, June 28, 2005, p. 1064:

... As I understand it, the point of order is with regard to whether the motion of Senator Rompkey to adjourn the sitting to the call of the chair is in order. ...

...

The real question, as I see it, honourable senators, is whether this longstanding practice requires leave, whether it is put in the form of a motion, as Senator Rompkey did in this case, or whether there is request for the unanimous agreement of the Senate to do something such as adjourn to the call of the chair.

In the case of a motion, I have looked at a rule that might have application, that being rule 59 [now rule 5-7], which says:

Notice is not required for:

It then lists a number of steps that can occur in the Senate by way of a motion which... do not require notice. The only subsection ... that might apply to this situation would be (18) [now subsection (p)], which says:

Other motions of a merely formal or uncontentious character.

I will not rule on whether the motion is debatable, but as to whether it is contentious. I think that is evident in that to adjourn to the call of the chair would require a request for agreement of the house by way of a vote. Therefore, I do not believe this matter falls under rule [5-7(p)].

Motions and Inquiries

RULE 5-8

Debatable motions

5-8. (1) Except as otherwise ordered by the Senate, a motion is debatable if it is:

- (a) a substantive motion;
- (b) to amend a motion or to amend an amendment to a motion;
- (c) to adopt a report of a committee;
- (d) for the second reading of a bill;
- (e) to appoint a committee;
- (f) to refer a question, other than a bill, to a committee;
- (g) to instruct a committee;
- (h) for the third reading of a bill;
- (i) for an address to the Governor General not merely formal in character;
- (j) to adopt any element of a bill in Committee of the Whole;
- (k) to reconsider, while a bill is under consideration, any element of the bill already agreed to;
- (l) to adjourn the Senate for an emergency debate;
- (m) to suspend any rule of the Senate;
- (n) for the previous question;
- (o) to amend these Rules;
- (p) for an order of the Senate for any documents not relating to a bill or other matter appearing on the *Order Paper and Notice Paper*; or
- (q) a motion required for the good conduct of the Senate, the maintenance of its authority, the appointment or conduct of its officers, the management of its proceedings, and the fixing of its sitting days or the times of its meetings or adjournments.

Inquiries debatable

5-8. (2) An inquiry is debatable.

Non-debatable motions	5-8. (3) Except as otherwise ordered by the Senate, the question shall be put immediately on all other motions, without debate or amendment.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-8: Rule 62

COMMENTARY

This rule lists the various types of motions that are debatable, except as otherwise ordered by the Senate, and specifies that all inquiries are debatable. Two important distinctions may be made concerning debatable and non-debatable motions: votes on non-debatable motions cannot be deferred (see rules 4-6(2), 5-13(4) and 9-10(1)), and amendments to non-debatable motions are inadmissible (rule 5-8(3)). It may be noted that rule 4-6(2) states that dilatory and procedural motions are decided without debate.

Until 1991, practice in the Senate was that all motions were debatable unless some rule existed to the contrary. Very few motions were designated non-debatable. On June 18, 1991 (see *Journals of the Senate*, pp. 180-181), the present limitation was adopted, specifying that all motions are to be decided immediately without debate, unless specifically recognized as debatable. The current wording of rule 5-8 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 5-8

House of Commons Procedure and Practice, Second Edition, pp. 529-530:

Before 1913, the rules provided for a limited number of matters to be decided without debate; however, the general practice until then had been that all motions were debatable, barring the existence of some rule or practice to the contrary. In 1913, the Standing Orders were amended to specify that all motions were to be decided without debate or amendment unless specifically recognized as debatable in the text of the rule. The Standing Orders therefore list those motions which are debatable and state that all others, unless otherwise provided for in the Standing Orders, are to be decided without debate or amendment.

... As a general rule, every question that is debatable is amendable. Exceptions include motions to adjourn the House for the purpose of an emergency debate, to designate the date and time of a take-note debate, to refer a government bill to a committee before second reading and “That this question be now put” (the “previous question”).

Motions decided without debate or amendment tend to be concerned more with the ordering of business of the House or with the manner in which it is conducted than with the substance of that business.

Speaker’s Rulings on Debatable and Non-Debatable Motions

The rulings below clarify the types of motions that are subject to debate. The Speaker has ruled that a motion for the appointment of a date for second or third reading of a bill is a subsidiary motion to move a

bill forward, but, unlike a motion for the reading of a bill, it is not debatable (April 9, 1992); that the reference of a substantive question to a committee is debatable (December 16, 1996); that a motion to create a special committee that will study a bill is debatable and requires notice (May 9, 2000); and that a message conveying amendments to the Commons is not a motion and so it is not debatable (December 4, 2002).

Appointment of Date for Reading of Bill

Journals of the Senate, April 9, 1992, pp. 799-800:

Honourable Senators, the question was raised yesterday whether or not the motion moved by Senator Di Nino “that Bill C-12 be placed on the Orders of the Day for third reading at the next sitting of the Senate” is a debatable one. ...

Honourable senators, Rule [5-8(1)] describes explicitly which motions are debatable. Rule 63(2) [now see rule 5-8(3)] states that:

“All other motions unless elsewhere provided in these rules or otherwise ordered, shall be decided immediately upon being put to the Senate, without any debate or amendment.”

The motion “that a bill be read the third time on a certain date” is neither a substantive motion nor a dilatory motion. According to our parliamentary authorities, quite clearly it is what is called a “subsidiary motion”. *Beauchesne’s* Sixth Edition, citation 559(4) states:

“Subsidiary motions are used to move forward in different stages of procedure through which they must pass before their final adoption. Motions for the readings of bills are in this class.”

...

Some subsidiary motions are debatable. For example, rule [5-8(1)(d)] allows for debate for the second reading of a bill; rule [5-8(1)(b)] for any amendment; rule [5-8(1)(h)] for the third reading of a bill. However, nowhere in rule [5-8(1)] does one find that a motion for the appointment of a reading of a bill, be it second or third reading, can be debatable. Since rule [5-8(3)] specifies that all other motions not listed in rule [5-8(1)] are to be decided without any debate or amendment, which rules were the basis for my ruling, the motion proposed yesterday by Senator Di Nino regarding Bill C-12 cannot be subject to debate.

The Speaker’s Ruling ... was sustained, on division.

Reference of Substantive Question to Committee

Journals of the Senate, December 16, 1996, p. 790:

Before considering the amendment of Senator Kinsella, it is necessary for me to point out that the motion of Senator Kenny seeks only to refer Bill C-29 to the committee. According to our practices, the motion referring a bill to a committee is now treated as a consequential motion that is automatically moved after a bill has received second reading. The motion of reference regarding Term 17, on the other hand, was a substantive motion independent of any other consideration. The two cases are not really comparable to each other.

According to my understanding of rule [5-8(1)(f)] and [5-8(3)], a motion referring a bill is not debatable or amendable while a motion referring any other kind of question, such as the substantive motion on Term 17, is both debatable and amendable. Rule 62(1)(i) [now see rule 5-8(1)(f)] states that “the reference of a question other than a bill to a standing or special committee” is a debatable motion. Rule 62(2) [now see rule 5-8(3)] explains that “all other motions, unless elsewhere provided in these rules or otherwise ordered, shall be decided immediately upon being put to the Senate, without any debate or amendment.”

Consequently, the proposition of Senator Kinsella must be made as a separate substantive motion requiring notice, which is the basic point that Senator Corbin raised. It cannot be moved as an amendment to the motion to refer the bill to committee and is out of order.

Motion to Create Special Committee to Study a Bill

Journals of the Senate, May 9, 2000, p. 576:

As everyone who spoke on this point last Thursday seemed to acknowledge, a motion to create a special committee is debatable. In fact, this is based on Rule [5-8(1)(e)] which explains that a motion for the appointment of a standing or special committee is debatable. Senator Hays went further to point out that under the terms of Rule 93 [now see rule 12-10(1)], the Senate “may appoint such special committees as it deems advisable and may set the terms of reference and indicate the powers to be exercised and the duties to be undertaken by any such committee.”

However, the motion to refer a bill to one committee or another following second reading is neither debatable nor amendable according to Rules [5-8(1)(f)] and [5-8(3)]. This is because a motion of reference to a committee is what might be classed a procedural motion. It follows automatically as a consequence from the adoption of the second reading motion of the bill.

The only opportunity, therefore, for a bill to be referred to a special committee or a legislative committee, which is also permitted under our Rules, is to create that committee by a separate debatable motion. Moreover, as I have attempted to explain, that motion must be adopted prior to the decision on second reading of the relevant bill. Otherwise, under our current Rules, it will not be possible to send the bill to that committee because it does not exist. My understanding of this procedure seems to be confirmed by several precedents.

Message Not Open to Debate

Journals of the Senate, December 4, 2002, pp. 287-289:

Messages of this kind conveyed from the Senate to the House of Commons are routine. Whenever the Senate has amended a Commons bill, the message sent by the Senate to the House of Commons identifies the amendments and seeks its concurrence. So far as I have been able to determine, these messages are not the object of a debate. I can only assume that this is because, as I have already explained, the message itself is not a motion. Certainly it is not listed as a debatable motion under rule [5-8] of the *Rules of the Senate*.

...

... That being said, it is possible for Senators to raise points of order on the content of the message if there is any suspicion as to a factual or procedural error in it. However, with respect to the claim that

the message is a debatable motion, it is my ruling that the point of order raised by Senator Kinsella is not substantiated. Accordingly, the message that I read yesterday is in order and will be sent to the House of Commons forthwith.

RULE 5-9

Preambles – restriction **5-9.** Inquiries and motions, except a motion for a resolution to amend the Constitution of Canada, shall not include a preamble.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-9: Rule 29

COMMENTARY

While preambles may be included in bills, rule 5-9 prohibits their use in motions or inquiries, unless a motion is for a resolution to amend the Constitution of Canada.

A rule adopted on December 17, 1867, stated: “No motion prefaced by a written preamble is received by the Senate” (rule 30). The wording was amended on December 10, 1968 (effective on August 1, 1969), and once again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). The provision for permitting a preamble in a motion for a resolution to amend the Constitution was added in 2012 to take into account the consistently followed practice of including a preamble in such motions.

RELATED CITATIONS AND EXTRACTS – RULE 5-9

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 317:

Instances may be found in the Commons’ journals where questions are prefaced by a preamble, but that form is obviously inconvenient, and not in conformity with the correct usage of either the Canadian or the English parliament.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, p. 174:

§565. A motion should be neither argumentative, nor in the style of a speech, nor contain unnecessary provisions or objectionable words. It is usually expressed in the affirmative, even when its purpose and effect are negative.

House of Commons Procedure and Practice, Second Edition, p. 529:

... While examples may be found of motions with preambles, this is generally considered out of keeping with usual practice. ...

RULE 5-10

Withdrawal or modification of a motion or an inquiry

5-10. (1) A Senator who has moved a motion or presented an inquiry may, with the leave of the Senate, withdraw or modify it.

Withdrawal of notice of a motion or of an inquiry

5-10. (2) A Senator who has only given notice of a motion or of an inquiry may withdraw the notice without leave when the item is called.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-10(1): Rule 30

Rule 5-10(2): New provision

COMMENTARY

When a motion or inquiry is on notice, the senator who gave notice can withdraw it without leave by indicating so when the item is called (see, for example, *Debates of the Senate*, November 15, 2007, p. 237, and March 4, 2008, p. 909). Such a withdrawal is not recorded in the *Journals of the Senate*.

When a motion has been moved by a senator or debate on an inquiry has started, the leave of the Senate is required to withdraw or to modify the item. This is because once debate has commenced on an item, it is in the possession of the Senate.

On December 17, 1867, the Senate adopted the following rule: “Any Senator who has made a Motion, may withdraw the same by leave of the Senate, such leave being granted without a negative voice” (rule 29). The wording was altered on May 2, 1906 (see *Journals of the Senate*, pp. 136-137), on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). Rule 5-10(2) was an addition made with the 2012 changes.

RELATED CITATIONS AND EXTRACTS – RULE 5-10

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 299:

A motion on the order paper must be in accordance with the notice in the votes; and, should a member desire to substitute another, or alter its terms, he must first obtain the leave of the house.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 175-178:

§566. (8) A Member cannot be forced to proceed with a motion.

...

§586. (1) The Member who has proposed a motion may withdraw it only with the unanimous consent of the House.

(2) An amendment may be withdrawn with the unanimous consent of the House, but neither a motion nor an amendment can be withdrawn in the absence of the Member who moved it.

§587. Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn or negatived, as the question on the amendment stands before the original motion. *May*, p. 385.

§588. In asking leave to withdraw a motion, a Member is not entitled to make a speech.

§589. A Member who has been given leave to withdraw an amendment may move it again at a later date. *Journals*, April 7, 1941, p. 260.

§590. Occasionally a motion or amendment is, by leave, withdrawn, and another motion or amendment substituted, in order to meet the views of the House as expressed in debate; but that course can only be taken with the consent of the House.

House of Commons Procedure and Practice, Second Edition, p. 550:

As long as a motion is not yet in the possession of the House or placed in the Order of Precedence, it remains a notice of motion and the sponsor may effect its withdrawal unilaterally, without seeking the consent of the House. To do so, the Member either requests in writing that the Clerk withdraw it or rises in the House to withdraw the notice orally. The item is then removed from the *Notice Paper* or the *Order Paper*. Alternatively, if the sponsor declines to move the motion when the order is called, it is dropped from the *Order Paper*. ...

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 402:

A Member who has made a motion can withdraw it only by leave of the House, granted without any dissentient voice. This leave is signified, not upon question but by the Speaker taking the pleasure of the House. He asks, "Is it your pleasure that the motion be withdrawn?" If no one dissents, the Speaker says, "Motion by leave withdrawn". However, if there is any objection, or if a Member rises to continue the debate, the Speaker must put the question at the end of the debate as, even if a dissentient Member no longer objects, the motion can no longer be withdrawn. An amendment can be withdrawn in the same way, but neither a motion nor an amendment can be withdrawn except by the Member who moved it. It is, however, the practice for a member of the Government to withdraw a motion in the absence of the Member (also a member of the Government), who moved it. Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn, or negatived, since the question on the amendment stands before the main question.

Speaker's Ruling: Request for Withdrawal of Bill

Journals of the Senate, December 8, 1998, p. 1171:

Last Tuesday, December 1, during debate on the motion to adopt the twelfth report of the Standing Committee on Legal and Constitutional Affairs respecting Bill S-15 and the motion in amendment of Senator Grafstein, Senator Lynch-Staunton sought leave to withdraw the bill. In making his request,

he expressed some reservation about his right to do so. For my part, I, too, had certain doubts about the acceptability of the request given that the Senate was in fact debating the report on the bill rather than the bill itself. Senator Kinsella correctly pointed to the novel aspects of this proceeding. Subsequently, I agreed to take the matter under advisement.

...

According to *Beauchesne* 6th edition, citation 587 at page 178, a motion cannot be withdrawn by leave whenever there is also an amendment to be disposed of since the question on the amendment stands before the original motion. In this particular case, what we are dealing with now is the report of the Standing Committee on Legal and Constitutional Affairs and the amendment of Senator Grafstein to refer the bill back to the Committee. Bill S-15 itself is not actually before the Senate for debate. As I understand it then, it would be necessary to dispose of Senator Grafstein's amendment and the report, before the Senate would be debating the bill. Until that happens, I do not believe that Senator Lynch-Staunton is entitled to make a request to withdraw the bill.

RULE 5-11

Motions to be seconded	5-11. A motion that has not been seconded shall not be debated and the Speaker shall not put the question on it.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-11: Rule 31

COMMENTARY

A basic tenet of parliamentary procedure in the Senate is that a motion or an amendment will not be put by the Speaker if it has not been seconded. A motion or an amendment which has been moved by a senator but not put by the Speaker because there is no seconder is not recorded in the *Journals of the Senate* (compare, for example, *Journals of the Senate* of March 3, 2009, with the *Debates of the Senate* for the same date at p. 290). There are certain exceptions to this rule: since an inquiry is never actually moved for adoption, there is no requirement for a seconder; and rule 12-20(1) provides that a seconder is not required for proceedings in committee. The appeal of a Speaker's ruling also does not require a seconder (although for a recorded vote two senators must stand – see rule 9-3).

If the senator moving a motion does not identify a seconder, the Speaker will name one when putting the motion to the Senate before debate starts. The seconder, who must be present when first identified as such, is typically a member of the same party as the senator moving the motion. The senator identified as the seconder can decline to do so, although this is rare.

The rule was first adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137) and was originally worded: "A motion or amendment not seconded cannot be debated or put from the Chair" (rule 31). The wording was amended on March 1, 1976, and on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 5-11

Bourinot's Parliamentary Procedure, Fourth Edition, p. 297:

If a motion is not seconded no entry appears in the Votes and Proceedings as the house is not in possession of it.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 137-138, 172:

§465. (1) The Member who makes a motion may give the name of a seconder who will, if necessary, indicate consent ...

(2) While a Government Order must be moved by a Minister, it may be seconded by any Member of the House. *Debates*, January 25, 1983, p. 22176; January 31, 1985, p. 1845.

...

§555. The seconding of a motion does not imply support of the principle of the motion.

RULE 5-12

No motions on resolved questions, five days' notice for rescission

5-12. Except as otherwise provided, a motion shall not be moved if it is the same in substance as any question that has already been adopted or defeated during the same session, unless the decision has been previously rescinded by motion following a notice of five days.

EXCEPTIONS

Rule 5-5(i): One day's notice for certain motions

Rule 5-7(n): No notice required

Rule 10-5: Reconsideration of clauses of a bill

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-12: Rule 63

COMMENTARY

Rule 5-12 may generally be referred to as the “same question rule,” which is that a question already decided during a session may not be brought up again during the same session. It is a very old and important principle of parliamentary procedure. On April 2, 1604, the English House of Commons passed a resolution which stated “That a question being once made and carried in the affirmative or negative cannot be questioned again, but must stand as a judgement of the House” (U.K. House of Commons *Journals*, Vol. I, p. 162). On June 1, 1610, the Commons applied the same principle to the passage of bills when it adopted the following motion: “That no bill of the same substance be brought in the same session” (U.K. House of Commons *Journals*, Vol. I, p. 434). This rule was first adopted by the Senate on March 31, 1915.

The same question rule has, however, a somewhat limited application with regard to the motions proposed during the passage of a bill in the Senate. For example, certain amendments, such as a six-month hoist, may be proposed at both second and third readings. As well, rule 10-5 provides that, “At any time before a bill is passed, a Senator may move for the reconsideration of any clause already carried.” However, rule 10-9 clearly states that “When a bill originating in the Senate has been passed or defeated, no new bill with the same object shall originate in the Senate during the same session.” The *Interpretation Act* specifically provides that an amending or repealing act can be proceeded with in the same session (s. 42(2), see related citations under rule 10-9).

A certain level of flexibility exists when interpreting what constitutes the “same question.” As explained by the Speaker in a 1991 ruling, “what defines the term ‘the same in substance’ is a question of judgement.”

Rule 5-12 provides that a motion may be proposed to rescind an order, resolution or decision of the Senate with five days’ notice. However, there are no known cases of this rule being used, with rescission having taken place with leave and without a recorded vote.

Prior to the rule changes of 2012, the adoption of a motion to rescind required at least two-thirds of the senators present to vote in favour. In 2000, the Speaker commented on an apparent conflict between rule 65(5) [now rule 9-1], which stated that “Questions arising in the Senate shall be decided by a majority of voices,” and then rules 63(2) and 58(2), which set a two-thirds majority requirement for certain items, including rescission (see *Journals of the Senate*, June 13, 2000, pp. 696-699). Again in 2009, the chair commented on how this requirement for an exceptional majority would not apply to committees (see *Journals of the Senate*, September 16, 2009, p. 1235). In both cases, it was suggested that this issue could benefit from consideration by the Standing Committee on Rules, Procedures and the Rights of Parliament. As part of the 2012 revisions to the Rules, the wording of the rule was amended on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 5-12

Hatsell’s Precedents of Proceedings in the House of Commons, Vol. II, p. 132:

That the same question, which has been once proposed and rejected, should not be offered again, in the course of the same session, seems to be a rule that ought to be adhered to as strictly as possible, in order to avoid surprise, and that unfair proceeding, which might otherwise sometimes be made use of. It however appears, from several of the cases under this title, as well as from every day’s practice, that this rule is not to be so strictly and verbally observed, as to stop proceedings of the House: It is rather to be kept in substance than in words; and the good sense of the House must decide, upon every question, how far it comes within the meaning of the rule. It clearly does not extend to prevent the putting the same question in the different stages of a Bill; nor to prevent the discharging of orders that have been made, though made on great deliberation as appears from the instances on the 14th and 17th of January, 1766, on discharging the order made for printing the American papers. But it has been always understood to exclude contradictory matters from being enacted in the same session; and it was upon this principle that it was thought necessary to make the short prorogations in 1707 and 1721.

J. Redlich, *The Procedure of the House of Commons*, Vol. III, p. 36:

It is necessary, finally, to refer to one principle which is of vital importance to the course of business and to the whole procedure of the House. *A motion or bill which the House has given a decision may not be brought before the House again in the same session.* The rule is of great importance from a constitutional standpoint. It protects the judgement of the House on any point from being attacked in the same session as that in which it is given, and thus provides for some amount of stability in legislation. To a certain extent it is analogous to the rule of law which prevents *res judicatae* from being tried over again. Of course, it only covers one session, a limitation which is but reasonable. In the constant flux of a nation's life the conditions which call for legislative action are always changing: each session, each year, has, more or less, its own problems to solve.

Bourinot's Parliamentary Procedure, Fourth Edition, p. 294:

When a question has been once sufficiently considered the Senate will not agree to its renewal. In 1880, a senator rose and gave the usual notice of proposed resolutions, but objection was at once taken on the ground that the matter had been already disposed of otherwise. The Senate finally resolved that "the notice should not be received by the clerk," inasmuch as the subject-matter thereof "had already been considered during the present session and referred to the committee on contingent accounts".

In 1915, the Senate established a rule on this subject. ... Such rescinding cannot be had without five days' notice, and at least two thirds of the senators present vote in favour of recession. Mere irregularities or mistakes may, however, be corrected on one day's notice. ...

Page 545:

It has been shown that it is a well established rule of parliamentary practice that no question or motion can regularly be offered upon which the judgment of the house has been expressed during the current session. But while this rule is recognized as a general one, it is limited in its application as respects bills. In reference to amendments to bills, Hatsell lays down the uniform practice which still obtains in the Canadian and English Parliaments: "That in every stage of a bill, every part of the bill is open to amendment, either for insertion or omission, whether the same amendment has been, in a former stage, accepted or rejected". But if an amendment has been rejected in a committee of the whole on a bill, it cannot be proposed again during the pendency of the bill in the committee.

House of Commons Procedure and Practice, Second Edition, pp. 582-583:

A decision once made cannot be questioned again but must stand as the judgement of the House. Thus, for example, if a bill or motion is rejected, it cannot be revived in the same session, although there is no bar to a motion similar in intent to one already negatived, but with sufficient variance to constitute a new question. This is to prevent the time of the House being used in the discussion of motions of the same nature with the possibility of contradictory decisions being arrived at in the course of the same session. It is not in order for Members to "reflect" upon (i.e., to reconsider or go back upon) votes of the House, and when this has occurred, the Chair has been quick to call attention to it. Members have also occasionally called attention to the rule.

The House may reopen discussion on an earlier decision (i.e., a resolution or an order of the House) only if its intention is to revoke it; this requires notice of a motion to rescind the resolution or discharge the order, as the case may be. This allows the House to reconsider an earlier resolution or order and, if the original resolution or order is in fact rescinded or discharged, the way is then clear for the House to make a second decision on the same question. A number of instances of orders of the House discharged have concerned arrangements made by the House for the scheduling of its sittings, or for the withdrawal of bills and motions.

Odgers' Australian Senate Practice, Thirteenth Edition, pp. 229-231:

A rescission properly so called has the retrospective effect of annulling or quashing a decision from the time that decision was made as if it had never been made. Rescission motions are therefore rare: it is seldom the intention to achieve that effect.

It is not necessary to rescind a resolution or order if the intention is simply to cease the operation of the resolution or order prospectively; this can be done by a new resolution or order and does not require a rescission motion.

...

... [T]he same question rule, is seldom applied, because it seldom occurs that a motion is exactly the same as a motion moved previously. A motion moved in a different context ... is not the same motion even if identical in terms to one already moved. Even if the terms of a motion are the same as one previously determined, because of elapse of time it almost invariably has a different effect because of changed circumstances and therefore is not the same motion. There may also be different grounds for moving the same motion again.

Speaker's Rulings on the "Same Question Rule"

There have been numerous occasions when the Speaker has been called upon to clarify the "same question rule" found in rule 5-12. The Speaker has ruled that the texts of motions must be identical for the rule to apply (June 18, 1985, and November 19, 1998) and that even the passage of time can make a text receivable (December 6, 1995). When confronted with bills that were substantially the same, the Speaker ruled that having passed the first bill, it was not then in order to continue with the second when the subject matter was the same in substance (February 27, 1991, and March 23, 2004). In the 2004 case, the Speaker did raise a note of caution regarding bills from the Commons and the operation of rule 10-9, which only applies to bills originating in the Senate. The Speaker has also ruled that until a decision is taken on one of two bills that are substantially the same, both bills can be considered (December 17, 1992); that if a bill is withdrawn, it is in order to introduce another bill that is substantially the same because no decision was taken on the first bill (March 16, 1999); that for bills to be considered substantially the same, they must have the same purpose and achieve it through the same means (November 23, 2005); that the adoption of a report on the pre-study of a bill does not bring the same question rule into operation (December 17, 2001); and that the fact an amendment is identical to a clause in another bill is not sufficient argument to invoke the same question rule (October 29, 2003).

Identical Texts

Journals of the Senate, June 18, 1985, p. 536:

... Our parliamentary jurisprudence requires that we have identical texts for rule [5-12] to apply. ...

Journals of the Senate, November 19, 1998, pp. 1079-1080:

In this particular case, there seems to be little dispute about the fact that the motion now standing on the *Order Paper* in the name of the Leader of the Opposition is virtually word-for-word identical to the motion adopted by the Senate on June 18. Indeed, this fact is acknowledged by the use of quotation marks following the introductory statement of reaffirmation. That being the case, it would seem that the “same question” rule is applicable. The Leader of the Opposition contends, however, that due to changed circumstances, the request to have the Senate reaffirm its decision is appropriate. I note, however, that these circumstances are not incorporated into the motion proposed by the Leader of the Opposition. Instead, the motion simply seeks to reiterate the previous decision.

... Consequently it is my decision that the point of order challenging the right to have the matter brought before the Senate again is well founded. To allow the motion to be put before the Senate would contravene the letter and intent of rule [5-12] and the established practices of this House. Motion No. 84 should be discharged from the *Order Paper*.

Passage of Time

Journals of the Senate, December 6, 1995, pp. 1361-1362:

I believe the original notice of motion was given on November 2. It is now December 6. Therefore, considerable time has elapsed since the first notice was given. The vote was given two weeks ago. It seems to me that the time difference in a circumstance such as this is a valid consideration. It is conceivable that, as time marches on, Senators may adopt a different point of view from what they had two or three weeks ago.

That is a decision for the Senate to make, not the Speaker.

Substantially the Same Bills

Journals of the Senate, February 27, 1991, pp. 2265-2266:

Although Bill S-7 and Bill C-43 have different objectives on the subject of abortion, the Chair feels, in that both deal specifically with amendments to Section 287 of the *Criminal Code*, a strong case may be made that they are “the same in substance.”

The Chair also notes that in the course of its deliberations of Bill C-43, amendments were proposed by the Honourable Senator Haidasz which resembled very closely the objectives and provisions of Bill S-7. These amendments were debated and rejected by the Senate on recorded divisions on January 31, 1991, the same day that the Senate made its final decision of Bill C-43. I refer Honourable Senators to the *Minutes of the Proceedings of the Senate* at pages 2232-2238 with respect to these amendments and their disposal.

It would seem to the Chair that if ever Rule [5-12] were to be invoked, now would be the time. I recognize that what defines the term “the same in substance” is a question of judgement and that there may be Honourable Senators who disagree with my opinion and I respect that. The issue itself is an emotional one and feelings understandably run high. The Senate has pronounced itself this session on the question of abortion. Given that the substance of Bill S-7 has been considered and disposed of during the debate on Bill C-43, it is not in order to proceed any further with Bill S-7. The order for second reading should be discharged and the Bill removed from the Senate Order Paper.

After debate,

By unanimous consent, the right to appeal the Speaker’s Ruling was reserved until the next sitting of the Senate.

(Ruling sustained on division the following day)

Journals of the Senate, March 23, 2004, pp. 340-343:

On Thursday, March 11, Senator Kinsella raised a point of order to have his bill, Bill S-7, struck from the *Order Paper*. Citing first the British parliamentary authority, *Erskine May*, and then subsequently a precedent that had occurred in the Senate some years ago, Senator Kinsella explained that when a decision has been made with respect to one of two bills on the *Order Paper* dealing with the same subject matter, it is not possible to proceed with the second bill. In this case, Bill C-5, setting the effective date of the representation order of 2003, received royal assent March 11. Bill S-7, dealing with the same subject as Bill C-5, still remains on the *Order Paper* and Senator Kinsella has now proposed that I as Speaker discharge the bill.

... The principle of the “same question rule,” also forms a part of the *Rules of the Senate*. Rule [10-9], for example, provides that “When a bill originating in the Senate has been passed or negatived a new bill for the same object shall not afterwards be originated in the Senate during the same session.” In addition, rule [5-12] states that “A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded ...”

The purpose of rule [10-9] is to prevent the consideration of a Senate bill that has substantially the same object as another Senate bill that had already been adopted or rejected during the same session. Rule [10-9] applies strictly to bills that originate in the Senate. It does not apply to bills that come from the “other place”. Rule [10-9], therefore, does not apply to the present circumstances since Bill C-5 did not originate in the Senate.

Erskine May, unlike *Odgers* does not seem to observe the distinction provided in Senate rule [10-9]. In fact, it may be that neither *Erskine May* nor *Odgers* are appropriate guides to our practices. ...

...

With respect to this point of order, the Senate has adopted a C-bill and it is now left with the task of discharging a similar S-bill from the *Order Paper*. Senator Robichaud’s concern, however, has to do with the possibility of the Senate taking a decision to adopt an S-bill that might block consideration of a C-bill. A solution for the future might be to propose the withdrawal of the S-bill in order to allow unimpeded consideration of the C-bill. The Senate did something similar to this in October 2001 when it unanimously agreed to withdraw Senator Lynch-Staunton’s bill on royal assent in order to

permit the introduction a similar bill sponsored by the Leader of the Government. Alternatively, it could be argued that rule [10-9] recognizes an implicit exception and that C-bills do not come under the “same question” prohibition if it thwarts the Senate’s ability to fulfill its obligation as the “Chamber of sober second thought” to review the legislation that comes to it from the “other place”.

In the end, the boundaries of the same question rule can only be drawn when the Senate is confronted with a concrete event. ...

The case that is now before the Senate is broadly similar to the precedent of 1991. In both instances, the Senate completed consideration of a Government sponsored bill received from the House of Commons before voting on the second reading motion of a Senate bill. ...

In passing Bill C-5 at third reading, the Senate did pronounce itself on the effective date of the representation order of 2003. As such, it would be inappropriate to now proceed on Bill S-7 since, in my view, it does deal with the same object as Bill C-5. Based on this assessment, I agree with Senator Kinsella and it is my ruling that Bill S-7 be discharged from the *Order Paper*.

Journals of the Senate, December 17, 1992, pp. 1673-1675:

... Senator Frith raised a point of order concerning the procedural acceptability of continuing consideration of Bill S-15, An Act to amend the Canadian Human Right Act (sexual orientation), introduced by Senator Kinsella on December 1, 1992. ...

In his remarks, Senator Frith noted that a similar bill had been introduced in the House of Commons. It is Bill C-108, An Act to amend the Canadian Human Rights Act and other Acts in consequence thereof, introduced by the Minister of Justice on December 10, 1992.

...

It should be noted, however, that the Senate has not yet pronounced itself, in either the affirmative or the negative on Bill S-15, which is at second reading, or Bill C-108 which is in the other place. The question of the applicability of citation 624(3) of Beauchesne’s, and of Rule [5-12] is hypothetical. I therefore cannot rule that Bill S-15 be withdrawn.

Journals of the Senate, March 16, 1999, p. 1352:

... As soon as I saw the bill coming back on the *Order Paper*, I myself wondered whether or not it was in order. I consulted the rules, and our own rule 63(1) [now see rule 5-12] is very clear. It states:

... has been resolved in the affirmative or negative ...

That has not happened, of course. What has happened is that the bill was withdrawn.

I then consulted *Erskine May*, which states clearly:

... but if a bill is withdrawn after having made progress, another bill with the same objects may be proceeded with.

Based on that, the bill was withdrawn with leave of the Senate. It was not proceeded with. I rule that the bill is in order.

Journals of the Senate, November 23, 2005, pp. 1308-1309:

The point of order that has been raised deals with the suggestion that Bill C-259 which deals with the elimination of the excise tax on jewellery is substantially the same as Bill C-43, a budget implementation bill that was enacted by Parliament last June. In order to make the case, it should be possible to identify the subject matter or clauses in both bills that address the same subject.

Bill C-43, which is now Chapter 30 of the Statutes of Canada 2005, contains an amendment to Schedule I of the *Excise Tax Act* that will phase out the excise tax on jewellery through a series of rate reductions over the next four years. ...

Of particular interest, for purposes of this point of order, is the tax reduction that will be given to clocks. Chapter 30 specifies that the phase-in tax reduction will apply to the following items when their value exceeds fifty dollars:

Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for use of the blind.

Bill C-259 is a one clause bill that provides an immediate 10 per cent reduction for:

Clocks adapted to household or personal use, except those specially designed for the use of the blind ...

if their sale price or duty paid value exceeds fifty dollars.

There is little doubt that these two clauses resemble each other, but they are also different in certain critical respects. The question to be determined is whether they are sufficiently the same to disallow further consideration of Bill C-259 or whether they are sufficiently different to allow Bill C-259 to proceed.

In seeking to answer this question, it should be noted that practice has changed over the years to accommodate the reality of extended sessions that can continue through several years. This has had the consequence of requiring a greater degree of similarity between two items before a bill or other business will be ruled out of order on the basis of the "same question rule".

... [In a ruling on November 2, 1989, Commons Speaker Fraser explained] that for two or more items to be substantially the same "they must have the same purpose and they have to achieve their same purpose by the same means." I am prepared to take this approach as a guide to the consideration of similar items whether they are sponsored by the Government or by Senators.

In taking this position, I am also mindful of British practice which is very clear. *Erskine May* states at page 580 of the 23rd edition: "There is no rule against the amendment or the repeal of an Act of the same session."

Bill C-259 amends the application of the excise tax on clocks at an accelerated speed in comparison to the proposal enacted through the budget implementation bill adopted earlier this year. The means, therefore, are not the same. If the Senate adopts this bill and it is made law by royal assent, it will have the effect of changing the rate of tax reduction now in place through the enactment of Bill C-43. I do not regard this measure to be the same, based on the criteria established by the decision of Speaker Fraser. The same end is not achieved by the same means. The two measures are substantially different and I am prepared to rule that debate on Bill C-259 can continue.

Pre-Study of Bill and Same Question Rule

Journals of the Senate, December 17, 2001, pp. 1157-1158:

... [I] believe that the Senate has never treated pre-study as a procedure subject to the same question rule. Pre-study has been a feature of Senate practice for more than thirty years. ...

Applying the logic of Senator Kinsella strictly to the circumstances now before us, it seems to me that the problem is far greater than the one he made out. If the same question rule is to be applied vigorously, it affects more than just the amendment of Senator Lynch-Staunton and the third reading of Bill C-36. It affects the entire proceedings of the bill from the moment it was introduced in the Senate. The first report of the Special Committee, it could be argued, dealt with the subject matter of Bill C-36 and made numerous recommendations that were subsequently adopted by the Senate. Thus, the Senate has pronounced itself with respect to the entire contents of what is now Bill C-36. Under the terms of the same question rule, understood in this restrictive way, the Senate should not reconsider Bill C-36 at all. I do not believe, however, that this is the intent of the rule.

...

I would concede that most reports dealing with pre-study have not been adopted by the Senate. This is because the vast majority of these pre-study reports have been tabled. With respect to Bill C-36, the first report of the Special Committee was tabled; however, it was subsequently adopted by motion from the floor. Does this make a difference? In my view, for the reasons that I have already given, it may call into question the same question rule, but it does not actually constitute a violation of it. ...

It is my ruling that a case has not been made on the point of order. Rule [5-12] does not apply to Bill C-36 and there is no need to rescind any decision of the Senate.

Amendment Negated in One Bill Same as Clause in Another

Journals of the Senate, October 29, 2003, p. 1267:

The same question rule has been invoked to prevent consideration of Bill C-41 in its present form because one [clause] is identical to a defeated amendment to Bill C-25. The same question rule cannot be used this way. It would be too restrictive and would prevent the Senate from properly carrying out its work. Rule [5-12] states that “a motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative ...” Clause 30 is not a discrete question; it is a part of Bill C-41. Unlike the defeated

amendment to Bill C-25, clause 30 has not been proposed in the Senate either as a motion or an amendment; it is part of a bill from the House of Commons. Moreover, there is no doubt that Bill C-41 is not the same “in substance” to Bill C-25 or to the defeated amendment. Bill C-41 has been duly passed by the House of Commons and has been placed before the Senate for its consideration. The task of the Senate is to review this bill in accordance with established practices and procedures.

It is my ruling that there is no point of order in this case and the Senate should now proceed to the second reading of Bill C-41.

Motions to Adjourn the Senate

RULE 5-13

Motion to adjourn always in order **5-13.** (1) Except as provided in subsections (2) and (5) and elsewhere in these Rules, or as otherwise ordered by the Senate, the motion “that the Senate do now adjourn” shall always be in order.

EXCEPTIONS

Rule 4-2(7): No motions during Senators’ Statements

Rule 7-3(1): Procedure for debate on motion to allocate time

Rule 7-4(1): Government order to which time is allocated

Rule 8-3(4): No motions during request for emergency debate

Rule 9-10(7): No adjournment until after deferred vote

Rule 13-7(6): Continuation of debate on motion on case of privilege beyond ordinary time of adjournment on first day of debate

Rule 16-1(4): Adjournment delayed after receipt of message

Who may move motion to adjourn **5-13.** (2) A motion to adjourn the Senate may only be moved by a Senator who is recognized to speak in a debate, and may not be moved on a point of order.

Motion to adjourn put immediately **5-13.** (3) Except as otherwise provided, the question on a motion to adjourn the Senate shall be put immediately, without debate or amendment.

EXCEPTION

Rule 8-4(1): Adjournment motion for emergency debate

Standing vote on motion to adjourn **5-13.** (4) A standing vote on a motion to adjourn the Senate shall not be deferred and shall be taken in accordance with the ordinary procedure for determining the duration of bells.

More than one motion – restriction **5-13.** (5) No other motion to adjourn the Senate shall be in order during the same sitting unless an intermediate proceeding occurred after the previous such motion.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 5-13: Rule 15

COMMENTARY

When the Senate has completed its business for the day as set out on the *Order Paper and Notice Paper*, the Deputy Leader of the Government usually moves a motion to adjourn the Senate. However, rule 5-13 provides that a motion to adjourn the Senate is always in order and can be moved at any time, unless otherwise prohibited by the Rules or by an order of the Senate. For instance, it is not permitted to move a motion for the adjournment of the Senate during Senators' Statements (see rule 4-2(7)), during debate on motions to allocate time (see rule 7-3(1)), during debate on a time-allocated government order (see rule 7-4(1)), if a deferred vote is to take place later that day (see rule 9-10(7)), and after receipt of a message fixing the time for a ceremony (see rule 16-1(4)).

Rule 5-13 also specifies that:

1. a senator can only move this motion if he or she has the floor in debate and not on a point of order (rule 5-13(2));
2. a motion to adjourn the Senate is non-debatable (unless moved for an emergency debate under rule 8-4(1)), and the Speaker must put the question immediately (rule 5-13(3)); and
3. if a standing vote is requested on a motion to adjourn the Senate, it cannot be deferred, and the bells to call in senators may ring for up to one hour (rule 5-13(4)).

If the Senate defeats a motion to adjourn the Senate, the same motion cannot be moved again until some intermediate proceeding has taken place (see rule 5-13(5)). An intermediate proceeding is defined in the Terminology of the Rules in Appendix I as any item, other than debate, that is recorded in the *Journals of the Senate*. This definition reflects standard parliamentary practice.

Rule 6-8 also provides that “during debate on a question, no other motion shall be received unless it is a motion ... (f) to adjourn the Senate.” Motions to adjourn are dilatory, whose purpose is often to postpone or delay consideration of a question. They are superseding motions in that they take priority over and interrupt the business that is before the house. Notice is not required.

All orders of the day that are not disposed of before the adjournment of the Senate will stand on the Order Paper for the next sitting (see rule 4-15(1)). This would include any item under debate at the time a motion to adjourn the Senate is adopted (see rule 3-5(2)).

When the Senate adjourns for more than a day (excluding weekends), a separate motion setting the date and time of the next sitting must have been adopted before adjournment. Motions concerning sitting days and times, or adjournment periods, require one day's notice and are debatable (see rules 5-5(g) and 5-8(1)(q)). They frequently occur on Thursday afternoons when the Senate chooses to resume sitting only on the following Tuesday (see, for example, Speaker's ruling, *Journals of the Senate*, June 28, 2005, pp. 1064-1065). Without such a motion, the Senate will automatically adjourn until the next sitting day at the time provided under rule 3-1.

Motions to adjourn debate are dealt with under rule 6-10. Pursuant to rule 12-32(3)(g), a motion to adjourn the committee is not permitted in a Committee of the Whole.

Rule 5-13 was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the wording was amended on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 5-13

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 322-323:

A motion to adjourn (except when made for the purpose of discussing a definite matter of urgent public importance) shall always be in order, but no second motion to the same effect shall be made until after some intermediate proceeding shall have been had. The term "intermediate proceeding" means a proceeding that can properly be entered in the journals. The true test is that if any parliamentary proceeding takes place, the second motion is regular, and the clerk ought to enter the proceedings to show that the motion in question is regular. It is usual to alternate motions for adjournment of house and debate when a question is under consideration. In case there is a substantive motion of adjournment before the house, and it is negatived, some proceeding must be had in order to render a second motion to the same effect regular. A message from the governor-general followed by other proceedings would be sufficient to render a second motion of adjournment valid. The rule applies literally to the adjournment of the house, and not of the debate, but it is usual and convenient to make an entry in the journal between two motions of the latter character.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 112:

§384. (3) A motion to adjourn the House may not have conditions attached, otherwise it becomes a substantive motion which may be moved only after notice.

House of Commons Procedure and Practice, Second Edition, p. 402:

There are times when the House may wish to set an adjournment time temporarily that is earlier than the time prescribed in the Standing Orders. The House may do this by adopting a special order to this effect. ...

Pages 545-546:

... A motion to adjourn the House is in order when moved by a Member who has been recognized by the Speaker to take part in debate on a motion before the House, or to take part in business under Routine Proceedings. A motion to adjourn the House is not in order if conditions are attached to the motion (e.g., where a specific time of adjournment is included), since this transforms it into a substantive motion which may only be moved after notice. In addition, a motion to adjourn the House may not be moved in the following circumstances:

- during Statements by Members or Question Period;
- during the questions and comments period following a speech;
- on a point of order;
- by a Member moving a motion in the course of debate (the same Member cannot move two motions at the same time);
- during the election of the Speaker;
- during emergency debates or the Adjournment Proceedings since, at these times, the House is already considering a motion to adjourn;

Rule 5-13

- on the final allotted day of a supply period;
- during debate on a motion that is the object of closure;
- when a Standing or Special Order of the House provides for the completion of proceedings on any given business before the House, except when moved by a Minister; or
- during proceedings on any motion proposed by a Minister in relation to a matter the government considers urgent.

CHAPTER SIX: RULES OF DEBATE

This chapter describes the rules pertaining to the process and conventions of debate in the Senate. It includes, for example, the manner in which senators are recognized to speak (rule 6-1), the time limits for speeches (rule 6-3), the types of motions allowed in debate (rule 6-8), the right of final reply (rule 6-12) and unparliamentary language (rule 6-13). Generally, the approach regarding debate has been “to interpret the rules in favour of debate by Senators, except when the matter to be debated is clearly out of order” (see *Journals of the Senate*, April 2, 1998, p. 579).

Recognition in Debate

RULE 6-1

Recognition by the Speaker	6-1. Senators wishing to speak shall rise at their assigned place and, when recognized by the Speaker, shall address the Senators.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-1: Rule 32

COMMENTARY

This rule describes the process for senators to be recognized in debate. When the Speaker calls “debate,” senators desiring to speak should rise in their assigned places indicating that they wish to have the floor. The Speaker will recognize one senator to address the Senate, normally alternating between government and opposition sides. The party leaderships may prepare lists of senators who wish to participate in debate as a guide for the chair, particularly for Government Business. However, the Speaker is not obliged to follow such lists and may recognize any senator who catches his or her eye. Once a senator is recognized, he or she speaks directly to other senators, usually using the expression “Honourable senators” or similar phrases. As rule 6-1 indicates, senators address each other when speaking, not the Speaker.

The rule adopted on December 17, 1867, stated: “Every senator desiring to speak is to rise in his place, and address himself to the rest of the senators, and not refer to any other senator by name” (rule 14). The rule was altered slightly on April 6, 1876, by adding the words “rise in his place uncovered” (rule 20). On December 10, 1968, the word “uncovered” was deleted since the concept had become “superfluous” (see *Journals of the Senate*, p. 455, effective on August 1, 1969). The rule was further revised on December 3, 1985 (see *Journals of the Senate*, p. 849), and on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

Under rules 12-32(3)(a) and 12-20(1)(a), senators address the chair in a Committee of the Whole and other committees.

RELATED CITATIONS AND EXTRACTS – RULE 6-1

Bourinot's Parliamentary Procedure, Fourth Edition, p. 332:

Senators and members of the Commons may sit in their places, in their respective houses ... but when they desire to speak they must rise. ... Exception, however, will be made in cases of sickness, or bodily infirmity, when the indulgence of a seat is permitted, at the suggestion of a member and with the general acquiescence of the house. A member suffering from indisposition will also be permitted to hand his motion to another member to read.

In the Commons, a member must address himself to Mr. Speaker. In the Senate, the members address themselves “to the rest of the senators...”

Annotated Standing Orders of the House of Commons, Second Edition, p. 42:

This Standing Order lists three conditions, each of which must be met by any Member wishing to participate in debate. ...

The first two conditions require Members both to stand and to be in their designated place while speaking. These stipulations are a practical necessity and are designed to avoid the difficulties Chair occupants might experience in recognizing Members if each Member were free to speak while seated in a different place every time he or she addressed the House. Exceptions to these conditions have occurred, usually when a Member is ill, injured or disabled. The requirement to be in one's seat does not apply in Committee of the Whole...

The third condition is that Members are required to address the Speaker during debate. In this way Members are perhaps less apt to engage in direct heated exchanges and personal attacks when their comments are made to the Speaker rather than to another Member.

Finally, there is also an unwritten rule requiring a jacket and tie as standard dress for male Members. Successive Speakers have rigourously upheld the dress code, although not indiscriminately. No specific dress code, written or unwritten, exists for female Members.

RULE 6-2

Senators to speak only once **6-2.** (1) Except as provided in subsection (2) and elsewhere in these Rules, no Senator shall speak more than once in any debate.

EXCEPTIONS

Rule 6-5(3): Yielding to another Senator for questions

Rule 6-12(1): Right of final reply

Rule 12-32(3)(c): Procedure in Committee of the Whole

Clarification in case of misunderstanding **6-2.** (2) A Senator may, with leave of the Senate, speak a second time in a debate for no more than five minutes in order to explain any misunderstanding arising from the original intervention. No new matter shall be introduced while explaining the misunderstanding.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-2: Rule 37(1)

COMMENTARY

As a general practice, a senator may only speak once in a debate on a motion, an amendment or an inquiry. The mover of an amendment, having proposed it while speaking to the main motion, is also considered to have spoken to the amendment. If a material part of a speech was misunderstood, the senator may seek leave to speak again, for a maximum of five minutes. In so doing, the senator should not introduce new matters.

There are some notable exceptions to this rule. If a senator yields the floor to allow another senator to ask a question during debate, the senator first recognized will be permitted to respond to the question and the entire exchange is considered to be part of the first senator's time (see rule 6-5(3)). A senator who moves a substantive motion or second reading of a bill, or who initiates an inquiry, may exercise the right of final reply even if he or she has already spoken in debate (see rule 6-12(1)). Finally, in a Committee of the Whole, senators may speak any number of times (see rule 12-32(3)(c)).

This provision came into effect on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), with an amendment on June 23, 1993 (see *Journals of the Senate*, p. 2280). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-2

House of Commons Procedure and Practice, Second Edition, p. 601:

A Member who has already spoken to a question may not rise again to propose or second an amendment or move a motion to adjourn the debate or the House, although the Member may speak to an amendment if it has been moved by another Member. If the House should negative a motion to adjourn the debate, the mover of the motion will be deemed to have exhausted his or her right to speak to the main question. However, if the motion is adopted, the mover may speak first the next time the Order is called. If the Member does not then rise, he or she forfeits the opportunity to speak.

Speaker's Ruling: Senator Who Moved Adjournment of Debate That the Senate Rejected Cannot Speak Again

Journals of the Senate, December 14, 2009, pp. 1666-1667:

On December 10, Senator Cools raised a point of order during debate on the series of amendments to the motion for third reading of Bill C-6, An Act respecting the safety of consumer products. The senator questioned Senator Comeau's participation in debate for what appeared to be a second time.

A brief chronology of events may help us understand what exactly happened. When the sitting resumed at 8 p.m., there was some initial business, after which Senator Comeau moved the

adjournment of debate without actually participating in it. After an hour bell, the motion was rejected. Senator Dallaire then spoke briefly on the amendments. Senator Comeau then moved the adjournment of the Senate. That motion was also rejected after another hour bell, and Senator Comeau subsequently rose to speak, after which he moved the adjournment of debate.

Senator Cools questioned whether Senator Comeau should have been speaking at this point. Several other senators expressed a range of views on the point of order.

Parliamentary authorities provide some assistance on this issue. Page 601 of the second edition of *House of Commons Procedure and Practice*, states that “If a Member moves a motion during his or her speech (e.g., an amendment or a motion to adjourn debate), the act of moving the motion will terminate the Member’s speech.” Page 346 of the fourth edition of Bourinot notes that “If a member should move the adjournment of debate, and the house should negative that motion, he will have exhausted his right of speaking on the main question.”

As is often the case, the Senate is flexible in its practices, not always applying these provisions rigidly. Since the matter has been raised, however, it is clear from the authorities that, with the rejection of his motion, Senator Comeau had exhausted his time in speaking to the amendments on Bill C-6 and cannot speak again to them.

Speaking Time

RULE 6-3	
Time limits for speakers	6-3. (1) Except as otherwise provided:
Leaders	(a) the Leader of the Government and the Leader of the Opposition shall be allowed unlimited time for debate; and the leader of any other recognized party shall be permitted up to 45 minutes for debate;
Sponsor of bill and following Senator	(b) the sponsor of a bill, and the next Senator speaking, if not the Leader of the Government or the Leader of the Opposition, shall be allowed up to 45 minutes each for debate at second and third reading; and
Others	(c) other Senators shall speak for no more than 15 minutes in debate.
<i>EXCEPTIONS</i>	
<i>Rule 2-5(1): Arguments</i>	
<i>Rule 4-2(3): Senators’ Statements limited to three minutes each</i>	
<i>Rule 4-3(2): Tributes limited to three minutes each</i>	
<i>Rule 4-3(4): Acknowledgements of tributes</i>	
<i>Rule 6-2(2): Clarification in case of misunderstanding</i>	
<i>Rule 6-5(1): Yielding to another Senator for debate</i>	
<i>Rule 7-1(3): Question on agreement to allocate time put immediately</i>	
<i>Rule 7-3(1)(f): Procedure for debate on motion to allocate time</i>	
<i>Rule 8-3(3): Time limit for request for emergency debate</i>	
<i>Rule 8-4(3): Speaking times</i>	

Rule 12-32(3)(d): Procedure in Committee of the Whole

Rule 13-7(3): Time limits on speaking on motion on case of privilege

Speeches to be
timed by Clerk

6-3. (2) The Clerk shall keep a record at the table of the time taken by each Senator in each debate. The Clerk shall inform the Speaker when a Senator's speaking time is about to expire and, when it expires, the Speaker shall so inform the Senator speaking.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-3(1): Rules 37(2) and (4)

Rule 6-3(2): Rule 37(5)

COMMENTARY

Rule 6-3 establishes that the length of senators' speeches is, in general, limited to 15 minutes, except:

1. the Leader of the Government and the Leader of the Opposition, who have unlimited time;
2. each leader of a recognized third party, who may speak for up to 45 minutes; and
3. the sponsor of a bill and the senator speaking immediately afterwards, who may speak for up to 45 minutes.

Although 6-3(1)(b) speaks of the senator speaking immediately after the sponsor as having the second period of 45 minutes, in practice this is usually understood to mean that the critic of a bill has that time. Even if the critic is not the speaker immediately after the sponsor, the second period of 45 minutes will normally be reserved for that senator.

Until 1991, the length of speeches in the Senate was unrestricted.

Senators may request leave of the Senate to extend their speaking time. When given, the extension is often limited to five minutes (see Speaker's rulings below).

Decisions of the Speaker regarding the expiry of time on speeches are final and are not subject to an appeal to the Senate (see rule 2-5(3)). A practice has developed whereby a senator can, by agreement of the Senate, adjourn debate for the balance of time and resume the speech at a future sitting.

Reference should also be made to various situations in which speaking times are different from the general rule. Notable exceptions from the general rule include:

1. statements and tributes (three minutes, with unlimited time for the response to Tributes – see rules 4-2 and 4-3);
2. a senator yielding the floor to another senator for the purposes of debate (the time remaining, but a maximum of 15 minutes if the senator yielding is a leader – see rule 6-5);
3. debate on a motion to allocate time (10 minutes, but 30 minutes for the Government and Opposition Leaders, and 15 minutes for any other party leader – see rule 7-3(f));

4. interventions during a request for an emergency debate (five minutes – see rule 8-3(3));
5. speeches during an emergency debate and a motion moved in relation to a case of privilege (15 minutes for all senators – see rules 8-4(3) and 13-7(3)); and
6. interventions during a Committee of the Whole (10 minutes – see rule 13-7(2)(d)).

With regard to points of order raised while a senator is speaking in debate, rule 2-7(4) provides that “When the Speaker calls a Senator to order, the Senator shall cease speaking until the point of order has been resolved.”

General provisions relating to speaking times were added on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and were amended on June 23, 1993 (see *Journals of the Senate*, p. 2280), and again on June 11, 2002, to provide for third parties in the Senate (see *Journals of the Senate*, p. 1714). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-3

Speaker’s Rulings: Leave to Extend Time

Journals of the Senate, May 11, 2000, p. 593:

... I do not find it procedurally objectionable to have a request for leave to suspend the rules limiting the time for debate combined with a proposal to fix the time of the extension. Indeed, following the model of the House of Lords that Senator Kinsella mentioned it might be useful and advantageous to the Senator, who is requesting more time, to indicate how much time is needed in order to improve the likelihood of a favourable response. Moreover, such an approach would, I think, be in keeping with the intent of Rule 3 [now see rule 1-3(2)] regarding the suspension of any particular rule. According to this rule, the purpose of any proposed suspension should be “distinctly stated.” As much as possible, I have usually permitted an explanation so long as it did not involve any prolonged discussion. This I think is a sensible approach that could serve the Senate well until the rules of debate are revised.

Accordingly, it is my ruling that a request to extend time for debate can be qualified with a statement indicating the time of the extension. This statement can be proposed either by the Senator making the request or by any other Senator so long as any discussion related to the request for leave is kept very brief.

Journals of the Senate, April 24, 2007, pp. 1363-1364:

Despite these mandated time limits on debate, it remains possible to extend the time for an individual senator’s debate through leave. Originally, such requests were without any restriction. This then led to objections that too much time was being monopolized when leave was granted. Speaker Molgat acknowledged this situation in a ruling made on May 11, 2000, when he addressed a point of order similar to this one. ...

...
I concur with Speaker Molgat’s assessment and I accept his ruling, which was not appealed. ...

At the same time, I should note that in reviewing the precedents, there have been numerous instances

since Speaker Molgat’s ruling when rule [6-3(1)(c)] was suspended in order to give leave for a few additional minutes of debate. As mentioned by Senator Comeau, it would seem that the Senate does generally give leave for no more than five minutes, probably because it is usually sufficient to allow senators to wrap up their speech or to answer a few questions. This is not to say that it has become a convention or practice. In fact, no rule or precedent is ever created through the use of leave. However, I should add that there is nothing that binds the Senate to a particular limit, if any, in extending the time for a particular senator in debate. ...

In addition, there is nothing preventing an additional request for an extension of time in debate when the original extension is exhausted. This is what I think Senator Cools thought had happened on March 27. However, as the *Debates of the Senate* show, the request was not actually put to the Senate and there is no indication that the Senate had agreed to the extension of additional time to Senator Murray beyond the five minutes. This, in turn, led to some confusion about whether Senator Cools was participating in debate on her own time or asking Senator Murray a question, prompting Senator Cools to raise her point of order.

In summary, it is my ruling that a request seeking leave to extend debate is procedurally acceptable. Equally, it is competent for the senator requesting leave, or for any other senator, to specify the length of time for that extension. In all such cases, however, the leave of the Senate is required to suspend the limits of debate established by our rules.

Process of Debate

RULE 6-4	
One Senator to speak at a time	6-4. (1) Except as provided in subsection (3), only one Senator shall be recognized to speak at any one time. When more than one Senator rises to speak, the Speaker shall recognize the Senator who, in the Speaker’s opinion, rose first.
Motion to hear another Senator	6-4. (2) Except as otherwise provided, if the Senator first recognized has not yet started to speak, another Senator, rising on a point of order, may immediately move a motion that a third Senator, who also rose to speak, “do now speak” or “be now heard”. The question shall be put on the motion immediately, without debate or amendment.
	<i>EXCEPTIONS</i> <i>Rule 4-2(7): No motions during Senators’ Statements</i> <i>Rule 8-3(4): No motions during request for emergency debate</i>
If motion to hear another Senator adopted	6-4. (3) If the motion to hear another Senator is adopted, it shall be an order of the Senate to recognize the Senator identified in the motion. If the motion is not adopted, the Senator who was first recognized by the Speaker shall be entitled to speak. In either case, no other motion to the same effect shall be received until either the Senator designated to speak has completed any remarks or the time allowed for the intervention has expired.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-4(1): Rules 33(1) and 34(1)

Rule 6-4(2): Rule 33(2)

Rule 6-4(3): Rules 33(3) and (4)

COMMENTARY

This rule describes the process to be followed when two senators rise to speak at the same time. When the Speaker recognizes one of the senators to take the floor, another senator may rise on a point of order, before the recognized senator has begun to speak, and propose that another senator who rose to speak “be now heard.” This motion is put immediately, without debate or amendment. If adopted, it becomes an order of the Senate to recognize the senator identified in the motion; if rejected, the senator who was first recognized by the Speaker is given the floor. No further motion of this nature may be received until the senator designated to speak has completed his or her remarks, or the time provided has expired.

There are two exceptions to this rule. This motion cannot be moved during Senators’ Statements (see rule 4-2(7)) and during consideration of a request for an emergency debate (see rule 8-3(4)).

The provision in rule 6-4(2) allowing for a motion to be moved when a point of order is raised in these circumstances is an exception to normal parliamentary practice, which prohibits raising a point of order in order to move a motion.

The rule, adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137), read: “When two or more senators rise to speak, the Speaker calls upon the senator who, in his opinion, first rose in his place; but a motion may be made that any senator who has risen ‘be now heard’ or ‘do now speak’.” The wording of the rule was amended on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-4

Bourinot’s Parliamentary Procedure, Fourth Edition, pp. 334-335:

In the House of Lords when two rise at the same time the chancellor or chairman of committees has no absolute right to determine the question as to which should be heard. Unless one immediately gives way the house will call upon one of them to speak, and in case of variance of opinion the decision must rest with the house, which may forthwith proceed to vote who shall be heard. ...

House of Commons Procedure and Practice, Second Edition, p. 598:

... [T]he motion [“that a Member be now heard”] cannot be moved:

- if no debatable motion is before the House;
- if no one has yet been given the floor;
- if the Member named in the motion did not originally rise to be recognized;

- to give the floor to a Member whose speech would close the debate;
- during the period for questions and comments following a speech; or
- if the House has adopted an Order specifying the speaking order to be followed during debate.

RULE 6-5	
Yielding to another Senator for debate	<p>6-5. (1) A Senator recognized to speak may yield the floor to another Senator for the purpose of debate. The speaking time of the Senator who thus obtains the right to speak is limited to:</p> <p>(a) the time remaining to the Senator who yielded; or</p> <p>(b) the time remaining, not to exceed 15 minutes, if the Senator who yielded is the Leader of the Government, the Leader of the Opposition or the leader of any other recognized party.</p>
Yielding for debate counts as speaking	<p>6-5. (2) Except as provided in subsection (3) and elsewhere in these Rules, neither the Senator who yields the floor nor the Senator to whom it is yielded shall speak again to the same question.</p> <p><i>EXCEPTIONS</i></p> <p><i>Rule 6-2(2): Clarification in case of misunderstanding</i></p> <p><i>Rule 6-12(1): Right of final reply</i></p> <p><i>Rule 12-32(3)(c): Procedure in Committee of the Whole</i></p>
Yielding to another Senator for questions	<p>6-5. (3) A Senator recognized to speak may yield the floor to any other Senator for a question. The Senator asking the question retains the right to speak in debate at a later time, unless the Senator has already spoken. The time taken for any questions and answers shall count as part of the time of the Senator originally recognized. After the questions and answers, the Senator originally recognized may resume the floor for any time remaining.</p>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-5: Rule 34

COMMENTARY

Rule 6-5 affirms the important parliamentary principle that only one senator may have the floor at one time. It provides for a procedure whereby a senator may yield the floor to another senator to speak. The senator yielding the floor will not be recognized to speak again, and the senator to whom the floor was yielded is recognized only for the balance of time that remained when the floor was yielded. If, however, the senator who yielded the floor was the Leader of the Government, the Leader of the Opposition or the leader of any other recognized party, the remaining speaking time would not exceed 15 minutes. Finally, the senator to whom the floor is yielded is considered to have spoken in the debate. The only exceptions to this rule would be for a senator to make a clarification or correction of his or her speech (see rule 6-2(2)); for the right of final reply (see rule 6-12(1)); and for debate in a Committee of the Whole, where senators can make more than one intervention (see rule 12-32(3)(c)).

Rule 6-5(3) also provides for a procedure whereby a senator speaking in debate can yield the floor to another senator for the purpose of asking a question. In this case, the senator first recognized will resume speaking after the question, and the whole exchange is considered part of his or her time. The senator who asked the question is not considered to have spoken in the debate.

The process for questions and comments often functions quite informally. At the end of a speech, another senator will typically ask whether the senator who spoke will accept questions. The acceptance of questions is voluntary (see ruling cited below), and can only take place if the senator who is speaking still has time left, since any questions or comments on a speech are included in the time of the senator speaking.

This provision was first adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-5

Beauchesne’s Parliamentary Rules & Forms, Fourth Edition, p. 113:

§126. (1) If a member desires to ask a question during debate, he should first obtain the consent of the member who is speaking. If the latter ignores the request, the former cannot insist, even if he thinks he is being misrepresented. He cannot make a denial during the speech, ... No one has a right to interrupt a member who is addressing the House, by putting a question to him or by making or demanding an explanation. A member may allow interruptions through a sense of courtesy, but it is entirely at his option to give way or not to an immediate explanation. ...

House of Commons Procedure and Practice, Second Edition, p. 603:

When a Member is addressing the House, no other Member may interrupt except on an unanticipated question of privilege or point of order. Prior to 1982 ..., a Member wishing to ask a question during debate had first to obtain the consent of the Member who was speaking. The Member allowing the interruption was under no obligation to reply [and] the time taken up in this way was subtracted from his or her speaking time.

Speaker’s Ruling: Yielding the Floor for Questions

Journals of the Senate, March 30, 2004, p. 402:

The rule is fairly straightforward. It has been quoted in full by Senator Kinsella. I shall not do that again; rather, I shall focus on the words of rule 37(4) [now see rules 6-3(1)(c) and 6-5], which reads:

37(4) ... no Senator shall speak for more than fifteen minutes, inclusive of any question or comments from other Senators which the Senator may permit in the course of his or her remarks.

I read it that the word “question” — “which the Senator may permit in the course of his or her remarks” — and the word “comments” — “which the Senator may permit in the course of his or her remarks” — have equal weight. Accordingly, if the senator who has the floor does not permit further comment or questions, then that is the end of the matter.

RULE 6-6

Quoting
Commons
speeches

6-6. The content of a speech made in the House of Commons during the current session may be summarized but shall not be quoted unless it is a speech of a minister relating to government policy. A Senator may always quote from a speech of a previous session.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-6: Rule 46

COMMENTARY

This rule states that it is not in order to quote a speech made in the House of Commons during the current session, unless it is a speech of a minister in relation to government policy. However, a speech in the Commons from a previous session, whether from a minister or not, can be quoted. It was a common practice in Commonwealth bicameral institutions that speeches made in the other place should not be quoted. In a ruling made on March 11, 1954, the Speaker stated that “It is clear then that no attempt to allude to debates and proceedings of the other branch of Parliament, during the current session, can properly succeed” (*Journals of the Senate*, pp. 351-352). In 1956, the Speaker also ruled that “any reference to the debates or proceedings in another branch of Parliament — and in order that there shall be no misunderstanding, I mean in the House of Commons — is distinctly out of order” (*Journals of the Senate*, June 5, 1956, p. 488).

The Speaker has, however, explained that it is in order to refer to the official records of the House of Commons, even though the document may not have been formally communicated to the Senate (March 16, 1999), and that a speech made by a parliamentary secretary for a minister is an expression of government policy and may be quoted (December 9, 2004).

This rule was first adopted on November 26, 1975 (see *Journals of the Senate*, p. 592), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-6

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, p. 141:

§481. Besides the prohibitions contained in [House of Commons] Standing Order 18, it has been sanctioned by usage that a Member, while speaking, must not:

...

(b) refer to any debate in the Senate, but reference may be made to the official printed records of the Senate though they have not been formally communicated to the House of Commons ...

House of Commons Procedure and Practice, Second Edition, pp. 614-615:

In debate, the Senate is generally referred to as “the other place” and Senators as “members of the other place”. References to Senate debates and proceedings are discouraged and it is out of order to question a Senator’s integrity, honesty or character. This “prevents fruitless arguments between

Members of two distinct bodies who are unable to reply to each other, and guards against recrimination and offensive language in the absence of the other party”.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 439-440:

Formerly, the content of a speech made in the House of Lords in the current session might be summarised, but it was not in order to quote from it unless it was a speech of or a statement by a Minister in relation to government policy. This rule was abolished in 1998.

Speaker’s Ruling: Motion Referring to Commons’ Report

Journals of the Senate, March 16, 1999, pp. 1354-1355:

On Thursday, March 11, just as Senator Roche was about to speak on his motion, Senator Kinsella rose on a point of order to question the procedural acceptability of a motion that endorses a report of the House of Commons of which the Senate has no direct knowledge. ...

In making his case, Senator Kinsella asked whether it was proper given the independence and autonomy of the two Houses for the Senate to debate a report from the other place that has not been formally communicated to it. ...

...

The practice of avoiding any reference to the proceedings of the other place in debate is an old and well-established restraint going back many years. Indeed, almost twenty-five years ago, this prohibition was formally incorporated into the *Rules of the Senate*. In 1975, the Senate adopted what is now rule [6-6]. ...

...

This practice of forbidding the use of direct citations from the debates of the House of Commons, euphemistically identified as “the other place” was originally intended to prevent, according to *Erskine May*, fruitless arguments between Members of two distinct bodies who are unable to reply to each other, and to guard against recrimination and offensive language in the absence of the other party.

However, *Erskine May* and the Canadian parliamentary authority, *Bourinot*, have always recognised some exceptions to this rule of debate. All four editions of *Bourinot’s Parliamentary Procedure and Practice in the Dominion of Canada*, dating from 1884 to 1916, note the exception in the same language. “It is perfectly regular, however, to refer to the official printed records of the other branch of the legislature, even though the document may not have been formally asked for and communicated to the house.” For many years, *Erskine May* has been explicit in noting that these official records include not just the *Journals* of either House, but also committee reports. Even though reports from the other House may not have been communicated to the Chamber, practice has allowed for references to be made to them in the course of debate.

As far as I see it, that which can be debated can legitimately be the object of a motion. Once it is part of a motion, it is up to the Senate to adopt, to amend or to reject it. That is the core of the process of debate.

Speaker's Ruling: Commons Speech Repeated in Senate

Journals of the Senate, December 9, 2004, pp. 285-287:

On Tuesday, December 7, when the Senate reached Orders of the Day, Senator Tkachuk raised a point of order. The Senator claimed that the sponsor's speech on the motion for the second reading of Bill C-4 violated rule [6-6] in that, as he claimed, its content repeated in large measure a speech given by the Parliamentary Secretary at the second reading of the bill in the other place. ...

...

As I read it, rule [6-6] allows that the content of speeches made in the other place during the current session can be cited in the Senate. These references, however, should be in summary form unless "it be a speech of a Minister of the Crown in relation to government policy". Rule [6-6], therefore, actually permits the direct use of a speech made by a Minister on government policy. With respect to this important exemption in rule [6-6], I accept the view that a government bill is an expression of its policy. Moreover, I do not think it is reasonable to read this rule in such a way that it would limit the right to cite a ministerial speech that was delivered by a Parliamentary Secretary for a Minister. One reason why Parliamentary Secretaries were created was, in fact, to allow them to act on behalf of Ministers. Acting in that capacity, there can be little doubt that a speech made by a Parliamentary Secretary for a Minister is an expression of government policy. This is the critical element that provides the exemption permitted by the rule.

Now, where does this leave us with respect to the allegation that the speech made by the Senate sponsor of Bill C-4 was based largely on the second reading speech of the Minister in the other place? ... Given my understanding of the rule, there is not sufficient justification to substantiate the complaint of the point of order. Indeed, as I have already stated, rule [6-6] expressly allows for the citation of a ministerial speech related to government policy. It may be that the text used in the Senate duplicates much that had been said in the other place, and there was much said here deprecating this practice of recycling, but this is not forbidden by rule [6-6].

...

I wish to make one final comment before we resume debate. The remedy that Senator Tkachuk proposed had the point of order been sustained was that I, as Speaker, strike the offending text from the *Debates*, that I effectively expunge it from the record. In point of fact, rule [6-6] does not give the Speaker such an authority. There is nothing explicit in the rule to allow this. Had there been a violation of rule [6-6], and had I been aware of it, or had the Speaker *pro tempore* been aware of it, as it was occurring, my authority would have been limited to counselling the Senator to refrain from citing the House of Commons speech. As to an after the fact point of order, my authority would be limited to deprecating the violation. Rule [6-6] does not provide for the suppression of an offending speech. Such a measure could only be made by the Senate itself on motion.

RULE 6-7

Reading the question

6-7. Except when another Senator is speaking, a Senator may, at any time during debate, request that the question then before the Senate be read.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-7: Rule 47

COMMENTARY

This rule permits senators to request that the item under debate be read aloud. This is especially useful when items are not on the Order Paper (e.g., an amendment moved during debate), or the terms of the proposition are not clear. The rule adopted on December 17, 1867, stated: “Any Senator may require the Question under discussion to be read at any time of the Debate, but not so as to interrupt any Senator while speaking” (rule 24). The wording of this rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and once again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-7

Annotated Standing Orders of the House of Commons, Second Edition, p. 173:

Occasionally the House is seized with a question that either does not appear on the *Order Paper* or has not been printed and distributed to the Members. This can happen when an emergency debate takes place under Standing Order 52, for example, or when amendments are moved during debate on a question, or when any substantive motion is moved without notice. In such instances, some Members may wish to hear the question read again to be certain of its wording and content. The only condition attached to this request is that it cannot be made as a device to interrupt a Member who is speaking.

RULE 6-8

Motions
allowed during
debate

6-8. Except as otherwise provided, during debate on a question, no other motion shall be received unless it is a motion:

- (a) to amend the motion under debate;
- (b) to refer the motion to a committee;
- (c) to put the previous question;
- (d) to adjourn the debate;
- (e) to adjourn the debate to a certain day; or
- (f) to adjourn the Senate.

EXCEPTIONS

Rule 6-4(2): Motion to hear another Senator

Rule 6-9(2): Application of previous question

Rule 7-3(1)(d): Procedure for debate on motion to allocate time

Rule 7-4(1)(b): Government order to which time is allocated

Rule 8-4(4): Limitations on motions

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-8: Rule 48(1)

COMMENTARY

This rule deals with motions which may be moved without notice during the course of a debate. Such motions may be referred to as “privileged motions,” a term that should not be confused with questions of privilege. This category of motion arises from and depends on the matter under debate. They are not stand-alone motions (“substantive motions”), and they are not used as a vehicle to move forward an item of business (“subsidiary motions”). Instead, they depend on another motion. A privileged motion can be moved without notice when the motion to which it relates is under debate, and it then takes priority over the original motion. The Terminology in Appendix I of the Rules defines the various types of motions mentioned here. See rule 5-7 for a broader list of all motions that do not require notice.

The only motions permitted during debate are listed in rule 6-8 as follows:

1. Motion to amend – An amendment is an alteration proposed to a motion, a clause of a bill or a committee report. It may attempt to modify the proposition under consideration or to provide an alternative to it.
2. Motion to refer a question under debate to a committee.
3. Motion for the previous question – A motion in the form “that the question be now put” that can be moved only on the main motion or the main motion as amended. It cannot be moved if an amendment is under debate (see rule 6-9 for details on the operation of the previous question).
4. Motion to adjourn the debate – A motion to end debate on a bill, motion, committee report or inquiry on a particular day, postponing further consideration either to the next sitting day or to a specified date. A motion to adjourn a debate is decided by the Senate without debate or amendment (see rule 6-10).
5. Motion to adjourn the debate to a certain day – A motion to postpone the consideration of a question until a specific date (see Speaker’s ruling below).
6. Motion to adjourn the Senate – A motion to end a sitting of the Senate until the next sitting day (see rule 5-13).

Certain exceptions and restrictions to this rule are indicated. It is also admissible during debate to propose a motion for a senator to “be now heard” (see rule 6-4(2)), which is also the only motion that can be received during a debate on a motion for the allocation of time (see rule 7-3(1)(d)), on a time-allocated government order (see rule 7-4(1)(b)) or during an emergency debate (see rule 8-4(4)).

On April 16, 2013, the Speaker ruled that it is possible to move that a motion under rule 13-7, dealing with a case of privilege, be referred to a committee (see *Journals of the Senate*, pp. 2075-2076; portions of this ruling are quoted in the text relating to rule 13-7).

The rule adopted in 1867 stated: “When a question is under debate, no motion is received, unless to amend it; to commit it; to postpone it to a certain day; for the previous question; for reading the Orders of the Day, or for the adjournment of the Senate” (rule 34). On July 12, 1960, the Speaker ruled that the present rule 6-8 provides the framework or scope for an amendment in the Senate (see Speaker’s ruling cited below). The rule remained unchanged until 1968, when amendments altered the words “commit it”

to “refer it to committee,” deleted mention of Orders of the Day and inserted a subsection relating to the previous question (see *Journals of the Senate*, November 28, 1968, p. 458, effective on August 1, 1969). In 2012, details relating to the operation of the previous question were made a separate rule (6-9), and the wording of the rule was amended to the current text (see *Journals of the Senate*, June 19, 2012, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-8

Standing Orders of the House of Commons (June 2011):

58. When a question is under debate, no motion is received unless to amend it; to postpone it to a day certain; for the previous question; for reading the Orders of the Day; for proceeding to another order; to adjourn the debate; to continue or extend a sitting of the House; or for the adjournment of the House.

Annotated Standing Orders of the House of Commons, Second Edition, pp. 217-218:

During debate on a question, the motions listed in this Standing Order [58] may be moved. Once moved, such motions take precedence and hence supersede the question then under debate. None of these motions require notice. They cannot be conditional, nor may they be moved by a Member rising on a point of order. Motions to amend and for the previous question are debatable, but other superseding motions are not.

Speaker’s Ruling: Amendment to Postpone Consideration to an Undetermined Date

Journals of the Senate, July 12, 1960, pp. 632-633:

The motion now under consideration is, in the apt words of Sir John Bourinot, of a dilatory character in that it provides in its final paragraph that “pending action by the Government on the foregoing suggestions”, namely, to submit certain questions to the Supreme Court of Canada, no further action be taken by the Senate on the motion now being considered by the Senate.

Honourable Senators, the governing provision in the Rules of the Senate of Canada is Rule 44 [now see rule 6-8], which reads as follows:

“When a question is under debate, no motion is received, unless to amend it; to commit it; to postpone it to a certain day; for the previous question; for reading the Orders of the Day, or for the adjournment of the Senate.”

That is the framework or the scope of an amendment in the Senate.

I have examined the motion in the light of the provision in question, to determine whether or not it falls within the list of permissible motions in the present circumstances. In the first place, as I indicated the other day, I do not consider that this is by any stretch of the imagination a motion to amend the main resolution, namely, to alter its substance, to change or otherwise modify its wording in any way, but that, rather, it is clearly a dilatory motion – that is, one which is designed to delay the passage of the main resolution. As I see it, the only basis upon which this motion would be acceptable is on the ground that it is a postponing motion. However, the Rules of the Senate are clear and concise, and to the effect that the only motion of this character which is permissible is one which postpones consideration “to a certain day”.

Honourable Senators will recall that the so-called motion to amend was for the purpose of putting off or postponing the debate until, first, the Government had decided to follow the suggestion made and, secondly, that the Supreme Court of Canada had rendered its decision on the reference which the Government may decide to make. Therefore, there was no postponement of a motion to “a certain day”.

The contingencies provided for in the so-called amending motion under consideration are, as I see it, such as to preclude any possibility of certainty as to the day to which consideration of the main resolution would be postponed.

Some Honourable Senators have mentioned the so-called “six months hoist”, and on reflection and further study I agree that in respect of Bills it is an acceptable amendment. On the other hand, I must remind Honourable Senators that the “six months hoist”, as its colloquial name implies, would defer consideration of any Bill under consideration to a day “six months hence”. It is true that the practical effect of the so-called “six months hoist”, if carried, is to kill the Bill. Therefore, in my opinion any similar proposition would likewise have the effect of killing the resolution moved by the Honourable the Leader of the Government, the Honourable Senator Aseltine.

In view of what I have said, I feel impelled to rule the amendment out of order, and I so rule.

Speaker’s Rulings: Motion to Refer to Committee

Journals of the Senate, March 2, 1995, pp. 777-778:

Honourable Senators, last Wednesday, during debate on the motion of Senator MacEachen to order the printing of 500 additional copies of volume 1 of the Report of the Special Joint Committee Reviewing Canada’s Foreign Policy in its original format, a motion was moved by Senator Lynch-Staunton not to adopt the motion, but to refer it to the Standing Committee on Internal Economy, Budgets and Administration. This motion was subsequently adopted.

Questions were then asked about the status of the original question. This confusion may have resulted from the uncertainty by Honourable Senators as to what type of motion had been proposed by the Leader of the Opposition, that is, whether it was a motion in amendment to the original question or a separate and distinct question?

Certainly, there was no disagreement as to the acceptability of the motion itself. The motion was in order. According to Rule 49 (1) [now see rule 6-8]

When a question is under debate, a motion shall not be received unless it is a motion to amend the question, to refer the question to a committee, to adjourn the debate, to postpone the debate to a certain day, for the previous question, or for the adjournment of the Senate.

Based on the wording of Rule [6-8], the motion of the Leader of the Opposition has the character of a distinct question. As such, if carried, there is no necessity to proceed to put the original question to the House as that question would have been superseded or displaced by the decision to refer the matter to a committee for consideration. The original motion to order the reprint of a committee report would no longer be before the Senate. It may presumably come before the Senate again once the committee has reported on this matter and the report itself becomes subject to a vote on concurrence.

Journals of the Senate, April 16, 2013, p. 2076:

... Motions to refer the question under consideration to committee are not common, but they do arise on occasion. When such a motion is before the Senate, debate is on the motion to refer the question to committee, although in point of fact this debate may be far-reaching. If the motion is adopted, the matter goes to that committee for study. If the motion is defeated, debate on the original motion resumes.

RULE 6-9	
Previous question	6-9. (1) A motion for the previous question shall be in the form “That the question be now put”.
Application of previous question	6-9. (2) The previous question may be applied either to a main motion or to a main motion as amended, but it cannot be moved in respect of a motion in amendment. A motion for the previous question cannot itself be amended.
No previous question in committee	6-9. (3) The previous question shall not be moved in a Committee of the Whole or in any other committee.
Speaking after previous question moved	6-9. (4) A Senator who has spoken on the main motion, or on the main motion as amended, may speak again after the previous question is moved, but cannot move or second the motion for the previous question.
Adopting previous question	6-9. (5) If the previous question is adopted, the main motion, amended or not, shall be put immediately, without further debate.
Defeating previous question	6-9. (6) If the previous question is defeated, the main motion, amended or not, shall be dropped from the Orders of the Day.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-9: Rule 48(2)

COMMENTARY

The previous question is a motion “That the question be now put.” At times, it is used to curtail debate and expedite a decision, and at other times it is used to delay a decision and allow senators who have already spoken to speak once again.

The previous question can only be moved on the main motion or the main motion as amended, but cannot be moved if an amendment is under debate. The motion for the previous question cannot be amended, but is debatable. All senators who have already spoken on the main motion, or the main motion as amended, can speak again, but they cannot propose the previous question or second it. Debate on the previous question can be adjourned, so it does not have to be resolved during the sitting during which it

was moved. If the previous question is adopted, the Speaker puts the question on the main motion without allowing further debate. If the previous question is defeated, the main motion is dropped from the Order Paper.

A motion for the previous question cannot be moved in a committee, including a Committee of the Whole.

The rule adopted in 1867 stated: “When a question is under debate, no motion is received, unless to amend it; to commit it; to postpone it to a certain day; for the previous question; for reading the Orders of the Day, or for the adjournment of the Senate” (rule 34). In 1968, the rules were amended and a subsection was added to clarify the procedures relating to the previous question (rule 36(3)) (see *Journals of the Senate*, November 28, 1968, p. 458, effective on August 1, 1969). In 2012, the subsection relating to the previous question became the current rule, and the wording was also amended by removing the word “original” which had previously been included (see *Journals of the Senate*, June 19, 2012, p. 1429, effective from September 17, 2012).

In Britain, the previous question is formulated differently than in Canada. The motion there is “That the previous question be *not* now put,” so the working there is in some ways different from that in the Senate (see *Erskine May Parliamentary Practice*, Twenty-Fourth Edition, pp. 404-405, for more information).

RELATED CITATIONS AND EXTRACTS – RULE 6-9

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 160-161:

§523. The Members proposing and seconding the previous question generally vote in its favour, but there is no rule to prevent them voting against their own motion if their intention is to supersede the question. *Bourinot*, p. 327.

...

§526. Debate on the motion for the previous question may be interrupted by a motion to adjourn or for the reading of the Orders of the Day. But such a motion cannot be made if the House resolves that the question shall now be put under this rule. *Bourinot*, pp. 327-28.

§527. The previous question has been moved upon the various stages of a bill, but it cannot be moved upon an amendment; however, after the amendment has been adopted, the previous question can be put on the main question as amended. Sir Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (20th ed., 1983), p. 379.

§528. When the previous question is moved on the third reading of a bill and voted in the negative, the main motion must be dropped, as the reading of a bill cannot be placed on the Order Paper unless a day has been appointed therefore by the House. The bill is not lost by this procedure but may be taken up again at a later date. The decision of the House is only that the question be not now put. Another day may be appointed for its consideration.

Speaker’s Ruling: Operation of Previous Question

Journals of the Senate, April 28, 2004, pp. 477-478:

... It has been argued that, as Speaker, my actions interfered with the rights of other Senators who had wanted to speak in debate. This allegation is based, at least in part, on the fact that Senator Joyal

moved the previous question. While it is true that other Senators did seek to be recognized, Senator Joyal was among them and so I called on him. This was not unwarranted and it is within the rules and practices of the Senate. ...

... Senator Joyal properly had the floor. He promptly moved the previous question which is allowed under rule [6-8]. This rule stipulates that when a question is under debate, it is permissible among other things to move the previous question. There is no restriction on the application of the previous question so long as there is no amendment outstanding to the original question. It can be applied to bills or motions whether sponsored by the government or a senator. Furthermore, rule [6-9] explains that the previous question is debatable and that it has the effect of preventing the introduction of an amendment to the original motion.

... [T]here seems to have been some confusion about the operation of the previous question. In reviewing the *Debates of the Senate* of April 22, various exchanges among the Senators leave the impression that some Senators thought that the previous question had completely deprived them of their right to speak in debate. ...

Do the debates and proceedings of last Thursday afternoon and evening substantiate in any way the finding of a *prima facie* question of privilege? I do not think so. While there was some misunderstanding about the nature of the previous question, this confusion does not itself invalidate the use of that motion. As I have already mentioned, the *Rules of the Senate* specifically allow for it without regard to the nature of the motion to which it can be applied. More importantly, perhaps, the Rules do not restrict how soon it can be applied; it can be proposed at any time as long as there is no amendment outstanding to the motion. ...

RULE 6-10

Motion to
adjourn
Government
Business

6-10. (1) If a motion to adjourn debate on an item of Government Business is adopted, the item shall be an order of the day for the next sitting and shall not stand in the name of any Senator.

Motion to
adjourn Other
Business

6-10. (2) If a motion to adjourn debate on an item of Other Business is adopted, the item shall be an order of the day either for the next sitting or for the day specified in the motion to adjourn. The item shall stand as an order of the day in the name of either the Senator who moved the motion to adjourn debate or another Senator whose name was specified in the motion to adjourn debate.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-10(1): Rule 49(2)

Rule 6-10(2): Rule 49(1)

COMMENTARY

Prior to 1991, there was no distinction between Government Business and Other Business. Any adjourned item would stand on the Order Paper in the name of the senator who moved the adjournment. Since the changes of 1991, when an item of Government Business is adjourned, it is adjourned until the

next sitting and does not stand in the name of any senator. Government Business is called in the order in which it appears on the Order Paper unless, pursuant to rule 4-13(1), either the Leader or Deputy Leader of the Government indicates that it should be called in a different order.

In the case of a non-government item, debate can be adjourned either to the next sitting or to a specified future day, and it will stand on the Order Paper in the name of the senator who moved the adjournment motion, or the senator on whose behalf the adjournment was proposed. Even though an item of non-government business may stand in the name of a particular senator, that senator does not control the resumption of the debate or a final decision on the matter by the Senate; rather it is taken as an indication that that senator intends to speak to the item. Any other senator who has not already spoken can do so when it is called. In such a case, the Speaker has also ruled that it is not necessary to obtain the permission of the senator in whose name the item stands.

This rule was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-10

“Forms and Proceedings,” *Rules of the Senate* (1990), p. 62:

When a Senator speaks on his or her inquiry and the debate is not adjourned, the inquiry is considered debated and is removed from the Order Paper. If the debate is adjourned, the inquiry becomes an order of the day and the order stands in the name of the senator who has adjourned the debate.

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 324:

It has been decided that a motion for the adjournment of the debate should be pure and simple, like the motion for the adjournment of the house, and should not contain a recital of reasons.

... This motion for the adjournment of the house or of the debate cannot be made while a member is speaking but only by a member who is in possession of the floor

Annotated Standing Orders of the House of Commons, Second Edition, p. 218:

... A motion to adjourn the debate or to adjourn the House, if carried, has that effect. However, the original motion is not dropped from the agenda of House business; rather, it is simply put over until the next sitting day, when it may be taken up again (see Standing Order 41). Should the motion to adjourn be defeated, debate on the original question carries on. ...

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 403:

When a motion for the adjournment of the House or of debate has been negatived, it may not be proposed again without some intermediate proceeding. Furthermore, the Speaker has the power under Standing Order No 35, if he believes that any dilatory motion is an abuse of the rules of the House, to decline to propose the question on it to the House or to put the question thereon forthwith.

A Member who has already spoken to the main question is not permitted to move either form of dilatory motion; nor, having moved a dilatory motion, may he later speak to the main question if his

motion is negatived. Similarly, a Member who has moved a dilatory motion is not entitled to move another in the course of debate on the same question.

A motion for the adjournment of debate, if carried, merely defers the decision of the House ...

Speaker's Rulings: Adjourned Item Standing in Senator's Name on Order Paper

Journals of the Senate, December 10, 1996, pp. 744-745:

When an adjournment is proposed to the debate of an item other than government business and the motion carries, the item will stand on the *Order Paper* in the name of the Senator who moved the adjournment or the Senator on whose behalf the adjournment was proposed. The name of the Senator is indicated in parenthesis and it merely identifies which Senator moved the adjournment the last time the item was dealt with. It does not give that Senator alone the right to decide if that item will be proceeded with, though it has sometimes appeared that way because of the courtesy usually extended by the Senate towards the Senator who adjourned the item. This is apparent whenever a Senator desires to speak on an adjourned item already standing in the name of another Senator. This, of course, is precisely what happened December 4 when Senator Lavoie-Roux indicated that she wanted to speak to the motion originally proposed by Senator Beaudoin. Senator Petten, in whose name the motion was last adjourned, agreed so long as the item would continue to stand in his name.

While this might suggest that the Senate requires Senator Petten's consent, the fact is that it does not. As rule [6-10] explains when the item was last adjourned, it was adjourned either to a specified day or to the next sitting day and that day having arrived, the Senate can debate the item according to the order it has adopted. Usually, when a Senator requests that the item again be stood, the Senate complies by its silence and the Senate proceeds to the next item. Should the Senate decide to debate the item, the Senator who had adjourned it will usually be accorded the opportunity to speak first; otherwise any other Senator will be recognized to speak.

If the item is debated and again adjourned, it can stand in the name of the Senator who actually adjourned it that day or, if the Senate agrees, in the name of the Senator who had previously adjourned it. To allow our practice to operate any other way, could create a situation where a Senator who had adjourned the debate could continually adjourn an item until such time as rule [4-15(2)] required that it be dropped from the *Order Paper* or, as Senator Lynch-Staunton supposed, it could allow a Senator to prevent any decision from being made. I do not believe that such an interpretation would be in the best interests of the Senate.

Journals of the Senate, February 7, 2007, p. 1025:

In the case of an item of other business, rule [6-10(2)] is clear that, when adjourned, it will stand either in the name of the senator who adjourned debate or in the name of another senator, if so specified. Accordingly, it is acceptable to move a motion to adjourn debate in another senator's name. The rules allow this, and practice confirms it. Indeed even substantive motions, which can trigger debate, are sometimes moved by one senator on behalf of another, as is the case with motion 131, currently on the *Order Paper*, which was moved by Senator Tkachuk for Senator Segal. Similarly, rule [5-3] allows for notice by one senator for another senator not then present.

Of course, adjournment by one senator in the name of another will most frequently occur if the senator in whose name the item is adjourned happens to be away from the chamber. A senator who expects to be absent, but who wishes to speak to an item, may ask a colleague to adjourn debate in the absent senator's name.

This does not mean that the senator in whose name an item is adjourned has a monopoly on speaking to it next and can therefore hold up debate. This matter was addressed in a ruling by Speaker Molgat on December 10, 1996 ... Therefore, a senator in whose name an item is adjourned has the right to speak first when it is next debated. If, however, another senator is ready to speak and the senator in whose name the item stands is not, the senator who is ready to speak has every right to do so.

RULE 6-11

Mover or
seconder may
speak later

6-11. The mover and seconder of a motion, if they do not speak at the start of debate, retain the right to speak at a subsequent time.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 6-11: Rule 41

COMMENTARY

Ordinarily a senator who proposes a motion will speak first, followed by other senators wishing to speak on the matter. If, however, the mover and seconder do not wish to speak at the beginning of debate, they may do so later. The Senate's procedure in allowing a senator who moves or seconds a motion to defer his or her speech to a subsequent period of debate differs from that to be found in the Canadian House of Commons. For a decision touching on this rule, see the Speaker's ruling from 1956 quoted in the text relating to rule 6-12.

A senator who moves a motion and who takes advantage of this rule is still permitted a right of final reply, if allowed under rule 6-12.

A rule adopted on May 2, 1906, read: "It shall be competent to a senator, when he seconds a motion or amendment, or moves an order of the day, without speaking to it, to address the Senate on the subject of such motion, amendment or order of the day, at any subsequent period of debate" (rule 38). The rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RULE 6-12

Right of final
reply

6-12. (1) Except as provided in subsection (2) and elsewhere in these Rules, a Senator shall have the right of final reply if:

- (a) the Senator moved the second reading of a bill;
- (b) the Senator moved a substantive motion;
- (c) the Senator initiated an inquiry; or
- (d) the Senator is the subject of a committee report made under the *Conflict of Interest Code for Senators*.

EXCEPTIONS

Rule 7-1(3): Question on agreement to allocate time put immediately

Rule 7-3(1)(e): Procedure for debate on motion to allocate time

Rule 7-4(5): Question put on time-allocated order

Rule 8-3(3): Time limit for request for emergency debate

Rule 8-4(3): Speaking times

Rule 13-7(3): Time limits on speaking on motion on case of privilege

REFERENCE

Conflict of Interest Code for Senators, *subsection 48(4)*

Exception to
right of final
reply

6-12. (2) For greater certainty, a Senator who has moved a motion to adopt a committee report under the *Conflict of Interest Code for Senators* pertaining to the conduct of another Senator does not have the right of final reply.

