SPEAKER'S RULING

BILL S-204 AND THE ROYAL RECOMMENDATION

Honourable senators,

On February 3, after Senator Spivak had spoken to her motion for the second reading of Bill S-204, An Act to amend the National Capital Act (establishment and protection of Gatineau Park), Senator Nolin rose on a point of order. Referring to the *Constitution Act, 1867*, he asserted that the bill requires a Royal Recommendation. As a consequence, he maintained that the bill cannot continue before the Senate.

Senators Fraser and Spivak both urged that the bill does not require a Royal Recommendation. Senator Banks, for his part, referred to Senator Spivak's speech, and noted that the National Capital Commission already acquires and sells property, and this bill would simply set up the park. The commission could, he maintained, act without new appropriation.

This question is one that has come up in the Senate on a number of recent occasions. It may, therefore, be helpful to consider some of the fundamental points at issue. As noted in Marleau and Montpetit, at page 709, the financial prerogative of the Crown means that "Under the Canadian system of government, the Crown alone initiates all public expenditures and Parliament may only authorize spending which has been recommended by the Governor General." This principle is reflected in Senate rule 81, which states that "The Senate shall not proceed upon a bill appropriating public money that has not within the knowledge of the Senate been recommended by the Queen's representative." The rule itself embodies some of the obligations imposed by sections 53 and 54 of the *Constitution Act, 1867*.

The Royal Recommendation is the concrete expression of the financial initiative of the Crown and is signalled to the House of Commons. Since the 1970s, the Recommendation has followed a standard form: "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…," followed by the bill's title. In February 1990, the Standing Senate Committee on National Finance raised questions about this general wording, noting "that the form of the royal recommendation now used does not serve to make clear what, if any, appropriation(s) the ministers are seeking by bills to which royal recommendations are appended."

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. Given the nature of the legislative process, senators may sometimes wish to delay raising a point of order until later stages, since committee hearings will often provide greater clarity on what a bill's provisions will entail and how they will have to operate.

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.

To be clear, however, a bill appropriating public money cannot be initiated in the Senate. To repeat, rule 81 establishes that "The Senate shall not proceed upon" such a bill. Thus, once it is determined that a Senate bill does infringe rule 81, it is not possible to make amendments that could correct the situation, since the bill cannot be dealt with further. The Royal Recommendation is, therefore, quite different from the Royal Consent, which relates to the requirement for the Governor General to signal agreement to Parliament considering a bill that would affect the prerogative powers of the Crown. As previous rulings have stated, in most instances the Royal Consent can be signalled up to the time a bill receives third reading.

To turn to the specific provisions of the bill before the Senate, the National Capital Commission already has considerable discretion when it comes to acquiring and selling land. As has been noted in some Senate committee hearings in recent years, the commission can buy and sell land in the National Capital Region largely at its own discretion. This power exists in the *National Capital Act*, specifically in subsection 10(2). That act also indicates that one of the commission's goals is to plan and assist in the development and conservation of the National Capital Region.

A reading of Bill S-204 shows that it would establish Gatineau Park and set its boundaries. The bill also allows for the expansion, but not the contraction, of the park. Of basic importance, the National Capital Commission would also have a right of first refusal on any land sold within the park, but is not compelled to purchase such land.

In relation to the management of the park, clause 4 of the bill states that the "Maintenance or restoration of ecological integrity, through the protection of natural resources and natural

processes, shall be the first priority of the Commission." Such legislative direction appears to be generally in keeping with the commission's existing goals.

Overall, the bill does not appear to involve any evident novel expenses. Instead, what it does do is establish Gatineau Park, direct priorities in its management, and allow, but not compel, the commission to purchase land if it comes up for sale, as it can already do. When viewed in the context of existing powers, none of these initiatives seem to involve new funding. Instead, Parliament would be guiding how the commission should exercise the discretionary authority it currently has. In particular, nothing in the bill indicates that the commission would be obliged to purchase land in the park. Its discretion in this regard would remain unfettered.

While it is true that the bill does prohibit the sale of public lands within the park, this limitation is not an expenditure, and certainly not an appropriation.

This analysis of Bill S-204 suggests that it does not require expenditures, whether new or distinct, since the direction the bill would give the commission fits within its existing larger powers. Accordingly, the ruling is that this bill does not require a Royal Recommendation, and debate at second reading of this bill can continue.