

SPEAKER'S RULING

BILL S-207 AND THE ROYAL RECOMMENDATION

Honourable senators,

On January 29, after Senator Carstairs had spoken to her motion for the second reading of Bill S-207, An Act to amend the Employment Insurance Act (foreign postings), Senator Comeau rose on a point of order. He argued that the bill needs a Royal Recommendation. While recognizing that the bill may have merits, he cited Beauchesne and rulings from the other place, stating that it could incur expenses not currently authorized by law. This issue arises because the bill would extend access to employment insurance to some individuals who do not now qualify. In keeping with rule 81, Senator Comeau asserted that the bill cannot be considered by the Senate.

By way of response, Senator Carstairs expressed concern that a restrictive approach could hamper senators' ability to introduce bills in the future. She also noted that the bill had been brought forward in several previous sessions without objection. Senator Fraser took up some of these points and suggested that, because this is not a supply bill, it should be given the benefit of the doubt. If amendments are required, she proposed that they could be made before the bill leaves the Senate. Senators Kenny and Tardif also spoke in favour of keeping the bill on the Order Paper. Finally, Senator Nolin drew the Senate's attention to sections 53 and 54 of the *Constitution Act, 1867*, arguing that the bill does not respect their provisions and is out of order.

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 43, 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.

As to the concern that senators could be impeded in bringing in legislation, this must be balanced against the need for a scrupulous respect for the financial prerogative of the Crown, which is reflected in our own rules and cannot be ignored. As the recent rulings demonstrate, each time a point of order like this one is raised, the bill is examined in terms of its potential monetary implications. As senators know, such concerns do not always prove to be valid. The actual merit of a particular bill, however, is not the issue when faced with the possible need for a Royal Recommendation.

As was noted in the ruling a few moments ago on Bill S-204, measures to extend the purposes of payments already authorized by statute or to relax conditions to be met typically require the Royal Recommendation. Marleau and Montpetit, at page 711, states that "An amendment which either increases the amount of an appropriation, or extends its objects, purposes, conditions and qualifications is inadmissible on the grounds that it infringes on the Crown's financial initiative." A similar point is made at citation 596 of Beauchesne, to which Senator Comeau referred, and in the 23rd edition of Erskine May, at page 857. This

obligation to respect the Royal Recommendation applies not just to amendments, but also to amending bills.

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.