Closing debate

6-12. (3) The final reply closes debate. It is the duty of the Speaker to ensure that every Senator wishing to speak has the opportunity to do so before the final reply is made.

EQUIVALENCE WITH MARCH 2010 RULES

Rules 6-12(1) and (2): Rule 35

Rule 6-12(3): Rule 36

COMMENTARY

The final reply is the right enjoyed by a senator, in certain cases, to speak last in debate, even if he or she has spoken already. A senator can exercise the right of final reply if he or she moved second reading of a bill, moved a substantive motion, initiated an inquiry or is the subject of a committee report under the *Conflict of Interest Code for Senators*.

There is no right of final reply on the motion for third reading of a bill (see Speaker's ruling on March 14, 1956, below), nor for a senator who moved a motion to adopt a committee report (including a report pertaining to the conduct of another senator under the *Conflict of Interest Code for Senators*). Furthermore, there is no right of reply for time allocation procedures (rules 7-1(3), 7-3(1)(e) and, if the time for debate expires, 7-4(5)), for emergency debate procedures (rules 8-3(3) and 8-4(3)), and on motions on cases of privilege (rule 13-7(3)).

The exercise of the right of final reply has the effect of closing debate. For this reason, the Speaker will ensure that every senator who wishes to speak in debate has the opportunity to do so by saying “If the honourable senator speaks now, the speech will have the effect of closing the debate.” Other senators who wish to participate in the debate should then seek the floor.

A rule adopted on December 17, 1867, stated: “No Senator may speak twice to a Question before the Senate, except in explanation, or reply where he has made a substantive motion, or in Committee of the Whole” (rule 19). The rule was altered on May 2, 1906 (see *Journals of the Senate*, pp. 136-137), to read: “A reply is allowed to a Senator who has moved the second reading of a Bill, or made a substantive motion, but not to one who has moved an amendment, the previous question, an adjournment during a debate, a motion on the consideration of Commons’ amendments, or an instruction to a Committee” (rule 36). In addition, a new provision was added which specified that it was the Speaker’s duty to warn the Senate when the mover would close debate. The rule was redrafted on December 10, 1968, “for sake of clarity” (see *Journals of the Senate*, p. 456), to read: “A Senator who has moved the second reading of a bill or made a substantive motion shall have a right of reply, but not otherwise” (rule 36, effective on August 1, 1969). On November 26, 1975 (see *Journals of the Senate*, p. 592), the rule was amended to read: “A Senator who has moved the second reading of a bill or made a substantive amendment or an inquiry shall have the right of final reply.” As part of the adoption of the *Conflict of Interest Code for Senators* on May 18, 2005, the rule was amended to give a senator who is the subject of a report under the Code the right of final reply. Finally, the current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-12

Conflict of Interest Code for Senators (2012):

48.(3) After a motion to adopt a report has been moved, or has been deemed to have been moved, no vote may be held for at least five sitting days, or until the Senator who is the subject of the report has spoken to the motion for its adoption, whichever is the sooner.

(4) The Senator who is the subject of the report may exercise the right of final reply.

Bourinot’s Parliamentary Procedure, Fourth Edition, pp. 344-345:

... A reply is allowed to a member who has moved a substantive motion or the second reading of a bill. But no reply is allowed to a member who has moved an order of the day (not being the second reading of a bill), an amendment, the previous question, and adjournment during a debate, or an instruction to a committee. A reply is allowed to a mover of a substantive motion, although the debate thereon, by being adjourned, becomes an order of the day. In all cases the reply of the mover of the original motion closes the debate. But it is the duty of the speaker to see that every member who wishes to speak has the opportunity to do so before the final reply.

House of Commons Procedure and Practice, Second Edition, p. 602:

The right of reply allows for the rebuttal of criticisms and arguments directed against a substantive motion, and its effect is to close the debate. To ensure that no Member wishing to participate in a debate is prevented from doing so by a sudden or unannounced exercise of the right of reply, the Speaker must inform the House that the reply of the mover of the original motion closes the debate.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 435-436:

A right of reply is allowed to a Member who has moved a substantive motion in the House, including a substantive motion for the adjournment of the House. However, a Member who moves an order of the day, such as a motion that a bill be read a second time or who moves an amendment, or a new clause (except as provided by Standing Order 76), the previous question, an adjournment of a debate, a motion on the consideration of Lords amendments, or an instruction to any committee, can reply only with the unanimous agreement of the House. In the spirit of this rule, a Member moving an order of the day may do so formally, without rising to address the Chair, and reserve his speech for a later period in the debate. In moving an amendment or a motion for the adjournment, a Member cannot avail himself of this privilege, as he must rise in his place to make the motion, and thus cannot avoid addressing the House, however briefly. A Member who moves an amendment cannot speak again upon the main question after the amendment has been withdrawn or otherwise disposed of, since he has already spoken while the main question was before the House and before the amendment had been proposed from the Chair. For the same reason, a Member who has addressed the House in moving the second reading of a bill cannot subsequently move the adjournment of the debate, unless an amendment has been since proposed, nor can a Member who has spoken upon an amendment proposed on the report stage of a bill move the adjournment of the debate, or, until the amendment has been disposed of, move the adjournment of further consideration of the bill. A Member who has unsuccessfully moved the adjournment of a debate (or of the House) may not subsequently speak upon the question upon which he has moved that motion.

Speaker's Ruling: Right of Final Reply on Third Reading

Journals of the Senate, March 14, 1956, pp. 250-251:

In the debate on Tuesday, March 6th, Senator Hayden moved the third reading of Bill H-5, which was an item on the Orders of the Day.

The motion was not a substantive motion, within the meaning of that term as it is defined in paragraph 'B' of rule 4 [now see Appendix I], which reads as follows:

Substantive motion – a motion not incidental to a proceeding before the Senate, nor relating to and arising out of an Order of the Day.

He, therefore, after making his motion had no right of reply.

Under rule [6-11], if he had merely moved the Order without speaking to it, he would have been entitled to address the Senate on that Order at a subsequent period of the debate. However he did rise, and move the third reading — and according to the interpretation which Bourinot places on his action, as he did in fact say a word or two, according to a strict interpretation of the rule, he was prohibited from again addressing the House.

May, 14th edition, at page 422, says, "Formerly a member who had moved an Order of the Day was precluded afterwards from addressing the House upon the same question, or was heard merely by the indulgence of the House, but under present usage the option of speaking at a subsequent period of the debate has been conceded."

Senator Hayden’s speech on third reading of Bill H-5 would not have been ruled “out of order” in the House of Lords, since in moving the Order of the Day previously he made no comment or explanation. In view of the practice in the House of Lords, I do not think that rule [6-11] should be interpreted too strictly, and accordingly I am of the opinion that in the circumstances Senator Hayden’s speech was in order.

Unparliamentary Language

RULE 6-13

Objectionable speech	6-13. (1) All personal, sharp or taxing speeches are unparliamentary and are out of order.
Unparliamentary language	6-13. (2) When a Senator is called to order for unparliamentary language, any Senator may demand that the words be taken down in writing by the Clerk.
Retractions and apologies	6-13. (3) A Senator who has used unparliamentary words and who does not explain or retract them or offer an apology acceptable to the Senate shall be disciplined as the Senate may determine.

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 6-13(1): Rule 51
- Rule 6-13(2): Rule 53(1)
- Rule 6-13(3): Rule 53(2)

COMMENTARY

This rule is for the preservation of decorum and order in the debates and proceedings of the Senate. There is no definitive list of words or expressions that are deemed unparliamentary. Determination of what constitutes unparliamentary language is left primarily to the judgment of the Speaker and the sense of the Senate. The circumstances and tone of the debate in question play important roles in this determination.

For other references to parliamentary and unparliamentary expressions, see *Bourinot’s Parliamentary Procedure*, Fourth Edition, pp. 360-367; *Beauchesne’s Parliamentary Rules & Forms*, Sixth Edition, pp. 142-150; *House of Commons Procedure and Practice*, Second Edition, pp. 618-620; and *Erskine May Parliamentary Practice*, Twenty-Fourth Edition, pp. 444-445.

The practice in the Senate is for the Speaker to caution any senator who may be using offensive language. This may be done after a point of order is raised or on the initiative of the Speaker. Since the Speaker of the Senate has no authority to name senators for using unparliamentary language, any remedy lies with the Senate itself (see Speaker’s ruling on March 1, 2000, cited below).

The disciplinary powers of the Speaker and of the house under ancient usage in British parliamentary practice included the power of the Speaker to direct the Clerk to take down words to which objection had been taken. Erskine May notes, however, that in modern times the practice has not been enforced in the British House of Commons. On July 23, 1946, during questions, a member asked that words be taken

down, but the Speaker declined to give the necessary instruction. No such request has been made since that date (see *Erskine May Parliamentary Practice*, Twentieth Edition, pp. 443-444).

Two rules were adopted on December 17, 1867, containing provisions of rule 6-13. One stated that “All personal, sharp or taxing speeches are forbidden” (rule 15); the other that “Any Senator having used objectionable words, and not explaining or retracting the same, or offering apologies for the use thereof, to the satisfaction of the Senate, will be censured or otherwise dealt with, as the Senate may think fit” (rule 16). The wording of the latter rule was altered on April 6, 1876, to read: “If a Senator be called to order, for words spoken in debate; upon the demand of the Senator so called to order, or of any other Senator, the exceptionable words shall be taken down in writing by the Clerk at the Table. And any Senator who has used exceptionable words, and does not explain or retract the same, or offer apologies therefore to the satisfaction of the Senate, will be censured or otherwise dealt with as the Senate may think fit” (rule 27). The wording was again amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and the current wording containing both provisions was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 6-13

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 371:

No motion is necessary in the Senate in order to have offensive words taken down. There have been contradictory rulings on this point in the British Commons; but the best opinions appear to be that while the motion is permissible it is not absolutely requisite, the direction of the Speaker or Chairman to take down the words being based upon his own discretion and the apparent general sense of the house or committee.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 142-143:

§484. (3) In the House of Commons a Member will not be permitted by the Speaker to indulge in any reflections on the House itself as a political institution; or to impute to any Member or Members unworthy motives for their actions in a particular case; or to use any profane or indecent language; or to question the acknowledged and undoubted powers of the House in a matter or privilege; or to reflect upon, argue against or in any manner call in question the past acts and proceedings of the House, or to speak in abusive and disrespectful terms of an Act of Parliament, *Bourinot*, pp. 360-61.

§485. (1) Unparliamentary words may be brought to the attention of the House either by the Speaker or by any Member. When the question is raised by a Member it must be as a point of order and not as a question of privilege.

(2) Except during the Question Period, the proper time to raise such a point of order is when the words are used and not afterwards.

(3) Unparliamentary language offending against the proprieties of the House, when the Speaker is in the Chair, cannot be withdrawn in Committee of the Whole. *Journals*, May 1, 1936, p. 281.

§486. (1) It is impossible to lay down any specific rules in regard to injurious reflections uttered in debate against particular Members, or to declare beforehand what expressions are or are not contrary to order; much depends upon the tone and manner, and intention, of the person speaking; sometimes upon the person to whom the words are addressed, as, whether that person is a public officer, or a private Member not in office, or whether the words are meant to be applied to public conduct or to private character; and sometimes upon the degree of provocation, which the Member speaking had received from the person alluded to; and all these considerations must be attended to at the moment, as they are infinitely various and cannot possibly be foreseen in such a manner that precise rules can be adopted with respect to them.

(2) An expression which is deemed to be unparliamentary today does not necessarily have to be deemed unparliamentary next week.

(3) There are few words that have been judged to be unparliamentary consistently, and any list of unparliamentary words is only a compilation of words that at some time have been found to cause disorder in the House.

House of Commons Procedure and Practice, Second Edition, pp. 614-617:

References to Members

...

Allusions to the presence or absence of a Member or Minister in the Chamber are unacceptable. Speakers have upheld this prohibition on the ground that “there are many places that Members have to be in order to carry out all of the obligations that go with their offices”.

Remarks directed specifically at another Member which question that Member’s integrity, honesty or character are not in order. A Member will be requested to withdraw offensive remarks, allegations, or accusations of impropriety directed towards another Member. The Speaker has no authority to rule on statements made outside the House by one Member against another.

Reflections on the House and the Senate

Disrespectful reflections on Parliament as a whole, or on the House and the Senate individually are not permitted. Members of the House and the Senate are also protected by this rule. ... This “prevents fruitless arguments between Members of two distinct bodies who are unable to reply to each other, and guards against recrimination and offensive language in the absence of the other party”.

Reflections on the Chair

Reflections must not be cast in debate on the conduct of the Speaker or other Presiding Officers. It is unacceptable to question the integrity and impartiality of a Presiding Officer and if such comments are made, the Speaker will interrupt the Member and may request that the remarks be withdrawn. Only by means of a substantive motion ... may the actions of the Chair be challenged, criticized and debated. Reflections on the character or action of the Speaker or other Presiding Officers have been ruled to be breaches of privilege.

References to the Sovereign, Royal Family, Governor General and Members of the Judiciary

Members are prohibited from speaking disrespectfully of the Sovereign, the Royal Family, the Governor General or the Administrator of the Government of Canada (in the absence of the Governor General). In the same way, any reference to these persons which appears intended to influence the work of the House is also prohibited.

Attacks against and censures of judges and courts by Members in debate have always been considered unparliamentary and, consequently, treated as breaches of order. As Acting Speaker McClelland explained to the house, “This is a longstanding tradition in our Parliament that we be cautious when we attack individuals or groups, particularly in the judiciary, and those who are unable to come in here and have the same right of free expression as we enjoy with impunity here”. While it is permissible to speak in general terms about the judiciary or to criticize a law, it is inappropriate to criticize or input motives directed to a specific judge or to criticize a decision made under the law by a judge.

References by Name to Members of the Public

Members are discouraged from referring by name to persons who are not Members of Parliament and who do not enjoy parliamentary immunity, except in extraordinary circumstances when the national interest calls for this. The Speaker has ruled that members have a responsibility to protect the innocent, not only from outright slander, but from any slur directly or indirectly implied, and suggested that Members avoid as much as possible mentioning by name people from outside the House who are unable to reply in their own defence.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 449:

Where any disorderly or unparliamentary words are used, whether by a Member who is addressing the House or by a Member who is present during a debate, the Speaker will intervene and call upon the offending Member to withdraw the words. If the Member does not explain the sense in which the words were used so as to remove the objection of their being disorderly, or retract the offensive expressions, or make a sufficient apology for using them, the Speaker will repeat his call for the words to be withdrawn, and inform the Member that if he does not immediately respond to it, it will be the duty of the Chair to take action in pursuance of Standing Order No 43 [i.e., withdrawal or naming rule].

Page 519:

Standing Order No 32 [of the House of Lords] directs ‘that all personal, sharp, or taxing speeches be forborn’ in the House; and that if any offence be given of that kind, the House ‘will sharply censure the offender’. When debate becomes heated, it is open to any Lord to move that the Standing Order be read by the Clerk. The motion is debatable.

As noted earlier, for other references to parliamentary and unparliamentary expressions, see Bourinot’s Parliamentary Procedure, Fourth Edition, pp. 360-367; Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 142-150; House of Commons Procedure and Practice, Second Edition, pp. 618-620; and Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 444-445.

Speaker's Rulings: Authority of Speaker In Relation to Unparliamentary Language

Journals of the Senate, March 1, 2000, pp. 393-395:

I remind honourable senators that the position of the Speaker in this place is very different from that of the Speaker in the other place. The practice and long-established custom is that senators regulate themselves, and that the Speaker has a limited responsibility insofar as interfering. I will admit the rule does provide, in case of serious conditions, that the Speaker can interfere, but normally that rule is not followed.

...

With that background, honourable senators will see that making a precise determination is not the easiest thing to do. I remind honourable senators again as to the custom and practices of this house. We are members of a house which always has taken the position that we be polite to each other. We treat each other with respect. We address each other as individuals, and I refer to each honourable senator by name. It is a very different context from that in the House of Commons. One has only to compare the Question Period in the other place with the Question Period in this place to see that. I make no criticism in that regard. They are a different house. We must remain ever conscious of the language that we use and that that language should always be respectful of each other.

...

I return to my comment that it is important in this house that we treat each other with respect. It is equally important when we speak to persons outside this house, particularly those who cannot respond, that we treat them with respect. I have also been told about some of the statements that have been made about senators by people in the other place. That should not affect the way in which we function in this chamber.

Having said that, honourable senators, the rules indicate that as Speaker I have no authority in this matter. I do not have, as the House of Commons has, the authority to name a senator. If I did take that authority, I would have no means of enforcing it. It is up to the chamber.

Journals of the Senate, April 14, 2005, p. 727:

I thank Senator Tkachuk for raising the matter and honourable senators for reviewing the details of what transpired yesterday. The exchange I think speaks for itself.

Senator Stratton drew our attention to rule 51 [now see rule 6-13(1)], which reads:

All personal, sharp or taxing speeches are forbidden.

That is the extent to which the presiding officer of the Senate can involve himself or herself in a matter such as this, other than to draw attention to the fact that such has occurred and that senators should judge themselves accordingly.

... In terms of the request to the chair to address the matter, my ruling is that it is not within the power of the chair to do other than what I have done on this occasion, and that is to draw attention to rule [6-13(1)]. The other matters are for the Senate itself or for a senator to use the rules to seek the remedies that are provided for in the rules.

Journals of the Senate, October 2, 2012, p. 1586:

Freedom of speech is a fundamental right necessary for the performance of our duties as parliamentarians. This right, as described in the second edition of *House of Commons Procedure and Practice*, at pages 89-90, permits members "...to speak in the House without inhibition, to refer to any matter or express any opinion as they see fit, to say what they feel needs to be said in the furtherance of the national interest ...". However, this right is not absolute. It is "[s]ubject to the rules of order in debate ...", as indicated at page 222 of the 24th edition of Erskine May.

There is no definitive list of words or expressions that are "personal, sharp or taxing". Indeed, as explained in a ruling of December 16, 2011, "[t]he circumstances and tone of the debate in question play important roles in this determination".

By and large, this limitation on the freedom of speech is observed in the Senate without incident. The Senate is a largely self-regulating chamber and each of us assumes responsibility for maintaining order and decorum in this place. In close to 30 years, only eight rulings have addressed inappropriate language. This is because the respectful exchange of ideas and information is a basic characteristic of the Senate.

In the past, I have asked senators to show care in how they frame their remarks. This caution includes whether senators are speaking extemporaneously or from prepared remarks. It is possible to express a position firmly and with conviction, indeed to attack a contrary view, while avoiding giving offence. We should always strive to show respect for each other, for the right to hold and express our divergent opinions is the basis of free speech.

Speaker's Ruling: Unparliamentary Language as Question of Privilege

Journals of the Senate, April 21, 2009, pp. 450-451:

Honourable Senators, before dealing with the particular matter of this question of privilege, the Chair would again urge all colleagues to use temperate language to help maintain order and decorum. Senators should avoid unnecessarily impugning the motives of colleagues. ...

...
With respect to the substantive matter of the question of privilege, the Speaker's role is to review the case and determine whether there is a prima facie case for a question of privilege, guided, *inter alia*, by the four criteria identified in rule [13-3(1)]. The first criterion is that the matter must be raised at the earliest opportunity. On this point, it may be reasonable to assume that Senator Harb wished to consult the Debates to ensure that he had indeed heard the remarks in question.

On the second criterion, that the matter must directly concern privilege, Senator Harb felt that the remarks affected him personally, seeing them as an attempt to silence him. In point of fact, however, nothing actually prevented the Senator from continuing to speak in debate. If there was any problem with the remarks, it was more as to whether they were "personal, sharp or taxing," to use the language of rule [6-13(1)]. As such, the issue may have been one of order, but was certainly not one of privilege.

Speaker's Ruling: Reflections on Committee Witness

Journals of the Senate, October 5, 2010, pp. 796-798:

It goes without saying that just because senators have the freedom to say something does not mean that they should avail themselves of this right in all cases. Honourable senators should be aware of the need to avoid impugning the reputations of those who do not sit in this place and who have no mechanism to defend themselves.

The case before us is somewhat complicated by the fact that it is not only parliamentarians who benefit from the protection of privilege. Witnesses are not to be molested or interfered with because of evidence that they have given or intend to give before a committee. To interfere with witnesses before their appearance or to punish them for evidence given can constitute a breach of the privileges of the Senate. This is recognized at page 150 of the 23rd edition of Erskine May, to which reference was made during debate on the alleged question of privilege.

...

In terms of prospective protection, which is central to this question of privilege, the basic allegation was that subsequent criticism of the witness could keep unknown future witnesses from appearing, at some point in time. Nothing specific was offered as an illustration to show that this was anything more than a possibility. Against this vague concern, we must set the undoubted freedom of speech that all senators enjoy, subject always to our Rules, customs and practices. There is nothing concrete in this case to suggest a real conflict between the two privileges of senator's freedom of speech and the protection of identified future witnesses.

The potential for conflict between unfettered freedom of speech and the need to use it in a responsible manner has been recognized in other countries. In Australia, most parliamentary houses have established a "right of reply". In the federal Senate, for example, a person who claims to have been adversely affected in a proceeding can submit a request that a response be published. This request goes through a control process before being put into effect. Since 1988 the Australian Senate has also recognized that freedom of speech must be exercised in a responsible manner, to avoid the damaging effects that allegations can have.

...

... [I]t is not evident how Senator Brazeau's exercise of his undoubted freedom of speech has, in a concrete and direct way, prevented the Senate from discharging its basic functions of examining legislation, investigating public affairs and ensuring accountability. The concerns raised were speculative. Moreover, let us remember that nothing indicates that the remarks in question affected the outcome of any decision by the Senate. ...

Speaker's Ruling: Reflections on the Speaker and the House of Commons

Journals of the Senate, December 16, 2011, pp. 798-799:

On December 14, 2011, after Question Period, a point of order was raised respecting a senator's statement earlier in the day. The statement at issue had commented on a ruling by the Speaker of the other place. A similar issue arose the day before, when a point of order was raised regarding the use of the word "mendacity" during debate.

Honourable senators, normal parliamentary practice holds that “[d]isrespectful reflections on Parliament as a whole, or on the House [of Commons] and the Senate individually are not permitted.” This is found at page 614 of the second edition of *House of Commons Procedure and Practice*, and Erskine May also makes similar points. The need for care when referring to the House of Commons is manifested by the widespread — although neither universal nor obligatory — practice of referring to that house as “the other place.”

More precisely, Beauchesne, in the sixth edition, at citation 71(1), is quite specific in saying that “[t]he Speaker should be protected against reflection on his or her actions.” Likewise, *House of Commons Procedure and Practice*, at page 615, states that “[r]eflections must not be cast in debate on the conduct of the Speaker or other Presiding Officers.”

More generally, rule [6-13(1)] prohibits “personal, sharp or taxing” language as unparliamentary. There is no definitive list of such words or expressions in the Senate. Determination of what constitutes unparliamentary language is left primarily to the judgment of the Speaker and the sense of the Senate. The circumstances and tone of the debate in question play important roles in this determination. . . .

All honourable senators are encouraged to be mindful of these restrictions, and to avoid making reflections on the houses of Parliament and their proceedings or deliberations.

CHAPTER SEVEN: TIME ALLOCATION

This chapter contains the rules pertaining to the process for curtailing debate on items of Government Business. Known as “time allocation,” this process can only be initiated by the government, and permits it to move a motion allocating a fixed amount of time for debate on an item of Government Business, after which a decision must be taken. There are two types of time allocation: one process is used where there is an agreement between the government and the recognized parties in the Senate on allocating time, and another where there is no such agreement.

With Agreement

RULE 7-1

Agreement to allocate time	<p>7-1. (1) At any time during a sitting, the Leader or the Deputy Leader of the Government may state that the representatives of the recognized parties have agreed to allocate a specified number of days or hours either:</p> <p style="margin-left: 40px;">(a) for one or more stages of consideration of a government bill, including the committee stage; or</p> <p style="margin-left: 40px;">(b) for consideration of another item of Government Business by the Senate or a committee.</p>
Motion on agreement to allocate time	<p>7-1. (2) The Leader or the Deputy Leader of the Government may then, without notice, propose a motion based on the agreement.</p>
Question on agreement to allocate time put immediately	<p>7-1. (3) The question shall be put on the motion immediately, without debate or amendment.</p>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 7-1: Rule 38

COMMENTARY

Rule 7-1 envisages a circumstance where there is an agreement among all the recognized parties in the Senate to allot a specified number of days or hours to one or more stages of a government bill, or another item of Government Business, by the Senate or a committee. After stating in the Senate that there is an agreement, the Leader or Deputy Leader of the Government may move a motion without notice setting forth the terms of the agreed allocation of time. Debate on the item to which time will be allocated does not have to have been previously adjourned; this differs from the situation in which the parties do not reach an agreement to allocate time (rule 7-2). The time allocation motion is decided without debate or amendment. A recorded division on the motion cannot be deferred since rule 9-10(1) states that standing votes can only be deferred on debatable motions.

Such agreements have often stated the time and date that debate on a stage of a bill will end, rather than specifying the number of hours to be taken for the remainder of the debate.

This provision was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 7-1

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, p. 162:

§533. Time allocation is a device for planning the use of time during the various stages of consideration of a bill rather than bringing the debate to an immediate conclusion.

§534. A motion for the allocation of time may set out in detail some or all of the provisions which are to be made for the further proceedings on the bill.

§535. The wording “representatives of the parties” in Standing Order 78, does not include independent Members. *Journals*, December 30, 1971, pp. 1013-14.

House of Commons Procedure and Practice, Second Edition, p. 660:

The time allocation rule allows for specific lengths of time to be set aside for the consideration of one or more stages of a public bill. The term “time allocation” suggests primarily the idea of time management, but the government may use a motion to allocate time as a guillotine. In fact, although the rule permits the government to negotiate with opposition parties on the adoption of a timetable for the consideration of a bill at one or more stages (including the consideration of Senate amendments), it also allows the government to impose strict limits on the time for debate. This is why time allocation is often confused with closure. While it has become the most frequently used mechanism for curtailing debate, time allocation remains a means of bringing the parties together to negotiate an acceptable distribution of the time of the House.

Pages 665-667:

The time allocation rule is divided into three distinct sections. Each section specifies the conditions applying to the allocation of time, depending on the degree of support among the representatives of the recognized parties in the House.

1. *All Parties Agree*: The first section of the rule envisages agreement among the representatives of all the recognized parties in the House to allocate time to the proceedings at any or all stages of a public bill. No notice is required. In proposing the motion, a Minister first states that such an agreement has been reached and then sets out the terms of the agreement, specifying the number of days or hours of debate to be allocated. The Speaker then puts the question to the House, which is decided without debate or amendment.
2. *Majority of Parties Agree*: The second section of the rule envisages agreement among a majority of the representatives of the recognized parties in the House. In these circumstances, the government must be a party to any agreement reached. The motion may not cover more than one stage of the legislative process. It may, however, apply both to report stage and third reading, if it is consistent with the rule requiring a separate day for debate at third reading when a bill has been debated or amended at report stage. Again, no notice is required, and it is not necessary for debate on the stage or stages specified in the time allocation to have begun. Prior to moving the motion,

the Minister states that a majority of party representatives have agreed to a proposed allocation of time. The motion specifies how many days or hours are to be allocated.

3. *No Agreement:* The third section of the rule permits the government to propose an allocation of time unilaterally. In this case, an oral notice of intention to move the motion is required. The motion can only propose the allocation of time for one stage of the legislative process, that being the stage then under consideration. However, the motion can cover both report stage and third reading, provided it is consistent with the rule which requires a separate day for third reading when a bill has been debated or amended at report stage. The amount of time allocated for any stage may not be less than one sitting day.

Without Agreement

RULE 7-2

No agreement to allocate time	<p>7-2. (1) At any time during a sitting, the Leader or the Deputy Leader of the Government may state that the representatives of the recognized parties have failed to agree to allocate time to conclude an adjourned debate on either:</p> <ul style="list-style-type: none"> (a) any stage of consideration of a government bill, including the committee stage; or (b) another item of Government Business.
Notice of motion to allocate time	<p>7-2. (2) After stating that there is no agreement on time allocation, the Leader or the Deputy Leader of the Government may give notice of a motion to allocate time for the adjourned debate, including the committee stage of a bill. The motion shall specify the number of days or hours to be allocated.</p>
Motion to allocate time made an order of the day	<p>7-2. (3) The motion to allocate time shall be an order of the day under Government Motions for the next sitting day.</p>
Only one stage of a bill	<p>7-2. (4) Except as provided in paragraph (5)(c), a motion relating to a government bill under this rule shall allocate time to only one stage of consideration of the bill.</p>
Content of motion to allocate time	<p>7-2. (5) A motion under this rule shall allocate at least:</p> <ul style="list-style-type: none"> (a) six hours to complete the adjourned debate: <ul style="list-style-type: none"> (i) on a substantive motion, or (ii) at the second reading stage of a bill; (b) one calendar day (in the period Monday to Friday) for a committee to report a bill or other item of Government Business, failing which it shall, at midnight, be deemed reported without amendment; (c) a single period of six hours for both the further consideration of a report on a bill and the third reading stage; or (d) six hours for further debate at the third reading stage of a bill.

EQUIVALENCE WITH MARCH 2010 RULES

Rules 7-2(1), (2) and (3): Rule 39(1)

Rule 7-2(4): Rule 39(3)

Rule 7-2(5): Rule 39(2)

COMMENTARY

Rule 7-2 envisages a circumstance where the recognized parties in the Senate have failed to agree on time allocation for an item of Government Business. The Leader or Deputy Leader of the Government can, at any time during a sitting of the Senate, announce this to the Senate and then give notice of a motion to allocate a specified number of hours or days of debate to a stage of a government bill or to another item of Government Business. Debate on the item must have already been adjourned at least once before the notice is given. The motion to allocate time is placed on the Orders of the Day for the next sitting as an item of Government Business. The motion is debatable.

Rule 7-2(5) provides for the minimum amount of time that may be allocated for debate – for substantive motions and each stage of a bill, it is a further six hours of debate. Report and third reading stages may be combined, and a minimum of one calendar day is provided for committee consideration of a bill. Unlike the case where there is agreement between the government and all recognized parties to allocate time, the motion to allocate time without agreement can apply to only one stage of debate of a government bill, with the exception of report stage and third reading. In practice, the minimum periods have become the usual amount of time contained in time allocation motions.

The *Glossary of Parliamentary Procedure* (7th edition, 2011), produced by the House of Commons, defines time allocation as “The allocation of a specific period of time for the consideration of one or more stages of a public bill.” This is distinct from closure, “A procedure preventing further adjournment of debate on any motion or on any stage of a bill and requiring that the motion come to a vote at the end of the sitting in which it is invoked.”

This provision was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 7-2

Annotated Standing Orders of the House of Commons, Second Edition, p. 283:

Section (3) of Standing Order 78 envisages a circumstance where agreement could not be reached under either Standing Order 78(1) or 78(2) on time allocation for the particular stage of a public bill currently being considered. Debate must have begun on that stage. As with sections (1) and (2) of Standing Order 78, the motion can only be moved by a Minister of the Crown. Notice of intention to move such a motion must have been given at a previous sitting and such notice must be given orally and is to be taken up under Government Orders. The motion may allot a specified number of “days” or “hours”, but some restrictions apply to the motion. Specifically, the motion can apply to proceedings at the stage under consideration only; the time to be allocated is not less than one sitting day for any stage; and the motion can cover the third reading stage in addition to report stage. In the

latter case, the motion can be moved while considering report stage, provided the motion takes into account the restrictions specified by Standing Order 76.1(10) (regarding situations where report and third reading stages must be decided at separate sittings).

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 468-469:

Sometimes, in attempting to secure the passage of particularly important and controversial legislation, governments are confronted with a series of choices, none of which are entirely satisfactory: taking special powers to curtail debate, cutting down their normal programme to an undesirable extent, prolonging the sittings of Parliament, or acknowledging the impotence of the majority of the House in the face of the resistance of the minority. Before the introduction of programming of bills, in such circumstances resort was had sooner or later to the most drastic method of curtailing debate known to procedure, namely, the setting of a date by which a committee must report, or the allocation of a specified number of days to the various stages of a bill and of limited amounts of time to particular portions of a bill. Orders made under this procedure are known as either ‘allocation of time orders’ (and colloquially as ‘guillotine motions’) or ‘programme orders’.

The guillotine represents the limit to which procedure goes in affirming the rights of the majority at the expense of the minorities of the House, and it cannot be denied that it is capable of being used in such a way as to upset the balance, generally so carefully preserved, between the claims of business and the rights of debate. In an attempt to moderate the harshness of the guillotine, in recent years the House has moved towards more general programming of legislation, under which a detailed programme for the passage of an individual bill is agreed to by the House, normally before the commencement of the proceedings in committee. There is a similarity between the Standing Orders on programming and traditional allocation of time orders although the programming standing orders incorporate more opportunities for the minority to have matters voted upon that customarily were provided in guillotines. In addition, the impact of allocation of time or programme orders is to some extent mitigated either by consultations between the party representatives informally or in the Business Committee or the Programming Committee in order to establish the greatest possible measure of agreement as to the most satisfactory disposal of the time available. Nevertheless, opposition parties have continued to express dissatisfaction with the way programming has curtailed debate on bills, particularly at report stage. Even after programme orders came to be used regularly, allocation of time orders have been used on occasions when, for example, the government wishes to enact a bill with unusual expedition.

Speaker’s Ruling: When Agreement Not Reached

Journals of the Senate, September 20, 2000, p. 858:

Insofar as the point raised by the Honourable Senator Kinsella is concerned, I refer specifically to rule 39(1) [now see rule 7-2(1)], which simply states that if “the Deputy Leader of the Government in the Senate, from his or her place in the Senate, may state that the representatives of the parties have failed to agree to allocate a specified number of days or hours,” that allows the deputy leader to give notice.

Honourable senators, the deputy leader has stated that an agreement has not been reached. I have no means of knowing whether an agreement will be reached. All I have before me is a motion stating that if they have reached no agreement at this point, the rule has been followed and the terms have been set out. Therefore, I rule that the point of order is not valid.

Speaker's Ruling: Notice After Vote Is Deferred

Journals of the Senate, May 13, 2004, p. 556:

(Note: On May 13, 2004, a notice of time allocation was given on a government bill just after the deferral of a vote on a reasoned amendment to third reading. A point of order was raised arguing that the Senate had not adjourned the item of Government Business when the notice was given and so the notice would have to be resubmitted on the next sitting day. After hearing further argument, the Speaker delivered the following ruling.)

In terms of precedents in our chamber, we have done this before, and I refer honourable senators to a specific example in the *Debates of the Senate* of December 17, 2001, at page 2095. Notice was given at 2:10 p.m., which interrupted the proceedings on Bill C-36, the terrorism bill. The notice to allocate time was given after a vote had been called and deferred and before the vote was taken. ...

In my mind, the issue boils down to this: ... An item stays on the *Order Paper* under Government Business, whether it is adjourned by agreement of the Senate...; whether it is adjourned by the operation of a vote of the Senate or dealt with in some other way by unanimous consent; or, whether, as in the case at hand, by the operation of the rules, it is an item to be dealt with on our agenda under Government Business on the next sitting day. It remains in the same place that it would have been had it not been subject to a deferred vote. The only thing that is different is that, by operation of the rules, there is a deemed order that there will be a vote at 5:30 p.m. That does not imply that it is not an adjourned item. If that were not the case, we would have to determine refined categories of items, other than those that are adjourned and remain in their normal place on the *Order Paper*. I do not believe that is applicable in the current instance. Accordingly, I rule that the matter is adjourned for the purposes of rule [7-2(1)].

Debate on Motions to Allocate Time

RULE 7-3	
Procedure for debate on motion to allocate time	7-3. (1) When a government motion to allocate time without agreement has been moved: <ul style="list-style-type: none">(a) the debate shall not be adjourned;(b) debate shall last a maximum of two and one half hours;(c) during the debate the rules respecting the ordinary time of adjournment shall not apply, and the debate shall instead continue until concluded or the time has expired;(d) no amendment or other motion shall be received, except a motion that a certain Senator be now heard or do now speak;(e) Senators shall speak only once;(f) Senators may speak for a maximum of 10 minutes each, provided that:<ul style="list-style-type: none">(i) the Leader of the Government and the Leader of the Opposition may each speak for up to 30 minutes, and

- (ii) the leader of any other recognized party may speak for up to 15 minutes;
- (g) when debate concludes or the time for debate expires, the Speaker shall put the question; and
- (h) any standing vote requested shall not be deferred, and shall be taken according to the ordinary procedure for determining the duration of bells.

Resuming
debate on
motion to
allocate time
after evening
suspension

7-3. (2) Except as otherwise provided, if debate on a government motion to allocate time without agreement is interrupted at 6 p.m. for the evening suspension, it shall resume when the Senate reconvenes at 8 p.m.

EXCEPTIONS

Rule 8-4(1): Adjournment motion for emergency debate

Rule 13-6(1): Consideration of question of privilege

Rule 13-6(2): When question of privilege without notice considered

Rule 13-7(2): Debate on motion on case of privilege

EQUIVALENCE WITH MARCH 2010 RULES

Rule 7-3: Rule 40

COMMENTARY

A motion to allocate time for the consideration of any item of Government Business is moved for adoption during Orders of the Day under Government Motions. Pursuant to rule 7-3(1)(b), debate is limited to two and one-half hours. The rules relating to the normal hour of daily adjournment do not apply during debate on a time allocation motion, which will continue until concluded or until the expiry of time, at which point the Speaker will put the question.

During the debate, the Leader of the Government and the Leader of the Opposition may speak for no longer than 30 minutes each, and the leader of any other recognized party may speak for no longer than 15 minutes. All other senators may speak for no longer than 10 minutes. Rule 7-3(1)(e) provides that senators may only speak once in debate, so there is no right of final reply. The time allocation motion is not amendable, and no other motion, other than that a senator “be now heard” or “do now speak,” can be received (see rule 6-4(2)). If a standing vote is requested, it cannot be deferred.

When a motion for the allocation of time is being considered, the provisions of rule 3-3(1) apply, and the sitting is suspended at 6 p.m., with debate to resume when the Senate reconvenes at 8 p.m. However, at 8 p.m., if the Senate is scheduled to deal with an emergency debate (see rule 8-4(1)), or with a case or question of privilege (see rules 13-6(1) and (2), and 13-7(2)), the debate on the time allocation motion will only resume once the Senate has disposed of the other matters, for the balance of time remaining..

As with the previous rules dealing with the allocation of time, this provision was adopted on June 18, 1991 (*Journals of the Senate*, pp. 180-181). On June 11, 2002, it was amended to provide for third parties in the Senate (see *Journals of the Senate*, p. 1714), and on June 19, 2012, the current wording was adopted (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 7-3

House of Commons Procedure and Practice, Second Edition, p. 668:

When the time allocation motion is moved with the agreement of all or a majority of the recognized parties, the question is put on the motion as soon as it is moved. However, if it is moved without any agreement, the House first holds a questions and answers period not exceeding 30 minutes for Members to ask questions of the Minister responsible for the item subject to the motion or of the Minister acting on his or her behalf. At the conclusion of the period provided, or when no other Member wishes to speak, the Speaker puts the question on the time allocation motion.

Time-Allocated Government Order of the Day

RULE 7-4	
Government order to which time is allocated	7-4. (1) When a time-allocated government order of the day is called: (a) the debate shall not be adjourned; and (b) no amendment or other motion shall be received, except that a certain Senator be now heard or do now speak.
Debate to continue beyond ordinary time of adjournment and no evening suspension	7-4. (2) During debate on a time-allocated government order of the day, the rules respecting the ordinary time of adjournment and the evening suspension of the sitting at 6 p.m. shall not apply. Instead, the debate shall continue until it is concluded or until the time allocated has expired.
Debate on time-allocated government item resumes if interrupted for deferred vote	7-4. (3) Immediately after any interruption for a deferred standing vote, debate on a time-allocated government item of business shall resume without reducing the time available for the order under time allocation.
Debate on time-allocated government item resumes if interrupted for other items of business	7-4. (4) Immediately after any interruption due to a case of privilege, emergency debate or question of privilege, debate on a time-allocated government item of business shall resume without reducing the time available for the order under time allocation.
Question put on time-allocated order	7-4. (5) Except as otherwise provided, when debate on a time-allocated government order of the day concludes or the time expires, the Speaker shall immediately put all the questions necessary to dispose of the item, provided that:

- (a) any standing vote requested at or before 5:15 p.m. shall be deferred until 5:30 p.m. on the same day, and the vote shall not be further deferred;
- (b) if the vote is requested after 5:15 p.m. and before 5:30 p.m., it shall be deferred to the time that would allow for a 15-minute bell, and the vote shall not be further deferred;
- (c) if the vote is requested at 5:30 p.m. or later, it shall be deferred until 5:30 p.m. on the next sitting day; and
- (d) if the deferred vote is to be held on a Friday, at any time during a sitting, the Government Whip may request a further deferral to 5:30 p.m. on the next sitting day.

EXCEPTION

Rule 16-1(6): Standing vote may be postponed if in conflict with message

Automatic
adjournment in
certain cases

7-4. (6) When the question on a time-allocated government order of the day is put after the ordinary time of adjournment, the Speaker shall, after all consequential business is disposed of, declare that a motion to adjourn the Senate has been deemed moved and adopted, and adjourn the Senate until the next sitting.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 7-4(1): Rule 39(7)

Rule 7-4(2): Rule 39(5)

Rule 7-4(3): Rule 39(5)

Rule 7-4(4): Rule 39(6)

Rule 7-4(5): Rules 39(4) and (5)

Rule 7-4(6): Rule 39(5)

COMMENTARY

When an item of Government Business subject to the provisions of time allocation is called, that debate cannot be adjourned, and no motion can be received except that a senator “be now heard” or “do now speak” (see rule 6-4(2)). The duration of the debate will be as stated in the time allocation motion, in compliance with the provisions of rule 7-2(5). The speaking times for individual senators continue to follow the general rules of debate (see rule 6-3).

During debate on a time-allocated government item, the rules relating to the normal hour of daily adjournment and the 6 p.m. suspension do not apply. The debate on the time-allocated motion will continue until concluded or until the time expires, at which point the Speaker will put the question. The only interruptions permitted are for a deferred standing vote, a motion moved in relation to a case of privilege, an emergency debate or the consideration of a question of privilege (see rules 7-4(3) and (4)). Immediately after such interruption, the debate on the time-allocated item will resume for the amount of time remaining in debate.

If a standing vote is requested at the conclusion of debate on the time-allocated item, the provisions of rule 7-4(5) apply. If debate expires at or prior to 5:15 p.m., the standing vote will be held at 5:30 p.m. on the same afternoon; if debate expires after 5:15 p.m. but before 5:30 p.m., the standing vote will be held after a 15 minute bell; or, if debate concludes after 5:30 p.m., the standing vote is deferred until

Rule 7-4

5:30 p.m. on the next day the Senate sits. If a deferred vote is to be held on a Friday, the Government Whip may request a deferral to the next sitting day. The only exception to these general rules would be when a deferred vote conflicts with the time provided to receive a message (see rule 16-1(6)). Under these circumstances, the deferred vote is postponed until after the conclusion of the event. Certain specifics may vary in some circumstances, as when time allocation applies to both report stage and third reading, or when amendments were before the Senate at the time the time allocation order was adopted.

When the question on a time-allocated item is put after the ordinary hour of daily adjournment and any consequential business is completed, the Speaker will declare that a motion to adjourn the Senate until the next sitting day has been deemed moved and adopted.

As with the previous rules dealing with the allocation of time, this provision was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). On June 19, 2012, the current wording of the rule was adopted (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 7-4

House of Commons Procedure and Practice, Second Edition, p. 669:

At the expiry of the time allocated for a given stage, any proceedings before the House are interrupted, and the Chair puts every question necessary for the disposal of the bill at that stage. If a recorded division is demanded, the bells summoning the Members will ring for not longer than 15 minutes. Recorded divisions on bills under time allocation are not ordinarily deferred, though deferrals may take place by special order, by automatic deferral of the vote pursuant to rules of the House, or by agreement of the Whips of all recognized parties. When debate concludes prior to the end of the allotted time, if a recorded division is demanded, the bells will ring for not more than 30 minutes and the vote may be deferred by either the Chief Government Whip or the Chief Opposition Whip.

CHAPTER EIGHT: EMERGENCY DEBATES

Chapter 8 describes the process for the Senate to set aside its normal business to discuss a matter of urgent public importance. This includes the provisions for a senator to request an emergency debate and the criteria that must be met (rules 8-1 and 8-2), as well as the way in which the request is dealt with in the Senate and decided by the Speaker (rule 8-3). Finally, rules 8-4 and 8-5 describe the process whereby the debate is conducted.

Request for Emergency Debate

RULES 8-1 and 8-2	
Raising a matter of urgent public interest	8-1. (1) A Senator who wishes to raise a matter of urgent public interest may request that an emergency debate be held on that subject.
Giving notice for emergency debate	8-1. (2) A written notice requesting the emergency debate shall be sent to the Clerk at least three hours before a scheduled meeting of the Senate. If the request is to be heard on a Friday, the notice must be delivered to the Clerk no later than 6 p.m. on Thursday.
Content of notice	8-2. (1) The notice shall briefly outline the urgent matter and explain why it should be debated. The matter proposed for debate: <ul style="list-style-type: none"> (a) must relate to a genuine emergency; (b) must not revive a request for an emergency debate already considered during the same session; (c) must not raise any question that, according to the Rules, may be debated only on a substantive motion after notice; and (d) must not raise an issue that is in substance a question of privilege.
Translation and distribution	8-2. (2) Upon receipt of the notice, the Clerk shall arrange for its translation and, as soon as possible thereafter, have a copy sent to each Senator’s parliamentary office and also placed on each Senator’s desk in the Senate Chamber.
Non-receipt	8-2. (3) The non-receipt of a notice by any Senator does not affect the validity of the notice, nor can it constitute grounds to delay consideration of the request.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 8-1: Rule 60(1)

Rule 8-2: Rules 60(1), (2) and (3)

COMMENTARY

Emergency debate procedures permit the Senate to set aside its normal business to discuss a matter of urgent public importance. Senators wishing to raise such a matter for debate in the Senate must first give notice to the Clerk of the Senate at least three hours before the sitting. If the request is to be made on a

Friday, notice must be delivered no later than 6 p.m. on Thursday. The Clerk will have the notice translated and distributed to each senator's office and desk in the chamber. The non-receipt of a notice does not invalidate it.

Rule 8-2(1) outlines the criteria for determining whether the matter to be raised qualifies for an emergency debate. The matter must be considered a genuine emergency requiring urgent consideration, it cannot revive an emergency debate already considered during the same session, it cannot raise a question that should be debated as a substantive motion with notice, and it cannot raise an issue that is a question of privilege.

The first procedure of the Senate governing emergency debates was adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137). Rule 25(g) stated that no notice would be required "for the adjournment of the Senate for the purpose of bringing up a question of urgent public importance (which the mover shall state on rising to speak) before the House proceeds to the Orders of the Day." The rule was amended to its current content on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 8-1 and 8-2

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 113-114:

§389. The "specific and important matter requiring urgent consideration", for the discussion of which the adjournment of the House may be moved under Standing Order 52, must be so pressing that the public interest will suffer if it is not given immediate attention.

§390. "Urgency" within this rule does not apply to the matter itself, but means "urgency of debate", when the ordinary opportunities provided by the rules of the House do not permit the subject to be brought on early enough and the public interest demands that a discussion take place immediately.

§391. The Speaker is bound to apply to motions made under Standing Order 52 the established rules of debate, and to enforce the principle that subjects excluded by those rules cannot be brought forward thereon, such as a matter under adjudication by a court of law, or matters already discussed or appointed for consideration during the current session, whether upon a substantive motion, upon an amendment, or upon an Order of the Day.

§392. Matters arising out of the debates of the same session, or the term of a bill before the Senate, matters of privilege or order, or matters debatable only upon a substantive motion, cannot be submitted to the House under this Standing Order.

§393. Leave to make a motion for the adjournment of the House, for the purpose of discussing a specific and important matter requiring urgent consideration, is out of order if the matter proposed to be discussed has been moved as an amendment to the Address in Reply to the Speech from the Throne which has not yet been disposed of. *Journals*, March 31, 1931, p. 50.

§394. (1) A general question of the maladministration of a department cannot be considered for debate under this Standing Order, *Debates*, March 27, 1974, p. 906.

(2) A motion under Standing Order 52 should not be essentially a censure or no-confidence motion. *Journals*, September 16, 1971, pp. 801-2.

§395. The conduct of a Member ought not to be the subject of debate under this Standing Order. If a Member's conduct is to be examined, it should be done on the basis of a substantive motion, of which notice is required, drawn in terms which clearly state a charge of wrongdoing. *Debates*, January 22, 1987, p. 2577.

Annotated Standing Orders of the House of Commons, Second Edition, p. 188:

Requests for permission to move the adjournment of the House to debate a "specific and important" matter must always be made after the conclusion of the ordinary daily routine of business. At least one hour before permission is sought, the Member must give the Speaker a written statement of the matter he or she wants to raise in the House. If for any reason the application cannot be heard on the day notice is submitted, the Member must resubmit his or her written statement on a subsequent sitting day. It is this same concise statement that the Member reads to the House in seeking leave to move the motion to adjourn.

House of Representatives Practice, Sixth Edition, pp. 592-593:

The matter of public importance procedure developed from a provision in the standing orders adopted in 1901 which permitted a Member to move formally the adjournment of the House for the purpose of discussing a definite matter of urgent public importance. ...

While, technically, any Member may initiate a matter for discussion, in practice Ministers would not be expected to use the procedure (and have not done so), as there are other avenues available to them to initiate debate on a particular subject. For a Minister to use the procedure would be regarded as an intrusion into an area recognised as the preserve of shadow ministers and backbench Members.

RULE 8-3

Order of debate **8-3.** (1) Except as otherwise provided, when the Senate meets after a notice has been received and distributed, the Speaker shall not call for Senators' Statements. Instead, the Speaker shall recognize the Senators who gave notice of a request for an emergency debate in the order in which the notices were received. Once debate on the first request is completed, the Speaker shall call for debate on any other distinct requests either until one is accepted as an emergency or none are accepted. All requests dealing with the same urgent matter shall be considered together.

EXCEPTION

Rule 4-4(2): When tributes or notice of a question of privilege

Reasons for debate **8-3.** (2) A Senator who gave notice shall explain why the normal business of the Senate should be set aside for the emergency debate. In putting the case, the Senator shall state:

(a) how the matter concerns the administrative responsibilities of the government or could come within the scope of departmental action; and

	(b) why the Senate is unlikely to have another opportunity to debate the matter within a reasonable period of time.
Time limit for request for emergency debate	8-3. (3) The debate on each request shall not exceed 15 minutes. During this debate, Senators, including the Senator making the request, shall speak only once and for no more than five minutes.
No motions during request for emergency debate	8-3. (4) During consideration of a request for an emergency debate, no motion shall be received.
Urgency decided by Speaker	8-3. (5) At the end of the debate, the Speaker shall determine whether the request for an emergency debate constitutes a matter of urgent public interest, making reference to the criteria in subsection (2) and rule 8-2(1).

EQUIVALENCE WITH MARCH 2010 RULES

Rule 8-3(1): Rules 60(4) and (9)

Rule 8-3(2): Rules 60(5) and (6)

Rule 8-3(3): Rule 60(7)

Rule 8-3(4): Rule 60(7)

Rule 8-3(5): Rule 60(8)

COMMENTARY

A senator who has given notice of a matter of urgent public interest will be recognized after Prayers by the Speaker. If more than one notice has been received, they will be heard and debated in the order in which they were received, until either one has been accepted for an emergency debate or none is accepted. Notices dealing with the same matter are considered together. The request for an emergency debate will be delayed if Tributes have been requested pursuant to rule 4-3, or if an oral notice of a question of privilege is to be given under rule 13-4(4). After Tributes or the oral notice of a question of privilege are completed, the request for an emergency debate will be heard (rule 4-4(2)).

Pursuant to rule 8-3(2), the senator raising the matter shall explain why leave should be granted to put aside the regular order of business to consider the matter contained in the notice. The senator may speak for not more than five minutes. Other senators may also speak for up to five minutes each as to whether the situation meets the criteria that would allow other business to be put aside. No motion may be moved during the consideration of a request for an emergency debate. Pursuant to rule 8-3(3), after not more than 15 minutes of consideration of the request, the Speaker shall declare whether the situation qualifies as a matter of urgent public importance making reference to the criteria listed under rule 8-2(1) and rule 8-3(2). This decision can be appealed pursuant to rule 2-5(3).

As with the previous rules dealing with emergency debates, the origins of rule 8-3 go back to changes adopted on May 2, 1906 (then rule 25(g), quoted in the text relating to rules 8-1 and 8-2 above) (see *Journals of the Senate*, pp. 136-137). The provision was amended on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), to its current content, with the current wording being adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 8-3

House of Commons Procedure and Practice, Second Edition, pp. 690-692:

... At the conclusion of Routine Proceedings, any Member who has filed an application with the Speaker rises to ask the Speaker for leave to move the adjournment of the House to debate the issue outlined in the application. The Member then makes a brief statement, normally by simply reading the text of the application filed with the Speaker. No discussion or argument is allowed in the presentation because, as one Speaker stressed, a lengthy statement may provoke debate. However, occasionally a Member will be permitted to expand on the application if the Chair indicates that the additional information could be of assistance in reaching a decision.

Under the Standing Orders, not more than one motion to adjourn the House for an emergency debate may be moved in a particular sitting. On occasion, more than one application has been forwarded to the Speaker. In such cases, Members are recognized in the order in which applications were received.

...
Having heard an application for an emergency debate, the Speaker decides without debate whether the matter is specific and important enough to warrant urgent consideration by the House. ...

House of Representatives Practice, Sixth Edition, p. 593:

Standing order 46 invests the Speaker with the power to decide whether a matter of public importance is in order. A Member must present to the Speaker a written statement of the matter proposed to be discussed.

... A matter is put before the House only if the Speaker has decided that it is in order and the Speaker is not obliged to inform the House of matters determined to be out of order. Members cannot read to the House (or present) matters determined to be out of order or not selected for discussion.

La Procédure parlementaire du Québec, Third Edition, pp. 299-301:

According to the jurisprudence, the first question the Chair must ask is not whether there is a serious problem, but whether the matter requires urgent consideration. Thus, the Chair may grant leave to hold a debate in response to a sudden or acute crisis or a suddenly aggravated situation. A request to hold an urgent debate on a labour dispute might be refused, however, if negotiations are in progress or are scheduled to begin shortly, in order to allow the normal dispute resolution process to take its course.

In addition to urgency, jurisprudence has identified the impossibility of discussing the matter in some other context as an important factor for the Chair to consider in deciding whether to authorize an urgent debate. ...

In determining whether future opportunities for discussion are likely to arise, the Chair must disregard hypothetical possibilities such as the likelihood of the Assembly's being dissolved.

A request to debate an urgent matter is out of order if the issue concerned does not fall under the Government's administrative responsibility. The same applies when the province's jurisdiction has not been clearly established or when the matter is not under the authority of the National Assembly. On the other hand, the Chair has in the past authorized an urgent debate on a stock market crisis: although of international scope, the issue was within the Assembly's jurisdiction.

Process for Emergency Debate

RULES 8-4 and 8-5

Adjournment motion for emergency debate	8-4. (1) Except as provided in subsection (2), when the Senate completes the Orders of the Day, but no later than 8 p.m., or noon on a Friday, the Senator whose request for an emergency debate was accepted shall initiate the debate by moving "that the Senate do now adjourn".
Emergency debate after case of privilege	8-4. (2) An emergency debate shall not take precedence over a motion relating to a case of privilege moved earlier in the sitting. Instead, the emergency debate shall be postponed until debate on the motion has concluded or been adjourned.
Speaking times	8-4. (3) During an emergency debate, Senators shall speak only once and for no more than 15 minutes.
Limitations on motions	8-4. (4) During an emergency debate, no amendment or other motion, except that a certain Senator be now heard or do now speak, shall be received.
Maximum duration of emergency debate	8-4. (5) An emergency debate shall conclude after a maximum of four hours. Provisions relating to the ordinary time of adjournment shall be suspended both during and after an emergency debate.
Where Orders of the Day completed before emergency debate	8-4. (6) The adjournment motion shall be considered adopted at the conclusion of the emergency debate, provided that: <ul style="list-style-type: none"> (a) the Senate had completed consideration of the Orders of the Day before the start of the emergency debate; and (b) the debate ends at or after the ordinary time of adjournment.
Where Orders of the Day not completed before emergency debate	8-4. (7) If the Senate has not completed consideration of the Orders of the Day before taking up the emergency debate, the adjournment motion shall be deemed withdrawn at the conclusion of the debate, and the Senate shall resume consideration of the Orders of the Day where they were interrupted.
Extension of sitting if required	8-4. (8) Except as otherwise provided, if the Senate resumes consideration of the Orders of the Day after an emergency debate, it shall continue sitting until the earlier of:

- (a) the adoption of an adjournment motion;
- (b) the completion of the Orders of the Day; or
- (c) the expiration of a period of time equivalent to that taken in the emergency debate.

EXCEPTIONS

Rule 7-3(1)(c): Procedure for debate on motion to allocate time

Rule 7-4(1)(a): Government order to which time is allocated

Rule 7-4(2): Debate to continue beyond ordinary time of adjournment and no evening suspension

Only one
emergency
debate per
sitting

8-5. There shall be only one emergency debate at any one sitting.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 8-4(1): Rules 61(1) and (2)

Rule 8-4(2): New provision

Rule 8-4(3): Rule 61(8)

Rule 8-4(4): Rule 61(7)

Rule 8-4(5): Rule 61(3)

Rule 8-4(6): Rule 61(3)

Rule 8-4(7): Rule 61(4)

Rule 8-4(8): Rule 61(5)

Rule 8-5: Rule 61(6)

COMMENTARY

When an application for an emergency debate has been accepted, the debate will commence after the Orders of the Day are completed, but no later than 8 p.m. (noon on a Friday). Only one emergency debate can take place in a sitting. Pursuant to rule 8-4(2), if a motion relating to a case of privilege was moved earlier in the day, it takes precedence over the emergency debate. The emergency debate is postponed until that item is disposed of or the debate is adjourned. The emergency debate is, however, taken up before consideration of a question of privilege on which there has not been a prima facie ruling (see rule 4-16(2)). Consideration of a government motion to allocate time or a time-allocated item could be interrupted by an emergency debate (see rules 7-3(2) and 7-4(4)).

During an emergency debate, senators can speak only once (therefore there is no right of final reply) and for no longer than 15 minutes each. No motion or amendment may be received, except that a senator “be now heard” or “do now speak” (rule 6-4(2)). Debate may continue for up to four hours.

The rules relating to the ordinary hour of daily adjournment are suspended for an emergency debate. The debate lasts a maximum of four hours, and if the Senate had completed the Orders of the Day before starting the emergency debate, it will normally adjourn once the debate concludes, if this is after the ordinary time of adjournment (rule 8-4(6)). If the Orders of the Day were not completed before starting the emergency debate, the adjournment motion is automatically withdrawn, and the sitting continues (rule

8-4(7)). In accordance with rule 8-4(8), the Senate will continue with the Orders of the Day until an adjournment motion is adopted, the Orders of the Day are completed or the expiration of a period of time equivalent to the time taken for the emergency debate. At the end of such time, the Speaker will interrupt the proceedings and declare that a motion to adjourn the Senate has been deemed moved and adopted.

There have not been many emergency debates in the Senate. Permission was granted to debate the “current farm crisis” on November 3, 1999 (see *Journals of the Senate*, p. 87). Requests to debate Canada’s blood supply and the application of Section 12 of the *Canadian Charter of Rights and Freedoms* to compassionate murders were rejected on December 11, 1997 (see *Journals of the Senate*, pp. 344-347). In the latter two cases, the Speaker’s decisions were appealed and upheld.

The basic elements of rules 8-4 and 8-5 were adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). At the same time that the current wording was adopted, on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), the rule was changed to provide that the emergency debate would last a maximum of four hours, no matter when it starts (previously it had to finish by midnight, no matter the start time). In addition, a new provision was added to clarify that an emergency debate does not take precedence over a motion moved in relation to a case of privilege, but that it does take precedence over a question of privilege.

RELATED CITATIONS AND EXTRACTS – RULES 8-4 and 8-5

Annotated Standing Orders of the House of Commons, Second Edition, pp. 194-195:

Once the application for an emergency debate has been accepted, the actual debate is deferred until the ordinary hour of daily adjournment that same day, except on Fridays when it is held immediately.

...

...

If an emergency debate concludes before the ordinary hour of daily adjournment, the motion to adjourn is withdrawn and the House may then resume the business previously before it. When debate continues after the time of adjournment, the motion is not withdrawn. Instead, it is deemed carried, either when debate is concluded, or at 12:00 midnight (4:00 p.m. on Fridays). The rule also provides that debate can be extended past midnight (or 4:00 p.m. on Fridays) according to the provisions of Standing Order 26.

CHAPTER NINE: VOTING

This chapter of the Rules describes the process for taking votes in the Senate. There are four ways in which a decision can be reached:

Without dissent expressed: When there is no desire to indicate dissent to a decision, senators will simply call out “agreed” or similar words when the Speaker asks if the motion is adopted. If no other action is taken, the Speaker declares the motion carried.

Without a voice vote, but on division: When there is a wish to indicate that a decision was not unanimous, but there is no desire for a voice or standing vote, senators may simply call out “on division” when the Speaker puts the question. The Speaker will then state that the motion has been adopted or defeated “on division.”

Voice vote: An oral vote may be held without recording senators’ names or the number of those in favour or opposed (rule 9-2).

Standing vote: After the Speaker has declared a decision on a voice vote, two senators may rise in their places to indicate a request for a standing vote (rules 9-3 to 9-7).

General Principle

RULE 9-1

Questions decided by majority of voices

9-1. Questions arising in the Senate shall be decided by a majority of voices, and the Speaker shall in all cases have a vote. When the voices are equal, the question shall be decided in the negative.

REFERENCE

Constitution Act, 1867, *section 36*

EQUIVALENCE WITH MARCH 2010 RULES

Rule 9-1: Rule 65(5)

COMMENTARY

Rule 9-1 establishes that all questions in the Senate are to be decided by way of majority votes. The rule also provides that the Speaker has a vote that can be exercised at the same time as the other senators. If there is a tie, rule 9-1 provides that the decision is in the negative. The Senate Speaker does not exercise a casting vote when there is a tie, unlike the Speaker of the House of Commons.

Since 1867, the Senate has taken decisions based on majority votes as required by section 36 of the *Constitution Act, 1867*. On December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), a rule was first adopted which stated: “Questions arising in the Senate shall be decided by a majority of voices, and when the voices are equal the decision shall be deemed to be in the negative” (rule 49(2)). The current wording of rule 9-1 was adopted on June 19, 2012 (see *Journals of the Senate*,

p. 1429, effective from September 17, 2012). The 2012 amendments also removed previous provisions requiring two-third majority votes to correct irregularities in orders or resolutions (now see rule 5-5) or to rescind orders (now see rule 5-12).

RELATED CITATIONS AND EXTRACTS – RULE 9-1

Constitution Act, 1867:

36. Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

Voice Votes

RULE 9-2

Procedure for voice vote	9-2. (1) When a question is put to a vote, the Speaker shall ask for the “yeas” and “nays” and shall decide whether the question is carried or defeated.
If no standing vote requested	9-2. (2) In the absence of a request for a standing vote, the decision of the Speaker cannot be appealed.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 9-2: Rules 65(1) and (2)

COMMENTARY

Voice votes may be held without recording senators’ names or the number of those in favour or opposed to the question. After putting the question, the Speaker will, if there are contrary voices expressed, ask for those in favour to say “yea” and those opposed to say “nay.” The Speaker will then declare that in his or her opinion the motion has been adopted or defeated. The decision of the chair is final unless two or more senators immediately rise to request a standing vote (see rule 9-3). All voice votes are recorded in the *Journals of the Senate* as being “on division” (in French a motion is recorded as carried “avec dissidence,” but rejected “à la majorité” in these circumstances).

On December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), the rules pertaining to voting were substantially revised. The previously existing rules (see Commentary for rules 9-3 to 9-6) were repealed and the following rule substituted: “(1) Voting in the Senate shall be as follows: the Speaker shall call for the ‘yeas’ and ‘nays’ and shall thereupon decide whether the motion has carried. In the absence of a request for a standing vote, his decision shall be final. ...” The committee proposing the 1968 rule change also recommended replacing the words “Contents” and “Non-Contents” in English with “yeas” and “nays,” “to accord with modern practice” (see *Journals of the Senate*, December 10, 1968, p. 460, effective on August 1, 1969). The current wording of rule 9-2 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 9-2

House of Commons Procedure and Practice, Second Edition, p. 567:

When it is obvious that the House wishes to divide on the question (i.e., dissent is expressed when the Speaker asks if it is the pleasure of the House to adopt the motion), the Speaker will take a voice vote. He or she will ask for the decision of the House by saying, “All those in favour of the motion will please say ‘yea’”; and then, “All those opposed will please say ‘nay’”. The Speaker listens to both responses, judges the voices and the sense of the House, and states his or her opinion as to the result: “In my opinion, the yeas (nays) have it”. If there is no objection, the Speaker then declares the motion carried or negatived, as the case may be; however, if five or more Members (including any Members already on their feet) rise to signal a demand for a recorded vote, the Speaker will say, “Call in the Members” (or, if the vote is automatically deferred pursuant to a Standing Order or special order of the House, the Speaker will announce the date and time at which the deferred recorded division will take place). If fewer than five Members rise, the Speaker concludes that the initial assessment is correct and declares the motion carried or negatived on division. It sometimes happens that, after the yeas and nays have been called, Members have said “on division” to indicate that the question was not decided unanimously, without resorting to a recorded vote.

House of Representatives Practice, Sixth Edition, p. 274:

When debate upon a motion has concluded or has been interrupted in accordance with the standing orders, the Chair puts the question on the motion and states whether, in his or her opinion, the majority of voices is for the ‘Ayes’ or the ‘Noes’. If more than one Member challenges this opinion, the question must be decided by division of the House. The opinion of the Chair cannot be challenged later, but the Chair has put the question again when an assurance was given that some misunderstanding had taken place and by leave of the House following a protest by the Opposition.

Standing Votes

RULES 9-3, 9-4, 9-5 and 9-6	
Request of two Senators	9-3. After a voice vote, upon the request of at least two Senators made before the Senate takes up other business, the Speaker shall call for a standing vote.
No debate after vote called	9-4. Without leave of the Senate, no Senator shall speak in debate on a question after the order has been given to call in the Senators to vote on that question.
Ordinary procedure for determining the duration of bells	<p>9-5. Except as otherwise provided, the ordinary procedure for determining the duration of the bells for a standing vote shall be as follows:</p> <p>(1) The Speaker shall ask the Government and Opposition Whips if there is an agreement on the length of time the bells shall ring.</p> <p>(2) The time proposed by the Whips shall not be more than 60 minutes.</p>

(3) With leave of the Senate, this agreement of the Whips shall constitute an order to sound the bells for that length of time.

(4) In the absence of an agreement or leave of the Senate, the bells shall be sounded for 60 minutes.

EXCEPTIONS

Rule 7-4(5): Question put on time-allocated order

Rule 9-6: 15-minute bells for scheduled vote

Rule 12-30(4): Deferred vote on report

Rule 16-1(6): Standing vote may be postponed if in conflict with message

15 minute bells
for scheduled
vote

9-6. Except as otherwise provided or ordered by the Senate, when a standing vote is required to take place at a certain time, the Speaker shall interrupt the proceedings 15 minutes before that time and shall order the bells to ring.

EXCEPTION

Rule 16-1(6): Standing vote may be postponed if in conflict with message

EQUIVALENCE WITH MARCH 2010 RULES

Rule 9-3: Rule 65(3)

Rule 9-4: Rule 68(2)

Rule 9-5: Rule 66(1)

Rule 9-6: Rule 66(3)

COMMENTARY

After the Speaker has declared his or her decision on a voice vote, two senators may rise in their places to request a standing vote. If a standing vote is requested, it may take place immediately after the sounding of the bells, or it may, in some cases, be deferred at the request of either the Government or Opposition Whip before the bells are rung (rule 9-10). In certain situations a vote is automatically deferred (see Commentary on rule 9-10).

Rule 9-5 provides that when a standing vote has been requested, the bells to call in the senators are rung for 60 minutes, unless the vote is subject to time allocation (rule 7-4(5)), or unless it relates to the disposal of a report under the *Conflict of Interest Code for Senators* (rule 12-30(4)). However, with leave it is possible to reduce the time for ringing the bells. The whips can agree to a reduced amount of time and propose it to the Senate. The Speaker will then ascertain whether the Senate will give leave. Rule 9-6 provides that when a standing vote is required to take place at a specific time, the bells to call in the senators are rung for 15 minutes.

In 1999, a question of privilege was raised after a five minute bell was requested, and it was assumed that leave was given. Following his ruling, the Speaker said, "Yesterday, the whips came and stood in front of me and gave me the information. They do that because, unfortunately ... everyone, instead of staying in their seats, is moving around. There is so much noise that no one can hear. If honourable

senators agree, henceforth when there is such a vote, I will call for order and have everyone sit ... we will not proceed until there is order” (see *Journals of the Senate*, June 10, 1999, p. 1714).

If any standing vote would conflict with an event relating to a message, then the vote is postponed until immediately after the event (see rule 16-1(6)).

When the bells are ringing to call in the senators for a vote, the proceedings are in a state of suspension, which precludes any further debate of the matter under consideration (rule 9-4).

On December 17, 1867, the Senate adopted two rules regarding standing votes. Rule 26 provided that “In voting, the ‘Contents’ first rise in their places, and then the ‘Non-Contents’.” Rule 27 established that “Upon a Division in the Senate, the ‘Contents’ and ‘Non-Contents’ are entered upon the Minutes, if two Senators require it, provided the Senate has not passed to other business.” On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the second rule was amended by adding the words “and each senator shall vote on the question opening and without debate, unless for special reasons he be excused” (rule 52).

On December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), the rules pertaining to standing votes were substantially revised. The existing rules were repealed and the following rule 49 substituted:

(1) Voting in the Senate shall be as follows: the Speaker shall call for the ‘yeas’ and ‘nays’ and shall thereupon decide whether the motion has carried. In the absence of a request for a standing vote, his decision shall be final. Upon the request of any two senators before the Senate takes up other business, the Speaker shall call for a standing vote and the ‘yeas’ shall first rise in their places, then the ‘nays’. Each senator shall vote on the question openly and without debate unless for special reasons he be excused by the Senate: Provided that

(a) the Speaker may vote but shall not be obliged to vote;

(b) a senator shall not be entitled to vote upon any question in which he has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown, and the vote of any senator so interested shall be disallowed;

(c) a senator who declines to vote shall assign his reasons therefore, following which the Speaker shall submit to the Senate the question; ‘Shall the Senator, for the reasons assigned by him, be excused from voting?’ which shall be decided without debate.

(2) Questions arising in the Senate shall be decided by a majority of voices, and when the voices are equal the decision shall be deemed to be in the negative.

The committee recommending the 1968 rule change also observed that the words “Contents” and “Non-Contents” should be deleted and the words “yeas” and “nays” substituted, in the English, “to accord with modern practice” (see *Journals of the Senate*, December 10, 1968, p. 460, effective on August 1, 1969).

The rules were amended again on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). Prior to this time, there was no formal rule on the length of time that the division bells were to ring or the procedure for taking a vote. The current wording of rules 9-3 to 9-6 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 9-3, 9-4, 9-5 and 9-6

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 379:

In the Senate the speaker says — “The contents will now rise.” Then the clerk or clerk-assistant, standing at the table, proceeds to call the names — first looking at Mr. Speaker, who remains seated, and indicates by an indication of his head his desire to vote, or his intention not to vote by the absence of any movement on his part. In all cases the speaker’s voice should be first recorded on the side on which he wishes to vote. After the contents have been taken down the speaker again says — “The non-contents will now rise.” The names having been taken down, and the numbers declared, the speaker states the result of the question in the usual parliamentary terms.

House of Commons Procedure and Practice, Second Edition, pp. 570-571:

Depending on the type of motion being debated and the conditions surrounding the taking of the vote, division bells can ring for a maximum of either 15 or 30 minutes:

- 15-minute bells—Whenever the Speaker is required by the rules or pursuant to a special order to interrupt the proceedings in order to put a question or questions at a specific time and a recorded division has been requested, the division bells are rung for not more than 15 minutes;
- 30-minute bells—The bells calling in the Members for a vote on a non-debatable motion or for an unscheduled vote on a debatable motion are rung for not more than 30 minutes.

... If two or more recorded divisions are to be held successively without intervening debate, the division bells are sounded only once to call in the Members.

... The Speaker has also ruled that it is within the authority of the Chair to intervene during the ringing of division bells should the terms of the motion for which a recorded division has been demanded become inoperable or moot.

RULE 9-7

Procedure for a standing vote

9-7. (1) At the end of the time provided for the ringing of the bells, the Speaker shall:

- (a) announce the names of Senators present who have made and not retracted a declaration of private interest in the matter, and whose names shall not be called except to abstain; and
- (b) then ask the “yeas” to rise for their names to be called, followed by the “nays” and then any abstentions.

Withdrawal or change of vote

9-7. (2) A Senator’s vote may, with leave, be withdrawn or changed immediately after the results of the standing vote have been announced. The Senator shall provide reasons when requesting leave.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 9-7(1): Rules 65(3) and (4), and 66(2)

Rule 9-7(2): Rule 68(3)

COMMENTARY

Rule 9-7 describes the procedures followed when the Senate is holding a standing vote. Once the bells have stopped ringing, the Speaker directs the Usher of the Black Rod to call order, and the whips then enter the chamber, bow to each other and take their seats. The Speaker then announces the names of senators then present who have made a declaration of private interest on the matter. Their names will not be called in the standing vote except to abstain. The same process would be followed in committees.

The Speaker will then read the text of the motion and say: “All those in favour of the motion will please rise.” Those in favour rise in their place. Their names are called one by one, in the language of the senator, by a clerk at the table, starting with the Speaker (if voting) and followed by all other senators row by row. If the leader of a recognized party wishes to vote in the affirmative, he or she is recognized first before other senators on that side of the Senate. Once the yeas have been recognized, the Speaker then rises and says: “All those opposed to the motion will please rise.” Again, a clerk at the table will call the names of the senators who have risen in the same order and manner. Finally, the Speaker will rise and say: “All those who wish to abstain will please rise.” A clerk at the table will then call the names of senators who decline to vote for or against the motion. During the entire process, the Clerk of the Senate, another table officer and a procedural clerk from the Journals Office record the names called. Once all of the names are recorded, the Clerk of the Senate will tally the results in consultation with a table officer, stand, turn towards the Speaker and announce the results of the vote in both English and French in the following order: yeas, nays and abstentions. The Speaker will then declare whether the motion is adopted or defeated. The official outcome, along with all the recorded names, are published in the *Journals of the Senate* and the *Debates of the Senate*.

Immediately after the results of a standing vote have been announced, if a senator wishes to withdraw or change a vote, he or she must rise and make such a request, stating the reasons for the change. The Senate must give leave for the change to be made.

On December 17, 1867, the Senate adopted two rules regarding the process of voting (see the Commentary on rules 9-3 to 9-6 for text of rules 26 and 27 as they were at that time). Two other rules dealing with the process of voting were adopted in 1906: “No senator is entitled to vote upon any question in which he has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown; and the vote of any senator so interested will be disallowed” (rule 53); and “A senator declining to vote, shall assign reasons therefore; and the Speaker shall submit to the Senate the question, — ‘Shall the senator, for the reasons assigned by him, be excused from voting?’” (rule 54). On June 9, 1982 (see *Journals of the Senate*, p. 2201), amendments were adopted so that senators no longer had to seek permission of the Senate in order to abstain. On October 7, 2009 (see *Journals of the Senate*, p. 1325), the rule was amended to remove the provision on “pecuniary interest,” which is instead covered under a provision dealing with declarations of private interests, including a new provision requiring the Speaker to announce the names of senators present who have made a declaration of private interest on the question being decided (see extracts from the *Conflict of Interest Code for Senators* below).

The current wording of rule 9-7 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 9-7

Conflict of Interest Code for Senators (2012):

12. (1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall make a declaration regarding the general nature of the private interest. The declaration can be made orally on the record or in writing to the Clerk of the Senate or the clerk of the committee, as the case may be, but shall be made no later than the first occasion at which the Senator is present during consideration of the matter. The Speaker of the Senate shall cause the declaration to be recorded in the *Journals of the Senate* and the Chair of the committee shall, subject to subsection (4), cause the declaration to be recorded in the Minutes of Proceedings of the committee.

(2) If a Senator becomes aware at a later date of a private interest that should have been declared under subsection (1), the Senator shall make the required declaration forthwith.

(3) The Clerk of the Senate or the Clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer who, subject to subsection (4) and paragraph 31(1)(i), shall file it with the Senator's public disclosure summary.

(4) In any case in which the declaration was made during an in camera meeting, the Chair of the committee and Senate Ethics Officer shall obtain the consent of the subcommittee on agenda and procedure of the committee concerned before causing the declaration to be recorded in the Minutes of Proceedings of the committee or filing it with the Senator's public disclosure summary, as the case may be.

(5) A declaration made in camera that, in compliance with subsection (4), has been neither recorded nor filed with the Senator's public disclosure summary is only valid in respect of the proceeding during which the declaration was made or the matter that the declaration concerned was discussed, and the Senator shall make a further declaration at the first possible opportunity.

(6) In any circumstances other than those in subsection (1) that involve the Senator's parliamentary duties and functions, a Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected shall make an oral declaration regarding the general nature of the private interest at the first opportunity.

(7) A Senator may, by declaration made under this section, retract a previous declaration, in which case the Senator may participate in debate or other deliberations and vote on the matter in respect of which the previous declaration was made.

...

14. A Senator who has made a declaration under section 12, or a Senator who is required to make such a declaration but has not yet done so, may not vote on the matter but may abstain.

House of Commons Procedure and Practice, Second Edition, pp. 567-568:

There is no rule requiring a Member to vote. A Member may abstain from voting simply by remaining seated during the vote. Such abstentions are of an unofficial status and are not recorded although, on occasion, Members have risen following a vote to offer an explanation as to why they had abstained, or how they would have voted had they been present when the question was put.

No Member is entitled to take part in debate or to vote on any question in which he or she has a private interest (formerly referred to as a “direct pecuniary interest”), and any vote subsequently determined to have been cast in these circumstances would be disallowed. For a Member to be disqualified from voting, the monetary interest in question must be direct and personal. A Member’s personal interests would not be challenged on questions of public policy, which have a broad application. Even voting a pay increase to Members themselves does not amount to a case of direct monetary interest because it applies to all Members, rather than just one, or to certain Members but not to others.

When a Member has a private interest in a question, he or she must disclose the general nature of the interest to the Clerk of the House and then abstain from voting. If the Member becomes aware of the conflict of interest after the vote, the disclosure is recorded in the *Journals* and the Conflict of Interest and Ethics Commissioner is notified. If a Member’s vote is questioned after the fact, it is the practice to accept his or her word. If the House wishes to pursue the issue, notice must first be given of a substantive motion to disallow a Member’s vote. While several Members have voluntarily abstained from voting, or have had their votes questioned, no Member’s vote has ever been disallowed on grounds of direct monetary interest.

Annotated Standing Orders of the House of Commons, Second Edition, pp. 162-163:

A vote once taken and recorded stands as a decision of the House. Nonetheless, it remains possible for Members to rise after the vote to indicate an error or to request a change either because they voted incorrectly or they voted when they should not have because they had been paired. A request to change a vote, however, is not always granted. The most famous dramatic instance where a Member attempted to correct his vote took place July 1, 1926 on the crucial division which led to the dissolution of Parliament. The ministry of Prime Minister Meighen had only been formed earlier the same week. The result of the vote was 95 for and 96 against the government. Mr. Bird asked to have his vote withdrawn, acknowledging that he had voted inadvertently since he was paired with an absent Member. The request was refused, the vote stood and the dissolution took place. Despite this dramatic case, there have been instances when the vote has been changed and even once when the Speaker intervened on his own initiative. There are also cases where Members have inadvertently voted both “yea” and “nay” on the same question, leading the Speaker to ask them to clarify their vote.

RULES 9-8 and 9-9

While a vote is in progress **9-8. (1)** While a standing vote is in progress:

- (a) the doors of the Senate Chamber shall not be locked, but only Senators may enter the chamber at that time;
- (b) Senators shall vote only from their assigned places; and
- (c) no Senator shall vote who is not within the bar when the Speaker puts the question.

Public galleries **9-8. (2)** The doors to the public galleries shall be locked and remain locked while a standing vote is in progress.

Adjournment suspended during vote	9-9. When the bells for a standing vote are ringing at the ordinary time of adjournment, the adjournment shall be suspended. When the vote and any consequential business are concluded, the Speaker shall declare the Senate adjourned until the next sitting day without the question being put.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 9-8(1): Rules 66(4) and (5), and 68(1)

Rule 9-8(2): Rule 66(5)

Rule 9-9: Rule 66(6)

COMMENTARY

Rule 9-8 describes the process to be followed during the taking of a vote. The doors to the Senate remain unlocked, and senators are free to enter or leave the chamber as they wish. However, no senator may vote who was not within the bar of the Senate when the Speaker put the question for the standing vote. This is to ensure that all senators are fully aware of the matter to be decided. Further, for a vote to be counted, a senator must be at his or her assigned seat. During the taking of a vote, the doors to the public galleries are locked, and no one is permitted to enter or leave the galleries. Points of order are not permitted when a standing vote is underway.

Rule 9-9 provides that should the bells be ringing for a standing vote at the ordinary hour of adjournment, the rules governing the adjournment of the Senate are suspended until the vote is completed. Immediately after any consequential business, the sitting is deemed to have adjourned.

A rule adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137), stated: “A senator shall not be permitted to vote on any question, unless he is within the Bar when the question is put; and no senator may speak to a question after the order has been given to call in the members to vote thereon, unless with the unanimous consent of the Senate; and, with the like consent, a senator may, for special reasons assigned by him, withdraw or change his vote, immediately after the announcement of the division” (rule 55). The rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and again on December 3, 1985 (see *Journals of the Senate*, p. 849).

On March 16, 1988 (see *Journals of the Senate*, p. 2053), a report of the Committee on Standing Rules and Orders was adopted, recommending that the practice of locking the doors to the Senate Chamber during a vote, which had been discontinued due in part to the objections of some senators, be re-established. The committee stated: “To avoid any misunderstanding with respect to the time at which the doors are to be locked, your Committee further recommends that in future, when the Whips have entered the Chamber and have indicated to the Speaker that they are ready to proceed to vote, the Speaker should say: ‘Let the doors of the Chamber be locked.’ The doors will then be locked by the pages and the Speaker will call for the vote.” Rule changes in 1991 (see *Journals of the Senate*, June 18, 1991, pp. 180-181) reverted to the practice of not locking the doors.

The current wording of rules 9-8 and 9-9 were adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 9-8 and 9-9

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 381-383:

... If a member was not present in the house when the question was put by the speaker, he cannot have his vote recorded. Rule [9-8(1)] of the Senate distinctly provides that "he must be within the Bar when the question is put." "Putting the question" means reading the whole question either in one or the other language from the beginning to the end. A member "who has indistinctly heard the motion read may ask it to be read again, but the rule is that he should be in his place all the time the question is being put in either French or English and he can only require it to be read again in case he did not hear it clearly on the first occasion in either language."

If a question is raised after a division as to the right of a member to vote under the condition stated, the speaker will inquire if the hon. member was present in the house and heard the question put. If he replied in the negative, his name will be struck off the list, and the clerk will again declare the numbers. If a member of the Commons who has heard the question put does not vote, and the attention of the speaker is directed to the fact, the latter will call upon him to declare on which side he votes; and his name will be recorded accordingly. ... Though "pairs," which are arranged by the whips of the respective parties in the house, are not any more authoritatively recognized in the Senate or Commons than in the houses of the English parliament, yet it is customary not to press the vote of a member when he states that he has "paired" with another member. If a member who has heard the question put in the Commons should vote inadvertently, contrary to his intention, he cannot be allowed to correct the mistake, but his vote must remain as first recorded. ... If a member's name is entered incorrectly or is inadvertently left off the list, he can have it rectified should the clerk read out the names, or on the following day when he notices the error in the printed votes. It may be added here, that when the house, by division, has decided a matter a discussion thereon cannot be renewed or reference made to circumstances connected with the division.

House of Commons Procedure and Practice, Second Edition, pp. 580-581:

When Members have been called in for a division, no further debate is permitted. From the time the Speaker begins to put the question until the results of the vote are announced, Members are not to enter, leave or cross the House, nor may they make any noise or disturbance.

Members must be in their assigned seats in the Chamber and have heard the motion read in order for their votes to be recorded. Any Member entering the Chamber while the question is being put or after it has been put cannot have his or her vote counted. Members must remain seated until the result is announced by the Clerk. Members' votes have been questioned because they left the Chamber immediately after voting and before the results of the vote were announced, or because they did not remain seated throughout the process. However, if a Member's presence is disputed and the Member in question asserts that he or she was present when the motion was read, convention prescribes that the House accept the Member's word.

Deferred Standing Votes

RULE 9-10

Deferral of standing vote

9-10. (1) Except as provided in subsection (5) and elsewhere in these Rules, when a standing vote has been requested on a question that is debatable, either the Government or the Opposition Whip may defer the vote.

EXCEPTIONS

Rule 7-3(1)(h): Procedure for debate on motion to allocate time

Rule 7-4(5): Question put on time-allocated order

Rule 12-30(4): Deferred vote on report

Rule 12-32(3)(e): Procedure in Committee of the Whole

Rule 13-7(8): Vote on case of privilege automatically deferred in certain circumstances

Time for deferred vote

9-10. (2) Except as otherwise provided, when a standing vote has been deferred, it stands deferred until 5:30 p.m. on the next sitting day.

EXCEPTIONS

Rule 7-4(5): Question put on time-allocated order

Rule 12-30(4): Deferred vote on report

Vote deferred only once

9-10. (3) Except as provided in subsection (4), a vote deferred under this rule shall not be further deferred.

Vote deferred to Friday

9-10. (4) Except as otherwise provided, if a vote has been deferred to a Friday, the Government Whip may, at any time during a sitting, further defer the vote to 5:30 p.m. on the next sitting day.

EXCEPTIONS

Rule 12-30(4): Deferred vote on report

Rule 13-7(8): Vote on case of privilege automatically deferred in certain circumstances

No deferral in relation to consequential business

9-10. (5) When a deferred vote has been taken and there is consequential business that must be disposed of, the Speaker shall proceed immediately to put successively every question necessary to dispose of such consequential business. A standing vote with respect to the consequential business shall not be deferred, and no bells shall be rung.

Bells to be rung once for a series of votes

9-10. (6) When two or more deferred votes are to be taken in succession during a sitting, the bells to call in the Senators shall be rung only for the first of the deferred votes.

No adjournment until after deferred vote

9-10. (7) On the day a deferred vote is to take place, no motion to adjourn shall be in order until after that vote and the conclusion of any consequential business that must be disposed of. However, if the Senate has gone through all the Orders of the Day and notices before the vote, the Speaker may suspend the sitting until 15 minutes before the deferred vote.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 9-10(1): Rule 67(1)
Rule 9-10(2): Rule 67(2)
Rule 9-10(3): Rule 67(6)
Rule 9-10(4): Rule 67(3)
Rule 9-10(5): Rule 67(4)
Rule 9-10(6): Rule 67(5)
Rule 9-10(7): Rule 7

COMMENTARY

Rule 9-10(1) provides that once a standing vote has been requested on a debatable motion, either whip may request that the vote be deferred. Generally, a deferred vote will take place at 5:30 p.m. on the next day the Senate sits. A deferred vote may not be further deferred unless it has been deferred to a Friday. In that case, the Government Whip may, at any time before the taking of the vote, further defer the vote until 5:30 p.m. on the sitting day following the Friday.

There are some notable exceptions to the general rule on the deferral of votes to the next sitting day at 5:30 p.m.:

1. a vote on a motion other than a dilatory or procedural motion during Routine Proceedings stands automatically deferred to 5:30 p.m. the same day (rules 4-6(1) and (2));
2. a vote on a motion to allocate time cannot be deferred (rule 7-3(1)(h));
3. a vote on a time-allocated item is automatically deferred to 5:30 p.m. on the same day if debate expires at or prior to 5:15 p.m.; if debate expires after 5:15 p.m. but before 5:30 p.m., the standing vote will be held after a 15 minute bell; or, if debate concludes after 5:30 p.m., the standing vote is deferred until 5:30 p.m. on the next sitting day (rule 7-4(5)); the vote cannot be further deferred unless it is to take place on a Friday, in which case the Government Whip may defer it to the next sitting day (rule 7-4(5)(d));
4. a vote on the adoption of a report on the conduct of a senator under the *Conflict of Interest Code for Senators* stands deferred to 5:30 p.m. the same day if debate expires at or prior to 5:15 p.m.; if debate expires after 5:15 p.m. but before 5:30 p.m., the standing vote will be held after a 15 minute bell; or, if debate is concluded after 5:30 p.m., the standing vote is deferred until 5:30 p.m. on the next sitting day (rule 12-30(4)); the vote cannot be further deferred;
5. a vote on a motion relating to a case of privilege is automatically deferred to 5:30 p.m. on the next day if debate expires after the ordinary hour of adjournment on the first day, and in this case the vote cannot be further deferred (rule 13-7(8)); and
6. a deferred standing vote that would be in conflict with an event announced in a message is postponed until after the event (rule 16-1(6)).

Rule 9-10(5) provides that once a deferred vote on an item is underway, the Speaker will proceed to put every question necessary to dispose of the business at hand without further ringing the bells or a further deferral. For example, if a vote on a bill subject to time allocation at second reading were deferred because the allocated time had expired, then the Senate would vote on all outstanding business relating to that bill, including any subamendments and amendments, the motion for second reading, and the related procedural motion to either refer the bill to committee or to place the bill on the Orders of the Day for third reading at the next sitting.

Under rule 9-10(6), if several deferred votes are to be taken successively, the bells only ring once, for the first one.

Rule 9-10(7) provides that should the Senate complete its business before 5:30 p.m. on the day a deferred vote is scheduled, it cannot adjourn until the vote and all related business have been completed. In such a case, the Speaker will suspend the sitting until 5:15 p.m., at which time the bells will ring for 15 minutes.

This rule was first adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). Prior to that time, there was no formal rule for deferring standing votes. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 9-10

House of Commons Procedure and Practice, Second Edition, pp. 571-574:

A recorded division on a debatable motion ... may be deferred to a designated time at the request either of the Chief Government Whip or of the Chief Opposition Whip. One of the Whips may approach the Speaker, after the question has been put and while the division bells are ringing, to ask that the vote be deferred. The Speaker orders the ringing of the bells stopped and then informs the House that the recorded vote is deferred until the time requested by the Whip—later in the same sitting or to a specific time not later than the ordinary hour of adjournment on the next sitting day that is not a Friday. If the two Whips request the deferral of a vote to different times, the Speaker makes the final decision.

Alternatively, after a recorded division has been demanded and the division bells are ringing, the Chief Government Whip may, with the agreement of the Whips of all of the recognized parties, approach the Chair and ask the Speaker to defer the division to an agreed-upon date and time that may even be beyond the ordinary hour of adjournment on the next sitting day. If the vote is on an item of Private Members' Business, the item's sponsor must also agree. Recorded divisions already deferred to a specific date and time may be further deferred to any other date and time.

Recorded divisions on debatable motions demanded on a Friday are automatically deferred until the ordinary hour of daily adjournment on the next sitting day; similarly, when on Thursday, a recorded division is deferred to Friday, it is automatically further deferred to the next sitting day—usually the following Monday—at the ordinary hour of daily adjournment.

...

When the time arrives to take one or more deferred divisions, the Speaker interrupts the proceedings at the time set down in the Standing Orders or ordered by the House, informs the House that the deferred vote or votes will now be held, and orders that the Members be called in. The division bells are rung for not more than 15 minutes. Once the Whips have appeared, the Speaker proceeds immediately to put the question. When there are several votes to be taken, the House may first agree to the sequence in which they will be taken; otherwise, the questions are put in the order in which they came before the House and were deferred.

In recent practice, a large percentage of recorded divisions are deferred, tending to be clustered and taken seriatim on Tuesdays and Wednesdays at the end of the time provided for Government Orders, immediately prior to Private Members' Business, at the end of Oral Questions, or at the ordinary hour of daily adjournment.

Speaker's Ruling: Deferral of Votes

On occasion the Speaker is called upon to clarify what type of votes may or may not be deferred – for example, it is not possible on a motion to adjourn debate (see Journals of the Senate, June 22, 1995, p. 1122), but it is possible on a hoist amendment (see Journals of the Senate, September 13, 1999, pp. 1865-1866). The Speaker has also clarified that a request for a deferred vote from a whip is mandatory (see extract cited below). Although rule 9-10(1) no longer refers to the whips “requesting” a vote, the following ruling is still of interest.

Journals of the Senate, October 19, 2000, p. 938:

The word “request” implies that something is being asked for; however, that something may not necessarily be received. Before I proceed along that line, I wish to say to honourable senators that the role of the Speaker is not to take into consideration whether there is a unanimous report, whether there are extraneous outside considerations, or whether there might be an election called on Sunday, or anything of that nature. The Speaker's role is to interpret the rules, not to take extraneous matters into consideration. It is incumbent upon the Speaker to ask: What do the rules say, and what do the precedents say?

Let us come back to the request [for the deferral of a vote]. Honourable senators will find that the word “request” appears in other places in our rules. For example, rule 65(3) [now see rule 9-3] reads as follows:

65(3) Upon the request of two Senators before the Senate takes up other business, the Speaker shall call for a standing vote ...

