

SPEAKER'S RULING

POINT OF ORDER CONCERNING BILL C-268

On April 15, 2010, Senator Cools rose on a point of order to question whether Bill C-268, An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years), is properly before the Senate. She asserted that the bill “offends Senate rules, the established law of Parliament and the constitutional independence of both houses.” She noted that the bill passed the House of Commons this session based on its standing order 86.1. While recognizing the control each house has over its own proceedings, she argued that the House of Commons could not pass Bill C-268 under that particular standing order since, at the time of prorogation, a previous version of the bill had been before the Senate. As part of her argument, Senator Cools explored a range of parliamentary issues. When they spoke later, Senators Banks, Carstairs, and Fraser found the points raised by Senator Cools to be intriguing.

Senator Comeau, during his intervention, questioned Senator Cools’ position. He explained that, as a result of prorogation, Bill C-268 from the last session is no longer before either the Senate or the House of Commons. The Bill C-268 now before the Senate for second reading is a new bill. It was received by the Senate from the other place in this session. He also cautioned against passing judgment on how the House of Commons chooses to conduct its business. Senator Comeau did not see any breach of the Rules or the practices of the Senate, concluding that the bill is properly before us.

Honourable senators, it may be helpful to consider some larger questions related to this point of order before turning to the specifics of this case.

As honourable senators know, prorogation of Parliament is one of the prerogative powers of the Crown, exercised on the advice of the Prime Minister. Prorogation brings to an end all business before Parliament. As Erskine May, at page 274 of the 23rd edition, puts it, “The effect of a prorogation is at once to suspend all business, including committee proceedings, until Parliament shall be summoned again, and to end the sittings of Parliament.”

This does not mean, however, that business from a previous session cannot be revived in a new session. The just-cited reference to Erskine May goes on to explain that public bills can be “carried over by order from one session to another.” Similarly, the House of Lords can carry public bills over to a new session in certain circumstances. In other words, in the United Kingdom mechanisms have been established to revive business from a previous session in a new session.

Such an approach is also followed in Canada. In the Senate, this is routinely done by the referral of papers and evidence from past sessions to committees for work in a new session. In the House of Commons, bills are regularly revived in a new session of the same Parliament, and the process has been essentially automatic for Private Members' Public Bills since 2003. Government bills are also occasionally reinstated, based on separate orders of the Commons. Practices allowing for the reinstatement of bills also exist in at least some provinces, including Alberta, Manitoba, Ontario, and Quebec. Reinstatement of bills in a new session is not an unusual feature in modern parliamentary practice.

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.

We can, however, refer to the House of Commons *Journals*, the official record of the decisions of the other place. For March 3, 2010, we find the following entry:

Accordingly, Bill C-268, An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years), was deemed introduced, read the first time, read the second time and referred to a committee, reported with an amendment, concurred in at report stage and read the third time and passed.

Honourable senators, this 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. The message accompanying the bill, as passed by the House of Commons on March 3, 2010, was in the normal form. The message stated that it was:

ORDERED,

That the Clerk do carry this Bill to the Senate, and desire their concurrence.

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*.

It may be of interest for honourable senators to learn that this type of situation actually occurs quite frequently. Since the third session of the 37th Parliament at least nine bills, in addition to Bill C-268, have passed the House of Commons at the start of a session as a result of reinstatement provisions, and then proceeded immediately to the Senate. Of these bills, no less than five have received Royal Assent.

Procedures surrounding Bill C-268 thus fully respected parliamentary procedure and practice, and so debate can continue.