

SPEAKER'S RULING

POINT OF ORDER ON MOTION 144 (OTHER BUSINESS)

On March 19, 2013, as the debate resumed on the motion, as amended, of Senator Cools, seconded by Senator Comeau, concerning the question of privilege relating to the actions of the former Parliamentary Budget Officer, clarification was sought by Senator Cools as to whether or not there were now two questions rather one question before the house.

The Order Paper, at motion 144 under Other Business, reads as follows:

Resuming debate on the motion, as amended, of the Honourable Senator Cools, seconded by the Honourable Senator Comeau:

That this case of privilege, relating to the actions of the Parliamentary Budget Officer, be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament for consideration, in particular with respect to the consequences for the Senate, for the Senate Speaker, for the Parliament of Canada and for the country's international relations;

And on the motion of the Honourable Senator Tardif, seconded by the Honourable Senator Cowan, that the question be referred to a Committee of the Whole for consideration.

Initially, upon the request for clarification, the Speaker sought to explain that order number 144 now contains, in the third paragraph, a proposal that has characteristics of a superseding motion. This proposal was introduced during debate on March 7, 2013, by Senator Tardif, who stated that "...pursuant to rules 5-7(b) and 6-8(b) I move: that this motion be not now adopted but that it be referred to a Committee of the Whole for consideration".

Senator Cools rose on a formal point of order and introduced a number of important considerations from the *Rules of the Senate* and the parliamentary procedural literature, all of which are reported in the published Senate Debates for March 19, 2013. Senators Tardif and Carignan each contributed to discussion on the point of order. Senator Carignan stated that: "...it seems fairly clear to me that Senator Tardif's intention was to propose an amendment...". At this point Senator Cools stated that "...if this is an amendment, it is a different matter". In light of this Senator Cools stated that she "would like to withdraw" the point of order.

The Speaker has been asked to evaluate the current status of motion 144. 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.