That is a request by two senators. It is never challenged. I do not believe it could be challenged. If two senators rise, we call a standing vote. It is automatic.

We have searched the precedents. There is not a single instance where the request of a whip on either side has not been accepted. It has been accepted. The precedent in this place, frankly, is that this is the procedure. I am sorry, but I can only rule that a request is mandatory.

CHAPTER TEN: PUBLIC BILLS

This chapter contains the rules relating to the legislative process for public bills in the Senate. A public bill is “A bill of general application, concerning matters of public policy. A public bill introduced in the Senate may be a Government bill (introduced by a Cabinet Minister or in a Minister’s name) or a non-Government bill (one introduced by a senator who is not a Cabinet Minister)” (see Appendix I, Terminology).

The rules in this chapter cover the various stages that a public bill must pass on its way to final adoption – introduction and first reading (rules 10-2 and 10-3), second reading (rule 10-4) and third reading (rule 10-5). The chapter also deals with special procedures such as the pre-study of bills (rule 10-11). For the provisions on committee consideration of bills, see Chapter 12, and for the consideration of Commons amendments to bills and Royal Assent, see Chapter 16.

This chapter also deals with different types of bills – for example, pro forma bills (rule 10-1) and supply bills (rules 10-7 and 10-8) – as well as the form of bills (rule 10-10) and bills within the same session that are substantially the same (rule 10-9).

Since the beginning of the First Session of the 39th Parliament, bills are numbered as follows:

S-1 and C-1: pro forma bills;
 S-2 to S-200, and C-2 to C-200: government bills;
 S-201 to S-1000, and C-201 to C-1000: non-government public bills; and
 S-1001 and up, and C-1001 and up: private bills.

The letters S and C at the start of the numbers refer to the house where the bill started (Senate or House of Commons, respectively).

For the rules on the consideration of private bills, see Chapter 11.

Stages of the Legislative Process

RULE 10-1

Pro forma bill **10-1.** A pro forma bill shall be introduced and receive first reading after the Speech from the Throne has been read to open a session.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-1: Rule 8

COMMENTARY

A pro forma bill serves as an assertion of the Senate’s right to determine the order of its deliberations, independently of the reasons for which Parliament was summoned as set out in the Speech from the

Rule 10-1

Throne. Rule 10-1 provides that a pro forma bill is introduced on the first day of each session prior to the Speaker reporting the Speech from the Throne. This pro forma Bill S-1, An Act relating to railways, is given first reading without any further proceedings. In the Senate, the pro forma bill is normally introduced by the Deputy Leader of the Government.

On December 17, 1867, the Senate agreed that “On the first day of the Meeting of a New Parliament, or of any subsequent Session, His Excellency having opened the Session by a gracious speech to both Houses, and Prayers being said, some bill is read pro forma; the Speech from the Throne reported by the Speaker, and a Committee of Privileges, consisting of all the senators present during the Session, is appointed” (rule 1).

On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the rule was amended to provide more detail on the opening of a session as well as the following paragraph relating to the pro forma bill:

On the second day of any such session as aforesaid or on the first day of any other session, His Excellency opens the Session by a gracious Speech to both Houses; and, Prayers being said, a Bill is read *pro forma*; the Speech from the Throne is reported by the Speaker, and a Committee of Privileges, consisting of all the senators present during the session is appointed (rule 6).

On December 10, 1968, the words “On the second day of any such session as aforesaid or on the first day of any other session” were deleted “because of modern-day practice of only one day opening of Parliament” (see *Journals of the Senate*, p. 447, effective on August 1, 1969).

On May 26, 1970, the rule was amended to read:

On the first day of each session of Parliament, a bill is read *pro forma*, the Speech from the Throne is reported by the Speaker and a Committee of Privileges, consisting of all the Senators present during the session, is appointed to consider the orders and customs of the Senate and privileges of Parliament.

The wording of the rule was amended on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). At that time it was also decided to delete the reference to the Committee on Privileges and rename the Committee on Standing Rules and Orders as the Standing Committee on Privileges, Standing Rules and Orders (now the Standing Committee on Rules, Procedures and the Rights of Parliament). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 10-1

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 94:

It is then the invariable practice in the Commons, as in the Senate, before the speaker reports the speech to the house, to introduce a bill *pro forma* and move that it be read a first time. This practice is observed in assertion of the right of parliament to consider immediately other business before proceeding to the consideration of the matters expressed in the speech.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 74-75:

§260. (1) There have been exceptions to this procedure. At the first sitting of the session of 1937, the Prime Minister did not introduce a *pro forma* Bill respecting the Administration of Oaths of Office. He introduced Bill No. 1, *An Act respecting Alteration in the Law Touching the Succession to the Throne*, which was read the first time and ordered for second reading at the next sitting of the House. *Journals*, January 14, 1937, p. 6.

(2) In the session of 1926, no bill was introduced prior to the motion for the debate on the Address, for as soon as the newly-elected Speaker reported that the House had been in the Senate Chamber and that he had made the usual claim of privileges which His Excellency had been pleased to confirm, the Leader of the House moved:

‘That in the opinion of this House, in view of the recent general elections, the Government was justified in retaining office and in summoning Parliament; and the Government is entitled to retain office unless defeated by a vote in this House equivalent to a vote of confidence.’

Debate was adjourned on this motion and never resumed. The Address in Reply to the Speech of the Governor General was moved the next day and the session went on with its work. As long as a majority however small, supported the Government, there was no necessity to divide the House on that motion. *Journals*, January 8, 1926, p. 10.

House of Commons Procedure and Practice, Second Edition, p. 369, footnote:

The introduction of a *pro forma* bill, a ritual act of independence, has existed as a practice of the House since before Confederation. It originated in the British House of Commons in 1558, being confirmed in the following resolution adopted on March 22, 1603: “That the first day of sitting, in every Parliament, some one Bill, and no more, receiveth a first reading for form’s sake” (Hatsell, J., *Precedents of Proceedings in the House of Commons*, Vol. II, South Hackensack, New Jersey: Rothman Reprints Inc., 1971 (reprint of 4th ed., 1818), p. 81). See also *British History Online* at <http://www.british-history.ac.uk>. By custom, Bill C-1 is introduced but not printed. Exceptionally, in 2008, Prime Minister Stephen Harper tabled a document entitled “An Act respecting the administration of oaths of office” (*Journals*, November 19, 2008, p. 12, *Debates*, pp. 13-4). The custom is observed in other Parliaments where, in most cases, the bill is read a first time and not heard of again until the start of the next session. The Australian House of Representatives refers to its “formal” or “privilege” bill (*House of Representatives Practice*, 5th ed., edited by I.C. Harris, Canberra: Department of the House of Representatives, 2005, p. 218). In the British House, it is called the Outlawries Bill (May, T.E., *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 23rd ed., edited by Sir W. McKay, London: LexisNexis UK, 2004, p. 289). In the Legislative Assembly of British Columbia, the *pro forma* bill is Bill 1, *An Act to ensure the Supremacy of Parliament*. See, for example, Province of British Columbia, Legislative Assembly, *Debates of the Legislative Assembly (Hansard)*, February 14, 2006, pp. 2231-2. In Ontario, the bill is Bill 1, *An Act to perpetuate an ancient parliamentary right*. See Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, November 29, 2007, p. 8.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 159:

It is the practice, in both Houses, to read some bill a first time *pro forma*, in order to assert their right of deliberating without reference to the immediate cause of summons. In the Lords this practice is governed by Standing Order No. 75. In the Commons the same form is observed pursuant to ancient custom. The Select Vestries Bill is read in the Lords and the Outlawries Bill in the Commons. Debate is out of order.

RULES 10-2 and 10-3

Right to introduce a bill **10-2.** A Senator may, as of right, introduce a bill in the Senate.

Introduction, first reading and printing **10-3.** The introduction and first reading of a bill are decided without debate or vote. Immediately after the first reading, the bill shall be printed.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-2: Rule 73(1)

Rule 10-3: Rules 23(2) and 73(2)

COMMENTARY

Senate public bills may be introduced by senators during Routine Proceedings under the rubric “Introduction and First Reading of Government Bills” or “Introduction and First Reading of Senate Public Bills,” as the case may be. Introduction and first reading occur at the same time, and they are purely formal in nature. That is to say, a bill may be introduced in the Senate without notice (rule 5-7(j)), and it is immediately given first reading without debate or vote. After first reading a procedural motion is moved to fix the date for second reading.

Bills received from the House of Commons are received by way of a message read by the Speaker during Routine Proceedings under the rubric “Introduction and First Reading of Government Bills” or “First Reading of Commons Public Bills,” or at the earliest appropriate time if the message is received later in the sitting (see rule 16-2). First reading takes place without notice, debate or vote. The procedural motion that follows first reading of a government bill is typically proposed by the Deputy Leader of the Government, and, for a Commons public bill, the motion is moved either by the senator who will act as the Senate sponsor or by one of the Deputy Leaders.

Two rules adopted on December 17, 1867 read: “It is the right of every Senator to bring in a Bill” (rule 38), and “The first reading of every Bill [is] taken immediately after the Bill is presented” (rule 39). On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the second of these rules was amended to read: “Immediately after a Bill is presented, it is read a first time and ordered to be printed” (rule 62). It was agreed that the two rules be combined into one rule on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 10-2 and 10-3

Department of Justice Act:

4.1. (1) Subject to subsection (2), the Minister shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every regulation transmitted to the Clerk of the Privy Council for registration pursuant to the *Statutory Instruments Act* and every Bill introduced in or presented to the House of Commons by a minister of the Crown, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the Minister shall report any such inconsistency to the House of Commons at the first convenient opportunity.

Canadian Bill of Rights:

3. (1) Subject to subsection (2), the Minister of Justice shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every regulation transmitted to the Clerk of the Privy Council for registration pursuant to the *Statutory Instruments Act* and every Bill introduced in or presented to the House of Commons by a Minister of the Crown, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of this Part and he shall report any such inconsistency to the House of Commons at the first convenient opportunity.

Annotated Standing Orders of the House of Commons, Second Edition, pp. 237-238:

The first stage in the legislative process, other than for Supply bills or those based on Ways and Means resolutions, begins with the introduction of a bill. Section (1) of Standing Order 68 provides two methods by which public bills can be introduced in the House: by a Member moving formally for leave to introduce a bill after having given at least 48-hours' notice, or by a committee reporting after having been ordered by the House to prepare and bring in a bill. In modern practice, a motion for leave to introduce a bill is by far the most common method employed.

Section (2) stipulates that the motion for leave to introduce a bill is deemed carried without debate or amendment. This proceeding does, however, allow any Member who moves the motion for leave, including a Minister, to give a succinct explanation of the provisions of the bill while doing so.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 598-599:

[In the Lords a]ny Member of the House may present a bill without notice and without seeking for leave to bring it in. The Public Bill Office should be informed of an intention to introduce a bill not later than the previous working day. Members are encouraged to submit a draft of any bill to the Public Bill Office before introduction in order to ensure that, before being printed and circulated, it is in proper form. The final text of the bill must be handed in to the Public Bill Office before it is introduced.

Procedure on introduction

A Lord who wishes to present a bill rises in his place at the beginning of public business. ... He introduces the bill by reading out the long title. He then immediately moves the first reading and the question is thereon put thereon from the Woolsack. ... The bill is endorsed with the name of the Lord who has introduced it. It is not the practice to add other names.

Speaker's Rulings on the Introduction and First Reading of Bills

The rulings below relate to the introduction of bills. The Speaker has explained that until a Senate bill is introduced, it has no parliamentary existence and therefore any information revealed in this pre-parliamentary stage does not contravene the privileges of the Senate (June 17, 2009); that the procedure used in the House of Commons for the reinstatement of bills in a new session is a matter rightfully belonging to the other house, and it is therefore inappropriate for the Senate to question those decisions (April 20, 2010); and that a bill allegedly introduced in violation of a law is a matter of the interpretation of the law, not of parliamentary procedure or privilege (December 8, 2011).

Media Release Prior to Introduction and First Reading

Journals of the Senate, June 17, 2009, pp. 1136-1137:

... It is only after an individual senator actually introduces a bill, whether on behalf of the government or not, and it has been read a first time and ordered printed, that the Senate has formal knowledge of the proposal. Until introduction, the bill has no parliamentary existence; it belongs to the sponsor, whether the government or an individual senator, who can choose to do with it as he or she wishes.

An intention to introduce legislation can be indicated in different ways. The Speech from the Throne, for example, is used for this purpose. Both the government and individual parliamentarians frequently engage in widespread consultations before bringing bills to Parliament. This is sometimes preceded by news conferences or press releases. These practices are in keeping with the principles of openness and freedom of expression that are important to our society. This Chamber must be most prudent before seeking to curtail or impede this useful, indeed essential, range of pre-parliamentary activities.

... [I]n the Commons an issue of contempt may sometimes arise if the content of a bill is revealed. But we must be clear that this possibility only arises after formal notice has been given to the Commons that the bill will be introduced. This notice marks the point at which the bill takes on a parliamentary existence. Prior to this notice, the report recognizes that there can be consultations and discussion on the possible bill's contents.

Honourable senators, in the Senate, however, the point at which a bill begins its parliamentary existence is different. Unlike the Commons, we have no requirement for notice before first reading, so at no time do we have cognisance of a bill prior to first reading. Here, a bill is simply introduced at the appropriate time in routine proceedings, without notice. The Senate has not chosen to establish

an intermediate phase during which we have been informed of the bill's existence but do not have access to its contents. An attempt by the Senate to control activities related to a possible bill, as yet un-introduced, would involve us trying to determine what can happen during the pre-parliamentary stages of a bill, claiming the power to determine who can talk to whom about what and in which circumstances.

Commons Public Bill from Previous Session

Journals of the Senate, April 20, 2010, pp. 248-249:

To turn to the specific issue raised by Senator Cools, much of the debate on the point of order dealt with standing order 86.1 of the House of Commons and how it should be applied and interpreted. As honourable senators know, each house is master of its own procedure, within the bounds of the Constitution and the law. Just as honourable senators would object to the other place examining Senate procedures, it is inappropriate for the Senate to question those of the Commons. As noted in Beauchesne, sixth edition, at citation four, one of the most important privileges is the right for each Chamber "to regulate [its own] internal proceedings..., or more specifically, to establish binding rules of procedure." This point has been made at different times in Speaker's rulings here.

...

Honourable senators, [the House of Commons *Journals*, March 3, 2010,] makes it clear that, at the beginning of this session, a new Bill C-268, which was identical in content and number to a bill from the last session that had died on the Senate Order Paper, was introduced in the House of Commons, read a first time, and passed all the necessary stages. The bill was, accordingly, introduced here the following day. ...

...

Based upon the already-noted principle that neither house should delve into the proceedings of the other, the Senate does not question the proceedings of the Commons, and accepts at face value a duly attested message received from that House. The Commons *Journals* do make clear, it must be emphasized, that the bill was introduced there on March 3. It was therefore a new bill from this session. The issue of which house had control of the bill last session is not relevant. The bill from the last session was not returned to or retrieved by the House of Commons. The same number was kept for ease of reference, as explained at page 1154 of the second edition of *House of Commons Procedure and Practice*.

...

Procedures surrounding Bill C-268 thus fully respected parliamentary procedure and practice, and so debate can continue.

Introduction of Government Bill in Violation of Existing Law

Journals of the Senate, December 8, 2011, pp. 719-720:

As I understand it, the basic argument to sustain the question of privilege is that the Senate is now examining a bill, C-18, that was presented to Parliament in violation of the requirements of the existing *Canadian Wheat Board Act*. This argument would lead to the conclusion that the Senate's study of Bill C-18 should be limited or constrained in some way. Particular importance is attached to a decision given yesterday by the Federal Court relating to requirements imposed under section 47.1 of the current *Canadian Wheat Board Act*. I will refrain from commenting on all aspects of the court

decision in detail, which honourable senators are free to review as they wish. I will, however, note that the declaratory judgment states that “the validity of Bill C-18, and the validity and effects of any legislation which might become law as a result of Bill C-18 are not an issue in the present Application”. The court demonstrated respect for institutional comity and for Parliament’s independent capacity to legislate.

... Proceedings in the Senate on Bill C-18 have been in accordance with our Rules and have been in order. The court decision has no bearing on our parliamentary proceedings, as was recognized. Moreover, as Senator Segal noted, there would be a risk that accepting a question of privilege of this nature could have the serious, and unintended, consequence of impeding the undoubted privilege of Parliament and parliamentarians to deliberate and to legislate freely.

As previously indicated, the putative question of privilege pertains to the introduction of Bill C-18. Basically, this question involves the interpretation of law. Thus, it does not fall under the Speaker’s authority. The chair refers to the fundamental principle that the Speaker can rule only on procedural matters and not on questions of law. Page 636 of the second edition of *House of Commons Procedure and Practice* says that constitutional questions or questions of law cannot be addressed to the Speaker. Other Canadian works on parliamentary procedure and other decisions rendered in this chamber have emphasized this point. For example, page 180 of the fourth edition of Bourinot and citation 324 in the sixth edition of Beauchesne were mentioned.

As already noted, proceedings on Bill C-18 in the Senate have respected our Rules and practices. While there has been a court decision respecting the current *Canadian Wheat Board Act*, if anything was at issue with respect to section 47.1, it did not involve Parliament. The issue is, in essence, a matter of interpretation of the law, not of parliamentary procedure or privilege. As such, it does not meet with the requirements of rule [13-3(1)(b)], and there is no basis for determining that a prima facie question of privilege has been established.

RULE 10-4

Second reading **10-4.** The principle of a bill is usually debated on second reading.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-4: Rule 75

COMMENTARY

Debate at second reading focuses on the principle of the bill. A ruling of December 9, 2009, noted that the principle can be defined “as the intention underlying a bill” (*Journals of the Senate*, p. 1589). The general issues raised in the bill, and not the specific content of its parts and clauses, are therefore the main object of debate at this stage. In the case of an amending bill, only the principle of the amendments contained in the bill is considered. Since debate at second reading is limited to the principle of a bill, specific or technical amendments to its clauses cannot be proposed. Adoption at second reading means

that there is agreement in principle to the bill. If the motion for second reading is defeated, the bill dies and cannot be reintroduced in the same session, since reintroduction would be contrary to the decision of the Senate and a violation of the same question rule.

Two days' notice is required before debate at second reading can begin (see rule 5-6(1)(f)), and the ordinary rules of debate apply (see Chapter 6 of the Rules).

Although specific or technical amendments to the clauses of a bill are not permitted during second reading debate, three other kinds of amendments are allowed:

1. *The hoist amendment* – This amendment purports to delay second reading for a specified period of time (usually six months), but in practice its adoption marks the defeat of the bill, which will not be brought before the Senate again.
2. *The reasoned amendment* – This amendment allows a senator to state the reason(s) for opposing second reading of a bill by introducing another relevant proposal to replace the original question. In other words, it provides a means to put on the record a statement or explanation as to why a bill should not receive second reading.
3. *The referral of the subject matter of a bill to committee* – This amendment proposes to give a committee an order of reference to study the subject matter of a bill. The amendment may include a paragraph allowing the bill to remain on the Order Paper and to be debated in the Senate at second reading while its subject matter is studied by a committee. In most cases, debate will not resume in the Senate until the committee reports on its subject matter study. It should be noted that without such a paragraph the bill may be dropped from the Order Paper and, should there be a desire to proceed with the bill after the committee has made its report on the subject matter, the bill would have to be restored to the Order Paper. The Speaker has also explained that it is possible to refer the subject matter of a bill to committee as a substantive motion with one day's notice (see ruling December 16, 1996, below).

For further information on reasoned amendments and subject matter referrals to committee, see the rulings below.

Immediately after the motion for second reading is adopted, a non-debatable procedural motion may be proposed to refer the bill to a standing or special committee, or to a Committee of the Whole. A motion may also be proposed to place the bill on the Orders of the Day for third reading at the next sitting of the Senate. Although committee stage is not obligatory, almost all bills are referred to committee for study. The major exceptions are supply bills, which are normally not referred to committee. Additional information on amendments to bills in committee is provided in the text relating to rule 12-23.

The Senate may also adopt a motion of instruction with one day's notice to give direction to a committee on a bill. For instance, the Senate may permit the committee to divide a bill or to consolidate two bills into one. The Speaker has explained that "Instructions are intended to allow a committee to do something it would not otherwise have the power to do" (*Journals of the Senate*, November 30, 1995, p. 1332). Normally, motions of instruction on bills are permissive, meaning that the committee can choose to exercise the power or not. For further information on motions of instruction, see the rulings below.

On December 17, 1867, the Senate adopted the following rule: “The principle of a Bill is usually debated at its second reading” (rule 40). On December 10, 1968, the word “usually” was deleted (see *Journals of the Senate*, p. 463, effective on August 1, 1969), but on November 26, 1975 (see *Journals of the Senate*, p. 592), it was agreed to restore the word. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 10-4

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 547-548:

Once a day has been appointed for second reading, the bill stands upon the Order of Business amongst the other orders of the day, and when the day arrives, is called in its proper turn. The second reading is the first important stage through which the bill is required to pass; its whole principle is then at issue, and is affirmed or denied by the House. ...

When the order for second reading is read, the Member in charge of the bill (or any other Member acting on his behalf) moves ‘That the bill be now read a second time’. Debate at this stage is not strictly limited to the bill’s contents; the circumstances surrounding its presentation to the House and other methods of attaining the bill’s object may be considered, and the inclusion of cognate objects may be recommended. But debate should not be extended, for example, to a general criticism of the administration or the policies of other political parties, or of the provisions of other bills before the House. Debate on second reading should not extend to the details of the clauses, although it is a common practice for a Minister or other Member in charge of a bill to give a brief explanation of the content of the principal clauses at this stage. Opponents of a bill may, and commonly do, vote against the question for second reading, but an alternative way of opposing second reading is by moving a reasoned amendment to the question. ... Defeat on second reading is fatal to a bill since no future day is appointed for that stage, and the introduction of a fresh bill in substantially the same terms has been ruled out of order.

Speaker’s Rulings on Amendments at Second Reading

On occasion, the Speaker has been called upon to clarify matters relating to amendments at second reading. In the following rulings, the Speaker describes the criteria for a reasoned amendment (December 2, 1997); notes that a reasoned amendment can be further amended (December 10, 1997); explains that it is possible to move either that a bill be discharged and the subject matter referred to committee, or that the subject matter be referred to committee for general discussion while the bill itself remains on the Order Paper (May 8, 1985, and May 24, 1995), with the form of the amendment being critical to its admissibility (May 27, 1986); and clarifies the general criteria for motions of instruction (December 16, 1996, and May 2, 2000).

Reasoned Amendments

Journals of the Senate, December 2, 1997, pp. 260-261:

... According to *Beauchesne* at citation 670 at page 200, a reasoned amendment can be proposed during second reading debate “to place on the record any special reasons for not agreeing to the second reading of a bill.” The citation goes on to explain the various possible categories of reasoned amendments. One of them is particularly pertinent to the amendment proposed by Senator Cools. Subsection 5 of the same citation states that a reasoned amendment “may express opinions as to any

circumstances connected with the introduction or prosecution of the bill, or otherwise opposed to its progress. It may oppose the principle of the bill but not propose that the bill be withdrawn and a new one introduced.”

The effect of a reasoned amendment is to supersede the question for the second reading of the bill. If it is adopted, the motion for the second reading of the Bill C-16 will not be put to the Senate since, by adopting the reasoned amendment, the Senate will have declared its support for a proposition which is contrary to the principle identified with the bill. If the amendment is defeated, however, the motion for the second reading of Bill C-16 will not have been superseded; it will still be before the Senate for further debate and possible amendment.

There can be no doubt that the amendment moved by Senator Cools is clearly opposed to the principle of the bill and it also expresses opinions as to the circumstances related to the bill’s introduction and consideration. Furthermore, as I reviewed citation 671 dealing with other procedural criteria that might be used to assess the acceptability of a reasoned amendment, I could only conclude that the amendment is relevant, it is not concerned with the detailed provisions of the bill, it attaches no conditions to the second reading motion and it is more than a direct negation of the principle of the bill. Accordingly, I rule that the amendment is in order.

Journals of the Senate, December 10, 1997, p. 336:

I have reviewed what few precedents we have with respect to reasoned amendments and I have considered procedures relating to sub-amendments. I could find no occasion in Senate practice where a reasoned amendment was amended. At the same time, however, I could find no clear authority stating that it could not be done. In fact, I am aware of recent precedents in the House of Commons where sub-amendments have been moved to reasoned amendments.

As I understand it, the purpose of this sub-amendment is to add to the reasons already provided in the original motion in amendment why Bill C-16 should not be read the second time. According to *Beauchesne*’s 6th edition, citation 580 at pages 176-177, a sub-amendment:

...should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment.

Further, at citation 584 dealing with the form and content of a sub-amendment, (2) explains that:

a sub-amendment must be relevant to the amendment it purports to amend and not to the main motion.

Based on these two relevant citations, I rule that the sub-amendment is in order.

Subject-Matter of Bills Referred to Committee

Journals of the Senate, May 8, 1985, pp. 430-431:

Yesterday the Speaker was asked to rule on the following question:

“Can a bill that is being debated at the second reading stage be referred to a committee?”

If I had to answer simply yes or no to the question as it stands, I would have to answer no. However, I believe the question warrants further clarification. The entire bill cannot be referred to a committee before it has been given second reading. However, the same cannot be said of the principle of the bill or of the discussion that I would term philosophical regarding the subject matter of the bill.

I refer you to paragraph 740 of Beauchesne's Fifth Edition which reads as follows:

“There are three types of amendments that may be proposed at the second reading stage of a bill. These are:

1. the six months' hoist;
2. the reasoned amendment;
3. the referral of the subject-matter to a committee.”

Paragraph 746 of the same edition is even more explicit:

“An amendment, urging a committee to consider the subject matter of a bill, might be moved and carried if the House were adverse to giving the bill itself a second reading and so conceding its principle. But where further information is desired in direct relation to the terms of the bill before the House, the advantage of referring the bill to a committee could be explained in the second reading stage.”

Be that as it may, according to Beauchesne and the precedents of this House that I will call to mind, referral to a committee is provided for in the Rules.

...

In conclusion, I submit to you that from a purely procedural standpoint, at this particular stage, an amendment to the initial motion to refer the subject matter of a bill to a committee may be proposed.

Journals of the Senate, May 27, 1986, p. 1375:

On May 7 last, during the debate on the motion for second reading of Bill S-8 intituled: “An Act to prohibit smoking in certain work areas and on board certain modes of transport”, the Honourable Senator Godfrey moved the following amendment:

“That the bill be not now read the second time but that the subject-matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs for examination and report.”

During the debate on the amendment, the Honourable Senator Frith stated that: “...the question of whether this motion is in order is still in doubt”, and, after discussion, asked for the Chair to rule on “...whether it is technically correct for the Senate to ask a committee to help it consider the principle of a bill.”

While Senator Godfrey's amendment is in order, according to citation 746(1) of *Beauchesne's Parliamentary Rules and Forms*, Fifth Edition, the form of the amendment is incomplete. I would refer Honourable Senators to Form No. 40 of the Forms and Formulae of the same authority at page 280. In order for the amendment to conform to established parliamentary form, the following words should have been added to the amendment: “...that the Order for the Second Reading be discharged, the Bill withdrawn and...”.

Journals of the Senate, May 24, 1995, pp. 970-971:

Certain other comments were made May 10 regarding these proceedings. They relate to the procedural acceptability of Senator Tkachuk's motion to refer the subject-matter of a Bill to a committee while retaining the order for second reading of the same Bill on the Order Paper.

...

It is my understanding that when this procedure is used in the other place, it ordinarily takes the form of an amendment to the second reading motion of the Bill which seeks to refer the subject-matter and discharge the second reading motion from the Order Paper.

What Senator Tkachuk proposed on May 10, in this House, was a different procedure. When the Order of the Day for the second reading of Bill S-10 was called, he rose and asked for leave to move a motion that the Bill's subject-matter be referred to the Aboriginal Peoples Committee and that the second reading of the Bill be suspended until the committee present its report. This type of motion, being an order of reference to a committee to examine the subject-matter of a Bill, normally requires one days notice according to Senate Rule [5-5(i)]. However, since leave was requested and given, the notice requirement was waived.

As to the procedural acceptability of such motion, I can find nothing in the Senate Rules which would prohibit it. To the contrary, I have found examples of various kinds in which the Senate referred the subject-matter of a Bill to a committee while keeping the reading motion of the Bill on the Order Paper and not discharging it.

Motions of Instruction to Committees

Journals of the Senate, December 16, 1996, p. 790:

On Friday, December 13, Senator Kenny moved the motion to refer Bill C-29, an Act to regulate interprovincial trade in and the importation for commercial purposes of certain manganese substances, to the Committee on Energy, the Environment and Natural Resources. Senator Kinsella then attempted to move an amendment. His amendment sought to have the committee produce an interim report to answer certain questions about MMT before submitting its final report on the bill.

Following an intervention by Senator Kenny objecting to the amendment as a proposition, Senator Corbin rose on a point of order. Referring to rule [5-5], he maintained that the amendment was not really an amendment, but an instruction, and as such it was out of order because it lacked the required notice.

...

Before considering the amendment of Senator Kinsella, it is necessary for me to point out that the motion of Senator Kenny seeks only to refer Bill C-29 to the committee. According to our practices, the motion referring a bill to a committee is now treated as a consequential motion that is automatically moved after a bill has received second reading. ...

According to my understanding of rule [5-8(1)(f)] and [5-8(3)], a motion referring a bill is not debatable or amendable while a motion referring any other kind of question ... is both debatable and amendable. Rule 62(1)(i) [now see rule 5-8(1)(f)] states that "the reference of a question other than a

bill to a standing or special committee” is a debatable motion. Rule 62(2) [now see rule 5-8(3)] explains that “all other motions, unless elsewhere provided in these rules or otherwise ordered, shall be decided immediately upon being put to the Senate, without any debate or amendment.”

Consequently, the proposition of Senator Kinsella must be made as a separate substantive motion requiring notice, which is the basic point that Senator Corbin raised. It cannot be moved as an amendment to the motion to refer the bill to committee and is out of order.

Journals of the Senate, May 2, 2000, pp. 549-551:

... The motion of Senator Lynch-Staunton seeks to instruct the committee that would examine Bill C-20 to make certain amendments “to rank the Senate of Canada as an equal partner with the House of Commons.” According to Senator Hays, this instruction is mandatory in form and consequently is out of order. Senator Hays argued that the instruction must be permissive, rather than mandatory, because the power to amend the bill is a power which the committee already possesses. ...

...
Motions of instruction developed in the British Parliament at a time when the powers of committees were narrowly defined and severely constrained. Through the eighteenth century and into the first decades of the nineteenth, it would seem that the authority of committees to amend bills was so limited that they frequently required instructions from the House to carry out their work effectively. A partial remedy to this problem was to incorporate within the rules or standing orders of the House, certain powers whereby the committees acquired the authority to make amendments to legislation so long as those amendments were generally within the scope of the bill and were relevant. Thereafter, the need for instructions became less frequent and they developed certain characteristics which remain generally the same to this day. Among these characteristics was the distinction between permissive and mandatory instructions. The more ordinary instruction was the permissive instruction which empowered a committee to exercise certain powers at its discretion. Instructions had to be in the permissive form if they were to apply to committees which already possessed some authority under the standing orders. Instructions could be either permissive or mandatory if the committees involved possessed no powers because they were created on an ad hoc basis or if they concerned private bills.

Applying this basic distinction to the *Rules of the Senate* as they are presently written, it would seem to me that motions of instruction to a committee with respect to the study of public bills must be in the permissive form. This is because our rules already authorize any committee examining a bill to recommend any relevant amendments it deems appropriate. Thus, a committee looking at Bill C-20 has the power to amend it in the way suggested by the motion of instruction proposed by Senator Lynch-Staunton. The text of the motion, however, is mandatory in its form and this is contrary to established usage. This position is supported by recent Canadian authorities including *Beauchesne's* and is confirmed in the latest Canadian parliamentary manual *House of Commons Procedure and Practice* at page 641: “Motions of instruction respecting bills are permissive rather than mandatory.”

Moreover, the present motion of instruction, even if it had been written in the permissive form, would still not pass muster procedurally. There are various criteria listed in *Erskine May* on admissible and inadmissible instructions. Admissible instruction can authorize a committee to treat legislation in a variety of different, but specific, ways. Among the instructions which are acceptable are motions empowering a committee to divide a bill, to consolidate several bills or to report separately on different parts of a bill. The motion of instruction of Senator Lynch-Staunton seeks to do none of these things. Rather it seeks to instruct the committee to do something which it already has the power

to do. This in fact, is a form of instruction which is recognized to be inadmissible because it is superfluous.

Beyond this, there is still another reason why the motion would give rise to some doubts about its acceptability, quite apart from what has already been discussed. Any motion seeking to authorize or direct a committee in its study of a particular bill must be clear and explicit. As I read it, the current motion does not meet this standard. In seeking to have the committee make whatever changes are required “to rank the Senate of Canada as an equal partner with the House of Commons,” the motion is not providing an instruction that is adequately explicit. The language is not clear or specific enough. It does not allow the committee to understand definitely what provisions the Senate desires that it should take into consideration.

For these reasons, therefore, I rule that the motion of instruction proposed by Senator Lynch-Staunton is out of order.

RULE 10-5

Reconsideration of clauses of a bill	10-5. At any time before a bill is passed, a Senator may move for the reconsideration of any clause already carried.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-5: Rule 77

COMMENTARY

Before a motion for third reading is adopted, a senator may propose the reconsideration of clauses in order to make specific or technical amendments. Such amendments can be debated and do not require notice, since they are dealt with as amendments to the motion for third reading. Amendments rejected in committee or at report stage may be proposed again.

A practice has developed to grant leave to “stack amendments” at third reading. Rather than limiting debate to one single amendment at a time, the final vote on each amendment is put into abeyance until the conclusion of all debate related to the third reading motion, and the various amendments and subamendments. Once debate is concluded, the various amendments are put to the Senate, normally in the order in which they were moved (see *Debates of the Senate*, June 18, 2013, pp. 4317-4318).

The Speaker has also remarked that technical amendments at third reading “are routinely moved without notice and can be placed before the Senate for immediate consideration while still in one language.” Because of this, the chair explained that “the Senate has been disposed to postpone any decision until the debated question, having been moved, is available in both languages” (see *Journals of the Senate*, May 11, 1999, pp. 1584-1586).

On December 17, 1867, it was agreed that “A Senator may, at any time, previous to a bill being passed entirely, move for the reconsideration of any particular clause thereof, already passed” (rule 44). At the time, the motions for third reading and “That the bill do pass” were separate. The present content of the rule was adopted on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on

August 1, 1969). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 10-5

Speaker’s Ruling: Technical Amendments at Third Reading

Journals of the Senate, July 2, 1986, p. 1577:

The Bill has now been returned to this House [from a Committee of the Whole] with an amendment, and the Senate is now considering whether to give the Bill third reading as amended. In my opinion, it is in order for a Senator to disagree with this motion by proposing an amendment, as Senator Cogger has done, so that Senators can vote against the Bill.

I refer you to *Beauchesne’s* Fifth Edition, citation 802.(1), on page 239, and I quote:

When an Order of the Day for the third reading of a bill is called, the same type of amendments which are permissible at the second reading stage are permissible at the third reading stage with the restriction that they cannot deal with any matter which is not contained in the bill.

Honourable Senators, I also refer you to citation 804 on pages 239 and 240:

There are limitations on the type of amendments that can be moved on third reading. They must be relevant to the bill which they seek to amend. They should not seek to give a mandatory Instruction to a committee. They should not contradict the principle of the bill as adopted on second reading.

Senator Frith mentioned this problem as one that was covered by Rule [5-12]. However, I think Rule [5-12] means that if in a session there is a vote on a bill and the bill is adopted by Parliament, we cannot, in the same session, introduce another bill that would contradict the substance of the bill previously adopted.

That is how I interpret Rule [5-12], and I think that in the present case, Rule [10-5] takes precedence. It is clear that Senator Cogger had the right to present his amendment and that is why I declare the amendment in order.

Speaker’s Ruling: Motions to Delete Clauses

Journals of the Senate, June 17, 2003, pp. 965-966:

During last evening’s sitting, Senator Nolin spoke on the third reading motion of Bill C-28, a budget implementation bill. During the course of his remarks, he proposed an amendment to delete certain lines at clause 64 on page 55 of the bill. The effect of the amendment was to delete the entire clause.

Senator Murray then intervened to explain his interpretation of the significance of this deletion. As he put it, “the effect of the amendment that Senator Nolin has proposed would be to allow the Federal

Court judgment to operate across the board, as it were, to all those school boards that would be affected by that judgment.” ...

... [A] point of order was [then] raised by Senator Carstairs, the Leader of [the] Government who suggested that the amendment “is in substance exactly the amendment that was raised last week, which Your Honour declared to be out of order.”

...

In assessing the merits of this point of order, it was necessary to take into account that the Senate is currently debating the third reading motion of a bill. Senate practices, acknowledged in our own *Rules of the Senate*, make it clear that it is possible to amend clauses at third reading. In addition, it is even possible to move the reconsideration of any clause at this stage so long as the bill is still before the Senate. This is provided for in rule [10-5]. The fact that we are reconsidering an amendment on clause 64 does not, in and of itself, make the amendment out of order. I do not think that was the rationale behind Senator Carstairs’ objection.

Instead, I believe that the thrust of the Senator’s objection is that the amendment itself is out of order because it infringes the financial initiative of the Crown with respect to the authorization of expenditures. ...

The parliamentary authorities are consistent in recognizing the procedural validity of any amendment to a bill that seeks to delete a clause. For example, the most recent Canadian manual of practice, *Marleau and Montpetit* states at page 666 “... since 1968 when the rules relating to report stage came into force, a motion in amendment to delete a clause from a bill has always been considered by the Chair to be in order, even if such would alter or go against the principle of the bill as approved at second reading...”

In the Senate, our rules and practice are equally generous with respect to amendments. There are numerous examples that could be cited as Senator Murray himself did last evening. Consequently, it is my ruling that the amendment moved by Senator Nolin is in order. Third reading debate on Bill C-28 and the amendment can proceed.

Speaker’s Ruling: Principle, Relevancy and Scope of Amendments

Journals of the Senate, December 9, 2009, p. 1589:

As honourable senators know, an amendment moved in committee must respect the principle and scope of the bill, and must be relevant to it. It may generally be helpful to view the principle as the intention underlying a bill. The scope of the bill would then be related to the parameters the bill sets in reaching any goals or objectives that it contains, or the general mechanisms it envisions to fulfil its intentions. Finally, relevancy takes into account how an amendment relates to the scope or principle of the bill under examination. An amendment must respect the principle of the bill it seeks to amend, must be within its scope, and must be relevant to it.

RULE 10-6

Third reading **10-6.** When the Senate has read a bill the third time, the bill is passed and shall not be further debated or amended.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-6: Rule 76

COMMENTARY

The purpose of third reading stage is to allow one final opportunity for the Senate to consider and debate a bill. Since the principle of a bill is approved at second reading, the debate at third reading tends to focus more on technical aspects of the bill as well as any issues that may have arisen during committee consideration. Several types of amendments are permitted without notice at third reading stage including technical amendments (see rule 10-5), the “hoist” and “reasoned” amendments, and a motion to refer the bill back to committee (see rule 10-4 concerning the hoist and reasoned amendments, which are also permissible at second reading).

One day’s notice is required before debate at third reading can begin (see rule 5-5(b)). During debate at third reading, the ordinary rules of debate apply (see Chapter 6). The mover of third reading does not have the right of final reply (see rule 6-12(1)).

Once third reading is adopted, no further debate or amendment of the bill is allowed in the Senate. If the motion for third reading is defeated, the bill is dropped from the Order Paper, and its consideration ends.

After a bill is given third reading, a message to that effect is sent to the House of Commons (see rule 16-2(1)). The message will indicate, in the case of a bill that originated in the Commons, whether the Senate passed the bill without amendment or is requesting Commons agreement to amendments. In the case of supply bills, practice is not to specify that the bill was passed without amendment, if such was the case. For examples of messages concerning bills adopted without amendment but containing recommendations and observations, see *Journals of the Senate*, June 29, 1989, p. 171; December 19, 1989, pp. 468-469; January 17, 1991, p. 2136; and December 12, 1991, p. 476.

The Speaker has also explained that if a bill requires Royal Consent because it affects one of the prerogatives of the Crown or the personal property rights of the Crown, the consent must be signified before adoption at third reading (see Speaker’s rulings below).

This rule was first adopted on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). The committee recommending its adoption commented that it was being added “to simplify procedure” (see *Journals of the Senate*, p. 463). Previously, after a bill had been read a third time, the Speaker would ask a separate question as to whether the bill should pass. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 10-6

Bourinot’s Parliamentary Procedure, Fourth Edition, pp. 531-533:

In the Senate, bills are constantly amended on the third reading without going back to committee. Previous to 1880-81 it was customary not to require a formal motion for the third reading – a practice which sometimes gave rise to misunderstandings when members wished to move amendments. Since

then, the third reading is moved regularly as in the Commons. The practice in moving amendments is still very variable. Amendments are now moved after the reading of the order, or on the motion for the third reading – the proper time when there is a diversity of opinion as to the bill and amendments. Or they are moved after the third reading has been agreed to. Sometimes it is found convenient to go back to committee.

...

When a bill has passed all its stages in one house, it is reprinted in proper form and communicated to the other house by one of the clerks at the table, who takes it up and presents it at the bar to a clerk. Every bill has engrossed on its back the order of the house, in two languages: “That the clerk do carry the bill to the senate (or commons) and desire their concurrence”. If the bill is passed by the Senate, without amendment, a written message is returned to that effect. If the bill is amended, a message is sent desiring the concurrence of the other house to the amendments, which are always attached to the copy of the bill. If the bill fails in either house, no message is sent back on the subject and the fate of the measure can only be decided by reference to the records of the house, to which it was sent for concurrence.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 214-215:

§737. (1) A bill may be recommitted to a Committee of the Whole or to a committee by a Member moving an amendment to the third reading motion. A motion to recommit to the legislative committee which considered the bill will also have to contain provision to revive the legislative committee.

(2) Any Member may move to recommit a bill for one of the following purposes:

- (a) to enable a new clause to be added to the bill when the House, on report, has passed the stage at which new clauses are taken.
- (b) to enable the committee to reconsider amendments they had previously made.

§738. Only that part of the bill as is specified in the order for recommitment is considered in the committee. If a bill is recommitted in respect of specified amendment to a clause, only those amendments and amendments that are relevant to them may be moved. When the amendments have been disposed of in respect of any clause, the question that the clause be adopted must be then put.

§739. A bill may be recommitted a number of times with or without limitations. It may be recommitted, amended in committee, reported back to the House, considered at the report stage and read a third time at the one sitting of the House by a Special Order adopted by the House.

House of Commons Procedure and Practice, Second Edition, pp. 788-789:

Debate at this stage of the legislative process focuses on the final form of the bill. The amendments that are admissible at this stage are similar to those that were admissible at second reading stage. It is in order to propose an amendment for a three- or six-month hoist, as well as a reasoned amendment. However, at third reading stage, reasoned amendments must deal strictly with the bill and may not be contrary to the principle of the bill as adopted at second reading.

An amendment to refer the subject matter of a bill to a committee at second reading stage becomes, at third reading, an amendment to recommit the bill to a committee with instructions to reconsider certain clauses for a specific purpose. The purpose of such an amendment may be to enable the committee to add a new clause, to reconsider a specific clause of the bill or to reconsider previous amendments. Despite this, an amendment to recommit a bill should not seek to give a mandatory instruction to a committee, nor should it seek to recommit a bill to a committee other than the one which previously considered it. If the amendment to recommit a bill to a committee is carried, the committee may consider only that part of the bill specified in the order of reference.

When the motion for third reading has carried, the Clerk of the House certifies that the bill has passed, and records the date of passage at the foot of the bill. The bill is then sent to the Senate for approval. Defeat of a motion for third reading will result in the withdrawal of the bill.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 625:

The Lords ordinarily send their bills to the Commons by the Clerk of the Parliaments, or by a clerk deputed for the purpose. When the bill has originated in the Lords a message is sent to the Commons desiring their agreement. If the bill has been sent up by the Commons, and has been agreed to without amendment, the Lords send a message to acquaint the Commons that they have agreed to the bill without amendment; but they do not return the bill unless it is a bill for granting aids or supplies and the Royal Assent to it is to be pronounced by Commission. If they have made amendments, they return the bill to the Commons with a message that they have agreed to the bill with amendments, to which they desire the agreement of the Commons. The amendments are enclosed with the bill, which is also endorsed by the Clerk of the Parliaments.

Speaker's Rulings Regarding Third Reading

In the following rulings, the Speaker has explained that it is not admissible to attach a recommendation to the message sent to the Commons after third reading of a Senate bill (December 5, 1979); that the motion for the appointment of a date for third reading is not debatable (April 9, 1992); and that a bill reported from a special committee without amendment requires one day's notice for third reading (December 10, 2001).

Journals of the Senate, December 5, 1979, pp. 220-221:

... The point that was raised ... was whether the Chair would entertain, with leave, a suggestion on third reading that a recommendation be added to a Message on a bill originating in the Senate ...

...

In the course of the discussion ... it would appear ... those recommendations were made by the committee, and were not individual recommendations being attached at the time of third reading. I would think, therefore, that that should be an essential condition for the attachment of any recommendation; otherwise, of course, a situation would arise in which any senator could rise on third reading and raise again the whole debate that went on in the committee. That would hardly seem to be in keeping with normal practice.

The second ground on which I find the precedents are not fully applicable is that in both cases the bills in question were Commons bills. There appears to me to be a distinction here between the attaching of a recommendation to a bill sent back to the Commons, and to one originating in the Senate, since ... there is an obligation on the Senate to send a bill originating in the Senate to the Commons whole and entire, and not truncated or qualified.

Journals of the Senate, April 9, 1992, pp. 799-800:

The motion, “that a bill be read a third time on a certain date” is neither a substantive motion or a dilatory motion. According to our parliamentary authorities, quite clearly, it is what is called a “subsidiary motion”. *Beauchesne’s* Sixth Edition, citation 559(4) states:

“Subsidiary motions are used to move forward in different stages of procedure through which they must pass before their final adoption. Motions for the readings of bills are in this class.”

...

Some subsidiary motions are debatable. For example, Rule [5-8(1)(d)] allows for debate for the second reading of a bill; Rule [5-8(1)(b)] for any amendment; Rule [5-8(1)(h)] for the third reading of a bill. However, nowhere in Rule [5-8(1)] does one find that a motion for the appointment of a reading of a bill, be it second or third reading, can be debatable. Since Rule [5-8(3)] specifies that all other motions, not listed in Rule [5-8(1)] are to be decided without any debate or amendment, which Rules were the basis for my ruling that the motion proposed yesterday by Senator Di Nino regarding Bill C-12 cannot be subject to debate.

Journals of the Senate, December 10, 2001, p. 1100:

Honourable senators, the practice here has been that when a committee reports a bill without amendment, we immediately proceed to third reading. ...

An issue was raised by Senator Kinsella in terms of the comments creating a substantive part of the report which required additional time for preparation so that debate on those observations could be full and complete. Senator Robichaud pointed out that there is no impediment to using the observations in terms of debate at the third reading stage. ...

...

The question of the committee on Bill C-36 being a special committee was raised as a possible reason for the application of rule [12-23(3)] and not [12-23(2)]. However, I believe that matter is resolved by the definition of “committee” in [the Terminology contained in Appendix I] of the rules, which defines “committee” as meaning, in part, a special committee.

Accordingly, honourable senators, I do not find the argument that the motion to proceed to third reading on one day’s notice is anything but in order. ...

Speaker’s Rulings Regarding Royal Consent

The following rulings describe some of the underlying principles regarding Royal Consent. The Speaker has explained that Royal Consent only needs to have been given in one house before a bill is adopted at third reading. In terms of the need for Royal Consent, it was determined that a bill proposing changes to

the Royal Assent ceremony did not require one before it could receive second reading, although the issue might arise at a later stage (December 14, 1999). A bill on the appointment of judges did not require Royal Consent (March 21, 2011).

Journals of the Senate, December 14, 1999, pp. 286-287:

As Senator Cools stated in her intervention, Royal Consent is required whenever a bill proposes to affect either the prerogative of the Crown, its hereditary revenues, personal property or interests. With respect to this case, there is no doubt that the only issue involved with Bill S-7 is that of the Royal Prerogative. The bill contains no provisions relating to the personal property or interests of the Queen. The question to be answered then is whether a bill providing an alternative to the ceremony of Royal Assent touches upon a prerogative power of the Crown.

...

... [I]t seems that the practice of signifying Royal Consent in Canada has almost never involved both the Senate and the House of Commons. In the numerous instances when Royal Consent was sought and signified, I noted that it was usually signified in the House of Commons and rarely in the Senate. ...

...

... I have heard nothing that would compel me as Speaker to delay the debate on the second reading of Bill S-7. Royal Consent might be necessary; yet based on the Canadian precedents, it would appear that there is no binding requirement that Royal Consent be signified in this Chamber. Accordingly, I am prepared to rule that the amendment is out of order and that debate on the second reading of Bill S-7 should be allowed to continue. ...

Journals of the Senate, March 21, 2011, pp. 1336-1340:

In making the argument for the need for Royal Consent, Senator Cools explained that the Sovereign, the Queen herself or the Governor General acting on her behalf, retains to this day certain prerogative powers. Among these prerogative powers, according to Senator Cools, is the appointment of judges. It is her contention that Bill C-232 would constrain the Queen's power of appointment by disabling individuals who would otherwise be qualified for a place on the bench of the Supreme Court. ...

...

Beginning with the question of when Royal Consent should be sought or signified, there is certainly no prohibition to providing Royal Consent at the outset of deliberations on a bill. However, accepted Canadian practice suggests that Royal Consent need only be given prior to the third reading. There are several recent rulings by Speakers of the Senate that are consistent with this view. The intent of these rulings is to allow debate to the greatest extent possible. Debate should not be constrained by a procedural requirement, despite its constitutional importance, which can be signified at any stage. To do otherwise would undermine a fundamental purpose of Parliament. Accordingly, I confirm that Royal Consent, when it is required, can be postponed to the last stage.

Canadian practice also indicates that Royal Consent needs to be signified in only one house. More often than not, this has been in the House of Commons, where most government bills originate. However, Bill C-232 is a private members bill which originated in the House of Commons, and I note that no objection was raised in that chamber on the grounds of Royal Consent. ...

...

A review of the precedents of the Canadian Parliament reveals that Royal Consent has been invoked only about two dozen times over the course of almost 144 years and many, many bills. More than a third of them occurred in the nineteenth century and some of these related to railways. The construction of railways was a large undertaking that involved liens with the Crown and the use of its land. Other bills that prompted the need for Royal Consent over the years dealt with the establishment of national parks and Indian reserves. There is no evidence that any legislation relating to the Supreme Court was ever the object of Royal Consent.

...

Bill C-232, if adopted, would be one more amendment to the *Supreme Court Act*. It would establish certain qualifications for appointment to the Supreme Court in addition to the ones that already exist. In addition to being a judge of a superior court or a member of a provincial bar with a minimum number of years of experience, this bill would require that candidates have a certain level of understanding in both official languages such that they would not need the assistance of interpretation. In accordance with the explanation already provided, this is an exercise of authority under statute law and there is no need to seek Royal Consent as part of the consideration of Bill C-232.

Supply Bills

RULE 10-7

Royal
Recommend-
ation

10-7. The Senate shall not proceed with a bill appropriating public money unless the appropriation has been recommended by the Governor General.

REFERENCE

Constitution Act, 1867, *section 54*

EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-7: Rule 81

COMMENTARY

The Constitution states that bills to appropriate funds or impose taxation cannot originate in the Senate. In addition, rule 10-7 provides that the Senate will not proceed on any bill which appropriates public funds that has not been first recommended by the Crown – i.e., accompanied by a Royal Recommendation issued by the Governor General. If the Speaker should find that a bill infringes on the financial initiative of the Crown, the Order of the Day for the bill will be discharged and the bill withdrawn. In this fashion, the financial initiative of the Crown is respected.

In 1918, a special committee of the Senate was formed to consider “the question of determining what are the rights of the Senate in matters of financial legislation, and whether under the provisions of the [*Constitution*] Act, 1867, it is permissible, and to what extent, or forbidden, for the Senate to amend a Bill embodying financial clauses (Money Bill).” The committee’s report (see *Journals of the Senate*, May 15, 1918, pp. 193-204), often referred to as the “Ross Report”, was adopted in May 1918 (see *Journals of the Senate*, May 22, 1918, p. 241). One of the main conclusions of the report was that the Senate has the power to amend money bills that appropriate any part of the revenue or impose a tax by *reducing* the

amounts therein, but that it does not possess the right to *increase* the same without the consent of the Crown. Extracts from the Ross Report are contained in the Related Citations and Extracts below.

This provision dates to 1867 (rule 46 at the time). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

A Royal Recommendation may be defined as “The authorization provided in a message of the Governor General for the consideration of a bill approving the spending of public monies proposed in a bill. The Royal Recommendation is provided only by a minister and only in the House of Commons. This requirement is based on section 54 of the *Constitution Act, 1867*” (Appendix I, Terminology). A report was made to the Senate on February 13, 1990, by the National Finance Committee on the form and use of Royal Recommendations (see *Journals of the Senate*, p. 563).

There have been a number of rulings by the Speaker dealing with the need for Royal Recommendations and the financial initiative of the Crown. See, for example, *Journals of the Senate*, June 6, 1978, pp. 464-465; June 7, 1988, pp. 2720-2722; June 13, 1989, pp. 156-157; February 20, 1990, pp. 710-711; February 27, 1991, pp. 2262-2264; October 23, 1991, pp. 288-289; February 13, 1992, pp. 528-531; February 4, 1997, pp. 821-824; October 29, 1998, pp. 1018-1021; May 11, 2006, pp. 144-146; February 20, 2007, pp. 1095-1098; May 13, 2008, pp. 1063-1064; May 27, 2008, pp. 1086-1088; February 24, 2009, pp. 124-126, 126-128, 128-129, 129-130; May 5, 2009, pp. 562-564; December 1, 2009, pp. 1516-1517; and March 10, 2011, pp. 1296-1297. Excerpts from some recent rulings are included below. Reference can also be made to a number of articles that have appeared in the *Canadian Parliamentary Review*, including: John Mark Keyes, “The Royal Recommendation: An Update” (vol. 22, no. 2, summer 1999), and “When Bills and Amendments Require the Royal Recommendation: A Discussion Paper and Guidelines” (vol. 20, no. 4, winter 1997-98); Michael Lukyniuk, “Spending Proposals: When is a Royal Recommendation Needed?” (vol. 33, no. 1, spring 2010); Gary O’Brien, “Requirements of the Royal Recommendation” (vol. 16, no. 1, spring 1993); and Rob Walsh, “Some Thoughts on Section 54 and the Financial Initiative of the Crown” (vol. 17, no. 2, summer 1994).

RELATED CITATIONS AND EXTRACTS – RULE 10-7

Constitution Act, 1867:

53. Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

54. It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

Second report of the Special Committee on the Rights of the Senate in Matters of Financial Legislation (Ross Report), Conclusions, *Journals of the Senate*, May 15, 1918, p. 194:

The following summing-up thereof is submitted as the conclusions of your Committee on the rights of the Senate in matters of financial legislation: —

1. That the Senate of Canada has and always had since it was created, the power to amend Bills originating in the Commons appropriating any part of the revenue or imposing a tax by reducing the amounts therein, but has not the right to increase the same without the consent of the Crown.

2. That this power was given as an essential part of the Confederation contract.
3. That the practice of the Imperial Houses of Parliament in respect of Money Bills is no part of the Constitution of the Dominion of Canada.
4. That the Senate in the past has repeatedly amended so-called Money Bills, in some cases without protest from the Commons, while in other cases the Bills were allowed to pass, the Commons protesting or claiming that the Senate could not amend a Money Bill.
5. That Rule [80] of the House of Commons of Canada claiming for that body powers and privileges in connection with Money Bills identical with those of the Imperial House of Commons is unwarranted under the provisions of the [*Constitution*] Act, 1867.
6. That the Senate as shown by the [*Constitution*] Act, 1867 as well as by the discussion in the Canadian Legislature on the Quebec Resolutions in addition to its general powers and duties is specially empowered to safeguard the rights of the provincial organizations.
7. That besides general legislation, there are questions such as provincial subsidies, public lands in the western provinces and the rights of the provinces in connection with pending railway legislation and the adjustment of the rights of the provinces thereunder likely to arise at any time, and it is important that the powers of the Senate relating thereto be thoroughly understood.

(Report adopted by the Senate on May 22, 1918, Journals of the Senate, p. 241.)

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 412-413:

The recommendation of the Crown to any resolution involving a payment out of the dominion treasury must be formally given by a privy councillor in his place at the very initiation of a proceeding, in accordance with the express terms of the 54th section of the [*Constitution*] Act, 1867, and in conformity with the practice of the English House of Commons. ...

Though the recommendation of the governor general cannot be formally given in the Senate to a motion involving money, — since such matters must originate in the Commons — yet that house has a standing order which forbids the passage of any bill which, from information received, has not received the constitutional recommendation.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 183-185:

§596. The guiding principle in determining the effect of an amendment upon the financial initiative of the Crown is that the communication, to which the Royal Recommendation is attached, must be treated as laying down *once for all* (unless withdrawn and replaced) not only the amount of the charge, but also its objects, purposes, conditions and qualifications. In relation to the standard thereby fixed, an amendment infringes the financial initiative of the Crown not only if it increases the amount but also if it extends the objects and purposes, or relaxes the conditions and qualifications expressed in the communication by which the Crown has demanded or recommended a charge. This standard is binding not only on private Members but also on Ministers whose only advantage is that, as advisors of the Crown, they can present new or supplementary estimates or secure the Royal Recommendation to new or supplementary resolutions.

§597. The Governor General's Recommendation is communicated to the House and is included on the *Notice Paper* with the item of parliamentary business. When required, the Royal Recommendation is printed in a bill and when that bill is given first reading, the text of the Message and Recommendation of the Governor General is printed in the *Votes and Proceedings*.

...

§599. (1) If any motion, whether in the House or in a committee, requires, but fails to receive, the recommendation of the Crown, it is the duty of the Speaker to announce that no question can be proposed upon the motion, or declare the bill out of order, or to say that the problem may be rectified by the proposer obtaining a Royal Recommendation.

House of Commons Procedure and Practice, Second Edition, pp. 831-833:

For the first 100 years following Confederation, any bill or clause appropriating money had to be preceded by a House resolution, whose wording defined precisely the amount and purpose of any appropriations sought. The resolution was moved by a Minister of the Crown and was recommended by the Governor General. Every appropriating clause of the subsequent bill had to conform to the provisions outlined in the resolution, and no Member could move amendments to the legislation that would have the effect of increasing the amount or altering the purposes which the resolution had authorized. To alter an appropriating clause, the government had first to obtain a new resolution from the House, again recommended by the Governor General, embodying the change.

Because the debate on the financial resolution was often repeated at the second reading stage of the bill, the House eliminated the resolution stage in 1968. The Crown's recommendation would now be conveyed to the House as a printed notice which would appear in the *Notice Paper* and again in the *Journals* when the bill was introduced, and be printed in or appended to the bill. The rule change did not alter the constitutional requirement for a royal recommendation, only the procedure to be followed.

Detailed recommendations were printed until 1976, when the government began using the current formula, which is as follows:

His/Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled (long title of the bill).

In 1994, the Standing Orders were again amended to remove the requirement that a royal recommendation had to be provided to the House before a bill could be introduced. The royal recommendation can now be provided after the bill has been introduced in the House, as long as it is done before the bill is read a third time and passed. However, the government has maintained the practice of providing the royal recommendation to their own bills at the moment they are put on notice for introduction in the House. The royal recommendation accompanying a bill must be printed in the *Notice Paper* for a 48-hour period, printed in or appended to the bill and recorded in the *Journals*.

As a royal recommendation may only be obtained by a Minister of the Crown, and because Ministers do not usually sit on committees, any amendment calling for additional public spending may only be proposed and considered at report stage.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 719:

The Crown's recommendation lays down the maximum amount of a charge on public funds or on the people, as well as its objects and purposes. An amendment infringes the financial initiative of the Crown not only if it increases the amount, but also if it extends the objects and purposes, or relaxes the conditions and qualifications expressed in the communication by which the Crown has recommended a charge. Similarly, no amendment to a motion relating to Supply is in order except one which proposes a reduction in the amount sought.

Speaker's Rulings on the Financial Initiative of the Crown

As indicated in the Commentary above, there are many Speakers' rulings dealing with the need for a Royal Recommendation and on the financial initiative of the Crown. In the following examples, the Speaker outlines the criteria for determining whether a bill requires a Royal Recommendation (February 24, 2009); notes that a bill that cannot, under its own terms, take effect until funds have been separately appropriated does not require a Royal Recommendation (May 5, 2009); identifies bills that infringe on the financial initiative of the Crown and discharges their order for second reading (February 24, 2009; May 5, 2009; and March 10, 2011); identifies a bill proposing new functions within an existing mandate (December 1, 2009); and explains the process for the examination of estimates and the appropriation bill (December 16, 2011).

Criteria to Be Considered

Journals of the Senate, February 24, 2009, p. 125:

The procedural authorities, including Speaker's rulings, Marleau and Montpetit, Beauchesne, and Erskine May, indicate that a number of criteria must be considered when seeking to ascertain whether a bill requires a Royal Recommendation. First, a basic question is whether the bill contains a clause that directly appropriates money. Second, a provision allowing a novel expenditure not already authorized in law would typically require a Royal Recommendation. A third and similar criterion is that a bill to broaden the purpose of an expenditure already authorized will in most cases need a Royal Recommendation. Finally, a measure extending benefits or relaxing qualifying conditions to receive a benefit would usually bring the Royal Recommendation into play.

On the other hand, a bill simply structuring how a department or agency will perform functions already authorized under law, without adding new duties, would most likely not require a Recommendation. In the same way, a bill that would only impose minor administrative expenses on a department or agency would probably not trigger this requirement.

The list of factors enumerated here is not exhaustive, and each bill must be evaluated in light of these points and any others at play. It certainly is not the case that every bill having any monetary implication whatsoever automatically requires a Royal Recommendation. When dealing with such issues, the Speaker's role is to examine the text of the bill itself, sometimes within the context of its parent act. Of course, the Speaker, in making this assessment, seeks to avoid interpreting constitutional issues or questions of law.

The senator raising a point of order has a responsibility to present evidence and explain to the Senate why a Royal Recommendation is required, linking it to what the text before the Senate would actually require, not optional decisions that may or may not be made at some point after a bill is passed. ...

Bill That Is Clearly Without Effect in the Absence of a Separate Appropriation Does Not Require a Royal Recommendation

Journals of the Senate, May 5, 2009, p. 564:

On March 31, after Senator Grafstein had spoken to his motion for the second reading of Bill S-230, An Act to amend the Bank of Canada Act (credit rating agency), Senator Nolin rose on a point of order. He noted that, under clause 2, the bill cannot be brought into force before funds have been appropriated, based on a Royal Recommendation, for the purpose of the bill. On this basis, he was of the view that the Senate cannot proceed with the study of the bill.

The effect of the type of clause challenged by Senator Nolin was addressed in some detail in a ruling given on May 27, 2008 [*Journals*, pp. 1086-1088], concerning Bill S-234, introduced by our retired colleague Senator Gill. That bill contained a virtually identical provision. The ruling is published at pages 1086 to 1088 of the *Journals of the Senate*, and is directly applicable to the current point of order. The final paragraph, which summarized the effect of this type of clause, applies equally to Bill S-230. It suggests that the bill has no real effect without a separate appropriation of the necessary funds. As stated in the ruling of May 27, 2008:

[T]here is no obligation to appropriate new money imposed upon Her Majesty. Nothing can happen if funds are not properly appropriated following a Royal Recommendation. Preferring to err on the side of allowing Senators the largest opportunity possible to consider proposals, debate on this item can proceed.

The ruling on Bill S-230 is the same. The bill does not require a Royal Recommendation, since nothing can happen following its adoption until and unless funds have been appropriated. Debate can therefore continue.

Bill Infringing on Financial Initiative of Crown: Extending Benefits

Journals of the Senate, February 24, 2009, p. 130:

None of the arguments raised challenged the basic point that Bill S-207 would extend employment insurance benefits to some individuals who do not currently qualify for them. The bill would relax the conditions that must be met in order to receive employment insurance benefits for certain individuals who accompany their spouse or common law partner when posted abroad, by allowing them to extend their qualifying period up to a limit set in the bill. Such individuals cannot now have this period overseas discounted when determining whether they qualify for benefits. The proposal in Bill S-207 to extend access to a benefit enlarges the scheme of entitlements in the *Employment Insurance Act*, and, consequently, it requires a Royal Recommendation.

The ruling is, therefore, that this bill is out of order. Debate at second reading cannot continue, and the bill shall be withdrawn from the Order Paper.

(Accordingly, the Order of the Day for the second reading of Bill S-207, An Act to amend the Employment Insurance Act (foreign postings), was discharged and, by order, the Bill withdrawn.)

Bill Infringing on Financial Initiative of Crown: Crown Liabilities

Journals of the Senate, May 5, 2009, pp. 562-563:

Since the government is the guarantor for loans made under the *Canada Student Loans Act*, it is liable to the lender if former students are discharged from debts or obligations with respect to such loans. The changes that Bill S-219 proposes would thus have the effect of increasing the contingent liabilities of the government, possibly resulting in additional charges on the Consolidated Revenue Fund.

...

While there is a general preference in the Senate to favour debate in uncertain situations, this must be balanced against the need for a scrupulous respect for the financial initiative of the Crown, a basic principle of our parliamentary system. The passage of Bill S-219 would expand the range of conditions under which the government would have to make good its guarantee of loans under the *Canada Student Loans Act*. This would change the existing scheme, since payments from the Consolidated Revenue Fund might increase due to the change in possible obligations. As such, the bill should have a Royal Recommendation, and would have to originate in the other place.

The ruling is, therefore, that this bill is out of order. Debate at second reading cannot continue, and the bill shall be withdrawn from the Order Paper.

(Accordingly, the Order of the Day for the second reading of Bill S-219, An Act to amend the Bankruptcy and Insolvency Act (student loans), was discharged and, by order, the Bill withdrawn.)

Bill Proposing New Functions Within Existing Mandate

Journals of the Senate, December 1, 2009, p. 1517:

The existing *Office of the Superintendent of Financial Institutions Act* has as its purpose “to ensure that financial institutions and pension plans are regulated ... so as to contribute to public confidence in the Canadian financial system.” Bill S-241 would add an additional purpose, relating to the use of credit and debit cards. This can be seen as directly relating to the act’s existing purpose, since credit and debit cards are essential, indeed integral, parts of a modern financial system and the operations of financial institutions.

Bill S-241 does not contain provisions appropriating any part of the public revenue. The Superintendent of Financial Institutions already exists, supported by an office. The office is funded both by a standing appropriation and by assessments on regulated bodies. It is to this office that the new purpose would relate. It is the superintendent who would be mandated to consult with other already existing bodies.

To be clear, Bill S-241 does not mandate new hiring or other expenditures. Although the changes it proposes may impose some administrative adjustments, arguments did not establish how the new responsibility would automatically incur new public expenditures, as opposed to being accommodated within existing funding, or how any expenditures would be “new and distinct”. The purpose to be added by Bill S-241 fits within the existing general roles and functions of the Office of the Superintendent of Financial Institutions. In light of the available information, the ruling is, therefore, that the point of order has not been established, and debate on the motion for second reading can continue.

Bill Infringing on Financial Initiative of Crown: Extending Retroactive Payments

Journals of the Senate, March 10, 2011, p. 1297:

Parliamentary practice stipulates that any new or additional legislative authorization for spending from the [Consolidated Revenue Fund] must be accompanied by a royal recommendation. Bill S-223 seeks to alter the conditions that are attached to the [Canada Pension Plan] by increasing the period of retroactivity to five years from the current 12 months. Although spending from the CPP is derived from its own separate account, it is made through the CRF. As such, any changes to the CPP which would entail increased spending require a royal recommendation.

In conclusion, it is my ruling that the provisions of Bill S-223 require a royal recommendation and that, as a consequence, it cannot originate in the Senate. The point of order is well founded; proceedings on the bill must cease and Bill S-223 will be discharged from the Order Paper.

(Accordingly, the Order of the Day for the second reading of Bill S-223, An Act to amend the Canada Pension Plan (retroactivity of retirement and survivor’s pensions), was discharged and, by order, the Bill withdrawn.)

Process for the Examination of Estimates and Appropriation Bill

Journals of the Senate, December 16, 2011, pp. 794-796:

Under its Standing Orders the House of Commons adopts the Estimates before the introduction of the supply bill. This reflects the fundamental role of the House of Commons in relation to financial measures. The Senate deals with supply in a different way. Here, there are two related but separate processes at play: the review of the Estimates and the adoption of the supply bill. The steps are related since the supply bill seeks approval of expenditures outlined in the Estimates, but they are separate since the introduction and the passage of the supply bill is, in the Senate, not contingent upon any action on the Estimates.

As Senator Day explained, the typical approach in the Senate is to deal with a report of the National Finance Committee on a set of Estimates before final disposition of the related supply bill. Senator Day characterized this as a convention. He acknowledged, however, that there have been divergences from this approach in the past.

In the Senate, the Estimates are tabled by the government. The National Finance Committee is then authorized to study most expenditures contained in the Estimates, although authorization may be given to other committees to study some expenditures. However, the Estimates themselves are never referred to the committee for any formal approval. This is an important distinction. Because the Estimates themselves are not referred to the committee, it does not approve them or recommend approval, and, indeed, it does not have authority to do so. The committee only studies and reports on the expenditures as set out in the Estimates.

The committee's report contains an analysis of various issues related to expenditures in the Estimates, and is provided for the Senate's information. As such, it would be more in keeping with rule [12-22(3)] for the report to be tabled in the Senate, although it is often presented. By tabling a report, the National Finance Committee fulfills its duty to examine and report on the Estimates. No further action is actually required, but, in accordance with established practice, a procedural motion is usually moved under rule [12-22(3)] to consider the report at a subsequent sitting, which allows senators to debate and discuss the contents. If adopted by the Senate, this report becomes a Senate report, rather than just a committee report.

A supply bill comes to the Senate through a separate process, completely different from the National Finance Committee's report to the Senate on the Estimates. The supply bill is received from the House of Commons by message, like any other bill originating in that house. By the time the Senate receives the supply bill it has an existence quite separate from the Estimates. Depending on proceedings in the House of Commons, the amounts in the supply bill could actually be lower than those indicated in the Estimates. After coming here, the Senate deals with the bill through the usual legislative process, with the notable exception that supply bills are very rarely referred to committee, although nothing in the Rules prevents a supply bill being referred to committee after second reading.

Some may find it helpful to draw a certain parallel between the Senate's work on Estimates and supply bills and the process for pre-study of a bill. A committee may be authorized to pre-study a bill that is in the House of Commons, but its work does not, indeed cannot, delay or hold up the progress of the bill itself when the Senate receives it. Likewise, the National Finance Committee studies the Estimates, but that work, important as it is, does not affect the progress on the supply bill when it reaches the Senate.

...

In practice, the Senate often receives a report from the National Finance Committee on Estimates before dealing with a supply bill providing for the expenditures set out in those Estimates. The work of the National Finance Committee is important to the Senate as it informs senators about issues arising from the Estimates and so contributes to an understanding of government programs. As such, this sequence of proceedings is beneficial, and perhaps even desirable.

To repeat, the *Rules of the Senate* do not require that a report on the Estimates be received or adopted before the Senate approves supply bills. There have been a number of instances when a supply bill has been passed without adopting a report from the National Finance Committee on the Estimates. So, while the approach of a report followed by the Senate's decision on a supply bill, which Senator Day termed a convention, is usually followed, this is not always the case.

RULE 10-8

No extraneous clauses

10-8. A bill of aid or supply shall not be amended to include any clause that is foreign to or different from the matter of the bill.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-8: Rule 82

COMMENTARY

Rule 10-8 prevents matters not relevant to the object and scope of a supply or appropriation bill from being added to it. There are no known examples of this rule being invoked in the Senate. Appropriations bills are usually only considered at second and third reading stages in the Senate and have, on occasion, been passed in one sitting, with leave. They are not customarily sent to committee for review; although they can be. Once the Senate has adopted an appropriation bill, a message is sent to the House of Commons. However, unlike all other bills passed by the Senate without amendment, general practice is that the message to the House of Commons for an appropriation bill does not usually specify that the Senate's adoption was without amendment, if that is the case.

For an explanation of the process for the examination of the estimates and the appropriation bill, see the Speaker's ruling of December 16, 2011 in Related Citations and Extracts for rule 10-7.

On December 17, 1867, the Senate adopted the following rule: "To annex any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to, and different from the matter of the Bill, is unparliamentary" (rule 45). The wording was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 10-8

Bourinot's Parliamentary Procedure, Fourth Edition, p. 290:

In the old days of conflict between the Lords and Commons, and between the legislative councils and assemblies of Canada, it was not an uncommon practice to tack on to bills of supply and other bills, matters entirely foreign to their object and scope. Such a system was at variance with correct parliamentary usage. The journals of the Lords abound in examples of the condemnation of so dangerous a system; and from the first establishment of colonial assemblies it appears to have been a standing instruction to the governors to enforce the observance of the strict usage by refusing their assent to any bill in which it might be infringed.

The Senate has the following rule upon this subject, ... "To annex any clause to a bill of aid or supply, the matter of which is foreign to and different from the matter of the bill, is unparliamentary."

No modern example can be found in the English or Canadian journals of a practice now admitted to be unconstitutional in principle and mischievous in its results. The House of Lords' standing order[s] declare[] that such a practice is not only unparliamentary but "tends to the destruction of the Constitution of the government".

Senate Bills**RULE 10-9**

No duplication of Senate bills in the same session **10-9.** When a bill originating in the Senate has been passed or defeated, no new bill with the same object shall originate in the Senate during the same session.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-9: Rule 80

COMMENTARY

Rule 10-9 provides that when a Senate bill has been passed or rejected, it is not permissible to introduce a new bill for the same object in the Senate during the same session. This rule applies only to bills originating in the Senate and does not apply to bills that are received from the House of Commons. For this reason, rule 10-9 has rarely been invoked. More often, rule 5-12 (same question during the same session) is invoked in these circumstances. When pertaining to bills, it is not always clear when the “same question rule” applies, especially when identical clauses are in question. Several rulings have clarified these matters (see below).

Section 42(2) of the *Interpretation Act* provides that an amending or repealing act can be proceeded with in the same session.

A rule adopted in 1867 stated: “When a Bill, originating in the Senate, has passed through its final stage therein, no new Bill for the same object can afterwards be originated in the Senate, during the same Session” (rule 59). The wording was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 10-9*Interpretation Act:*

42. (1) Every Act shall be so construed as to reserve to Parliament the power of repealing or amending it, and of revoking, restricting or modifying any power, privilege or advantage thereby vested in or granted to any person.

(2) An Act may be amended or repealed by an Act passed in the same session of Parliament.

(3) An amending enactment, as far as consistent with the tenor thereof, shall be construed as part of the enactment it amends.

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 546:

If the second or third reading of a bill sent from one house to the other, be deferred for three or six months, or if it be rejected, it cannot be regularly revived in the same session. Again when a bill has finally passed, it cannot be introduced again in the house where it was presented.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 198:

§654. On February 19, 1968, the House negatived the motion for third reading of Bill C-193 to amend the Income Tax Act. Several days later the government put forward Bill C-207 which contained matters not contained in Bill C-193, along with several clauses which were identical to those in the defeated bill. The Speaker ruled that the only way to interpret the two measures in relation to the rule against consideration of substantially the same question twice in one session is to compare the clauses in the two bills. Four of the clauses in the new bill were found to be repetitions of clauses in the defeated bill, and would put the House in the position of having to take a decision which would be inconsistent with a decision taken previously. There should be no contradiction between the new bill and the decision taken previously. At the Speaker's suggestion, the bill was withdrawn and a new measure was introduced. *Journals*, March 11, 1968, pp. 751-57.

House of Commons Procedure and Practice, Second Edition, p. 582:

A decision once made cannot be questioned again but must stand as the judgement of the House. Thus, for example, if a bill or motion is rejected, it cannot be revived in the same session, although there is no bar to a motion similar in intent to one already negatived, but with sufficient variance to constitute a new question. This is to prevent the time of the House being used in the discussion of motions of the same nature with the possibility of contradictory decisions being arrived at in the course of the same session.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 543-545:

There is no general rule or custom which restrains the *presentation* of two or more bills relating to the same subject, and containing similar provisions. But if a decision of the House has already been taken on one such bill, for example, if the bill has been given or refused a second reading, the other is not proceeded with if it contains substantially the same provisions; nor could such a bill be introduced on a motion for leave. ... The Speaker has declined to propose the question for the second reading of a bill which would have had the same effect as a clause of a bill which had already received second reading. Similarly, a new clause offered at the consideration stage of one bill was ruled out of order when it substantially repeated the provisions of another bill of the same session, the consideration stage of which had been adjourned. But if a bill is withdrawn, after having made progress, another bill with the same objects may be proceeded with. Objection to a bill related to, but not identical with, another bill being considered by the House of Lords has been overruled.

...

There is no rule against the amendment or the repeal of an Act of the same session.

Speaker's Rulings: Substantially the Same Bills

In the rulings that follow, the Speaker has explained that when a decision is taken by the Senate on a bill, proceedings on another bill that is substantially the same cannot continue (March 23, 2004, see also Journals of the Senate, February 27, 1991, pp. 2265-2266; and December 17, 1992, pp. 1673-1675); that a clause in one bill which was identical to a third reading amendment defeated in another bill would not constitute a breach of the same question rule (October 29, 2003); and that two bills amending the same section of a parent act must achieve the same purpose by the same means in order to bring the same

question rule into play (November 23, 2005). Although they do not directly touch on the situation covered by rule 10-9, which deals with two bills originating in the Senate, they are nevertheless of relevance.

Journals of the Senate, March 23, 2004, pp. 340-343:

On Thursday, March 11, Senator Kinsella raised a point of order to have his bill, Bill S-7, struck from the *Order Paper*. Citing first the British parliamentary authority, *Erskine May*, and then subsequently a precedent that had occurred in the Senate some years ago, Senator Kinsella explained that when a decision has been made with respect to one of two bills on the *Order Paper* dealing with the same subject matter, it is not possible to proceed with the second bill. In this case, Bill C-5, setting the effective date of the representation order of 2003, received royal assent March 11. Bill S-7, dealing with the same subject as Bill C-5, still remains on the *Order Paper* and Senator Kinsella has now proposed that I as Speaker discharge the bill.

...

According to Senator Kinsella's understanding of the Senate precedent and the procedural literature, it is the responsibility of the Speaker to discharge the bill. In his view, unanimous consent is not the appropriate means to meet this procedural step. Senator Robichaud again intervened to express a concern that by discharging Bill S-7, the Senate might establish a precedent that could, in the future, block consideration of a Government bill based on a prior decision taken with respect to a Senate bill on a similar subject.

...

It is useful to explain how the different parliamentary authorities and our own rules operate in circumstances where the House is confronted with bills that are substantially the same. The passage at page 499 of the 22nd edition of *Erskine May* that Senator Kinsella referred to, in raising his point of order, states that "There is no general rule or custom which restrains the *presentation* of two or more bills relating to the same subject, and containing similar provisions. But if a decision of the House has already been taken on one such bill, for example, if the bill has been given or refused second reading, the other is not proceeded with if it contains substantially the same provisions." This passage closely resembles citation 624(3) in the sixth edition of the Canadian authority, *Beauchesne*.

The Australian Senate authority, *Odgers*, provides a much narrower interpretation. As it explains at page 203 of the 9th edition, "the same question rule is seldom applied because it seldom occurs that a motion is exactly the same as a motion moved previously. Even if the terms of a motion are the same as one previously determined, the motion almost invariably has a different effect because of changed circumstances and therefore is not the same motion. There may be different grounds for moving the same motion again."

The principle of the "same question rule," also forms a part of the *Rules of the Senate*. Rule [10-9], for example, provides that "When a bill originating in the Senate has been passed or negatived a new bill for the same object shall not afterwards be originated in the Senate during the same session." In addition, rule 63(1) [now see rule 5-12] states that "A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded"

The purpose of rule [10-9] is to prevent the consideration of a Senate bill that has substantially the same object as another Senate bill that had already been adopted or rejected during the same session. Rule [10-9] applies strictly to bills that originate in the Senate. It does not apply to bills that come

from the “other place”. Rule [10-9], therefore, does not apply to the present circumstances since Bill C-5 did not originate in the Senate.

Erskine May, unlike *Odgers* does not seem to observe the distinction provided in Senate rule [10-9]. In fact, it may be that neither *Erskine May* nor *Odgers* are appropriate guides to our practices. It is worth noting that the *Companion to the Rules of the Senate* published in 1994, on page 247 cites section 42(2) of the *Interpretation Act*, which specifically allows that “An Act may be amended or repealed by an Act passed in the same session of Parliament.” There is nothing to suggest that a proposed amendment or repeal of an Act could not be similar in substance to the earlier Act that was already adopted by Parliament in the same session.

How can we sort out these conflicting provisions and statements? I am not really sure that we can. It may not be possible to square the circle. The role of the Speaker is to ensure that best practices are followed while at the same time protecting the interests of the Senate. This is what the Speaker strives to do through rulings. If, at any time, the Senate disagrees with that judgment, with a decision, any Senator can challenge the ruling and the Senate itself will decide what the outcome will be by either accepting or overturning that ruling. In any case, it might be prudent to follow the advice of *Hatsell*, also cited in the *Companion* at page 190, which explains that it is “the good sense of the House that must decide, upon every question, how far it comes within the meaning of the [same question] rule.”

With respect to this point of order, the Senate has adopted a C-bill and it is now left with the task of discharging a similar S-bill from the *Order Paper*. Senator Robichaud’s concern, however, has to do with the possibility of the Senate taking a decision to adopt an S-bill that might block consideration of a C-bill. A solution for the future might be to propose the withdrawal of the S-bill in order to allow unimpeded consideration of the C-bill. The Senate did something similar to this in October 2001 when it unanimously agreed to withdraw Senator Lynch-Staunton’s bill on royal assent in order to permit the introduction of a similar bill sponsored by the Leader of the Government. Alternatively, it could be argued that rule [10-9] recognizes an implicit exception and that C-bills do not come under the “same question” prohibition if it thwarts the Senate’s ability to fulfill its obligation as the “Chamber of sober second thought” to review the legislation that comes to it from the “other place”.

In the end, the boundaries of the same question rule can only be drawn when the Senate is confronted with a concrete event. During discussion on the point of order on March 11, reference was made to a Senate precedent. On February 27, 1991, the Speaker ruled that a bill sponsored by Senator Haidasz, coincidentally also Bill S-7, entitled *An Act to amend the Criminal Code (protection of the unborn child)*, should be removed from the *Order Paper* following a substantial decision on Bill C-43, *An Act respecting Abortion*, since both bills sought to amend section 287 of the Criminal Code. As the Speaker noted in the ruling “Although Bill S-7 and Bill C-43 have different objectives and represent alternatives on the subject of abortion, the Chair feels that ... a strong case may be made that they are ‘the same in substance’.” This impression was strengthened by the fact that Senator Haidasz had moved amendments to Bill C-43 that resembled the objectives and provisions of Bill S-7, all of which were rejected by the Senate.

The case that is now before the Senate is broadly similar to the precedent of 1991. In both instances, the Senate completed consideration of a Government sponsored bill received from the House of Commons before voting on the second reading motion of a Senate bill. Bill S-7 was introduced or presented February 4 and debate on its second reading began on February 11. The Senate received a

message from the House of Commons concerning Bill C-5 on February 11 and, following our usual practice, the bill was read the first time immediately. Second reading debate commenced on February 13 and ended February 20 when the bill was subsequently referred to the Standing Committee on Legal and Constitutional Affairs. After it was reported without amendment, Bill C-5 was debated and passed at third reading on March 10. Royal assent was given on March 11. At the same time, I note that no further action was taken with respect to Bill S-7 until the point of order was raised.

In passing Bill C-5 at third reading, the Senate did pronounce itself on the effective date of the representation order of 2003. As such, it would be inappropriate to now proceed on Bill S-7 since, in my view, it does deal with the same object as Bill C-5. Based on this assessment, I agree with Senator Kinsella and it is my ruling that Bill S-7 be discharged from the *Order Paper*.

(Accordingly, the motion that the original question be now put was deemed withdrawn and the Order of the Day for the second reading of Bill S-7, An Act respecting the effective date of the representation order of 2003, was discharged and, by order, the Bill withdrawn.)

Journals of the Senate, October 29, 2003, pp. 1266-1267:

Essentially, I am being asked to rule Bill C-41, or a part of it, out of order because it contains a provision, clause 30, that is identical to a third reading amendment to Bill C-25 that was moved and defeated. To accede to this request, I must be satisfied that the question before the Senate is one that has been previously moved in the Senate and that it is the same in substance.

Is this in fact the case? There is little doubt that the defeated amendment to Bill C-25 is identical to clause 30. This fact alone does not fully meet the requirements of the same question rule. It is not sufficient in itself to oblige me to rule all or part of Bill C-41 out of order. Bill C-41 comes to the Senate from the House of Commons; it is a legislative measure that proposes to amend or correct a number of laws, including Bill C-25. Clause 30 is only one element of this bill.

...

The same question rule cannot be used this way. It would be too restrictive and would prevent the Senate from properly carrying out its work. Rule 63(1) [now see rule 5-12] states that “a motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative ...” Clause 30 is not a discrete question; it is a part of Bill C-41. Unlike the defeated amendment to Bill C-25, clause 30 has not been proposed in the Senate either as a motion or an amendment; it is part of a bill from the House of Commons. Moreover, there is no doubt that Bill C-41 is not the same “in substance” to Bill C-25 or to the defeated amendment. Bill C-41 has been duly passed by the House of Commons and has been placed before the Senate for its consideration. The task of the Senate is to review this bill in accordance with established practices and procedures.

It is my ruling that there is no point of order in this case and the Senate should now proceed to the second reading of Bill C-41.

Journals of the Senate, November 23, 2005, pp. 1308-1309:

The point of order that has been raised deals with the suggestion that Bill C-259 which deals with the elimination of the excise tax on jewellery is substantially the same as Bill C-43, a budget implementation bill that was enacted by Parliament last June. In order to make the case, it should be possible to identify the subject matter or clauses in both bills that address the same subject.

Bill C-43, which is now Chapter 30 of the Statutes of Canada 2005, contains an amendment to Schedule I of the *Excise Tax Act* that will phase out the excise tax on jewellery through a series of rate reductions over the next four years. Among the items to be affected by this tax change are articles of all kinds made of various materials including ivory, coral, jade and onyx and semiprecious stones. Other items to benefit from this tax reduction include personal objects made of real or artificial diamonds as well as gold and silver jewellery.

Of particular interest, for purposes of this point of order, is the tax reduction that will be given to clocks. Chapter 30 specifies that the phase-in tax reduction will apply to the following items when their value exceeds fifty dollars:

Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for use of the blind.

Bill C-259 is a one clause bill that provides an immediate 10 per cent reduction for:

Clocks adapted to household or personal use, except those specially designed for the use of the blind.

if their sale price or duty paid value exceeds fifty dollars.

There is little doubt that these two clauses resemble each other, but they are also different in certain critical respects. The question to be determined is whether they are sufficiently the same to disallow further consideration of Bill C-259 or whether they are sufficiently different to allow Bill C-259 to proceed.

...

... In a ruling by Speaker Fraser made in 1989 dealing with items proposed by Private Members, that is with respect to items not proposed by the Government, the Speaker explained that for two or more items to be substantially the same "they must have the same purpose and they have to achieve their same purpose by the same means." I am prepared to take this approach as a guide to the consideration of similar items whether they are sponsored by the Government or by Senators.

In taking this position, I am also mindful of British practice which is very clear. *Erskine May* states at page 580 of the 23rd edition: "There is no rule against the amendment or the repeal of an Act of the same session."

Bill C-259 amends the application of the excise tax on clocks at an accelerated speed in comparison to the proposal enacted through the budget implementation bill adopted earlier this year. The means, therefore, are not the same. If the Senate adopts this bill and it is made law by royal assent, it will have the effect of changing the rate of tax reduction now in place through the enactment of Bill C-43. I do not regard this measure to be the same, based on the criteria established by the decision of Speaker Fraser. The same end is not achieved by the same means. The two measures are substantially different and I am prepared to rule that debate on Bill C-259 can continue.

RULE 10-10	
Form of amending bill	10-10. (1) A bill originating in the Senate that amends any statute in whole or in part shall re-enact the whole of any affected section, subsection or other minor division and shall not ordinarily be made of clauses that only add, leave out or substitute words in the existing statute.
Typographical indications of amendments	10-10. (2) The print of such an amending bill shall contain comparative texts of the amendments and any affected portion of the statute, indicating by italics, parallel columns or any other appropriate means, the changes that would be made by the bill if enacted.
Explanatory notes on amending bill	10-10. (3) The print of such an amending bill shall also include an explanatory note outlining briefly the reasons for each amendment. Whenever practicable the explanatory note shall be printed on the right-hand page of the bill in paragraphs opposite the amendments referred to and numbered correspondingly.
Reprints of Senate bills	10-10. (4) As far as practicable, explanatory notes shall also be included in subsequent reprints of any bill.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-10: Rule 72

COMMENTARY

This rule provides guidelines on the format for bills that amend existing statutes and originate in the Senate. The guidelines include the use of explanatory notes and comparisons with the existing sections of the statutory law. The Office of the Law Clerk and Parliamentary Counsel of the Senate can provide drafting services, and is responsible for printing all legislation originating in the Senate.

Since bills will form part of Canada’s statutory law once given Royal Assent, it is essential that they all conform to a basic structure, whether they originate in the Senate or the House of Commons, are public or private, or are introduced by the government or not. For that reason, all bills are printed in a bilingual format and contain certain elements – beginning on the first page, bills are identified with the Parliament and session numbers, the regnal year of introduction, and the bill number. Other elements of a

bill include long and short titles, preambles, the enacting formula, clauses and schedules. For more details on the structure of bills, see *House of Commons Procedure and Practice*, Second Edition, pp. 730-734.

This rule previously read as follows (rule 60A in 1932):

(1) In the preparation of Bills amending existing enactments the amendments shall not ordinarily be made by clauses which add or leave out words or substitute words for others, but by clauses which re-enact the section, subsection or other minor division, as it is amended.

(2) In the text of the Bill, on the left hand page, new matter shall be indicated by such typographical means as may best suit the varying circumstances of each case, such as brackets, italics, underlining, asterisks, etc. Opposite each clause, on the right hand page, the enactment amended thereby, or so much thereof as is essential, shall be printed with the proposed changes to be made therein similarly indicated.

(3) When a clause repeals an existing section, subsection or other minor division of a section, that section, subsection or division, or so much thereof as is essential, shall be printed opposite the clause.

(4) A memorandum by the draftsman explaining briefly the reasons for each clause, shall be appended to the Bill, or distributed therewith. Whenever practicable the memorandum shall be printed on the right hand page of the Bill, in paragraphs opposite the clauses referred to and numbered correspondingly.

(5) The above rules shall also as far as practicable apply to the reprinting of Bills.

On December 10, 1968, the rule was redrafted “to accord with the intent of the recent amendments to the Publication of Statutes Act” (see *Journals of the Senate*, p. 462, effective on August 1, 1969). The wording of rule 10-10 was amended on November 26, 1975, and again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

Although the rules of the House of Commons do not provide similar guidelines on the format of bills, Standing Order 156 gives the Law Clerk of the House of Commons the authority to make non-substantive corrections to bills dealing with such matters as errors of a grammatical, typographical or technical nature; and changes resulting from amendments affecting numbering, cross-reference provisions, headings and marginal notes. Situations sometimes arise in which there are technical errors in bills, in which case there can be a certain latitude for correction, as indicated in the citations below.

RELATED CITATIONS AND EXTRACTS – RULE 10-10

Interpretation Act:

4. (1) The enacting clause of an Act may be in the following form:

“Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:”.

(2) The enacting clause of an Act shall follow the preamble, if any, and the various provisions within the purview or body of the Act shall follow in a concise and enunciative form.

...

13. The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.

14. Marginal notes and references to former enactments that appear after the end of a section or other division in an enactment form no part of the enactment, but are inserted for convenience of reference only.

John B. Stewart, *The Canadian House of Commons: Procedure and Reform*, pp. 79-80:

The practice of submitting “petitions” or “bills” to the king – evidently the two terms were used interchangeably initially – asking that the law be declared to be as the petitioner believes it ought to be already was old when the representatives of the Commons of England first were summoned to Parliament in the thirteenth century. ... Soon it became established that statutes, the highest statements of the law, could be made only in response to bills in Parliament. Gradually the next step followed: it came to be agreed that a statute must conform closely to the bill that had evoked it. By the sixteenth century this constitutional rule was so well recognized that the House of Commons began to present its own public bills to the king in the form and language of statutes. ... It gave the king a simple, stark choice: he could assent to a bill or he could withhold his assent. Thus the possibility that the statute made by the king would be different in the slightest detail from the bill was excluded. ... In our age, when the ministers of the Crown take the lead in initiating changes in the law, it would perhaps be more revealing to say that the Crown bills the House of Commons, and that the function of royal assent is mainly to mark the successful closing of the legislative circle.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 192-195:

§626. (1) Although there is no specific set of rules or guidelines governing the content of a bill, there should be a theme of relevancy amongst the contents of a bill. They must be relevant to and subject to the umbrella which is raised by the terminology of the long title of the bill. *Journals*, May 6, 1971, p. 532.

...

§630. (1) A bill is divided into a series of numbered clauses each with a descriptive title printed in the margin (referred to as Marginal Notes). Clauses may be divided into subclauses; subclauses into paragraphs; and paragraphs into sub-paragraphs. Long and complicated bills often have their clauses grouped in “parts” distinguished by Roman numerals and headings in capitals. These Parts may again be broken up into small groups of clauses with a group heading in italics. ...

...

§632. Explanatory notes, though technically not part of the bill, are printed on the page opposite to the relevant clause. A Member may prepare explanatory notes which should be brief and contain nothing of an argumentative character of the contents and objects of the bill. When the bills are passed into law, the explanatory notes are deleted.

§633. (1) The marginal notes, short titles of clauses and the headings of parts of a bill do not form part of the bill and, therefore, are not open to amendment. *Journals*, May 17, 1956, p. 568.

(2) The Law Clerk and Parliamentary Counsel is responsible for marginal notes and headings, pursuant to Standing Order 156.

...

§638. The Speaker has ordered the alteration of a bill to correct errors contained in the bill, but in doing so noted that the errors did not affect “the essence, the principles, the objects, the purposes or the conditions” of the bill. Nor was the Royal Recommendation affected or altered. In doing so, the Speaker cautioned that as a precedent, this case should be examined in its most narrow and factual form. Those who are responsible for such errors should take no comfort that future mistakes can be similarly cured. *Debates*, January 26, 1987, pp. 2665-68.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 526:

A public bill is in the form of a draft statute, and when first printed should therefore be consistent with existing law or contain such amendments or repeals as are necessary to render it capable of implementation.

Memorandum from the Law Clerk and Parliamentary Counsel of the Senate to the Clerk of the Senate on Technical Errors in Bills, quoted in the *Debates of the Senate*, May 19, 1988, pp. 3448-3449:

You have asked me to brief you concerning the correction of mistakes in the parchments of bills in various stages of their passage through both Houses. The following is, to the best of my knowledge, the current situation.

(1) There is no provision of law nor is there any provision in the *Rules of the Senate* or in the *Standing Orders of the House of Commons* that clearly allows for corrections of errors, no matter how small. Standing Order 126 of House of Commons gives a limited authority to the Law Clerk of that House “to revise” bills before third reading in that House. This Standing Order provides some authority to correct obvious errors but is limited in scope and there is no similar provision in the *Rules of the Senate*.

(2) Over the years, there has been a practice of making editorial corrections. They are never made by the Clerk of the Parliaments acting alone. They are usually made by the Law Clerks of both Houses acting together and then initialled by the Clerks of both Houses. I understand that the present Clerk of the House of Commons has delegated to the Law Clerk of that House the task of initialling such editorial changes.

(3) After Royal Assent, no mistake, no matter how minor, should be corrected by parliamentary officials without proper legislative authority.

(4) No guidelines have been established for deciding which errors are the proper subject-matter of clerical correction and which require parliamentary amendment. A good guide for clerical correction is to work by analogy to errors that the courts would feel comfortable in characterizing as “an obvious typographical error or slip of the draftsman’s pen.” Driedger, *Construction of Statutes* (2d), pages 128 to 130, deals with this topic. ...

Speaker’s Ruling: Editorial Errors in Bill

Journals of the Senate, June 19, 2003, pp. 992-993:

The point of order, as I understand it, concerns the requested changes referred to in the observations made by the committee in the context of asking the law clerk to deal with those changes as clerical

errors. The request was that those changes should be dealt with as amendments in the absence of the unanimous consent of the committee to adopt that part of the report.

I remind honourable senators that this form of instruction in a committee report is consistent with past practice in the Senate. I do not want to go into a lot of detail, but I refer honourable senators to the *Debates of the Senate* of June 28, 1988, at page 3751 and 3752. The Senate received a report with an observation which stated:

Having found, however, that there were certain incorrect cross-references in the Bill as passed by the House of Commons, the Committee has asked that these editorial errors be corrected in the parchment of the Bill by officials of both Houses prior to its third reading in the Senate.

... That brings me to the heart of what I will be ruling on: That is, the concern highlighted by the point of order that something like that could only be done with unanimous consent. I quote from *Beauchesne's Parliamentary Rules and Forms*, Fifth Edition. Paragraph 728 at page 223 is not necessarily right on point, although it is partly on point and it covers the matters before us.

When a variance occurs in either the English or French texts of a bill, it may be treated, with unanimous consent, as an editorial change.

The words “editorial” and “clerical” have been used interchangeably in many of the references I have seen.

I emphasize the word “may” in that paragraph from *Beauchesne*. Certainly unanimous consent is one way to proceed but not the only way. The committee proceeded in accordance with Senate practices; that is, by majority vote. I believe that the committee acted correctly, that the report is properly before us and that we should not go behind the integrity of the committee.

The only time that we require unanimous consent is when we suspend a written rule or when we depart from an established practice. In those cases, unanimous consent is required. That is not the situation before us.

Accordingly, honourable senators, I do not feel that there is a point of order. The observations of the committee, which contain instructions, are in order. It is in order for us to proceed to deal with the bill at third reading.

Pre-Study of Commons Bills

RULE 10-11

Referral of
subject matter of
bill to committee

10-11. (1) The subject matter of a bill originating in the House of Commons may be referred to a standing committee for study at any time before the bill is received in the Senate.

Notice of motion to refer the subject matter of a bill	10-11. (2) Notice of motion for such referral may be given either: (a) by the Leader or the Deputy Leader of the Government at any time during a sitting; or (b) by any Senator at the appropriate time during Routine Proceedings.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 10-11: Rule 74

COMMENTARY

During the 1970s, a practice developed whereby the Senate would conduct “pre-study” on bills while they were still before the House of Commons. This allows the subject matter of a bill to be referred to a Senate committee for a general review. This procedure was previously referred to as the “Hayden Formula” because Senator Salter Hayden, Chair of the Standing Senate Committee on Banking, Trade and Commerce from 1951 to 1983, was the driving force behind it. During the process of pre-study, the Senate can suggest changes to the bill that may be taken into account as it moves through the legislative process. By the time such a bill reaches the Senate, the need for detailed study or further amendments may be reduced or eliminated, thus allowing the bill to be adopted in a shorter timeframe.

Rule 10-11 provides that before a Commons bill is received by the Senate, notice may be given of a motion to refer the subject matter of the bill to committee by the Leader or Deputy Leader of the Government at any time during a sitting, or by any senator under Notices of Motions during Routine Proceedings. The choice of which standing committee may receive a reference to examine the subject matter of a bill is made in light of the mandates outlined in rule 12-7. For a typical recent example of a motion for the pre-study of the subject matter of a bill, see *Journals of the Senate*, November 4, 2010, p. 938.

There have been cases in which, while one committee was authorized to study the subject matter of an entire bill, several other committees were simultaneously authorized to study the subject matter of specific parts of the same bill (see *Journals of the Senate* of May 3, 2012, pp. 1227-1228; and October 30, 2012, p. 1672). In the second of these cases the motion provided that, as the reports of the various committees to which parts of the bill were referred were tabled, they were automatically referred to the committee authorized to study the subject matter of the entire bill.

This provision was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 10-11

House of Commons Procedure and Practice, Second Edition, p. 724:

Draft bills: This expression is used to refer to the draft form of bills that have not yet been introduced in either House. Occasionally, the House may have the draft of a government bill sent to a committee for examination. As the bill has not yet been given first reading, the committee may examine the

proposed legislation without being constrained by the rules of the legislative process, and may recommend changes. The government can then take the committee's report into consideration when finalizing the draft of the bill.

Speaker's Rulings: Pre-Study

Journals of the Senate, December 17, 2001, pp. 1157-1158:

... I believe that the Senate has never treated pre-study as a procedure subject to the same question rule. Pre-study has been a feature of Senate practice for more than thirty years. ...

...

I would concede that most reports dealing with pre-study have not been adopted by the Senate. This is because the vast majority of these pre-study reports have been tabled. With respect to Bill C-36, the first report of the Special Committee was tabled; however, it was subsequently adopted by motion from the floor. Does this make a difference? In my view, for the reasons that I have already given, it may call into question the same question rule, but it does not actually constitute a violation of it. There is a precedent to support my interpretation. It occurred in 1992 and involved a bill on telecommunications, Bill C-62. That bill had been the object of a pre-study the report of which was subsequently adopted. As with Bill C-36, the pre-study report on Bill C-62 had an impact on the study of the bill in the House of Commons, even though not all of the pre-study recommendations were incorporated into it. When the bill was at third reading in the Senate, an amendment was proposed to include a missing portion of a recommendation that had only partially been accepted in the House of Commons. In the end, the amendment was negatived. The result, however, is not the principle point of this case. Rather, it is that the pre-study report with its numerous recommendations and the third reading debate were implicitly recognized to be two separate, although related, proceedings. As one would expect, the pre-study report certainly informed the debate on the bill, but it did not limit the course of that debate nor did it determine its outcome. They were treated as two different and separate procedures.

Journals of the Senate, November 22, 2011, p. 647:

The subject-matter of any bill which has been introduced in the House of Commons, but not read the first time in the Senate, may be referred to a standing committee for study.

This is the essence of the authority that we have to do a pre-study of a bill that has been introduced in the House of Commons and is not yet before the Senate. This practice is not unusual. The matter before us is not out of order.

Journals of the Senate, November 22, 2011, p. 647:

... [R]ule [10-11] provides explicitly that a notice can be given and a motion be brought to the house to propose a pre-study on a bill that is yet to be received in this house. In fact, *mutatis mutandis* is what pre-study means. The house is not impeded from proceeding on this motion on this basis.

CHAPTER ELEVEN: PETITIONS AND PRIVATE BILLS

This chapter describes the rules pertaining to petitions and private bills. Petitions are one of the oldest of parliamentary forms and can be divided into two categories: those which seek redress for some public good (rule 11-1), and those which seek some benefit for an individual or some private group, on which private bills are based (rules 11-2 to 11-18).

Petitions

RULE 11-1

Petitions from individuals	11-1. (1) A petition shall be clearly written and signed by the petitioner.
Petitions from corporations	11-1. (2) The Senate shall not receive a petition from a corporation unless it is duly authenticated.
Petitions on behalf of public meetings	11-1. (3) A petition signed by persons purporting to represent a public meeting shall be received only as the petition of those who have signed.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 11-1(1): Rule 69

Rule 11-1(2): Rule 70

Rule 11-1(3): Rule 71

COMMENTARY

A petition is a formal request made by Canadian citizens or residents to Parliament for some action. Such a request can only be tabled in the Senate by a senator. There are two kinds of petitions: those requesting that Parliament redress a grievance, and those on which private bills are based. For further information on petitions for private bills, see rules 11-2 to 11-18.

Petitions may be tabled by a senator during Routine Proceedings when the Speaker calls “Tabling of Petitions” (see rule 4-5). A senator may make a brief statement about the content of a petition (such as the subject-matter, where it originated, the number of signatures, etc.). However, it is out of order to make a speech or present an argument in support of the petition at the time it is tabled. Although the Rules do not prescribe in detail what form a petition should take, certain general practices are followed: petitions should be addressed to the Senate or the Senate in Parliament Assembled; they should be clearly written, signed and contain the full name and address of the petitioners; they should relate to something within federal jurisdiction; and they should be written in respectful language. Electronic petitions would not meet the requirement under the Rules that a petition be signed by the petitioner. Further guidelines may be found in the practices that have developed (see citations from Bourinot and Beauchesne below). The House of Commons produces a document entitled *Petitions: Practical Guide*, available on the Parliamentary Internet, which may provide some general guidance about petitions. There are, however, a

number of significant differences in the ways the two houses deal with petitions. The Senate does not have any type of pre-tabling certification process; and petitions can only be tabled in the chamber itself, during a sitting. In addition, there is no minimum number of signatures required for a petition to be tabled in the Senate, and the *Rules of the Senate*, unlike the House of Commons Standing Orders, do not require the government to respond to petitions.

After a petition, other than one for a private bill, is tabled in the Senate and recorded in the Journals, no further action is taken, although on occasion petitions have been referred to committee for study and report by way of a substantive motion. For the process relating to petitions for private bills, see the later section of this chapter.

On December 17, 1867, three rules regarding petitions were adopted: “Every Petition is to be fairly written or printed, and no Petition will be received, unless three of the Petitioners shall have signed the Sheet containing the Petition” (rule 35); “No Petition is received from any Corporation aggregate, unless it be duly authenticated by the Seal of such Corporation” (rule 36); and “Petitions signed by persons purporting to represent Public Meetings shall be received only as the petitions of the persons whose names are affixed thereto” (rule 37). On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the first of these rules (rule 35 in 1867) was amended to read:

Every Petition is to be fairly written or printed, and signed on the sheet containing the prayers of the petition; and if there be more than three petitioners, the additional signatures may be affixed to the sheets attached to the petition (rule 58).

The wording of these rules was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 11-1

Bourinot’s Parliamentary Procedure, Fourth Edition, pp. 230-237:

... The language [contained in a petition] should be respectful and temperate and free from offensive references to the sovereign, imputations upon the character or conduct of parliament or its committees, courts of justice or other constitutional authority or offensive reflections upon the social position of individuals. If it should be found on inquiry that the house has inadvertently received a petition which contains unbecoming and unparliamentary language, the order for its reception will be read and discharged. ... If a petition contains a prayer which may be construed into a reflection on the action of the house, a member will be justified in declining to present it. Every member presenting a petition should endorse his name thereon. Petitions may be either printed or written but where there are three or more petitioners the signatures of at least three petitions shall be subscribed on the sheet containing the prayer of the petition. If there be more than three petitioners, the additional signatures may be affixed to the sheets attached to the petitions. ... [P]etitions signed by persons purporting to represent public meetings can only be received as the petition of the persons whose names are affixed thereto. Petitions are to be presented by a member of the house to which they are addressed but a member cannot be compelled to present a petition. It is the duty of a member proposing to present a petition to make himself acquainted with its terms and see that it is in expression and form consistent with the rules of the house. And in case of any irregularity he should

refrain from offering it to the house. A senator, in presenting a petition may briefly explain its purport but other members may not discuss its contents.

... Petitions containing lengthy extracts from other documents or publications or having such extracts printed in separate forms and annexed to petitions are irregular. Many petitions are not received every session on grounds of irregularity. Petitions from one person are frequently received and are quite in order. Petitions may be written or type-written or printed and may be in French or English but they must be free from erasures or interlineations and the signatures must be written, not printed, pasted on or otherwise transferred. It must not have appendices attached thereto, whether in the shape of letters, affidavits, certificates, statistical statements or documents of any character.

... Aliens, not resident in this country, have strictly no right to petition parliament. In the case of applications for private bills, however, this rule is not enforced. It was agreed in 1878, at the suggestion of Mr. Speaker Anglin, to receive a petition from the Hartford directors of the Connecticut Mutual Life Insurance Company on the ground that it was a mutual company, partly composed of Canadians, and that it was the subject of parliamentary legislation, the company being required to make a certain deposit before doing business in the country. In 1883 a petition from certain persons in the city of Portland in the State of Maine, asking for an act of incorporation, was received on the ground that the subject-matter came within the jurisdiction of the house, as in the case already cited. The reception of such petitions may be considered an act of grace; and since 1883 no objection has been raised to their being brought up in the Canadian house.

Any forgery or fraud in the preparation of petitions or in the signatures thereto will be considered as a breach of privilege and dealt with as such.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 277-279:

§1014. (1) The right of petitioning the Crown and Parliament for redress of grievances is acknowledged as a fundamental principle of the constitution and has been exercised without interruption since 1867.

...

§1020. All petitions must be endorsed on the back of the first page by a Member and be dated. *Debates*, June 21, 1985, p. 6091.

...

§1030. (1) A petition is irregular if it does not set forth a case in which the House has jurisdiction to interfere. *Journals*, February 16, 1956, p. 163. *Journals*, June 7, 1972, p. 362.

(2) A petition cannot be considered if it concerns a matter delegated by Parliament to another body. *Journals*, June 7, 1972, p. 361. *Journals*, October 24, 1973, p. 591.

(3) A petition stating that the election of a Member of the House is void and praying that the petitioner be declared duly elected cannot be received, as Parliament has vested in the courts exclusive jurisdiction over matters relating to the election of its Members. *Journals*, February 15, 1881, pp. 199-200. *Journals*, May 6, 1926, p. 295.

§1031. A petition praying the House to take into its favourable consideration the desirability of recommending the ordering of a new trial, in the case of a person convicted of a criminal offence, cannot be received as it reflects improperly on the Courts of Justice. *Journals*, April 5, 1909, p. 234.

House of Commons Procedure and Practice, Second Edition, pp. 1162, 1172-1175:

Petitions have always been subject to verification by an official of the House of Commons. ... Until 1986, such verification took place after Members had presented their petitions; the Standing Orders now require petitions to be certified correct as to form and content by the Clerk of Petitions prior to being presented to the House. Petitions not meeting the form and content requirements cannot be certified and only certified petitions can be presented to the House.

... Certified petitions are presented daily during Routine Proceedings, under the rubric “Presenting Petitions”. A maximum of 15 minutes is provided for the presentation of petitions. To be recognized, Members must be in their assigned places. Members with more than one petition to present on a given day are advised to present them all when given the floor, as individual Members are recognized by the Chair only once during “Presenting Petitions”. The Chair has on occasion limited the number of petitions presented at one time by a single Member to five. This allows more Members to be recognized within the 15-minute time limitation.

No debate is permitted during the presentation of petitions. Any comment on the merits of a petition—even a Member’s personal agreement or disagreement with the petitioners—has been deemed to constitute a form of debate and is therefore out of order. Members are permitted a brief factual statement, in the course of which they may allude to the petition being duly certified, to its source, to the subject matter of the petition and its prayer, and the number of signatures it carries.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 483:

Originally, the procedure of the House of Commons imposed little restriction on the raising of debate on the presentation of petitions, which served as a method of introducing subjects from outside the House and could be used for obstructing other kinds of business. In view of the great increase in the number of petitions, and the simultaneous growth in government demands on the time of the House a series of standing orders was adopted in 1842, which, as subsequently amended, made the presentation of petitions a formal proceeding incapable, except in rare cases ..., of giving rise to immediate debate.

Pages 486-487:

The House will not entertain petitions for any specific grant or charge; however, petitions seeking a change of policy, or asking for legislation, which might incidentally involve public expenditure, or against a resolution or bill imposing a tax or duty for the service of the year are usually acceptable. In the Lords, a petition relating to a bill before the Commons, which has not yet reached their House, or which has already been rejected, will not be received. In the House of Commons petitions have been received relating to bills which had already been read the third time in that House.

Petitions from Abroad

Petitions from British subjects resident abroad as well as petitions from inhabitants of British colonies having local parliaments have always been received; and also those of foreigners resident in this

country. Petitions have also been received from Dominions and colonies, and from ‘the Indian people in Canada’.

Speaker’s Ruling: Fundamental Right to Petition

Journals of the Senate, June 16, 1998, p. 841:

The right of Canadians to petition Parliament respecting any matter which might fall within its competence or jurisdiction is fundamental to our constitution. It is a right that cannot be denied. Certainly the reform of the Senate and its possible abolition are subjects that are appropriate for petition. I am advised that numerous petitions on Senate abolition containing several thousand signatures have been received in recent months in the other place. The question of privilege alleged by Senator Cools appears to challenge this fundamental right without providing any justification for the action.

PRIVATE BILLS

NOTE: The rules regarding private legislation are considered together without exhaustive historical references to each rule. Given the numerous changes to these procedures over the years, such commentary would be unduly lengthy.

RULES 11-2 to 11-18	
<i>Petitions for Private Bills</i>	
Private bill introduced after petition and examination	11-2. (1) A private bill may be introduced only after a petition for the bill has been received by the Senate and then favourably reported upon by the Examiner of Petitions for Private Bills.
Suspension of rules	11-2. (2) A motion to suspend any rule relating to petitions for private bills shall not be in order unless the suspension has been recommended by the Standing Committee on Rules, Procedures and the Rights of Parliament.
<i>Examiner of Petitions for Private Bills</i>	
Appointment of Examiner	11-3. (1) The Principal Clerk of Committees, or another official designated by the Clerk of the Senate, shall be the Examiner of Petitions for Private Bills.
Examination of petitions	11-3. (2) The Examiner shall consider petitions for private bills received by the Senate.
If petition is in order	11-3. (3) If a petition is in order, the Examiner shall so report to the Senate.

If petition is defective	<p>11-3. (4) If the petition is, in the Examiner's opinion, defective, the Examiner shall so report to the Standing Committee on Rules, Procedures and the Rights of Parliament, with an explanation of the defect. The committee shall study the matter and report to the Senate any recommendation it considers to be appropriate to deal with the defect.</p>
	<p>Notice and Publication</p>
Publication of rules	<p>11-4. Between sessions of Parliament, the Clerk shall publish weekly in the <i>Canada Gazette</i> and in the official gazette of each province the rules respecting notices for applications for private bills.</p>
Publication in the <i>Canada Gazette</i>	<p>11-5. (1) A notice of every application to Parliament for a private bill shall be published in the <i>Canada Gazette</i>.</p>
Content of notice	<p>11-5. (2) The notice shall:</p> <ul style="list-style-type: none">(a) state the nature and purpose of the application;(b) be signed by, or on behalf of, the applicants; and(c) contain the address of the party signing it.
Company name	<p>11-5. (3) If the application is for an act of incorporation, the notice shall also state the name of the proposed company.</p>
Notice in newspapers	<p>11-5. (4) The notice published in the <i>Canada Gazette</i>, or a similar notice, shall be published in the gazettes of the provinces and territories concerned, and in one or more leading news publications with substantial circulation in the areas concerned, if the act applied for:</p> <ul style="list-style-type: none">(a) is to incorporate a company whose objects relate to transportation and communications generally, or is to amend an act that incorporates such a company;(b) is to obtain any exclusive rights or privileges; or(c) is to extend the powers of a company or to increase or reduce the capital stock; to alter powers related to borrowing or the issuing of bonds; or to make any amendments that would in any way affect the rights or interests of shareholders, bondholders or creditors of the corporation.
Frequency and language of notice	<p>11-5. (5) All notices concerning an application for a private bill shall be published at least once a week for a period of four weeks. They shall be published in English and French in the required official gazettes, and, as numbers warrant, in English, French or both in other publications.</p>

<p>Notice to government departments</p>	<p>11-5. (6) If an act being applied for would declare the works or objects of a company to be for the general advantage of Canada, the applicants shall disclose this in the notice and send the notice by registered mail to the federal, provincial and municipal departments concerned; the Examiner of Petitions for Private Bills shall not consider the petition for the bill any earlier than two weeks after the notice has been sent to all concerned.</p>
	<p><i>REFERENCE</i> Constitution Act, 1867, <i>paragraph 92(10)(c)</i></p>
<p>Statutory declaration</p>	<p>11-5. (7) An applicant shall file a statutory declaration with the Clerk proving that the notice requirements have been met.</p>
	<p><i>Fees</i></p>
<p>Deposit of bill and fees</p>	<p>11-6. A person seeking to obtain a private bill originating in the Senate shall deposit with the Clerk:</p> <ul style="list-style-type: none"> (a) a copy of the bill in English or French; (b) a sum to pay for: <ul style="list-style-type: none"> (i) the costs of translating and printing the bill, and (ii) the costs of printing the act in the statutes; and (c) an additional amount of \$200.
	<p><i>Procedures</i></p>
<p>Public bill rules to apply generally</p>	<p>11-7. Except as provided in this chapter, the rules relating to public bills apply to private bills.</p>
<p>Obligatory referral of a private bill to a committee</p>	<p>11-8. After second reading, a private bill shall be referred to a committee and representations made in the Senate for or against the bill shall also be referred to the committee.</p>
<p>No referral to Committee of the Whole</p>	<p>11-9. Unless otherwise ordered by the Senate, a private bill reported by a committee shall not be referred to a Committee of the Whole.</p>
<p>Minimum time before committee study</p>	<p>11-10. A Senate private bill shall not be considered by a committee until one week after referral. A private bill originating in the House of Commons shall not be considered until 24 hours after referral.</p>
<p>Questions about provincial jurisdiction</p>	<p>11-11. After its introduction and first reading, two Senators may require that a private bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs so that it can evaluate and report on whether the bill comes within exclusive provincial jurisdiction.</p>

	<p>REFERENCE Constitution Act, 1867, sections 92, 92A and 93</p>
Private bill from the Commons	<p>11-12. If a private bill is received from the House of Commons without the Senate having previously received a petition for the bill, that bill shall, after being introduced and read a first time, stand referred to the Standing Committee on Rules, Procedures and the Rights of Parliament for consideration and report in lieu of a petition.</p>
Private Bill Register	<p>11-13. The Clerk shall maintain a Private Bill Register, which is available for public examination during office hours. The register shall include the following:</p> <ul style="list-style-type: none">(a) the names, addresses and descriptions of the applicants for a private bill or their agents;(b) a record of the legislative stages through which the private bills have passed, from receipt of the petition to passage, including the date; and(c) a brief outline of each proceeding in the Senate or committee on either the petition or the bill.
Notice of committee meetings	<p>11-14. A daily list indicating the time and place of any committee meetings on private bills shall be posted in public, readily accessible locations in the Senate.</p>
Interested persons	<p>11-15. A person whose interests may be affected by a private bill:</p> <ul style="list-style-type: none">(a) may ask to appear before a committee examining the bill or submit a written brief to the committee; and(b) shall appear before the committee examining the bill if required to do so by the committee.
Notice of substantive amendments to private bills	<p>11-16. One day's notice is required for any substantive amendment proposed to a private bill in Committee of the Whole or on motion for third reading.</p>
Commons amendments referred to committee before consideration by Senate	<p>11-17. When a private bill is returned from the House of Commons with substantive amendments, the amendments shall, before being considered by the Senate, be referred either to a Committee of the Whole or to the committee to which the bill was originally referred.</p>
Reference of private bill to Supreme Court	<p>11-18. At any time before the adoption of a private bill, the Senate may order that it be referred to the Supreme Court of Canada for examination and an opinion on any point identified in the order of reference to the court.</p>
	<p>REFERENCE Supreme Court Act, section 54</p>

EQUIVALENCE WITH MARCH 2010 RULES

Rules 11-2 to 11-18: Rules 105 to 122

COMMENTARY

A private bill is “a bill to confer particular benefits or exemptions on specific individuals or groups distinct from the general law,” such as, for example, a bill to incorporate a private company (Appendix I, Terminology). Virtually all private legislation originates in the Senate, principally because the cost is lower. Petitioners for private bills must pay all legal, printing and translation costs, as well as an additional fee. The additional fee for the introduction of a private bill in the Senate is \$200 (rule 11-6), but in the House of Commons it is \$500 (Standing Order 134(2)). This difference in fee structure was introduced in 1934 at the instigation of the government of the day in order to divert the initiation of private bills to the Senate.

The need for private bills has diminished dramatically since Confederation due to changes in the general law affecting divorce and corporate bodies. Up until 1967, the Senate was very active in divorce. Following the Second World War, an average of 340 divorce bills were initiated in the Senate each year (see F.A. Kunz, *The Modern Senate of Canada*, p. 214). In 1963 the Senate was granted the power to dissolve or annul marriages by resolution. This power was removed under the *Divorce Act* of 1967-1968. Any proceeding not finally disposed of could continue, and the Senate last dealt with a divorce case on November 26, 1969.

The decline in the frequency of private bills is illustrated by comparing the number of such bills during the Third Session of the 11th Parliament, from November 17, 1910 to July 29, 1911 (a combined total of 205 bills, excluding divorce bills, were introduced in the two houses, of which 128 received Royal Assent; of the bills introduced, 112 (54.6%) were private bills, and of those that received Royal Assent, 101 (78.9%) were private bills), with the numbers for the entire 40th Parliament, from November 18, 2008 to March 26, 2011 (only one private bill was introduced, out of 1029 bills introduced in both houses).

Since the beginning of the First Session of the 39th Parliament, private bills originating in the Senate are numbered sequentially starting at S-1001. If a private bill were to originate in the House of Commons—the last was in 1978—it would be numbered starting at C-1001.

In order for a private bill to be introduced in the Senate, the petitioner must find a senator to act as the sponsor of the bill. Generally, the sponsor is from the same province as the petitioner and/or the subject matter of the petition is one that is of interest to the sponsor. Because a private bill is sent to the House of Commons after it has been passed by the Senate, the petitioner must also secure a member of that house to act as sponsor of the bill. It is a well-established parliamentary practice that cabinet ministers do not act as sponsors of private legislation.

Before the process for the introduction of a private bill can start with the initial petition, rule 11-5 requires that a notice of the application for a private bill must be published in the *Canada Gazette*, the relevant provincial or territorial gazettes, and other newspapers. Notice may in some situations also have to be given to affected federal, provincial or municipal departments.

A private bill can only be introduced in the Senate upon a petition, which must then be examined and reported on favourably by the Examiner of Petitions. The sequence of steps is as follows:

1. *Tabling of the Petition:* When the Speaker calls “Tabling of Petitions” during Routine Proceedings, the senator sponsoring the bill tables the petition for the private bill. The senator would typically say “Honourable Senators, I have the honour to table a petition from [name of petitioner] praying for the passage of an act [the text of the petition is inserted here].” The petition is then forwarded to the Examiner of Petitions (under rule 11-3(1), the Principal Clerk of Committees or another official designated by the Clerk of the Senate).
2. *Examination of the Petition:* The examiner reviews the petition to ensure that the petition is without defect and that all requirements have been respected. Since the practice is for the examiner to unofficially review the petition and other documents prior to the tabling of the petition, this step is usually accomplished in an expeditious manner.
3. *Report on the Petition:* If the petition is without defect, the examiner’s report is presented in the Senate and published in the Journals.
4. *Reading of Petition:* On the day the examiner’s report is presented in the Senate, the text of the petition is read by a clerk at the table when the Speaker calls “Reading of Petitions for Private Bills” during Routine Proceedings.
5. *Introduction of Bill:* After the petition for the private bill has been favourably reported on and read, the bill is actually introduced when the Speaker calls “Introduction and First Reading of Private Bills” during Routine Proceedings, immediately after “Reading of Petitions for Private Bills”.

If a petition were found to be defective, the examiner would report the matter to the Standing Committee on Rules, Procedures and the Rights of Parliament, rather than presenting a report in the Senate. The report to the committee would indicate why, in the examiner’s opinion, the petition is defective and specify the nature of the defect(s). The Rules Committee would then study the examiner’s findings and report to the Senate, recommending the course of action that should be taken on the matter.

The Senate does not have a rule limiting the time for receiving petitions. A petition may be received by the Senate at any time during the session.

Under Rule 11-11 a private bill may, upon the request of two senators, be referred to the Standing Senate Committee on Legal and Constitutional Affairs after first reading “so that it can evaluate and report on whether the bill comes within exclusive provincial jurisdiction.” Were that committee to determine that the bill was not within federal jurisdiction, it would so report to the Senate, with reasons, and, if the report were adopted, the bill would not reappear on the Order Paper.

Rule 11-18 allows the Senate to refer any private bill to the Supreme Court of Canada for examination and report at any time before it is passed. This seldom-used power is also provided for in s. 54 of the *Supreme Court Act*.

Rule 11-7 indicates that the rules relating to public bills apply generally to private bills. For rules with respect to public bills, see Chapter 10 of the Rules. Rule 11-10 requires that the committee to which the Senate refers a private bill wait one week before starting its study (the delay is 24 hours if the private bill

started in the House of Commons). Committees do not normally pay expenses for witnesses appearing on private bills. Other special procedures relating to private bills are set out in rules 11-8, 11-9, and 11-12 to 11-18.

The rules regarding private legislation have varied throughout the years. In 1867, 24 rules were adopted regarding private bills in general, as well as 13 additional rules which dealt specifically with bills of divorce. On April 11, 1888, the Senate substantially revised its rules, orders and forms of proceeding regarding divorce bills and introduced a more judicial form of procedure. On May 2, 1906, the rules regarding divorce procedure were altered again, and, in the opinion of the committee proposing the changes, “simplified to the greatest degree consistent with prudence” (see *Journals of the Senate*, p. 317).

The wording of rules 11-2 to 11-18 was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and again on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 11-2 to 11-18

Supreme Court Act:

54. The Court, or any two of the judges, shall examine and report on any private bill or petition for a private bill presented to the Senate or House of Commons and referred to the Court under any rules or orders made by the Senate or House of Commons.

Interpretation Act:

9. No provision in a private Act affects the rights of any person, except as therein mentioned or referred to.

Bourinot’s Parliamentary Procedure, Fourth Edition, p. 484:

No witness, who comes as a witness at the solicitation of parties interested in a private bill, is paid by the house. The rule only applies to those persons who are present in cases of public inquiry.

Page 538:

... In the Senate on one occasion, a private bill was referred to the Supreme Court for an opinion as to whether it came within the jurisdiction of the Parliament of Canada, and as this was done by an amendment to the motion for the third reading, the bill disappeared from the order paper. Consequently when the judges had reported favourable, it became necessary to restore the bill to the paper, which was done without notice.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 286-287:

§ 1055. There are four principles which have been followed in determining whether a private bill should not be allowed to proceed as such, but should be introduced as a public bill (Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (20th ed., 1983), p. 897). These are as follows:

- (1) That public policy is affected.
- (2) That the bill proposes to amend or repeal public acts. In these cases, the nature and degree of the proposed repeal or amendment have to be considered and provisions of this kind in private bills demand peculiar vigilance, lest public laws be lightly set aside for the benefit of particular persons or places.
- (3) The magnitude of the area and the multiplicity of the interests involved.
- (4) The fact that the bill, though partly of a private nature, has as its main object a public matter. In this case the fact that Standing Orders have to be complied with is often an important factor in deciding whether a bill should be a private bill.

...

§1062. The form of a private bill is similar to that of a public bill with the exception that it must have a preamble which is generally written in the following terms:

“Whereas (the person/corporation named), has by its petition prayed that it be enacted as hereinafter set forth and it is expedient to grant the prayer of the said petition: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons, enacts as follows:”

House of Commons Procedure and Practice, Second Edition, pp. 1181-1182:

As the Speaker noted in 1971, private bill procedure was established to protect the public against the uncontrolled granting of special powers to private interests. The affected person or organization petitions Parliament to grant some extraordinary favour set down in a bill. The facts upon which the bill is based are examined by both Houses of Parliament. If deemed necessary, the committee to which the private bill is referred may call witnesses to testify, and the committee will adjudicate whether the need for the bill has been demonstrated. Thus, in considering private bills, Parliament acts in both a judicial and legislative capacity. Like a court, Parliament will hear all parties involved and decide whether or not the interests of private parties justify additional rights or exemptions from the general law; as a legislature overseeing the passage of a bill, it is watchful over the interests of the public.

Four fundamental principles underlie and define private bill procedure as set out in the Standing Orders and the procedural authorities. These principles may be expressed in the following terms:

1. A private bill should only be passed at the explicit request of the persons who are to benefit from the legislation.
2. Pertinent information regarding a private bill should be made available to all interested persons.
3. All persons or bodies affected by a private bill should be heard and the need for the bill demonstrated.
4. The financial burden of considering a bill for the benefit of private interests should not be borne solely by the public treasury.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 921-923:

The essential difference in procedure between a public bill and a private bill is this: a public bill is either presented direct to one or other House or introduced on motion by a Member of the appropriate House, while a private bill is sought by the parties who are interested in promoting it and is founded upon a petition which must be deposited in accordance with standing orders. Furthermore, the payment of fees by the promoters is an indispensable condition of its progress. ...

Until the nineteenth century, most private bills were concerned with the affairs of individuals. In the absence of any ordinary procedure for divorce or naturalization, many of them were bills for these purposes, and most of the others were concerned with the alteration of settlements and entails. From about 1750, however, a growing number of private bills were concerned with the construction of toll roads, canals, railways, reservoirs and other works, and with the local government of boroughs and other areas, such as vestries. ... The range of activities requiring private bills further narrowed during the course of the last century as an increasing number of functions came to be governed by public general Acts.

...

Distinctive character of proceedings on private bills

Before agreeing to exemption from, or amendment of, the general law in particular local circumstances, Parliament has always required proof, first of the need for the exemption or amendment, and second of the fact that the need is, at any rate in part, that of the promoters of the bill. ...

Legislative and judicial functions of Parliament

...

In passing private bills Parliament still exercises its legislative functions, but its proceedings are also of a judicial character. The persons who are applying for powers or benefits appear as petitioners for the bill, while those parties who fear that their interests may be adversely affected by its provisions have the opportunity to oppose it. ...

Principles by which Parliament is guided

The union of the judicial and legislative functions is not confined to the forms of procedure, but is an important principle in the inquiries and decision of Parliament upon the merits of private bills. As a court, it inquires into and adjudicates upon the interests of private parties; as a legislature, it is concerned to safeguard the interests of the public. The promoters of a bill may prove beyond a doubt that their own interests will be advanced by its success and no one may complain of injury or urge any specific objection, but if Parliament considers that it may be damaging to the community as a whole, it will reject the bill or impose conditions or restrictions which were not sought by the parties.

Speaker's Rulings: Definition of Private Bill

Journals of the Senate, October 2, 1996, pp. 566-568:

Honourable Senators, yesterday during debate on the second reading of Bill C-42, an Act to amend the Judges Act and to make consequential amendments to another Act, a point of order was raised asking for a ruling from the Chair. Senator Kinsella asked me as Speaker to determine whether Bill C-42 is a public or a private bill. ...

...

... Basically, the question before us seems to be one of definitions: What is a public bill and what is a private bill? Citation 623 of *Beauchesne*, 6th edition at page 192 states that:

A public bill relates to matters of public policy while a private bill relates to matters of a particular interest or benefit to a person or persons. A bill containing provisions which are essentially a feature of a private bill cannot be introduced as a public bill. A bill designed to exempt one person from the application of the law is a private bill and not a public bill.

And at citation 1053 (page 285-6), *Beauchesne* further explains that:

Private legislation is legislation of a special kind for conferring particular powers or benefits on any person or body of persons, including individuals and private corporations, in excess of or in conflict with the general law.

From these definitions, it is pretty clear to me that in order for Bill C-42 to be viewed as a private bill, it must be the case that its provisions do not relate at all to public policy, but rather confer particular benefits on certain individuals or provide an exemption from the general law. To assess this issue, it has been necessary for me to review the provisions of the bill. ...

Based on the debates thus far, it seems evident that Bill C-42 is attempting to accomplish a number of objectives: One, it establishes a mechanism to permit judges to apply for a leave of absence without pay in order to participate in international activities or international technical assistance programs under certain conditions. Two, Bill C-42 transfers from the cabinet to chief justices the authority to approve leaves of up to six months. Three, it permits the appointment of a judge to the Ontario Court of Appeal and of two judges to the British Columbia Court. Four, the bill adds the Chief Justice of the Court Martial Appeal Court to the membership of the Canadian Judicial Council. Finally, the bill also makes a change with respect to the annuity entitlements of judges in certain circumstances and provides for representational allowances to the Chief Justice of the Court Martial Appeal Court as well as to the Chief Justices of the Yukon and Northwest Territories Courts of Appeal. While some of these changes may relate at the moment to identifiable individuals, they are designed to have lasting application; consequently, they are not in any way an exemption from the general law, but a change to it. Given this interpretation, it seems clear to me that Bill C-42 is a public bill, and not a private one.

...

Accordingly, I must conclude that Bill C-42, which was introduced in the other place by a Minister of the Crown as a matter of public policy and with a Royal Recommendation attached to it, is a public bill.

Journals of the Senate, April 2, 1998, pp. 579-582:

... Senator Kinsella obtained the leave of the Senate to re-open the matter in order to ask another question with respect to the procedural acceptability of Bill S-13[, An Act to incorporate and to establish an industry levy to provide for the Canadian Tobacco Industry Community Responsibility Foundation]. His question concerned whether this bill was a private bill or a public one. In stating his case, he noted that the corporation established by this bill was for the benefit of the tobacco industry. ...

...

... Senator Kinsella identifies the possible petitioners as the “tobacco industry”. He does not, however, identify the individuals or corporations who should be the petitioners for the tobacco industry. Nor does the bill define the tobacco industry or specify who are its members. Whatever the precise identity of the tobacco industry, the first question that must be decided is whether Bill S-13 is a private bill or a public bill.

Looking at the four criteria which would determine whether a private bill should be handled as a public bill, I am struck by two of the criteria which lead me to believe that Bill S-13 is properly a public bill. The first is the fact that the objects of the bill affect public policy. While it cannot be denied that the language of the bill highlights industry benefits, it is equally true that public policy is very much served by the bill in so far as it is aimed at the reduction of smoking by young people as is stated in subsection 3(2) of the bill. As well, the magnitude of the area covered by the bill and the multiplicity of interests involved, which is the third criterion listed in *Beauchesne*, suggest to me that the bill is a public bill.

In the absence of any compelling reasons to assess the bill any other way, I am satisfied that Bill S-13 can proceed as a public bill.

CHAPTER TWELVE: COMMITTEES

This chapter outlines the rules governing the Senate’s committees. These rules include, for example, provisions dealing with the proceedings of committees, their orders of reference, the kinds of reports that may be made and the mandates of individual committees. The various types of committees operating within the Senate are: standing committees (rules 12-3 and 12-7), joint committees (rule 12-4), special committees (rule 12-10), legislative committees (rule 12-11), subcommittees (rule 12-12), Committees of the Whole (rules 12-32 and 12-33) and the Committee of Selection (rules 12-1 and 12-2).

Committee of Selection

RULES 12-1 and 12-2	
Appointment of Committee of Selection	12-1. At the beginning of each session, the Senate shall appoint a Committee of Selection composed of nine Senators.
Nomination of Speaker <i>pro tempore</i>	12-2. (1)(a) Within the first five sitting days of each session, the Committee of Selection shall present a separate report on its nomination of the Speaker <i>pro tempore</i> .
Term of appointment of Speaker <i>pro tempore</i>	12-2. (1)(b) Once the report is adopted by the Senate, the Speaker <i>pro tempore</i> shall serve for the duration of the session.
Nomination of standing or standing joint committee members	12-2. (2) Except as otherwise provided, the Committee of Selection shall present a report on its nomination of Senators to serve on the standing committees and the standing joint committees. <i>EXCEPTION</i> <i>Rule 12-27(1): Appointment of committee</i>
Term of appointment of members of committees	12-2. (3) Except as otherwise provided, once the report is adopted by the Senate, Senators appointed to the standing committees and the standing joint committees shall serve for the duration of the session. <i>EXCEPTION</i> <i>Rule 12-5: Membership changes</i>
Powers of the Committee of Selection	12-2. (4) The Committee of Selection is empowered to inquire into and report on any other matter referred to it by the Senate, and also has the power: (a) to publish from day to day such papers and evidence as may be ordered by it; and (b) to propose to the Senate from time to time changes in the membership of a committee.

Committee of Selection is neither a standing nor special committee	12-2. (5) For greater certainty, the Committee of Selection is neither a standing nor a special committee.
Quorum of Committee of Selection	12-2. (6) The quorum of the Committee of Selection shall be six of its members.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-1: Rule 85(1)

Rule 12-2(1)(a): Rules 85(1) and (2)

Rule 12-2(1)(b): Rule 85(3)

Rule 12-2(2): Rule 85(1)

Rule 12-2(3): Rule 85(3)

Rules 12-2(4), (5) and (6): New provisions

COMMENTARY

At the beginning of each new session of Parliament, the Senate adopts a motion to appoint a Committee of Selection composed of nine senators. The Leader of the Government and the Leader of the Opposition (or their deputies) are members of this committee *ex officio*. The committee is formed to nominate a Speaker *pro tempore* and to name senators to serve on all standing and standing joint committees except for the Standing Committee on Conflict of Interest for Senators, which is appointed pursuant to rule 12-27. This rule makes clear that the Committee of Selection is neither a standing nor a special committee. Its quorum is six of its members. The Committee of Selection must report within five sitting days regarding the nomination of the Speaker *pro tempore*, but the committee often reports on both matters on the same day. In at least one case, the Committee of Selection reported that it was unable to make a decision within the prescribed timeframe (see third report, Second Session, 36th Parliament, presented on November 2, 1999), but it did so a short time later (see fourth report, presented on November 17, 1999).

The recommendations of the Committee of Selection take effect when its reports are adopted by the Senate. The Committee of Selection is not obliged to nominate the full membership of committees as identified in rules 12-3 and 12-4. The Rules simply establish the maximum number of members that can be nominated (see ruling of May 30, 1991, below). A ruling has indicated that there may be limitations on moving a motion in the Senate for an order of reference for committee work before the membership has been established (see ruling of October 8, 2002, below).

Once senators are appointed to committees, rule 12-2(3) provides that their membership continues for the duration of the session. Rule 12-2(4) allows the Committee of Selection to propose changes in the membership of committees during the course of a session (also see rule 12-5 for membership changes during a session, and rule 12-3(3) for *ex officio* members). The Standing Committee on Internal Economy, Budgets and Administration continues to function over a period of prorogation or dissolution until the members for the new committee have been appointed in the following session (see citations from the *Parliament of Canada Act*, under rule 12-7).

Senators who do not sit as members of a recognized party in the Senate can be appointed to committees on the recommendation of the Committee of Selection (see, for example, fourth report, First Session, 39th Parliament, presented on October 4, 2006). Independent senators may voluntarily choose to be under the responsibility of the whip of one of the parties for the purpose of membership changes by indicating this in writing to the Speaker. If they do not do so, their membership on a committee can only be changed by the Senate itself, usually by the adoption of a report of the Committee of Selection recommending a change.

On March 29, 1894 (see *Journals of the Senate*, p. 34), the Senate adopted the following rule establishing a Committee of Selection: “At the commencement of each Session a Committee of Selection, consisting of nine Senators to be named by the Senate, shall be appointed, whose duty it shall be to nominate the Senators to serve on the several Standing Committees” (rule 79). On June 9, 1982 (see *Journals of the Senate*, p. 2201), the rule was amended as follows:

(1) At the commencement of each session, a Committee of Selection consisting of nine senators shall be appointed whose duties shall be to nominate:

- (a) a senator to preside as Speaker *pro tempore*; and
- (b) the senators to serve on the several select committees.

(2) The Committee of Selection shall, within the first five sitting days of each session, present a separate report to the Senate in respect of its nomination of a senator to preside as Speaker *pro tempore* pursuant to paragraph (1)(a).

(3) Unless otherwise ordered by the Senate, the senators nominated under this Rule shall, when their appointments are confirmed by the Senate, serve for the duration of the session for which they are appointed (rule 66).

The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), with subsections (4), (5) and (6) added on May 28, 2013 (*Journals of the Senate*, pp. 2567-2568). Appendix III of the Rules indicates that it is “undesirable to have any cabinet minister other than the Leader of the Government as a member of Senate Committees.”

RELATED CITATIONS AND EXTRACTS – RULES 12-1 and 12-2

House of Commons Procedure and Practice, Second Edition, p. 1019:

In the vast majority of cases, the House sets the number, or the maximum number, of members for each committee. The number of members to be selected from each of the recognized parties is the subject of negotiation among the parties at the beginning of each Parliament. The resulting informal agreement is not set down in the Standing Orders or anywhere else, but is reflected in the composition of each committee, which generally reflects the proportions of the various recognized parties in the House.

Speaker's Ruling: Committee of Selection Not Obligated to Nominate Maximum Number of Members

Journals of the Senate, May 30, 1991, p. 58:

In the brief time allowed to me I have noted that while the committee of selection has often provided a list of the maximum number of members to be nominated, it has not always done so. I would draw the attention of the Senate to the second report of the committee of selection dated October 9, 1986. In that report, the committee of selection nominated only fourteen members to serve on the committee on internal economy, budgets and administration although Rule [12-3(2)(a)] states that that committee shall be composed of fifteen members. In the same report, the committee nominated only eleven members to serve on the standing committee on national finance although Rule [12-3(1)] states that that committee shall be composed of twelve members. In the same report, the committee nominated only eleven members to serve on the standing committee on fisheries even though Rule [12-3(1)] stated that that committee shall be composed of twelve members.

More recently, on June 6, 1989, the committee of selection nominated only four senators to serve on the joint committee for the scrutiny of regulations although Rule 67(1)(d) states that eight senators shall be appointed to that committee. In that same report, the committee of selection nominated only eight senators to serve on the joint committee on official languages although Rule 67(1)(e) states that nine senators shall be appointed to that committee. [Note: rule 12-4 now states that the membership of the "standing joint committees shall be recommended by the Committee of Selection."]

It would appear therefore to the Chair that while Rule [12-3] of the *Rules of the Senate* sets the maximum number of members which a committee may have, the committee of selection is not obliged to nominate a full complement of senators for each committee.

Speaker's Ruling: Limitation on Orders of Reference Before Membership Established

Journals of the Senate, October 8, 2002, pp. 41-42:

On Thursday, October 3, during the Daily Routine of Business Senator Morin gave notice of a motion on behalf of Senator Kirby. The purpose of the notice is to authorize the Standing Committee on Social Affairs, Science and Technology to examine several aspects relating to Canada's health care system. The motion would also permit the Committee to make use of evidence collected by the Committee during the second session of the 36th Parliament and the first session of this Parliament with a view to submitting a final report on this study no later than October 31, 2002. Once the notice of motion was given, I reminded the Senate that it would not be possible to deal with this motion until the standing committees are underway.

Just before Orders of the Day, I recognized Senator Kinsella on a point of order relating to this issue. It was his contention that the notice of motion is out of order because the committee does not yet exist. In his view, the Senate cannot authorize a non-existing entity to do something or refrain from doing something.

By way of rebuttal, Senator Carstairs noted that the object of the notice was to alert the Senate about possible future activity of the committee. Moreover, the Senator explained that there are precedents of the Senate adopting motions referring bills to committees even before the committees were formed. In this case, however, the Senator indicated that it would seem to be more appropriate not to move it until the Standing Committee on Social Affairs, Science and Technology is formed.

In the intervening time, I have had an opportunity to look into this question more closely. Let me begin by noting that I neglected to mention last Thursday that under rule [4-11(1)(b)] the point of order is somewhat premature. The rule explains that a point of order in relation to any notice given during the daily Routine of Business can only be raised at the time the Order is first called for consideration by the Senate.

Be that as it may, I have been able to confirm that there have been two recent precedents when the Senate agreed to refer a bill to a standing committee before the membership of the committee was approved by the Senate. The first instance occurred on November 3, 1999 when Bill S-6, amending the Criminal Code, was referred to Legal and Constitutional Affairs. The second instance happened January 31, 2001 when a different Bill S-6, dealing with wrongdoing in the Public Service, was referred to the National Finance Committee. In the first instance, the motion was amended with leave of the Senate to qualify the reference by inserting the phrase “when and if the committee is formed”. In the second case, the motion proposed by Senator Kinsella was moved with this qualification included.

Despite these two precedents, it seems to me that the use of the phrase “when and if” is redundant, particularly when applied to standing committees. As the term implies, standing committees are permanent committees of the Senate recognized as such in the Rules of the Senate. These permanent committees are reconstituted early in every session in order to carry out the tasks assigned to them.

Applying the reasoning of the precedents to the present case, there are two options available. Either the Senate can agree, if leave is granted, to amend this debatable motion by adding the phrase “when and if the committee is formed” or the Senate can accept the proposition of the Government leader that the motion not be moved until such time as the Senate agrees to a report of the Committee of Selection recommending the membership of the Committee of Social Affairs, Science and Technology, in which case no leave is required. Any decision on this need only be made when the Order is actually called for debate.

It is my ruling, therefore, that the notice of motion is in order.

Membership of Committees

RULE 12-3

Committee membership – general

12-3. (1) Except as provided in subsections (2) and (3), twelve members shall be appointed to each standing committee.

Committee membership – certain committees

12-3. (2) The number of members appointed to the following standing committees shall be as indicated:

- (a) the Standing Committee on Internal Economy, Budgets and Administration, 15 Senators;
- (b) the Standing Committee on Rules, Procedures and the Rights of Parliament, 15 Senators;
- (c) the Standing Senate Committee on Official Languages, nine Senators;
- (d) the Standing Senate Committee on Human Rights, nine Senators;

	(e) the Standing Senate Committee on National Security and Defence, nine Senators; and (f) the Standing Committee on Conflict of Interest for Senators, five Senators.
Ex officio members	12-3. (3) In addition to the membership provided for in subsections (1) and (2), the Leader of the Government and the Leader of the Opposition or, in the absence of either, their respective Deputy Leaders are ex officio members of all committees except the Standing Committee on Conflict of Interest for Senators and the joint committees.

EQUIVALENCE WITH MARCH 2010 RULES

Rules 12-3(1) and (2): Rule 86(1)

Rule 12-3(3): Rule 87

COMMENTARY

Rule 12-3 fixes the number of senators for standing committees. Rule 12-7 provides additional information on standing committees. A maximum of 12 senators may be appointed by the Senate to each standing committee, with the exception of the six listed in 12-3(2). A ruling delivered by the Speaker on May 30, 1991, explained that this rule “sets the maximum number of members which a committee may have, [however] the committee of selection is not obliged to nominate a full complement of senators for each committee” (for an extract of this ruling, see text for rules 12-1 and 12-2 above). The membership takes effect once a report of the Selection Committee recommending nominations of senators to standing committees is adopted by the Senate.

Senators who are members of a standing committee may, in most cases, participate fully in the committee’s proceedings by moving motions, voting and being counted in its quorum. Senators who do not sit as members of a recognized party in the Senate may be appointed to standing committees. Appendix III of the Rules states that it is “undesirable to have any cabinet minister other than the Leader of the Government as a member of Senate Committees.” Senators who are not members of a standing committee may still attend and participate in meetings, except in the case of the Standing Committee on Conflict of Interest for Senators, but they are not allowed to move motions, vote, raise points of order or be counted towards quorum (see rules 12-14 and 12-28). A senator may be a member of more than one standing committee.

Rule 12-3 also provides that the Leaders of the Government and the Opposition, or in their absence their respective deputy leaders, are members ex officio of all committees, except for the Standing Committee on Conflict of Interest for Senators and the joint committees. Ex officio means “by virtue of one’s office or status” (*Canadian Oxford Dictionary*, 2nd Edition). As members of a committee, they may receive all committee documentation prior to meetings if they so wish, just as any other member. At a meeting they count towards quorum, and may move motions and vote. There is, however, a convention that a senator sitting as an ex officio member will normally abstain from voting, unless an ex officio member from the other party is also present. The Leaders or Deputy Leaders can also be “regular” (that is to say non-ex officio) members — either by being recommended in a report of the Committee of Selection or by being substituted onto the committee — in which case they vote like any other member and have only one vote, not two.

Prior to 1894, the *Rules of the Senate* did not list the names of standing committees or the number of members to be appointed to each one. On March 29, 1894, a rule (then rule 80) was adopted specifying the number of members to be appointed to ten standing committees – the number of members ranged from 9 to 25 senators (see *Journals of the Senate*, p. 34). Over the years numerous other standing committees were added to the Rules, and certain committees grew in size to as many as 50 members. In 1968, a major restructuring of committees occurred, and the size of standing committees was fixed at 20 members (see *Journals of the Senate*, November 19, 1968, pp. 381-382, effective on August 1, 1969). On October 25, 1983, the size of all standing committees was reduced from 20 to 12 members with two exceptions – the Standing Committee on Rules and Orders, and the Standing Committee on Internal Economy, Budgets and Administration, which had memberships fixed at 15 members (see *Journals of the Senate*, p. 3264). Over the following years, a number of additional committees, some with fewer than 12 members, were established. The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

Rule 12-3(3) concerning ex officio members was first adopted on November 19, 1968 (*Journals of the Senate*, pp. 381-382, effective on August 1, 1969). Originally it provided that “The Senators occupying the recognized positions of Leader of the Government and Leader of the Opposition in the Senate shall be *ex officio* members of all Standing Committees of the Senate” (rule 78A). On November 26, 1975, the rule was amended to make both leaders ex officio members of the Committee of Selection as well (see *Journals of the Senate*, p. 592). On October 25, 1983, the two leaders were made ex officio of “all select committees of the Senate” as well as the Committee of Selection (see *Journals of the Senate*, p. 3264). By definition, a select committee included standing and special committees, but excluded joint committees. The current wording of the rule was adopted on June 19, 2012 (*Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-3

House of Commons Procedure and Practice, Second Edition, p. 1019:

Committees cannot take up the responsibilities assigned to them until their members have been named. It is the House, and the House alone, that appoints the members and associate members of its committees, as well as the Members who will represent it on joint committees. The Speaker has ruled that this is a fundamental right of the House. The committees themselves have no powers at all in this regard.

In the vast majority of cases, the House sets the number, or the maximum number, of members for each committee. The number of members to be selected from each of the recognized parties is the subject of negotiation among the parties at the beginning of each Parliament. The resulting informal agreement is not set down in the Standing Orders or anywhere else, but is reflected in the composition of each committee, which generally reflects the proportions of the various recognized parties in the House.

The House has adopted committee membership mechanisms that enable it to rely largely on the recognized political parties to prepare the lists of members and associate members. As a result, an independent Member rarely sits on a committee unless a recognized political party allots him or her one of its seats.

RULE 12-4

Standing joint committees

12-4. The number of Senators appointed to the following standing joint committees shall be recommended by the Committee of Selection:

- (a) the Standing Joint Committee on the Library of Parliament; and
- (b) the Standing Joint Committee for the Scrutiny of Regulations.

REFERENCES

Parliament of Canada Act, *sections 74 and 78*
Statutory Instruments Act, *sections 19 and 19.1*

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-4: Rules 86(1)(a) and 86(1)(d)

COMMENTARY

Standing joint committees are established under the *Rules of the Senate* and the *Standing Orders of the House of Commons* (Standing Order 104(3)) and are composed of both senators and members of the House of Commons. The functioning of standing joint committees comes to an end at prorogation or dissolution. Rule 12-4 does not set the specific number of senators to sit on joint committees but provides that the Selection Committee recommends an appropriate number. Usually, senators will be appointed to reflect the proportional relationship between the two houses – roughly one-third for the Senate and two-thirds for the House of Commons. The number of members may vary from one session to another. The membership takes effect once the Senate adopts the Selection Committee’s report.

Once senators have been appointed, a message is sent to the House of Commons to acquaint it of the Senate’s representatives on the committee. Similarly, once the House of Commons appoints its members, it should send a message to the Senate.

See text under rule 12-6 for information on the quorum of joint committees.

There are no formal rules governing the operations of joint committees. Joint chairs from each house preside over meetings of standing joint committees, by practice either alternately or together. The practices observed during the meetings of a joint committee are a mixture of those of the two houses, despite the fact that “the rules and practices of the Senate and the House of Commons, as they relate to the role, functions and powers of the Joint Committee[s], diverge in a number of respects” (see second report of the Standing Joint Committee for the Scrutiny of Regulations, tabled in the Senate on October 28, 2003).

As with standing committees, the *Rules of the Senate* did not list the names of standing joint committees before 1894 or the number of members to be appointed to each one; a motion was adopted for each session. On March 29, 1894, a rule (then rule 80) was adopted establishing three standing joint committees – on the Library of Parliament (with 17 senators), the Printing of Parliament (with 21 senators) and the Restaurant (with the Speaker and six other senators) (see *Journals of the Senate*, p. 34). In 1971, the *Rules of the Senate* were amended to establish the Standing Joint Committee on Regulations and other Statutory Instruments (see *Journals of the Senate*, October 21, 1971, p. 418), which was

renamed in 1987 as the Standing Joint Committee for Regulatory Scrutiny, and again in 1988 with its current name. This committee has an on-going mandate to review regulations, pursuant to section 19 of the *Statutory Instruments Act*. Some provisions of the act also set out in considerable detail how the houses should deal with some of the committee's reports (see citations below). In 1984, the Rules were amended to establish the Standing Joint Committee on Official Languages (see *Journals of the Senate*, April 5, 1984, p. 319). The House of Commons changed its Standing Orders in 1991 to make the standing joint committee into a standing committee, but the Senate did not revise its Rules. In 1994, the standing joint committee was re-established and met until 2002, when the Senate created its own standing committee (see *Journals of the Senate*, October 10, 2002, p. 65).

In 2010, the Senate amended its Rules to remove references to the Standing Joint Committees on the Restaurant and on the Printing of Parliament since no senator had been appointed to these committees since 1984, and the House of Commons had already removed them from its Standing Orders (see third report of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented on December 7, 2010, and adopted by the Senate on December 13, 2010, *Journals of the Senate*, p. 1127). There are therefore currently two standing joint committees (Library of Parliament and Scrutiny of Regulations). The current wording of the rule was adopted on June 19, 2012 (*Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-4

Parliament of Canada Act:

74. (1) The direction and control of the Library of Parliament and the officers, clerks and servants connected therewith is vested in the Speaker of the Senate and the Speaker of the House of Commons assisted, during each session, by a joint committee to be appointed by the two Houses.

(2) The Speakers of the two Houses of Parliament, assisted by the joint committee referred to in subsection (1), may, subject to the approval of the two Houses, make such orders and regulations for the government of the Library, and for the proper expenditure of moneys voted by Parliament for the purchase of books, maps or other articles to be deposited therein, as appear to them appropriate.

...

78. The Parliamentary Librarian, the Associate Parliamentary Librarian, the Parliamentary Budget Officer and the other officers, clerks and servants of the Library are responsible for the faithful discharge of their official duties, as defined, subject to this Act, by regulations agreed on by the Speakers of the two Houses of Parliament and concurred in by the joint committee referred to in section 74.

Statutory Instruments Act:

19. Every statutory instrument issued, made or established after December 31, 1971, other than an instrument the inspection of which and the obtaining of copies of which are precluded by any regulations made pursuant to paragraph 20(d), shall stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments.

19.1 (1) Subject to subsection (2), a committee of both Houses of Parliament may make a report to the Senate and the House of Commons containing only a resolution that all or any portion of a regulation that stands permanently referred to the committee be revoked.

(2) No report may be made unless the authority authorized to make the regulation has been notified, at least 30 days before the committee adopts the report, that the committee intends to consider the report. If the regulation is authorized to be made by the Governor in Council, the notice must be given to the Minister responsible for the provision under which the regulation may be made.

(3) Not more than one report shall be laid before the Senate or the House of Commons during any sitting day of that House.

(4) In each House, the Senator or member who presents the report shall

(a) state that it contains a resolution pursuant to subsection (1);

(b) identify the regulation or portion of the regulation in relation to which the report is made and indicate that the text of the regulation or portion is included in the report; and

(c) state that notice has been given in accordance with subsection (2).

(5) The resolution is deemed to have been adopted by the Senate or the House of Commons on the fifteenth sitting day after the report is presented to that House unless, before that time, a Minister files with the Speaker of that House a motion to the effect that the resolution not be adopted.

(6) The House in which the motion is filed shall meet at 1:00 o'clock p.m. on the Wednesday next, or at any later time or date fixed by unanimous consent of that House. At that time the order of business shall be the consideration of the motion.

(7) The motion shall be debated without interruption for not more than one hour, during which time no Senator or member may speak for more than ten minutes. On the conclusion of the debate or at the expiration of the hour, the Speaker shall immediately, without amendment or further debate, put every question necessary for the disposal of the motion.

(8) If more than one motion is made pursuant to subsection (5), the Senate or the House of Commons shall consider those motions in the order in which they may be set down for consideration at the request of a Minister, as long as the motions are grouped together for debate.

(9) Where both Houses have adopted or are deemed to have adopted a resolution that all or any portion of a regulation be revoked, the authority authorized to make the regulation shall revoke the regulation or portion of the regulation no later than 30 days, or any longer period that may be specified in the resolution, after the later of the dates on which the Houses have adopted or are deemed to have adopted the resolution.

(10) For the purposes of this section, "sitting day" means, in respect of either House of Parliament, a day on which that House sits.

House of Commons Procedure and Practice, Second Edition, p. 1037:

... In standing joint committees, two Joint-Chairs are elected, one from each House. The Senate Joint-Chair is elected first, followed by the Commons Joint-Chair. The election of each Joint-Chair is presided over by the Joint-Clerk from the respective House. All committee members, whether they are Senators or Members of the House of Commons, are entitled to vote for the Joint-Chairs from each House.

Speaker's Ruling: References to Joint Committees From One House Only

Journals of the Senate, March 25, 1986, pp. 1198-1199:

With regard to the powers of joint committees, it is a basic principle, as stated in *May's Parliamentary Practice* (20th edition), at page 732, that a joint committee

has only such authority, and can exercise only such power, as have been conferred upon it by the two Houses concurrently, nor can the powers of a joint committee be enlarged by an order of one House alone. ... For a joint committee to act on an authority which had been delegated to it by one House only would be *ultra vires*.

With regard to instructions to joint committees, May, at page 733 of the same edition, comments as follows:

A mandatory instruction can be given to a joint committee appointed to join with a committee of the other House, but no corresponding instruction is given by the other House to its committee, the instruction ... is not binding on the joint committee, as a committee

Citation 760(2) of *Beauchesne's Parliamentary Rules & Forms* (Fifth Edition), supports May in the following terms:

(2) A mandatory Instruction can be given to a joint committee only with the concurrence of both Houses. If either House gives a mandatory Instruction to a joint committee, but no corresponding Instruction is given by the other House, then the Instruction ... is not binding on the joint committee, as a joint committee.

... With respect to the reference to the Standing Joint Committee on Official Languages, I conclude from the above that, unless the powers given to that Committee by both Houses at the time of its creation allow it to receive references from one House alone, the concurrence of this House is required in order for the reference of February 27, 1986, by the House of Commons to be binding on the Committee. Having been informed by Message of the reference to the Committee by the House of Commons, the Senate may, if it chooses, concur in the action by adopting its own motion of reference in identical terms. It may do so, whether or not the House of Commons in its Message asked the Senate to concur.

RULE 12-5

Membership changes

12-5. Changes in the membership of a committee, except for the ex officio members and members of the Standing Committee on Conflict of Interest for Senators, may be made by notice filed with the Clerk, who shall have the notice recorded in the *Journals of the Senate*. The notice shall be signed by:

- (a) the Leader of the Government or a designate for a change of government members;
- (b) the Leader of the Opposition or a designate for a change of opposition members; or
- (c) the leader of any other recognized party or a designate for a change of members of that party.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-5: Rules 85(4) and (5)

COMMENTARY

Once senators are appointed to committees, rule 12-2(3) provides that their membership continue for the duration of the session. Nonetheless, membership changes can be made during the course of a session by the leader in the Senate of the party to which the senator belongs, or a delegate (usually the party whip). This provision does not apply for members of the Standing Committee on Conflict of Interest for Senators (see rule 12-27) or for ex officio members (rule 12-3(3)). The Rules Committee has also noted that the replacement of the chair or deputy chair of a committee through the process provided under rule 12-5 can be problematic (see extract from report below).

As the Speaker has explained (see below), “Allowing changes in membership during the course of a session provides a convenient way to co-ordinate caucus work. If, for example, a Senator is obliged to be away from a meeting for other responsibilities or if a Senator who is not a regular member of a committee has particular expertise in a matter under consideration, Rule [12-5] provides a way to accommodate these circumstances.” Membership changes result in the permanent removal of a senator from a committee. Senators who are removed are no longer members of a committee until another notice is submitted to reinstate them.

Under rule 12-5, the Clerk of the Senate must receive written notification of any committee membership changes. In practice, this is administered by the Committees Directorate on behalf of the Clerk. The notice must be signed by the leader, or delegate, of the appropriate party. This change is then recorded in the *Journals of the Senate*. Copies of membership changes are also included in the committee’s published records. The leaders can remove members by indicating “substitution to follow,” or similar wording, resulting in a reduced total membership for the committee for the time the position is not filled (see Speaker’s ruling cited below).

Senators who do not sit as members of a recognized party in the Senate and who are appointed to committees may choose to be under the responsibility of the whip of one of the parties for the purpose of membership changes by indicating this in writing to the Speaker. If they do not do so, their membership on a committee can only be changed by the Senate itself, usually by the adoption of a report of the Committee of Selection recommending a change.

This provision was first adopted on October 25, 1983 (see *Journals of the Senate*, p. 3264). The wording was amended on December 3, 1985 (see *Journals of the Senate*, p. 849), with further amendments on June 11, 2002, to reflect changes relating to third parties in the Senate (see *Journals of the Senate*, p. 1714). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-5

Parliament of Canada Act:

19.1. (3) The Leader of the Government in the Senate, or the nominee of the Leader, and the Leader of the Opposition in the Senate, or the nominee of the Leader, may, in accordance with the rules of the Senate, change the membership of the Committee [on Internal Economy, Budgets and Administration] from time to time, including during periods of prorogation or dissolution.

Sixth report of the Standing Committee on Rules, Procedures and the Rights of Parliament, October 8, 2009:

At the commencement of each session, the Senate appoints a Committee of Selection whose duties include the nomination of the senators to serve on select committees (except the Committee on Conflict of Interest for Senators). Once the Senate has concurred in the report of the Committee of Selection, senators serve on the committees to which they were appointed for the duration of the session. The Leader of the Government, the Leader of the Opposition and the leader of any recognized third party in the Senate may, however, make a change to the membership of a committee for senators who are members of their respective caucuses by filing a notice to that effect with the Clerk of the Senate. Each leader may, in accordance with the *Rules of the Senate*, delegate this task to any senator in his or her caucus. In practice, these functions are entrusted to the whip of each party. The Clerk of the Senate has also delegated the authority to receive notices of membership change to the Committees Directorate and each committee clerk.

Membership changes are permanent: they last until the end of the session. The Rules do not provide for a senator to be temporarily replaced on a committee. In practice, temporary replacements are, however, achieved in the following manner: The senator who is unable to attend the business of a committee for a meeting or period of time is replaced by another senator. Then, when the original committee member is able to resume attendance at meetings, he or she replaces that replacing senator – thus restoring the original membership of the committee. This practice, which works well for the replacement of a senator who is neither the chair nor deputy chair of a committee, may be the source of some concern when it comes to the replacement of the presiding officers of a committee.

Upon being replaced, the chair is no longer a member of the committee and cannot, therefore, be its chair. It ensues that the committee is no longer properly constituted because it does not have a chair. The deputy chair cannot act for the chair since he or she may only replace the chair in his or her absence, but may not replace him or her if the chair position is vacant. Therefore, should the chair of a committee be replaced, the first item of business should be the election of a new chair. Such an election is presided over by the clerk of the committee. Should the former chair of the committee be re-appointed to the committee, he or she would have to be elected anew as chair of the committee before resuming his or her functions.

The replacement of a deputy chair can also be problematic. While a committee remains properly constituted when its deputy chair is replaced, the business of the committee may be stalled should he or she not be replaced. For example, steering committees, which are usually composed of three members: the chair, the deputy chair and another senator, would not be able to meet should the deputy chair be replaced on the committee and no senator elected in his or her place as deputy chair.

These concerns led the Senate to refer to your committee the manner in which committee replacements are made and in particular the need for temporary as well as permanent replacements of committee members.

...

... [Y]our committee notes that the concerns with the Rules on replacement of chairs and deputy chairs on committees may be more the result of an absence of awareness about what they actually are. As stated above, temporary replacements on committees can be achieved as follows:

- A senator unable to attend the business of a committee is replaced by another senator;
- Once the senator is again able to attend the business of a committee, he or she will replace the senator who replaced him or her.

As stated above, committees should always make sure that the chair position is filled at all times. To that end, these additional steps ought to be taken when the chair of a committee is replaced:

- A committee whose chair was replaced must elect a new chair (the election of whom is presided over by the clerk of the committee);
- As soon as the *former* chair has rejoined the membership of the committee, he or she must be re-elected to the chair position.

As for the deputy chair of a committee, his or her replacement on a committee does not always necessitate that another deputy chair be elected. A committee is still properly constituted despite the absence of a deputy chair. However, a committee should seek to elect a new deputy chair if it wishes to transact business that requires the presence of its deputy chair, such as a meeting of the steering committee. If no such election occurs, a deputy chair will resume his or her functions upon rejoining membership of the committee, since his or her original election stands. However, if a new deputy chair has been elected, the former deputy chair would need to be re-elected into the position before he or she can assume that function again.

That being said, should both the chair and deputy chair be absent from a committee meeting, *but not replaced*, the committee need not elect a new chair and deputy chair, but can simply proceed to the election of an acting chair for that given meeting (such an election is presided over by the clerk of the committee).

Your committee believes that there should be more awareness of the Rules on replacement of senators on committees, especially for those who are chairs and deputy chairs. One purpose of this report was to meet this objective.

(Report adopted by the Senate on November 4, 2009, Journals of the Senate, p. 1413)

Speaker's Ruling: Membership Changes Without Immediate Replacements

Journals of the Senate, May 9, 2007, pp. 1511-1512:

Returning to the main issue raised by Senator Banks, the removal of a committee member without making an immediate replacement, this has been a long practice in the Senate, developed since 1983, when the leaders were empowered to make changes to committee membership. During the current session, there have already been at least two dozen such changes, done by both sides. In some cases the vacancies were subsequently filled, while in others they remain to be filled. Such changes often occurred during previous sessions.

It will be noted that Rule 85(4) simply refers to “a change in the membership of a committee” [now see rule 12-5, which refers to “Changes in the membership of a committee...”]. Removing a member from a committee with the replacement to follow clearly constitutes a “change” in committee membership that fits within the general wording of the Rule and this practice has been sanctioned by long use. ...

Since the removal of committee members without making immediate replacements falls within the terms of Rule [12-5] and has long been part of Senate practice, it follows that there have been many cases of committees not having the full membership as set out in Rule [12-3]. The general acceptability of this situation is to some degree supported by a Ruling of the Speaker of May 30, 1991. That Ruling stated that, while current Rule 85, which was Rule 86 at the time, “sets the maximum number of members which a committee may have, the committee of selection is not obliged to nominate a full complement of senators for each committee” [now see rule 12-3]. Since then, some reports of the Committee of Selection have not recommended the maximum number of members.

A committee can function, from the time members are appointed, with fewer members than the number in the Rules, provided it has quorum. This situation is endorsed by the Senate when it adopts the report of the Committee of Selection. Practice has been that a committee can also function if its membership falls below this number during the course of a session, as long as it continues to have quorum. What distinguishes the case Senator Banks raised is not only its duration, but also the fact that the entire membership of one caucus is involved. There is, however, no cut-off point as to how long this situation can last, nor can the Speaker impose one. Furthermore, while recognizing that the permanent withdrawal of all members from one side could alter the operations of a committee, this aspect of the issue is also beyond the authority of the Speaker, as long as there still can be quorum at meetings.

RULE 12-6

Quorum of standing committees

12-6. Except as otherwise provided, the quorum of a standing committee shall be four of its members.

EXCEPTION

Rule 12-27(2): Quorum of Conflict of Interest Committee

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-6: Rule 86(1)

COMMENTARY

A quorum is the minimum number of members required for a committee to transact business. A standing committee cannot take decisions or adopt motions without the presence of four members (three in the case of the Standing Committee on Conflict of Interest for Senators (rule 12-27(2))). If members from both the government and opposition are not present at the scheduled start of a meeting, a committee may, as a courtesy even if quorum is present, wait until both sides are represented (also see rule 12-17 concerning the meetings of committees without a quorum).

The quorum for a standing joint committee is not set in the Rules. A standing joint committee reports to each house with a recommendation on its quorum (including representation from both houses), and the

quorum takes effect after the report has been adopted by both houses. Until that time, a majority of the committee's members from each house must be present for it to conduct business (see citation 809(2) from Beauchesne below).

The quorum of special and legislative committees is a majority of the members unless the Senate specifies otherwise (see subsection 22(2) of the *Interpretation Act*). The quorum for all subcommittees is set at three members (rule 12-12(3)).

The rule concerning the quorum for standing committees was previously embedded in the rule for the appointment and general mandates of standing committees (current rule 12-7). On October 25, 1983, the quorum was set at four members (see *Journals of the Senate*, p. 3264). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), with a minor change agreed to on May 28, 2013 (*Journals*, pp. 2567-2568).

RELATED CITATIONS AND EXTRACTS – RULE 12-6

Interpretation Act:

22. (2) Where an enactment establishes a board, court, commission or other body consisting of three or more members, in this section called an “association”,
- (a) at a meeting of the association, a number of members of the association equal to,
 - (i) if the number of members provided for by the enactment is a fixed number, at least one-half of the number of members, and
 - (ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range, constitutes a quorum;
 - (b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, is deemed to have been done by the association; and
 - (c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 230:

§807. Although not obligated to do so by the Standing Orders, it is a courtesy for the Chairman to wait until a representative of each party is present before commencing a meeting.

...

§808. (3) No motion may be put by the Chairman (although notice may be given of proposed motions) nor divisions taken during committee sittings held under a reduced quorum.

§809. (1) The question of whether a quorum is present in a committee is a matter that should be dealt with in the committee and not in the House. *Journals*, May 28, 1971, p. 586.

(2) In the case of a joint committee, unless the quorum is established by both the House and Senate, a joint committee cannot transact business until a quorum of the members appointed by each of the House and the Senate is present.

House of Commons Procedure and Practice, Second Edition, p. 1085:

In order to exercise the powers granted to it by the House, the Standing Orders require a committee to have a quorum at its meetings. In the case of standing, legislative and special committees, a majority of the members constitute a quorum. ...

Only regular members of a committee, or properly designated substitutes, are counted as part of the quorum. As a courtesy, most committees do not begin their meetings until at least one Member of the opposition is in attendance, even if a quorum is present.

Standing Committees of the Senate

RULE 12-7

Appointment and general mandates

12-7. The Senate shall appoint the following standing committees:

Internal Economy, Budgets and Administration

12-7. (1) the Standing Committee on Internal Economy, Budgets and Administration, which shall be authorized:

- (a) to consider, on its own initiative, all financial and administrative matters concerning the Senate's internal administration, and
- (b) subject to the *Senate Administrative Rules*, to act on all financial and administrative matters concerning the internal administration of the Senate and to interpret and determine the propriety of any use of Senate resources;

Rules, Procedures and the Rights of Parliament

12-7. (2) the Standing Committee on Rules, Procedures and the Rights of Parliament, which shall be authorized:

- (a) to propose from time to time, on its own initiative, amendments to the Rules for the consideration of the Senate,
- (b) to examine any question of privilege referred to it by the Senate, and
- (c) to consider the orders and practices of the Senate and the privileges of Parliament;

Official Languages

12-7. (3) the Standing Senate Committee on Official Languages, to which may be referred matters relating to official languages generally;

Foreign Affairs and International Trade

12-7. (4) the Standing Senate Committee on Foreign Affairs and International Trade, to which may be referred matters relating to foreign or Commonwealth relations generally, including:

- (a) treaties and international agreements,
- (b) external trade,
- (c) foreign aid, and
- (d) territorial and offshore matters;

National Finance	<p>12-7. (5) the Standing Senate Committee on National Finance, to which may be referred matters relating to federal estimates generally, including:</p> <ul style="list-style-type: none">(a) the public accounts and reports of the Auditor General, and(b) government finance;
Transport and Communications	<p>12-7. (6) the Standing Senate Committee on Transport and Communications, to which may be referred matters relating to transport and communications generally, including:</p> <ul style="list-style-type: none">(a) transport and communications by any means,(b) tourist traffic,(c) common carriers, and(d) navigation, shipping and navigable waters;
Legal and Constitutional Affairs	<p>12-7. (7) the Standing Senate Committee on Legal and Constitutional Affairs, to which may be referred matters relating to legal and constitutional matters generally, including:</p> <ul style="list-style-type: none">(a) federal-provincial relations,(b) administration of justice, law reform and any related matters,(c) the judiciary,(d) all essentially juridical matters, and(e) private bills not specifically assigned to another committee, including those related to marriage and divorce;
Banking, Trade and Commerce	<p>12-7. (8) the Standing Senate Committee on Banking, Trade and Commerce, to which may be referred matters relating to banking, trade and commerce generally, including:</p> <ul style="list-style-type: none">(a) banking, insurance, trust and loan companies, credit societies, <i>caisses populaires</i> and small loans companies,(b) customs and excise,(c) taxation legislation,(d) patents and royalties,(e) corporate affairs, and(f) bankruptcy;
Social Affairs, Science and Technology	<p>12-7. (9) the Standing Senate Committee on Social Affairs, Science and Technology, to which may be referred matters relating to social affairs, science and technology generally, including:</p> <ul style="list-style-type: none">(a) cultural affairs and the arts,(b) social and labour matters,(c) health and welfare,(d) pensions,

	<ul style="list-style-type: none"> (e) housing, (f) fitness and amateur sport, (g) employment and immigration, (h) consumer affairs, and (i) youth affairs;
Agriculture and Forestry	12-7. (10) the Standing Senate Committee on Agriculture and Forestry, to which may be referred matters relating to agriculture and forestry generally, and the Canadian Wheat Board;
Fisheries and Oceans	12-7. (11) the Standing Senate Committee on Fisheries and Oceans, to which may be referred matters relating to fisheries and oceans generally;
Energy, the Environment and Natural Resources	<p>12-7. (12) the Standing Senate Committee on Energy, the Environment and Natural Resources, to which may be referred matters relating to energy, the environment and natural resources generally, including:</p> <ul style="list-style-type: none"> (a) mines and natural resources, other than fisheries and forestry, (b) pipelines, transmission lines and energy transportation, (c) environmental affairs, and (d) other energy-related matters;
Aboriginal Peoples	12-7. (13) the Standing Senate Committee on Aboriginal Peoples, to which may be referred matters relating to the Aboriginal peoples of Canada;
Human Rights	12-7. (14) the Standing Senate Committee on Human Rights, to which may be referred matters relating to human rights generally;
National Security and Defence	12-7. (15) the Standing Senate Committee on National Security and Defence, to which may be referred matters relating to national defence and security generally, including veterans affairs; and
Conflict of Interest for Senators	<p>12-7. (16) the Standing Committee on Conflict of Interest for Senators, which shall be authorized:</p> <ul style="list-style-type: none"> (a) to exercise general direction over the Senate Ethics Officer, and (b) to be responsible, on its own initiative, for all matters relating to the <i>Conflict of Interest Code for Senators</i>, including all forms involving Senators that are used in its administration, subject to the general jurisdiction of the Senate. <p><i>REFERENCE (Standing Committee on Internal Economy, Budgets and Administration)</i> Parliament of Canada Act, sections 19.1-19.9</p> <p><i>REFERENCE (Standing Committee on Conflict of Interest for Senators)</i> Conflict of Interest Code for Senators, sections 35-37</p>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-7: Rule 86(1)

COMMENTARY

Rule 12-7 establishes 16 standing committees that operate during each session of Parliament. The functioning of these standing committees comes to an end at prorogation or dissolution, except for the Standing Committee on Internal Economy, Budgets and Administration, which is authorized to continue until its successor is appointed (see section 19.1(2) of the *Parliament of Canada Act* below). In addition, section 38 of the *Conflict of Interest Code for Senators* (see below) provides that during a period of prorogation or dissolution, and until the successor committee is appointed, the members of the Standing Committee on Conflict of Interest for Senators form an Intersessional Authority on Conflict of Interest for Senators, to provide general direction to the Senate Ethics Officer.

Rule 12-7 indicates the general mandate of each standing committee. Although almost all activities of the federal government are covered in these mandates, the standing committees do not mirror the structure of government departments. These mandates serve as a guideline on the different types of subjects that may be referred to each committee, but do not provide an automatic authority for committees to conduct studies without an order of reference from the Senate (see rules 12-8 and 12-9 concerning orders of reference). Especially where an issue may fall within the mandate of more than one committee, it is up to the Senate to decide which committee should conduct the study.

There are, however, three standing committees which are authorized to conduct certain work on their own initiative: the Standing Committee on Internal Economy, Budgets and Administration; the Standing Committee on Rules, Procedures and the Rights of Parliament; and the Standing Committee on Conflict of Interest for Senators. In addition, the Standing Joint Committee for the Scrutiny of Regulations also has an on-going mandate to review regulations, pursuant to section 19 of the *Statutory Instruments Act* (see below).

Most standing committees have 12 members, although six have a different number (see rule 12-3). The quorum for standing committees is set at four (rule 12-6), except for the Standing Committee on Conflict of Interest for Senators, which is set at three pursuant to rule 12-27(2).

Prior to 1894, the *Rules of the Senate* did not specifically list standing committees. A rule adopted in 1867 merely stated that “It is the duty of The Clerk to cause to be affixed in some conspicuous part of the Senate a list of the several Standing and Select Committees appointed during the Session” (rule 95). On March 29, 1894 (see *Journals of the Senate*, p. 34), a rule was adopted (rule 80) that listed the standing committees of the Senate and the number of members to be appointed. There were ten committees in all, as follows: the Library of Parliament (Joint — 17 senators); the Printing of Parliament (Joint — 21 senators); Standing Orders (9 senators); Banking and Commerce (25 senators); Railways, Telegraphs and Harbours (25 senators); Miscellaneous Private Bills (25 senators); Internal Economy and Contingent Accounts (25 senators); Debates and Reporting (9 senators); Divorce (9 senators); and Restaurant (Joint — the Speaker and 6 other senators). Numerous other standing committees were added to and deleted from the Rules over the years, and certain committees grew in size to as many as 50 members.

In 1968, a major restructuring of committees took place. Certain committees were renamed, new ones created and areas of jurisdiction defined. On November 19, 1968 (see *Journals of the Senate*,

pp. 381-382, effective on August 1, 1969), it was agreed that there be three standing joint committees — (i) on the Library of Parliament; (ii) on the Printing of Parliament and (iii) on the Restaurant of Parliament — and eight standing committees — (i) Standing Rules and Orders; (ii) Internal Economy and Contingent Accounts; (iii) Foreign Affairs; (iv) National Finance; (v) Transport and Communications; (vi) Legal and Constitutional Affairs; (vii) Banking, Trade and Commerce; and (viii) Health, Welfare and Science.

On December 10, 1968, it was agreed that the Standing Rules and Orders Committee be empowered “on its own initiative to propose to the Senate amendments to the Rules from time to time.” The special committee proposing the change recommended that these words be added to allow the Rules Committee to keep “under constant study the Rules and recommend periodic revisions thereto without the necessity of special reference by the Senate” (see *Journals of the Senate*, p. 466, effective on August 1, 1969). In 1971, the Standing Joint Committee on the Scrutiny of Regulations was created with an on-going mandate to review regulations (see rule 12-4). On November 26, 1975, it was agreed that the Internal Economy Committee also be given a permanent order of reference. It was henceforth empowered “on its own initiative to consider any matter relating to the internal economy of the Senate, including budgetary matters and administration generally, and to report the result of such consideration to the Senate” (see *Journals of the Senate*, p. 523). The wording of this rule was amended on June 2, 1988.

Other changes to what is now rule 12-7 took place in the 1980s. On December 9, 1982, it was agreed to establish a Standing Committee on Energy and to change the name of the Health, Welfare and Science Committee to the Social Affairs, Science and Technology Committee (see *Journals of the Senate*, p. 2636). On October 25, 1983 (see *Journals of the Senate*, p. 3264), the size of all standing committees was, with two exceptions, reduced from 20 members to 12 members, and their quorums from five to four. The two exceptions were the Standing Rules and Orders Committee; and the Internal Economy, Budgets and Administration Committee. Both these committees were to be composed of 15 members and have quorums of four. It was also agreed on the same date that the Energy Committee be renamed the Energy and Natural Resources Committee and that a Standing Committee on Agriculture, Fisheries and Forestry be established. On May 16, 1986, this committee was divided into two committees: Agriculture and Forestry, and Fisheries. On March 23, 1988, it was agreed that the joint committee created to review statutory instruments be re-named the Joint Committee on the Scrutiny of Regulations (see *Journals of the Senate*, p. 2112). On December 20, 1989, the Standing Committee on Aboriginal Peoples was created (see *Journals of the Senate*, p. 491). On February 13, 1990, it was agreed that the Rules be amended to permit the creation of “legislative committees” to be composed of not more than twelve members (see *Journals of the Senate*, p. 566). On June 15, 1991, the word “Environment” was added to the name of the Energy and Natural Resources Committee.

On June 18, 1991, the name of the Standing Rules and Orders Committee was changed to “Privileges, Standing Rules and Orders” (see *Journals of the Senate*, pp. 180-181). The committee was also empowered “upon a reference from the Senate, to examine and, if required, report on any question of privilege.” From that time, questions of privilege, which previously could have been referred to the Committee of Privileges, consisting of all the senators present during the session, could be referred to this standing committee.

Since 1991, a number of other changes have been made to standing committees: on March 15, 2001, the mandates of two standing committees (Foreign Affairs; and Social Affairs, Science and Technology) were amended, and two new standing committees were created (Defence and Security; and Human Rights) (see *Journals of the Senate*, pp. 171-172); on September 25, 2001, the name of the Standing Committee on Privileges, Standing Rules and Orders was changed to Rules, Procedures and the Rights of

Parliament (see *Journals of the Senate*, p. 781); on October 31, 2001, the name of the Standing Committee on Defence and Security was changed to National Security and Defence (see *Journals of the Senate*, p. 912); on October 10, 2002, the Senate created the Standing Committee on Official Languages and informed the House of Commons that it would no longer participate in the previous standing joint committee (see *Journals of the Senate*, p. 65); on November 5, 2002, the name of the Standing Committee on Fisheries was changed to Fisheries and Oceans (see *Journals of the Senate*, p. 161); on May 18, 2005, the Senate created the Standing Committee on Conflict of Interest for Senators following the adoption of the *Conflict of Interest Code for Senators* (see *Journals of the Senate*, p. 928); on October 30, 2006, the name of the Standing Committee on Foreign Affairs was changed to Foreign Affairs and International Trade (see *Journals of the Senate*, p. 671); and on December 13, 2010, references to the Standing Joint Committees on the Restaurant and on the Printing of Parliament were removed from the Rules (see *Journals of the Senate*, p. 1127).

The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). It also included a provision to remove from the mandate of the Social Affairs Committee those matters touching on Indian and Inuit affairs, which fall under the Aboriginal Peoples Committee.

RELATED CITATIONS AND EXTRACTS – RULE 12-7

Parliament of Canada Act:

19.1 (1) In this section and sections 19.2 to 19.9, “Committee” means the Standing Senate Committee on Internal Economy, Budgets and Administration established by the Senate under its rules.

(2) During a period of prorogation or dissolution of Parliament and until the members of a successor Committee are appointed by the Senate, the Committee continues to exist for the purposes of this Act and, subject to subsection (3), every member of the Committee, while still a senator, remains a member of the Committee as if there had been no prorogation or dissolution.

(3) The Leader of the Government in the Senate, or the nominee of the Leader, and the Leader of the Opposition in the Senate, or the nominee of the Leader, may, in accordance with the rules of the Senate, change the membership of the Committee from time to time, including during periods of prorogation or dissolution.

(4) In exercising its functions and powers under this Act, the Committee is subject to the rules, direction and control of the Senate.

(5) Where the Chairman of the Committee deems that there is an emergency, the Committee’s Subcommittee on Agenda and Procedure may exercise any power of the Committee under this Act.

(6) The Chairman of the Committee shall report to the Committee any decision made under subsection (5) at the meeting of the Committee immediately following the decision.

Conflict of Interest Code for Senators (2012):

38. During a period of prorogation or dissolution of Parliament and until the members of a successor Committee are appointed by the Senate, there shall be a committee known as the Senate Intersessional Authority on Conflict of Interest for Senators.

39. The Intersessional Authority on Conflict of Interest for Senators shall be composed of the members of the Committee.

40. (1) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Intersessional Authority on Conflict of Interest for Senators.

(2) Subject to the rules, direction and control of the Senate and of the Committee, the Intersessional Authority on Conflict of Interest for Senators shall carry out such other of the Committee's duties and functions as the Committee gives to it by resolution.

Statutory Instruments Act:

19. Every statutory instrument issued, made or established after December 31, 1971, other than an instrument the inspection of which and the obtaining of copies of which are precluded by any regulations made pursuant to paragraph 20(d), shall stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments.

House of Commons Procedure and Practice, Second Edition, p. 960:

Standing committees fall into three broad categories: (1) those overseeing one or more federal departments or organizations, (2) those responsible for matters of House and committee administration and procedure, and (3) those with transverse responsibilities that deal with issues affecting the entire government apparatus.

Odgers' Australian Senate Practice, Thirteenth Edition, pp. 443-444:

Like most representative legislative assemblies in free countries, the Senate delegates some of its tasks, and the powers to carry out those tasks, to committees of its members.

Role of committees

The task most often given to committees is that of conducting inquiries: of inquiring into specified matters, particularly by taking submissions and hearing evidence, and reporting findings on those matters to the Senate. Although the Senate may conduct inquiries directly, committees are a more convenient vehicle for this activity.

Apart from conducting inquiries, committees may be required to perform any of the functions of the Senate, including its primary legislative function of considering proposed laws, the scrutiny of the conduct of public administration and the consideration of policy issues.

The Constitution recognises committees as essential instruments of the Houses of the Parliament by referring in section 49 to: "The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House ...".

The Senate makes extensive use of committees which specialise in a range of subject areas. The expertise built up by those committees enables them to be multi-purpose bodies, capable of undertaking policy-related inquiries, examining the performance of government agencies and

programs or considering the detail of proposed legislation in the light of evidence given by interested organisations and individuals. The scrutiny of policy, legislative and financial measures is a principal role of committees.

Most significantly, committees provide a means of access for citizens to participate in law making and policy review. Anyone may make a submission to a committee inquiry and committees will normally take oral evidence from a selection of witnesses who have made written submissions. Committees frequently meet outside Canberra, thereby taking the Senate to the people and gaining first hand knowledge of and exposure to issues of concern to the public.

Inquiries by committees allow citizens to air grievances about government and bring to light mistreatment of citizens by government.

Specialist committees support the Senate's ability to monitor delegated legislation made by the executive government and to ensure that all proposals for legislation do not trespass against fundamental personal rights and liberties. In the Australian Parliament, only Senate committees perform this role.

An important outcome of committee work is the opportunity senators gain to pursue special interests and build up expertise in aspects of public policy, enhancing the quality of debate and providing a solid grounding for backbenchers who may go on to be committee chairs, shadow ministers, party spokespeople or ministers.

The characteristic multi-partisan composition and approach of committees also provides opportunity for proponents of divergent views to find common ground. The orderly gathering of evidence by committees and the provision of a forum for all views can often result in the dissipation of political heat, consideration of issues on their merits and the development of recommendations that are acceptable to all sides:

It is in the conference [i.e., committee] room that careful, calm consideration can be brought to bear upon a subject, and [senators] can work harmoniously in spite of party differences. It is there that the qualities and experience of the individual can be applied to matters under discussion. It is there that opportunity is provided for vision, judgment and experience to be applied and, later, brought before the Senate for open discussion and action.

House of Representatives Practice, Sixth Edition, p. 639:

The principal purpose of parliamentary committees is to perform functions which the Houses themselves are not well fitted to perform, that is, finding out the facts of a case or issue, examining witnesses, sifting evidence, and drawing up reasoned conclusions. Because of their composition and method of procedure, which is structured but relatively informal compared with that of the Houses, committees are well suited to the gathering of evidence from expert groups or individuals. In a sense they "take Parliament to the people" and allow direct contact between members of the public and representative groups of Members of the House. Not only do committee inquiries enable Members to be better informed about community views but, by simply undertaking an inquiry, committees may promote public debate on the subject at issue. The all-party composition of most committees and their propensity to operate across party lines are important features. This bipartisan approach generally manifests itself throughout the conduct of inquiries and the drawing up of conclusions.

Orders of Reference to Committees
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RULE 12-8

Referral of a matter to any committee	12-8. (1) Any bill, message, petition, inquiry, paper or other matter may be referred to any committee as the Senate may order.
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User fee proposals	12-8. (2) When the Leader or Deputy Leader of the Government tables a user fee proposal, it is deemed referred to the standing or special committee designated by the Leader or Deputy Leader of the Government following consultations with the Leader or Deputy Leader of the Opposition.
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*REFERENCE*User Fees Act, *subsection 4(4)***EQUIVALENCE WITH MARCH 2010 RULES**

Rule 12-8(1): Rule 86(2)

Rule 12-8(2): Rule 28(3.1)

COMMENTARY

Rule 12-8(1) provides that any bill, message, petition, inquiry, paper or other matter may be referred to a committee for study, thus becoming an order of reference. This rule also reflects the provisions of rule 6-8, which states that it is in order to move a motion to refer a question under debate to a committee.

An order of reference is “The authorization for a committee to study a resolution, motion, bill or the subject matter of a bill, or to undertake an investigation or other work according to the terms contained in the motion or as provided for by the *Rules of the Senate*” (Appendix I, Terminology). An order of reference establishes the scope of the committee study and may confer other powers that the committee may need to complete the study. It is granted by the adoption of a motion by the Senate, and until such motion is adopted, a committee cannot begin its work on the study.

The most common orders of reference are those to send a bill or the subject matter of a bill to committee, or for a special study. A bill may be referred to a committee immediately after second reading by means of a non-debatable procedural motion. The subject matter of a bill may be referred if an amendment to that effect is adopted on the second reading motion. If a Commons bill has not yet reached the Senate its subject matter can also be referred to committee (see text on rule 10-11 for additional detail). A committee can be authorized to conduct a special study by means of a substantive motion with one day’s notice (see rule 5-5). It is also possible for any motion under debate in the Senate to be referred to a committee by means of a superseding motion (see rule 5-7). A ruling of October 8, 2002, quoted in the text relating to rule 12-2, notes that there can be certain limitations on orders of reference to committees before the membership has been named.

There are three standing committees which have permanent orders of reference included in their mandates, allowing them to self-initiate certain work: the Standing Committee on Internal Economy, Budgets and Administration; the Standing Committee on Rules, Procedures and the Rights of Parliament; and the Standing Committee on Conflict of Interest for Senators (see rule 12-7). In addition, the Standing Joint Committee for the Scrutiny of Regulations also has an on-going mandate to review regulations, pursuant to section 19 of the *Statutory Instruments Act* (see text on rule 12-4).

Rule 12-8(2) contains a provision which automatically refers any user fee proposal tabled in the Senate to the appropriate standing or special committee without debate or a vote. The committee is designated by the Leader or Deputy Leader of the Government following consultations with the Leader or Deputy Leader of the Opposition (see rule 12-22 regarding reports on user fee proposals).

Rule 12-8(1) was previously embedded in the rule for the appointment and general mandates of standing committees (see current rule 12-7). Regarding rule 12-8(2), in March 2004, the *User Fees Act* was given Royal Assent. As a result a new rule (then rule 28(3.1)) was adopted on June 27, 2006 (see *Journals of the Senate*, p. 418). The current wording of rule 12-8 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-8

User Fees Act:

2. “Committee” means, in respect of each House of Parliament, the appropriate standing committee of that House.

...

4. (2) In addition to subsection (1), the Minister must cause to be tabled in each House of Parliament a proposal

(a) explaining in respect of what service, product, regulatory process, facility, authorization, permit or licence the user fee is being proposed;

(b) stating the reason for any proposed change in user fee rate;

(c) including the performance standards established in accordance with paragraph (1)(f), as well as the actual performance levels that have been reached;

(d) giving an estimate of the total amount that the regulating authority will collect in the first three fiscal years after the introduction of the user fee, and identifying the costs that the user fee will cover; and

(e) describing the establishment of an independent advisory panel in accordance with paragraph (1)(e) and describing how any complaints received under section 4.1 were dealt with.

...

(4) Every proposal tabled under subsection (2) is deemed referred to the Committee.

5. The Committee may review a proposal for a user fee referred to it pursuant to subsection 4(4) and submit to the Senate or the House of Commons, as the case may be, a report containing its recommendation as to the appropriate user fee, subject to the provisions of section 5.1.

<i>Powers of Standing Committees and Standing Joint Committees</i>

RULE 12-9	
Power to conduct inquiries and report	12-9. (1) Standing committees and standing joint committees are empowered to inquire into and report on such matters as may be referred to them by the Senate.
Power to send for persons and papers and to publish papers	12-9. (2) Standing committees and standing joint committees are empowered: <ul style="list-style-type: none"> (a) to send for persons, papers and records; and (b) to publish from day to day such papers and evidence as may be ordered by them.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-9: Rule 90

COMMENTARY

Rule 12-9 enumerates the powers of standing committees and standing joint committees. Once an order of reference has been received from the Senate, standing and standing joint committees are empowered to study the matter and to report thereon to the Senate. They have the power to send for persons, papers and records (including the power to issue a summons insisting that certain persons appear or that papers be made available), and to publish papers and evidence ordered by the committee (including the minutes of the committee, transcripts of its evidence and its reports to the Senate). Special committees must have these powers enumerated in their terms of reference or granted separately by a motion adopted by the Senate (see rule 12-10).

The first step in summoning witnesses or having necessary documents presented before a committee is to invite the individuals in question to attend or to provide the documents. In most cases, this suffices. Were witnesses to refuse to appear after the seriousness of the matter has been made clear, a senator on the committee could file a certificate attesting to the relevancy of each witness' testimony, and the committee could then adopt a motion ordering the individuals in question to appear. The practice of filing a certificate is based on previous practice in the House of Commons, retained in Senate committees. Once this motion is adopted, a summons – outlining the time, date and place at which attendance is required – would be served on the witnesses.

When a committee is denied access to documents it considers essential, it can order the presentation of papers and records. The committee would adopt a motion ordering the appropriate person or organization to produce them.

If a summons or order to produce documents were ignored, and were the committee to insist upon the persons appearing or the documents being provided, the committee's recourse would be to report the matter back to the Senate. The enforcement of a committee's power to send for persons, papers and records lies with the Senate, not with individual committees (see Maingot, *Parliamentary Privilege in Canada*, Second Edition, p. 221).

Upon the presentation of such a report, it is then for the Senate to resolve the issue. The Senate may choose to summon the persons in question to the bar of the Senate to answer for their conduct, or require that they go before the committee to justify themselves. Although the Senate can order a witness committed to prison, neither federal house has followed this course since 1913. Admonishment at the bar would be another option to punish a witness who fails to comply. For additional information on summoning witnesses and related matters, see, for example, “The Power to Send for Persons, Papers and Records: Theory, Practices and Problems (Report of the Chairman and the Deputy-Chairman),” attached to the Final Report of the Special Senate Committee on the Pearson Airport Agreements (December 1995); Joseph Maingot, *Parliamentary Privilege in Canada*, 2nd edition; Blair Armitage and Charles Robert, “Perjury, Contempt and Privilege: The Coercive Powers of Parliamentary Committees,” *Canadian Parliamentary Review*, Vol. 30, No. 4, Winter 2007, pp. 29-36; and Diane Davidson, “The Powers of Parliamentary Committees,” *Canadian Parliamentary Review*, Vol. 18, No. 1, Spring 1995, pp. 12-15).

One of the limitations on the powers of standing and standing joint committees is that they cannot compel members of either house to give evidence, and that they can only call for documents that the Senate itself can demand according to its Rules and practices. Should an individual refuse to comply with a summons to testify or an order to produce documents, the only recourse for a committee is to report the matter to the Senate, where the authority to enforce the power is exercised.

In recent history, Senate committees have summoned witnesses on a number of occasions, including: Special Committee on the Pearson Airport Agreements (witness summoned on October 17, 1995); Agriculture and Forestry Committee (witness summoned on April 26, 1999); and Energy, Environment, and Natural Resources Committee (witnesses summoned on June 1, 2000). In addition, the Standing Joint Committee for the Scrutiny of Regulations summoned a witness on May 9, 2002. Previous cases in the Senate date back to the 19th century and the first years of the 20th century.

There have been several cases where the Senate has taken action or threatened to take action against witnesses refusing to provide information. These cases go back to the start of the 20th century or earlier (see *Journals of the Senate*, May 22, 1872, p. 101; May 29, 1872, p. 150; *Debates of the Senate*, August 14, 1891, pp. 440-442; September 8, 1891, pp. 569-578; June 24, 1904, pp. 609-617; and June 28, 1904, pp. 643-657).

The Rules also enumerate other powers provided to committees in general: the power to create subcommittees (see rule 12-12), to meet in camera under certain limited conditions (see rule 12-16), to hold meetings without a quorum to gather evidence (see rule 12-17), and to meet on days the Senate sits or when the Senate is adjourned, with certain restrictions (see rule 12-18). The *Parliament of Canada Act*, at subsection 10(3), also authorizes Senate committees to have witnesses testify under oath or solemn affirmation, although this rarely occurs. A witness who lies under oath can face a charge of perjury, in addition to the punishment for contempt that a witness who lies while not under oath would face.

Committees may seek additional powers by way of a motion or a committee report in the Senate. These powers may include, for example, the power to travel either inside or outside Canada, to engage professional and other services, and to table a report with the Clerk of the Senate if the Senate is not sitting.

The Senate can adopt a motion of instruction with one day's notice to give direction to a committee on its order of reference. The Speaker has explained that "Instructions are intended to allow a committee to do something it would not otherwise have the power to do" (see *Journals of the Senate*, November 30, 1995, p. 1332). Instructions can be permissive or mandatory. The Speaker has explained that "The more ordinary instruction was the permissive instruction which empowered a committee to exercise certain powers at its discretion" (see *Journals of the Senate*, May 2, 2000, p. 550). Motions of instruction are infrequent in the Senate; however, they have been used in regard to bills (see rule 10-4).

Any power given by the Senate to a standing joint committee must also be given by the House of Commons in order for the standing joint committee to exercise the power.

Witness expenses can, in certain circumstances, be reimbursed (see rule 12-25).

This provision was adopted on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). The current wording of rule 12-9 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-9

Parliament of Canada Act:

10. (1) The Senate or the House of Commons may administer an oath to any witness examined at the bar of the Senate or the House.

(2) The Senate or the House of Commons may order witnesses to be examined on oath before any committee.

(3) Any committee of the Senate or the House of Commons may administer an oath to any witness examined before the committee.

11. (1) Where any witness to be examined under this Part conscientiously objects to take an oath, the witness may make a solemn affirmation and declaration.

(2) Any solemn affirmation and declaration made under subsection (1) has the same force and effect, and entails the same consequences, as an oath taken in the usual form.

12. Any person examined under this Part who wilfully gives false evidence is liable to such punishment as may be imposed for perjury.

13. (1) Any oath or solemn affirmation and declaration under this Part may be administered by

(a) the Speaker of the Senate or the House of Commons;

(b) the chairman of any committee of the Senate or the House of Commons; or

(c) such person or persons as may be appointed for that purpose either by the Speaker of the Senate or by the Speaker of the House of Commons or by standing or other order of the Senate or the House.

(2) Every oath and solemn affirmation and declaration under this Part shall be in the Forms 1 and 2 in the schedule.

FORM 1

The evidence you shall give on this examination shall be the truth, the whole truth and nothing but the truth. So help you God.

FORM 2

I,, do solemnly, sincerely and truly affirm and declare the taking of any oath is according to my religious belief unlawful, and I do also solemnly, sincerely and truly affirm and declare, etc.

Bourinot's Parliamentary Procedure, Fourth Edition, p. 70:

The Senate and House of Commons have the right, inherent in them as legislative bodies, to summon and compel the attendance of all persons, within the limits of their jurisdiction, as witnesses, and to order them to bring with them such papers and records as may be required for the purpose of an inquiry.

House of Commons Procedure and Practice, Second Edition, p. 136:

By virtue of the Preamble and section 18 of the *Constitution Act, 1867*, Parliament has the ability to institute its own inquiries, to require the attendance of witnesses and to order the production of documents, rights which are fundamental to its proper functioning. These rights are as old as Parliament itself.

Pages 974-977:

Standing committees often need the collaboration, expertise and knowledge of a variety of individuals to assist them in their studies and investigations. Usually these persons appear willingly before committees when invited to do so. But situations may arise where an individual does not agree to appear and give evidence. If the committee considers that this evidence is essential to its study, it has the power to summon such a person to appear.

A committee exercises this power by adopting a motion to summon one or more individuals to appear before it at a set date, time and location. The summons, signed by the Chair of the committee, is served on each of the individuals by a bailiff. It states the name of the committee concerned, the matter for which the appearance is required, the authority under which it is ordered, and the date and location of the appearance. It also orders the witness to be available from the time of the appearance until duly released by the committee.

...
In practice, certain limitations are recognized on the power to order individuals to appear. Because committee powers do not extend outside Canadian territory, a committee cannot summon a person who is in another country. The Sovereign (whether in Canada or abroad), the Governor General and the provincial lieutenant-governors are also exempt from such a summons.

This applies, as well, to parliamentarians belonging to other Canadian legislatures, because each of these assemblies, like the House of Commons, has the parliamentary privilege of controlling the attendance of its members and any matters affecting them. The same logic explains why a standing committee cannot order a Member of the House of Commons or a Senator to appear.

... If a standing committee wants to request formally that a Senator appear before it, it must obtain the leave of the House of Commons. If the House agrees with the committee, it sends the Senate a message requesting that the Senator appear before the committee. Under the Rules of the Senate, however, even if the Upper House acquiesces to the request of a Commons' committee to have a Senator appear before it, that Senator need not do so unless he or she thinks fit. At all times, the Rules of the Senate allow Senators to appear of their own free will before committees of the House of Commons without any formal request being sent by the House.

Although they can send for certain persons, standing committees do not have the power to punish a failure to comply with their orders in this regard. Only the House of Commons has the disciplinary powers needed to deal with this type of offence. If a witness refuses to appear, or does not appear, as ordered, the committee's recourse is to report the matter to the House. Once seized with the matter, the House takes the measures that it considers appropriate.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 805-806:

A select committee possesses no authority except that which it derives by delegation from the House. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference). The interpretation of the order of reference of a select committee is, however, a matter for the committee. Committees have sometimes resolved that certain matters were within the scope of their order of reference. However, when a bill is committed, or referred, to a select committee, the bill itself is the order of reference, and the inquiries and deliberations of the committee must be confined to the bill and amendments relevant to its subject-matter.

Page 820:

Since the general practice of select committees is to request witnesses to give evidence to them by means of an informal invitation issued through their clerks or the chair of the committee, they seldom use their formal powers to summon individuals, preferring to keep them in reserve. Nevertheless, when a select committee has the power to send for persons, that power is unqualified, except to the extent that it conflicts with the privileges of the Crown and of Members of the House of Lords, or with the rights of Members of the House of Commons.

When a committee decides to summon a witness formally, the witness is summoned to attend the committee by an order signed by the chair. Failure to attend a committee when formally summoned is a contempt and if a witness fails to appear, when summoned in this manner, his conduct is reported to the House. If in the meantime the witness appears before the committee, the order for his attendance has been discharged; but if he still neglects to appear, he will be dealt with as in other cases of disobedience to an order of the House.

Eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament, *Journals of the Senate*, June 20, 2013, pp. 2716-2717:

... It is imperative for Parliament to have a dialogue with the public, to hear a diversity of views, opinions and perspectives on any item of business before Parliament. This enriches Parliament's work and makes it relevant to Canadians. For this reason, Parliament must be vigilant in preserving its ability to conduct its business and to have access to the views of its fellow citizens.

In addition, the right to appear before parliamentary committees is an individual right for Canadians, a means by which they can participate in the deliberations of Parliament. Witnesses coming to Parliament are protected by privilege when they participate in a proceeding in Parliament such as a committee hearing, inquiry or other study. Witnesses are afforded parliamentary protection because it is essential that, like parliamentarians, they are able to speak freely without fear that they will be held liable for any statements they make.

...

Parliament has the absolute and unfettered right to call witnesses to appear before it and before its committees. ...

(Report adopted by the Senate on June 26, 2013, Journals of the Senate, p. 2757)

Speaker's Ruling: Committees Can Hear from Witnesses Without Impediment

Journals of the Senate, May 8, 2013, pp. 2235-2236:

Yesterday, Senator Cowan raised a question of privilege about media reports suggesting that a witness invited to appear before the Standing Senate Committee on National Security and Defence during its study of Bill C-42 had not done so because of pressures exerted on him by his employer. The bill had been reported earlier in the sitting, without amendment but with observations. As the Leader of the Opposition explained, Corporal Roland Beaulieu, a member of the RCMP currently on medical leave, had been invited to appear before the committee on Monday, May 6. Senator Cowan indicated that last week Corporal Beaulieu had been informed that if he came to Ottawa to testify his medical leave would be terminated. As a result he did not attend. A number of other honourable senators then participated in consideration of the question of privilege. After these interventions, the chair committed to ruling today.

...

As already noted, the fundamental issue is the protection of witnesses. Privilege is the sum of the rights enjoyed by this house and its members that are necessary for us to conduct our work. We must be mindful that this protection of privilege is not limited to parliamentarians alone. More importantly, with respect to the current situation, witnesses also enjoy a range of protection. As stated at page 267 of the 24th edition of Erskine May, "Any conduct calculated to deter prospective witnesses from giving evidence before either House or a committee is a contempt." Erskine May then continues to explain "It is also a contempt to molest any person attending either House as witnesses, during their attendance in such House or committee," as are threats against those who have previously appeared. These points are repeated at page 840. Similar statements are made at pages 114 and 115 of the second edition of *House of Commons Procedure and Practice*, which explains that witnesses are protected from threat or intimidation.

On April 13, 2000, the Standing Committee on Privileges, Standing Rules and Orders — now the Standing Committee on Rules, Procedures and the Rights of Parliament — presented its fifth report, dealing with allegations about reprisals against a witness. The report stated in part as follows:

The Senate, and all Senators, view with great seriousness any allegations of possible intimidation or harassment of a witness or potential witness before a Senate committee. In order for the Senate to discharge its functions and duties properly, it must be able to call and hear from witnesses without their being threatened or fearing any repercussions. Any interference with a person who

has given evidence before a Senate committee, or who is planning to, is an interference with the Senate itself, and cannot be tolerated.

The essential issue is not whether representatives of the association appeared before the committee. They did. The issue is whether there was a deliberate attempt to impede the appearance of an invited witness, agreed to by the Steering Committee. Witnesses or potential witnesses who fear retaliation, directly or indirectly, arising from their testimony, whether because of implied or direct threats or because previous witnesses or potential witnesses have suffered due to the fact that they appeared or considered appearing, will either be unwilling to appear or, if they do, will not be forthcoming in their evidence. Since this impedes parliamentarians on the committee in the full exercise of their duties, it would represent a breach of privilege.

Speaker's Rulings: Motions of Instruction

Journals of the Senate, March 10, 1971, p. 189:

... [T]he Senate has the right to instruct Committees. However, instruction to Committees may be given only under certain conditions, which are set out in *Bourinot*, 4th edition, at page 513. ...

Many precedents are referred to by Bourinot, at pages 513 and following, whereby instructions to Committees were declared irregular because the Committee concerned already had the power to take the action indicated. May's 17th edition, at page 498, contains a statement to the same effect.

(Also see ruling of December 18, 1971, Journals of the Senate, p. 508.)

Journals of the Senate, May 2, 2000, pp. 550-551:

Motions of instruction developed in the British Parliament at a time when the powers of committees were narrowly defined and severely constrained. Through the eighteenth century and into the first decades of the nineteenth, it would seem that the authority of committees to amend bills was so limited that they frequently required instructions from the House to carry out their work effectively. A partial remedy to this problem was to incorporate within the rules or standing orders of the House, certain powers whereby the committees acquired the authority to make amendments to legislation so long as those amendments were generally within the scope of the bill and were relevant. Thereafter, the need for instructions became less frequent and they developed certain characteristics which remain generally the same to this day. Among these characteristics was the distinction between permissive and mandatory instructions. The more ordinary instruction was the permissive instruction which empowered a committee to exercise certain powers at its discretion. Instructions had to be in the permissive form if they were to apply to committees which already possessed some authority under the standing orders. Instructions could be either permissive or mandatory if the committees involved possessed no powers because they were created on an ad hoc basis or if they concerned private bills.

Applying this basic distinction to the *Rules of the Senate* as they are presently written, it would seem to me that motions of instruction to a committee with respect to the study of public bills must be in the permissive form. This is because our rules already authorize any committee examining a bill to recommend any relevant amendments it deems appropriate. ...

Special and Legislative Committees

RULE 12-10

Special committees **12-10.** (1) Special committees may be appointed from time to time with such terms of reference, powers and duties as the Senate shall determine.

Special committees – mover of motion as member **12-10.** (2) Except as otherwise provided, a Senator on whose motion a bill, petition or other matter is referred to a special committee may be appointed to that committee if the Senator so desires.

EXCEPTION

Rule 15-7(2): Restrictions if declaration of interest

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-10(1): Rule 93

Rule 12-10(2): Rule 94

COMMENTARY

A special committee is “established especially for the purpose of examining a bill or investigating a subject; it normally ceases to exist once it has made its final report” (Appendix I, Terminology). A motion to establish a special committee requires two days’ notice (see rule 5-6(1)), and is subject to debate and amendment. Once adopted, it sets the parameters of the committee’s work. The motion normally establishes the date by which the committee must report, and will sometimes include other provisions, such as the power to travel and contract professional services. The *Rules of the Senate* also enumerate other powers provided to committees in general: the power to create subcommittees (see rule 12-12), to meet in camera under certain conditions (see rule 12-16), to hold meetings without a quorum (see rule 12-17) and, with certain restrictions, to meet when the Senate is adjourned (see rule 12-18). A special committee must be specifically granted the powers to send for persons, papers and records, and to publish papers and evidence, since rule 12-9 only grants those powers to standing committees.

The initial membership of a special committee is usually set out in the motion establishing the committee. Subsequently, membership changes for special committees are made in the normal manner (see rule 12-5). Under rule 12-10(2), the sponsor of a bill, petition or other matter referred to a special committee may normally become a member of that committee if the senator so wishes. The quorum of a special committee is, in keeping with the *Interpretation Act*, a majority of its members unless its order of reference specifies otherwise. Under rule 12-3(3) the Leader of the Government and the Leader of the Opposition, or their deputy leaders, are ex officio members of special Senate committees, but not special joint committees.

As already mentioned, a special committee ceases to exist once its final report is submitted to the Senate. The consideration of a report from a special committee requires two days’ notice (rule 5-6(1)(e)). When a prorogation or dissolution occurs prior to the completion of its work, a new motion creating the special committee would have to be adopted in the next session.

On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the Senate adopted the following rule: “The senators to serve on a Special Committee may be nominated by the mover; but, if three senators so demand, they shall be selected as follows: Each senator shall vote openly for one senator to serve as a member of such committee, and those senators for whom the largest number are given shall constitute the Committee” (rule 83). On November 26, 1975 (see *Journals of the Senate*, p. 592), this rule was deleted, and a rule recognizing the Senate’s authority to establish special committees, to grant them powers and to set their terms of reference was subsequently adopted.

The origins of rule 12-10(2) date back to 1867, when the following provision was adopted: “Every Senator on whose Motion any Bill, Petition or Question shall have been referred to a Select Committee, shall, if he so desires, be one of the Committee” (rule 92). The provision was amended on March 29, 1894 (see *Journals of the Senate*, p. 34), and again on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969).

The current wording of rule 12-10 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-10

Interpretation Act:

22. (2) Where an enactment establishes a board, court, commission or other body consisting of three or more members, in this section called an “association”,

- (a) at a meeting of the association, a number of members of the association equal to,
 - (i) if the number of members provided for by the enactment is a fixed number, at least one-half of the number of members, and
 - (ii) if the number of members provided for by the enactment is not a fixed number but is within a range having a maximum or minimum, at least one-half of the number of members in office if that number is within the range, constitutes a quorum;
- (b) an act or thing done by a majority of the members of the association present at a meeting, if the members present constitute a quorum, is deemed to have been done by the association; and
- (c) a vacancy in the membership of the association does not invalidate the constitution of the association or impair the right of the members in office to act, if the number of members in office is not less than a quorum.

“Forms and Proceedings,” *Rules of the Senate* (1990), pp. 54-55:

A senator may move that a special joint committee be appointed. If the House of Commons unites in the appointment of such a committee, the Senate is so informed by Message from that House. If the special joint committee is initiated in the House of Commons, the Senate, if in agreement, sends a Message to the House of Commons indicating that it agrees to the appointment of the joint committee. See *Journals of the Senate*, 1984-85, p. 579.

The Committee of Selection nominates the senators to serve on the special joint committee and reports to the Senate the names of the senators so nominated. When the report is adopted, a Message is sent to the House of Commons informing that House of the names of the senators nominated to serve on the special joint committee. See *Journals of the Senate*, 1977-78, p. 546.

A senator may move that a special Senate committee be appointed.

A special committee has no power to engage counsel or staff, to sit during sittings and adjournments of the Senate, or to adjourn from place to place, unless so authorized by way of motion. If a special committee is reconstituted in a new session of Parliament, the papers and evidence received by it in the preceding session(s) are, by motion, referred to it. See *Journals of the Senate*, 1984-85, pp. 83-84.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 229:

§799. A special committee has no power to send for any papers or records unless it is duly authorized to do so by Order of the House.

...

§801. A special committee ceases to exist at the moment its final report is presented to the House. The report cannot afterwards be sent back to the committee with instructions to amend it in any particular way unless the House agrees to revive the committee by adding the following words to the motion for recommitment: "and that the committee for such purposes be revived." *Journals*, December 1, 1964, pp. 941-47.

House of Commons Procedure and Practice, Second Edition, pp. 966-967:

As in the case of legislative committees, special committees are *ad hoc* bodies created as needed by the House. Unlike legislative committees, however, they are not usually charged with the study of a bill, but rather with inquiring into a matter to which the House attaches particular importance. Every special committee is established by an order of reference of the House. The motion usually defines its mandate and may include other provisions covering its powers, membership—the number of members varies—and the deadline for presentation of its final report to the House. The content of the motion varies with the specific task entrusted to the committee. Special committees cease to exist upon presentation of their final report.

Speaker's Ruling: Creation of Special Committee on a Bill

Journals of the Senate, May 9, 2000, p. 576:

... [A] motion to create a special committee is debatable. In fact, this is based on Rule [5-8(1)(e)] which explains that a motion for the appointment of a standing or special committee is debatable. Senator Hays went further to point out that under the terms of Rule 93, the Senate "may appoint such special committees as it deems advisable and may set the terms of reference and indicate the powers to be exercised and the duties to be undertaken by any such committee" [see current rule 12-10(1)].

However, the motion to refer a bill to one committee or another following second reading is neither debatable nor amendable according to Rules [5-8(1)(f)] and [5-8(3)]. This is because a motion of reference to a committee is what might be classed a procedural motion. It follows automatically as a consequence from the adoption of the second reading motion of the bill.

The only opportunity, therefore, for a bill to be referred to a special committee or a legislative committee, which is also permitted under our Rules, is to create that committee by a separate debatable motion. Moreover, as I have attempted to explain, that motion must be adopted prior to the decision on second reading of the relevant bill. Otherwise, under our current Rules, it will not be possible to send the bill to that committee because it does not exist. My understanding of this procedure seems to be confirmed by several precedents.

There have been three occasions in the last twelve years when the Senate decided to establish a special committee to deal with legislation. Two of the cases predate the rule changes of 1991, the third does not. The first occurred in July 1988 and related to Bill C-72, on official languages. The second happened the following year, in November 1989, and related to Bill C-21 dealing with unemployment insurance. Of these two cases, the first motion was adopted after second reading, but the second motion was adopted before second reading. The third and most recent precedent dates to 1995 and involved Bill C-110 on constitutional amendments. Notice of all three motions was given before the motion for second reading of the relevant bill was adopted. In fact, all of them were cast in the same language as the motion relating to the present case. They all proposed to establish a special committee to consider a specific bill “after second reading”. As it happened, only the 1995 precedent gave rise to any debate, though all of them were moved as debatable motions.

RULE 12-11

Legislative
committees

12-11. A legislative committee shall be composed of no more than 12 members.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-11: Rule 86(3)

COMMENTARY

A legislative committee is “A Senate committee, other than a special committee, established for the specific purpose of studying a particular bill” (Appendix I, Terminology). The membership of a legislative committee may be composed of not more than 12 members. While the Rules provide for such committees, there are no known cases of legislative committees being created. Instead, the Senate has referred bills to standing and special committees, as well as Committees of the Whole.

This rule was adopted on February 13, 1990 (see *Journals of the Senate*, p. 566), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-11

House of Commons Procedure and Practice, Second Edition, pp. 965-966:

Legislative committees are created on an *ad hoc* basis by the House solely to draft or review proposed legislation. They therefore do not return from one session to the next, as standing and standing joint committees do. They are established as needed when the House adopts a motion making a referral, and cease to exist upon presentation of their report on the draft legislation to the House. They consist of a maximum of 15 Members drawn from all recognized political parties, plus the Chair.

Their mandate is restricted to examining and inquiring into the bill referred to them by the House, and presenting a report on it with or without amendments. They are not empowered to consider matters outside the provisions of the bill, nor can they submit comments or recommendations in a substantive report to the House. However, if the House has instructed a committee to prepare a bill, it is empowered under the Standing Orders to recommend in its report the principles, scope and general provisions of the bill and may include recommendations regarding legislative wording.

Subcommittees

RULE 12-12

Appointment	12-12. (1) A committee may appoint from among its members one or more subcommittees.
Membership	12-12. (2) A subcommittee shall be composed of no more than half the membership of the committee.
Quorum	12-12. (3) A subcommittee shall have a quorum of three members.
Procedure	12-12. (4) The rules applicable in the committee shall apply in the subcommittee with such modifications as the circumstances require.
In camera meetings	12-12. (5) Except when considering a bill clause by clause, a subcommittee may meet in camera whenever it so determines and without public notice.
Reports	12-12. (6) A subcommittee shall report to the committee that appointed it.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-12(1): Rule 96(4)

Rules 12-12(2) and (3): Rule 96(5)

Rule 12-12(4): Rule 96(4)

Rule 12-12(5): Rule 92(3)

Rule 12-12(6): Rule 96(4)

COMMENTARY

Rule 12-12 gives a standing or special committee the power to create one or more subcommittees to conduct work on its behalf. The most common example is a Subcommittee on Agenda and Procedure, or “steering committee,” which is usually created at the organization meeting and empowered to make decisions on behalf of the committee with respect to its agenda, to invite witnesses and to schedule hearings. A committee may delegate its powers to a subcommittee, except the power to report directly to the Senate. Any report of a subcommittee is submitted to the parent committee, which must adopt it before deciding to submit it to the Senate. Subcommittees may have a membership of not more than half of the membership of the parent committee, and the quorum is set at three. The general rules on the proceedings of committees also apply to subcommittees. However, subcommittee meetings are exempt from the requirement to meet in public, unless they are conducting a clause-by-clause examination of a bill. In practice, however, subcommittees hearing witnesses always meet in public.

Rules on subcommittees were first adopted on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). On October 25, 1983, a new provision was added regarding the composition of subcommittees (see *Journals of the Senate*, p. 3264). The current wording of rule 12-12 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-12

Speaker’s Ruling: Non-Members at In Camera Subcommittee Meetings

Journals of the Senate, June 7, 1999, pp. 1682-1685:

On Tuesday, April 27, Senator Kenny raised a point of order to object to some recent practices of the Committee on Internal Economy, Budgets and Administration and its subcommittees. Citing rule [12-14], the Senator noted that all Senators are entitled to attend and participate in meetings of any Senate committee even if they are not members. ...

...

Certain subcommittees, usually identified as steering committees that deal with agenda and procedure, routinely meet informally and *in camera* without public notice. Other subcommittees, those involved in conducting special studies, or for the purpose of hearing witnesses, usually meet publicly following public notice. The only time a subcommittee is explicitly required to sit in public session, according to the provisions of rule 92(3)(b), is when it is considering a bill clause-by-clause. For all other occasions, the choice to meet publicly or *in camera* is a decision of the subcommittee itself.

Accordingly, it would seem that the subcommittees of the Committee on Internal Economy, Budgets and Administration have not breached any rule of the Senate by meeting *in camera* and without public notice.

This conclusion provides the basis for what I believe to be the meaning of rule [12-14], understood in the context of other related rules and current practices. As was already explained, rule [12-14] allows senators to attend meetings of committees. The rule, however, does not specify subcommittees which, by practice, have come to fulfil various support functions for the benefit of committees. I believe that senators retain the right to attend and participate in meetings of subcommittees whenever they are meeting publicly. It is less clear that senators have that right when subcommittees are meeting *in camera* for the purpose of considering issues that are subsequently reviewed and endorsed by the committee.

In my view, senators do not have an undoubted right to attend these *in camera* meetings of subcommittees. The opportunity for them to comment on the recommendations that are developed by subcommittees will come when they are considered by the committee.

...

Whereupon the Speaker’s Ruling was appealed.

The question being put on whether the Speaker’s Ruling shall be sustained, it was adopted on the following division ...

Meetings

RULE 12-13	
Organization meeting	12-13. Once the Senate has agreed to the membership of a committee, the Clerk of the Senate shall, as soon as practicable, call an organization meeting of the committee at which it shall elect a chair.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-13: Rule 88

COMMENTARY

Following the dissolution of Parliament or the prorogation of a session, the committees of the Senate cease to function (with the exception of the Standing Committee on Internal Economy, Budgets and Administration, which continues until the membership of its successor is appointed; also note the Intersessional Authority on Conflict of Interest for Senators, discussed under rule 12-27), and must be reconstituted in the new session. A number of steps must be undertaken, pursuant to the *Rules of the Senate* and parliamentary tradition and practice, in order to ensure that the necessary structures and authorities are in place to allow a committee to conduct its business. Many of these steps occur at the first meeting of a committee, known as the “organization meeting.”

Under rule 12-13, the Clerk of the Senate calls the organization meetings for committees “as soon as practicable after a committee has been appointed.” The term “as soon as practicable” is understood to mean that both whips have indicated their agreement to the organization meeting being called.

When a quorum is present at the organization meeting of the committee, the committee clerk calls the meeting to order and presides over the election of the chair. No other matter may be presided over by the clerk. To be elected chair, a senator must be a member of the committee, but does not have to be present. Nominations for a senator to be chair are made by motion, but are not debatable. The Senate does not have the practice of holding elections by secret ballot. Once elected, the chair presides over the remainder of the meeting. If the chair is absent, the clerk of the committee would preside over the election of an acting chair for that meeting.

The second item of business at an organization meeting is usually the election of a deputy chair. After these elections, the committee will typically proceed to consider a series of procedural and administrative motions to facilitate its subsequent operations. Typical motions address matters such as the creation of the steering committee and the publication of committee proceedings.

A rule adopted on December 17, 1867 stated: “Select Committees usually meet in one of the Committee Rooms, at the option of the Senators, who choose their Chairman” (rule 87). On April 6, 1876, the rule was amended to read: “Select Committees meet on the next sitting day after their appointment and choose their Chairman” (rule 92). The present content of rule 12-13 was adopted on November 26, 1975 (see *Journals of the Senate*, p. 592). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-13

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 226-227:

§782. The clerk of the committee conducts the election of the chairman by putting a motion moved by a member of the committee. If this motion fails, successive motions are moved and put until a Chairman is elected.

...

§784. (2) If the Chairman is elected *in absentia*, the clerk of the committee proceeds to the election of an Acting Chairman who may either adjourn the meeting or dispose of the routine business. Standing Committee on Indian and Northern Development, *Minutes of Proceedings and Evidence*, March 7, 1974, p. 1:1.

§785. When a tie vote occurs during the election of the Chairman, the question remains undecided. If the committee cannot reach a decision, the members disperse. The clerk of the committee cannot entertain motions to adjourn. Standing Committee on Miscellaneous Estimates, *Minutes of Proceedings and Evidence*, March 5, 1974, p. 1:4.

...

§787. In joint committees, the clerk of the committee conducts the election, first of a Joint Chairman from the Senate, and then of a Joint Chairman from the House of Commons. In both instances all members of the committee, regardless of their House, may vote on each motion.

RULE 12-14

Participation of non-members **12-14.** Except as otherwise provided, a Senator who is not a member of a committee may attend and participate in its deliberations, but shall not vote.

EXCEPTIONS

Rule 12-28(2): Participation of non-members

Rule 15-7(2): Restrictions if declaration of interest

Rule 16-3(6): Speaking at conferences

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-14: Rule 91(1)

COMMENTARY

While rule 12-14 provides that senators who are not members of a standing or special committee can attend and participate in the committee's meetings, they are not counted in the quorum nor are they allowed to move motions, vote or raise points of order. Non-members will sometimes withdraw as a courtesy from in camera meetings when a committee is considering a draft report, although this is not an obligation under the Rules.

Certain exceptions apply to this rule: non-members cannot attend in camera meetings of the Standing Committee on Conflict of Interest for Senators, except for senators who are the subject of an inquiry, if the committee allows them to attend (rule 12-28(2)); senators who have made a declaration of private interest on a matter cannot attend committee meetings on that matter (rule 15-7(2)); and only senators who are members of a conference with the House of Commons may speak when it meets (rule 16-3(6)). The Speaker has also explained that practice is more restrictive in the case of non-members attending in camera subcommittee meetings (see Speaker's ruling, June 7, 1999, in Related Citations and Extracts for rule 12-12). The Speaker has also cautioned senators on the use of committee meetings held under the guise of private meetings, which could result in the diminished participation of senators (see Speaker's ruling, October 20, 2005, in Related Citations and Extracts for rules 12-15 and 12-16).

A rule adopted on December 17, 1867 stated: "Senators, though not of the Committees, are not excluded from coming in and speaking, but they must not vote; they sit behind those that are of the Committee" (rule 90). The rule was modified on November 19, 1968 (see *Journals of the Senate*, pp. 381-382, effective on August 1, 1969), and again on May 18, 2005 (see *Journals of the Senate*, p. 928). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-14

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 223-224:

§766. (1) Members of the House of Commons who have not been appointed to a committee are entitled to be present at sittings of all committees, unless the House or the committee orders otherwise. But, in accordance with Standing Order 199, they may not vote, move motions nor be a part of any quorum. They may participate during the committee's examination of witnesses but they do so usually at the discretion of the Chairman and the committee.

(2) On the grounds of established usage and courtesy to the committee, they normally retire when the committee is about to deliberate upon its report.

Second report of the Standing Committee on Standing Rules and Orders, *Journals of the Senate*, June 29, 1987, p. 975:

It has been brought to your Committee's attention that certain committees of the Senate have been allowing legal counsel, research assistants and other persons who are not members of the committee to direct questions to witnesses appearing before those committees.

This practice is inconsistent with Senate practice and is a contravention of Rule [12-14] of the *Rules of the Senate*.

Your Committee urges all committee chairmen to conduct committee meetings in conformity with the *Rules of the Senate*, and to ensure that the questioning of witnesses is conducted by Senators only.

(Report considered by the Senate but not adopted)

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 895:

... [A]ny Lord, although not a member of a committee, may attend a meeting of the committee and speak, but he must not attend a meeting while the committee deliberates unless invited by the committee to do, and must not vote.

House of Commons Procedure and Practice, Second Edition, pp. 1018-1019:

The Standing Orders provide that any Member—whether affiliated with a political party or sitting as an independent—may participate in the public proceedings of any committee, of which he or she is not a member, unless the House or the committee in question orders otherwise. The Standing Orders specifically exclude a non-member from voting, moving motions or being counted for purposes of a quorum.

...

With the exception of joint committees, the Standing Orders do not provide for the participation of Senators in meetings of committees of the House of Commons.

RULES 12-15 and 12-16	
Notice of meetings	12-15. (1) A public notice shall be posted of every committee meeting.
Meetings public	12-15. (2) Except as otherwise provided, all meetings shall be held in public. Unless otherwise ordered, the public may attend a public meeting of a committee or a subcommittee. <i>EXCEPTIONS</i> <i>Rule 12-16(1): In camera meetings</i> <i>Rule 12-16(2): In camera meetings of joint committees</i> <i>Rule 12-28(1): In camera meetings</i>
In camera meetings	12-16. (1) Except as provided in subsection (2) and elsewhere in these Rules, a committee may meet in camera only for the purpose of discussing: <ul style="list-style-type: none"> (a) wages, salaries and other employee benefits; (b) contracts and contract negotiations; (c) labour relations and personnel matters; and (d) a draft agenda or draft report. <i>EXCEPTION</i> <i>Rule 12-28(1): In camera meetings</i>
In camera meetings of joint committees	12-16. (2) A joint committee may meet in camera whenever the joint committee so determines.

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 12-15(1): Rule 92(1)
- Rule 12-15(2): Rules 92(1) and 92(5)
- Rule 12-16(1): Rule 92(2)
- Rule 12-16(2): Rule 92(4)

COMMENTARY

These rules provide that all committee meetings require public notice and are held in public. Certain exceptions are made for committees to meet in camera to discuss personnel matters, and to draft agendas and reports (rule 12-16(1)). Rule 12-16(2) specifies that a joint committee can meet in camera at any time it so decides. Subcommittee meetings are also exempt from the requirement to meet in public, unless they are conducting clause-by-clause examination of a bill (rule 12-12(5)). In practice, however, subcommittees hearing witnesses always meet in public (see ruling of June 7, 1999 quoted in the text on rule 12-12(5)). A final exception is made for meetings of the Standing Committee on Conflict of Interest for Senators, which are held in camera unless a senator who is the subject of an inquiry or investigation requests that a meeting be in public, and the committee agrees to that request (rule 12-28(1)).

Appendix IV of the Rules contains extracts from the fourth report of the Standing Committee on Privileges, Standing Rules and Orders, presented on April 13, 2000, and adopted on June 27, 2000. The extracts cover procedures for dealing with the unauthorized disclosure of draft committee reports and other confidential documents or proceedings. Reference can also be made to other portions of the report in the Related Citations and Extracts below.

On December 17, 1867, the following rule was adopted: “No other persons, unless they are commanded to attend, are to enter at any Committee of the Senate, or at a Conference” (rule 91). On November 19, 1968 (see *Journals of the Senate*, p. 381, effective on August 1, 1969), the rule was amended to read: “Members of the public may attend any meeting of a Committee of the Senate, unless the Committee otherwise orders” (rule 73). On June 18, 1991 (see *Journals of the Senate*, pp. 180-181), the present content of the rule was adopted, without the provisions regarding meetings of the Standing Committee on Conflict of Interest for Senators, which was added on May 18, 2005 (see *Journals of the Senate*, p. 928). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 12-15 and 12-16

Fourth report of the Standing Committee on Privileges, Standing Rules and Orders, *Journals of the Senate*, April 13, 2000, pp. 537-538:

30. Your Committee believes that new measures and policies should be adopted by all Senate committees to preserve the confidentiality of draft reports and other confidential or *in camera* proceedings. In this regard, we suggest that serious consideration be given to the following measures:

(a) that draft reports and other confidential documents be individually numbered, with the number shown on each page;

(b) that each numbered report and other confidential document be assigned exclusively to an individual, and always given to that individual, and this should be carefully recorded;

(c) that if Senators are to be given draft reports or other confidential documents in advance of a meeting, or are to take such documents away after a meeting, they be required to sign for them. Certain documents, such as *in camera* transcripts, should only be able to be consulted in the committee clerk’s office, with the chair’s approval;

(d) that the names of all persons in the room at *in camera* meetings to discuss draft reports - including assistants, research staff, interpreters and stenographers - be recorded, preferably on the record; and

(e) that the chairs of committees ensure that all Senators and staff are cautioned and reminded of the nature of confidential and *in camera* proceedings and documents, the importance of protecting them, and the consequences of breaching such confidentiality.

(Report was adopted on June 27, 2000. Additional excerpts are included in Appendix IV of the Rules.)

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 236-237:

§850. (2) The purpose of *in camera* sittings is to allow members to feel free to negotiate, discuss, deliberate and, sometimes, compromise without the glare of publicity which may add to the difficulties of agreeing to reports when it is desirable that these proceedings be treated in confidence. The final decision of whether to sit *in camera*, however, rests with the members themselves. *Journals*, June 21, 1955, pp. 781-82.

§851. When a committee chooses to meet *in camera*, all matters are confidential. Any departure from strict confidentiality should be by explicit committee decision which should deal with what matters should be published, in which form and by whom. Committees should make clear decisions about the circulation of draft reports, the disposition of evidence and the publication of their *Minutes*. Equally, committees should give careful consideration to the matters that should be dealt with *in camera* and matters that should be discussed in public. Seventh Report of the Standing Committee on Elections, Privileges and Procedure. *Journals*, December 18, 1987, pp. 2014-16.

La procédure parlementaire du Québec, Third Edition, p. 534:

All committee meetings, except deliberative meetings, are public. However, a committee may decide to meet *in camera* on a motion carried by a majority of the members from each parliamentary group. Depending on the terms of the motion, the decision may apply to only part of a meeting or even to only one particular testimony.

When a committee decides to meet behind closed doors, the testimony heard, documents received and deliberations held are secret and may be disclosed only to the extent and on the conditions determined by the concerned parties and the committee on a motion adopted unanimously by the members. A motion allowing total or partial disclosure must be accompanied by the written consent of the concerned parties. The terms of the motion and of the consent are public.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 816:

Select committees (and their sub-committees, except as the committee otherwise orders) have the power to admit the public during oral evidence sessions (Standing Order No 125). The effect of this Standing Order is that, unless a resolution is passed to allow the admittance of the public (formally 'strangers'), evidence has to be held in private. Many committees make a practice of passing a general resolution at their first meeting, so as to ensure that their evidence is held in public and the great majority of evidence is now heard in public. Where the public is admitted, meetings are open to the press and media...

Speaker's Ruling: No Notice for Committee Meeting; Private Meeting

Journals of the Senate, October 20, 2005, pp. 1217-1219:

... Senator LeBreton contends that the [Standing Senate Committee on National Security and Defence] met Monday and Tuesday morning without issuing a notice as required by rule [12-15(1)]. In addition, the Senator explained that these committee meetings were conducted without simultaneous interpretation and outside the assigned time-slot allocated to the committee. In

consequence, the Senator argued that she had been deprived of her rights under rule [12-14] to attend and participate in those meetings, even though she is not a member of this committee.

By way of response, Senator Kenny, who is the Chair of the National Security and Defence Committee, explained that the meetings beginning Monday and Tuesday morning were not in fact committee meetings. Instead, they were private meetings involving a senator and a group of individuals assisting him and some members of the Library of Parliament in preparing research. ...

...

... As was mentioned during the exchanges that took place on the question of privilege, the Senate uses its committees to conduct much of its business to examine bills and inquire into different governmental policies. An adjunct to this work involves the use of subcommittees and, as well, informal private meetings with individuals or groups. Both are common and necessary practices that enable senators to more effectively carry out their responsibilities.

At the same time, there is a need to maintain a certain balance especially with respect to the use of private meetings whose objectives are designed to serve the broader interests of the committee. A fundamental purpose of the rules and practices followed in the Senate is to provide for openness and accessibility. For this reason, the rules require that public notice be given, interpretation services provided, and proper records of decisions kept. It is also why rule [12-14] allows Senators who are not members of the committee to attend and participate. It should be noted that subcommittees can and do meet while the Senate is sitting and without public notice. However, in their actions and decisions, subcommittees are directly accountable to their main committee which operates in full public view. This is not the case with respect to so-called private meetings.

What needs to be asked is whether the use of private meeting can cross the line and become in substance, if not in reality, a meeting of a committee or subcommittee in disguise. If committee meetings are held under the guise of private meeting, there is a serious possibility that the Senate could lose control of its ability to manage its affairs effectively. A proliferation of informal and unofficial private meetings could easily conflict with other committee work or even with the sittings of this Chamber itself. The substantial risk of diminished participation by senators could also seriously compromise the Senate's ability to conduct its affairs properly and thoroughly. Seen in this perspective, the abusive use of private meetings could constitute a grave and serious breach under the terms of rule [13-3(1)(c)] and lead to a finding of a prima facie breach of privilege.

...

As Speaker, I am reluctant to become involved in regulating the affairs of committees. It seems to me that there are other more appropriate mechanisms available to do this. With respect to the issue raised in Senator LeBreton's question of privilege, committees themselves could consider how they might standardize the role of subcommittees in performing the kind of important preparatory work guiding their research efforts. This would likely reduce the need for the sort of private meetings complained of in this question of privilege. It might also be useful for the Rules Committee to look into the matter if it thinks that certain practices need to be more formally regulated. ...

Speaker's Ruling: Reference to Proceedings of In Camera Meeting

Journals of the Senate, March 8, 2012, p. 947:

Yesterday, a point of order was raised by the Honourable Senator Kenny. His objection related to remarks made in the chamber earlier in the week. Among other things, it was alleged that these remarks touched on proceedings of an in camera committee meeting held several months ago in a previous session. Little was said during discussion of the point of order to assist the chair in identifying what might have actually happened. It is not the role of the chair to delve into what may or may not have been said in a meeting held so long ago. Nonetheless, I do wish to take this opportunity to remind honourable senators that they should be careful to avoid referring to proceedings or documents from in camera meetings. This limitation must be kept in mind. I consider the matter closed.

(Also see Speaker's ruling of June 7, 1999, in Related Citations and Extracts for rule 12-12 concerning the attendance of non-members at subcommittee meetings. Also refer to Speaker's rulings of September 14, 1999 (p. 1893); October 13, 1999 (p. 30); November 24, 1999 (p. 151); December 12, 2002 (p. 424); and May 27, 2003 (p. 851), on the unauthorized disclosure of committee reports.)

RULE 12-17

Meetings without quorum	12-17. A quorum is required whenever a committee makes a decision. However, a Senate committee may authorize the chair to hold meetings without a quorum for the purpose of receiving and publishing evidence.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-17: Rule 89

COMMENTARY

A quorum is the minimum number of members required for a committee to transact business. A committee cannot take decisions or adopt motions without the presence of a quorum. However, rule 12-17 permits committees to hold meetings when a quorum is not present for the purpose of receiving evidence from witnesses and to publish that evidence. A committee must first adopt a motion to invoke this power. It is not uncommon for a committee to adopt a provision requiring that a member from both the government and the opposition be present for such meetings. In practice, blanket permission to hold such meetings is normally granted to the chair at the committee's organization meeting.

For further information on quorums in committee, see rule 12-6.

This rule was adopted on November 26, 1975 (see *Journals of the Senate*, p. 592). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-17

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 230:

§808. (1) Under the terms of Standing Order 118(2), a committee may adopt a motion to reduce its quorum for the purpose of sitting to receive evidence from witnesses and to have that evidence printed.

(2) Under the authority of this motion the Chairman may authorize the printing of appendices to that day's *Minutes of Proceedings and Evidence*.

(3) No motion may be put by the Chairman (although notice may be given of proposed motions) nor divisions taken during committee sittings held under a reduced quorum.

RULE 12-18

Meetings on days Senate sits **12-18.** (1) Except as otherwise ordered by the Senate, a Senate committee may meet on days the Senate sits, but it shall not meet during a sitting of the Senate.

Meetings on days the Senate is adjourned **12-18.** (2) Except as otherwise provided, a Senate committee may meet when the Senate is adjourned:

- (a) for more than a day but less than a week, provided that notice was given to the members of the committee one day before the Senate adjourned; or
- (b) for more than a week, provided that the meeting was either:
 - (i) by order of the Senate, or
 - (ii) with the signed consent of the Leaders of the Government and Opposition, or their designates, in response to a written request from the chair and deputy chair.

EXCEPTION

Rule 12-29: Adjournment of the Senate

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-18: Rules 95(2), (3) and (4)

COMMENTARY

Committee meetings are scheduled around the sittings of the Senate and meetings of the party caucuses, and therefore regularly take place in the mornings, late afternoons and evenings. Rule 12-18 provides that committees can meet on days that the Senate sits but not while it is sitting, unless there is specific permission to do so. This limitation also applies when the sitting of the Senate is suspended (see decision of June 5, 2012, cited below). When a committee holds meetings outside the parliamentary precinct, it is understood that the power to adjourn from place to place includes the power to sit while the Senate is sitting.

The rule also provides that when the Senate is adjourned for less than a week, committees may meet if notice was given to members at least one day prior to the adjournment of the Senate. When the Senate is adjourned for more than a week, committees can only meet if they were given specific permission by the Senate, or if the Government and Opposition Leaders both give written agreement to a written request from both the committee chair and deputy chair. An exception is made for the Standing Committee on Conflict of Interest for Senators, which can sit during any adjournment of the Senate (rule 12-29).

The *Senate Administrative Rules* (see citation below) provide that rooms and facilities are reserved for committees to meet on a regular schedule.

This rule was first adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137). It was changed on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). Since then, amendments have been adopted regarding Senate adjournments exceeding one week (November 7, 2002, *Journals of the Senate*, p. 176), and relating to the Standing Committee on Conflict of Interest for Senators (May 18, 2005, *Journals of the Senate*, p. 928). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-18

Senate Administrative Rules (2004), Chapter 5:03:

3. The Senate Administration, acting in consultation with the leadership of the parties, shall assign a meeting schedule and reserve a room to be made available for the use of each Senate committee and subcommittee that meets regularly.
4. (1) Subject to such limits as may be established by the Internal Economy Committee, every Senate committee is entitled to order translations of documents that the Committee directs to be distributed to members.

(2) A Senate committee is entitled to interpretation services at its meetings.
5. Every standing committee is entitled to have its proceedings recorded and reproduced in their entirety in each official language.

Odgers' Australian Senate Practice, Thirteenth Edition, p. 511:

Originally there was a complete prohibition on committees meeting while the Senate was sitting, but this was significantly modified. The prohibition was based on two principles: that a senator's duty lay first with the Senate and should not be subordinated to a lesser duty; and that it was an infringement of the rights of individual senators to participate in debates in the Senate and meetings of committees if the two were scheduled concurrently. From early days, however, the Senate granted permission, in certain circumstances, for committees to meet while the Senate was sitting. In 1987 the prohibition was modified to allow committees to deliberate in private session provided that decisions were not taken unless all members were present.

Speaker's Ruling: Committee Meetings When a Committee of the Whole Sitting or When Sitting Suspended

Journals of the Senate, June 5, 2012, p. 1343:

On May 31, 2012, the Honourable Senator Ringuette raised a question about the fact that the National Finance Committee had met at the same time as the Committee of the Whole considering Bill C-39. A similar objection was raised on March 14, 2012, when a Committee of the Whole was considering Bill C-33 at the same time a meeting of the Banking, Trade and Commerce Committee was scheduled.

This complaint involves conflicting priorities, obligations, and preferences, a feature that often confronts us as parliamentarians. In this case, for this matter to have merit, it would be necessary to establish that the sitting of the Senate, the Committee of the Whole, or the standing committee was in any way irregular.

In the normal course of events, the standing and special committees are not permitted to sit when the Senate is sitting, according to rule [12-18(1)]. [Appendix I] clearly defines a sitting as starting [with] prayers and ending with adjournment, so this prohibition holds when the Senate is sitting, when a Committee of the Whole is meeting, or when the Senate is suspended for the dinner break. Exceptions to rule [12-18(1)] occur, however, when committees are given permission to meet even though the Senate may be sitting.

With respect to the concern raised on March 14, that day was a Wednesday, and under the order adopted by the Senate on October 18, 2011, committees scheduled to meet after 4 p.m. on a Wednesday can do so, even if the Senate is sitting. The more recent incident of May 31 related to a meeting of the National Finance Committee dealing with the subject-matter of Bill C-38. The order of the Senate of May 3, specifically authorized the National Finance Committee to meet while the Senate was sitting, also suspending the application of rule [12-18(1)].

Without the special permissions granted by these motions and authorizing a suspension of rule [12-18(1)], Senator Ringuette's objection would be well-founded. The Senate had, however, adopted such motions, leaving it to the discretion of the committees involved as to how and when the power to sit despite rule [12-18(1)] would be used. That is, if the committees involved preferred not to sit while the Senate is sitting — including when a Committee of the Whole is meeting — they had the right not to sit. If, however, the committees chose to sit, they were allowed to do so. In such circumstances it is a matter for individual senators whether they wish to attend the committee or the proceedings in the Senate Chamber.

The committees in question exercised powers granted to them by the Senate.

Speaker's Ruling: Committee Meetings Outside Usual Time Slot

Journals of the Senate, November 3, 2003, pp. 1299-1300:

In considering my decision, I am mindful that I have been urged to take into account the customs, practices and usages of the Senate. I am asked not to rely exclusively on the *Rules of the Senate*. There is no doubt that our way of doing things in the Senate does not depend just on the written rules.

What goes on here and how we work is due, in large measure, to cooperation, collegiality and mutual respect. The Senate traditionally prides itself on its ability to work through consensus when it can. Even when it cannot, it is rare for the Senate to give way to partisan bickering and harsh confrontations pitting the Government against the Opposition and possibly others in some cases in a show of force.

At the outset of his point of order, Senator Kinsella recognized the relative importance of practice in comparison to the rules. As he put it, “unless there is an explicit rule to trump a practice, the custom must be respected.” This is good advice and I have tried to follow it. At the same time, I have noted that several Senators, including both Leaders, have recognized that no explicit rules of the Senate were violated when the Rules Committee held its meeting last Thursday morning. The issue, as Senator Lynch-Staunton said, is one of respect and courtesy and this goes back to the usual approach the Senate takes to conducting its business. As Speaker, however, I do not have the authority to impose cooperation. This is something that can only be achieved by Senators themselves. Whatever the merits of the grievance, my task is to interpret the rules as best I can and to exercise what authority I have in the best interests of the Senate.

Based on the arguments that were presented, there is no reason for me to intervene in this extraordinary way to nullify the proceedings of the Thursday morning meeting of the Rules Committee. Indeed, I do not believe that I have such authority. So far as I can assess it, there was nothing “illegal” about the meeting of the Rules Committee. The proper rules have been observed. Notice of the meeting was given and quorum was present. The Opposition has indicated its objections, and several Senators have complained about the conflicts that arose from simultaneous and overlapping committee meetings. Such conflicts are indeed frustrating and can lead to a genuine sense of grievance. However, there is nothing that I can do as Speaker since the *Rules of the Senate* were not breached.

Comments have been made that the Opposition whip did not consent to the Rules Committee meeting outside of its time slot. It has been acknowledged that the consent of both whips is usually obtained before a committee holds a meeting outside its time slot. This is a practice or custom that has developed in recent years to accommodate the interests of the Government and the Opposition as well as Senators generally. It is not a practice that involves the Speaker. I should also observe that it is not a practice that has been incorporated into the Senate’s Rules. The Senate has not sought to formalize this practice by making a part of our Rules. It is thus beyond the scope of my authority to enforce.

As was mentioned last Thursday, committees are generally masters of their own procedures. *Beauchesne* 6th edition at citation 760(3) states that the Speaker of the other place has ruled many times “that it is not competent for the Speaker to exercise procedural control over committees.” I feel that this is no less true here in the Senate absent any violation of an explicit Senate rule.

RULE 12-19

Power to adjourn

12-19. (1) A committee may adjourn from time to time.

Meetings outside the parliamentary precinct

12-19. (2) A committee may travel and adjourn from place to place outside the parliamentary precinct if authorized to do so by the Senate.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-19: Rule 95(1)

COMMENTARY

Rule 12-19 gives committees the power to hold a series of meetings on its orders of reference and envisions the possibility of travel, although this requires a grant of power from the Senate.

Practice is that the adjournment of a committee meeting is usually done by the chair with the tacit agreement of the members. The Speaker has, however, noted that to “assist the orderly flow of proceedings it would be desirable for the chair, in the absence of a formal motion to adjourn, to verify whether any senator has business to bring forward at the end of a meeting. Similarly, committee members who wish to raise matters should clearly signal this to the chair. This should help the committee to function better and also help to prevent any premature adjournment” (see ruling below).

The power to travel must be granted by the Senate. In the case of travel for a special study, the power is obtained through a budget report requesting both funds and any necessary powers. In the case of travel for legislative work, which is less common, the power must be requested before the committee adopts a budget for travel. The power to travel is granted separately for each special study, but it is granted for legislative work in general. Once granted, the power is valid for the entire session. Committee travel may either be for public hearings (inside Canada) or for fact-finding work (inside Canada or outside the country). When travelling in Canada, a formal meeting of a committee has the same status as a meeting within the parliamentary precinct and includes all the services (e.g., interpretation and transcripts of the evidence). Such committee meetings have the full protection of parliamentary privilege, but since Parliament’s jurisdiction does not extend beyond Canada’s borders, public meetings cannot be held outside the country, and all international travel is by definition fact-finding work. Committees may also conduct fact-finding work within Canada, which usually involves site visits and private meetings without transcript.

This rule was first adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137), and amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-19

Senate Administrative Rules (2004), Chapter 3:06:

1. (1) The budget of a select [i.e., standing or special Senate] committee for expenses relating to the study of bills, the subject-matter of bills, or estimates shall be:
 - (a) adopted by the committee;
 - (b) submitted by the committee to the Internal Economy Committee for its consideration;
 - (c) adopted or amended by the Internal Economy Committee; and
 - (d) presented to the Senate by report of the Internal Economy Committee.

(2) A select [i.e., standing or special Senate] committee must obtain the power to retain the services of independent contractors by resolution of the Senate before the committee adopts a budget under subsection (1) to do so.

2. (1) A committee budget for expenses not referred to in section 1 shall be:

- (a) adopted by the committee;
- (b) submitted by the committee to the Internal Economy Committee for its consideration; and
- (c) presented to the Senate by report of the committee, with the budget and a report of the Internal Economy Committee appended.

(2) A budget prepared for the purposes of subsection (1) shall contain a general estimate of the total cost of a special study and a detailed estimate of the special expenses of the committee for the study for the fiscal year.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 231:

§813. (1) Committees may be authorized by the House to adjourn from place to place as may be found expedient, or meet at a particular place, but no committee can sit after a prorogation. Sir John Bourinot, *Parliamentary Procedure and Practice in the Dominion of Canada*, (4th ed., 1916) p. 467.

(2) Committees frequently are given power to travel and hold sittings in a particular place, or, in some circumstances, in such places as the committee may decide.

(3) When authorized by the House, committees may sit and hear evidence outside the precincts of the House. In such cases, unless the committee has been previously authorized to adjourn from place to place, it must obtain the leave of the House for that purpose. *Journals*, October 21, 1976, p. 49. *Journals*, May 6, 1970, p. 752.

(4) The exact place which the committee is to meet need not be specified in the House Order.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 815:

For the most part select committees travelling overseas do so for the purpose of gathering information through informal visits and private discussions with representatives of official and other organizations in the countries visited. In such cases, no formal evidence is heard, nor are the meetings recorded in the official formal minutes of the committee concerned though it is common practice for the staff of the committee to prepare a memorandum recording exchanges and information received during a visit, and this may be published with a report.

Speaker's Ruling: Adjournment of a Committee

Journals of the Senate, October 30, 2012, pp. 1670-1671:

The fundamental issue of the question of privilege is whether the chair of a committee has the power simply to end a meeting. Here in the Senate, adjournment always occurs following the adoption of a motion or by the operation of the Rules. The Speaker does not act unilaterally. Even in a case of grave disorder, rule 2-6(2) puts limits on how long the Speaker can suspend the sitting.

Rule 12-20(4) states that “[n]o Senate committee shall adopt procedures inconsistent with the Rules or practices of the Senate,” so the limitations on the Speaker’s power would, with modifications required by the circumstances, apply to committees. This conclusion is supported by reference to page 1087 of the second edition of *House of Commons Procedure and Practice*, which notes that “[t]he committee Chair cannot adjourn the meeting without the consent of a majority of the members, unless the Chair decides that a case of disorder or misconduct is so serious as to prevent the committee from continuing its work.”

In practice, however, the consent of the committee to adjourn is usually given implicitly, rather than explicitly. To again cite page 1087 of *House of Commons Procedure and Practice*, “most meetings are adjourned . . . informally, when the Chair receives the implied consent of members to adjourn”. This also holds in Senate committees, and may have contributed to misunderstanding in the situation at issue. To avoid such incidents, and to assist the orderly flow of proceedings, it would be desirable for the chair, in the absence of a formal motion to adjourn, to verify whether any senator has business to bring forward at the end of a meeting. Similarly, committee members who wish to raise matters should clearly signal this to the chair. This should help the committee to function better and also help to prevent any premature adjournment in the future.

Committee Procedures

RULE 12-20	
Proceedings in committee	12-20. (1) In Senate committees:
Addressing chair	(a) Senators wishing to speak shall address the chair;
Seconder not required	(b) a motion does not require a seconder;
Motion defeated when votes equal	(c) all motions shall be decided by majority vote, including the vote of the chair, and when the votes are equal, the motion is defeated; and
Notice not required	(d) notice of a motion or an amendment shall not be required.
Before recorded vote	12-20. (2) Before a recorded vote in committee, the chair shall announce the names of Senators present who have made and not retracted a declaration of private interest on the matter to be voted on, and their names shall not be called except to abstain.
Clause-by-clause consideration of bills	12-20. (3) Except with leave of its members present, a committee shall not dispense with clause-by-clause consideration of a bill.

Inconsistency with the Rules and practices of the Senate	12-20. (4) No Senate committee shall adopt procedures inconsistent with the Rules or practices of the Senate.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-20(1): Rules 96(1), (3) and (6)

Rule 12-20(2): Rule 65(4)

Rule 12-20(3): Rule 96(7.1)

Rule 12-20(4): Rule 96(7)

COMMENTARY

Rule 12-20 provides for many of the fundamental rules governing the proceedings of standing and special committees.

In committee, senators address the chair, as is the case in a Committee of the Whole (see rule 12-32(3)). This is in contrast with the manner of speaking in the chamber, where a senator addresses the rest of the senators (see rule 6-1). The practices regarding debate in committee are more informal than in the chamber – senators may speak more than once, and there are no formal time limits. The chair will, however, usually attempt to ensure that all senators who wish to speak or to question a witness have the opportunity to do so. While senators who are not members of a committee can generally participate in its work (see rule 12-14), situations may arise in which the chair attempts to ensure that members, who will actually have to decide on the matter, have the opportunity to question witnesses first.

In committee, a motion may be proposed without notice and without a seconder, unlike the procedure in the chamber (see rules 5-5, 5-6, 5-7 and 5-11). All motions are decided by majority vote. Like the Speaker of the Senate (see rule 9-1), the chair of a committee may vote on a question. If the chair does vote, his or her name is called first. In the case of a tied vote, the motion is defeated. The chair does not have a casting vote.

Rule 12-20(2) provides that, before a vote, the chair will announce the names of senators then present who have made a declaration of private interest on the matter to be voted on. Their names will not be called in the vote except to abstain. The same procedure is followed in the Senate (see rule 9-7(1)). For more information on the declaration of private interest and the *Conflict of Interest Code for Senators*, see rule 15-7. In practice, however, such a situation should never arise in committee, since rule 15-7(2)(b), reflecting provisions of the Code, requires that a senator who has made a declaration of private interest on a matter withdraw from committee proceedings on the issue. The fact that this provision is included in the Rules means that the chair has authority to deal with the matter as an issue of order (under rule 2-1(2), matters relating to the Code do not fall under the authority of the Speaker – and therefore the chair in committee – unless “expressly incorporated in the *Rules of the Senate*”).

Regarding rule 12-20(3), after a point of order in 2005 concerning a motion in committee to dispense with clause-by-clause consideration of a bill, the Speaker ruled that a decision taken by a committee could not be undone, but cautioned that “If the committee seeks to suspend a rule or practice with respect to clause-by-clause, the committee might consider the advisability of doing it through leave, rather than by

motion, to ensure that no rights to which a senator is entitled are unduly infringed” (see Speaker’s ruling, May 18, 2005, cited below). Subsequently, the Standing Committee on Rules, Procedures and the Rights of Parliament recommended a new rule on this matter, which was adopted by the Senate on June 14, 2005 (see *Journals of the Senate*, p. 999). The rule provides that clause-by-clause consideration of a bill must take place unless all members of the committee present agree to dispense with it. Grouping clauses for consideration would also require leave of the members present. The Speaker has noted that if a committee decides to recommend to the Senate that a bill should not be further proceeded with (see rule 12-23(5)), it would not be necessary to consider the bill clause-by-clause (see ruling of December 1, 2010, below).

Although committees are masters of their own proceedings, rule 12-20(4) establishes that a committee should not adopt any special procedure which is inconsistent with the practices and usages of the Senate itself, unless the committee first obtains authority from the Senate. As explained by the Speaker “While committees often operate informally, they remain bound by the *Rules of the Senate*. Committees cannot follow any procedure whatsoever that they set for themselves. The phrase *mutatis mutandis*, in the context of our practices, means that the Rules apply in committee, unless they contain an exemption or there is a clear reason why they cannot. While committees are often said to be ‘masters of their own proceedings,’ this is only true insofar as they comply with the *Rules of the Senate*” (see *Journals of the Senate*, September 16, 2009, p. 1234; the phrase *mutatis mutandis* in what is now rule 1-1(2) has since been replaced by “with such modifications as the circumstances require,” which does not change the meaning).

The general provisions of this rule were adopted on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). An amendment pertaining to clause-by-clause consideration of bills was adopted on June 14, 2005 (see *Journals of the Senate*, p. 999). Another amendment was adopted on October 7, 2009 (see *Journals of the Senate*, p. 1325), following recommendations of the Committee on Rules, Procedures and the Rights of Parliament. The recommendations provided for the removal of previously existing provisions relating to “pecuniary interest,” dating from 1906 and now covered under rule 15-7 dealing with declarations of private interest, and for the addition of the requirement for the chair to announce the names of senators who made a declaration of private interest on the question being decided. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), and included a clarification that notice of a motion or amendment is not required in committee.

RELATED CITATIONS AND EXTRACTS – RULE 12-20

“Forms and Proceedings,” *Rules of the Senate* (1990), p. 71:

Voting in a select [i.e., standing or special Senate] committee, in practice, is by voice or a show of hands, and the result of an equal vote is deemed to be in the negative. A recorded vote is taken if the committee so decides. There is no recorded vote in Committee of the Whole.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 223, 240:

§762. Proceedings in committee are more relaxed in nature than those in the House as the requirements which must be observed in the Chamber are not so strictly enforced when Members sit as committees. *Journals*, March 26, 1971, pp. 453-54.

...

§870. (1) It is the opinion of the committee, as a committee, not that of the individual members, which is required by the House, and, failing unanimity, the conclusions agreed to by the majority are the conclusions of the committee.

Conflict of Interest Code for Senators (2012):

12. (1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall make a declaration regarding the general nature of the private interest. The declaration can be made orally on the record or in writing to the Clerk of the Senate or the clerk of the committee, as the case may be, but shall be made no later than the first occasion at which the Senator is present during consideration of the matter. The Speaker of the Senate shall cause the declaration to be recorded in the *Journals of the Senate* and the Chair of the committee shall, subject to subsection (4), cause the declaration to be recorded in the Minutes of Proceedings of the committee.

...

13. (2) A Senator who has made a declaration under section 12 regarding a matter that is before a committee of the Senate of which the Senator is a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings, but the Senator need not resign from the committee.

(3) A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before a committee of the Senate of which the Senator is not a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings.

(4) A Senator who is required by section 12 to make a declaration but has not yet done so may not participate in debate or any other deliberations on the matter and, in the case of committee proceedings, the Senator must withdraw from the committee for the duration of those proceedings.

House of Commons Procedure and Practice, Second Edition, p. 219:

If a matter in which a Member has a private interest is being discussed in the Chamber or in a committee of which he or she is a member, the Member must, if present during consideration of the matter, disclose at the first opportunity the general nature of the matter either orally or in writing to the Clerk of the House. The disclosure is recorded in the *Journals* and forwarded to the Commissioner who files it with the Member's public disclosure statements.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 808:

In any proceeding of a select committee a Member must disclose any relevant pecuniary interest or benefit of whatever nature, whether direct or indirect, that he may have had, may have or may be expecting to have. Although this obligation is expressed in terms of pecuniary interests, it is taken in practice to include relevant interests of a non-financial nature, such as membership of a trade union or pressure group. Any such interest is entered in the formal minutes of the committee. It is additional to the requirement to register interests in the Register of Members' Financial Interests.

Odgers' Australian Senate Practice, Thirteenth Edition, p. 482:

Standing order 27(5) provides that a senator shall not sit on a committee if the senator has a conflict of interest in relation to the inquiry of the committee. This standing order was the subject of a statement by President Beahan on 24 February 1994. It had been suggested that a senator had a conflict of interest because he had written newspaper articles critical of a committee of which he was

a member, without identifying himself as such. The President indicated that the standing order applies to a situation in which a senator has a private interest in the subject of the committee's inquiry which conflicts with the duty of the senator to participate conscientiously in the conduct of the inquiry, an example being a senator holding shares in a company, the activities of which are under inquiry. There is no precedent of the Senate enforcing this rule by removing a chair or member of a committee, or disagreeing with an appointment.

Annotated Standing Orders of the House of Commons, Second Edition, p. 405:

Since committees are regarded as creatures of the House, Standing Order 116 provides that the rules of the House have force in committees so far as they are applicable. However, those respecting the election of a Speaker (Committee Chairs), the seconding of motions, the number of times a Member may speak and the length of such speeches do not apply in any committee.

Speaker's Rulings: Obligation to Consider Bills Clause-by-Clause

The following rulings deal with the issue of a committee's obligation to consider a bill clause-by-clause. Before such a provision was included in the Rules, a ruling in 1990 maintained that a point of order on this matter could not prevent a bill from being proceeded with. Another ruling in 2005 suggested that if a committee wished to forego clause-by-clause consideration of a bill, this should be done by leave of all members to ensure that no senator's rights are unduly infringed. A ruling in 2010 explained that it would not be necessary for a committee to consider a bill clause-by-clause if it first decided to recommend against the bill pursuant to rule 12-23(5).

Journals of the Senate, September 26, 1990, p. 1250:

The Chair is not being asked to decide whether or not Senate committees should study bills clause by clause. It is more proper that this question be decided by our Standing Rules and Orders Committee and by the Senate as a whole than by the Speaker. The Chair is being asked, however, to decide the question that because a certain practice or rule was not followed in a committee, should a subsequent proceeding flowing from the deliberations of the Committee be delayed?

As I ruled earlier today on the point of order of Senator Ottenheimer, it does not appear feasible that a proceeding can be prevented from happening simply because a question of privilege, or in this case a point or order, has been raised regarding alleged infractions of the rules or practices of the Senate by a committee or its Chairman. If contempt of the Senate or of its rules has occurred, the Senate can take certain actions to deal with it. I cannot uphold the point of order raised by Senator Murray.

Journals of the Senate, May 18, 2005, p. 925:

The purpose of the reference of a bill to a committee is to allow for detailed examination of the bill, which usually includes clause-by-clause as well as the hearing of witnesses. As Senator Banks noted in citing *Marleau and Monpetit*, clause-by-clause is a practice that allows members to propose amendments to a bill as the committee proceeds through its consideration of the bill.

In making my ruling, I need to consider various issues. A motion that has the effect of preventing members from the ability to move amendments, a fundamental purpose of the reference by the Senate, strikes me as irregular. However, it is difficult for me, as Speaker, to take retroactive action on the proceedings that appear to have taken place in the committee, given that the Senate adopted yesterday the order to proceed to third reading today.

It is important that all senators be mindful of the right possessed by each senator who is a member of a committee to propose amendments as they see fit. A motion that prevents senators from exercising this right seems to me to be out of order. It might be contrary to rule [12-20(4)] of the *Rules of the Senate*.

If the committee seeks to suspend a rule or practice with respect to clause-by-clause consideration, the committee might consider the advisability of doing it through leave, rather than by motion, to ensure that no rights to which a senator is entitled are unduly infringed.

As I mentioned, I do not feel I have the authority to undo decisions that have already been taken by the Senate. At the same time, I remind senators that they still retain the right to propose amendments to clauses in the bill during third reading debate. It is my ruling, therefore, that I cannot undo what was done by the committee and already accepted by the Senate. Debate on third reading can begin in the full knowledge that senators have the right to move amendments to clauses of the bill.

It is my personal feeling that the Rules Committee could examine the advisability of reviewing the practice, that unless leave is granted by members of the committee to dispense with the procedure, committees are bound to examine bills that are referred to them clause-by-clause.

Journals of the Senate, December 1, 2010, p. 1034:

There are relatively few instances in which Senate committees have used the process allowed under rule [12-23(5)]. Research has identified eight cases since 1975, of which the 1998 example of Bill C-220 is the most recent. According to the available records, committees have always made the decision to report against a bill without starting clause-by-clause study. That is to say, the basic issue of whether a committee considers that a bill should be proceeded with is decided, either explicitly or, most often, implicitly, before clause-by-clause. If the committee decides to make a recommendation under rule [12-23(5)], it does not ever reach the clause-by-clause stage.

...

A review of the blues of the meeting of the Banking Committee on November 25, indicates that, although the term “dispense with clause-by-clause” was used at one point, this was quickly corrected to “not proceed with clause-by-clause”. A motion to that effect was put to a recorded vote and carried. A report was then proposed, with a recommendation that the Senate not continue consideration of the bill. This report was adopted on another recorded vote. The proceedings, except for the passing reference to dispensing with clause-by-clause, which was corrected, were thus in order. Not proceeding with clause-by-clause when the committee is recommending against a bill is, as already noted, proper practice.

RULE 12-21

Smoking
prohibited

12-21. Smoking is prohibited at meetings of all committees and subcommittees.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-21: Rule 96(8)

COMMENTARY

The provisions of this rule prohibiting smoking in meetings of all committees and subcommittees were originally adopted on May 13, 1986 (see *Journals of the Senate*, p. 1349). The rule was initially drafted to apply only to meetings of Senate committees but was amended so that the prohibition against smoking also applied to meetings of the Senate (also see rule 2-8). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

Committee Reports

RULE 12-22

Majority
conclusions

12-22. (1) A report of a Senate committee shall contain the conclusions agreed to by majority.

Presentation or
tabling

12-22. (2) Except as otherwise provided, a committee report shall be presented or tabled in the Senate by the chair or by a Senator designated by the chair.

EXCEPTION

Rule 12-31: Report deposited with the Clerk

Tabled for
information
only

12-22. (3) A committee report that is only for the purpose of information shall be tabled in the Senate. A tabled report may, by motion, be placed on the Orders of the Day for future consideration.

No debate when
report presented
or tabled

12-22. (4) No debate is allowed when a committee report is presented or tabled in the Senate.

Reports on user
fees

12-22. (5) If a user fee proposal has been referred to a properly appointed and constituted committee, and that committee does not report within 20 sitting days following the day it received the order of reference, it shall be deemed to have recommended approval of the user fee.

REFERENCE

User Fees Act, *subsection 6(2)*

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-22(1): Rule 96(2)
 Rule 12-22(2): Rule 97(1)
 Rule 12-22(3): Rule 97(3)
 Rule 12-22(4): Rule 97(2)
 Rule 12-22(5): Rule 28(3.2)

COMMENTARY

A committee report is “the means whereby a committee formally informs the Senate of the results of its work” (Appendix I, Terminology). Rule 12-22(1) provides that the conclusions contained in a committee report must be agreed to by a majority of its members. Occasionally a consensus is not possible, and a report may include the opinion of a minority of the members, if the committee agrees to do so. The tabling of a separate minority report is not allowed in Senate practice, so a committee must agree to include or append minority opinions to a report.

Reports from committees are presented or tabled in the Senate by the chair of the committee (or a senator designated by the chair) during Routine Proceedings when the Speaker calls “Presenting or Tabling Reports from Committees.” No debate takes place at this time. “Reports are presented when a decision of the Senate is required; they are tabled when they are for information purposes only, although they may be taken into consideration by the Senate and then moved for adoption by the Senate” (Appendix I, Terminology). In the case of a report on a bill without amendment, which is presented, the adoption of the report is automatic under rule 12-23(2). Presented reports are read aloud in the Senate by a table officer and are published in the *Journals of the Senate*. The Speaker will then ask when the report will be considered (or when the bill will be read a third time if the report is on a bill without amendment). Tabled reports, on the other hand, are not read aloud and are not published in the Journals. However, a motion may be moved to have a tabled report placed on the Orders of the Day for future consideration and possible adoption by the Senate.

An exception to the provisions regarding the presentation or tabling of reports is found in rule 12-31. It allows a report from the Standing Committee on Conflict of Interest for Senators to be deposited with the Clerk when the Senate is adjourned, and the report is deemed to have been presented at the next sitting of the Senate. Rule 12-30 outlines the special procedures that govern the consideration of a report of the Conflict of Interest Committee that deals with the conduct of an individual senator.

When a user fee proposal has been referred to a committee, rule 12-22(5) provides that the proposal will be deemed reported with a recommendation to approve it if the committee has not reported to the Senate within 20 sitting days of receiving the order of reference. Following a ruling by the Speaker on January 28, 2009 (see *Journals of the Senate*, p. 43), the rule was reworded in 2012 to clarify that the 20 sitting days only begin once a committee is duly appointed and constituted. If the 20 sitting days are interrupted by a prorogation or dissolution, the entire process must recommence with another tabling in the new session (see also rule 12-8(2) for information on the referral of user fee proposals to committee).

On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), the following rule was adopted: “Upon the presentation of a report no discussion takes place; but the report may be ordered to be printed, with the documents accompanying it; or it may be placed on the orders of the Day for future consideration or laid

on the table. This rule does not necessarily apply to the reports of Select Standing Committees upon Private Bills referred to them in the ordinary course of business” (rule 87). That rule was replaced by the present general content of the rule on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). In March 2004, the *User Fees Act* was given Royal Assent and, as a result, a new rule to address this provision (the then rules 28(3.1) and (3.2)) was adopted on June 27, 2006 (see *Journals of the Senate*, p. 418). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012, with a subsequent amendment to rule 12-22(9) being adopted on November 7, 2012, see *Journals of the Senate*, p. 1706).

RELATED CITATIONS AND EXTRACTS – RULE 12-22

User Fees Act:

5. The Committee may review a proposal for a user fee referred to it pursuant to subsection 4(4) and submit to the Senate or the House of Commons, as the case may be, a report containing its recommendation as to the appropriate user fee, subject to the provisions of section 5.1.

6. (1) The Senate or the House of Commons may pass a resolution approving, rejecting or amending the recommendation made by the Committee pursuant to section 5.

(2) If, within twenty sitting days after the tabling of a proposal under subsection 4(2), the Committee fails to submit a report containing its recommendation to the Senate or the House of Commons, as the case may be, the Committee is deemed to have submitted a report recommending that the proposed user fee be approved.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 240-241:

§870. (1) It is the opinion of the committee, as a committee, not that of the individual members, which is required by the House, and, failing unanimity, the conclusions agreed to by the majority are the conclusions of the committee.

(2) It is the custom to include the opinions of dissenting members in a committee report. No separate minority report may be tabled in the House. *Journals*, March 16, 1972, p. 194. [See Standing Order 35(2).]

§871. If a member disagrees with certain paragraphs in the report, or with the entire report, this disapproval may be recorded by dividing the committee against those paragraphs to which objection is taken, or against the entire report, as the circumstances of the case require.

...

§876. When a committee is unable to agree upon its report, it may make a report to the House to that effect, reporting the *Minutes of Proceedings and Evidence*, or the committee may merely report the *Minutes of Proceedings and Evidence* to the House without any observations or expressions of opinion.

Speaker’s Ruling: Report on Estimates Tabled

Journals of the Senate, December 16, 2011, p. 795:

In the Senate, the Estimates are tabled by the government. The National Finance Committee is then authorized to study most expenditures contained in the Estimates, although authorization may be given to other committees to study some expenditures. However, the Estimates themselves are never

referred to the committee for any formal approval. This is an important distinction. Because the Estimates themselves are not referred to the committee, it does not approve them or recommend approval, and, indeed, it does not have authority to do so. The committee only studies and reports on the expenditures as set out in the Estimates.

The committee’s report contains an analysis of various issues related to expenditures in the Estimates, and is provided for the Senate’s information. As such, it would be more in keeping with rule [12-23(3)] for the report to be tabled in the Senate, although it is often presented. By tabling a report, the National Finance Committee fulfills its duty to examine and report on the Estimates. No further action is actually required, but, in accordance with established practice, a procedural motion is usually moved under rule [12-23(3)] to consider the report at a subsequent sitting, which allows senators to debate and discuss the contents. If adopted by the Senate, this report becomes a Senate report, rather than just a committee report.

Reports on Bills

RULE 12-23	
Obligation to report bill	12-23. (1) A committee to which a bill has been referred shall report the bill to the Senate. The report shall set out any amendments that the committee is recommending.
Report on bill without amendment	12-23. (2) A report on a bill without amendment shall be considered adopted upon presentation, and a Senator shall move that the bill be read a third time on a future day.
Reporting bill with amendments	12-23. (3) When a committee report recommends amendments to a bill, or makes proposals that require the approval of the Senate, the report shall, by motion, be placed on the Orders of the Day for future consideration.
Amendments to be explained	12-23. (4) The Senator presenting a committee report recommending amendments to a bill shall explain the purpose and effect of each amendment.
Reporting against bill	12-23. (5) When a committee report recommends that the Senate not proceed further with a bill, the report must state the reasons for this. If the report is adopted, the Senate shall not proceed further with the bill.
Signing of amended bill	12-23. (6) A committee report recommending amendments to a bill shall have attached to it a printed copy of the bill on which the amendments are clearly written. The chair or deputy chair shall sign or initial this copy of the bill as well as all the amendments.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-23(1): Rule 98

Rule 12-23(2): Rule 97(4)

Rule 12-23(3): Rule 97(5)

Rule 12-23(4): Rule 99

Rule 12-23(5): Rule 100

Rule 12-23(6): Rule 101

COMMENTARY

Rule 12-23 describes the procedures on the reporting of a bill by a committee. The rule states that a committee is obliged to report a bill referred to it by the Senate and to include any amendments recommended to the text of the bill. In practice, committees have reported bills with or without amendment, and at times they have appended observations after the chair's signature. A committee also has the option of reporting that a bill should not be proceeded with further.

Reports from committees on bills are presented to the Senate when the Speaker calls "Presenting or Tabling Reports from Committees" during Routine Proceedings. This is normally performed by the chair of a committee, but the task may be delegated to another senator (see rule 12-22(2)). Rule 12-23(4) provides that the senator who presents the committee report on the bill will summarize any amendments recommended by the committee. This is done when the adoption of the report is moved. As the purpose of reporting is to communicate the recommendations of the committee to the Senate, the chair does not have to be in agreement with the decisions of the committee, but is responsible for accurately transmitting the committee's decisions (see Speaker's ruling of November 21, 2001, cited below).

When a committee reports a bill without amendment, rule 12-23(2) provides that the report is deemed adopted upon presentation, and a senator – usually the sponsor – then moves that the bill be read a third time on a future date.

When reporting a bill with recommendations for amendments or with proposals that require the approval of the Senate, rule 12-23(3) provides that after presentation the report will be placed by motion on the Orders for the Day for consideration at a future sitting. In the case of a standing committee reporting a bill, the notice period is one day (rule 5-5(f)); in the case of a special committee reporting a bill, the notice period is two days (rule 5-6(1)(e)). Once presented to the Senate during Routine Proceedings, the Speaker will ask "When shall the report be taken into consideration?" The chair of the committee, or the senator designated to present the report, will move that the report be considered either at the next sitting or two days hence. Proposals that would require the approval of the Senate would include, in this context, reports recommending that a bill not be proceeded with further.

When recommending that a bill not be proceeded with further, rule 12-23(5) provides that a committee must include the reasons for such a recommendation in its report. If the Senate adopts such a report, the bill is dropped from the Order Paper. If the Senate rejects such a report, the bill would, by motion, be placed on the Orders of the Day for third reading at a future sitting. Some examples of Senate committees reporting that a bill should not be proceeded with further are as follows: *Journals of the Senate*, May 28, 1975; p. 382; July 14, 1977, pp. 788-790; March 22, 1978, pp. 319-320; September 26, 1990, p. 1247; November 7, 1996, pp. 640-641; March 13, 1997, pp. 1108-1109; June 10, 1998, pp. 794, 799-808, November 25, 2010, pp. 1016-1017; February 3, 2011, pp. 1181-1182; November 22, 2012, pp. 1740-1741; April 30, 2013, pp. 2195-2196; and June 20, 2013, pp. 2712-2713. For an example of a joint committee report recommending that a bill not be proceeded with further, see the *Journals of the Senate*, June 3, 1993, p. 2119.

When a committee recommends amendments to a bill, rule 12-23(6) provides that the chair or deputy chair must sign or initial a printed copy of the bill on which the amendments have been clearly written and must also sign or initial the amendments made and clauses added. This working copy of the bill is attached to the committee's report to the Senate.

Committee amendments must first be agreed to by the Senate if they are to be incorporated into the bill. When the report is taken up, the senator who presented the report opens the debate by moving its adoption and explaining "the purpose and effect of each amendment" (rule 12-23(4)). The Senate will then take a decision on whether to adopt, reject or amend the committee report, or to send it back to committee for further consideration. If the Senate rejects the report, the unamended bill will, by motion, be placed on the Orders of the Day for third reading at the next sitting (see Speaker's ruling, January 31, 1991, cited below). When the Senate adopts a committee report with amendments, the senator in charge of the bill will move that the amended bill be placed on the Order Paper for third reading at the next sitting of the Senate. In practice, the Senate does not usually amend a committee report, preferring instead to adopt the report and propose amendments at third reading. See rules 10-5 and 10-6 for third reading and reconsideration of the clauses of a bill.

A practice has also developed whereby committees may append observations to a report on a bill. On December 5, 1979, the Speaker made a ruling in which it was explained that observations may be attached to bills sent back to the House of Commons but not to bills originating in the Senate, as there is an obligation on the Senate to send a bill originating in the Senate to the Commons whole and entire and not qualified (see Speaker's ruling in Related Citations and Extracts for rule 10-6). On June 28, 1988, the Standing Rules and Orders Committee made a recommendation that "where a committee reports a bill without amendment or where a committee recommends amendments to a bill, the report not contain any background information, observations or recommendations." The recommendation was, however, not adopted by the Senate, being instead referred back to the committee for further consideration. Observations appended to reports on bills have no procedural significance. As the Speaker explained in a ruling on December 11, 2002, "Their value ... is as an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation" (see Speaker's ruling cited below).

Rules on the reporting of bills by committees have existed since 1867. A rule adopted in 1867 stated: "On all Reports, made from a Committee, of amendments to a Bill, the Senator presenting the report is to explain to the Senate the effect of each amendment" (rule 93). Another rule adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137), read as follows: "Upon the presentation of a report no discussion takes place; but the report may be ordered to be printed, with the documents accompanying it; or it may be placed on the Orders of the Day for future consideration or laid on the table. This rule does not necessarily apply to the reports of Select Standing Committees upon Private Bills referred to them in the ordinary course of business" (rule 87). In 1968, a major revision of the *Rules of the Senate* took place relating to the legislative process (see *Journals of the Senate*, December 10, 1968, pp. 514-515, effective on August 1, 1969). Further amendments to the rule were made on November 26, 1975 (see *Journals of the Senate*, p. 592), June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and June 23, 1993 (see *Journals of the Senate*, p. 2280). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-23

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 520-521:

Every committee on a public bill is bound to report thereon. The house alone has the power to prevent its passage or to order its withdrawal. When a bill has been referred to a select [i.e., standing or special] committee and the committee wishes to make a special report and submit minutes of evidence it is necessary to obtain permission from the house to that effect in case no such power is given in the original order of reference.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 210:

§708. The House is not supposed to be informed of the proceedings of a committee on a bill until the bill has been reported; discussion of the clauses, with the Speaker in the Chair, when the bill is still before the committee, is consequently irregular.

House of Commons Procedure and Practice, Second Edition, pp. 772-773:

Every committee is bound to report to the House every bill referred to it, together with any amendments which have been made to the bill, and every bill reported from any committee, whether amended or not, must be received by the House. However, no committee has the authority to submit two reports to the House on one bill, as the effect of this would be to divide the bill. ...

Unless an order of the House or a provision of the Standing Orders imposes a deadline by which a committee must report a bill to the House, it is up to the committee to decide when it reports the bill. The House retains the right to modify the terms of the committal of a bill to a committee. If a Minister or a Member believes that a committee to which a bill has been referred is defying the authority of the House by refusing to consider the bill or to report it to the House, he or she may choose to bring this fact to the attention of the House and to propose a time limit for consideration of the bill in committee. This may be done by placing on notice a motion to require the committee to report by a certain date. The notice may, as appropriate, be placed under Government Orders or Private Members' Business.

Speaker's Rulings on Reports on Bills

The following rulings deal with issues relating to committee reports on bills. They are arranged in generally the same sequence as the subjects appear in the Commentary above.

Senator in Charge of a Bill

(Note: The expression "senator in charge of a bill" previously appeared in what is now rule 12-23(2). Although the specific term is no longer used in the rule, the following is still relevant.)

Journals of the Senate, March 28, 2001, p. 256:

... I would note that our Rules do not provide a clear definition of “the Senator in charge of the bill.” In the case of a government bill such as S-16, the Leader of the Government in the Senate is ultimately responsible for it – indeed that position appears on the cover of the Bill. In keeping with [the definitions in the Rules], the Deputy Leaders on both sides often act on behalf of their respective Leaders in this Chamber.

In addition, the Senator serving as sponsor of a bill – who begins debate at second reading – also has a high degree of involvement throughout the process, often including moving the motion to set the date for third reading. Finally, in matters resulting directly from a committee’s work, as in this case, the committee Chair may also be involved.

Senate practice with respect to moving the motion to set the date for third reading reflects the variety of Senators who may be involved in the process. For government bills, there have been many cases in which a Senator other than the Leader of the Government has moved this motion. This motion has often been moved by the Deputy Leader of the Government. ... Chairs of committees reporting government bills sometimes moved the motion in question. ...

Therefore, while the Rules do not define the term “Senator in charge of a bill,” Senate practice would suggest that, at least for government legislation, the Leader of the Government, the Deputy Leader of the Government, the sponsor of the Bill, or their designate can move the motion to set the date for third reading.

Rule 12-23(2): Notice for Third Reading When Bill Reported Without Amendment

Journals of the Senate, December 10, 2001, p. 1100:

Going specifically to the rules, the rule that Senator Carstairs is relying on in making the motion to proceed to third reading, the [Special Committee of the Senate on the Subject Matter of Bill C-36] having reported the bill without amendment, is rule 97(4) [now see rule 12-23(2)]:

When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

There is then the question of whether that rule or rule 97(5) [now see 12-23(3)] would be applicable. That rule refer[ed] to a report that recommends amendments, which this committee report did not do. That particular rule refers to two previous rules, [5-6(1)(e)] and [5-5(f)], one of which provides for one day’s notice, the other for two days’ notice. The question becomes whether rule [12-23(2)] or [12-23(3)] is applicable.

The question of the committee on Bill C-36 being a special committee was raised as a possible reason for the application of rule [12-23(3)] and not [12-23(2)]. However, I believe that matter is resolved by the definition of “committee” in [Appendix I] of the rules, which defines “committee” as meaning, in part, a special committee.

Accordingly, honourable senators, I do not find the argument that the motion to proceed to third reading on one day's notice is anything but in order. ...

Rule 12-23(2): Bill Reported Without Amendment, Third Reading Adopted With Leave

Journals of the Senate, February 23, 2005, pp. 490-492:

... This bill ... was adopted with leave the same day it was reported from committee without amendment. Indeed, the third reading motion was put almost immediately following the presentation of the committee report. Senator Lynch-Staunton objected to this accelerated consideration of a bill, especially as it occurred during the Routine of Business. ...

...

This in fact, is what happened on February 10. Under "Presentation of Reports from Standing or Special Committees", the second rubric of the Routine of Business, the Chair of the Committee on Aboriginal People, Senator Sibbeston, presented the report on Bill C-14 without amendment. In accordance with rule [12-23(2)], I then asked when shall the bill be read a third time. Senator Sibbeston was prepared to move the routine motion for third reading at the next sitting, but before I put his motion, Senator St. Germain suggested that the bill be given third reading now in view of "exceptionally special circumstances". In making this request, Senator St. Germain indicated that the Leadership of the Opposition had been consulted. For his part, Senator Austin, the Leader of the Government, stated that he was also prepared to see the bill passed immediately. Accordingly, I asked if the Senate would grant leave for this. Once it was clear that the Senate had consented, Senator Sibbeston proceeded to move third reading of Bill C-14, seconded by Senator St. Germain. The motion was adopted immediately and so the bill passed.

...

Accordingly, it is my ruling that what occurred with respect to Bill C-14 on Thursday, February 10 was out of the ordinary, but not out of order. It was the unanimous will of the Senate to proceed as it did and, I as Speaker, have no authority to prevent the proceeding or to overrule it.

Rule 12-23(2): Committee Amendments Not in Order, so Report on Bill Without Amendment Adopted

Journals of the Senate, December 9, 2009, pp. 1588-1589:

On December 8, Senator Comeau rose on a point of order respecting the twelfth report of the Standing Senate Committee on National Finance, which proposes amendments to Bill C-51 ...

Senator Comeau's concern was, in essence, that the amendments contained in the report were not relevant to Bill C-51. He referred to the second edition of *House of Commons Procedure and Practice*, which, at pages 766-767, notes that "an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill." Similar limitations are to be found at citation 698(8) of Beauchesne, which states:

- (a) An amendment may not amend a statute which is not before the committee

(b) An amendment may not amend sections from the original Act unless they are specifically being amended in a clause of the bill before the committee.

Senator Comeau explained that the report's amendments deal with the *Bankruptcy and Insolvency Act*. Although Bill C-51 does propose amendments to that Act, the sections that it would amend are different from those in the report. As such, he argued that the amendments in the report are out of order.

...

As honourable senators know, an amendment moved in committee must respect the principle and scope of the bill, and must be relevant to it. It may generally be helpful to view the principle as the intention underlying a bill. The scope of the bill would then be related to the parameters the bill sets in reaching any goals or objectives that it contains, or the general mechanisms it envisions to fulfil its intentions. Finally, relevancy takes into account how an amendment relates to the scope or principle of the bill under examination. An amendment must respect the principle of the bill it seeks to amend, must be within its scope, and must be relevant to it.

As Senator Comeau noted, normal practice is that an amendment should not be moved that would amend an existing Act, unless the bill under consideration proposes that the Act be amended. What is more, in general, only those aspects of the original Act that are already to be amended by the bill are subject to further amendment. In the Commons, this appears to have been interpreted in a very rigid manner, that is to say that amendments that fail to respect these criteria, even if they are directly relevant or perhaps seek to correct something overlooked in error, are not acceptable.

As is often the case, and reflecting its unique approach, the Senate has not been so rigid on this point. Although the issue only comes up very rarely, practice here has tended to be that a proposed amendment to a bill amending an existing Act may deal with sections of the original Act that are not amended by the bill, provided that there is a strong and direct link between an existing clause of the bill and the change to the original Act that the proposed amendment seeks to affect.

This said, the summary of Bill C-51 indicates that the amendments it proposes to the *Bankruptcy and Insolvency Act* are "to correct unintended consequences resulting from the inaccurate coordination of two amendment Acts." The amendments proposed by the twelfth report, on the other hand, deal with unfunded pensions of retirees and employees when a corporation files for bankruptcy, placing them on the same level as creditors. Without in any way speaking to the desirability of the changes proposed by the report, they exceed the quite limited nature of the amendments the bill proposes.

The ruling is that the point of order is established, and the amendments that the report proposes are out of order.

Since the report only contained amendments that have been determined to be out of order, the content of the report is evacuated. In consequence, the report proposes no amendments to Bill C-51 and, under rule [12-23(2)], therefore stands adopted. The next question that must be put to the Senate is therefore the procedural one of "When shall this bill be read a third time?" To be clear, this is for third reading of the bill without amendment.

Rule 12-23(4): Presenter of Report on Bill Opposed to Report

Journals of the Senate, November 21, 2001, pp. 997-998:

... I have been asked to determine whether or not it is procedurally acceptable for a Chair of a committee to present a report of that committee even though the Chair disagrees with it and, in fact, has stated an intention to vote against it.

In order to answer this point of order adequately, I think it is useful to review briefly the process that we follow in considering legislation. Once a bill has been adopted at second reading and agreed to in principle, it is usually assigned to a committee for detailed examination. This normally involves hearing witnesses prior to going through the bill clause-by-clause. At this stage, it is proper to consider amendments which, if adopted, become the basis of the committee's report which it must make to the Senate according to rule [12-23(1)]. Further, rule [12-23(4)] requires that the Senator who is sponsoring the report to explain the basis for, and the effect of, each amendment. This is what happened yesterday, when Senator Milne spoke to the report on Bill C-7.

... Under our rules and practices, decisions of committees, just like those of the Senate itself, are made by the majority. There is no binding obligation for consensus or unanimity. The fact that a bill receives second reading, for example, does not mean that all members of the Senate agree with it and will no longer oppose the bill either at report stage or third reading. Nonetheless, the decision stands as a legitimate decision of the Senate and is, in this limited sense, binding. Similarly, in a committee, decisions are reached by a majority. There is no requirement for all committee members to agree in order for it to report a bill back to the Senate. Accordingly, it is possible that the Chair of the committee may disagree with all or part of a report. Nonetheless, as Senator Taylor pointed out through his reference to *Beauchesne's*, the Chair will sign the report authenticating it. And as Senator Corbin suggested, in presenting the report, the Chair is really acting as a messenger of the committee. Once the requirement of rule [12-23(4)] to explain the amendments has been carried out, the Chair, or whoever is the sponsor of the report, is under no additional obligation. If the Chair should ever be uncomfortable in carrying out this function, arrangements can be made under our rules to find another member to act as sponsor of the report. Such a decision, however, does not rest with the Speaker. This can only be determined by the Chair as allowed under rule 97(1) which states that "a report from a select [i.e., standing or special Senate] committee shall be presented by the chairman of the committee or by a Senator designated by the chairman" [refer to current rule 12-22(2)].

Rule 12-23(5): Committee Recommends Not Proceeding Further With Bill

Journals of the Senate, December 1, 2010, pp. 1033-1034:

Yesterday, during debate on the sixth report of the Standing Senate Committee on Banking, Trade and Commerce, a point of order was raised as to whether the report, which recommends that the Senate not further consider Bill S-216, was properly before the Senate. This concern arose from the fact that the committee had not gone through the bill clause-by-clause, a usual requirement under rule 96(7.1) [now see rule 12-20(3)]. That rule states that "[e]xcept with leave of its members present, a committee cannot dispense with clause-by-clause consideration of a bill". Against this requirement, there is rule 100 [now see rule 12-23(5)], which states, in part, that "[w]hen a committee to which a bill has been referred considers that the bill should not be proceeded with further in the Senate, it shall so report to the Senate, stating its reasons".

There are relatively few instances in which Senate committees have used the process allowed under rule [12-23(5)]. Research has identified eight cases since 1975, of which the 1998 example of Bill C-220 is the most recent. According to the available records, committees have always made the decision to report against a bill without starting clause-by-clause study. That is to say, the basic issue of whether a committee considers that a bill should be proceeded with is decided, either explicitly or, most often, implicitly, before clause-by-clause. If the committee decides to make a recommendation under rule [12-23(5)], it does not ever reach the clause-by-clause stage.

This helps to understand how rule [12-20(3)], which was added to the *Rules of the Senate* in 2005, is to be used. This rule only applies if the committee actually gets to the stage of considering a bill clause-by-clause. If that point is not reached, because a committee decides to recommend against the bill pursuant to rule [12-23(5)], the requirement of rule [12-20(3)] does not come into play. To oblige that a committee go through a bill clause-by-clause when it has already decided to report against the bill would be contradictory and inconsistent.

Report From Committee Rejected, Senate Proceeded to Third Reading

Journals of the Senate, January 31, 1991, p. 2240:

When we send Bills to committee we do so essentially to get advice from the committee. But in my view the Senate cannot be bound by the advice that it receives from a committee. In other words, the Senate must remain master of its own decisions. If you followed otherwise – and let us take the case of the Bill presently in question – because the Senate did not like the Report we could say, “We will send it back to the committee”. That is allowable. The committee could report exactly the same thing as that it has presently reported. The Senate would then be faced with the same question coming back. We could then end up with a situation in which the Bill could simply navigate back and forth from Senate to committee.

I repeat, the Senate must remain master of its own affairs. It cannot be subject to committees’ decisions. In my view, the Senate can negate a committee decision. When it does so, the Bill can then proceed to third reading. Therefore, in this case I rule that we should now proceed to third reading of the Bill.

Bill Referred to Two Committees, Reported by One

Journals of the Senate, December 8, 1999, pp. 227-228:

Honourable Senators, I must say that this is a most unusual procedure. Certainly to send one bill to two committees is not good practice. After all, how is that done?

Therefore, it was sent, as I understand it, to the Standing Senate Committee on Banking, Trade and Commerce. The Committee studied the Bill and no amendments were proposed.

The Bill was reported back. I must refer you, then, to Rule 97(4) [now refer to 12-23(2)], which states:

When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

However, there was an instruction from the Senate, which I have just read to Honourable Senators, that the Bill was to be referred to the other committee. Thus, having been reported by one committee without amendment, I concluded that it should not then proceed to third reading because it still had to go to the other committee. That is what the Senate decided. There had to be a mechanism to move it to the other committee, and that is what was stated in the motion.

Observations Not Considered as Minority Report

Journals of the Senate, December 11, 2002, pp. 412-413:

For about twenty years now, committee reports on bills have sometimes contained observations. These observations are not a procedurally significant part of the reports. Their value, in the view of some Senators, is as an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation. Some Senators ... have tended to object to the use of observations, but they have, nevertheless, found a place in our practice. They are now fairly routine as was pointed out by Senator Milne.

In the case of Bill C-5, Senator Banks informed the Senate that the observations were adopted unanimously. Thus, in this instance, the observations cannot be said to represent the views of a minority of the committee. For other bills, however, the observations have represented the views of a dissident minority. Of course, none of these differences matter because ... the observations are not, and have never been, a substantive part of a committee's report. That is why, when the Committee on Energy, the Environment and Natural Resources reported Bill C-5 last Wednesday without amendment, the report was adopted immediately as required under rule [12-23(2)] of the *Rules of the Senate*.

This brings me now to the core of the argument that was made by Senator Kinsella and also Senator Stratton. Both objected to the committee report on Bill C-5 because, as they put it, the observations, these statements, invalidate it procedurally. As Senator Kinsella described it, the report presents difficulties in substance and process. To substantiate their position, Senator Kinsella and Senator Stratton cited *Erskine May* where it is made clear that a committee report must not "be accompanied by any counterstatement, memorandum of dissent, or protest from any dissenting or non-assenting member or members; nor ought the committee to include in its report any observations which are not subscribed to by the majority." It is relevant to point out that the citation in the British authority pertains to minority reports. In the United Kingdom, it is established practice that the report of a committee must reflect only the views of the majority. There can be no minority report. ... This position is not much different from our own rule 96(2) which provides that "A report of any select [i.e., standing or special Senate] committee shall contain the conclusions agreed to by the majority" [now refer to rule 12-22(1)].

... Senate practice has permitted appending observations to reports for almost twenty years, but they have never been accepted as minority reports. Indeed, the observations have no substantive value in terms of our procedure. They can serve, as Senator Andreychuk explained, as a notice to the government of the views of committee members; they can even provide material for debate, but they have no substantive significance or procedural weight. ...

Government Responses to Reports

RULE 12-24

Request for government response	<p>12-24. (1) The Senate may request a complete and detailed response from the Government to a report of a standing or special committee that has been adopted by the Senate. This request may be:</p> <ul style="list-style-type: none"> (a) contained in the report itself; (b) contained in the motion to adopt the report; or (c) made by a separate motion moved after the report has been adopted.
Communication of request	<p>12-24. (2) When the Senate requests a Government response, the Clerk shall communicate the request and send a copy of the report to the Leader of the Government and to each minister expressly identified in the request.</p>
Tabling response	<p>12-24. (3) The Leader of the Government shall table the Government's response no later than 150 calendar days after the request was adopted, or provide an explanation why the response has not been provided.</p>
Response or explanation deemed referred to committee	<p>12-24. (4) The report and either the Government's response or the explanation why there is no response shall be deemed referred to the relevant committee when either is tabled or provided.</p>
Absence of response and explanation deemed referred to committee	<p>12-24. (5) If, 150 calendar days after the request was adopted, the Government has neither tabled its response nor provided an explanation why there is no response, then the report and the absence of a response or an explanation shall be deemed referred to the relevant committee.</p>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-24: Rules 131(2), (3) and (4)

COMMENTARY

Rule 12-24 provides a mechanism for the Senate to request responses from the government to reports from standing and special committees that have been adopted by the Senate. There are three ways in which this can be initiated: the motion to adopt the committee report may contain the request for a response from the government; a separate and distinct motion may be adopted, after the report's adoption, requesting a government response to the report; or the report itself may contain a specific request for a government response, which then takes effect when the report is adopted. The request identifies the ministers responsible for providing the response.

Once the Senate requests a response from the government, the request is communicated by the Clerk of the Senate to the identified ministers and to the Leader of the Government. The leader then has 150 calendar days to table the government's response or to give an explanation for not doing so. The report and the response (or explanation) are deemed referred to the committee when tabled. If there is no response or explanation, the report and the lack of response are deemed referred to the committee after 150 calendar days. If the Senate is not sitting at the expiry of the 150 calendar days, the response would have to be tabled with the Clerk under rule 14-1(6), otherwise the lack of a response would be deemed referred to the committee under rule 12-24(5). This is different from the situation in the House of Commons, where the option of waiting until sittings resume exists.

Resolutions of the Senate ordering a return, including requests for government responses to committee reports, die at prorogation or dissolution. As explained in a ruling by the Speaker on December 11, 2007, "if a report was adopted in a past session or a past Parliament, a government response can be requested under rule [12-24(1)], and must be renewed in each subsequent session, whether in the same Parliament or a new one." The Speaker also cautioned that if the committee report was not adopted by the Senate, these procedures would not apply, but various options might be available to reach what is substantially the same result (see Speaker's ruling cited below). The three options are:

1. give the committee a new order of reference, including a referral of all past papers, allowing it to re-adopt its former report;
2. move, on notice, to place the unadopted report on the Orders of the Day for consideration, after which the regular processes could be followed (in practice, the Senate has chosen not to use this process when it has been proposed; on May 26, 2009, for example, such a motion was amended so that the Agriculture and Forestry Committee was, instead, seized of its papers and evidence from the past session – in effect the first option; and
3. move, on notice, a motion requesting a government response to the committee report of the previous session without asking for its adoption by the Senate and without invoking rule 12-24.

On occasion, when a government response was requested and the process was then interrupted by a prorogation, the government tabled the response under rule 14-1(1) in the new session. However, since such responses are not tabled pursuant to rule 12-24, they are not deemed referred to the committee.

This rule was adopted on June 3, 2003 (see *Journals of the Senate*, p. 880). Prior to the adoption of the rule, the Senate had on occasion adopted a resolution requesting a government response to a committee report (see Speaker's ruling, June 2, 1993, cited below). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-24

House of Commons Procedure and Practice, Second Edition, pp. 1074-1075:

When a report is presented to the House, a standing or special committee may request that the government table a comprehensive response to it within 120 calendar days. The committee may request the response either to the whole report or to one or more parts. The request is recorded in the *Journals* immediately after the entry regarding the presentation of the report. A request for a partial

response does not prevent the government from responding to the entire report. Speakers have consistently refused to define “comprehensive” in this context, maintaining that the nature of the response must be left to the discretion of the government. When the House is sitting, the response may be tabled by a Minister or a Parliamentary Secretary during Routine Proceedings under “Tabling of Documents” or filed with the Clerk. When the House is adjourned, the response may be filed with the Clerk. ... The Standing Orders do not provide for any sanction should the government fail to comply with the requirement to present a response.

Speaker’s Rulings: Government Responses to Reports

In the following rulings, the Speaker explains that despite the brevity of a government response, the requirement of the order was met (June 2, 1993); and describes the different ways in which a request may be made for a response to a committee report from a previous session that was not adopted during that session (December 11, 2007).

Journals of the Senate, June 2, 1993, p. 2110:

On Tuesday, May 4, 1993, Senator Marshall rose on a point of order to complain of the fact that the Government had not complied with a resolution of the Senate requesting the Government to respond to the Report of the Standing Senate Committee on Social Affairs, Science and Technology entitled: “The Valour and the Horror”.

The resolution to which Senator Marshall referred, was adopted by the Senate on February 4, 1993, and reads as follows:

“That, within 60 days of the adoption of this motion, the Leader of the Government shall provide the Senate with the response of the Government to the Report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled: “The Valour and the Horror”, tabled in the Senate on 25th January, 1993.”

As Senator Marshall explained, the response was to have been tabled no later than April 5th, that is, within sixty days of the adoption of the resolution.

In response, Senator Murray, the Leader of the Government in the Senate, indicated that the Minister of Communications had sent the response directly to Senator Marshall. Senator Murray then tabled the letter in the Senate. Despite the brevity of the letter, Senator Murray made it clear that it was the Government’s response and, as such, meets the requirements of the resolution.

Journals of the Senate, December 11, 2007, pp. 366-369:

On Thursday, November 29, when the Senate had reached the Notice Paper, Senator Carstairs raised a point of order to challenge the propriety of a motion moved by Senator Stollery. This motion sought to adopt the report of the Standing Senate Committee on Foreign Affairs and International Trade on Sub-Saharan Africa, tabled in the last session, and to request a response from the government in accordance with rule [12-24(1)].

Senator Carstairs warned that the motion of Senator Stollery posed some serious problems. This was because the report proposed for adoption was not actually before the Senate, since it had died with the prorogation of the previous session. In any debate, she argued, it would not be possible to amend the

contents of the report. If the report were to be considered revived through motions like this, Senator Carstairs asked whether it might be possible to do the same with reports from ten or fifteen years ago.

...

In considering this issue, it is essential to underscore that a committee report that has not been adopted by the Senate is exactly that, a report of a committee to the Senate. A report only becomes a report of the Senate if and when it is adopted. Except in the case of a report on a bill without amendments, which is automatically adopted under rule [12-23(2)], adoption gives the Senate the opportunity to debate and possibly amend a report. As Senators know, under rule [12-22(3)] a tabled report does not have to be moved for adoption, but adoption is a necessary step for requesting a government response under rule [12-24(1)].

The issues in this point of order are complex. ... In considering the current point of order, it is helpful to begin by addressing the fundamental question of whether business from a previous session can be reinstated or revived. Practices in the Senate, in the Commons, in the provinces, and in the Parliament at Westminster make it clear that business can indeed be revived or reinstated from a previous session, at least within the same Parliament. This is done by a clear and deliberate decision, either by adopting a motion or by establishing provisions in Rules or Standing Orders.

This in no way reduces the significance and impact of prorogation. All business then before a House of Parliament dies at prorogation. With reinstatement or revival, the House exercises its fundamental control over its own affairs and decides how it will conduct new business in the new session. In the Senate, we have had many motions relating to committee work that have had the effect of continuing studies and referring work and evidence from past sessions. We have also had motions to request government responses to reports adopted in a previous session or even a previous Parliament. In the Commons, all non-government public business — both bills and motions — is reinstated in the following session of the same Parliament. In addition, government business is frequently reinstated by House order. The Commons also provides for the automatic continuation of requests for papers, including requests for government responses to committee reports. Finally, in some provinces and at Westminster, various practices exist to allow the reinstatement of bills.

As Senators know, a proposal is currently before the House to allow for the reinstatement of bills. While this proposal has not been adopted, it is nonetheless competent for the Senate to revive or reinstate other types of business, such as committee business, if a clear decision to that effect is made. This respects the competing principles of the prerogative of the Crown to prorogue Parliament and the fundamental freedom of parliamentary Houses to structure their business as they see fit.

In reviewing the issues raised by Senator Carstairs and others, I noted a relevant ruling, given by my distinguished predecessor on February 19, 2004, which dealt with two similar points of order. The first concerned a motion, in a new session, to request a government response to a report adopted during the preceding session. That motion was held to be in order, and the motion was subsequently adopted. Since then, there have been five such motions adopted, including two earlier in this session. Given that such motions request responses to previously adopted reports, this practice is acceptable.

The second point of order raised in 2004 dealt with a motion both to adopt a report from a previous session and to request a government response. The ruling found the motion to be in order. Until now, this had been the only instance of this kind of motion. The motion moved by Senator Stollery paralleled the 2004 example, and, accordingly, it was properly drafted in light of that ruling.

This said, Senator Carstairs' point of order raises issues that were not fully addressed in the 2004 case. In particular, she asked how far into the past such motions can reach, and, equally important, whether the report proposed for adoption by the Senate can be amended.

Such uncertainty is not conducive to orderly proceedings in the Senate. My analysis of the situation suggests that the motion under consideration would not necessarily allow the Senate to amend the report. I find the indirect closing off of one important element of free and full debate unacceptable, in this case. The objection about how far back in time such motions can go is also real. In light of these problems, it would be more appropriate to find a different approach to reach the objective sought by Senator Stollery in his motion.

An additional difficulty with the motion is that rule [12-24(1)] clearly requires that the report in question be from a committee. The question is, therefore, whether this report from a past session, cited in the current session, is, truly, a report of a committee of this session. There was no order of reference in the current session, and no report has been tabled or presented. As noted, prorogation does have real practical effects in Parliament, and the report should not be seen as a report of this session to which rule [12-24(1)] could apply. Because the motion in question invokes rule [12-24(1)], it must fulfill the conditions stipulated in that rule.

What is needed, therefore, is a clear and direct procedure that unambiguously places the report before the Senate in the current session and allows Senators ample opportunity for debate. Several such processes seem to be available. As already noted, committees often seek to revive studies from the previous session and to have the relevant papers and evidence referred back to them. A Senator could, therefore, move a motion, on notice, to authorize the Standing Senate Committee on Foreign Affairs and International Trade to study issues relating to Africa, and to refer the papers, evidence, and work from last session back to the committee. If this motion were adopted by the Senate, the committee would then be seized of all that information. It could adopt a new report, identical to the old one, or evaluate whether some of the previous work should be adjusted. The new report could then be tabled in the current session and treated like any other tabled report.

A second approach might be to follow the process outlined in citation 890 of the sixth edition of *Beauchesne's*. Although the 2004 ruling referred to the citation, it appears to me that its meaning was not fully followed. Taking into account the citation and Senate practice, a motion might be moved, on notice, to place a report from a previous session on the orders of the day for consideration at the next sitting. This type of preliminary motion would effectively, and clearly, reinstate or revive the report of the previous session. It might then be treated as a report in the current session, subject to possible amendment, and also allow for a motion to adopt and request a government response.

While these approaches may be more time-consuming, they have the great advantage of allowing the fullest possible opportunity for debate and discussion. They avoid the pitfall of forcing the Senate to accept or reject entirely a report from the previous session without the possibility of amendment.

There is yet another viable approach that might be available, along the lines suggested by Senator Fraser. As already stated, the report addressed by the motion in question does not fall under rule [12-24(1)], being a report from a previous session that was neither adopted nor revived. Consequently, the Senate is not bound by the processes of the rule. It might be possible, therefore, for a Senator to move, on notice, a motion simply requesting a government response to the committee report of the previous session, without asking for its adoption by the Senate. Since the Senate would not actually adopt the report, it would remain simply a report of the committee, not of the Senate. This could be a third approach.

As a final point relating to government responses and prorogation, I would like to take this opportunity to clarify that, because the Senate does not have rules providing that requests for government responses are automatically revived in a new session, such requests do, in fact, die at prorogation. If a response is still desired in the new session, it must be renewed by motion, with a new period of 150 days, if the motion is adopted. This is different from the House of Commons, which does have a Standing Order allowing requests for government responses to committee reports to survive in a new session of the same Parliament. In the Senate, the government does, of course, have the option of tabling on its own initiative a response to a committee report from a previous session, under the authority of rule [14-1(1)]. This has occurred several times during the current session. Such responses are not, however, made under rule [12-24], and are not automatically referred to committee under rule [12-24(4)].

This point of order, like the discussion late in the last session, shows that the process for requesting government responses has many unexpected complexities. The Standing Committee on Rules, Procedures, and the Rights of Parliament may, therefore, wish to consider revisiting the entire issue in detail to provide needed clarification. The committee could also examine how far back in time such requests can go. While recognizing the importance of this aspect of the issue, a decision by the Speaker at this time would be highly speculative, and a solution requires detailed consideration. Let me emphasize that any decision by the committee to undertake such work belongs not to me, as Speaker, but to the committee itself, under rule [12-7(2)(a)], or to the Senate, if it gives the committee a specific order of reference.

As it stands, if a report was adopted in a past session or a past Parliament, a government response can be requested under rule [12-24(1)], and must be renewed in each subsequent session, whether in the same Parliament or a new one. If, however, the report was not adopted, a motion such as this one is not adequate, given the factors raised in discussion of the point of order. However, other means are available to achieve the objective of Senator Stollery's motion.

Debate on the current motion cannot proceed, and it is to be discharged from the Order Paper.

<i>Committee Expenditures</i>

RULE 12-25

Payment of witnesses' expenses	12-25. The Clerk is authorized to pay witnesses invited or summoned before a Senate committee a reasonable sum for their living and travelling expenses, upon the certificate of the clerk of the committee.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-25: Rule 102

COMMENTARY

A central function of a senator's role in committee is to hear from and question witnesses. Witnesses can include public officials, academics, representatives of organizations and interest groups, or members of the public whose views are of special interest to the committee in question. Rule 12-25 provides that reasonable travel and living expenses may be reimbursed. Witnesses are invited to appear, but on rare occasions when an invitation is refused and the information is considered vital, a committee may issue a summons identifying the time and place at which attendance is required. For information on the summoning of witnesses, see rule 12-9.

On February 7, 1996, the Internal Economy Committee adopted a policy limiting the number of witnesses from a given organization who would be reimbursed to two (see second report of the committee, *Journals of the Senate*, pp. 19-20; and March 27, 1996, p. 111). Committees often choose to reduce this to one, with expenses for a second witness being allowed only in "exceptional circumstances." A motion to this effect is usually adopted at the organization meeting. Committees do not normally pay expenses for witnesses appearing on private bills.

A rule adopted on April 6, 1876 (see *Journals of the Senate*, p. 168) stated: "The Clerk of the Senate is authorized to pay every witness summoned to attend before a Committee, a reasonable sum for his attendance and also for his travelling expenses, upon the certificate or order of the Chairman of the Committee before which he shall have been summoned; and no witness shall be so summoned and paid unless a certificate shall first have been filed with the Chairman by a member of the Committee or of the Senate, stating that the evidence of such witness is, in his opinion, material and important; and no witness residing at the seat of Government shall be paid for his attendance" (rule 99). The substance of rule 12-25 was adopted on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-25

Bourinot's Parliamentary Procedure, Fourth Edition, p. 484:

No witness, who comes as a witness at the solicitation of parties interested in a private bill, is paid by the house. The rule only applies to those persons who are present in cases of public inquiry.

RULE 12-26	
Financial operations	12-26. (1) The financial operations of Senate committees shall be governed by the <i>Senate Administrative Rules</i> .
Report of expenses	12-26. (2) A committee shall table a report within 15 sitting days of the commencement of each session on any special expenses incurred during the previous session. This report shall state the expenses that have been accounted for as well as an estimate of expenditures not yet accounted for.
When committee not reconstituted	12-26. (3) When the final or interim report of expenditures involves a committee that is not reconstituted, the report shall be tabled by, or on behalf of, the Senator who was most recently the chair of that committee.
Printing of report	12-26. (4) Each final or interim report on special expenditures shall be printed in the <i>Journals of the Senate</i> .

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-26: Rules 103 and 104

COMMENTARY

Committees may incur a variety of expenses during the course of their work. Until the Senate has granted funds to a committee, it may not incur expenses or commit funds. Chapter 3:06 of the *Senate Administrative Rules* outlines the financial rules and procedures governing Senate committees. It includes information on emergency funds, the budget approval process, the certification of payments, and financial monitoring and reporting.

Not all expenses related to the functioning of committees are charged directly to each committee. For example, working meals in Ottawa, and witness and videoconferencing expenses are all charged to a central budget managed by the Committees Directorate.

Committees may require two types of budgets: one for special study work and one for legislative work. Legislative budgets are less common because most expenses required to examine legislation, such as working meals, and witness and videoconferencing expenses, are covered by a central budget. If a committee does require a budget for legislative work, it adopts a single budget for all such work that it may conduct. On the other hand, committees must adopt and seek approval for a separate budget for each special study. Funds approved for one special study can only be used for that study, and not for another one. Also, funds approved for legislative work cannot be used for a special study, and vice versa. New budgets are required both every fiscal year and at the beginning of a new session of Parliament.

Once the Senate adopts an order of reference for a special study, the committee clerk prepares a draft budget reflecting the committee's plans. The committee meets to review and adopt the budget, with modifications if required. Once a special study budget has been adopted by a committee, it is submitted to the Standing Committee on Internal Economy, Budgets and Administration for review. Either the Internal Economy Committee or one of its subcommittees will usually meet with the chair of the

committee to discuss the budget proposal. The Internal Economy Committee can agree to the budget, cut portions or reject it altogether. At this point, the budget proposal and the recommendation for the release of funds by the Internal Economy Committee are returned to the committee that originated the budget. The chair, or a senator designated by the chair, then presents a report to the Senate, with the budget submitted by the committee and the recommended release from the Internal Economy Committee appended. The report must include a request for any powers required by the committee, such as the power to travel or the power to hire. If the report is approved by the Senate, the funds recommended by the Internal Economy Committee become available to the committee making the request.

The process for legislative budgets differs in some ways from the process for special study budgets. Before adopting a legislative budget that includes funds to hire personnel, a committee must obtain the power to do so from the Senate by way of motion. Once this motion is adopted, the committee clerk then prepares a draft budget reflecting the committee's needs. After a legislative budget has been adopted by a committee, it is submitted to the Standing Committee on Internal Economy, Budgets and Administration for review. The legislative budget proposal then proceeds through the same steps as the special study budget proposal until it is adopted, either in its original or modified form, by the Internal Economy Committee. The chair of the Internal Economy Committee, or a senator designated by the chair, then presents a report to the Senate containing its recommendations for legislative budgets from one or more committees. Only when the Senate adopts this report can a committee actually use funds.

Rule 12-26(2) provides that committees table a report of expenses incurred and activities undertaken within the first 15 sitting days at the beginning of each session for the session just ended. These "expenses and activities reports" are published in the *Journals of the Senate* on the day they are tabled. These reports outline, for each study, expenditures for general expenses, for each activity (e.g. trip) and for witnesses. The report also includes information on the number of meetings, witnesses, reports and orders of reference. When the report involves a committee that is not reconstituted, it is the senator who was most recently chair who tables the report (rule 12-26(3)).

A rule adopted on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), stated: "Within sixty days following its report to the Senate, a special committee, and a standing committee that has been instructed to make a special study, shall report to the Senate with reasonable detail the expenses incurred by that committee in its work" (rule 84). The rule was amended on November 6, 1969 (see *Journals of the Senate*, p. 57), and again on October 4, 1995 (see *Journals of the Senate*, p. 1209). The provisions for obtaining a budget were adopted on March 26, 1986 (see *Journals of the Senate*, p. 1213), and amended on May 6, 2004, to take into account the adoption of the *Senate Administrative Rules* (see *Journals of the Senate*, p. 523). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-26

Senate Administrative Rules, (2004), Chapter 3:06:

1. (1) The budget of a select [i.e., standing or special Senate] committee for expenses relating to the study of bills, the subject-matter of bills, or estimates shall be:

- (a) adopted by the committee;
- (b) submitted by the committee to the Internal Economy Committee for its consideration;
- (c) adopted or amended by the Internal Economy Committee; and
- (d) presented to the Senate by report of the Internal Economy Committee.

(2) A select [i.e., standing or special Senate] committee must obtain the power to retain the services of independent contractors by resolution of the Senate before the committee adopts a budget under subsection (1) to do so.

2. (1) A committee budget for expenses not referred to in section 1 shall be:

- (a) adopted by the committee;
- (b) submitted by the committee to the Internal Economy Committee for its consideration; and
- (c) presented to the Senate by report of the committee, with the budget and a report of the Internal Economy Committee appended.

(2) A budget prepared for the purposes of subsection (1) shall contain a general estimate of the total cost of a special study and a detailed estimate of the special expenses of the committee for the study for the fiscal year.

...

4. Where a committee needs funds on an emergency basis and either the Senate or the Internal Economy Committee is unable to consider the budget submission of the committee, the Steering Committee may authorize the committee to incur expenses in an amount not to exceed a maximum to be set by finance rule.

...

10. (1) The Senate Administration shall monitor the expenses of each committee and the Clerk of the Senate shall report to the Chair of the Internal Economy Committee any expense not within the terms and conditions of a committee's budget.

(2) At the end of every month, the Senate Administration shall provide the chair of a committee with a monthly financial statement of expenditures charged against the committee's authorized budget, showing expenditures for the month in question, total expenditures to date and the unexpended balance.

(3) At the end of every quarter, the Senate Administration shall provide the Internal Economy Committee with a financial statement in respect of each committee.

11. Every committee shall make a financial report to the Senate in respect of each session.

Standing Committee on Conflict of Interest for Senators

RULE 12-27

Appointment of Committee **12-27.** (1) As soon as practicable at the beginning of each session, the Leader of the Government shall move a motion, seconded by the Leader of the Opposition, on the membership of the Standing Committee on Conflict of Interest for Senators. This motion shall be deemed adopted without debate or vote, and a similar motion shall be moved for any substitutions in the membership of the Committee.

	<i>REFERENCE</i> Conflict of Interest Code for Senators, <i>subsections 35(4) and (5)</i>
Quorum of Conflict of Interest Committee	12-27. (2) The quorum of the committee is three.
	<i>REFERENCE</i> Conflict of Interest Code for Senators, <i>subsection 35(2)</i>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-27(1): Rule 85(2.1)

Rule 12-27(2): Rule 86(1)(t)

COMMENTARY

The Standing Committee on Conflict of Interest for Senators has the mandate to exercise general direction over the Senate Ethics Officer and to be “responsible, on its own initiative, for all matters relating to the *Conflict of Interest Code for Senators*, including all forms involving senators that are used in its administration, subject to the general jurisdiction of the Senate” (rule 12-7(16)).

The membership of the committee is appointed in a manner totally different from that of other committees. At the beginning of each session, the government and opposition caucuses each elect, by secret ballot, two senators to sit on the committee. These four senators together elect a fifth. Once all five members have been chosen, the Leader of the Government moves a motion in the Senate, seconded by the Leader of the Opposition, to appoint the committee. This motion is deemed adopted without debate or vote. If a vacancy occurs in the membership, the new member is chosen through the same method as the member who is being replaced (s. 35(8) of the Code). The quorum of the committee is set at three members (rule 12-27(2)), and the leaders and deputy leaders are not *ex officio* members of this committee (rule 12-3(3)). During a period of prorogation or dissolution, the members of the committee form an Intersessional Authority on Conflict of Interest for Senators and perform similar functions as the committee until a new membership is appointed (ss. 38 to 40 of the *Conflict of Interest Code for Senators*). Finally, the chair of the committee must be elected by four or more members of the committee (s. 35(6) of the *Conflict of Interest Code for Senators*).

This provision was adopted at the same time as the *Conflict of Interest Code for Senators*, on May 18, 2005 (see *Journals of the Senate*, p. 928). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 12-27

Conflict of Interest Code for Senators (2012):

35. (2) The Committee shall be composed of five members, three of whom shall constitute a quorum.

(3) The Committee shall have no *ex officio* members.

(4) Two of the Committee members shall be elected by secret ballot in the caucus of Government Senators at the opening of the session; two of the Committee members shall be elected by secret ballot in the caucus of Opposition Senators at the opening of the session; the fifth member shall be elected by the majority of the other four members after the election of the last of the other four members.

(5) The Leader of the Government in the Senate, seconded by the Leader of the Opposition in the Senate, shall present a motion on the full membership of the Committee to the Senate, which motion shall be deemed adopted without any debate or vote.

(6) The Chair of the Committee shall be elected by four or more members.

(7) A member is deemed removed from the Committee as of the time that

(a) the Senate Ethics Officer informs the Committee that a request for an inquiry made by the Senator is warranted; or

(b) the Senator becomes the subject of an inquiry under the Code.

(8) Where a vacancy occurs in the membership of the Committee, the replacement member shall be elected by the same method as the former member being replaced.

...

38. During a period of prorogation or dissolution of Parliament and until the members of a successor Committee are appointed by the Senate, there shall be a committee known as the Senate Intersessional Authority on Conflict of Interest for Senators.

39. The Intersessional Authority on Conflict of Interest for Senators shall be composed of the members of the Committee.

40. (1) The Senate Ethics Officer shall carry out his or her duties and functions under the general direction of the Intersessional Authority on Conflict of Interest for Senators.

(2) Subject to the rules, direction and control of the Senate and of the Committee, the Intersessional Authority on Conflict of Interest for Senators shall carry out such other of the Committee's duties and functions as the Committee gives to it by resolution.

RULES 12-28 and 12-29

In camera meetings

12-28. (1) Meetings of the committee shall be in camera unless the committee accepts the request of the Senator who is the subject of an inquiry or investigation that the meetings be public.

REFERENCE

Conflict of Interest Code for Senators, *subsections 36(1) and (2)*

Participation of non-members

12-28. (2) When the committee is meeting in camera, only members of the committee or, by decision of the committee, a Senator who is the subject of its inquiry or investigation may attend and participate in deliberations.

REFERENCE

Conflict of Interest Code for Senators, *subsections 36(3) and (4)*

Adjournment of the Senate **12-29.** The committee may sit during any adjournment of the Senate.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-28(1): Rule 92(2.1)

Rule 12-28(2): Rule 91(2)

Rule 12-29: Rule 95(3.1)

COMMENTARY

Meetings of the Standing Committee on Conflict of Interest for Senators are held in camera unless a senator who is the subject of an inquiry or investigation requests that a meeting be in public, and the committee agrees to that request. Unlike other committees, only members of the committee are permitted to participate in its in camera meetings, although a senator who is the subject of an inquiry or investigation may be permitted to participate if agreed to by the committee. Finally, the committee has the authority to sit during any adjournment of the Senate.

These provisions were adopted at the same time that the *Conflict of Interest Code for Senators* was adopted on May 18, 2005 (see *Journals of the Senate*, p. 928). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 12-28 and 12-29

Conflict of Interest Code for Senators (2012):

36. (1) Subject to subsection (2), meetings of the Committee shall be held *in camera*.

(2) At the request of a Senator who is the subject of an investigation, the Committee may hold meetings at which the investigation is being conducted in public.

(3) Subject to subsection (4), the Committee may limit attendance at its meetings.

(4) The Committee shall give notice to a Senator who is the subject of an investigation of all meetings at which the investigation is being conducted, and shall admit the Senator to those meetings, but the Committee may exclude that Senator from those meetings or portions of meetings at which the Committee is considering a draft agenda or a draft report.

RULES 12-30 and 12-31

Motion deemed made **12-30.** (1) A motion to adopt a report of the committee on the conduct of an individual Senator shall be deemed moved on the fifth sitting day following its presentation, if the motion is not moved earlier.

	<p><i>REFERENCE</i> Conflict of Interest Code for Senators, <i>subsection 48(2)</i></p>
Minimum period for consideration of report	<p>12-30. (2) No vote on a motion to adopt a report under this rule shall be taken until the earlier of the following:</p> <ul style="list-style-type: none">(a) the fifth sitting day following the motion to adopt the report; or(b) the Senator who is the subject of the report has spoken.
	<p><i>REFERENCE</i> Conflict of Interest Code for Senators, <i>subsection 48(3)</i></p>
Maximum period for consideration of report	<p>12-30. (3) The Speaker shall put all questions necessary to dispose of a report under this rule when it is called no later than the fifteenth sitting day after a motion for adoption was moved.</p>
	<p><i>REFERENCE</i> Conflict of Interest Code for Senators, <i>subsection 48(5)</i></p>
Deferred vote on report	<p>12-30. (4) Except as otherwise provided, when the questions to dispose of a report are put under subsection (3):</p> <ul style="list-style-type: none">(a) if a standing vote is requested at or before 5:15 p.m., the vote shall be deferred until 5:30 p.m. on the same day, and the vote shall not be further deferred;(b) if a standing vote is requested after 5:15 p.m. and before 5:30 p.m., it shall be deferred to the time that would allow for a 15 minute bell, and the vote shall not be further deferred; and(c) if a standing vote is requested at 5:30 p.m. or later, it shall be deferred until 5:30 p.m. on the next sitting day, and the vote shall not be further deferred.
	<p><i>EXCEPTION</i> <i>Rule 16-1(6): Standing vote may be postponed if in conflict with message</i></p>
Report deposited with the Clerk	<p>12-31. A report of the committee may be deposited with the Clerk at any time the Senate stands adjourned and the report shall be deemed to have been presented to the Senate at the next sitting.</p>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 12-30: Rules 97(6), (7), (8), (9) and (10)

Rule 12-31: Rule 97(1.1)

COMMENTARY

Rules 12-30 and 12-31 describe the special process for dealing with a report by the Standing Committee on Conflict of Interest for Senators on the conduct of an individual senator. Such a report may be presented during Routine Proceedings, as with any other committee report. Rule 12-31 also provides that, when the Senate is adjourned, a report may be deposited with the Clerk and then be deemed to have been presented at the next sitting of the Senate.

A motion to adopt such a report requires one day's notice, and it is debatable and subject to amendment. Rule 12-30(1) provides that a motion to adopt the report is deemed moved on the fifth sitting day following its presentation, if not moved earlier. The normal rules of debate apply (see Chapter 6), but the senator who is the subject of the report has the right of final reply (see rule 6-12). A vote to adopt such a report cannot be held until either the senator who is its subject has spoken or five sitting days have passed, whichever comes earlier.

If the motion to adopt such a report has not been disposed of by the fifteenth sitting day after it was moved, the Speaker is required to put all questions necessary to dispose of the report. Finally, a standing vote to dispose of questions put on the fifteenth day is automatically deferred to 5:30 p.m. on the same day if debate expires at or prior to 5:15 p.m.; if debate expires after 5:15 p.m. but before 5:30 p.m., the standing vote will be held after a 15 minute bell; or, if debate is concluded after 5:30 p.m., the standing vote is deferred until 5:30 p.m. on the next sitting day. The deferred vote cannot be further deferred, although if it conflicts with an event relating to a message, it will be postponed until immediately after the event (rule 16-1(6)). The Senate may refer a report back to the committee for further consideration.

These provisions were adopted at the same time that the *Conflict of Interest Code for Senators* was adopted on May 18, 2005 (see *Journals of the Senate*, p. 928). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 12-30 and 12-31

Conflict of Interest Code for Senators (2012):

45. (1) Subject to subsection (4), following an inquiry, the Senate Ethics Officer shall, without delay, report confidentially in writing to the Committee, which shall table the report in the Senate, in the same form in which it was received, at the first opportunity.
- (2) If the Senate is not sitting on the day on which the Committee receives the report, or if Parliament is dissolved or prorogued, the Chair of the Committee shall
 - (a) transmit the report to the Clerk of the Senate, in the same form in which it was received; and
 - (b) table the report in the Senate, in the same form in which it was received, at the first opportunity.
- (3) A report that is transmitted to the Clerk of the Senate under paragraph (2)(a) is a public document.
- (4) The Senate Ethics Officer is not required to report to the Committee under subsection (1) where the report, if made, would make a finding under paragraph 6(a) or (b), unless the Senator who was the subject of the inquiry requests that a report be made.
- (5) Where the Senate Ethics Officer makes a report under subsection (1) that, by virtue of subsection (4), is not required to be made, the report may, at the request of the Senator who was the subject of the inquiry, keep the name of the Senator anonymous in order to protect the Senator's reputation.
- (6) In a report made under subsection (1), the Senate Ethics Officer may make findings and recommendations, including

- (a) that the complaint appears to be unfounded and should be dismissed;
- (b) that the request for an inquiry was frivolous or vexatious or was not made in good faith, or that there were no grounds or insufficient grounds to warrant an inquiry or the continuation of an inquiry;
- (c) that the complaint appears to be founded and that remedial action has been agreed to by the Senator involved; or
- (d) that the complaint appears to be founded, but that no remedial action was available or agreed to by the Senator involved.

(7) Where the Senate Ethics Officer makes a finding in the report that the complaint or request for an inquiry was frivolous or vexatious or was not made in good faith, he or she may recommend that action be considered against the person who made the complaint or request.

(8) If the Senate Ethics Officer concludes that a Senator has not complied with an obligation under this Code but that the Senator took all reasonable measures to prevent the non-compliance, or that the non-compliance was trivial or occurred through inadvertence or an error in judgement made in good faith, the Senate Ethics Officer shall so state in the report and may recommend that no sanction be imposed.

(9) The Senate Ethics Officer may include in the report any recommendations arising from the matter that concern the general interpretation of this Code.

(10) The Senate Ethics Officer shall include in the report reasons and any supporting documentation for any findings and recommendations.

46. (1) The Committee shall take into consideration a report of the Senate Ethics Officer tabled or otherwise made public under section 45 as promptly as circumstances permit.

(2) The Committee shall afford the Senator who was the subject of the inquiry the opportunity to be heard by the Committee.

(3) In considering a report, the Committee may

- (a) conduct an investigation; or
- (b) direct that the Senate Ethics Officer's inquiry be continued and refer the report back to the Senate Ethics Officer for such further information as the Committee specifies.

(4) Following its consideration under this section of a report of the Senate Ethics Officer, the Committee shall report to the Senate.

(5) In its report to the Senate, the Committee shall report the fact of the inquiry and give its findings with respect thereto, its recommendations if any, and its reasons and the supporting documentation for any findings or recommendations.

(6) The Committee may recommend that the Senator be ordered to take specific action or be sanctioned.

(7) Where the report of the Senate Ethics Officer keeps the name of the Senator anonymous at the Senator's request under subsection 45(5) and the Committee agrees that the Senate Ethics Officer was entitled to keep the name anonymous, the Committee's report may, at the Senator's request, keep the name of the Senator anonymous in order to protect the Senator's reputation.

...

48. (1) A motion that the Senate adopt a report referred to in subsection 46(4) shall be put pursuant to the notice provisions of [rule 5-5(f)] of the *Rules of the Senate*.

(2) A motion to adopt a report referred to in subsection 46(4) shall be deemed to have been moved on the fifth sitting day subsequent to the presentation of the report if the motion has not yet been moved.

(3) After a motion to adopt a report has been moved, or has been deemed to have been moved, no vote may be held for at least five sitting days, or until the Senator who is the subject of the report has spoken to the motion for its adoption, whichever is the sooner.

(4) The Senator who is the subject of the report may exercise the right of final reply.

(5) If a motion for the adoption of a report has not been put to a vote by the 15th sitting day after the motion was moved or deemed to have been moved, the Speaker shall immediately put all necessary questions to dispose of the matter when the item is called.

(6) The Senate may refer any report back to the Committee for further consideration.

49. (1) An investigation or inquiry of a Senator who ceases to be a Senator is permanently suspended unless the Committee directs that the investigation or inquiry be completed.

(2) In considering whether to issue a direction under subsection (1), the Committee shall consider any request from the former Senator or from the Senator who requested the inquiry, and any representations made by the Senate Ethics Officer.

(3) Notwithstanding subsection 48(5), where a motion to adopt a report about a former Senator is moved or deemed to be moved, the motion shall not be put to a vote until the former Senator has been offered the opportunity to speak to the report as a witness in Committee of the Whole, and has either availed himself or herself of the opportunity or has refused or otherwise failed to take advantage of the offer.

Committees of the Whole

RULES 12-32 and 12-33

No notice
required for
Committee of
the Whole

12-32. (1) A motion to resolve the Senate into a Committee of the Whole may be moved without notice.

Proceedings
recorded

12-32. (2) The proceedings of a Committee of the Whole shall be entered in the *Journals of the Senate*.

Procedure in Committee of the Whole	<p>12-32. (3) The Rules and practices of the Senate shall apply in a Committee of the Whole with the following exceptions:</p> <ul style="list-style-type: none">(a) Senators wishing to speak shall address the chair;(b) Senators need not stand or be in their assigned place to speak;(c) a Senator may speak any number of times;(d) no Senator shall speak in debate for more than ten minutes at a time;(e) any standing vote shall be taken immediately without the bells to call in the Senators;(f) arguments against the principle of a bill shall not be admitted;(g) no motion for the previous question or for adjournment shall be received; and(h) except as otherwise provided, notice is not required for a motion or an amendment. <p><i>EXCEPTION</i> <i>Rule 11-16: Notice of substantive amendments to private bills</i></p>
Participation of ministers in Committee of the Whole	<p>12-32. (4) When a bill or other matter relating to the administrative responsibility of the government is being considered by a Committee of the Whole, a minister who is not a Senator may, on invitation of the committee, enter the chamber and take part in debate.</p>
Witnesses in Committee of the Whole	<p>12-32. (5) Persons other than ministers may be invited to attend as witnesses before a Committee of the Whole.</p>
Motion to leave chair or report progress	<p>12-33. (1) In a Committee of the Whole, a Senator may at any time move “That the chair do now leave the chair” or “That the chair do now report progress and ask leave to sit again”. When either motion is moved, the following conditions shall apply:</p> <ul style="list-style-type: none">(a) the motion shall be decided immediately without debate or amendment; and(b) if the motion is rejected, another motion to the same effect shall not be received unless an intermediate proceeding has taken place.
Adoption of motion to leave chair	<p>12-33. (2) If the motion “That the chair do now leave the chair” is adopted, the committee shall immediately rise. The chair shall make no report to the Senate, and the bill or other matter before the Committee of the Whole shall be dropped from the Orders of the Day.</p>

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 12-32(1): Rule 59(16)
- Rule 12-32(2): Rule 84(3)
- Rule 12-32(3): Rules 83 and 84(1)
- Rule 12-32(4): Rule 21
- Rule 12-32(5): New provision
- Rule 12-33: Rule 84(2)

COMMENTARY

A Committee of the Whole is composed of “All Senators present sitting as a committee in the Senate Chamber, with a Senator other than the Speaker in the chair. A Committee of the Whole is usually established to consider urgent legislation, to hear from persons nominated for senior public positions or to hear testimony from a Minister or expert witness, though it may meet for any purpose ordered by the Senate. The mace is placed under the table when the Senate is sitting as a Committee of the Whole” (Appendix I, Terminology).

The Senate may resolve itself into a Committee of the Whole by adopting a motion moved without notice (rule 12-32(1)). More normally, however, the motion is only moved after notice. The proceedings of a Committee of the Whole are recorded in the *Journals of the Senate*, and the verbatim transcript is published in the *Debates of the Senate*. The Senate sometimes allows television cameras into the chamber for Committees of the Whole by the prior adoption of a motion.

During a meeting of a Committee of the Whole, the Rules and practices of the Senate generally apply. There are, however, a number of exceptions, and proceedings are generally less formal. A notable difference is that the Speaker leaves the chair and the mace is put under the table. The Committee of the Whole is presided by a senator – usually the Speaker *pro tempore* – designated by the Speaker, who sits at the Clerk’s place rather than in the Speaker’s chair. On at least one occasion, however, the Speaker has presided a Committee of the Whole when it was receiving the Speaker of a foreign Parliament (see *Journals of the Senate*, May 5, 2010). A table officer other than the Clerk of the Senate serves as clerk of the committee. Senators address the chair instead of their colleagues, and may speak more than once but for no more than 10 minutes at a time. Senators do not have to be in their assigned seats to speak and may remain seated. No notice is required to move a motion or an amendment, and votes are taken immediately without ringing the bells to call senators in to vote. The one exception relates to amendments to private bills, which require one day’s notice (rule 11-16). Motions for the previous question or for adjournment are not in order, nor are arguments against the principle of a bill adopted at second reading.

Ministers who are not senators may be invited to take part in debate in a Committee of the Whole when a bill or other matter under the responsibility of the government is being considered. Other witnesses may also be invited. While ministers usually sit at one of the desks near the Government Leader’s place, other witnesses sit at a convenient place in the central aisle. The rule for the appearance of ministers was adopted by the Senate on July 11, 1947. In introducing the motion for amending the rule Senator Robertson stated:

...There seems to be a desire on the part of ministers who are sponsoring important legislation to introduce it in the house of which they are members. Apparently they feel that in its initial stage they can do justice to it better than anyone else. That condition has existed for a long time.

I may say that early in the session I contemplated bringing to the attention of the Senate the desirability of doing something about this matter, in regard to which there has been so much talk. As early as 1868 the distinguished gentlemen who occupied the offices of leader of the government and leader of the opposition in this house concurred in a suggestion to amend the rules so as to permit the introduction of more legislation in this house. The amendment proposed would have allowed ministers of the government to introduce legislation in the Senate, and to participate in debate on it.

...

What I am proposing, honourable senators, contains nothing new. I have hurriedly looked through the records and I find that so long ago as 1868 the very matter which I am suggesting for your consideration was before the Senate. It came before this house in 1868, 1874, 1879, 1882, 1908, 1918, 1921, 1931, and 1934; but I cannot find that a formal change of our rules to permit this proceeding was ever made. The motion I am proposing is, so far as I remember, in the exact phraseology of one which was proposed about the year 1934, but was not proceeded with. In 1944, probably as a result of unanimous consent, the then Minister of National War Services, the Honourable J. G. Gardiner, was accorded the privileges of this house. ... (*Debates of the Senate*, 1947, pp. 572-574).

In 2012, the Rules were amended to explicitly provide for other witnesses to appear. Witnesses appear before Committees of the Whole with some regularity, and have included, for example, a former prime minister, a foreign speaker, ministers, officers of Parliament and nominees to such positions, First Nations leaders, and union representatives.

At any time during a Committee of the Whole, a senator may move that “That the chair do now leave the chair” or “That the chair do now report progress and ask leave to sit again.” These motions are decided immediately, without debate or amendment. If rejected, another motion to the same effect cannot be proposed unless some intervening proceeding has taken place. If the motion “That the chair do now leave the chair” is adopted, the committee immediately rises and no report is made to the Senate, resulting in the bill or other item being dropped from the Orders of the Day. If the motion “That the chair do now report progress and ask leave to sit again” is adopted, the Senate may authorize the committee to sit again, either that day or another day. Once a Committee of the Whole has completed its work on a bill or other item, it orders the chair to report its decisions to the Senate. The report of a Committee of the Whole is usually made verbally, not in writing. If a bill is reported without amendment, the sponsoring senator moves that it be placed on the Orders of the Day for third reading at the next sitting. If a bill is reported with amendments, those amendments are considered at some future date.

If business arises requiring the attention of the Senate (notably Royal Assent), the Speaker would take the chair immediately, without awaiting a report, and the committee would continue after the business has been disposed of. Under rule 3-3(1), if a Committee of the Whole is sitting at 6 p.m., its proceedings would be interrupted, to resume at 8 p.m. An exception to this provision would have to be granted by the Senate itself, not by the Committee of the Whole.

A rule adopted on December 17, 1867, stated: “When the Senate is put into a Committee of the Whole, the Sitting is not resumed without the unanimous consent of the Committee, unless upon a question put by the Senator who shall be in the Chair of such Committee” (rule 87). On April 6, 1876 (see *Journals of the Senate*, p. 168), the following provisions were added: “The Rules of the Senate are observed in a Committee of the Whole, except the rules limiting the number of times of speaking; and no motion for the previous question, or for an adjournment, can be received; but a Senator may at any time move that the Chairman leave the Chair, or report progress and ask leave to sit again” (rule 88); “No arguments are admitted against the Principle of a Bill in a Committee of the Whole” (rule 89); and “The proceedings of the Committee are entered in the Journals of the Senate” (rule 91).

On December 10, 1968, the rule that the sitting of the Senate could not be resumed unless by unanimous consent or upon a question put by the chair was repealed (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). The other rules were combined into the following (rule 65):

(1) The rules of the Senate shall apply in committee of the whole with the following exceptions:

- (a) the rules limiting the number of times of speaking shall not apply;
- (b) a motion for the previous question or for an adjournment shall not be received;
- (c) arguments against the principle of the bill shall not be admitted.

(2) In committee of the whole a Senator may at any time move “that the Chairman leave the Chair” or “that the Chairman report progress and ask leave to sit again”. Either motion shall be decided forthwith without debate and if resolved in the negative the motion shall not be reintroduced unless some intermediate proceeding has taken place. If the motion “that the Chairman leave the Chair” is resolved in the affirmative, the Chairman shall at once leave the Chair, shall make no report to the Senate, and the bill or other matter referred to the committee shall be removed from the order paper.

(3) The proceedings of a committee of the whole shall be entered in the Journal of the Senate.

The present content of the rule was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), including a new provision (rule 12-32(5)) to explicitly provide for other witnesses to appear before a Committee of the Whole.

RELATED CITATIONS AND EXTRACTS – RULES 12-32 and 12-33

Bourinot’s Parliamentary Procedure, Fourth Edition, pp. 392-393:

When the Senate has been “put into committee,” it is recorded in the journals as “adjourned during pleasure,” and when the committee rises, it is stated that “the house was resumed”. The procedure with respect to committees of the whole is substantially the same in the two houses.

...

There is no chairman of committees in the Senate, regularly appointed at the commencement of every session, as in the House of Lords; but the speaker will call a member to the Chair.

Page 399:

If it is proposed to defer the discussion of a bill or resolution, the motion may be made – “That the chairman do report progress and ask leave to sit again”; and if this motion (which is equivalent to a motion for the adjournment of debate) be agreed to the committee rises at once, and the chairman reports accordingly. The speaker will then say – “When shall the committee have leave to sit again?” A time will then be appointed for the future sitting of the committee. But if a member wishes to supersede a question entirely, he will move – “That the chairman do now leave the chair”.

“Forms and Proceedings,” *Rules of the Senate* (1990), pp. 64-65:

If the committee does not complete its consideration of the bill at a sitting, the chairman, on behalf of the committee, reports progress and asks leave to sit again. This question is decided by the Senate.

After the Committee of the Whole has completed its consideration, the chairman reports the bill to the Senate. If the bill is reported without amendment, the sponsoring senator then moves that it be placed on the Orders of the Day for third reading at the next sitting.

If the bill is reported with amendments, those amendments are, by motion, considered either at that time or at some future date. The motion for third reading of the bill follows.

A report of a select [i.e., standing or special Senate] committee may be referred to a Committee of the Whole for consideration. In Committee of the Whole the report of the select [i.e., standing or special Senate] committee is read by the Clerk Assistant. When the Committee of the Whole has concluded its consideration, the chairman reports the committee's findings to the Speaker. See Senate Journals, 1952-32, p. 357; 1960, pp. 610-11.

Supply bills are not usually referred to a Committee of the Whole or to a select [i.e., standing or special Senate] committee (See Bourinot, Fourth edition, pp. 443-44 and 530.) However, the estimates on which a supply bill is based are, in practice, referred to the Standing Senate Committee on National Finance when they are tabled in the Senate. The following references from the *Journals of the Senate* indicate occasions on which an appropriation bill was referred to (a) a Committee of the Whole: 1915, p. 139; 1919 (Second Session), pp. 177, 179 and 225; 1976-77, pp. 446 and 473; and (b) to a select [i.e., standing or special Senate] committee: 1943-44, p. 172; 1944-45, pp. 178 and 185; 1945 (First Session), p. 246; 1950 (Special Session), p. 29; 1973-74, pp. 85-86. Except for 1919, 1973-74, and 1976-77, the above references had to do with war appropriation bills.

Page 71:

There is no recorded vote in Committee of the Whole.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 249-250:

§901. The function of a Committee of the Whole House is deliberation, not enquiry. Questions which, in the opinion of the House, may be more fitly discussed in this Committee, are dealt with in a Committee of the Whole. The provisions of public bills are considered, from time to time, in a Committee of the Whole House.

...

§904. A Committee of the Whole House has no power either to adjourn its own sittings or to adjourn its consideration of any matter to a future sitting. If its consideration of a matter is not concluded, or if all matter referred to it have not been considered, the Chairman is directed to report progress and ask leave to sit again.

Speaker's Ruling: Committees Meeting at Same Time as Committee of the Whole

Journals of the Senate, June 5, 2012, p. 1343:

On May 31, 2012, the Honourable Senator Ringuette raised a question about the fact that the National Finance Committee had met at the same time as the Committee of the Whole considering Bill C-39. A similar objection was raised on March 14, 2012, when a Committee of the Whole was considering Bill C-33 at the same time a meeting of the Banking, Trade and Commerce Committee was scheduled.

This complaint involves conflicting priorities, obligations, and preferences, a feature that often confronts us as parliamentarians. In this case, for this matter to have merit, it would be necessary to establish that the sitting of the Senate, the Committee of the Whole, or the standing committee was in any way irregular.

In the normal course of events, the standing and special committees are not permitted to sit when the Senate is sitting, according to rule [12-18(1)]. [The Terminology in Appendix I] clearly defines a sitting as starting after prayers and ending with adjournment, so this prohibition holds when the Senate is sitting, when a Committee of the Whole is meeting, or when the Senate is suspended for the dinner break. Exceptions to rule [12-18(1)] occur, however, when committees are given permission to meet even though the Senate may be sitting.

With respect to the concern raised on March 14, that day was a Wednesday, and under the order adopted by the Senate on October 18, 2011, committees scheduled to meet after 4 p.m. on a Wednesday can do so, even if the Senate is sitting. The more recent incident of May 31 related to a meeting of the National Finance Committee dealing with the subject-matter of Bill C-38. The order of the Senate of May 3, specifically authorized the National Finance Committee to meet while the Senate was sitting, also suspending the application of rule [12-18(1)].

Without the special permissions granted by these motions and authorizing a suspension of rule [12-18(1)], Senator Ringuette's objection would be well-founded. The Senate had, however, adopted such motions, leaving it to the discretion of the committees involved as to how and when the power to sit despite rule [12-18(1)] would be used. That is, if the committees involved preferred not to sit while the Senate is sitting — including when a Committee of the Whole is meeting — they had the right not to sit. If, however, the committees chose to sit, they were allowed to do so. In such circumstances it is a matter for individual senators whether they wish to attend the committee or the proceedings in the Senate Chamber.

The committees in question exercised powers granted to them by the Senate.

CHAPTER THIRTEEN: QUESTIONS OF PRIVILEGE

This chapter describes the rules for the consideration of issues of privilege. It outlines the processes for raising a question of privilege, it establishes the criteria for evaluating a question of privilege when raised using certain procedures, and it describes the rules of debate for the consideration of a motion on a case of privilege. As explained in a ruling by the Speaker (see *Journals of the Senate*, March 25, 2010, p. 165) and as noted in the Terminology of the Rules, there are five ways a question of privilege can be brought before the Senate:

1. under the special processes provided under rules 13-6 and 13-7, requiring oral and written notice (rules 13-3(1) and 13-4);
2. after notice, as a substantive motion (rule 13-3(2));
3. without notice if the senator becomes aware of the issue either after the time for giving written notice or during the course of a sitting, but otherwise generally following the processes set out in rules 13-6 and 13-7 (rule 13-5);
4. by way of a report from a committee; and
5. through the processes outlined in Appendix IV of the Rules following the unauthorized release of confidential committee documents or proceedings.

The first process is most usually followed. Under both that process and the third one, the Speaker first considers whether the matter meets the criteria for a prima facie question of privilege. If it does, the senator who raised the matter can move a motion proposing some action or decision by the Senate. These steps may also arise in relation to the fifth process.

The first and third processes make a basic distinction between a question of privilege – “An allegation that the privileges of the Senate or its members have been infringed...” – and a case of privilege – “A matter that has been determined by a decision of the Speaker on a question of privilege to have prima facie merits...” (see Appendix I, Terminology). This distinction would generally also hold with the fifth process.

Unlike the situation in some other legislative bodies, questions of privilege arising from issues in committee can be raised on the floor of the Senate without a report of the committee involved (see ruling of October 28, 2009, quoted in relation to rules 13-3 and 13-4 below, as well as the list of cases in the Commentary on rule 2-9).

Breach of Privilege

RULE 13-1

Duty to preserve privileges

13-1. A violation of the privileges of any one Senator affects all Senators and the ability of the Senate to carry out its functions. The preservation of the privileges of the Senate is the duty of every Senator and has priority over every other matter before the Senate.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 13-1: Rule 43(1)

COMMENTARY

Parliamentary privilege is “The rights, powers and immunities enjoyed by each house collectively, and by members of each house individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Privileges include: freedom of speech in the Senate and its committees, exemption from jury duty and appearance as witness in some cases, and, in general, freedom from obstruction and intimidation” (Appendix I, Terminology). Rule 13-1 states that the preservation of the individual privileges of each senator and the collective privileges of the institution is the duty of every senator, and it states that matters of privilege have priority over every other item before the Senate.

Rule 13-1 was initially part of a larger rule that included the criteria for raising a question of privilege, as well as many aspects of the process now found in other parts of this chapter. The current content dates to June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The adoption of these changes in 1991 significantly altered the way in which the Senate deals with matters of privilege. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

For additional information on parliamentary privilege, see J. Maingot, *Parliamentary Privilege in Canada*, Second Edition; *Canada (House of Commons) v. Vaid*, 1 [2005] 1 S.C.R. 667, 2005 SCC 30; *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 R.C.S. 319; W.F. Dawson, “Privilege in the Senate of Canada,” unpublished paper presented at the annual meeting of the Canadian Political Science Association, 1966; Charles Robert, “Parliamentary Privilege in the Canadian Context: An Alternative Perspective, Part I: The Constitution Act, 1867,” *The Table*, vol. 78 (2010), pp. 32-47; and *House of Commons Procedure and Practice*, Second Edition, 2009, Chapter 3, pp. 59-160.

RELATED CITATIONS AND EXTRACTS – RULE 13-1

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 203:

Parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament; and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute.

Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members. The Speaker has ruled that parliamentary privilege is absolute.

Pages 217-218:

Throughout the long history of parliamentary privilege, the need to balance two potentially conflicting principles – both first enunciated in the seventeenth century – has become clear. Indeed the clarity of the need is heightened in modern times by actual or potential conflict with European or human rights law. On the one hand, the privileges of Parliament are rights ‘absolutely necessary for the due execution of its powers’, and on the other, the privilege of Parliament granted in regard of public service ‘must not be used for the danger of the commonwealth’. In consequence, it was agreed in 1704, for example, that ‘neither House of Parliament hath any power, by any vote or declaration, to create to themselves any new privilege that is not warranted by the known laws and customs of Parliament’. A number of privileges have been surrendered or modified over the years. A few examples may suffice. Following the Parliamentary Privilege Act 1770, the privilege of freedom from arrest previously enjoyed by Members’ servants was extinguished ... The Privileges Committee concluded at the beginning of the Second World War that the detention of a Member under Emergency Powers legislation should be regarded as akin to arrest under the criminal law, so that no breach of privilege was involved. The Criminal Justice Act 2003 abolished the category of persons ‘excusable as a right’ from jury service, including Members and Officers of either House.

... In general, the House exercises such jurisdiction in any event as sparingly as possible and only when satisfied that to do so is essential in order to provide reasonable protection for the House, its Members or its officers from such improper obstruction or attempt at or threat of obstruction causing or likely to cause, substantial interference with the performance of their respective functions ...

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 13-14:

§32. (1) While privilege in the United Kingdom has always been based on the common law, it has never been transferable to the colonies except by statute. The right of the Canadian Parliament to establish its privileges is guaranteed by the *Constitution Act* and the privileges thus claimed may, at present, not exceed those of the United Kingdom House of Commons.

(2) Parliament, in 1868, laid claim to all of the privileges of the United Kingdom House of Commons without specifying their exact extent. Three times since then (in 1868, 1873 and 1894) Parliament has clarified minor aspects of its privileges by statute.

Eighth report of the Standing Committee on Rules, Procedures and the Rights of Parliament, *Journals of the Senate*, June 20, 2013, p. 2716:

The rights of Parliament to perform its constitutionally-mandated role are well-entrenched in our Westminster parliamentary system. These rights assure the independence of parliamentarians to enable their constitutional functions. They result from the centuries old struggle of the English House of Commons in the assertion of its independence and the establishment of its distinct role within Parliament.

In Canada, these rights attained constitutional status when they were entrenched in the preamble and in section 18 of the *Constitution Act, 1867*. Under the Constitution, Parliament exercises the full extent of parliamentary rights and immunities enjoyed by the UK House of Commons at the time of

Confederation as well as additional rights and immunities that are necessary to its constitutional functions.

The historic rights that Parliament relies on to conduct its business and fulfil its constitutional role have continued to evolve in response to modern realities. ...

...

Among the rights Parliament possesses are:

- The right to conduct its business, whether in the chamber or in committees, without any encroachment on that right;
- The right to call any witness on any matter of business that the Parliament considers relevant; and
- The right to determine for itself whether its rights have been encroached upon.

Equally important, Parliament has a corresponding duty to preserve and protect these fundamental rights.

(Report adopted on June 26, 2013, Journals of the Senate, p. 2757)

Speaker's Ruling: Right of Senate to Regulate Internal Affairs

Journals of the Senate, May 23, 2013, p. 2550:

As honourable senators know, a question of privilege is “An allegation that the privileges of the Senate or its members have been infringed.” Privilege is made up of “The rights, powers and immunities enjoyed by each house collectively, and by members of each house individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.” These definitions are from Appendix I of our Rules.

There are a range of privileges and rights enjoyed by this house and by its members. One of these rights is to regulate internal affairs. In exercising this right, the Senate can implement measures intended to safeguard its public reputation, even if it appears to be detrimental to the interest of individual members. This is confirmed at page 88 of the second edition of *House of Commons Procedure and Practice*, where it is stated that “... individual Member's rights are subordinate to those of the House as a whole in order to protect the collectivity against any abuses by individual Members.” That is to say that the privileges and rights exercised by the Senate itself take precedence over those of individual senators.

RULE 13-2

Breach of privilege in the media

13-2. A Senator claiming as a breach of privilege a statement appearing in a newspaper, magazine or periodical, or transmitted by radio, television or any form of public media, shall specify the substance of the alleged breach, its source and its nature.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 13-2: Rule 45

COMMENTARY

Rule 13-2 provides that when a senator wishes to raise a question of privilege concerning derogatory remarks or reflections made in the public media relating to senators or the institution, the source and nature of the alleged breach must be identified. In 1993, the Standing Committee on Privileges, Standing Rules and Orders noted that a reflection on a senator may constitute a breach of privilege “only if it impedes the Senator or the Senate from performing parliamentary functions,” and that it should be “distinguished from actions for defamation, which are available to all citizens and are pursued through the civil courts” (see extract of report below).

A rule adopted on May 2, 1906, stated: “Any senator complaining to the Senate of a statement in a newspaper as a breach of privilege, shall produce a copy of the paper containing the statement in question” (rule 42). The wording was altered on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), to its present content. The Committee recommending the changes explained that the rule was “amended to extend to all forms of public news media and to simplify the manner of complaining to the Senate” (*Journals of the Senate*, November 28, 1968, p. 457, effective on August 1, 1969). The current wording was adopted on June 19, 2012 (*Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 13-2

Standing Orders of the House of Lords (2013):

16. The printing or publishing of anything relating to the proceedings of the House is subject to the privilege of the House.

Erskine May’s Parliamentary Practice, Twenty-Fourth Edition, p. 258:

Indignities offered to the House by words spoken or writings published reflecting on its character or proceedings have been punished by both the Lords and the Commons upon the principle that such acts of abuse tend to obstruct the Houses in the performance of their functions by diminishing the respect due to them.

Reflections upon Members, the particular individuals not being named or otherwise indicated, are equivalent to reflections on the House. ...

The resolution of the Commons of February 1978, ... is particularly relevant to contempts of this character. The House resolved to take action only when satisfied that it is essential to do so in order to provide reasonable protection against improper obstruction causing or likely to cause substantial interference with its functions.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 18-19:

§59. Traditionally, articles in the press reflecting badly on the character of the House have been treated as contempts. Two members of the staff of the House have been dismissed for writing such articles, and in 1873 the House judged an article written by a Member to be a “scandalous, false and malicious libel upon the honour, integrity and character of this House, and of certain Members thereof, and a high contempt of the privileges and constitutional authority of this House.” *Journals*, April 17, 1873, p. 169.

§60. In 1906, Mr. Joseph Ernest Eugène Cinq-Mars, a journalist, was examined at the Bar for an article in the press that the House eventually judged to “pass the bounds of reasonable criticism and constitute a breach of the privileges of the House.” Mr. Cinq-Mars incurred the censure of the House. *Journals*, June 14, 1906, pp. 372-77.

§61. More recently, notice has occasionally been taken of such articles, but the House has not taken any action. In 1920, a press report of a speech suggested that the expenditure of money would achieve certain results in Parliament. The Speaker requested an explanation and the clear denial of any such implication was accepted. (*Debates*, June 15, 1920, p. 3557.) In 1962, a derogatory article which appeared to reflect badly on a parliamentary delegation was referred to the Standing Committee on Privileges and Elections which failed to make a report. *Journals*, November 29, 1962, p. 334.

...

§63. A radio advertisement purporting to have as one of its characters a Member of Parliament and allegedly reflecting on the ethics of Members was ruled by the Speaker to constitute a *prima facie* case of privilege, but the advertisement was withdrawn before the House could consider the question. *Debates*, March 2, 1981, pp. 7771-72.

Fifth report of the Standing Committee on Privileges, Standing Rules and Orders, *Journals of the Senate*, May 6, 1993, pp. 2052-2053:

An adverse reflection upon a Senator or the Senate can constitute breach of privilege, but only if it impedes the Senator or the Senate from performing parliamentary functions. As such, it has a very narrow application, and is to be distinguished from actions for defamation, which are available to all citizens and are pursued through the civil courts. It is extremely difficult to bring oneself within the protection offered by this aspect of parliamentary privilege. There must be a link or nexus between the alleged defamation and the parliamentary work of the Senator.

...

Your Committee notes that in two earlier cases of privilege in the other place concerning Messrs. Reid and Mackasey, on each occasion the characterization of the alleged conduct of the member in question was in his capacity as a member of Parliament. Your Committee also notes that in a particular instance at Westminster it was pointed out that in every case of imputations upon members, the imputation was expressly directed to the conduct of the member or members either in the transaction of the service or business of the House or within the precincts. (United Kingdom, House of Commons, 269 (1964-65))

Your Committee notes that in the United Kingdom and in Canada, it “has long been accepted that neither House of Parliament has any power to create new privileges. Your Committee believe that it would be contrary to the interest of the House and of the public to widen the interpretation of its privileges especially in matters affecting freedom of speech. Your Committee and the House are not concerned with setting standards for political controversy or for the propriety, accuracy or taste [of newspaper articles or] of speeches made on public platforms outside Parliament. They are concerned only with the protection of the reputation, the character and the good name of the House itself. It is in that respect only and for that limited purpose that they are concerned with imputations against conduct of individual Members.” (United Kingdom, House of Commons, 247 (1963-64), paragraph 8).

Your Committee notes that the Canadian House of Commons, in 1976, agreed with the principle “that the House should be slow and reluctant to use its penal powers to stifle criticism or even abuse, whether of the machinery of the House, of a member or of an identifiable group of members, however strongly the criticism may be expressed and however unjustifiable it may appear. Your Committee regard such criticism as the life blood of democracy. In their view the sensible politician expects and even welcomes criticism of this nature. Nonetheless, a point may be reached at which conduct ceases to be merely intemperate criticism and abuse and becomes or is liable to become an improper obstruction of the functions of Parliament. For such cases, however rare, the penal powers must be preserved and the House must be prepared to exercise them”. (House of Commons, *Debates*, April 9, 1976, p. 12668)

(Report adopted by the Senate on June 10, 1993; see Journals of the Senate, p. 2182)

Speaker’s Rulings on Adverse Reflections in the Public Media

On occasion, Speakers have been asked to rule on questions of privilege dealing with adverse reflections on senators or the Senate in the public media. In the cases highlighted below, rulings were made about reflections on the work of a committee by a witness that were published in a newspaper article (November 7, 1995), and alleged misrepresentations of decisions made by the Senate found in blogs and press releases made by senators (October 28, 2009). In the 1995 case, it was determined that the ability of the committee to complete its mandate was not affected, while in the 2009 case the matter was determined to be essentially a difference of opinion.

Reflections on the Work of a Committee

Journals of the Senate, November 7, 1995, pp. 1263-1264:

On October 5, 1995 ... the Honourable Senator Cools raised a question of privilege ... related to an article in the *Edmonton Sun* in which a witness who appeared before the Standing Committee on Legal and Constitutional Affairs allegedly cast reflections upon the Senate and the Senators in connection with the work of the Committee concerning Bill C-68, An Act respecting firearms and other weapons. ...

This is not the first time Senators have attempted to raise, as questions of privilege, complaints that newspaper articles cast adverse reflections upon this chamber. However, as *Beauchesne’s* Sixth Edition, citation 69, p. 20 states: “... It is very important ... to indicate that something can be inflammatory, can be disagreeable, can even be offensive, but it may not be a question of privilege unless the comment actually impinges upon the ability of Members of Parliament to do their job properly.”

...

I can find no link between the description given by Senator Cools of the comments by the witness and the ability of the Legal and Constitutional Affairs Committee or the Senators who serve on it to carry out their mandate with respect to Bill C-68. Finding no link, I cannot conclude there has been any *prima facie* breach of the privileges of the Senate.

Alleged Misrepresentations of Decisions Made by the Senate

Journals of the Senate, October 28, 2009, pp. 1386-1387:

On October 20, Senator Comeau, the Deputy Leader of the Government in the Senate, raised a question of privilege challenging the accuracy of a press release from and interviews by Senator Cowan, the Leader of the Opposition in the Senate, as well as statements contained in a blog kept by Senator Mitchell. These materials addressed the Senate's handling of Bill C-25 and Senate procedures. Senator Comeau considered that they had misrepresented decisions taken by the Senate and distorted his own role and position. The result, he argued, was that they constituted a contempt.

... In this case a significant difference of opinion as to the course of events on October 8 obviously exists. Some honourable senators understood what happened in one way, others interpreted the situation quite differently.

... Do differences in how events are interpreted in the present case actually constitute a "grave and serious breach" of privilege? Was the Senate prevented from dealing with Bill C-25 as it wished? Do senators still exercise their rights and responsibilities unimpeded?

Senator Comeau certainly felt aggrieved by what was said, and not without reason. However, on balance, it does not appear that the tests of the second and fourth criteria have been satisfied. The ruling is therefore that a prima facie question of privilege has not been made out.

RULES 13-3 and 13-4

Criteria for priority	13-3. (1) In order to be accorded priority, a question of privilege must: <ul style="list-style-type: none">(a) be raised at the earliest opportunity;(b) be a matter that directly concerns the privileges of the Senate, any of its committees or any Senator;(c) be raised to correct a grave and serious breach; and(d) be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available.
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Substantive motion	13-3. (2) Except as otherwise provided, if the question of privilege is not raised at the earliest opportunity, a Senator may still raise the matter on a substantive motion following notice, but the matter cannot be proceeded with under the terms of this chapter.
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EXCEPTION

Rule 13-5: Question of privilege without notice

Giving Notice

Written notice of question of privilege	<p>13-4. (1) Except as otherwise provided, a Senator wishing to raise a question of privilege shall provide the Clerk with a written notice, indicating the substance of the alleged breach, at least three hours before the Senate meets. If the question of privilege is to be raised on a Friday, the notice shall be provided no later than 6 p.m. the day before.</p> <p><i>EXCEPTION</i> <i>Rule 13-5: Question of privilege without notice</i></p>
Translation and distribution	<p>13-4. (2) When the Clerk receives the notice, it shall be translated as soon as possible and a written copy in both official languages shall be sent immediately to each Senator’s parliamentary office.</p>
Non-receipt of notice	<p>13-4. (3) The non-receipt of a notice by any Senator shall not affect the validity of the notice, nor can it constitute a reason to delay consideration of the question of privilege.</p>
Oral notice of question of privilege	<p>13-4. (4) The Senator who has given written notice of a question of privilege shall be recognized during Senators’ Statements for the purpose of giving oral notice of the question. The Senator shall clearly identify the subject matter that shall be raised as a question of privilege and indicate a readiness to move a motion seeking Senate action in relation to the matter or referring it to the Standing Committee on Rules, Procedures and the Rights of Parliament.</p>

EQUIVALENCE WITH MARCH 2010 RULES

Rule 13-3: Rules 43(1) and (2)

Rule 13-4: Rules 43(3) to (7)

COMMENTARY

As mentioned in the introduction to this chapter, there are five different ways in which a question of privilege may be raised in the Senate. Two of these are described in rules 13-3 and 13-4. A question of privilege raised with written notice before the sitting is provided for under rules 13-3(1) and 13-4. A question of privilege raised by means of a substantive motion with notice is provided for under rule 13-3(2).

In practice, most questions of privilege begin by the senator who wishes to raise the matter sending a written notice to the Clerk. The notice must be provided at least three hours before a sitting, or, if the question is to be raised on a Friday, by 6 p.m. the previous day. The Clerk arranges for translation and sends a copy of the notice in both official languages to each senator’s office. The non-receipt of this notice by any senator does not affect the validity of the notice nor can it delay the process (rule 13-4(3)). The senator wishing to raise the question gives oral notice during Senators’ Statements. As with all Senators’ Statements, the senator is limited to speaking for no more than three minutes. Both the written and oral notices must indicate the substance of the alleged breach. In making the statement the senator must also indicate a readiness to move an appropriate motion if a prima facie case of privilege is established. The Senate will consider the question of privilege once the Orders of the Day are completed, but no later than 8 p.m. on the same day, or noon on a Friday (see rule 13-6(1)).

Rule 13-3(1) lists the criteria to be used by the Speaker in order to determine whether a question of privilege should be declared to be a *prima facie* case of privilege.

The four criteria listed in rule 13-3(1) begin by underlining the urgency of the matter – it must be raised by a senator at the earliest opportunity. The Speaker has ruled that “even a gap of a few days” may invalidate the claim for precedence in our proceedings” (see *Journals of the Senate*, November 16, 1994, pp. 569-571). Second, the matter must directly concern the privileges of the Senate, any of its committees or any senator – for example, freedom of speech or the right of the Senate to the presence of its members. Third, the matter must relate to a grave and serious breach – something that “would seriously undermine the ability of committees to function and would even jeopardize the work of the Senate itself” (see *Journals of the Senate*, November 4, 2003, pp. 1314-1317). Finally, a remedy must be proposed that the Senate has the power to provide – for example, the examination of the issue by the Standing Committee on Rules, Procedures and the Rights of Parliament. When the Speaker believes that all the conditions under rule 13-3(1) have been met, a *prima facie* case of privilege is established (see, for example, *Journals of the Senate*, June 10, 1999, p. 1714; May 27, 2007, pp. 1562-1564; and May 9, 2013, pp. 2235-2237). The citations below contain extracts of Speakers’ rulings dealing with various criteria.

Another method for the Senate to consider a question of privilege is provided under rule 13-3(2). Under this rule, a question of privilege can be raised by a substantive motion with one day’s notice. In this situation the matter does not have to be raised at the first opportunity, nor does it have to respect the previously cited criteria. The motion is dealt with in the same way as any other substantive motion. It will appear on the Notice Paper until moved, at which point it can be debated, amended and adjourned. The motion is subject to being dropped from the *Order Paper and Notice Paper* if it is not proceeded with for 15 sitting days pursuant to rule 4-15(2). However, unlike the procedure for raising a question of privilege under rule 13-3(1), such motions do not require a *prima facie* finding by the Speaker before they can be moved.

Rules 13-3 and 13-4 were initially part of a larger rule adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 13-3 and 13-4

Annotated Standing Orders of the House of Commons, Second Edition, pp. 175-176:

... When a Member brings a question of privilege forward, he or she is usually expected to be brief in presenting reasons why the Speaker should rule that a *prima facie* case exists. Other Members, at the Speaker’s discretion, may be allowed to participate in the discussion. Advance written notice is required in many cases (see Standing Order 48(2)), and successive Speakers have disallowed questions of privilege during Members’ Statements and Question Period, as well as during the Adjournment Proceedings and divisions. In fact, most are raised at specific times, namely, following Routine Proceedings but before Orders of the Day, immediately after Question Period, and, occasionally, during a debate.

Meeting these conditions, however, does not ensure that the question of privilege raised will have the House’s prompt attention since other criteria, decided upon by the Speaker, also come into play. In addition to the *prima facie* condition, for example, the Speaker considers whether the matter has been

brought forward in a reasonable time; whether the Member has a motion to propose that the House take some kind of action; and whether, if the motion questions a Member's conduct, election or right to sit, that there be a specific complaint against that Member. As well, where a publication is cited as the basis for a question of privilege, the relevant passage should be tabled and then read by the Clerk if required. If the Speaker is satisfied that the necessary conditions have been met, the Member is immediately allowed to move the motion (or move it at the first opportunity if there is a question already before the House), which usually — but not always — proposes that the matter be referred to the Standing Committee on Procedure and House Affairs for study and report. ...

Speaker's Rulings on Raising a Question of Privilege

In the following rulings, the Speaker provides concrete examples of the criteria used in determining whether there is a prima facie question of privilege, as well as other points relating to notice. The Speaker explains the requirement that all four criteria must be met (rulings from May 29, 2007; February 28, 2013; and April 24, 2013, are cited below, although this point has been made in other decisions as well); that the criteria of urgency cannot overlook even a gap of a few days (November 16, 1994); and that a genuine remedy must be available to the Senate (October 30, 2012). With regard to the notice, the Speaker explains that it must provide some meaning or context (October 26, 2006), and that after a senator has given oral notice under Senators' Statements, it is permissible for other senators to make statements on the same matter (May 17, 2007). In addition, the Speaker describes the procedures to be followed concerning matters arising from committees (October 28, 2009). It has also been noted that a question of privilege can be raised in relation to a matter that is otherwise sub judice (February 28, 2013).

Journals of the Senate, November 16, 1994, pp. 570-571:

In her words, Senator Cools claims that “The court has repeatedly and systematically insisted on my attendance at court on Senate sitting days, and even during actual Senate sittings.” However, the specific case that she has offered to the Chair for its ruling concerns an appearance that took place before the Ontario Court (General Division) on Tuesday, June 14. Between June 15, and October 5 when the question was formally raised, the Senate had sat at least eight separate days, five of them taking place in the month of June alone. It is true that the Senator gave an oral notice on July 7 of her intention to raise a question of privilege at the next sitting, but she provided no details.

Accordingly, I must conclude that I am not satisfied that the question was raised in the Senate at the earliest opportunity, given that “even a gap of a few days” may invalidate the claim for precedence in our proceedings.

Journals of the Senate, October 26, 2006, pp. 557-559:

In assessing the meaning of notice, which is central to the determination of this point of order, it is essential to look to the purpose of the particular notice required. I feel it appropriate to consider not just rule [13-4(1)], but other Senate rules as well as current practices that provide a better sense of what notice is meant to be and the purposes that it serves. ... [Rules 5-1, 5-3, 5-5, 5-6 and 5-7 are] all about notices. Not only do these rules identify the period of a notice, either one or two days when notice is required at all, but they also confirm that the content of the notice must be meaningful. ... It is not adequate, as a notice, to state simply an intention to move a motion or to propose an inquiry. To

suggest otherwise would seriously distort the meaning and intent of the notice. As an example, who would accept as adequate notice a Senator's declaration to move a motion without any indication of its content or to have a committee undertake a study without knowing what it was about? Notice must include some content indicating the subject being proposed for debate and decision.

... In a ruling of June 21, 1995, Speaker Molgat reiterated the explanation for notice:

The purpose of giving notice is to enable honourable senators to know what is coming so that they can have an opportunity to prepare. Why else would there be notice? They must have an opportunity to get themselves ready for the discussion. It is not meant to delay the work of the Senate. It is simply meant to bring order.

...

In this particular case, neither the written nor the oral notice provided by Senator Stratton dealt with the subject matter of the question of privilege. They simply stated that the Senator was going to raise a question involving "a contempt of Parliament" that "constitutes an affront to the privileges of every senator and of this place". These notices were insufficient. ...

Journals of the Senate, May 17, 2007, p. 1549:

At the end of Question Period on Wednesday, May 16, 2007, Senator Tardif rose on a point of order to object to statements made by Senators Angus and Cochrane. ... [S]he noted that Rule 22(4) [now see rule 4-2(5)(b)] states that, when making statements, "a Senator shall not anticipate consideration of any Order of the Day."

... Rule 44(3) [now see 13-7(2)] is in turn quite clear that a putative question of privilege is taken up after the Senate has completed consideration of the Orders of the Day or by 8:00 p.m., whichever is earlier. By its very language, stating that consideration of a putative question of privilege will occur "when the Senate has completed consideration of the Orders of the Day," it is clear that, under Rules 43 and 44 [now see, in particular, rules 13-1 to 13-4, 13-6 and 13-7], this does not fall into the category of items included in the Orders of the Day. A putative question of privilege, rather than being an Order of the Day, is an opportunity for a senator, providing certain conditions respecting notice are met, to raise an urgent matter relating to privilege.

... Senators Angus and Cochrane were expressing themselves, in accordance with Rule [4-2(5)(b)], on a matter they considered to be of public consequence. This is distinct from, although it may be close to, the more argumentative process characteristic of debate. This issue happened to relate to the question of privilege of Senator Tkachuk, of which he had given oral notice only moments earlier. There is nothing to prohibit several senators addressing the same topic during Senators' Statements, just as can be the case during Question Period. Furthermore, giving oral notice does not deprive another senator of the opportunity to make a statement before the matter has been taken up by the Senate.

The statements in question did not, therefore, violate Rule [4-2(5)(b)] and were in order.

Journals of the Senate, May 29, 2007, p. 1563:

Four basic conditions must be met for a putative question of privilege to be accorded priority over other matters before the Senate. It is the Speaker's role to evaluate these criteria.

Firstly, rule [13-3(1)(a)] requires that the matter be raised at the earliest opportunity. This is clearly the case here.

Secondly, rule [13-3(1)(b)] requires that the matter directly concern the privileges of the Senate, a committee, or a senator. This case involves a complex interaction between the rights and duties of committee members, the rights of the Senate to the presence of its members, and the freedom usually accorded to committees to conduct their business. This second criterion is also met.

Thirdly, rule 43(1)(c) [now see rule 13-3(1)(d)] requires that the question "be raised to seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available." The Speaker's role is limited to evaluating whether there is some option that could fulfil this condition. Senator Tkachuk can move a variety of motions meeting this condition. He has indicated that he is prepared to do so. Thus, the third criterion can reasonably be met.

Fourthly, rule [13-3(1)(c)] requires that the question be raised to correct a grave and serious breach. Fundamentally, Senator Tkachuk has suggested that he was obstructed from his ability to discharge his duties in committee. This is a grave and serious matter.

The putative question of privilege under consideration meets the conditions to be accorded priority under the special processes for a *prima facie* question of privilege. ...

Again, let me reiterate that this decision on the *prima facie* aspect of this question of privilege is not a definitive resolution of the issue. This ruling does not establish that Senator Tkachuk's privileges were breached. Nor does it conclude that any action must be taken on the matter. That is a decision for the Senate. Senator Tkachuk now has an opportunity, under rule [13-7(1)], to move a motion either calling on the Senate to take some action or referring the matter to the Rules Committee. The motion must be moved at this time, although it will only be taken into consideration at the end of Orders of the Day or 8:00 p.m., whichever comes first. Debate on the motion can last no more than three hours, with each senator limited to speaking once, and for no more than 15 minutes. Debate can be adjourned and, when concluded, the Senate will decide on Senator Tkachuk's motion. So the final decision is with the Senate.

Journals of the Senate, October 28, 2009, p. 1385:

Before considering the substantive points at the heart of this question of privilege, it is appropriate to address the procedural issue raised by Senator Wallace about how a matter of privilege from a committee can be brought before the Senate. Many parliamentary authorities do indeed state that such a matter should only be considered, except in rare instances, upon a report of the committee in question. However, the *Rules of the Senate* provide, at rule 43(1)(b) [now see rule 13-3(1)(b)], that a question of privilege can be raised under the special process for such issues if the "privileges of the

Senate, of any committee thereof, or any Senator” are at issue. Accordingly, [this process] can be used to raise questions of privilege arising from committee work, although a report of the committee is another vehicle available, as the authorities suggest.

Journals of the Senate, October 30, 2012, p. 1671:

... The Speaker’s role when dealing with a question of privilege is to assess whether a prima facie case has been made out. In making this assessment the Speaker is assisted by the provisions of rule 13-3(1), which outlines four criteria to be used in determining whether priority should be given to a question of privilege. The question of privilege must meet all the criteria.

While the question of privilege before the Senate certainly fulfills some of the criteria, it is not clear that the requirement of rule 13-3(1)(d) is met. That provision states that the question of privilege must “be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available.” In this case, the action of the committee chair in adjourning the meeting without verifying if there was other business is really one of order, and, as such, there is another reasonable parliamentary process available. The matter could be raised as a point of order in committee, where it can be dealt with more effectively. This may help avoid such situations in the future.

Journals of the Senate, February 28, 2013, pp. 1960-1962:

Before dealing with the specifics of the issue, it would be helpful to review how the process for dealing with questions of privilege works. The Speaker’s role at this initial stage is limited to determining whether there is a prima facie case of privilege, that is to say whether a reasonable person could conclude that there may have been a violation of privilege. This ruling does not deal with the substance of the case. If a prima facie case of privilege is established, the senator who raised the matter can, under rule 13-7(1), move a motion, which is subject to debate and can be amended.

In conducting the initial review the Speaker is guided by the four criteria set out in rule 13-3(1), all of which must be met for a prima facie case of privilege to be established. I shall now review each of the criteria to see how they relate to this question of privilege.

...

Before concluding, one other point, identified by Senator Fraser, should be addressed. The senator was concerned about dealing with a matter that is before the court, in effect raising the *sub judice* convention. As noted at pages 627 and 628 of the second edition of *House of Commons Procedure and Practice*, “The *sub judice* convention is first and foremost a voluntary exercise of restraint on the part of the House to protect an accused person, or other party to a court action or judicial inquiry, from any prejudicial effect of public discussion of the issue. Secondly, the convention also exists ... ‘to maintain a separation and mutual respect between legislative and judicial branches of government’. Thus, the constitutional independence of the judiciary is recognized.” Quite importantly, the text then goes on to note that “...the *sub judice* convention has never stood in the way of the House considering a *prima facie* matter of privilege vital to the public interest or to the effective operation of the House and its Members.” The *sub judice* convention does not, therefore, prevent the Senate from dealing with this matter.

Journals of the Senate, April 24, 2013, p. 2163:

As honourable senators know, a question of privilege must meet all four criteria set out in rule 13-3(1) to benefit from the special procedures in Chapter 13 of the Rules. The first of these criteria is that the matter be raised at the earliest opportunity. As Senator Chaput herself acknowledged, the Senate sat a number of times between February 13 and March 5. To meet the first criterion it would have been necessary to raise the matter on February 14, or to present a compelling case as to why that was not possible. Since this did not happen in this instance, the question of privilege does not meet the initial requirement to allow a prima facie question of privilege. Given this, it is not really necessary to evaluate it in terms of the others. In such a situation, the senator raising the matter still has, under rule 13-3(2), the option of proceeding by means of a substantive motion after notice. In the current case, however, the criteria of rule 13-3(1) have not been met, and there is no prima facie finding of a question of privilege.

RULE 13-5

Question of
privilege without
notice

13-5. If a Senator becomes aware of a matter giving rise to a question of privilege either after the time for giving a written notice or during the sitting, the Senator may either:

- (a) raise it during the sitting without notice at any time, except during Routine Proceedings, Question Period or a vote, but otherwise generally following the provisions of this chapter; or
- (b) delay raising it until the next sitting, in which case written notice must be given in accordance with this chapter.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 13-5: Rule 59(10)

COMMENTARY

Rule 13-5 provides that a question of privilege may be raised without notice if a senator becomes aware of a matter after the deadline for giving written notice, or if it arises during the sitting. Under these circumstances, the senator may raise the matter without notice at any time during a sitting, except during Routine Proceedings, Question Period or a vote. It will be considered at the time it is raised, unless the Speaker directs that consideration be delayed to 8 p.m. (noon on a Friday) or after completion of Orders of the Day (rule 13-6(2)), whichever comes first. If another question of privilege, raised after written and oral notices, is also to be dealt with at that time, the one raised without notice but delayed is dealt with before the one of which notice was given. The other provisions for dealing with a question of privilege are then followed (i.e., the necessity to meet the criteria outlined in rule 13-3(1) and the process for the consideration of a question or case of privilege in rules 13-6 and 13-7). A senator can, alternatively, wait until the next sitting to raise this matter, but in such cases the normal rules for written and oral notices apply (rule 13-5(b)).

Rule 13-5 originated in a rule dating from 1906, which outlined motions that required no notice, and which included questions of privilege. In 1991 the *Rules of the Senate* were modified to provide a new

process for giving notice of questions of privilege, without deleting some elements of the previous process. The Speaker was from time to time called upon to address the apparent inconsistency between two separate processes for dealing with the same matter. On October 26, 2006, the Speaker explained that “What I suspect happened is that in making the consequential changes to the rules, this particular change was not properly adjusted, either to delete it entirely or to modify it to explain under what conditions a question of privilege could be raised without notice” (see *Journals of the Senate*, p. 559). For additional information on how the two processes were applied during this period, refer to the ruling of April 21, 2009 (*Journals of the Senate*, pp. 450-451). The current rule was adopted on June 19, 2012, to clarify this apparent inconsistency and resolve the issue (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 13-5

Annotated Standing Orders of the House of Commons, Second Edition, p. 178:

A question of privilege may be raised without notice if it arises out of House proceedings. If it does not arise in this way, however, then one of two kinds of notice is required before the question may be brought to the House’s attention. First, the Member may give notice by providing a written statement to the Speaker at least one hour before raising it. Alternatively, the Member may choose to give written notice to the House in accordance with the provisions of Standing Order 54, which requires two days’ advance warning that such a matter is to be put before the House.

Speaker’s Ruling: Questions of Privilege Raised Without Notice

Journals of the Senate, October 30, 2012, p. 1670:

On October 25, Senator Marshall raised a question of privilege without notice, pursuant to rule 13-5(a). The issue dealt with a meeting of the Standing Senate Committee on National Finance held earlier that day. Since the events giving rise to the question of privilege took place less than three hours before the Senate sat, the normal written notice could not be provided.

Senator Marshall explained that, after hearing the scheduled witness on Bill C-46, she had intended to move a motion for the committee to proceed to clause-by-clause consideration of the bill. Before she could move the motion, the chair declared the meeting adjourned. This prevented her from proposing a motion for decision by the committee. Following this intervention, other senators participated in consideration of the question of privilege. ...

... In terms of the general process, rule 13-5 allows flexibility in raising a question of privilege when the matter arises after the time for giving written notice. The rule seeks to accommodate unusual or urgent circumstances and, as such, correct processes were followed by Senator Marshall.

Consideration of a Question of Privilege

RULE 13-6

Consideration of question of privilege **13-6.** (1) Except as provided in subsection (2) and elsewhere in these Rules, or unless the Senate adjourns earlier, questions of privilege of which written and oral notice was given shall be considered as soon as the Senate has completed the Orders of the Day, but no later than either 8 p.m. the same day or noon on a Friday.

EXCEPTIONS

Rule 8-4(1): Adjournment motion for emergency debate

Rule 13-5(a): Question of privilege without notice

Rule 13-7(2): Debate on motion on case of privilege

When question of privilege without notice considered **13-6.** (2) A question of privilege raised without notice shall be considered at the time it is raised, unless the Speaker at any time directs that further consideration be delayed until the time for considering questions of privilege of which written and oral notice was received. In this case, the delayed consideration shall be taken up before any questions of privilege of which notice was given.

Order of consideration **13-6.** (3) If more than one question of privilege is to be raised, the questions shall be considered successively in the order in which the Clerk received the notices.

Debates to be in succession **13-6.** (4) The Speaker shall end debate on a question of privilege before calling for consideration of the next question of privilege.

Prima facie determination by Speaker **13-6.** (5) The Speaker shall determine whether a prima facie question of privilege has been established. The Speaker shall give the reasons and cite any rules, practices or authorities on which the ruling is based.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 13-6(1): Rules 43(8) and (9)

Rule 13-6(2): New provision

Rule 13-6(3): Rule 43(10)

Rule 13-6(4): Rule 43(11)

Rule 13-6(5): Rule 43(12)

COMMENTARY

Rule 13-6 establishes the order in which and time at which questions of privilege will be considered. Rule 13-6(1) provides that the Senate will consider a question of privilege at 8 p.m. (or noon on a Friday) or after completion of the Orders of the Day, whichever comes first. This provision is subject to any earlier adjournment of the Senate, in which case the question of privilege will be dealt with at the same point on the next sitting day (see *Journals of the Senate*, May 29, 2007, p. 1562).

Both the consideration of a motion moved earlier in the day relating to a case of privilege and an emergency debate will be dealt with at this stage before the question of privilege is taken into consideration (rule 4-16(2)). If more than one notice on distinct questions of privilege has been received on the same day, the Senate will consider them in the order they were received.

Rule 13-6(2) provides that a question of privilege without notice under rule 13-5 is considered at the time that it is raised. However, the Speaker has the authority to delay further consideration to 8 p.m. (or noon on a Friday) or after completion of Orders of the Day. If, at that time, another question of privilege with notice was scheduled to be heard, the delayed question of privilege will be taken up first.

The rules and time limits for the consideration of the alleged breach of privilege are similar to those governing points of order. The senator who raised the question is recognized by the Speaker first to give a succinct explanation of the matter, along with references to any specific rules, practices, precedents or parliamentary authorities to support the complaint. Once the initiating senator has completed his or her intervention, the Speaker will generally choose to hear from other senators on the matter. During interventions on a question of privilege, normal rules regarding both time limits on debate or the number of times a senator may speak do not apply. These matters remain at the sole discretion of the Speaker. The Speaker also has complete discretion as to when he or she has heard enough debate on the matter to determine whether a prima facie case has been established or not. The Speaker may either deliver a ruling immediately or take the matter under advisement.

In making a ruling, which is subject to an appeal pursuant to rule 2-5(3), the Speaker will state the reasons for his or her decision, together with references to any rule or other written authority relevant to the case. Rule 13-3(1) establishes certain tests that questions of privilege must meet. Among others, a question of privilege must:

1. be raised at the earliest opportunity;
2. be a matter directly concerning the privileges of the Senate, a committee or a senator;
3. be raised to correct a grave and serious breach; and
4. be raised to seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available (see Speaker's rulings concerning the above criteria in Related Citations and Extracts for rule 13-3).

This provision dates to 1991 (see *Journals of the Senate*, June 18, 1991, pp. 180-181). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), including rule 13-6(2) to clarify how questions of privilege raised without written and oral notice are dealt with.

RULE 13-7

Motion relating to a case of privilege

13-7. (1) When a prima facie question of privilege has been established, the Senator who raised the matter may immediately move a motion to seek a remedy or to refer the case of privilege to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation and report.

<p>Debate on motion on case of privilege</p>	<p>13-7. (2) Debate on a motion relating to a case of privilege shall start when the Senate completes the Orders of the Day, but no later than 8 p.m., or noon on a Friday. The motion shall have priority over an emergency debate or any questions of privilege that would normally be considered at that point in the sitting.</p>
<p>Time limits on speaking on motion on case of privilege</p>	<p>13-7. (3) No Senator shall speak more than once or for more than 15 minutes in debate on the motion.</p>
<p>Limit of three hours</p>	<p>13-7. (4) Debate on the motion shall last no more than three hours. When debate concludes or the time expires, the Speaker shall immediately and successively put every question necessary to dispose of the motion without permitting further debate or amendment.</p>
<p>Debate may be adjourned</p>	<p>13-7. (5) Except as provided in subsection (6), debate on the motion may be adjourned.</p>
<p>Continuation of debate on motion on case of privilege beyond ordinary time of adjournment on first day of debate</p>	<p>13-7. (6) If, on the first day of debate, the motion is under consideration at the ordinary time of adjournment, the Senate shall not adjourn. Instead, the debate shall continue until it is concluded or the time has expired, and shall not be adjourned.</p>
<p>Vote deferred</p>	<p>13-7. (7) Except as provided in subsection (8), any standing vote requested on the motion may be deferred.</p>
<p>Vote on case of privilege automatically deferred in certain circumstances</p>	<p>13-7. (8) If debate on the motion ends after the ordinary time of adjournment, any standing vote requested shall automatically be deferred until 5:30 p.m. on the next sitting day, and the vote shall not be further deferred.</p>
<p>Where Orders of the Day completed</p>	<p>13-7. (9) Except as provided in subsection (11), if the Senate has completed the Orders of the Day before considering the motion relating to a case of privilege, a motion to adjourn the Senate shall be deemed to have been moved and adopted once debate on the motion either has been adjourned or has concluded with the question put.</p>
<p>Where Orders of the Day not completed</p>	<p>13-7. (10) Except as provided in subsection (11) and elsewhere in these Rules, if the Senate has not completed the Orders of the Day before debate on the motion begins, proceedings on the Orders of the Day shall resume after debate on the motion has been adjourned or has concluded with the question put. In either case, unless the Senate adjourns earlier:</p>

- (a) when the end of the Orders of the Day is reached, the Speaker shall adjourn the Senate until the next sitting day without the question being put; and
- (b) the rules for the ordinary time of adjournment shall be suspended, if necessary, for the shorter of:
 - (i) the time required to allow the Senate to reach the end of the Orders of the Day, or
 - (ii) the time spent on the motion relating to a case of privilege.

EXCEPTIONS

Rule 7-3(1)(c): Procedure for debate on motion to allocate time

Rule 7-4(1)(a): Government order to which time is allocated

Rule 7-4(2): Debate to continue beyond ordinary time of adjournment and no evening suspension

Where emergency debate or question of privilege follows motion on case of privilege

13-7. (11) If the Senate is to deal with an emergency debate or a question of privilege after a motion relating to a case of privilege, it shall deal first with the emergency debate and then with the question of privilege before either adjourning or resuming consideration of the Orders of the Day.

EQUIVALENCE WITH MARCH 2010 RULES

Rules 13-7(1) to (10): Rule 44

Rule 13-7(11): New provision

COMMENTARY

This rule provides that after the Speaker determines that a case of privilege exists on a prima facie (at first glance) basis, a motion may be moved for the Senate to take action on the matter. This underscores the fact that it is the Senate that ultimately decides whether a breach of privilege has occurred. As the Speaker has explained, a “decision on the *prima facie* aspect of [a] question of privilege is not a definitive resolution of the issue. ... nor does it conclude that any action must be taken on the matter. That is a decision for the Senate” (see *Journals of the Senate*, May 29, 2007, p. 1563). Rule 13-7 also contains provisions for the rules of debate and voting.

The motion to be debated is proposed by the senator who raised the issue, and it must call on the Senate either to propose a remedy or, more often, to refer the case to the Standing Committee on Rules, Procedures and the Rights of Parliament for consideration and report. Rule 13-7(2) provides that the debate starts at 8 p.m. (or noon on a Friday) or after the completion of Orders of the Day, whichever comes first. The motion has priority over an emergency debate or any question of privilege to be considered at that time.

In accordance with rule 13-7(3), no senator can speak more than once or for more than 15 minutes during the debate. There is, therefore, no right of reply. A ruling of April 16, 2013 (cited below), has nevertheless indicated that the limitation on speaking once “...only applies to the main motion. If there is an amendment or some other type of debatable motion moved during the three hours of debate, a senator

who has already spoken to the main motion could speak again.” Pursuant to rule 13-7(4), the total length of the debate is limited to three hours, after which the Speaker must interrupt the proceedings and put all questions necessary to dispose of the motion. This three hours includes time spent on amendments as well as any superseding or other motions that may be moved in relation to the motion (see ruling of April 16, 2013, cited below). The motion is amendable, and debate can be adjourned as long as the three-hour limit for debate is not surpassed. Under rule 13-7(6), debate on the motion can continue past the ordinary time of adjournment if necessary on the first day of debate. A standing vote on the motion may be deferred until the next sitting at 5:30 p.m.; however, if the debate ends after the ordinary hour of adjournment, the vote is automatically deferred until 5:30 p.m. on the next sitting day (rule 13-7(8)).

If debate on the motion starts after the Orders of the Day end, a motion to adjourn the Senate is deemed to have been adopted once debate on the motion is either adjourned or has concluded (rule 13-7(9)). If debate on the motion starts before the Orders of the Day are complete, the Senate will resume its consideration of the Orders of the Day once debate on the motion is either adjourned or has concluded. At the end of Orders of the Day the Senate will adjourn. In this situation the ordinary time of adjournment is suspended for a period not to exceed the time taken for the consideration of the case of privilege or for the completion of the Orders of the Day, whichever is shortest (rule 13-7(10)). Exceptions are made for the consideration of a government motion to allocate time, or a time-allocated government order of the day; in both cases debate will continue until completed (see rules 7-3(1)(c), 7-4(1)(a) and 7-4(2)).

Following the debate on a motion to consider a case of privilege, if the Senate is to deal with an emergency debate or a question of privilege, it will first deal with the emergency debate and then with the question of privilege before adjourning or resuming Orders of the Day (rule 13-7(11)).

These provisions date to June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). Rule 13-7(11) was added at that time to clarify the procedures following the adjournment or conclusion of a motion dealing with a case of privilege.

RELATED CITATIONS AND EXTRACTS – RULE 13-7

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, p. 29:

§118. A complaint of a breach of privilege must conclude with a motion providing the House an opportunity to take some action. That action is normally the reference of the matter to the Standing Committee on Elections, Privileges, and Procedure for examination. It may, however, be a statement of condemnation for a breach of privilege or an order for an individual to appear at the Bar.

House of Commons Procedure and Practice, Second Edition, pp. 148-149:

During the proceedings on a privilege motion, motions to adjourn the debate, to adjourn the House, or to proceed to Orders of the Day are in order, as are motions for the previous question (“that this question be now put”), for the extension of the sitting, or “that a Member be now heard”. If a motion to adjourn the debate or the House is adopted, debate on the privilege motion resumes the following sitting day. However, should the previous question be negatived, or a motion to proceed to Orders of the Day be adopted, then the privilege motion is superseded and dropped from the *Order Paper*. ...

Speaker's Rulings: Senate Decides if Breach of Privilege Has Occurred

Journals of the Senate, May 29, 2007, p. 1563:

Again, let me reiterate that this decision on the *prima facie* aspect of this question of privilege is not a definitive resolution of the issue. This ruling does not establish that Senator Tkachuk's privileges were breached. Nor does it conclude that any action must be taken on the matter. That is a decision for the Senate. Senator Tkachuk now has an opportunity, under rule [13-7(1)], to move a motion either calling on the Senate to take some action or referring the matter to the Rules Committee. The motion must be moved at this time, although it will only be taken into consideration at the end of Orders of the Day or 8:00 p.m., whichever comes first. Debate on the motion can last no more than three hours, with each senator limited to speaking once, and for no more than 15 minutes. Debate can be adjourned and, when concluded, the Senate will decide on Senator Tkachuk's motion. So the final decision is with the Senate.

Journals of the Senate, February 28, 2013, p. 1962:

A *prima facie* case of privilege has been established. The role of the Speaker, as identified at citation 117(2) of the sixth edition of Beauchesne, "... is limited to deciding the formal question, whether the case conforms with the conditions which alone entitle it to take precedence ... and does not extend to deciding the question of substance — whether a breach of privilege has in fact been committed — a question which can only be decided by the House itself."

Under rule 13-7(1), Senator Cools now has the opportunity to move a motion either calling on the Senate to take some action or referring the case of privilege to the Rules Committee. The motion must be moved at this time, although it will only be taken into consideration at the end of Orders of the Day or 8 p.m., whichever comes first. Debate on the motion can last no more than three hours, with each senator limited to speaking once, and for no more than 15 minutes. This debate can be adjourned, and when it concludes the Senate will decide on the motion. The final decision is for the Senate to make.

Speaker's Ruling: Motion Moved During Debate on Motion Relating to a Case of Privilege

Journals of the Senate, April 16, 2013, p. 2076:

... At the outset, it may be noted that Senator Tardif's proposal — to refer the entire motion relating to the case of privilege, not the actual case of privilege itself, to a Committee of the Whole — is unusual. When speaking to the point of order, the Deputy Leader of the Opposition indicated that "There may be no precedent for such a motion . . ." This does not mean that the motion is necessarily out of order, but it does make the uncertainty, indeed the concern, voiced by Senator Cools understandable. The point of order was therefore a legitimate effort to ensure that the Senate is following proper procedure. To assess this, I will turn to the *Rules of the Senate*.

The Rules do, in general, allow a motion of the type moved by Senator Tardif. Rule 5-7(b) provides that notice is not required for a motion "to refer a question under debate to a committee". Rule 6-8(b) then states that during debate on a question, a proposal to "refer the motion to a committee" is one of

the limited class of motions allowed. In neither case do these rules identify exceptions relating to a motion on a case of privilege. It should also be noted that rule 5-8(1)(f) states that a motion to refer a question to committee, if it does not relate to a bill, is debatable. Motions to refer the question under consideration to committee are not common, but they do arise on occasion. When such a motion is before the Senate, debate is on the motion to refer the question to committee, although in point of fact this debate may be far-reaching. If the motion is adopted, the matter goes to that committee for study. If the motion is defeated, debate on the original motion resumes.

It is certainly true, as Senator Cools pointed out, that rule 13-7 establishes a number of parameters that govern debate on a motion moved on a case of privilege. Of particular relevance to the present issue, rule 13-7(4) limits debate to three hours; rule 13-7(3) limits all senators to only one speech of fifteen minutes, effectively removing the right of reply; and rule 13-7(1) makes clear that the motion can only be moved after the ruling on the question of privilege, even though debate may not begin until later that day. Other provisions of rule 13-7 generally apply only on the first day of debate.

In situations in which the analysis may be ambiguous, it is helpful to refer to the principle, expressed by several Speakers, that matters should generally be presumed to be in order unless the opposite is clearly demonstrated. As stated in a ruling of February 24, 2009, “In situations where the analysis is ambiguous, several Senate Speakers have expressed a preference for presuming a matter to be in order, unless and until the contrary position is established. This bias in favour of allowing debate, except where a matter is clearly out of order, is fundamental to maintaining the Senate’s role as a chamber of discussion and reflection.” Senator Tardif has outlined how her motion can be seen as fitting into the general framework of the Rules. As such, there is a reasonable basis to allow debate to continue, so that the Senate itself can decide how best to proceed.

Before concluding, there are two final issues to address. First, as already noted, there is a limit of three hours for debate on Senator Cools’ motion. Any time taken in debate on Senator Tardif’s motion counts towards that three hour period. Second, the restriction on a senator speaking once, contained in rule 13-7(3), only applies to the main motion. If there is an amendment or some other type of debatable motion moved during the three hours of debate, a senator who has already spoken to the main motion could speak again.

Trusting that this analysis has been helpful to the chamber, debate can continue.

CHAPTER FOURTEEN: DOCUMENTS, JOURNALS AND BROADCASTING

This chapter contains the rules relating to the documents, the official records, and the broadcasting of the Senate and its committees. Rules 14-1 and 14-2 describe the processes whereby documents may be provided to the Senate (i.e., “tabled”); rules 14-3 to 14-6 describe the official record of the decisions and business of the Senate, called the *Journals of the Senate*, as well as other official publications; and rule 14-7 describes the provisions for the audio recording and broadcasting of the proceedings of the Senate and its committees.

Tabling Documents and Accounts

RULE 14-1

Tabling by Government	14-1. (1) The Leader or Deputy Leader of the Government may table any papers dealing with the administrative responsibilities of the Government when the Speaker calls for the Tabling of Documents.
Tabling ordered by Senate	14-1. (2) The Senate may order that Government accounts and papers be tabled, and the Leader of the Government shall cause these papers to be tabled in the Senate.
Tabling by other Senators	14-1. (3) A Senator may, with leave of the Senate, table any paper when the Speaker calls for the Tabling of Documents.
Tabling during debate	14-1. (4) A Senator who is speaking during debate may, with leave of the Senate, table any paper relating to the subject of the debate.
Record of tabling in Journals and Debates	14-1. (5) A record of any paper tabled in the Senate under subsections (1), (3) and (4) of this rule shall be entered in the <i>Journals of the Senate</i> and the <i>Debates of the Senate</i> at the earliest opportunity.
Tabling through the Clerk	14-1. (6) Except as otherwise provided, when there is a requirement that a return, report or other paper be laid before the Senate, the document may be deposited with the Clerk and it shall then be considered tabled in the Senate.
<p><i>EXCEPTIONS</i> <i>Rule 15-1(2): Failure to attend two sessions</i> <i>Rule 15-6(2): Tabling of declarations by Clerk</i></p>	
Record of tabling in Journals	14-1. (7) A record of any paper tabled through the Clerk under this rule shall be entered in the <i>Journals of the Senate</i> at the earliest opportunity.

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 14-1(1): Rule 28(3)
- Rule 14-1(2): Rule 131(1)
- Rule 14-1(3): Rule 28(4)
- Rule 14-1(4): New provision
- Rule 14-1(5): Rule 28(5)
- Rule 14-1(6): Rule 28(1)
- Rule 14-1(7): Rule 28(2)

COMMENTARY

Rule 14-1 provides for the tabling of documents for the information of the Senate, including documents relating to the administrative responsibilities of the government or to the business before the Senate. Documents may, generally speaking, be tabled in one of the following three ways:

1. the Leader of the Government or the Deputy Leader may, without leave, table papers dealing with the administrative responsibilities of the government during Routine Proceedings under “Tabling of Documents” (see rules 14-1(1) and 14-1(2));
2. with leave of the Senate any senator may table a paper either during “Tabling of Documents” or during debate (see rules 14-1(3) and 14-1(4)); and
3. papers required to be laid before the Senate under an act of Parliament, or a rule or decision of the Senate may be deposited with the Clerk of the Senate at any time Parliament is not prorogued or dissolved, and are then deemed to be tabled in the Senate (see rules 14-1(6) and 14-1(7)).

In most cases, the government can choose whether to use the first or third method, sometimes respectively referred to as “front door tabling” and “back door tabling.” In some situations one or the other must be used. A user fee proposal, for example, can only be tabled “front door” because of the subsequent referral to committee required under rule 12-8(2). If a document must be tabled by a fixed date, and the Senate is not sitting on that day, it would have to be tabled “back door.” This can apply, notably, to government responses to committee reports, where the Rules require that the tabling be within 150 calendar days of the adoption of the request for a response (see Commentary on rule 12-24).

The government is required by statute to table various documents before Parliament. The Senate may also order the production of other papers from the government. This is done by the adoption of a motion after one day’s notice. While this practice is long established, it is not often used, since information may be requested from the government in other ways, such as written questions. Since 2003, there is also an opportunity for the Senate to request that the government produce responses to reports from standing and special committees adopted by the Senate (see rule 12-24(1)). An order for the government to produce a document or to respond to a committee report ceases to have effect at prorogation or dissolution (see Speaker’s ruling cited below).

In addition, the Speaker can table reports or documents that are required by the *Rules of the Senate* or by statute. The Speaker may also table documents or reports relating to the administrative functions of the Speaker’s Office. In the latter situation, the Speaker seeks leave to table the documents under rule 14-1(3), since there is no rule, resolution or statute requiring tabling. The *Rules of the Senate* also provide that the Clerk of the Senate must table a list of those senators who have renewed their Declaration of Qualification (rule 15-6(2)) and those who have failed to attend for two consecutive sessions of Parliament (rule 15-1(2)). This is done by the Speaker tabling a communication from the Clerk.

The *Journals of the Senate* record all tabled documents, whether this is done “front door” or “back door.” Reports deposited with the Clerk during periods of adjournment are entered in the Journals on the first sitting day following the adjournment. All documents tabled by a federal institution, either during a sitting or through the Clerk, must be in both official languages (see *Official Languages Act*, s. 8, cited below).

Citation 476 of *Beauchesne* (Sixth Edition) states at page 140: “Under no circumstances may a Member merely table a speech for printing in Hansard.” This point was discussed and followed on December 20, 1984 (see *Debates of the Senate*, pp. 405-406 and 409).

A rule adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137), stated: “Accounts and papers may be ordered to be laid on the Table, and the Clerk shall communicate to the senator having the conduct of government business all orders for papers made by the Senate; and such papers when returned shall be laid on the Table” (rule 101). This rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). The current general content of the rule was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181), and amended on June 23, 1993 (see *Journals of the Senate*, p. 2280). On June 3, 2003, a provision was adopted for government responses to committee reports (see *Journals of the Senate*, p. 880). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), and included a provision recognizing that senators can table papers during debate with leave.

RELATED CITATIONS AND EXTRACTS – RULE 14-1

Official Languages Act:

8. Any document made by or under the authority of a federal institution that is tabled in the Senate or the House of Commons by the Government of Canada shall be tabled in both official languages.

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, pp. 151-152:

§495. (1) A Minister is not at liberty to read or quote from a despatch or other state paper not before the House without being prepared to lay it on the Table. *Debates*, March 6, 1984, p. 1818.

(2) It has been admitted that a document which has been cited ought to be laid upon the Table of the House, if it can be done without injury to the public interest. The same rule, however, cannot be held to apply to private letters or memoranda. *May*, pp. 433-34.

(3) A public document referred to but not cited or quoted by a Minister need not be tabled. *Journals*, November 16, 1971, p. 922.

(4) Only the document cited need be tabled by a Minister. A complete file need not be tabled because one document in it has been cited. *Debates*, April 17, 1913, pp. 7925-45.

(5) To be cited, a document must be quoted or specifically used to influence debate. The admission that a document exists or the reading of the salutation or address of a letter does not constitute citing. *Debates*, April 3, 1957, p. 3008. *Debates*, March 4, 1975, p. 3755.

(6) A private Member has neither the right nor the obligation to table an official, or any other, document. *Journals*, April 6, 1971, pp. 475-76.

(7) When a letter, even though it may have been written originally as a private letter, becomes part of a record of a department, it becomes a public document, and if quoted by a Minister in debate, must be tabled on request. *Journals*, February 22, 1972, p. 15.

Speaker's Ruling: Effect of Prorogation or Dissolution on Government Response to Committee Report

Journals of the Senate, December 11, 2007, p. 368:

As a final point relating to government responses and prorogation, I would like to take this opportunity to clarify that, because the Senate does not have rules providing that requests for government responses are automatically revived in a new session, such requests do, in fact, die at prorogation. If a response is still desired in the new session, it must be renewed by motion, with a new period of 150 days, if the motion is adopted. This is different from the House of Commons, which does have a Standing Order allowing requests for government responses to committee reports to survive in a new session of the same Parliament. ...

RULE 14-2

Royal
prerogative

14-2. When the royal prerogative is concerned in any report or paper sought by the Senate, an address shall be presented to the Governor General asking that the report or paper may be tabled in the Senate.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 14-2: Rule 132

COMMENTARY

The royal prerogative consists of “The powers exercised by the Crown without statutory authority that are the survivors of the original powers possessed by the early English sovereigns. The prerogative powers have been reduced and limited over the centuries by statute and disuse, but still represent a substantial residue, including, for example, the appointment of the Prime Minister; the declaration of war and the conclusion of peace; the making and renouncing of treaties; the establishment and termination of diplomatic relations; the summoning, prorogation and dissolution of Parliament; and the granting of certain pardons. Most prerogative powers are exercised only on advice of the Government, although some limited prerogative powers, such as the granting of honours, are exercised by the Sovereign (or, more usually, a representative) independently” (Appendix I, Terminology).

Rule 14-2 provides that when the Senate wishes to request documents in the possession of the Crown, such as correspondence between the federal government and provincial governments, it is done by way of an address to the Crown. This is in contrast to a request for papers directly relating to the workings of government departments, which is done by way of an order (see rule 14-1(2)). Addresses are worded in

the following fashion: “That a humble Address be presented to His/Her Excellency praying that he/she will cause to be laid before the Senate ____.” On the related issue of Royal Consent, required when a bill affects the personal property of the Queen or her prerogative powers, refer to rule 10-6.

This rule was adopted on May 2, 1906 (see *Journals of the Senate*, pp. 136-137). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 14-2

Norman Ward, *Dawson’s the Government of Canada*, Sixth Edition, p. 178:

The powers of the British crown are derived from two sources: statute and common law. The powers springing from the former are, of course, found in acts of Parliament; those derived from the common law are the survivors of the original powers possessed by the early English sovereigns before Parliament in the modern sense existed, and are generally described by the term ‘prerogative.’ The authority was originally extensive, and included the general powers vested in the monarch as supreme executive, lawgiver, judge, and warrior. But succeeding centuries have seen these reduced and limited by various contractual agreements (such as Magna Carta, 1215), by statutes (such as the Bill of Rights, 1689), and by simple disuse. The remainder is thus not so extensive as the original powers, but there is still a substantial residue which Parliament has permitted to remain under the control of the crown. This residue can, of course, be altered by Parliament.

Prerogative powers have the same legal validity as those conferred on the crown by statute, and while they are almost entirely exercisable on the responsibility of ministers, there is within this area a very small segment of independent authority. Statutory powers are fairly obvious and readily ascertained; but the prerogative, finding its origin in the misty past and interpreted by the courts only as the occasion has arisen, is uncertain. Statutory powers are constantly being increased and have, in fact, been expanded enormously in recent years. Prerogative powers, however, can shrink but not grow; for if a new executive power rests on valid precedent, it is no extension but merely a revival; and if it is given a new lease of life by act of Parliament, it becomes a statutory power.

Yet the prerogative is extremely important, and its significance may be readily appreciated by considering the part played in English government by the following, which are broadly prerogative powers, although they may have been affected by the enactment of statutes: the appointment and dismissal of public servants; the summoning, prorogation, and dissolution of Parliament; the creations of peers and conferring of titles of honour; the pardoning power; the power to do all acts of an international character, such as the declaration of war and neutrality, the conclusion of peace, the making or renouncing of treaties, and the establishment or termination of diplomatic relations.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 168:

An Address to Her Majesty is the form ordinarily employed by the Houses of Parliament for making their desires and opinions known to the Crown as well as for the purpose of acknowledging communications proceeding from the Crown. In the House of Commons the procedure upon a motion for an Address is the same as upon an ordinary substantive motion. It requires notice and can

be debated, amended and divided upon. Usually the motion for an Address is made in the form ‘That an humble Address be presented to Her Majesty to ...’ and the necessary prefatory words are inserted when the actual copy of the Address is prepared. An amendment to leave out the word ‘humble’ is not in order. ...

Journals of the Senate

RULES 14-3, 14-4, 14-5 and 14-6

Copies to Governor General	14-3. A copy of the <i>Journals of the Senate</i> , certified by the Clerk, shall be transmitted daily to the Governor General.
Searching of Journals	14-4. The <i>Journals of the Senate</i> may be searched by the House of Commons, just as the <i>Journals</i> of that house may be searched by the Senate.
Publishing	14-5. The publishing of anything relating to the proceedings of the Senate shall be as ordered by the Senate.
Binding	14-6. The <i>Journals of the Senate</i> shall be bound in volumes with full indexes as soon as possible after each session.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 14-3: Rule 127

Rule 14-4: Rule 125

Rule 14-5: Rule 129

Rule 14-6: Rule 128

COMMENTARY

The *Journals of the Senate* are the official record of the decisions and the business conducted by the Senate. In addition to noting all the proceedings that have taken place, including the readings of bills, the presentation of committee reports, the adoption of motions, committee membership changes and declarations under the *Conflict of Interest Code for Senators*, the Journals also record rulings, votes taken during a sitting, messages received from the House of Commons and the attendance of senators.

The unrevised Journals are prepared after each sitting, based on the Clerk’s scroll, and published in a bilingual format. Any error or omission is noted in a corrigendum appended to a subsequent issue of the unrevised Journals at the earliest opportunity. The unrevised Journals are posted on the Internet the morning after each sitting. At the end of each session, the unrevised Journals are edited and issued in bound volumes. Proclamations relating to the appointment of the Governor General; and the opening, prorogation or dissolution of Parliament are included in the bound volumes, as are full indices and various lists of senators, committees, officers of the Senate, the ministry and the Senate Administration.

The Rules provide for a number of details regarding the Journals. Rule 14-3 requires that, for every sitting of the Senate, the Clerk of the Senate send a certified copy of the unedited *Journals of the Senate* to the Governor General. Rule 14-4 reflects the need for each house to have ready access to the other's official record, so it authorizes the House of Commons to search the *Journals of the Senate* and for the Senate to search those of the Commons. Finally, rule 14-6 provides for the preparation of the final edited and bound version of the Journals at the end of each session.

One of the collective rights and immunities that belong to the Senate relates to the control of its publications. In this regard, rule 14-5 recognizes that the Senate has exclusive power over all of its publications relating to its proceedings and those of its committees. This includes, for example, the *Journals of the Senate*; the *Order Paper and Notice Paper*; the *Debates of the Senate*; the Progress of Legislation; and committee reports, minutes and evidence. Rule 12-9(2) provides that standing committees are empowered to “publish from day to day such papers and evidence as may be ordered by them,” while special committees are normally given this authority within their orders of reference. Rule 14-5 also covers any appendix that may be annexed to the Journals or the Debates. In accordance with sections 4 to 6 of the *Official Languages Act*, all documents are published in English and French, and both versions are equally authoritative.

Variations of most of these rules have existed since 1867. On December 17, 1867, the Senate adopted a rule reading: “A copy of the Journals, or Minutes of Proceedings certified by the Clerk, is to be transmitted daily to the Governor General” (rule 102). On April 6, 1876 (see *Journals of the Senate*, p. 168), the reference to the Journals was deleted (rule 105), while on October 4, 1995 (see *Journals of the Senate*, p. 1209), the “Minutes of Proceedings” were renamed the “Journals.” The House of Commons had a corresponding Standing Order until 1994, when it was deleted. On December 17, 1867, the Senate also adopted the following rule: “The Journals of the Senate, according to Parliamentary usage, may be searched by the House of Commons, as the Journals of that House, may be searched by the Senate” (rule 107). The present content of rules 14-3 and 14-4 was agreed to on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969).

On December 17, 1867, the Senate also adopted a rule on the binding of the Journals at the end of the session (rule 103). On March 29, 1894 (see *Journals of the Senate*, p. 34), the Senate adopted a rule reading: “All papers laid on the Table, stand referred to the Joint Committee on Printing, who decide and report whether they are to be printed” (rule 97). On December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), the Senate amended the rule regarding the control of its publications. The committee proposing the change commented in its report that this amendment was “intended to eliminate all doubts concerning the printing of documents as appendices to our Debates and Journals. This rule would equally apply to documents that may concern both Houses of Parliament” (see *Journals of the Senate*, November 28, 1968, p. 471, effective on August 1, 1969).

The current wording of rules 14-3 to 14-6 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULES 14-3, 14-4, 14-5 and 14-6

Official Languages Act:

4. (3) Everything reported in official reports of debates or other proceedings of Parliament shall be reported in the official language in which it was said and a translation thereof into the other official language shall be included therewith.

5. The journals and other records of Parliament shall be made and kept, and shall be printed and published, in both official languages.

6. All Acts of Parliament shall be enacted, printed and published in both official languages.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 299-300:

§1113. (1) The *Journals* contain all the proceedings which have actually taken place, the *res gestae*, such as petitions presented, bills read a first, second or third time, references of questions to committees, resolutions amended or carried, votes taken, debates adjourned. The official record of what is “done and past”, in a legislative assembly, is called the *Journal*. It is so called because the proceedings are entered therein, in chronological order, as they occur from day to day, the business of each day forming the matter of a complete record by itself; hence the record is frequently spoken of in the plural as the *Journals*.

(2) The *Journals* are prepared under the direction of the clerk, by the Journals Branch. They are prepared from the Clerk's Scroll; therefore, whenever any question arises as to any proceedings which have taken place, the *Journals* alone are held to be correct. An entry therein may be amended or expunged, but only on a motion made in the House after due notice.

§1114. (1) Upon any enquiry touching the privileges, immunities and powers of the Senate and House of Commons, or of any Member thereof respectively, any copy of the *Journals* of the House of Commons, printed or purported to be printed by order of the House of Commons, shall be admitted as evidence of such *Journals* by all courts, justices, and others without any proof being given that such copies were so printed. *Parliament of Canada Act*, R.S.C. 1985, c. P-1, s. 6.

(2) When the *Journals* are required as evidence in a court of law, or for any legal purpose, a person may either obtain from the Journals Branch a copy of the entries required without the signature of any officer and swear that it is a true copy or, with the permission of the House or, during prorogation, of the speaker, may secure the attendance of an officer to produce the printed *Journals* or extracts which are certified to be true copies. Sir John Bourinot, *Parliamentary Procedure in the Dominion of Canada* (4th ed., 1916), pp. 186-87.

House of Commons Procedure and Practice, Second Edition, p. 140:

The *Parliament of Canada Act* provides protection for the publication, by order of the House, of parliamentary papers such that no lawsuit may be brought relating to the contents of the papers or their appendices. This includes all documents published by a committee acting under the authority of the House. It has been established that householders and other communications between Members and their constituents are not considered a “proceeding in Parliament” and are therefore not protected by this particular parliamentary privilege.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 223:

The publication of the debates of either House was in the past repeatedly declared to be a breach of privilege, whether or not the reports were false and perverted. While either House could still withhold its proceedings from the public and punish violations, it is unlikely that such a course of action would any longer be resorted to. ...

Commons

The House of Commons resolved that it would not entertain any complaint of contempt or breach of privilege in respect of the publication of the debates or proceedings of the House or of its committees, except when any such debates or proceedings have been conducted with closed doors or in private, or when publication has been expressly prohibited by the House.

...

Lords

... [T]he printing or publishing of anything relating to the proceedings of the Lords is subject to the privilege of the House.

Speaker’s Ruling: Conformity of Journals with Hansard

Journals of the Senate, April 23, 1986, p. 1270:

I should comment, however, on Senator Flynn’s statement that the Minutes do not conform to Hansard. He stated that, and I quote: “I object to the fact that the Minutes do not conform to Hansard. A change has been made, probably by the staff, and it does not apply. It cannot be accepted. The motion was not put.”

I have examined the Clerk’s Scroll for April 16, 1986, which indicates that the question on Senator Fairbairn’s motion was indeed put by the Chair, as is recorded on page 1238 of the *Minutes of the Proceedings of the Senate*. One must admit that Hansard is not as comprehensive as the Journals, which constitute the official record of the Senate.

Broadcasting of the Senate and Committee Proceedings

RULE 14-7	
Audio broadcast of Senate proceedings	14-7. (1) Public proceedings in the Senate may be recorded or broadcast, but only through the use of audio facilities that are installed for that purpose in the Senate Chamber, subject to such arrangements with the Clerk as may be necessary.
Permission to broadcast	14-7. (2) Public proceedings in any committee may be recorded or broadcast, but only through the use of audio facilities that are installed for that purpose in a committee room, subject to such arrangements with the Clerk as may be necessary. In addition, any committee may permit coverage by electronic media of its public proceedings with the least possible disruption of its meetings.
Alternative arrangements	14-7. (3) When a committee meets in a room without audio facilities, the chair of the committee shall, if there is a request and it is practicable, make appropriate arrangements to allow the audio recording or broadcasting of the public proceedings.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 14-7: Rule 130

COMMENTARY

Rule 14-7 covers the recording and broadcasting of proceedings of the Senate and its committees. The audio feed of public proceedings of the Senate is broadcast over the Internet and over the parliamentary network through facilities installed in the Senate Chamber. The broadcasting or recording of images from proceedings is not covered by this rule, so special permission is required. These practices are also applied to Committees of the Whole since they meet in the Senate Chamber. Although proceedings in the chamber are not normally televised, the Senate does sometimes allow this; for example, for some Committees of the Whole or occasional Royal Assent ceremonies. Similarly, special permission is sometimes granted for still photographers to be on the floor (e.g., for the introduction of new senators).

The audio feeds of public proceedings of committees are broadcast as a routine matter, and this includes broadcast over the Internet. If the room in which a committee meets is not equipped with audio feed facilities, the chair of the committee must take reasonable steps, where possible, to arrange for the recording or broadcasting of proceedings if required. Since September 2012, rule 14-7(2) allows committees to permit the broadcasting or recording of images of their proceedings.

Since 2004, committee meetings are regularly broadcast on CPAC. For example, in 2011-2012, CPAC aired 1171 hours of committee meetings, and in 2010-2011 it aired 1345 hours. Meetings of committees are also available on Parliament's webcast site, which offers access to proceedings on demand or through live streaming. An events calendar posts the schedule of future committee meetings and identifies whether the meeting is available as a video or audio-only stream. After a meeting is adjourned, the recording is archived on the webcast site, currently for a period of two years.

The basic elements of this rule were adopted on May 15, 1985 (see *Journals of the Senate*, p. 452). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), incorporating the power for committees to allow coverage by electronic media (notably television) at their discretion. This power had previously been sought by motion at the start of each session.

RELATED CITATIONS AND EXTRACTS – RULE 14-7

House of Commons Procedure and Practice, Second Edition, p. 1223:

... Committee and House proceedings are broadcast and recorded from the opening of business until adjournment and distributed to outside users without revision or editing.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 141:

The Official Report remains the authoritative record of what is said in the Commons, and the Speaker has stated that the tapes cannot be used for the purposes of casting doubt on the validity of the Official Report.

**CHAPTER FIFTEEN: ATTENDANCE, LEAVES OF ABSENCE,
SUSPENSIONS AND DECLARATIONS**

This chapter addresses the duty of senators to attend sittings of the Senate. These rules cover the situation where a senator has failed to attend the Senate for two consecutive sessions (rule 15-1(2)). The rules also impose deductions for absences (rules 15-1(3) and 15-3), and provide for leaves of absence and suspensions if there is sufficient cause (rules 15-2, 15-4 and 15-5). The rules also stipulate that senators must renew their Declaration of Qualification for the first session of each parliament (rule 15-6) and make a declaration of private interest when necessary (rule 15-7).

Attendance

RULE 15-1(1)

Duty to attend
the Senate

15-1. (1) Except as provided in subsection (3) and elsewhere in these Rules, every Senator shall comply with the command of the Sovereign to attend to the Senate when it is in session for the purposes of advising and assisting in the affairs of Canada, laying aside all difficulties and excuses to do so.

EXCEPTION

Rule 15-2(3): Absence obligatory

EQUIVALENCE WITH MARCH 2010 RULES

Rule 15-1(1): Rule 136(1)

COMMENTARY

Rule 15-1(1) imposes a duty on all senators to attend the Senate “when it is in session for the purposes of advising and assisting in the affairs of Canada.” Indeed one of the main collective rights, or privileges, of the Senate is to maintain the attendance and service of its members, and for members to be able to carry out their duties free from arrest in civil matters, from molestation and obstruction, and from jury duty.

The names of the senators attending each sitting have been listed in the *Journals of the Senate* since 1867. Following the adoption of the *Senators Attendance Policy* in 1998, the *Journals of the Senate* have also included a second list, indicating senators who were “in attendance to business” as defined in section 8 of that policy (see Related Citations and Extracts below). The *Companion Guide to the Senators Attendance Policy* provides senators with detailed information on the policy.

The policy requires that the Clerk maintain a Senators Attendance Register. The register records each senator’s presence in the chamber on days the Senate sits. It also indicates attendance to business, public or official business, and the number of committee meetings attended. If a senator was absent due to illness, that fact is noted. At the end of each month the Clerk sends each senator a draft statement of attendance to review, correct, sign and return. The statements are public. In this way the policy ensures that the requirement of subsection 65(1) of the *Parliament of Canada Act*, that each senator must furnish a signed monthly statement of attendance for the purposes of remuneration, is satisfied.

Rule 15-1(1)

The only exception to a senator's general duty to attend the Senate is provided in rule 15-2(3), which prohibits attendance in the Senate or a committee when a senator is suspended or on leave of absence.

The provisions of rule 15-1(1) were first adopted on December 14, 2001 (see *Journals of the Senate*, p. 1152), following recommendations of the Standing Committee on Rules, Procedures and the Rights of Parliament pertaining to attendance. The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 15-1(1)

Parliament of Canada Act:

65. (1) For each session of Parliament, at the end of each month and at the end of the session, every member of each House of Parliament shall furnish the Clerk of that House with a statement, signed by the member, of the number of days attendance during the month or session, as the case may be, and, in the case of the inclusion of days on which the member has failed to attend by reason of illness, setting out that fact and that the absence was due to that illness and was unavoidable.

Senators Attendance Policy:

8. (1) The attendance to business of Senators shall be published on a daily basis in the Journals of the Senate, in the form set out in Schedule "B".

(2) For the purposes of subsection (1), "attendance to business" means

(a) attendance at a sitting of the Senate;

(b) attendance at a meeting of a Senate committee, authorized by the Senate to sit within the National Capital Region during the sitting of the Senate or to sit or be on travel status outside the National Capital Region on that day;

(c) participation in a delegation of a recognized parliamentary association conducting its business outside the National Capital Region on a sitting day or on travel status for that day; or

(d) attendance to the official business set out in subsection (3) outside the National Capital Region on a sitting day, or being on travel status for that business that day.

(3) For the purposes of being included in attendance to business under paragraph 2(d), "official business" means business that a Senator conducts that could only have been conducted on a sitting day, that required the Senator to be absent from the sitting and that

(a) was authorized by the Senate or a committee of the Senate, or

(b) was conducted pursuant to a request in writing from a federal Minister of the Crown that the Senator represent the Government of Canada.

House of Commons Procedure and Practice, Second Edition, pp. 126-127:

The Standing Orders of the House provide that every Member is bound to attend the sittings of the House unless otherwise occupied with parliamentary activities or functions or on public or official business. Because the House sits during prime working hours, scheduling conflicts with other parliamentary or official commitments (for example, committee meetings) may prevent Members

from being present in the Chamber. In practice, considerable leniency is exercised in this regard. Indeed, the Chair has often discouraged any references to the absence of any individual Member. As the attendance of Members is seen to be a function of the party leadership usually through the Whip or as a matter of personal obligation if the Member is without party affiliation, it is rarely necessary for the House as a whole to take action in this regard.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 47:

On ordinary occasions the attendance of Members in Parliament is not enforced by either House.

In the House of Lords the name of every Lord present during the sitting of the House is taken down each day and entered in the Journals. In the Commons ensuring attendance has become a function of the party machinery, and the Whips of the various parties ... make it their duty to secure adequate representation for all important divisions. The Minutes of Committees include attendance lists and these, together with the publication of division lists and records of debate in the Official Report, allow Members to demonstrate their regular attendance in Parliament.

Speaker's Ruling: Attendance of Senators Before Courts

Journals of the Senate, November 16, 1994, pp. 570-571:

In her words, Senator Cools claims that "The court has repeatedly and systematically insisted on my attendance at court on Senate sitting days, and even during actual Senate sittings." However, the specific case that she has offered to the Chair for its ruling concerns an appearance that took place before the Ontario Court (General Division) on Tuesday, June 14. Between June 15, and October 5 when the question was formally raised, the Senate had sat at least eight separate days, five of them taking place in the month of June alone. It is true that the Senator gave an oral notice on July 7 of her intention to raise a question of privilege at the next sitting, but she provided no details.

Accordingly, I must conclude that I am not satisfied that the question was raised in the Senate at the earliest opportunity, given that "even a gap of a few days" may invalidate the claim for precedence in our proceedings.

...

... This ruling should not be construed as a conclusion that Senator Cools has not raised important questions. To the contrary, she has raised questions concerning the fundamental right of the Senate to claim the attendance of its members, and the right not to have such attendance and service interfered with or obstructed. To use her words, the privilege of attendance at Parliament is "the first and oldest privilege."

Moreover, the elements of her case raise concerns about the adaptability to modern circumstances of our uncodified privileges, immunities and powers.

Honourable Senators, there is an additional circumstance to the context of this question of privilege that does not appear on the face of Senator Cools intervention of October 5. By letter dated September 20, Senator Cools advised the Chair that she has placed the privileges of the Senate before the Ontario Court of Appeal, on the same facts that gave rise to her question of privilege here. This is of course a matter of public record. It appears that the Senator signed a Notice of Motion of Leave to Appeal on June 28 and a Notice of Appeal in a related action on July 14.

The interests of institutional comity, and hence the best interests of the Senate, seem to me to dictate that the complaint of the Senator be dealt with in one forum or another, but not both at the same time. Since her appeal predates her question of privilege, I am of the view that Senator Cools should continue to pursue her remedy in the courts. ...

RULE 15-1(2)

Failure to attend
two sessions

15-1. (2) If any Senator fails to attend the Senate for two consecutive sessions of Parliament, the Clerk shall report this to the Senate. The Senate shall consider and determine as soon as possible whether the Senator's seat should be declared vacant because of the failure to attend.

REFERENCE

Constitution Act, 1867, sections 31 and 33

EQUIVALENCE WITH MARCH 2010 RULES

Rule 15-1(2): Rule 133

COMMENTARY

Rule 15-1(2) deals with the procedure followed if a senator fails to attend the Senate at least once during two consecutive parliamentary sessions. The basis for this rule is the *Constitution Act, 1867*, subsection 31(1) and section 33, cited below. This rule requires the Clerk of the Senate to table a report in the Senate if a senator does not meet this requirement. In the past the matter was referred to the Committee of Privileges, composed of all senators. This committee no longer exists, and in modern practice the issue would probably be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament. Based on historical practice, the Clerk would most likely be directed to inform the senator of the matter and inquire if there is a reason why the committee should not recommend to the Senate that the position be declared vacant. As the 1990 "Forms and Proceedings" of the *Rules of the Senate* (p. 72) explains:

... If no reply is received, the committee recommends, in the form of a report to the Senate, that the senator's place be declared vacant. If the report of the committee is adopted by the Senate, the Leader of the government then moves that the senator's place be declared vacant in accordance with sections 31(1) and 33 of the *Constitution Act, 1867*.

If the motion is carried, the Leader of the government then moves that a copy of the resolution be presented to His Excellency the Governor General by such members of the Senate who are members of the Privy Council. See *Journals of the Senate*, 1912-13, pp. 23, 43 and 44; 1915, pp. 6, 7, 224-25.

A rule was adopted on March 29, 1894 (see *Journals of the Senate*, p. 34), which read as follows: "If for two consecutive Sessions of Parliament, any Senator has failed to give his attendance in the Senate, it shall be the duty of the Clerk to report the same to the Senate; and the question of the vacancy arising thereupon, shall with all convenient speed be heard and determined by the Senate" (rule 99). The present content of the rule was adopted on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 15-1(2)

Constitution Act, 1867:

31. The Place of a Senator shall become vacant in any of the following Cases:

- (1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:
- (2) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power:
- (3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter:
- (4) If he is attainted of Treason or convicted of Felony or of any infamous Crime:
- (5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

...

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

Bourinot's Parliamentary Procedure, Fourth Edition, p. 111:

... [T]he Clerk first reported in 1876, for the information of the Senate, that Sir Edward Kenny, Nova Scotia, had been absent from his seat for two consecutive sessions. The committee of privileges, to whom the matter was immediately referred, reported that Sir Edward Kenny had vacated his seat, and that the house should so determine and declare in pursuance of the thirty-second section of the [Constitution] Act, 1867. The report of the committee having been formally adopted, the Senate agreed to an address to the governor-general setting forth the facts in the case, and also conveyed to Sir Edward Kenny an expression of regret at the severance of the ties which had hitherto connected them. In another case, in 1884, the report of the committee of privileges, declaring the seat vacant, was before its adoption communicated to the absent member, in case he had any representation to make in the matter. No reply was received and the seat was declared vacant in due form.

W.F. Dawson, "Resignation and Removal of Canadian Senators" (1975) *Parliamentarian*, p. 15:

Further complications arose eight years later when the Clerk reported [January 25, 1884] that Senator W.H. Dickson had been absent. As before, the report was referred to the Committee on Privileges which reported the next day. Rather than accept the report at once, the Senate decided to establish a new precedent and agreed to postpone consideration of the report for two weeks while Dickson was notified and asked if he had any answer to the charges. On this occasion, the notification was a pure formality, as one Senator had already reported that Dickson admitted being too ill to attend and preferred to lose his seat this way rather than to resign. Nearly four weeks later, the Senate met on the question again and accepted the report of the Committee with the usual expressions of regret.

RULE 15-1(3)

Deductions from sessional allowance

15-1. (3) Subject to any terms and conditions set out in law or provided by the Senate, the deduction made from a Senator's sessional allowance under subsection 57(1) of the *Parliament of Canada Act* is increased to \$250 for each sitting day that the Senator does not attend, unless the absence was:

- (a) for public or official business;
- (b) due to illness; or
- (c) one of the twenty-one personal leave days per session.

REFERENCES

Parliament of Canada Act, *sections 57 and 59*

Senators Attendance Policy

Senate Sessional Allowance (Deductions for Non-attendance) Regulations

EQUIVALENCE WITH MARCH 2010 RULES

Rule 15-1(3): Rule 137

COMMENTARY

Rule 15-1(3) permits senators to be absent from the Senate for one of the following reasons:

1. *Public or official business*: Senators may participate in certain activities of a public or official nature that can only be conducted on a sitting day.
2. *Illness*: Senators must advise the Clerk if they were unavoidably absent due to illness. A medical certificate must be submitted to the Clerk for any consecutive absence beyond six days within the session.
3. *Personal leave*: Subsection 57(1) of the *Parliament of Canada Act* provides senators with 21 days per session for personal leave, primarily used for bereavement, family-related matters and religious holidays.

If a senator is absent beyond the 21 days of leave, rule 15-1(3) provides that the sessional allowance will be reduced by \$250 per sitting day missed, unless covered by one of the other reasons identified above. The Senate has set a higher amount than the minimum in the *Parliament of Canada Act*, exercising power granted to it by the act. Since September 1990, the record of attendance kept by the Clerk of the Senate is available for scrutiny by the public (fourth report of the Standing Committee on Standing Rules and Orders, October 5, 1990, adopted by the Senate on May 24, 1990, *Journals of the Senate*, p. 1006).

This rule was adopted in 1998. At that time, the Standing Committee on Privileges, Standing Rules and Orders recommended that a regulation be made relating to deductions for non-attendance pursuant to section 59 of the *Parliament of Canada Act*. This regulation provided that the deduction from the sessional allowance of a senator be increased to \$190 for every sitting day beyond 21 on which a senator does not attend. The committee also recommended that this be made part of the Rules, which was accepted by the Senate (see *Journals of the Senate*, June 9, 1998, p. 789). In 2001, the Standing

Committee on Rules, Procedures and the Rights of Parliament recommended that the deduction be increased to \$250, as well as the adoption of other rules relating to attendance. This was agreed to by the Senate (see *Journals of the Senate*, December 14, 2001, p. 1152). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 15-1(3)

Parliament of Canada Act:

57. (1) A deduction at the rate of \$120 per day shall be made from the sessional allowance of a member of either House of Parliament for every day beyond 21 on which the member does not attend a sitting of that House if it sits on that day.

(2) For the purposes of subsection (1), in the case of a member elected or appointed after the commencement of a session, no day of a session previous to the election or appointment shall be reckoned as one of the twenty-one days referred to in that subsection.

(3) Each day during a session on which

- (a) a member of either House of Parliament did not attend a sitting thereof by reason of public or official business,
- (b) there has been no sitting of the House in consequence of its having adjourned over that day, or
- (c) the member is unable to attend by reason of being ill,

shall be reckoned as a day of attendance of the member at that session.

(4) Where a member of either House of Parliament dies, the sessional allowance of the member shall be paid to the end of the month in which the death occurs.

58. In the calculation pursuant to this Part of any deduction from the sessional allowance of a member on account of absence, days that were spent by the member

- (a) on service as an officer or non-commissioned member of the reserve force while on any training or other duty authorized by regulations or orders made under the *National Defence Act*, or
- (b) in the Canadian Forces or in any other armed forces of Her Majesty while those forces are on active service in consequence of any war,

shall not be computed.

59. The Senate or the House of Commons may make regulations, by rule or by order, rendering more stringent on its own members the provisions of this Act that relate to the attendance of members or to the deductions to be made from sessional allowances.

Senate Sessional Allowance (Deductions for Non-attendance) Regulations:

1. The deduction to be made from the sessional allowance of a senator under subsection 57(1) of the *Parliament of Canada Act* is increased to \$250 per day for every sitting day beyond twenty-one on which the senator does not attend a sitting of the Senate.

Leaves of Absence and Suspensions

RULE 15-2

Authorized leaves and suspensions

15-2. (1) The Senate may order a leave of absence for or the suspension of a Senator where, in its judgment, there is sufficient cause.

Leaves of absence – preventive measure

15-2. (2) When a leave of absence is granted, it is solely to protect the dignity and reputation of the Senate and public trust and confidence in Parliament.

Absence obligatory

15-2. (3) Except as provided in subsection (4), a Senator on leave of absence or under suspension shall not attend any sitting of the Senate or its committees.

Avoiding disqualification

15-2. (4) To avoid disqualification, a Senator who is on leave of absence or under suspension for more than a full session may attend the Senate once every session, provided that:

- (a) the Senator shall send to the Clerk a signed notice indicating an intention to attend;
- (b) the Clerk shall table the notice; and
- (c) the Senator may then attend, but only on the sixth day the Senate sits after the notice was tabled by the Clerk.

REFERENCE
Constitution Act, 1867, *section 31*

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 15-2(1): Rule 136(2)
- Rule 15-2(2): Rules 136(6) and 140(5)
- Rule 15-2(3): Rule 136(4)
- Rule 15-2(4): Rule 136(5)

COMMENTARY

Although senators are under an obligation to attend sittings, the Senate may order a leave of absence or suspend a senator if there is sufficient cause. While the Rules have provisions relating to leaves of absence and suspensions that apply automatically when a senator faces certain charges or has been found guilty, these are not the only cases in which the Senate can grant a leave of absence or suspend a member. Other cases would involve the adoption of a motion by the Senate (see, for example, *Journals of the Senate*, February 12, 2013, p. 1907). The Senate has granted a leave of absence on two occasions (see *Journals of the Senate*, June 22, 2007, p. 1848; and February 12, 2012, p. 1907), and suspended four senators (see *Journals of the Senate*, February 19, 1998, p. 460; and November 5, 2013, pp. 140-145).

A leave of absence is automatically granted by the Senate when a senator is charged with a criminal offence for which prosecution may proceed by indictment (rule 15-4). A senator found guilty of a criminal offence in proceedings by indictment, and who receives a sentence other than a discharge, is automatically suspended from the time of the sentence (rule 15-5).

While on leave of absence or suspended a senator is not allowed to attend sittings of the Senate or its committees. A senator who is on a leave of absence or suspended for more than a full session may, however, attend the Senate once each session in order to avoid disqualification (see rule 15-1(2)). The senator must first send a signed notice to the Clerk of the Senate indicating an intention to attend a sitting. The Clerk will table the notice, which is recorded in the *Journals of the Senate*. The senator is then permitted to attend on the sixth sitting day after the notice was tabled.

Rule 15-2(2) explains that a leave of absence is granted as a preventative measure “solely to protect the dignity and reputation of the Senate and the public trust and confidence in Parliament.”

These provisions were first adopted on December 14, 2001 (see *Journals of the Senate*, p. 1152), following recommendations of the Standing Committee on Rules, Procedures and the Rights of Parliament pertaining to attendance. The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

See Speaker’s rulings concerning the attendance of a senator on leave of absence under Related Citations and Extracts for rule 15-4.

For section 31 of the *Constitution Act, 1867*, see Related Citations and Extracts under rule 15-1(2).

Speaker’s Ruling: Power of the Senate to Suspend a Senator

Journals of the Senate, October 24, 2013, p. 65:

Honourable senators, when considering this issue we must be clear that one of the privileges and powers of the Senate is to suspend a member. Rule 15-2(1) states that “The Senate may order a leave of absence for or the suspension of a Senator where, in its judgment, there is sufficient cause.” But this provision is not the source of this power, it is merely a recognition of its existence. It is an inherent power of a parliamentary body to regulate its own affairs and to discipline its members, which includes suspension. Bourinot, at page 64 of the fourth edition, states that “The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body.”

In Canada, section 18 of the *Constitution Act, 1867*, allows Parliament to define the privileges, immunities and powers of the two federal houses, provided that they do not exceed those of the United Kingdom House of Commons. Under section 4 of the *Parliament of Canada Act*, the Senate has the powers of the United Kingdom Commons as of 1867, plus such additional powers as are defined by law.

The United Kingdom House of Commons has long had the power to suspend members, exercising it as far back as 1641. Section 4 of the *Parliament of Canada Act* thus provides the Senate with the same power to suspend a member. This power is entirely independent of and separate from any criminal measures undertaken by the relevant authorities.

Suspension of a member is, without a doubt, a serious issue. It is not done lightly, and the Senate has only done it once, when Senator Thompson was suspended on February 19, 1998. His sessional allowance was also affected under regulations that are still in force and still have effect.

A decision by the Senate to exercise this power is, of course, a serious matter, to be dealt with during debate. It is through this process that honourable senators seek to convince each other whether a proposal should be accepted or not. In the end, the desirability of a proposal to suspend a senator will be decided by the Senate itself.

In a similar way, it is through debate that honourable senators set out the reasons, arguments and facts that favour the adoption or rejection of a suspension motion. If detailed consideration or evidence is required, the option of referring a question to committee — a proposal already made in the case of the motion relating to Senator Brazeau — is available.

It is not the role of the chair to comment on the substance or desirability of the motion that has been proposed to the Senate. The chair's authority is limited to determining whether the motion is in order in terms of procedure. The finding is that it is. Proceedings thus far have been in keeping with the Senate's authority, rules and practices. Debate on the question, when called, can proceed.

RULE 15-3

Deduction if suspended

15-3. (1) While a Senator is under suspension:

- (a) the sessional allowance otherwise payable to the Senator shall be reduced by the amount remaining after any deductions required by any Act of Parliament; and
- (b) the Senator shall not be entitled, except as provided in subsection (2), to the use of any Senate resources allocated for the purpose of carrying out the Senator's parliamentary functions, including funds, goods, services and premises as well as any entitlements for moving, transportation, travel and telecommunications.

REFERENCE

Senate Sessional Allowance (Suspension) Regulations

Access to resources

15-3. (2) Upon application of the suspended Senator, the Standing Committee on Internal Economy, Budgets and Administration may make Senate resources available for use by the suspended Senator. For greater certainty, this provision does not include the suspended Senator's sessional allowance.

Deductions restored

15-3. (3) A Senator who is under suspension because of a conviction for a criminal offence in proceedings by indictment that is subsequently overturned shall be paid the amount of any deduction made under paragraph (1)(a), without interest and without regard to any duty of the member to mitigate.

REFERENCE

Senate Sessional Allowance (Suspension) Regulations

Suspension of Allowances

15-3. (4) Where a finding of guilt is made against a Senator who has been charged with a criminal offence that was prosecuted by indictment, the Standing Committee on Internal Economy, Budgets and Administration may order the withholding of the payable portion of the sessional allowance of the Senator in accordance with paragraph (1)(a) as if the Senator were suspended.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 15-3(1): Rules 138(1), and 139(1) and (2)

Rule 15-3(2): Rule 139(3)

Rule 15-3(3): Rules 138(2) and (3)

Rule 15-3(4): Rule 139(2.1) (from December 2011)

COMMENTARY

If there is sufficient cause, the Senate may order the suspension of a senator from its service. A senator is automatically suspended after being found guilty of a criminal offence in proceedings by indictment and the imposition of a sentence other than a discharge (see rule 15-5). The power to suspend a senator is derived from the right of the Senate to regulate its own affairs.

While suspended, a senator is not allowed to attend the sittings of the Senate or its committees (except as provided in rule 15-2(4)). Rule 15-3(1)(a) also provides that the sessional allowance of a senator who has been suspended will be reduced by the amount otherwise payable after any deductions required by act of Parliament. If a senator is suspended as a result of a criminal conviction, and that conviction is overturned on appeal, the senator is paid the amount of the sessional allowance that was deducted.

Rule 15-3(1)(b) also provides that a senator who has been suspended will not be able to use the resources of the Senate otherwise available for carrying out parliamentary functions. These include, for example, funds for the operation of an office (including telecommunication and printing expenses), the use of office accommodations, and travel entitlements and expenses. Under rule 15-3(2), however, a suspended senator may request that the Standing Committee on Internal Economy, Budgets and Administration make Senate resources available, but this provision does not include the sessional allowance of the suspended senator. If a senator is found guilty of a criminal offence prosecuted by indictment, but a sentence has not yet been imposed, the Standing Committee on Internal Economy, Budgets and Administration may order the withholding of the payable portion of the sessional allowance as if the senator were suspended (rule 15-3(4)).

As previously noted (see Commentary on rule 15-2), cases involving criminal matters are not the only situations in which the Senate can suspend a member. In 1998, for example, a senator who was ordered to attend the Senate and to come before a committee, but did not do so, was found to be in contempt and suspended for the rest of the session (for details see both the second report of the Standing Committee on

Privileges, Standing Rules and Orders, presented on February 11, 1998, *Journals of the Senate*, pp. 426-427, debate on the report was adjourned, and it was not adopted; and the fourth report of the same committee, presented on February 19, 1998, *Journals of the Senate*, pp. 457-458, adopted the same day at p. 460).

Rule 15-3 was originally adopted in 1998. At that time, the Standing Committee on Privileges, Standing Rules and Orders recommended that a regulation be made relating to deductions after the suspension of a senator pursuant to section 59 of the *Parliament of Canada Act*. This regulation provided that deductions be made from the sessional allowance of a senator for the duration of the suspension. The committee also recommended that this be integrated into the Rules, which was accepted by the Senate (see *Journals of the Senate*, February 19, 1998, p. 460). In 2001, the Standing Committee on Rules, Procedures and the Rights of Parliament recommended amendments to the regulation and to the rule for cases where a conviction were overturned on appeal. These recommendations were adopted by the Senate (see *Journals of the Senate*, December 14, 2001, p. 1152). In 2011, the committee recommended further amendments on leaves of absence and suspensions. One provision, adopted by the Senate on December 16, 2011 (see *Journals of the Senate*, p. 800), provided for the suspension of allowances where a finding of guilt is found (now rule 15-3(4)). The current wording of rule 15-3 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 15-3

Senate Administrative Rules (2004), Chapter 3:01:

5. (1) Subject to the law and the *Senate Administrative Rules*, every Senator is entitled to equal resources for the carrying out of the Senator's parliamentary functions.

(2) Where a Senator is suspended from the Senate, the [Internal Economy] Committee may reduce or suspend for the period of the suspension the Senator's access to any Senate resource, including entitlements.

House of Commons Procedure and Practice, Second Edition, pp. 127-128:

Closely related to the right of the House to regulate its own internal affairs and its authority to maintain the attendance and service of its Members is the House's right to discipline its own Members for misconduct and the power to punish anyone for interfering with the conduct of parliamentary business (which it considers to amount to a breach of privilege or contempt). While Article 9 of the *Bill of Rights* gives both Members and "strangers" protection from outside interference when engaged in the business of the House, it also subjects them to the disciplinary power of the House for their conduct during proceedings. *May* notes that the power to punish for contempt probably originated in medieval times when the English Parliament was primarily a court of justice. This power affords the House a wide range of penalties for dealing with misconduct. ... Members may be called to order, directed to cease speaking because of persistent repetition and irrelevance in debate, "named" for disregarding the authority of the Chair and suspended from the service of the House, incarcerated, or even expelled.

Senate Sessional Allowance (Suspension) Regulations:

1. (1) If the Senate suspends a member, there shall be deducted from the member's sessional allowance for the period of suspension the amount otherwise payable after deductions required by any Act of Parliament.

(2) If the conviction of a member who was suspended because of a conviction of a criminal offence in proceedings by indictment is overturned on appeal, there shall be paid to the member the total of all amounts deducted under subsection (1) as a result of the suspension.

(3) The amount payable under subsection (2) is payable without interest and without regard to any duty of the member to mitigate.

Speaker's Ruling: Senator Suspended from Use of Senate Resources

Journals of the Senate, December 16, 1997, pp. 379-380:

Under the *Rules of the Senate*, the [Standing Committee on Internal Economy, Budgets and Administration] has a special power, possessed by only one other Committee, to act on its own initiative. ... In the words of Rule [12-7(1)], the Internal Economy Committee is "... authorized on its own initiative to consider all matters of a financial or administrative nature relating to the internal management of the Senate."

The Internal Economy Committee decided to use its power to act on its own initiative to look into and consider a particular matter. Its Report is limited to recommendations that would temporarily suspend Senator Thompson's access to Senate resources, clearly a matter of a financial or administrative nature. The Report does not reflect upon Senator Thompson or his conduct. The recommendations are careful to preserve the Senator's ability to travel to Ottawa to safeguard his privileges to attend, to speak and to vote. They are careful to preserve his ability to regain access to Senate resources as soon as he sees fit to apply.

The Committee's recommendations as presented in this Report modify the application of general policies relating to the resource entitlements provided to all Senators. It must be noted, however, that the Committee is not undertaking this action on its own authority. Indeed, it has placed its recommendations before the full Senate for consideration as it must. Under this procedure, the suspension of Senator Thompson's access to resources will be determined by no less a body than the one charged with the protection of his privileges.

Honourable Senators, in these circumstances, it seems to me that the Committee has simply exercised its right to act on its own initiative and consider a matter of a financial or administrative nature. The recommendations seem carefully limited to matters concerning Senate resources.

... It is precisely because the Report is essentially about resources, and not about attendance, that I conclude that it does not involve a question of privilege. Had the Report reflected critically on the character of Senator Thompson, it would have triggered in my mind the privilege concerns invoked by Senator Corbin.

As to whether the power of the Internal Economy Committee is limited to the adoption and administration of general policies, to the exclusion of decisions relating to individual Senators, I know of no such limitation. On the contrary, I suspect that such a limitation would not be beneficial. In fact, it could impair the ability of the Committee to help individual Senators by providing resources in appropriate circumstances.

RULE 15-4

Notice of charge	<p>15-4. (1) At the first opportunity after a Senator is charged with a criminal offence for which the Senator may be prosecuted by indictment, either:</p> <p>(a) the Senator shall notify the Senate by a signed written notice that is delivered to the Clerk of the Senate, who shall table it; or</p> <p>(b) the Speaker shall table such proof of the charge as the court may provide.</p>
Leave of absence for accused Senator	<p>15-4. (2) When notice is given under subsection (1), the Senator charged is granted a leave of absence from the time the notice is tabled and is considered to be on public business during this leave of absence.</p>
Duration of leave of absence	<p>15-4. (3) The leave of absence remains in force until the earlier of the following:</p> <p>(a) the charge of the criminal offence is withdrawn;</p> <p>(b) the proceedings related to it are stayed;</p> <p>(c) the charge is proceeded with in summary conviction proceedings; or</p> <p>(d) the Senator is acquitted, convicted or discharged.</p>
Leave of absence reinstated	<p>15-4. (4) The leave of absence is reinstated if stayed proceedings are reinstated.</p>
Presumption of innocence	<p>15-4. (5) For greater certainty, the Senate affirms the right of a Senator charged with a criminal offence to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal. No intent to comment on or pass judgment with respect to a Senator shall be imputed to the Senate because of the operation of this rule.</p>
Senate resources in case of leave of absence	<p>15-4. (6) If a Senator is granted a leave of absence under subsection (2), the Standing Committee on Internal Economy, Budgets and Administration may, as it considers appropriate in the circumstances, suspend that Senator's right to the use of some or all of the Senate resources otherwise made available for the carrying out of the Senator's parliamentary functions, including funds, goods, services, premises, moving, transportation, travel and telecommunications expenses.</p>

EQUIVALENCE WITH MARCH 2010 RULES

- Rule 15-4(1): Rule 140(1) (from December 2011)
- Rule 15-4(2): Rules 140(2) (from December 2011) and (4)
- Rule 15-4(3): Rule 140(3)
- Rule 15-4(4): Rule 140(3)
- Rule 15-4(5): Rule 140(6)
- Rule 15-4(6): Rule 140(2.1) (from December 2011)

COMMENTARY

Rule 15-4 contains the provisions relating to the granting of a mandatory leave of absence for a senator charged with a criminal offence for which the senator may be prosecuted by indictment. When this situation arises the Senate is informed at the first opportunity either by the Clerk tabling a signed written notice from the senator, or by the Speaker tabling proof of the charge provided by the court.

A mandatory leave of absence for a charged senator starts when the notice or proof of the charge is tabled and continues until either the charge is withdrawn; the proceedings are stayed; the charge is proceeded with in summary conviction proceedings; or the senator is acquitted, convicted or discharged. If stayed proceedings recommence, the leave of absence restarts.

A senator who is on a mandatory leave of absence may not attend a sitting of the Senate or a meeting of its committees. The senator is considered to be on “public business” and as such continues to receive a sessional allowance. A senator charged with a criminal offence is presumed innocent until proven guilty and no intent to pass judgement should be imputed by rule 15-4. When a senator is on leave of absence because of a criminal charge, the Standing Committee on Internal Economy, Budgets and Administration may suspend some or all of the resources available for the carrying out of the senator’s parliamentary functions, including funds, goods, services, premises, moving, transportation, travel and telecommunications expenses.

This provision was first adopted on December 14, 2001 (see *Journals of the Senate*, p. 1152). In 2011, the Standing Committee on Rules, Procedures and the Rights of Parliament recommended amendments to the Rules on leaves of absence and suspensions. One provision, adopted by the Senate on December 16, 2011 (see *Journals of the Senate*, p. 800), provided for the possible suspension of Senate resources for senators on leave of absence (rule 15-4(6)). The current wording of rule 15-4 was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 15-4

House of Commons Procedure and Practice, Second Edition, p. 105:

If Members are charged with infractions of the law, then they must abide by the due process of law just like any other citizen. To do otherwise would be contemptuous of the justice system. While a Member is protected from arrest for civil contempt of court, there is no protection from arrest for criminal contempt of court. If a Member is arrested on a criminal charge or is committed for a contempt of court, the House should be notified by the authorities if it is in session. Similarly, if a Member is sent to prison after a conviction, the House is informed by way of a letter addressed to the Speaker by the judge or magistrate.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 243-244:

In all cases in which Members of either House are arrested on criminal charges, the House must be informed of the cause for which they are being detained from their service in Parliament.

House to be informed of arrests

It has been usual to communicate the cause of committal of a Member after his arrest; such communications are also made whenever Members are in custody in order to be tried by naval or military courts-martial, or have been committed to prison for any criminal offence by a court or magistrate. Although normally making an oral statement, the Speaker has notified the House of the arrest or imprisonment of a Member by laying a copy of a letter on the Table. In the case of committals for military offences, the communication is made by royal message. ...

House to be informed of sentences for criminal offences

The committal of a Lord or Member for high treason or any criminal offence is brought before the House by a letter addressed to the Lord Speaker or the Speaker by the committing judge or magistrate. On these occasions, the first communication is made when the Lord or Member is committed to prison, bail not being allowed; and, subsequently, if the Member is neither released from custody nor acquitted, the judge informs the Speaker or Lord Speaker of the offence for which the Member was condemned, and the sentence that has been passed upon him. Where a Member is convicted but released on bail pending an appeal, the duty of the magistrate to communicate with the Speaker does not arise. No duty of informing the Speaker arises in the case of a person who while in prison under sentence is elected as a Member of Parliament, but when notification has been made to the Speaker in such circumstances he has communicated it to the House.

Speaker's Rulings: Attendance of Senator on Leave of Absence

Journals of the Senate, March 11, 2010, pp. 67-68:

A senator who, pursuant to the rules — as pointed out by Senator Wallace — is on a leave of absence or suspended under rule [15-5], is in a very real sense, a stranger.

The point I am making is that, as your chair, I did not observe Senator Lavigne in this place, nor was it drawn to the chair's attention. Senator Wallace has drawn it to our attention, and it is a fact that in the record his name appears as being present. We could refer to guidance from Beauchesne's, the sixth edition at page 97, which points out, in paragraph 321:

A point of order against procedure must be raised promptly and before the question has passed to a stage at which the objection would be out of place.

The fact is that Senator Lavigne, apparently, took his place in the Senate although improperly, as has been pointed out by Senator Wallace. This discussion is now all on the record and, unless honourable senators feel that we have to expunge the name from those present yesterday, I suggest that the record now makes the matter clear.

Journals of the Senate, March 25, 2010, pp. 165-167:

On March 17, 2010, Senator Wallace rose on a question of privilege under rule [13-5(a)] respecting Senator Lavigne's attendance earlier that day. Senator Wallace explained that Senator Lavigne is

currently on leave of absence and, having already attended the Senate once this session, rule [15-2(4)] prohibits him from attending again. Senator Wallace referred to Maingot to argue that disobedience to the Rules constitutes contempt. He also indicated that he was ready to move that the matter be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament should the Speaker find a prima facie question of privilege.

...

By way of background, Senator Lavigne is currently on a mandatory leave of absence. On March 3, 2010, he sent a letter to the Clerk indicating that he would take advantage of his right to be present. Once the letter had been tabled and recorded in the *Journals of the Senate*, the Clerk wrote to Senator Lavigne advising him that, if the Senate sat on dates identified in the letter, which reflected the normal pattern of sittings, the senator could attend on March 17, expected to be the sixth sitting day following the tabling of his letter. This date would, of course, change if the Senate varied from its normal pattern of sittings, a fact that was noted.

Despite receiving this information, Senator Lavigne attended the Senate on March 10, earlier than allowed, since it was only the third sitting day after the letter was tabled. This led to a point of order on March 11, on which I ruled. Senator Lavigne then wrote to the Clerk seeking clarification. As part of his response the Clerk noted the provision in rule [15-2(4)] that stipulates attendance is allowed “once every session.” In the event, on March 17, Senator Lavigne was again present at his desk. The question of privilege was raised as a result of this second attendance.

...

Rule [15-2(4)] only allows a senator on leave of absence or who is suspended to attend a sitting once in a session, and only on the sixth sitting day following the tabling of a notice. This notice requirement is useful for the planning of house business and votes.

In this case, Senator Lavigne was correctly informed of the requirements of rule [15-2(4)]. While neither of his appearances respected the rule, it is not clear that this constitutes a contempt, an action tending to obstruct or impede the Senate or to offend against its authority or dignity. Instead, it appears to be an unfortunate misunderstanding. The fact that Senator Lavigne withdrew once it became apparent that his presence was a cause of concern supports this conclusion. A breach of the Rules certainly occurred, as addressed in the ruling of March 11, but there is insufficient evidence to determine wilful contempt to the authority of the Senate.

Before concluding, I would like to clarify any confusion that may have arisen about the use of the term “stranger.” Since he is on a mandatory leave of absence, Senator Lavigne is not authorized to be on the floor while the Senate is sitting, except in the very narrow circumstances provided under rule [15-2(4)]. As such, the word “stranger” was used as a means to challenge his presence in the chamber. The term is relevant inasmuch as it provides a framework for dealing with the awkward situation in which a senator who is prohibited from being present is nevertheless in the chamber.

To return to the case at issue, the ruling is that no prima facie case of privilege has been established. There was, instead, a breach of order, which, as noted in the earlier ruling, is now a matter of record.

RULE 15-5	
Suspension of Senator	15-5. (1) A Senator who has been found guilty of a criminal offence in proceedings by indictment and who is given a sentence other than a discharge is suspended from the Senate as of the time of the sentence.
Duration of suspension	15-5. (2) The suspension continues in force until the earlier of the following: (a) the finding of guilt is overturned on appeal; (b) the sentence is replaced by a discharge on appeal; or (c) the Senate determines whether or not the place of the Senator shall become vacant by reason of that conviction. <i>REFERENCE</i> Constitution Act 1867, <i>sections 31 and 33</i>
Report of conviction	15-5. (3) Upon being informed that a Senator has been convicted while in office of a criminal offence in proceedings by indictment, the Clerk of the Senate shall obtain and lay upon the table a certificate or such other proof of the conviction as the court makes available.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 15-5: Rule 141

COMMENTARY

Rule 15-5 contains provisions relating to the suspension of a senator. If a senator is convicted of a criminal offence in proceedings by indictment, he or she is suspended from the service of the Senate as of the time a sentence other than a discharge is imposed. The suspension continues until the finding of guilt is overturned on appeal, the sentence is replaced by a discharge on appeal or the Senate decides whether the place of the senator is to become vacant by reason of the conviction. The Clerk of the Senate, when advised that a senator has been convicted of a criminal offence by indictment, will obtain such proof of the conviction as the court makes available and have it tabled.

This rule was originally adopted on December 14, 2001 (see *Journals of the Senate*, p. 1152). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

For an extract of sections 31 and 33 of the *Constitution Act, 1867*, see Related Citations and Extracts under rule 15-1(2).

Declarations	
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RULE 15-6	
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Renewal of Declaration of Qualification	15-6. (1) Every Senator shall file with the Clerk a renewed Declaration of Qualification within the first 20 sitting days of the first session of each Parliament. The declaration shall be in the form prescribed in the fifth schedule of the <i>Constitution Act, 1867</i> .
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REFERENCE

Constitution Act, 1867, fifth schedule

Tabling of declarations by Clerk	15-6. (2) After the expiry of the 20 days, the Clerk shall table a list of the Senators who have filed the renewed declaration.
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EQUIVALENCE WITH MARCH 2010 RULES

Rule 15-6: Rule 135

COMMENTARY

Section 23 of the *Constitution Act, 1867*, establishes the qualifications for membership in the Senate. Senators must be citizens of at least 30 years of age owning property worth a minimum of \$4,000 in the province of appointment. Senators must have a net worth of at least \$4,000 and reside in the province for which they are appointed. Senators from Quebec must fulfil either the property qualification or the residency requirement in the specific division for which they are appointed.

Rule 15-6 requires every senator to file a renewed Declaration of Qualification with the Clerk of the Senate within the first 20 sitting days of the first session of every Parliament. Following the expiry of the 20 days, the Clerk will table a list of all senators who have filed the renewed declaration, which is published in the *Journals of the Senate* (see, for example, *Journals of the Senate*, October 19, 2011, p. 249). This is sometimes done before the 20th day if all senators have renewed their declaration. If Parliament is prorogued before the 20 days expire, a motion can be passed in the second session to resume the process, directing that the Clerk's list include all senators who renewed their declaration in both the first and second sessions (see *Journals of the Senate*, January 27, 2009, p. 31).

The original motion that forms the basis of this rule was adopted by the Senate on April 9, 1880 (see *Journals of the Senate*, pp. 152-153), and read: "That within the first twenty days of the next Session of the present Parliament, and within the first twenty days of the first Session of each succeeding Parliament, every Member of the Senate shall make and file with the Clerk, a renewed declaration of his "property qualification" in the form prescribed in the 5th Schedule annexed to the *British North America Act, 1867*, and the Clerk shall, immediately after the expiration of each period of twenty days, above referred to, lay upon the table of the House a list of the Members who have complied with this Rule." This provision was made part of the Rules on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on

August 1, 1969), and the current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 15-6

Constitution Act, 1867, Fifth Schedule:

Declaration of Qualification

I A.B. do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada [*or as the Case may be*], and that I am legally or equitably seised as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [*or seised or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture (as the Case may be)*], of the Value of Four thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [*or as the Case may be*], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

RULE 15-7

Declaration of private interest

15-7. (1) When a Senator makes a declaration of private interest pursuant to the *Conflict of Interest Code for Senators*, or retracts such a declaration:

- (a) the Speaker shall cause the declaration or retraction, if made in the Senate, to be recorded in the *Journals of the Senate*; and
- (b) the Clerk shall cause the declaration or retraction to be recorded in the *Journals of the Senate* if it is made in committee and the *Conflict of Interest Code for Senators* allows the declaration or retraction to be published in the minutes of proceedings of the committee.

REFERENCE

Conflict of Interest Code for Senators, section 12

Restrictions if declaration of interest

15-7. (2) Except as provided in subsection (3), when a Senator has made a declaration of private interest on a matter, the declaration, until retracted, shall be valid for all subsequent proceedings on the matter, whether in the Senate or in committee, and the Senator:

- (a) shall not participate in debate or vote on that matter in the Senate, but may abstain; and
- (b) shall withdraw from committee meetings during any proceedings on that matter.

REFERENCE

Conflict of Interest Code for Senators, sections 13 and 14

If declaration made in camera	15-7. (3) If a declaration of private interest, or a retraction of such a declaration, is made in committee, but cannot be published in the minutes of proceedings under the <i>Conflict of Interest Code for Senators</i> , the declaration or retraction is valid only for the meeting at which it was made. Unless authorization under the code to publish the declaration or retraction is subsequently given, the Senator shall repeat the declaration or retraction at the first possible opportunity.
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REFERENCEConflict of Interest Code for Senators, *section 12***EQUIVALENCE WITH MARCH 2010 RULES**

Rule 15-7: Rule 32.1

COMMENTARY

The *Conflict of Interest Code for Senators* states that “If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall make a declaration regarding the general nature of the private interest” (section 12(1)). The declaration must be made, at the latest, at the first meeting the senator attends during which the matter is dealt with. The declaration may be made orally in the Senate or in committee, or in writing to the Clerk of the Senate or the clerk of the committee. Once made, a declaration is valid for all subsequent proceedings on the matter. A declaration can be retracted.

Rule 15-7(1) provides that when a senator makes a declaration of private interest in the Senate, the declaration is published in the *Journals of the Senate* (see, for example, *Journals of the Senate*, February 24, 2009, p. 135 (written declaration), and March 14, 2012, p. 969 (oral declaration)). If made in committee, the declaration will appear in both the *Journals of the Senate* and the committee’s Minutes of Proceedings (see, for example, Standing Committee on Legal and Constitutional Affairs, Minutes of Proceedings, December 1, 2011, p. 7:5, and *Journals of the Senate*, December 1, 2011, p. 697). When the declaration or retraction is made at an in camera meeting of a committee, it is not recorded in the minutes and is only valid for the meeting during which it was made. The senator would have to make a further declaration at the first possible opportunity. If a declaration or retraction is made in camera, publication in the minutes can be subsequently authorized by the steering committee, avoiding the need for another declaration.

Rule 15-7(2) provides that senators who have made and not retracted a declaration cannot participate in debate in the Senate on the matter, cannot vote in the Senate on the matter (but may abstain) and must withdraw from committee meetings during any proceedings on the matter.

The *Conflict of Interest Code for Senators* was initially adopted by the Senate on May 18, 2005 (see *Journals of the Senate*, p. 928), following recommendations of the Standing Committee on Rules, Procedures and the Rights of Parliament (see *Journals of the Senate*, May 11, 2005, p. 889). There were a number of consequential changes to the Rules at that time, including the addition of what is now rule 15-7, originally with the following wording: “After a Senator has made an oral or written declaration of private interest pursuant to the *Conflict of Interest Code for Senators*, the Speaker shall cause the declaration to be recorded in the *Journals of the Senate*.” The Code was revised on May 29, 2008 (see

Journals of the Senate, p. 1211), following recommendations of the Standing Committee on Conflict of Interest for Senators (see *Journals of the Senate*, May 28, 2008, pp. 1095, 1102-1134). Further consequential changes to the Rules, including the current content of rule 15-7, were made on October 7, 2009 (see *Journals of the Senate*, p. 1325), following recommendations of the Standing Committee on Rules, Procedures and the Rights of Parliament (see *Journals of the Senate*, May 27, 2009, pp. 727, 734-736). The current wording of the rule was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012). The Code was again revised with effect from October 1, 2012 (see third report of the Standing Committee on Conflict of Interest for Senators, presented on March 29, 2012, pp. 1010-1044 of the *Journals of the Senate*, adopted on May 1, 2012, at p. 1213), without consequential changes to the Rules.

RELATED CITATIONS AND EXTRACTS – RULE 15-7

Conflict of Interest Code for Senators (2012):

12. (1) If a Senator has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before the Senate or a committee of which the Senator is a member, the Senator shall make a declaration regarding the general nature of the private interest. The declaration can be made orally on the record or in writing to the Clerk of the Senate or the clerk of the committee, as the case may be, but shall be made no later than the first occasion at which the Senator is present during consideration of the matter. The Speaker of the Senate shall cause the declaration to be recorded in the Journals of the Senate and the Chair of the committee shall, subject to subsection (4), cause the declaration to be recorded in the Minutes of Proceedings of the committee.

(2) If a Senator becomes aware at a later date of a private interest that should have been declared under subsection (1), the Senator shall make the required declaration forthwith.

(3) The Clerk of the Senate or the Clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer who, subject to subsection (4) and paragraph 31(1)(i), shall file it with the Senator's public disclosure summary.

(4) In any case in which the declaration was made during an in camera meeting, the Chair of the committee and Senate Ethics Officer shall obtain the consent of the subcommittee on agenda and procedure of the committee concerned before causing the declaration to be recorded in the Minutes of Proceedings of the committee or filing it with the Senator's public disclosure summary, as the case may be.

(5) A declaration made in camera that, in compliance with subsection (4), has been neither recorded nor filed with the Senator's public disclosure summary is only valid in respect of the proceeding during which the declaration was made or the matter that the declaration concerned was discussed, and the Senator shall make a further declaration at the first possible opportunity.

(6) In any circumstances other than those in subsection (1) that involve the Senator's parliamentary duties and functions, a Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected shall make an oral declaration regarding the general nature of the private interest at the first opportunity.

(7) A Senator may, by declaration made under this section, retract a previous declaration, in which case the Senator may participate in debate or other deliberations and vote on the matter in respect of which the previous declaration was made.

13. (1) A Senator who has made a declaration under section 12 regarding a matter that is before the Senate may not participate in debate or any other deliberations in the Senate with respect to that matter.

(2) A Senator who has made a declaration under section 12 regarding a matter that is before a committee of the Senate of which the Senator is a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings, but the Senator need not resign from the committee.

(3) A Senator who has reasonable grounds to believe that he or she, or a family member, has a private interest that might be affected by a matter that is before a committee of the Senate of which the Senator is not a member may not participate in debate or any other deliberations in the committee on the matter, and must withdraw from the committee for the duration of those proceedings.

(4) A Senator who is required by section 12 to make a declaration but has not yet done so may not participate in debate or any other deliberations on the matter and, in the case of committee proceedings, the Senator must withdraw from the committee for the duration of those proceedings.

14. A Senator who has made a declaration under section 12, or a Senator who is required to make such a declaration but has not yet done so, may not vote on the matter but may abstain.

House of Commons Procedure and Practice, Second Edition, pp. 214-215:

On being elected, Members of the House of Commons become trustees of public confidence. Members must place the public's interests over their private interests and derive no personal benefit or gain from their decisions. A number of statutory provisions and guidelines governing aspects of conflict of interest exist.... [A]ll parliamentarians and public office holders are subject to the general provisions in the *Criminal Code* pertaining to corruption, including bribery, influence-peddling and breach of trust.

**CHAPTER SIXTEEN: MESSAGES TO THE SENATE
AND RELATIONS BETWEEN THE HOUSES**

This chapter describes the procedures surrounding the access of the Sovereign or the Governor General to the Senate Chamber for official events such as Royal Assent, the way in which the two houses communicate with one another by message, the now rarely used processes for holding conferences, and the provisions relating to the attendance of senators or Senate officers before the House of Commons.

Messages from the Crown

RULE 16-1

Access to Senate Chamber	16-1. (1) The Sovereign, the Governor General and any of the Deputies of the Governor General shall have unimpeded access to the Senate Chamber at all times and, in particular, when the Senate is sitting.
Fixing time for event	16-1. (2) When the Speaker receives a message that the Sovereign, the Governor General or a deputy will come to the Senate at a given time for any reason, that time shall be fixed for the beginning of that event.
Reading of messages	16-1. (3)(a) Except as provided in paragraph (b), the Speaker shall read a message from the Crown upon receipt, interrupting the proceedings if necessary. Times for debate remain unaffected if debate is interrupted.
If vote underway	16-1. (3)(b) If a message is received during a standing vote, the Speaker shall read the message immediately after announcing the result.
Adjournment delayed after receipt of message	16-1. (4) When a message has fixed the time for an event, no motion to adjourn the Senate shall be received. In addition, the rules regarding the ordinary time of adjournment or suspension, or any prior order regarding adjournment shall be suspended until the event relating to the message has concluded.
Suspension of sitting after receipt of message	16-1. (5) If the Senate completes the business for the day before the time fixed in the message, the Speaker shall suspend the sitting. Before this suspension, the Speaker shall indicate: <ul style="list-style-type: none"> (a) when the sitting shall resume, which shall be at least five minutes before the time fixed in the message for the event; and (b) the length of time the bells shall ring before the sitting resumes, which shall be a minimum of five minutes if practicable.
Standing vote may be postponed if in conflict with message	16-1. (6) When a standing vote would conflict with an event relating to the message, the vote shall be postponed until immediately after the conclusion of the event.

Interruption of
debate

16-1. (7) At the time fixed in the message, the Speaker shall interrupt any proceeding then before the Senate. Proceedings on the interrupted business shall resume at the conclusion of the event announced in the message. Times for debate and other proceedings remain unaffected by this interruption.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 16-1: Rule 134

COMMENTARY

Rule 16-1 deals with the procedures to be followed when the Sovereign, the Governor General or a Deputy of the Governor General come to the Senate for any reason during a sitting. The most common reason is for a Royal Assent ceremony – the approval, by a representative of the Crown, of a bill passed by the Senate and the House of Commons, making it an act of Parliament. However, rule 16-1 also provides for the procedures to be followed for all events involving the Crown (for example, a prorogation or dissolution ceremony).

On the day that a ceremony is to take place, the Speaker announces, usually at the beginning of the sitting, that a communication has been received from the Secretary of the Governor General. If the communication is received later in the sitting, rule 16-1(3) provides that the Speaker shall interrupt proceedings to read it. If it is received during a standing vote, the announcement is made immediately afterwards. The letter will state that the Governor General or a justice of the Supreme Court of Canada (naming which justice), acting as Deputy of the Governor General, will come to the Senate Chamber at a certain time for a specific purpose (for example, giving Royal Assent to certain bills). Once this letter has been read, the Senate cannot adjourn until the ceremony has taken place, even if it has finished its business before that time. If business is completed before the ceremony, the Speaker will suspend the sitting until at least five minutes before the time in the message and announce the length of the bell to call in the senators. If business is not completed before the ceremony, the business underway is interrupted near the time in the communication and only resumes once the ceremony has taken place. If a deferred vote is scheduled to occur during the time for the ceremony, it is automatically further deferred until the ceremony is completed (rule 16-1(6)). Once the Speaker has suspended the sitting to await the arrival of the Governor General or deputy, the Speaker leaves the chair and takes a place to the right of the thrones, and the Mace Bearer removes the mace from the table and stands next to the Speaker.

Once the Governor General or deputy arrives and is seated in the Speaker's chair, the Speaker commands the Usher of the Black Rod to proceed to the House of Commons and acquaint the Commons that the Governor General or deputy desires the presence of the Commons in the Senate Chamber. The Usher of the Black Rod returns in procession with the Commons Speaker, members of the House of Commons, the Sergeant-at-Arms carrying the Commons' mace and the table officers. The Usher of the Black Rod then enters the Senate Chamber and stands next to the Governor General or deputy, while the House of Commons remains outside the bar.

For a Royal Assent ceremony, all bills except appropriation bills are then presented to the Governor General or deputy for assent. The reading clerk formally makes the request for assent to the bills and then reads the titles of the bills in both official languages. The Governor General then signifies assent by a nod of the head. Immediately after, the Clerk of the Senate states: "In Her Majesty's name, His Excellency

the Governor General doth assent to these bills” (the gender reflects the current occupant of the position). If it is a deputy granting Royal Assent, the appropriate adjustments in titles are made. If there are any appropriation bills, the Speaker of the House of Commons addresses the Governor General and reads the titles of the bills. The reading clerk then reads the titles of the bills again. After the Governor General has signified assent to the appropriation bills, the Clerk of the Senate states: “In Her Majesty’s name, His Excellency the Governor General thanks her loyal subjects, accepts their benevolence and assents to these bills” (again, gender reflects the current occupant, and if it is a deputy the appropriate adjustments are made). After Royal Assent has been granted, the Speaker and members of the House of Commons withdraw from the Senate Chamber. The Governor General’s procession then leaves. At this point, the Speaker returns to the chair, the mace is placed back on the table and the sitting of the Senate resumes where it left off. If all business is complete, the Senate adjourns for the day.

Since the adoption of the *Royal Assent Act* in 2002, Royal Assent may be given by ceremony or by written declaration. When Royal Assent is signified by written declaration, the declaration is signed by the Governor General or deputy in the presence of representatives of the Senate, the House of Commons and the Privy Council. Practice now tends toward using the written declaration procedure for expediency and convenience. However, under the *Royal Assent Act*, a parliamentary ceremony must be held at least twice each calendar year. In addition, a ceremony must be used for the first appropriation bill of each session of Parliament.

When Royal Assent by written declaration is signified by the Governor General, it usually takes place at Government House. When one of the justices of the Supreme Court of Canada acts as a deputy, it may take place in an office in the Supreme Court. No location is specified for Royal Assent by written declaration, so it can be given anywhere within Canada. At a written declaration, the Clerk of the Parliaments presents the bills and a letter requesting Royal Assent to the Governor General or deputy. If there are any appropriation bills to receive Royal Assent, a representative of the House of Commons presents those bills. After the bills have been duly presented, the Governor General signs a Declaration of Royal Assent, which is witnessed by the Clerk of the Parliaments. The Secretary to the Governor General provides letters addressed to the Speaker of the Senate and the Speaker of the House of Commons advising them that Royal Assent has been granted. The Speakers each read their respective letter in their house. Royal Assent only takes effect when both houses have been informed.

This rule was adopted on June 18, 1991 (see *Journals of the Senate*, pp. 180-181). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 16-1

Royal Assent Act:

3. (1) Royal assent shall be signified in Parliament assembled at least twice in each calendar year.
- (2) Royal assent shall be signified in Parliament assembled in the case of the first bill of the session appropriating sums for the public service of Canada based upon main or supplementary estimates.
- (3) The signification of royal assent by written declaration may be witnessed by more than one member from each House of Parliament.

4. Each House of Parliament shall be notified of a written declaration of royal assent by the Speaker of that House or by the person acting as Speaker.

5. Where royal assent is signified by written declaration, the Act is deemed to be assented to on the day on which the two Houses of Parliament have been notified of the declaration.

Interpretation Act:

5. (1) The Clerk of the Parliaments shall endorse on every Act, immediately after its title, the day, month and year when the Act was assented to in Her Majesty's name and the endorsement shall be a part of the Act.

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 548-549:

The bills passed by both houses remain in the possession of the clerk of the Parliaments or Clerk of the Senate as he is commonly called (with the exception of the supply bill which is always returned to the Commons), until his Excellency the Governor-General comes down to give the royal assent. When his Excellency has taken his seat upon the throne and the Commons are present at the bar, the clerk of the Crown in Chancery reads *seriatim* the titles of the bills which are to receive assent. Then the clerk of the parliaments having made his obeisance to the governor-general gives the royal assent in the prescribed formula.

...

It is an old constitutional rule that the royal assent is due and should be given to all bills which have passed all their stages in the two houses, and are ready for that assent, when the queen or her representative comes down for that express purpose.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, p. 218:

§755. (2) The Clerk of the Parliaments (The Clerk of the Senate) endorses on every Act, immediately after the title thereof, the day, month and year when the Act was assented to in Her Majesty's name; such endorsement is taken to be a part of the Act, and the date of such assent is the date of the commencement of the Act, if no other date of commencement is therein provided. *Interpretation Act, R.S.C. 1985, c. 1-21, s. 5(2).*

§756. (1) If a bill should receive the Royal Assent and be afterwards discovered not to have passed its proper stages in both Houses or be otherwise not in conformity with the constitutional procedure, it is in such cases so much waste paper.

(2) If the Clerk of either House neglects to sign a bill as passed, that fact does not invalidate a bill which has passed all its constitutional stages. The error may be rectified later. It is the fact that the *Journals* show that the bill has passed which should govern.

House of Commons Procedure and Practice, Second Edition, p. 798:

... [D]uring adjournments of the House, the Speaker may, at the request of the government, give notice that the House will meet at an earlier time for the purposes of Royal Assent; being convened "for those purposes only", the House cannot proceed to any other business. This has seldom been necessary since provision was made for the signifying of Royal Assent by written declaration while the House stands adjourned. New Standing Orders added in 2002, require that Members be informed

of this in a special issue of the *Journals*, and that messages received from the Senate during an adjournment be deposited with the Clerk. Such messages are deemed received by the House the same day.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 652-653:

When bills, either public or private, or measures, have been finally agreed to by both Houses, they await only the Royal Assent to be declared to Parliament to give them, as Lord Chief Justice Hale says, ‘the complement and perfection of a law’, and assent must be forthcoming.

Messages Between the Houses and Conferences

RULE 16-2

Sending and receiving messages	16-2. (1) The Clerk shall arrange for the sending of messages from the Senate to the House of Commons and for the receipt of messages from that house.
Messages from Commons read	16-2. (2) The Speaker shall read messages received from the House of Commons at the earliest appropriate time.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 16-2: Rule 123

COMMENTARY

The method of official communication between the houses is by message. It is the responsibility of the Clerk of the Senate to arrange for the transmission of messages to the House of Commons and to receive messages sent to the Senate by the House of Commons. The Clerk of the Senate endorses all written messages, including engrossed amendments to bills, sent to the House of Commons. Messages received from the House of Commons are read by the Speaker at the earliest opportunity and are published in the *Journals of the Senate*.

Messages are used for sending bills from one house to the other, for informing one house of the agreement or disagreement of the other to bills or amendments, for creating joint committees, for establishing the membership on joint committees, for joint resolutions, for requesting the presence of a member or officer of one house to give evidence before the other, and for other official communications. Messages to the Commons have contained recommendations or observations on bills passed without amendment (see, for example, *Journals of the Senate*, June 10, 1989, p. 171; December 19, 1989, pp. 468-469; January 17, 1991, p. 2136; and December 12, 1991, p. 476.)

Three rules were adopted on December 17, 1867, dealing with the transmission of messages:

1. “With regard to Messages, one of the Clerks of either House may be the bearer of Messages from one House to the other” (rule 96);

2. “Messages so sent are received at the Bar by one of the Clerks of the House to which they are sent, at any time whilst the House is sitting, or in Committee, without interrupting the business then proceeding” (rule 97); and
3. “Messages are occasionally brought up by two or more Members of the House of Commons. The Speaker takes the chair, if the Senate be in Committee, and one of the Messengers reads the Message at the Bar and delivers it to the Speaker, who reports the same to the Senate; and if an Answer be required, the Messengers are called in and informed that an answer will be sent by a Messenger of the Senate” (rule 98).

This last rule was deleted on April 6, 1876 (see *Journals of the Senate*, p. 168). On December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), the first two rules were repealed, and the present content of rule 16-1(1) was adopted. What is now rule 16-2(2) was added on June 23, 1993 (see *Journals of the Senate*, p. 2280). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 16-2

Bourinot’s Parliamentary Procedure, Fourth Edition, pp. 271-273:

... The houses have almost constantly, during sessions, to send and receive messages in regard to bills which require the assent of each house. Other modes of communication are also sometimes necessary, such as, a conference, a joint committee or select [i.e., standing or special] committee of both houses, communicating with each other. A message is the most frequent mode of communication. It was formerly the practice to communicate all messages to the upper chamber through a member of the commons, whilst the legislative council transmitted the same through a master in chancery. It was soon, however, found more convenient to send all bills to the upper house by a clerk at the table. Addresses continued to be carried to the upper house by one or more members of the house up to a recent period; but it has been the practice since 1870 to transmit all messages through the clerks of the two houses. ...

...

In this way, all bills, resolutions, and addresses are sent and received – whether the mace is on or under the table – without disturbing the business of either house. The clerk at the table is informed of the presence of the messengers from the other house, and receives the message at the bar. If any business is proceeding at the time, the speaker will not interrupt its progress, but will announce the message (which is handed him by the clerk) as soon as a convenient opportunity presents itself. A message from the governor-general or the deputy governor will, however, interrupt any proceeding, which will again be taken up at the point where it was broken off, – except, of course, in the case of a prorogation, when the message will interrupt all proceedings for that session.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, pp. 171-172:

A message is the most simple mode of communication. It is frequently resorted to, for sending bills from one House to another, for the interchange of reports and other documents, for communicating about joint committees or private bills, or for requesting the presence of an officer of one House to give evidence before a committee of the other House. ... Messages are carried from one House to the other by one of the Clerks of the House which sends the message. The reception of a message does not interrupt the business then proceeding.

...

In the Lords a message from the Commons is recorded in the Minutes of Proceedings and the Journal. The message may, if desired, be received forthwith without notice. ... A message that the Commons have passed a bill may be read by the Clerk at any convenient time, and the bill is subsequently read a first time. ...

Odgers' Australian Senate Practice, Thirteenth Edition, pp. 688-689:

A message from the Senate to the House of Representatives is in writing, is signed by the President or Deputy President, and is delivered by a clerk at the table or the Usher of the Black Rod.

If the House of Representatives is sitting, a message is delivered to the House and received by the Deputy Clerk or Sergeant-at-Arms. If the House is not sitting, the message is delivered to the Clerk of the House.

Most messages, for example messages with respect to proceedings on bills, pass automatically between the Houses, under provisions in the standing orders. A motion may be moved at any time without notice that any resolution of the Senate be communicated by message to the House of Representatives. This procedure is used where the agreement of the House to a resolution is sought, or it is thought appropriate to advise the House of a resolution of the Senate.

A motion that a resolution of the Senate be communicated by message to the House may be moved by any senator, and not necessarily the senator who moved the motion for the resolution.

A message from the House of Representatives is received, if the Senate is sitting, by a clerk at the table, and if the Senate is not sitting, by the Clerk of the Senate, and is reported by the President as early as convenient, and a future time is normally fixed for its consideration; or it may, by leave, be dealt with at once.

A message is reported to the Senate by the President at any stage when other business is not before the Senate. By convention, however, a message from the House concerning government business is handed to the President by the Clerk when a minister indicates that the government is ready for the message to be reported.

Speaker's Rulings on Receiving Messages

The rulings that follow concern messages received from the House of Commons. The Speaker has addressed the issue of defective messages or messages that would infringe the privileges of the Senate (May 14, 1996, and May 8, 2003); the process for dealing with the correction of textual errors in bills sent from the Commons either through messages or motions declaring the previous proceedings null and void (June 13, 2000); and the acceptability of dispensing with the reading of lengthy messages (November 22, 2006).

Defective Message

Journals of the Senate, May 14, 1996, pp. 204-206:

... While I believe that the Senate would have the right to consider bringing [a defective message] to the attention of the other place, it would likely do so only when confronted with incontestable evidence. If the message included a bill containing financial provisions without the requisite Royal

Recommendation, it would be competent for the Senate to return the bill to the House since, under the provisions of Rule [10-7], such bills cannot be considered in this place without a recommendation from the Queen's representative.

Alternatively, if the message somehow infringed the privileges of the Senate or impinged on the ability of the Senate to conduct its business adequately, the Senate might have to consider appropriate action. In this particular case, however, I can find nothing to justify the claim that the message or the bill contains a mistake or error or is defective in any way.

...

Whereupon the Speaker's Ruling was appealed

The question being put on whether the Speaker's Ruling shall be sustained, it was adopted on the following division: ...

Error in Bill, No Message From Commons

Journals of the Senate, June 13, 2000, pp. 698-699:

... I find the motion proposed by the Deputy Leader of the Government to be procedurally acceptable. Its effect is to nullify all the proceedings connected with the message that was received June 1 concerning Bill C-12. It was widely acknowledged and admitted last Thursday that the purpose of the motion was to provide an opportunity to bring in a corrected version of the bill. Apparently, there were some textual errors in Bill C-12 as originally transmitted from the House of Commons to the Senate. Once this error was discovered by officials in the House of Commons, the bill was reprinted in its corrected form. The Senate must now be seized of this information so that it can do its work properly with the right bill.

...

I am in complete agreement that messages between the two Houses provide the proper formal way to deal with problems of this kind. Furthermore, I am in sympathy with what I perceive to be the irritation underlying much of this point of order. Nonetheless, as an occupant of this Chair, my obligation is to maintain the rules and practices of the Senate. In this specific case, I must note that there is a valid alternative to deal with this problem. ...

The motion of Senator Hays seeks to implement this alternative to rectify the problem of the printing error in Bill C-12. In pursuing this approach, he is doing what was accepted last month when we confronted a similar problem with Bill C-22, a bill dealing with money laundering. Honourable Senators will recall that on that occasion, Senator Hays moved a motion on May 11 to declare the proceedings with respect to the introduction and first reading of Bill C-22 null and void. As noted in the *Journals* of that day at page 594, the motion was adopted after a brief debate. Later in the same sitting, a message was read leading to the introduction and first reading of Bill C-22. Of course, this message contained the corrected text of the Bill C-22. ...

The procedure used with respect to Bill C-22 was reasonable and procedurally acceptable in every way. In the absence of a message asking for the return of the defective bill, there is no reason why the approach proposed in the motion of Senator Hays cannot be used as an alternative.

Message from House Allegedly Infringing on Privileges of the Senate

Journals of the Senate, May 8, 2003, pp. 815-816:

Let me turn now to the second question that was raised as part of this point of order, the language of the second paragraph of the message. Its force apparently offended some Senators. This paragraph declared that the House of Commons was prepared to waive its claims even though it disapproved “of any infraction of its privileges or rights by the other House.” Furthermore, the Commons made it clear that it was not prepared to consider this event as a precedent. Several Senators suggested that this message infringed the privileges of the Senate. Others argued that if the Senate accepts this message, it would amount to an admission of wrongdoing on the part of the Senate. The House of Commons, it was argued, can agree or disagree with the Senate’s decision to divide Bill C-10, but the Commons does not have the right to disapprove of the Senate’s decisions, at least not in this way. Another Senator was more indifferent to the meaning of the message explaining that whether the Commons or the Senate accepts this event as a precedent is really a decision for each Chamber to make.

... Finally, as I stated in my ruling of December 4, 2002, messages between the two Houses are a vehicle for formal communication. The content of the message received from the House of Commons will often determine whether the message is debatable or not. In this particular case, there is no subsequent action flowing from the message itself that would require debate. The message advises the Senate that the Commons has passed Bill C-10A. It also includes a standard declaration about claims to privileges that are being set aside in this instance without prejudice to the merits of those claims. There is nothing that I can see in the text that would warrant debate on the message. Despite the harsh language, it is conveyed to the Senate for information purposes only.

Dispensing With the Reading of a Message

Journals of the Senate, November 22, 2006, p. 782:

Nihil est in intellectu quod non prius in sensu, which means nothing is in the intellect which is first not in the senses.

Senator Cools has drawn our attention to the importance that, as Senators, we must know what is before us. How do we get things before us? One way is through the oral tradition. We table many things in this place, so the written tradition is equally an important process used in Parliament.

Furthermore, Honourable Senators will recall that we often do second reading of a bill and we never ever read the bill from cover to cover, which, if an Honourable Senator rose and insisted upon, would have to be done. The situation is the same for third reading.

Those are but some of the reasons why the Chair finds that the message is properly before us. The Speaker did rise and did commence to read it. The House expressed its unanimous view that the 30 pages ought not to be physically read but that the message and its contents would be before the House in its fullness. Thus, part of it has been presented in the oral tradition and the rest was presented in the written format. These are my reasons and that is my ruling.

RULE 16-3

Senate disagreement with Commons amendments

16-3. (1) When the Senate disagrees with amendments proposed by the House of Commons to a bill that originated in the Senate, the message accompanying the bill to the Commons shall state the reasons for this disagreement.

Commons disagreement with Senate amendments

16-3. (2) When the House of Commons disagrees with amendments proposed by the Senate to a bill that originated in the Commons, and the Senate insists on any of its amendments, the message accompanying the bill to the Commons shall state the reasons.

Preparing reasons

16-3. (3) The Senate shall charge a committee with the task of drawing up the reasons required in a message under this rule.

Messages relating to bills on which the houses disagree

16-3. (4) The Senate shall receive by message the reasons for the House of Commons either disagreeing with Senate amendments to bills or insisting on Commons amendments, unless the House of Commons at any time wishes to communicate these reasons at a conference.

Free conference

16-3. (5) Any conference between the houses may be a free conference.

Speaking at conferences

16-3. (6) A Senator shall not speak at a conference with the House of Commons unless the Senator is one of the committee.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 16-3: Rules 78 and 79

COMMENTARY

The Senate and House of Commons use messages to communicate with one another concerning bills. Immediately after the Senate adopts a bill at third reading, a message is sent to the House of Commons to inform that house of the decision. When a message of the same nature is received from the House of Commons, it is read by the Speaker in the Senate at the earliest opportunity and published in the Journals. As explained by the Speaker on December 4, 2002 (see citation below), some messages are solely provided for information (as when a Senate bill is adopted by the Commons without amendment), and some messages require an action (as when the Commons amends a Senate bill or disagrees to a Senate amendment to a Commons bill).

Rule 16-3 establishes procedures to be followed when the Senate disagrees with amendments by the House of Commons to bills originating in the Senate, or when the Senate wishes to insist on amendments it has made to bills originating in the Commons that were rejected by that house.

When the Senate receives such a message of disagreement from the House of Commons, the Senate may consider its response by way of a motion moved immediately or at a later time (rule 5-7(h)). In the process of considering its response, the Senate may decide to send the message, along with the bill, to committee for study and report. The Senate can agree with, disagree with or further amend the amendment(s). It can also give a combined response by agreeing to certain amendments, disagreeing

with others and further amending others. Once the Senate has reached a decision, a message to that effect is sent to the House of Commons. There is no limit on the number of messages which may be exchanged between the houses on a bill.

In the event of an impasse between the two houses, rule 16-3(5) provides for the possibility of a conference as an alternative dispute resolution mechanism to messages. A conference is “A meeting between representatives of the two houses, called ‘managers’, convened in the case of a protracted disagreement on a bill or another item requiring bicameral agreement. Such meetings can be of two types, either a simple ‘conference’ or a ‘free conference’. In the former type, the managers meet, exchange written messages, and withdraw, without a word spoken. In the latter type, the managers can discuss their respective positions without restriction, save the general directions given by their respective houses” (Appendix I, Terminology). Rule 16-3(6) provides that only the senators chosen to represent the Senate can speak at a free conference. The last conference between the Senate and the House of Commons was held on July 14, 1947, when the House of Commons found certain Senate amendments made to a *Criminal Code* bill unacceptable. For additional background on conferences, refer to Blair Armitage, “Parliamentary Conferences,” *Canadian Parliamentary Review* (vol. 13, no. 2, summer 1990, pp. 28-29).

On December 17, 1867, the Senate agreed that: “None are to speak at a Conference with the House of Commons, but those that are of the Committee; and when any thing from such Conference is reported, the Senators of the Committee are to stand up” (rule 98). On May 2, 1906 (see *Journals of the Senate*, pp. 136-137), two other rules were added:

1. “In any case where a Bill originating in the Senate and amended in the Commons, is returned to the House of Commons with any of the amendments made by the Commons disagreed to, or where a Bill originating in the Commons has been amended in the Senate, and has been returned to the Senate with any of the Senate amendments disagreed to, and the Senate decides to insist on such amendments, or any of them, and returns the Bill to the Commons, the message accompanying such Bill shall also contain reasons for the Senate not agreeing to the amendments proposed by the House of Commons, or for the Senate insisting on its own amendments, as the case may be; and such reasons shall be drawn up by a committee of three senators, to be appointed for the purpose when the Senate decides to disagree to, or insist on, as the case may be, the amendments in question” (rule 66); and
2. “In cases in which the Commons disagree to any amendments made by the Senate, or insist upon any amendments to which the Senate has disagreed, The Senate is willing to receive the reasons of the Commons for their disagreeing or insisting (as the case may be) by Message, without a conference; unless at any time the Commons should desire to communicate the same at a conference. Any conference between the Houses may be a free conference” (rule 67).

The present content of what is now rule 16-3 was agreed to on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012), and included the removal of the reference to a committee of three senators to develop reasons for not accepting Commons amendments to Senate bills, because in practice the reasons are usually provided by the committee that studied a bill after second reading.

RELATED CITATIONS AND EXTRACTS – RULE 16-3

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 274-275:

Either house may demand a conference upon subjects which, by the usage of parliament are allowed to be proper for such a proceeding. Among the matters for which a conference may be desired there might be mentioned as examples: (1) to communicate resolutions or addresses to which the concurrence of the other house is desired; (2) concerning the privileges of parliament; (3) in relation to the course of proceedings in parliament; (4) to require or to communicate statements of facts on which bills have been passed by either house; (5) to offer reasons for disagreeing to, or insisting on, amendments. But as the objects of such conferences is to maintain a good understanding between the houses, it is not proper to use them for interfering with or anticipating the proceedings of one another before the fitting time. While a bill or other matter is pending it is irregular to demand a conference upon it. In demanding a conference, the purpose for which it is desired should be explained lest it should be on a subject not proper for a conference. Conferences were formerly demanded in order to offer reasons for disagreeing to amendments to bills but ... messages between the two houses were substituted for conferences – unless a conference should be demanded by the Senate. If there should be a disagreement on an amendment to a bill it goes back to the other house for a reconsideration of the points of difference. If the disagreement continues the originating house may appoint a committee to draw up reasons for its disagreement. Formerly there was a conference but this practice has been discontinued except in very urgent cases. If an agreement cannot be reached the bill drops.

Beauchesne's Parliamentary Rules & Forms, Sixth Edition, pp. 216-217:

§743. When the House of Commons does not agree to the Senate amendments, it adopts a motion which states reasons for its disagreement. This is communicated to the Senate by written Message. If the Senators persist in their amendments, they send a Message informing the House of this fact. The House may adopt the amendments, or return them to the Senate with a further Message. This may occur a number of times. On May 6, 1987, the House passed Bill C-22, *An Act to amend the Patent Act and to provide for certain matters in relation thereto*. The bill passed the Senate with amendments on August 13, 1987, and on two occasions, Messages respecting amendments were received by the House and returned to the Senate (August 31, 1987 and November 5, 1987), before the bill received Royal Assent on November 19, 1987.

...

§747. According to ancient British practice, the number of managers appointed by the Commons is double that of the House of Lords. In Canada there has been no consistency, although equal numbers are commonly appointed.

...

§749. In Canada, the last free conference was on July 14, 1947. (*Journals*, p. 905.) On this, and other occasions the sitting of the House was not suspended during the free conference.

...

§751. What may be described as less open and ostensible means of communication arise from the fact that representatives of the government sit in both Houses, so that every public question is presented by the executive to both Houses from a single point of view. When, however, the government cannot rely on a majority in the House of Lords, disagreement between the two Houses may arise. *May*, pp. 639-40.

§752. In the event of the two Houses being unable to agree on the final form of a bill, no further action is taken.

House of Commons Procedure and Practice, Second Edition, pp. 794-795:

Over the years, the exchange of messages and the appearance of Ministers before House and Senate committees have considerably reduced the need for [free conferences], which is nevertheless held in reserve in case of a deadlock in connection with Senate amendments to a bill. In this event, a Member, usually the Member responsible for the bill, could propose that a message be sent to the Senate asking it to participate in a free conference on the amendment or amendments in dispute. Once the message was approved and sent to the Senate, the Senate would in turn respond to the House by means of a message. If the Senate agreed to participate in the conference, a message would also be sent to the House of Commons to inform it of the time and place chosen for the conference, and of the names of the Senators (“managers”) who would represent the Senate. A similar motion would be moved in the House of Commons to designate the representatives of the House (who would normally include the Member responsible for the bill) and to order that a message to this effect be sent to the Senate.

At the time agreed upon, the managers would meet to try to resolve the impasse. The records of proceedings show that in the event that the House was sitting at the time chosen for the conference, the Speaker would rise and announce that the time had come to hold the conference, and the Clerk would announce the names of the managers who would then go to the Senate. When the House managers arrived in the Senate, the Speaker of the Senate would announce the names of the Senate managers, who would immediately leave the Senate Chamber. Since no official report or minutes were prepared for those conferences, there is very little information available as to how free conferences were held in the past and on who attended them in addition to the managers from the two Houses.

A “free conference” is one in which discussion may continue as long as is required for an agreement to be reached, but a successful outcome is by no means guaranteed. There are, in fact, three possible outcomes: the conference fails; a compromise is reached; the House accepts the Senate amendments, or the Senate accepts the House amendments, as the case may be. If the conference fails, the matter is closed and the bill simply remains on the *Order Paper* where it dies at the end of the session. During that time, no new bill may be introduced in the House in respect of the same subject matter and containing similar provisions. If a compromise is reached, one of the representatives of the House submits a report to the House concerning the conference and moves that the report be approved and a message informing the Senate be sent to the latter. Lastly, if the House decides not to press for the approval of its amendments, it accepts the Senate amendments and sends a message to this effect to the Senate.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 715, footnote:

Conferences between the Houses are now obsolete, since their main function, that of providing an occasion for communicating reasons for disagreement to amendments to bills, has been taken over by the modern practice of sending messages. The last free conference (at which discussion was permitted) was in 1836, and its immediate predecessor in 1740. The last ordinary conference, when written communications were handed over without debate, was in 1860. Under resolutions of 1851, it remains possible for either House to request a conference with reference to amendments to bills disagreed to ...

Speaker's Ruling: Messages to the House of Commons – Debatable and Non-Debatable

Journals of the Senate, December 4, 2002, pp. 287-289:

When the Senate receives a message from the House of Commons, the content of the message is often debatable, but not always. For example, yesterday, I read a message from the House of Commons to inform the Senate that it had passed Bill S-2, dealing with a series of tax treaties, without amendment. In this particular case, there is nothing to debate; the purpose of the message is simply to convey information. In other cases, however, a message may require some action on the part of the Senate. When, for example, the House of Commons either disagrees to a Senate amendment to a Commons bill, or the Commons amends a Senate bill, the message is taken as notice, and its contents are ordered for debate and determination at a subsequent sitting.

In order for a bill to become an Act of Parliament, it must be adopted by both Houses. It is part of established practice that when a bill is adopted at third reading and passed by one House, a message must be sent to the other House informing it of the actions taken and the decisions made. This message is an automatic consequence flowing from the decision to pass a specific bill. The message itself is not debatable. The debate took place on the bill; the message is simply a method of informing the other House of the decision taken with respect to the bill.

... Messages of this kind conveyed from the Senate to the House of Commons are routine. Whenever the Senate has amended a Commons bill, the message sent by the Senate to the House of Commons identifies the amendments and seeks its concurrence. So far as I have been able to determine, these messages are not the object of a debate. I can only assume that this is because, as I have already explained, the message itself is not a motion. Certainly it is not listed as a debatable motion under rule [5-8(1)] of the *Rules of the Senate*.

The one exception appears to be the case mentioned by Senator Kinsella yesterday. In 1988 after the Senate had already agreed to divide Bill C-103 into two bills and then adopted and passed Bill C-103 (Part I), there was some discussion on the content of the message. As recorded in the *Debates* of July 7, at page 3888, a portion of the message was deleted. I am being asked if this case constitutes a precedent that is binding with respect to the matter now before the Senate, namely Bill C-10A.

Having reviewed the *Debates* carefully, I am uncertain as to exactly how this incident occurred. ...

...
Despite the lack of a clearly established formula, one thing is clear. A proper message must seek the concurrence of the House of Commons to any changes made by the Senate to a Commons bill. This is the only element of the message in 1988 that was deleted. The original message informed the House of Commons that it divided the Bill into two Bills, both of which were attached as appendices. Further, the message informed the House of Commons that the Senate had passed one part of the bill and was continuing its examination of the second part.

Is the current message much different from the original version of the 1988 example? Any comparison would suggest that they are almost identical. Certainly, there is no substantive difference. The 1988 message on Bill C-103 with the deletion was sent by the Senate.

Taking into account what happened in 1988, I think it can be said that the original version of the 1988 message is a fair model. That being said, it is possible for Senators to raise points of order on the content of the message if there is any suspicion as to a factual or procedural error in it. However, with respect to the claim that the message is a debatable motion, it is my ruling that the point of order raised by Senator Kinsella is not substantiated. Accordingly, the message that I read yesterday is in order and will be sent to the House of Commons forthwith.

(Other rulings have sometimes touched on issues relating to messages. See, for example, the following rulings: June 21, 1995 (Journals of the Senate, pp. 1092-1093); October 1, 2003 (Journals of the Senate, p. 1106); May 1, 2007 (Journals of the Senate, p. 1396); February 12, 2008 (Journals of the Senate, p. 538); and February 14, 2008 (Journals of the Senate, p. 561).

RULE 16-4

Senators attending before the Commons	16-4. (1) If the Senate receives a message from the House of Commons requesting that a Senator attend before that house or appear before one of its committees, the Senator may choose to do so, but only if the Senate, after considering the message, gives its permission. Without this permission the Senator shall not appear or attend after receipt of such a message, and shall not provide answers, either in writing or through counsel.
Voluntary attendance	16-4. (2) In the absence of a message, a Senator may voluntarily appear before a House of Commons committee.
Senate officers and employees attending before Commons	16-4. (3) Officers or employees of the Senate shall comply with the decision of the Senate, in response to a message from the Commons, as to whether they should attend before the House of Commons, appear before one of its committees or provide answers, either in writing or through counsel. Without such approval of the Senate, no officer or other employee of the Senate shall attend before the Commons or appear before one of its committees.
Penalty	16-4. (4) A Senator or officer or other employee who, except as authorized under this rule, attends before the House of Commons, or appears before one of its committees or provides answers, either in writing or through counsel, may be committed by the Senate to the Usher of the Black Rod or to prison during the Senate's pleasure.

EQUIVALENCE WITH MARCH 2010 RULES

Rule 16-4: Rule 124

COMMENTARY

One of the central privileges of the Senate is the right to the attendance of its members. When the House of Commons sends a message to the Senate formally requesting the attendance of a senator or an officer of the Senate before one of its committees, and the Senate grants permission, then the senator may attend if he or she thinks fit, but the officer is obliged to attend. Without such permission a senator or

officer may not attend or send an answer in writing. In the absence of a message from the Commons requesting a senator's attendance, he or she can choose to appear voluntarily as a witness. Senate officers and employees cannot, however, appear before Commons committees without the permission of the Senate, and they cannot answer questions in writing or by legal representation.

Senators have, voluntarily, sometimes appeared before House of Commons committees. Recent examples include the following: Standing Committee on Veterans' Affairs, October 4, 2011 (Senator Don Meredith); Standing Committee on Foreign Affairs and International Trade, October 25, 2011 (Senator Hugh Segal); Standing Committee on Canadian Heritage, October 16, 2012 (Senator Terry Mercer); and Standing Committee on Health, October 16, 2012 (Senator Jim Munson). Members of the House of Commons also often appear, voluntarily, as witnesses before Senate committees – most regularly ministers on government bills, but also sponsors of non-government bills and, occasionally, other members.

On December 17, 1867, the following rule was adopted: “When the attendance of a Senator, or any of the Officers, Clerks, or Servants of the Senate is desired, to be examined by the Commons, or to appear before any Committee thereof, a Message is sent by the Commons, to request that the Senate will give leave to such Senator, Officer, Clerk or Servant to attend; and if the Senate doth grant leave to such Senator, he may go, if he thinks fit; but it is not optional for such Officer, Clerk or Servant to refuse. And without such leave, no Senator, Officer, Clerk or Servant to the Senate shall, on any account, either go down to the House of Commons, or send his answer in writing, or appear by Counsel to answer any accusation there, upon penalty of being committed to the Black Rod, or to Prison, during the pleasure of the Senate” (rule 101). The rule was amended on December 10, 1968 (see *Journals of the Senate*, pp. 514-515, effective on August 1, 1969), and again on December 3, 1985 (see *Journals of the Senate*, p. 849). What is now rule 16-4(2), on the voluntary appearance of senators before Commons committees, was adopted on December 4, 1979 (see *Journals of the Senate*, p. 216). On March 8, 1984, the Speaker provided an interpretation to this rule (see *Journals of the Senate*, pp. 215-216). The current wording was adopted on June 19, 2012 (see *Journals of the Senate*, p. 1429, effective from September 17, 2012).

RELATED CITATIONS AND EXTRACTS – RULE 16-4

Bourinot's Parliamentary Procedure, Fourth Edition, pp. 273-274:

Whenever either house desires the attendance of a senator or a member before a select [i.e., standing or special] committee, a message must be sent to that effect. Leave must be given by the house to which the member belongs, and it is optional for him to attend. In case of the attendance of one of the officers or servants of either house is required the same course will be pursued; but it is not optional for them to refuse to attend.

In 1870, a message was sent to the senate requesting that they would give leave to their clerk to attend the committee of public accounts, and lay before that committee an account of the sums paid to each member of the senate as indemnity and mileage. The senate did not comply with the request, but simply communicated to the commons a statement on the subject. In a subsequent session the senate agreed to a resolution, instructing the clerk to lay before that house at the commencement of every session, a statement of indemnity and mileage, and to deliver to the chairman of the committee of public accounts a copy of such statement, whenever an application may be made for the same. In

answer to a message from the house in 1880, the senate gave leave to their clerk to furnish details of certain expenditures of their own for the use of the same committee, adding at the same time an expression of opinion that “the critical examination of the details of such disbursements was, in the interest of the harmonious relations of the two houses, best left to the house by whose order payment is made.” In the session of 1890, the House of Commons requested the attendance of one of the officers of the senate before the committee of public accounts to give information respecting the distribution of stationery and the expenditure for contingencies in that house. The senate replied that the matter was under consideration of their own contingent committee and that as soon as a report was submitted by that committee it would be transmitted to the Commons. Subsequently the report was laid before the House of Commons.

House of Commons Procedure and Practice, Second Edition, pp. 976-977:

If a standing committee wants to request formally that a Senator appear before it, it must obtain the leave of the House of Commons. If the House agrees with the committee, it sends a message requesting that the Senator appear before the committee. Under the Rules of the Senate, however, even if the Upper House acquiesces to the request of a Commons’ committee to have a Senator appear before it, that Senator need not do so unless he or she thinks fit. At all times, the Rules of the Senate allow Senators to appear of their own free will before committees of the House of Commons without any formal request being sent by the House.

Erskine May Parliamentary Practice, Twenty-Fourth Edition, p. 821:

As with Members of the House of Commons, Members of the House of Lords, including Ministers, may not be formally summoned to attend [as witnesses before Commons committees]. Under Standing Order No 138 the House of Commons has given a general leave to attend to any Member requested to attend as a witness before a Lords committee or its sub-committees, if the Member thinks fit. Under Lords Standing Order No 25 (Lords attendance at Commons select Committees) any Lord requested by a committee of the Commons to attend as a witness before it or before any sub-committee appointed to it, is given leave to attend if he thinks fit. No messages are exchanged.

If a committee wishes to examine any Officer of the other House, a message requesting his attendance must be sent to the other House and leave given by it.

Odgers’ Australian Senate Practice, Thirteenth Edition, pp. 543-545:

... [A]s a matter of comity between legislatures, and perhaps as a matter of law, the Senate may not summon members of the House of Representatives or of state and territory legislatures. Senate procedures reflect this rule.

If the Senate or one of its committees requires the attendance of a member or officer of the House of Representatives, standing order 178 requires a message to be sent to that House. The message is framed as a request that the House give leave for the member or officer to attend. A similar provision is in the standing orders of the House of Representatives and is referred to in standing order 179, which provides that, on receipt of a message from the House of Representatives, the Senate may authorise the attendance of a senator or Senate officer before a House committee.

The standing orders are interpreted as not preventing the voluntary appearance by invitation of members and officers of one House before the committees of the other. It is quite common for members of the House of Representatives or of state parliaments to appear before Senate committees by invitation, and many have done so. The standing orders are interpreted as not preventing the voluntary appearance by invitation of members and officers of one House before the committees of the other. It is quite common for members of the House of Representatives or of state parliaments to appear before Senate committees by invitation, and many have done so.

... Although the standing orders refer to the House to which a request is made giving permission for its member to appear, it is open to that House to compel the member to appear. As either House may compel its members to appear for the purposes of its own inquiries, it follows that a House can compel its members to appear in an inquiry by another House.

The granting of permission for members of one House to appear before the other House or its committees does not, however, suspend the rule that one House may not inquire into or adjudge the conduct of a member of the other House, other than the conduct of a minister in that capacity.

APPENDIX I: TERMINOLOGY

Introductory

Grammatical gender in French text	In the French version of the Rules, the masculine gender is used throughout, without any intent to discriminate but solely to make the text easier to read.
“Shall” and “may”	The expression “shall” is to be construed as imperative and the expression “may” as permissive.

Definitions

In these Rules, unless the context suggests otherwise, the following definitions apply, with such modifications as the circumstances require:

Adjournment of the Senate

The termination of a sitting of the Senate, by order or pursuant to the Rules, until a day appointed for the resumption of sitting in the same session. The period between the last sitting day and the resumption of sitting is also known as an adjournment. (*Levée de la séance* or *clôture de séance*; *Ajournement du Sénat*)

Adjournment of debate

The ending of a debate on a bill, motion, committee report or inquiry on a particular day, postponing further consideration either to the next sitting day or to a specified date. A motion to adjourn a debate is decided by the Senate without debate or amendment. When the motion to adjourn a debate is applied to a non-Government item, it stands on the Order Paper in the name of the Senator who proposed the adjournment or the Senator indicated in the adjournment motion. (*Ajournement du débat*)

Amendment

An alteration proposed to a motion, a clause of a bill or a committee report. It may attempt to modify the proposition under consideration or to provide an alternative to it. A Senator may propose amendments to a bill during clause-by-clause study in committee, during the Senate study of the report if the committee recommends amendments or during third reading debate. (*Amendement*)

Ancillary motion

See “Motion”. (*Motion subsidiaire*)

Bill

A proposed law that becomes an Act of Parliament if adopted in identical form by both the Senate and the House of Commons and then given Royal Assent. (*Projet de loi*)

Bills may be of various types, including:

- (a) **Bill of aid or supply:** A specific type of public bill that relates to funds for government operations. Such bills include appropriation bills, which authorize government expenditures and reflect spending requirements set out in the Estimates. Bills of this nature can only originate in the House of Commons and require a Royal Recommendation. (*Projet de loi de crédits*)
- (b) **Public bill:** A bill of general application, concerning matters of public policy. A public bill introduced in the Senate may be a Government bill (introduced by a Cabinet Minister or in a Minister's name) or a non-Government bill (one introduced by a Senator who is not a Cabinet Minister). A similar distinction is made for public bills originating in the Commons. (*Projet de loi d'intérêt public*)
- (c) **Private bill:** A bill to confer particular benefits or exemptions on specific individuals or groups, distinct from the general law. Such bills are introduced after receipt and examination of a petition from the affected parties, and are subject to special provisions in the Rules. (*Projet de loi d'intérêt privé*)
- (d) **Pro forma bill:** A bill introduced on the first day of each session prior to the Speaker reporting the Speech from the Throne. The bills – S-1, An Act relating to railways in the Senate and C-1, An Act respecting the administration of oaths of office in the Commons – are given first reading but there are no further proceedings. The pro forma bill serves as an assertion of each chamber's right to determine the order of its deliberations, independently of the reasons for which Parliament was summoned as set out in the Speech. (*Projet de loi symbolique*)

Bill of aid or supply

See "Bill". (*Projet de loi de crédits*)

Case of privilege

See "Privilege". (*Cas de privilège*)

Clerk

The Clerk of the Senate, who is also Clerk of the Parliaments. (*Greffier*)

Committee

A body of Senators, Members of the House of Commons or both, appointed by one or both of the two houses to consider such matters as may be referred to it or that it may be empowered to examine, including bills. A Senate committee is one composed solely of Senators (as opposed to a joint committee — see below). (*Comité*)

There are several types of committees:

- (a) **Committee of Selection:** A Senate committee appointed at the beginning of each session to nominate a Senator to serve as Speaker *pro tempore* and to nominate Senators to serve on the standing committees and the standing joint committees. (*Comité de selection*)

- (b) **Committee of the Whole:** All Senators present sitting as a committee in the Senate Chamber, with a Senator other than the Speaker in the chair. A Committee of the Whole is usually established to consider urgent legislation, hear from persons nominated for senior public positions or to hear testimony from a Minister or expert witness, though it may meet for any purpose ordered by the Senate. The mace is placed under the table when the Senate is sitting as a Committee of the Whole. (*Comité plénier*)
- (c) **Joint committee:** A committee composed of a specific number of members of both the Senate and of the House of Commons. It may be either a standing committee, appointed under the Rules of both houses, or a special joint committee, appointed by a resolution of each house to deal with a particular matter. Joint committees have and may exercise only those terms of reference, powers, duties and procedures granted to them by both the Senate and the House of Commons by equivalent provisions in their respective Rules, by resolutions or by Act of Parliament. As such, provisions in the *Rules of the Senate* relating to joint committees are only made as far as the Senate is concerned. (*Comité mixte*)
- (d) **Legislative committee:** A Senate committee, other than a special committee, established for the specific purpose of studying a particular bill. The Rules establish the maximum membership of legislative committees at 12 Senators. (*Comité législatif*)
- (e) **Special committee:** A Senate committee established especially for the purpose of examining a bill or investigating a subject; it normally ceases to exist once it has made its final report. Unless it is clearly indicated that reference is to a joint committee, the term applies only to Senate committees. (*Comité spécial*)
- (f) **Standing committee:** A Senate committee appointed under the Rules, with a mandate related either to the operations of the Senate or to an area of public policy as provided for in the *Rules of the Senate*. Unless it is clearly indicated that reference is to a joint committee, the term applies only to Senate committees. (*Comité permanent*)

Committee of Selection

See “Committee”. (*Comité de selection*)

Committee of the Whole

See “Committee”. (*Comité plénier*)

Conference

A meeting between representatives of the two houses, called “managers”, convened in the case of a protracted disagreement on a bill or another item requiring bicameral agreement. Such meetings can be of two types, either a simple “conference” or a “free conference”. In the former type, the managers meet, exchange written messages, and withdraw, without a word spoken. In the latter type, the managers can discuss their respective positions without restriction, save the general directions given by their respective houses. (*Conférence*)

Consequential business

Business that must be disposed of directly as a consequence of adopting a preceding motion. (*Travail qui découle d’une affaire*)

Deputy Leader of the Government

The Senator who acts as the second to the Leader of the Government and who is normally responsible for the management of Government business on the floor of the Senate. The Deputy Leader is also generally responsible for negotiating the daily agenda of business with the Opposition leadership. In the absence of the Deputy Leader, the Government Leader may designate another Senator to perform the role. The full title is “Deputy Leader of the Government in the Senate”. (*Leader adjoint du gouvernement*)

Deputy Leader of the Opposition

The Senator who acts as the second to the Leader of the Opposition and who is normally responsible for negotiating the daily agenda of business on the floor of the Senate with the Government leadership. In the absence of the Deputy Leader, the Opposition Leader may designate another Senator to perform the role. The full title is “Deputy Leader of the Opposition in the Senate”. (*Leader adjoint de l’opposition*)

Dilatory motion

See “Motion”. (*Motion dilatoire*)

Evening suspension

The interruption of the sitting that normally occurs between 6 and 8 p.m. In some situations provided for in the Rules the suspension does not take place. In other cases, the Senate may decide, with leave, not to suspend over this period, which is often referred to as “not seeing the clock”. (*Suspension du soir*)

Free conference

One of the two types of conferences. For further details, see definition under “Conference”. (*Conférence libre*)

Government Business

A bill, motion, report or inquiry initiated by the Government. Government business, including items on notice, is contained in a separate category on the Order Paper, and the Leader of the Government or the Deputy Leader may vary the order in which these items are called. (*Affaires du gouvernement*)

Government Leader

See “Leader of the Government”. (*Leader du gouvernement*)

Government Whip

The Senator responsible for ensuring the presence of an adequate number of Senators of the Government party in the Senate for purposes such as quorum and the taking of votes, and to whom the Government Leader normally delegates responsibility for managing the substitution of Government members on committees. (*Whip du gouvernement*)

Inquiry

A procedure used for the purpose of drawing the attention of the Senate, through debate, to a particular matter. An inquiry does not lead to a decision of the Senate and is dropped from the Order Paper once debate concludes. (*Interpellation*)

Instruction (to a committee)

A grant of authority by the Senate to a committee to exercise certain powers that it does not normally possess, such as the power to divide a bill. A motion of instruction may be either mandatory or permissive. If it is mandatory, the committee is obliged to follow it; if it is permissive, the committee is not obliged to do so. (*Instruction*)

Intermediate proceeding

A proceeding, other than debate, that would be recorded in the *Journals of the Senate*. Examples include the adoption, rejection or adjournment of a motion; the adjournment of debate on an inquiry; the reading of messages; announcements of Royal Assent; and the standing of items of business. (*Fait de procédure*)

Joint committee

See “Committee”. (*Comité mixte*)

Leader of the Government, or Government Leader

The Senator who acts as the head of the Senators belonging to the Government party. In modern practice, the Government Leader is also a member of Cabinet. The full title of the Government Leader is “Leader of the Government in the Senate”. (*Leader du gouvernement*)

Leader of the Opposition, or Opposition Leader

The Senator recognized as the head of the party, other than the Government party, with the most Senators. The full title of the Opposition Leader is “Leader of the Opposition in the Senate”. (*Leader de l’opposition*)

Leader of a recognized party in the Senate

The Senator who heads a group of Senators recognized as a party in the Senate under the Rules. (*Leader d’un parti reconnu au Sénat*)

Leader of any other recognized party in the Senate

The Senator heading any party in the Senate that is acknowledged under these Rules, other than the party supporting the Government and the largest party in opposition to the Government. (*Leader d’un autre parti reconnu au Sénat*)

Leadership

A term commonly used to refer to various positions in the Senate, notably the party leaders, deputy leaders and whips. (*Dirigeants*)

Leave of the Senate

An agreement of the Senate, without dissent expressed, to take an action involving the suspension of a rule or usual practice without notice. (*Consentement du Sénat*)

Legislative committee

See “Committee”. (*Comité législatif*)

Meeting of the Senate

The assembling of Senators in the Senate Chamber at a time designated according to the Rules or by order. (See also “Sitting of the Senate”.) (*Ouverture de la séance*)

Mitigate

The duty of a person injured by breach of contract or tort to exercise reasonable diligence and ordinary care in attempting to minimize damages, or to avoid aggravating the injury. (*Mitiger les dommages*)

Motion

A proposal made for the purpose of eliciting a decision of the Senate or a committee. A motion, once adopted, may either express the opinion or make an order of the Senate that something be done. It may be either a Government motion or a non-Government motion, and these appear at different places on the *Order Paper and Notice Paper*. (*Motion*)

There are various kinds of motions, and one motion may fall into more than one of these categories:

- (a) **Ancillary motion:** See “Subsidiary Motion”. (*Motion subsidiaire*)
- (b) **Dilatory motion:** A motion designed to dispose of the original question either for the time being or permanently. These include motions to adjourn the Senate, to adjourn debate and to postpone consideration of a question until a certain day. Such motions are typically not debatable. (*Motion dilatoire*)
- (c) **Privileged motion:** A type of motion that arises from and depends on the matter under debate. A privileged motion can be moved without notice when the motion to which it relates is under debate, and it then takes priority over the original motion. Privileged motions include amendments (see separate definition) and superseding motions (with the latter including the previous question and dilatory motions). Privileged motions are distinct from motions relating to questions of privilege. (*Motion privilégiée*)
- (d) **Procedural motion:** A non-debatable motion dealing with a routine matter necessary to move an item of business forward. A procedural motion gives a direction as to how or when to deal with a matter before the Senate. Such motions include, for example, motions for setting the day for second or third reading of a bill, for referring a bill to committee or for setting the day for consideration of a report. (*Motion de procédure*)
- (e) **Subsidiary motion:** Sometimes known as an ancillary motion, this is a class of motion that is dependent on some other order or proceeding already before the Senate and is used to move the item of business forward. Subsidiary motions include, notably, the motions for second and third reading of a bill, to adopt a report that has been placed on the orders of the day for consideration and to refer the question under debate to committee. (*Motion subsidiaire*)
- (f) **Substantive motion:** A motion that stands independently of other business, in that it does not relate to any other proceeding or order of the day before the Senate. Such a motion seeks to bring forth an opinion or action of the Senate. Substantive motions typically require notice and are debatable and amendable. (*Motion de fond*)
- (g) **Superseding motion:** A motion proposing to replace (supersede) the question before the Senate. Such motions may be moved without notice when a debatable motion is under consideration, and require that the Senator moving the motion have been recognized to speak (they cannot be moved if a Senator rises on a point of order). There are two kinds of superseding motions, which are dealt with separately in this Appendix—the previous question and dilatory motions. (*Motion de remplacement*)

Notice Paper

See “*Order Paper and Notice Paper*”. (*Feuilleton des préavis*)

Notice period

The time that must lapse before an item of business can be considered by the Senate. The notice period varies depending on the nature of the item. A two-day notice period includes an intervening day that, at the time the notice was given, would be a sitting day under the Rules and orders then in force. With a one-day notice, an item may be moved on the next sitting day. (*Délai de préavis*)

Opposition Leader

See “*Leader of the Opposition*”. (*Leader de l’opposition*)

Opposition Whip

The Senator responsible for ensuring the presence of Senators of the Opposition party in the Senate for purposes such as the taking of votes, and to whom the Opposition Leader normally delegates responsibility for managing the substitution of Opposition members on committees. (*Whip de l’opposition*)

Order

A decision of the Senate giving a direction to its committees, Senators or officers, or regulating proceedings. An order may be sessional (lasting for an entire session of Parliament) or special (in force only once or only for a specified period of time). (*Ordre*)

Order of reference

The authorization for a committee to study a resolution, motion, bill or the subject matter of a bill, or to undertake an investigation or other work according to the terms contained in the motion or as provided for by the *Rules of the Senate*. (*Ordre de renvoi*)

Order Paper and Notice Paper

A document outlining the Senate’s agenda for a particular sitting. Items are listed in several different categories and in a priority established by or under the *Rules of the Senate*. The Order Paper contains all Government Business, as well as non-Government bills, reports, motions that have been moved and inquiries on which debate has begun. The Notice Paper contains the text of non-Government motions and inquiries not yet moved or debated. The Senate may, in certain circumstances, vary from the order of business set out in the *Order Paper and Notice Paper*. This document is prepared by the Journals Branch in advance of each sitting in light of the latest decisions of the Senate. (*Feuilleton et Feuilleton des Préavis*)

Ordinary procedure for determining duration of bells

The Speaker asks the Government and Opposition Whips if there is an agreement on the length of time, not to exceed 60 minutes, the bells shall ring. With leave of the Senate, this agreement of the Whips constitutes an order to sound the bells for the agreed length of time, but in the absence of either agreement or leave, the bells ring for 60 minutes. In some cases provided for in the Rules this procedure is not followed, with the bells ringing for shorter periods of time. (*Procédure ordinaire pour déterminer la durée de la sonnerie*)

Ordinary time of adjournment

The time at which the Senate must, under the Rules, ordinarily adjourn (midnight from Monday to Thursday, and 4 p.m. on Friday). The Senate may sit beyond this time in situations provided for under the Rules or by special order. If business concludes before the ordinary time of adjournment, the sitting is normally brought to an end by the adoption of a motion to adjourn the Senate. (*Heure fixée pour la clôture de la séance*)

Other business

Items of non-Government business on the *Order Paper and Notice Paper*. These may include bills, motions, reports or inquiries. Unless the Senate otherwise orders, items of Other Business are called in the order in which they are printed, which is determined by the Rules. (*Autres affaires*)

Petition

A formal request made to Parliament by Canadian citizens or residents. Petitions may relate to public or private matters, matters of general policy, or the redress of local or personal grievances. Such a request can only be tabled in the Senate by a Senator. Petitions may be tabled during the daily Routine Proceedings. A petition for a private bill is a petition requesting passage of a private bill, which, after a favourable report by the Examiner of Petitions for Private Bills, authorizes the introduction of a private bill. (*Pétition*)

Point of order

A complaint or question raised by a Senator who believes that the rules, practices or procedures of the Senate have been incorrectly applied or overlooked during the proceedings, either in the chamber or in committee. (*Rappel au Règlement*)

Practice

Parliamentary practice includes the customs, precedents, usages and forms traditionally or habitually applied in the Senate and its committees. (*Pratique*)

(To) present

See “Report”. (*Présenter*)

Previous question

A motion in the form “that the question be now put”. It can be moved only on the main motion or the main motion as amended. It cannot be moved if an amendment is under debate. The previous question cannot be amended, but it is debatable, and debate may range over all issues relevant to the main motion. Debate on the previous question may be adjourned.

If the previous question is adopted, the Speaker puts the question on the main motion, without allowing further debate. If the previous question is defeated, the main motion is dropped from the Order Paper. The previous question cannot be moved in committee. (*Question préalable*)

Private bill

See “Bill”. (*Projet de loi d'intérêt privé*)

Privilege

The rights, powers and immunities enjoyed by each house collectively, and by members of each house individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Privileges include: freedom of speech in the Senate and its committees, exemption from jury duty and appearance as witness in some cases, and, in general, freedom from obstruction and intimidation.

Witnesses before committees also benefit from certain privileges relating to their appearance, notably freedom of speech and freedom from intimidation. (*Privilège*)

- (a) **Case of privilege:** A matter that has been determined by a decision of the Speaker on a question of privilege to have prima facie merits. The Speaker's decision is subject to appeal. (*Cas de privilège*)
- (b) **Question of privilege:** An allegation that the privileges of the Senate or its members have been infringed. A Senator may bring the matter to the Senate's attention to request that it be dealt with.

There are various mechanisms whereby a question of privilege may be raised in the Senate, including: (i) using the process for notice provided for in chapter 13, (ii) as a substantive motion after one day's notice, (iii) by a committee reporting disclosure of confidential material after which the committee may conduct an investigation, (iv) by a committee report of a possible breach of privilege relating to the committee, and (v) by being raised without notice when the Rules allow. (*Question de privilège*)

Privileged motion

See "Motion". (*Motion privilégiée*)

Procedural motion

See "Motion". (*Motion de procédure*)

Pro forma bill

See "Bill". (*Projet de loi symbolique*)

Public bill

See "Bill". (*Projet de loi d'intérêt public*)

Question

The matter before the Senate or a committee for consideration and decision. A question is put by the Speaker or by the chair in the form of a motion for decision following any debate. The term "question" is distinct from Question Period or a question of privilege. (*Question*)

Question of privilege

See "Privilege". (*Question de privilège*)

Readings

The three basic stages through which a bill must progress in order to be adopted by the Senate.

First reading is the introductory step and takes place without debate or vote.

Second reading involves debate on the principle of the bill.

Third reading allows the Senate to review the bill a final time, usually following examination by committee. (*Lectures*)

Recall of the Senate

An action by the Speaker to convene a sitting of the Senate earlier than the time ordered when it last adjourned. The Speaker may exercise this authority when satisfied that the public interest requires that the Senate meet earlier than planned. The notification that the Senate is being recalled must indicate the date and time of the meeting and its purpose. (*Rappel du Sénat*)

Recognized party

A caucus consisting of at least five Senators who are members of the same political party. The party must have initially been registered under the *Canada Elections Act* to qualify for this status and have never fallen subsequently below five Senators. Each recognized party has a leader in the Senate. (*Parti reconnu*)

Report (of a committee)

The means whereby a committee formally informs the Senate of the results of its work; reports are in writing, with reports of a Committee of the Whole being an exception. A report may contain a committee's findings, conclusions and recommendations. Reports are either presented or tabled. Reports are presented when a decision of the Senate is required; they are tabled when they are for information purposes only, although they may be taken into consideration by the Senate and then moved for adoption by the Senate. (*Rapport*)

Royal Assent

The final stage in the legislative process, whereby a bill passed by both Houses of Parliament in identical form receives approval in the Sovereign's name, becoming an Act of Parliament. Royal Assent is typically granted by the Governor General or a deputy, although the Sovereign has given it on occasion in the past. Royal Assent may occur by traditional ceremony in the Senate or through written declaration. (*Sanction royale*)

Royal Consent

The requirement that whenever a bill touches the royal prerogative or the personal property rights of the Crown, the Sovereign's representative must consent to Parliament considering the measure. This does not mean that the Crown either approves or disapproves of the measure; it means only that there is agreement that the measure may be taken into consideration. (*Consentement royal*)

Royal prerogative

The powers exercised by the Crown without statutory authority that are the survivors of the original powers possessed by the early English sovereigns. The prerogative powers have been reduced and limited over the centuries by statute and disuse, but still represent a substantial residue, including, for example, the appointment of the Prime Minister; the declaration of war and the conclusion of peace; the making and renouncing of treaties; the establishment and termination of diplomatic relations; the summoning, prorogation and dissolution of Parliament; and the granting of certain pardons. Most prerogative powers are exercised only on advice of the Government, although some limited prerogative powers, such as the granting of honours, are exercised by the Sovereign (or, more usually, a representative) independently. (*Prérogative royale*)

Royal Recommendation

The authorization provided in a message of the Governor General for the consideration of a bill approving the spending of public monies proposed in a bill. The Royal Recommendation is provided only by a minister and only in the House of Commons. This requirement is based on section 54 of the *Constitution Act, 1867*. (*Recommandation royale*)

Rules of the Senate

The written collection of procedures adopted by the Senate for the purpose of regulating its proceedings. Rules may be changed, repealed or suspended by a decision of the Senate. (*Règlement du Sénat*)

Senate Chamber

The room where the Senate meets, including the area behind the bar, the galleries and the antechamber. (*Salle du Sénat*)

Senator who is a minister

A Senator who is a member of the Cabinet. The Leader of the Government in the Senate is normally a Minister. (*Sénateur-ministre*)

Sessional order

An order governing the conduct of the business of the Senate or of its committees that has effect only for the remainder of the session in which it is adopted. (*Ordre sessionnel*)

Sitting of the Senate

The time taken by the Senate to conduct its business, starting with Prayers and continuing up to and including the adoption of a motion to adjourn. (See also “Meeting of the Senate”.) (*Séance du Sénat*)

Sitting day

A day on which the Senate sits or is to sit under the Rules or under any orders in force at a particular time. (*Jour de séance*)

Special committee

See “Committee”. (*Comité spécial*)

Standing committee

See “Committee”. (*Comité permanent*)

Substantive motion

See “Motion”. (*Motion de fond*)

Subsidiary motion

See “Motion”. (*Motion subsidiaire*)

Superseding motion

See “Motion”. (*Motion de remplacement*)

Supplementary question

A follow-up question seeking clarification or further information following a response provided during Question Period. Supplementary questions are permitted under the Rules. (*Question supplémentaire*)

Suspension of the sitting

A pause during the course of a sitting. The Speaker may leave the chair, but the mace remains on the table. (*Suspension de la séance*)

(To) table

In relation to committee reports, see “Report”.

To provide a document for the information of the Senate. For example, delayed answers or answers to written questions are tabled, as are certain other documents – either under statute, because they relate to the administrative responsibilities of the Government or because they relate to business before the Senate. In some cases the tabling of documents requires leave, while in other cases it does not. (*Déposer*)

User fee proposal

A proposal made under the *User Fees Act* to establish, increase or expand a charge imposed by a regulating authority. (*Proposition de frais d’utilisation*)

Vote

The means whereby the Senate reaches a decision on a motion before it. Senators may vote either orally or, in the case of a standing vote, by rising in their places and having their names recorded. In English the term vote may also be used in relation to expenditures in the Estimates, but is not used in this way in the Rules. (*Vote*)

Writing

Words represented or reproduced in any visible and legible form. (*Écrit*)

EQUIVALENCE WITH MARCH 2010 RULES

Appendix I: Rules 1(3) and 4

COMMENTARY

A definitions section was added to the *Rules of the Senate* on May 2, 1906 (rule 4). The special committee recommending the changes commented that “Experience has shown that in certain cases definitions are desirable” (see *Journals of the Senate*, p. 317). The section was amended over the years. Several new definitions were added in 1991 and 1993 (see *Journals of the Senate*, June 18, 1991, pp. 180-181; June 14, 1993, p. 2199; and June 23, 1993, p. 2280). In 1999, a rule was adopted concerning the use of the masculine gender in the French version (see *Journals of the Senate*, February 9, 1999, p. 1248), and a reordering of the definitions was made shortly afterwards. In 2002 changes were made that included amendments to incorporate the possibility of a third party in the Senate (see *Journals of the Senate*, June 11, 2002, p. 1714).

In 2012, the Senate moved the previous rules 1(3) and 4 to Appendix I (see *Journals of the Senate*, June 19, 2012, p. 1429, effective from September 17, 2012). This amendment stemmed from recommendations of the Standing Committee on the Rules, Procedures and Rights of Parliament presented on November 16, 2011 (see *Journals of the Senate*, p. 407).

Other reference sources for parliamentary terms include: *A Glossary of Parliamentary Procedure* (House of Commons of Canada, Seventh Edition, 2011; available on the parliamentary web site); N. Wilding and P. Laundry, *An Encyclopaedia of Parliament* (Revised Fourth Edition, London, Cassell,

1972); L.A. Abraham, S.C. Hawtrey, and H.M. Barclay, *Abraham and Hawtrey's Parliamentary Dictionary* (Third Edition, London, Butterworths, 1970); Glossary (Parliament of the United Kingdom, available on the UK Parliament's web site); and *A Glossary of Parliamentary Words* (Parliament of Australia, available on the Australian Parliament's web site).

APPENDIX II: PROVINCIAL REPRESENTATIONS TO SENATE COMMITTEES

(Extract from the Second Report of the Standing Committee on Standing Rules and Orders of Tuesday, May 28, 1985. The report was adopted by the Senate on May 30, 1985.)

The Standing Committee on Standing Rules and Orders recommends that the following be observed by committees of the Senate as general practice:

That, whenever a bill or the subject-matter of a bill is being considered by a committee of the Senate in which, in the opinion of the committee, a province or territory has a special interest, alone or with other provinces or territories, then, as a general policy, the government of that province or territory or such other provinces or territories should, where practicable, be invited by the committee to make written or verbal representations to the committee, and any province or territory that replies in the affirmative should be given reasonable opportunity to do so.

APPENDIX III: CABINET MINISTERS BEING MEMBERS OF SENATE COMMITTEES

(Extract from the Eleventh Report of the Standing Committee on Standing Rules and Orders of Wednesday, May 14, 1986. The report was adopted by the Senate on June 12, 1986.)

The Standing Committee on Standing Rules and Orders examined that matter of whether or not Senators who are cabinet ministers, including the Leader of the Government in the Senate, should be members of Senate Committees, and concluded that it is desirable to have the Leader of the Government in the Senate and the Leader of the Opposition in the Senate as members *ex officio* of all select [i.e., standing or special] Committees of the Senate, as provided for in Rule 68 [currently rule 12-3(3)], but that your Committee considers it undesirable to have any cabinet minister other than the Leader of the Government as a member of Senate Committees.

APPENDIX IV: PROCEDURE FOR DEALING WITH UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL COMMITTEE REPORTS AND OTHER DOCUMENTS OR PROCEEDINGS

(Extract from the Fourth Report of the Standing Committee on Privileges, Standing Rules and Orders of Thursday, April 13, 2000. The report was adopted by the Senate on June 27, 2000.)

- (a) If a leak of a confidential committee report or other document or proceeding occurs, the committee concerned should first examine the circumstances surrounding it. The committee would be expected to report the alleged breach to the Senate and to advise the Chamber that it was commencing an inquiry into the matter.
- (b) While the committee would be required to undertake an investigation of the circumstances surrounding the alleged leak, the means, nature, and extent would rest with the committee. As part of the inquiry, it is likely that the committee members, their staff, and committee staff could be interviewed. The committee would be engaged in a fact-finding exercise - to determine, if it can, the source of the leak. The committee should also address the issue of the seriousness and implications - actual or potential - of the leak. The committee would be expected to undertake this inquiry in a timely manner.
- (c) The committee investigation of the leak would not prevent any individual Senator raising a question of privilege in the Senate relating to the matter. As a general matter, however, and in the absence of extraordinary circumstances, it would be expected that the substance of the question of privilege would not be dealt with by the Senate until the committee had completed its investigation. Thus, if the Speaker finds that a *prima facie* case exists, any consequent motion would be adjourned until the committee had tabled its report.
- (d) Individual Senators would also be able to raise questions of privilege in relation to the leak upon the tabling of the committee report. In other words, while ordinarily a question of privilege is to be raised at the first opportunity, no Senator would be prejudiced by awaiting the results of the committee's investigation. Similarly, no action or inaction or decision taken by the committee in relation to the matter would be determinative in respect of the Speaker's responsibility under the Rules of the Senate to determine whether or not a *prima facie* exists.
- (e) In the event that a committee decided not to investigate a leak of one of its reports or documents, any Senator could raise a question of privilege at the earliest opportunity after the determination by the committee not to proceed in the matter. Similarly, if a committee did not proceed in a timely way, any Senator would be entitled to raise a question of privilege relating to the leak.
- (f) When the committee concerned tabled its report, the matter would ordinarily be referred to your Committee by the Senate if it discloses that a leak occurred and that it caused substantial damage to the operation of the committee or to the Senate as a whole.

COMMENTARY

In response to questions of privilege raised in 1999, the Standing Committee on Privileges, Standing Rules and Orders on April 13, 2000, presented a report (*Journals of the Senate*, pp. 531-539) dealing with the issue of unauthorized disclosure of confidential committee reports, and other documents or proceedings. The report outlines the measures that all committees should undertake to preserve the

Appendix IV

confidentiality of draft reports and other confidential or in camera proceedings. The report was adopted by the Senate on June 27, 2000 (*Journals of the Senate*, p. 795), and the procedure recommended by the committee for dealing with such disclosures was appended to the *Rules of the Senate*, now in Appendix IV.

The report stated that the Senate has the “pre-eminent right ... to have reports tabled and made available first to its members prior to their being released to the general public.” According to Beauchesne’s (Sixth Edition), citation 877(1) “The publication of proceedings of committees conducted with closed doors or of reports of committees before they are available to Members will ... constitute a breach of privilege.”

Appendix IV of the Rules establishes a procedure to be followed if there is a leak of a confidential report. The committee concerned is expected to conduct an investigation into the circumstances surrounding such a leak. The steps are roughly as follows:

1. Report the alleged breach to the Senate and advise it that an inquiry has been started. This has been done through a variety of methods, including: raising a question of privilege; during Question Period; and during Senators Statements (see, for example, *Debates of the Senate*, December 12, 2002, pp. 698-703, in relation to the Standing Senate Committee on Banking, Trade and Commerce; *Debates of the Senate*, May 27, 2003, pp. 1417-1418 in relation to the Standing Senate Committee on Fisheries and Oceans; *Debates of the Senate*, March 1, 2007, pp. 1874-1875, in relation to the Standing Senate Committee on Official Languages; and *Debates of the Senate*, October 3, 2012, p. 2546, in relation to the Standing Senate Committee on Banking, Trade and Commerce).
2. Conduct an investigation into the circumstances of the leak (see citations in point 3).
3. Report the results of the investigation to the Senate (see, for example, the seventh report of the Standing Senate Committee on Banking, Trade and Commerce, *Journals of the Senate*, October 30, 2012, p. 1669; the seventh report of the Standing Senate Committee on Official Languages, *Journals of the Senate*, May 8, 2007, p. 1449; the seventh report of the Standing Senate Committee on Fisheries and Oceans, *Journals of the Senate*, November 6, 2003, pp. 1336-1337; and the seventh report of the Standing Senate Committee on Banking, Trade and Commerce, *Journals of the Senate*, February 25, 2003, pp. 524-525).
4. Possible referral of the committee’s report to the Standing Committee on Rules, Procedures and the Rights of Parliament.

It is important to note that the implementation of this procedure in no way limits the right of any senator to raise a question of privilege on the matter at any time. However, “in the absence of extraordinary circumstances, it would be expected that the substance of the question of privilege would not be dealt with by the Senate until the committee had completed its investigation” (paragraph (c) of Appendix IV).

RELATED CITATIONS AND EXTRACTS – APPENDIX IV

Beauchesne’s Parliamentary Rules & Forms, Sixth Edition, p. 241:

§877. (1) No act done at any committee should be divulged before it has been reported to the House. ... The publication of proceedings of committees conducted with closed doors or of reports of committees before they are available to Members will, however, constitute a breach of privilege.

(Also see *Speaker’s rulings of September 14, 1999; October 13, 1999; and November 24, 1999.*)

Fourth report of the Standing Committee on Privileges, Standing Rules and Orders, *Journals of the Senate*, April 13, 2000, pp. 531-539, adopted June 27, 2000:

1. Pursuant to its orders of reference from the Senate of October 13, 1999, and November 24, 1999, your Committee is pleased to report as follows on the questions of privilege raised by the Honourable Senators A. Raynell Andreychuk and Lise Bacon, and on related issues.

2. On September 14, 1999, Senator Andreychuk gave written notice pursuant to Rule 43 and subsequently raised a question of privilege in the Senate. It related to a newspaper story that had appeared in the *National Post* on Saturday, September 11, 1999 entitled "Senators want special court for aboriginals - Scrap Indian Act, report recommends." The article related to a draft report that was being considered by the Standing Senate Committee on Aboriginal Peoples.

3. Following interventions by Senators Charlie Watt, Anne C. Cools, Jack Austin, and Joan Fraser, the Speaker ruled that a *prima facie* case of privilege existed. Accordingly, Senator Andreychuk moved a motion that the unauthorized release of working drafts of the report be referred to the Standing Senate Committee on Privileges, Standing Rules and Orders. This motion was agreed to by the Senate.

4. Before your Committee could deal with this question of privilege, however, the first session of the 36th Parliament was prorogued on September 18, 1999. At the beginning of the second session, on October 13, 1999, Senator Andreychuk raised this matter again, and, after a finding that a *prima facie* case existed, she moved the following motion, which was adopted by the Senate:

"That the question of privilege concerning the unauthorized release of working drafts of a report of the Standing Committee on Aboriginal Peoples be referred to the Standing Committee on Privileges, Standing Rules and Orders when that Committee is established."

5. On November 24, 1999, Senator Bacon gave notice and subsequently rose on a question of privilege regarding news reports that had been published that morning about a draft report on the restructuring of Canada's airline industry that was being considered by the Standing Senate Committee on Transport and Communications. She referred to two articles - one in *Le Soleil* (Quebec City) and the other in *The Toronto Star*. Various other Senators spoke in support of Senator Bacon, including Senators J. Michael Forrestall, Serge Joyal, Dan Hays, Joan Fraser, and Anne C. Cools. The Speaker *pro tempore* of the Senate, referring to the precedent of Senator Andreychuk, found that a *prima facie* had been established. Accordingly, Senator Bacon moved the following motion, which was adopted by the Senate:

"That the question of privilege concerning the leak of the second draft of the report of the Standing Senate Committee on Transport and Communications on the reorganization of Canada's air industry in *Le Soleil* and *The Toronto Star* of November 24, 1999, be referred to the Standing Committee on Privileges, Standing Rules and Orders."

6. Your Committee met to consider the question of privilege raised by Senator Andreychuk on Tuesday, November 23, 1999, and Tuesday, November 30, 1999, and the question of privilege raised by Senator Bacon on Wednesday, December 15, 1999. Your Committee subsequently considered both questions of privilege on Wednesday, February 16, 2000, and Tuesday, March 21, 2000.

7. The news report in the *National Post* on September 11, 1999 referred to “excerpts of the committee’s recommendations obtained by Southam News,” and quoted a number of recommendations that had been included in one of the drafts of the report. As the chair of the Standing Senate Committee on Aboriginal Peoples said in the Senate on September 14, 1999, “The description given by the *National Post* cannot help but infer that the report was leaked.”

8. In the case raised by Senator Bacon, she explained, both in the Senate and before your Committee, that the Standing Senate Committee on Transport and Communications received an order of reference from the Senate on October 14, 1999 to consider the restructuring of Canada’s airline industry. This order of reference was precipitated by the competing proposals from Onex Corporation and Air Canada to acquire control of and merge Canadian Airlines. The Committee was required to submit its report to the Senate before December 15, 1999.

9. After hearing from 57 witnesses, the Committee began consideration of drafts of its report about the middle of November 1999. The draft reports were marked “Draft” and “Confidential,” and were considered at *in camera* meetings. The first draft was distributed at the meeting at which it was considered, and copies were collected at the end of the meeting. The second draft was distributed the day before the meeting to those Senators who had indicated that they would be in attendance; at the meeting, copies were also provided to the assistants of Senators present. Copies of the draft report were not retrieved at the end of the meeting. Later that day, Senator Bacon was advised by a Senator on the Committee that a Canadian Press journalist had a copy of the second draft of the report. She declined to speak to the journalist. The next day - November 24, 1999 - the newspaper articles appeared in *Le Soleil* and *The Toronto Star*. While there do not appear to have been actual quotes from the draft report, Senator Bacon believes that information that was contained in the newspaper articles could only have come from a copy of the second draft of the report.

10. The premature and unauthorized disclosure of committee reports before they have been tabled in the Senate constitutes a breach of privilege and a contempt of the Senate. The Sixth Edition of *Beauchesne’s* makes this clear in citation 877(1):

“877.(1) No act done at any committee should be divulged before it has been reported to the House. Upon this principle the House of Commons of the United Kingdom, on April 21, 1937, resolved “That the evidence taken by any select committee of this House and the documents presented to such committee which have not been reported to the House, ought not to be published by any member of such committee or by any other person.” The publication of proceedings of committees conducted with closed doors or of reports of committees before they are available to Members will, however, constitute a breach of privilege.”

11. In addition to the pre-eminent right of the chamber to have reports tabled and made available first to its members prior to their being released to the general public, your Committee also notes that premature and unauthorized disclosure of committees reports can interfere with and impede the work of the committee. The violation of the confidentiality of *in camera* discussions undermines the confidence with which Senators can discuss things freely, and affects their ability to carry out the work on behalf of the Senate.

12. Senator Andreychuk argued, both in the Senate and before your Committee that the issue of confidentiality is central to free and open debate and is the basis for working and achieving the kind of consensus that is the hallmark of good committee reports. As she told the Senate:

“It was disconcerting to see recommendations that may or may not be appropriate, which may or may not be chosen by the full committee, being publicized in the newspaper. My ability to feel secure that my comments in committee hearings will stay in the committee has been prejudiced. My options in deciding what recommendations are appropriate and inappropriate are prejudiced.”

13. In the same debate, Senator Austin made the point that the unauthorized release of the report puts Senators who are members of the Standing Committee on Aboriginal Peoples and the Senate as a whole in an unfavourable position:

“What happens now is that, regardless of our views as to what should be in the report, it will not be the report as leaked to the media. We are compromised. If the media have created expectations that certain recommendations will be made and we do not make them, there will be speculation as to why we did not make them.”

14. The same argument was made by Senator Bacon. She noted that the leak adversely affected the work then underway of the Standing Senate Committee on Transport and Communications. As she told the Senate on November 24, 1999:

“Although the information given in the media today is based on a draft report that has not been finalized, it may well colour the perception the public will have of our final report. As I have said, our report is not finished. There are still a number of points to be discussed. Unfortunately, the leak, and the reactions to it, might hinder serene and informed reflection by the committee members.”

15. The comments and concerns of Senators Andreychuk and Bacon, as well as other Senators, echo a finding by the Committee on Privileges of the Australian Senate in its 74th Report entitled *Possible Unauthorized Disclosure of Parliamentary Committee Proceedings*, which was tabled in December 1998. In its report, the Committee referred to the integrity of committee proceedings and the relationship between committee members which must exist in order for a committee to function constructively and productively. In the Committee’s view, the release of draft reports during their preparation, particularly at an early stage of committee deliberations has one purpose alone: to influence the outcome of deliberations, thereby impairing the integrity of committee proceedings. It also noted that unauthorized disclosure of internal working documents can destroy the relationship of trust which is essential to productive committee deliberations, even if these documents, on their face, are harmless or routine.

16. Your Committee has determined, on the basis of the facts presented and after a consideration of the authorities, that in both of these cases draft committee reports were released prematurely and without authority. In the case of the Standing Senate Committee on Aboriginal Affairs, the draft report on aboriginal governance was leaked, and in the case of the Standing Senate Committee on Transport and Communications the draft report on the restructuring of the airline industry was leaked. Both Committees were considering confidential draft reports, at *in camera* meetings, and the reports had not been presented to the Senate. This clearly constitutes breaches of the parliamentary privileges of the Senate and of Senators, and contempts of the Senate have been thereby committed.

17. After due consideration and at the request of Senator Andreychuk, your Committee has decided not to conduct an investigation or inquiry into the source of the leak, or to assess culpability with respect to the Standing Senate Committee on Aboriginal Affairs. The damage has been done, and the objective is to avoid a repetition in the future. This incident should be taken as a warning and a reminder of the seriousness with which Senators and Senate staff should view confidentiality.

18. Senator Andreychuk has advised your Committee that her main concern is in raising the awareness of Senators and staff of the need for and requirements of confidentiality. She suggests that all Senators be advised, in writing, of the issue of confidentiality; that upon their appointment new Senators be fully briefed and informed of the issue of confidentiality; that the training of Senate staff and staff assigned to the Senate include an explanation of the implications of confidentiality; that persons retained by Senate committees have confidentiality explained to them and included in their contracts; and that persons who are hired or contracted by individual Senators be apprised of the need for confidentiality and that this be included in the terms of their employment or contract. The issue of confidentiality arises not just with draft committee reports, but also with other confidential documents and proceedings of committees.

19. Your Committee fully agrees that there needs to be enhanced awareness of confidentiality, among Senators and among all persons who work for or in the Senate. Measures should be taken to ensure that everyone is carefully briefed and educated about what confidentiality means, including the implications of discussions at *in camera* meetings and documents or evidence presented at such meetings.

20. Your Committee has reviewed the employment contracts and contracts of service that are used in the Senate. One of the General Terms and Conditions in the Contract for the Provision of Consulting Services, for instance, is the following:

“Any information of a character confidential to the affairs of the Senate, its members or its employees to which the Contractor or any employee or agents of the Contractor become privy as a result of work to be performed under this contract shall be treated as confidential during and after the performance of the services.”

21. Similarly, article 5.2 of the Senate’s *Conflict of Interest Code*, with which all employees and contractors must comply, provides: “No person governed by this Code shall communicate to someone not entitled thereto information that has been acquired in the course of performing that person’s duties to the Senate or to a senator that is not available to members of the public.”

22. Your Committee believes that confidentiality as a term of employment should be emphasized as a stand-alone policy, apart from the *Conflict of Interest Code*. Your Committee would also suggest that wording be added to all contracts of employment and service to indicate that the integrity of the Senate’s proceedings is paramount, and that any breach of confidentiality will be considered to be a breach of privilege and subject to such proceedings as the Senate may determine.

23. Your Committee has great confidence in the integrity and dedication of the staff of the Senate, of Senators and of Senate committees, including interpreters and the staff from the Library of Parliament. Persons who have worked in the Senate for some time appreciate its needs and requirements, and the importance of confidentiality. It is important, however, that new staff, or

temporary and term staff, often hired under contract, be sensitized to these conditions and requirements. They need to appreciate the onerous responsibility which parliamentary privilege imposes on them.

24. The question of privilege raised by Senator Bacon raises other serious issues. First, the draft report of the Standing Senate Committee on Transport and Communications involved publicly-traded companies that were in the midst of complex corporate and securities transactions. The leak of the Committee's draft report could have had serious repercussions and implications, and is deplored.

25. The difficulty in which your Committee finds itself is to determine how to undertake an investigation in such circumstances. Your Committee has reviewed carefully the practices and procedures of other legislative bodies for dealing with leaked committee reports. In particular, your Committee has considered the procedures in the Canadian House of Commons, the British House of Commons, and the Australian Senate and House of Representatives. In the case of leaked committee reports, these legislative bodies provide that, as a first step, the committee concerned should investigate the leak to seek to determine who was responsible and to assess the seriousness of it.

26. Your Committee believes that the following procedure should be adopted by the Senate for dealing with unauthorized disclosure of confidential committee reports and other documents or proceedings, and should be printed as an appendix to the *Rules of the Senate*:

(a) If a leak of a confidential committee report or other document or proceeding occurs, the committee concerned should first examine the circumstances surrounding it. The committee would be expected to report the alleged breach to the Senate and to advise the chamber that it was commencing an inquiry into the matter.

(b) While the committee would be required to undertake an investigation of the circumstances surrounding the alleged leak, the means, nature, and extent would rest with the committee. As part of the inquiry, it is likely that the committee members, their staff, and committee staff could be interviewed. The committee would be engaged in a fact-finding exercise - to determine, if it can, the source of the leak. The committee should also address the issue of the seriousness and implications - actual or potential - of the leak. The committee would be expected to undertake this inquiry in a timely manner.

(c) The committee investigation of the leak would not prevent any individual Senator raising a question of privilege in the Senate relating to the matter. As a general matter, however, and in the absence of extraordinary circumstances, it would be expected that the substance of the question of privilege would not be dealt with by the Senate until the committee had completed its investigation. Thus, if the Speaker finds that a *prima facie* case exists, any consequent motion would be adjourned until the committee had tabled its report.

(d) Individual Senators would also be able to raise questions of privilege in relation to the leak upon the tabling of the committee report. In other words, while ordinarily a question of privilege is to be raised at the first opportunity, no Senator would be prejudiced by awaiting the results of the committee's investigation. Similarly, no action or inaction or decision taken by the committee in relation to the matter would be determinative in respect of the Speaker's responsibility under the Rules of the Senate to determine whether or not a *prima facie* exists.

(e) In the event that a committee decided not to investigate a leak of one of its reports or documents, any Senator could raise a question of privilege at the earliest opportunity after the determination by the committee not to proceed in the matter. Similarly, if a committee did not proceed in a timely way, any Senator would be entitled to raise a question of privilege relating to the leak.

(f) When the committee concerned tabled its report, the matter would ordinarily be referred to your Committee by the Senate if it discloses that a leak occurred and that it caused substantial damage to the operation of the committee or to the Senate as a whole.

27. Your Committee deplores all leaks of confidential or *in camera* materials and information. In the case of committee reports, there is a well-established principle that the chamber has the right to be first informed of the report. Nothing in this report is intended to depart from this privilege of the Senate. Nevertheless, there are some leaks that may be more serious than others - such as those which compromise national security or the security or confidence of witnesses; those which are designed to influence or interfere with the drafting of a committee report; or those which could be used to personal benefit. In order to give rise to sanctions, it will ordinarily be necessary for the committee whose report was leaked to find that the leak was both substantial and damaging. The committee must determine this as part of the fact-finding process.

28. It should be emphasized that, under the proposed procedure, the issues of parliamentary privilege and contempt will continue to be dealt with only by the Senate itself. The committee whose report has been leaked is merely engaged in a preliminary fact-finding process. If the Speaker finds that a *prima facie* case of privilege exists, it will remain the responsibility of the Senate to decide how to deal with it, generally by referring the matter to your Committee for detailed investigation and recommendations. Sanctions will continue to be imposed only by the full Senate, usually upon recommendation of your Committee.

29. While individual cases must be assessed on their own merits, your Committee reminds everyone that the Senate possesses a range of options in terms of sanctions for breach of privilege and contempt of Parliament. These include apologies, reprimands, censure, suspension, and imprisonment. Your Committee notes, in this regard, that the British House of Commons has recently suspended members for the unauthorized and premature release of committee reports. In appropriate cases, your Committee will consider recommending sanctions on Senators and other persons who breach the privileges of the Senate.

30. Your Committee believes that new measures and policies should be adopted by all Senate committees to preserve the confidentiality of draft reports and other confidential or *in camera* proceedings. In this regard, we suggest that serious consideration be given to the following measures:

(a) that draft reports and other confidential documents be individually numbered, with the number shown on each page;

(b) that each numbered report and other confidential document be assigned exclusively to an individual, and always given to that individual, and this should be carefully recorded;

(c) that if Senators are to be given draft reports or other confidential documents in advance of a meeting, or are to take such documents away after a meeting, they be required to sign for them. Certain documents, such as *in camera* transcripts, should only be able to be consulted in the committee clerk's office, with the chair's approval;

(d) that the names of all persons in the room at *in camera* meetings to discuss draft reports - including assistants, research staff, interpreters and stenographers - be recorded, preferably on the record; and

(e) that the chairs of committees ensure that all Senators and staff are cautioned and reminded of the nature of confidential and *in camera* proceedings and documents, the importance of protecting them, and the consequences of breaching such confidentiality.

31. By letter dated December 8, 1999, Senator Landon Pearson has raised various issues relating to *in camera* committee proceedings, which are very relevant to this issues covered by this report. In this regard, your Committee notes that the Sixth Edition of *Beauchesne's* states: "Committees should make clear decisions about the circulation of draft reports, the disposition of evidence and the publication of their *Minutes*." (citation 851, p. 237). Your Committee concurs: there are a variety of types of matters that are taken up at *in camera* meetings, and different considerations apply to different situations. Committees and their chairs are in the best position to decide how *in camera* proceedings and documents are to be treated, but they should be very clear about their nature and status. While we consider such issues best dealt with by individual committees, your Committee is prepared to re-visit this issue, and develop a basic set of rules for *in camera* proceedings if required or if requested.

32. Your Committee hopes that the unfortunate situations involving the reports of the Standing Senate Committees on Aboriginal Peoples and on Transport and Communications will act as reminders that confidentiality must not be taken lightly. Without trust and integrity, the Senate and its committees cannot function properly. The issue of confidentiality is a complex one, and must be addressed in a number of ways. Heightened awareness of the issue and contractual terms and undertakings are part of the solution to protect confidentiality. Other measures, including administrative ones, such as security arrangements for draft reports and *in camera* meetings, should also assist. Your Committee appreciates that some of the measures outlined above will lead to inconveniences. Nevertheless, the recent events highlighted by the questions of privilege of Senators Andreychuk and Bacon have led us to conclude that they are necessary to ensure the integrity of Senate committee proceedings, and to prevent further unauthorized leaks.

33. Your Committee wishes to re-emphasize the seriousness with which it views breaches of confidentiality. The premature and unauthorized disclosure of committee reports undermines and compromises the work of the Senate, its committees, and of Senators. If the Senate is to work as an institution, confidentiality must be respected.

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