MAY 11, 2006

SPEAKER'S RULING

Bill S-212

On Tuesday May 2, during Orders of the Day, Other Business, as Senator Austin was about to move the second reading of Bill S-212, Senator Di Nino rose on a point of order to argue that the bill was not properly before this House. The Senator explained that under the *Constitution Act, 1867*, bills that appropriate any part of the public revenue or impose a tax must originate in the House of Commons. Such bills cannot be introduced first in the Senate. Based on his reading of the bill, Senator Di Nino maintained that Bill S-212 was imposing a tax and was appropriating public revenue. In his view, the bill "should have been preceded by a Ways and Means motion, should have been accompanied by a Royal Recommendation, and should have originated in the other place." The Senator went on to explain the reasons why he thought Bill S-212 was out of order. The first reason is that the bill provides an increase in the child disability supplement which could lead to payments out of the Consolidated Revenue Fund, the CRF. Secondly, clause 3 of the bill increases the maximum refundable medical expense supplement. As a result, in instances where a taxpayer is entitled to a tax credit, a refund will be made out of the CRF. And finally, while Senator Di Nino acknowledged that Bill S-212 reduces the income tax rate from 16 per cent to 15 per cent, he suggested that this could actually result in an increased tax burden for a very small number of taxpayers.

Other Senators participated in the discussion on this point of order. Senator Rompkey characterized the arguments justifying the point of order as specious. Senator Baker claimed that the expenditures contained in Bill S-212 were not really expenditures within the meaning of the objection raised. For his part, Senator Austin, the sponsor of the bill, denied that there were any appropriations or tax impositions in Bill S-212. The Senator also pointed to several precedents to buttress his position including past rulings in which the Speaker declared that bills proposing reductions in taxes did not require a royal recommendation. Senator Stratton appreciated the intent of the point of order. He thought that the bill should be examined to determine if there is an increase on the public purse. Senator Murray then intervened. He repeated a point that had already been made by Senator Di Nino; that Bill S-212 is based in large measure on a bill that had been introduced in the House of Commons in the last Parliament. That bill, as Senator Murray recalled, had been preceded by a Ways and Means motion and accompanied by a royal recommendation. Whether right or wrong in his recollection, the Senator was convinced that the provisions of the bill implicitly involved payouts that would be drawn from public funds. Finally, Senator Hays spoke to caution against any misunderstanding of the fiscal process that might prompt any confusion about the purpose of the bill, which is "to preserve tax reductions that are already in place."

Following these exchanges, I stated that I would take the matter under advisement. Since then, I have reviewed the applicable *Rules of the Senate*, closely examined the bill and

studied the relevant precedents and authorities. I am now ready to make my ruling on the point of order.

There were three arguments made by Senator Di Nino to justify his claim that Bill S-212 is not properly before the Senate. Let me begin with the last one. The Senator accepted that one objective of the bill is to reduce the federal income tax rate to 15 per cent from 16 per cent. This is achieved through clauses 1 and 2 of the bill. As he and other Senators acknowledged, this reduction first appeared in Bill C-80, a bill introduced in the other place in what turned out to be the closing days of the last Parliament. According to the *Journals* of the other place, that bill was preceded by a Ways and Means motion**.** However**,** I can find no evidence that the bill was also accompanied by a royal recommendation.

In his presentation, Senator Di Nino explained that when the percentage of the tax rate is lowered, the tax credits are also lowered. When this happens, when a tax credit is lowered, according to the Senator, a Ways and Means motion is required. Such motions are a distinct feature of the other place. There is no equivalent in any part of the Senate's rules and practices. While I accept that clauses 1 and 2 of Bill S-212 will reduce the tax rate, I do not agree that this tax reduction necessitates a Ways and Means motion. A tax reduction is clearly not a tax imposition even if, incidentally, it has a negative impact on a small number of taxpayers. According to *House of Commons Procedure and Practice* by Marleau and Montpetit, at page 759, "Legislative proposals which are not intended to raise money but rather to reduce taxation need not be preceded by a Ways and Means motion before being introduced in the House." This statement is supported by two rulings by Speakers of the House of Commons, dating back to 1957 and 1972. Based on this aspect of the point of order, I would not be disposed to rule Bill S-212 out of order. This is in keeping with my preference and underscores my intention, to allow debate which gives the Senate itself the opportunity to come to its own decision on the question.

There are, however, two other arguments that need to be considered in regard to this point of order. I propose to deal with both of them together. As has already been mentioned, much of Bill S-212 is based on Bill C-80. Despite their similarities, there are some significant differences which may be reflected in their different titles. Bill C-80 was entitled, *An Act to implement certain income tax reductions*; Bill S-212 has as its title, *An Act to amend the Income Tax Act (tax relief)*. In addition to incorporating elements of Bill C-80, Bill S-212, in clause 3 and 4, also seeks to implement increases to the refundable medical expense supplement and the child disability benefit. As honourable Senators may recall, both of these refundable credits had been increased in the budget implementation bill, Bill C-43, adopted last June. Prior to the enactment of this bill, the formulas used to calculate the refundable credits for medical expense supplements and the child disability benefit were $500 and $1,600 respectively. As a result of the changes implemented through Bill C-43, the figures were increased to $750 and $2,000. Bill S-212 now proposes to increase the benefit again to $1,000 and $2,300. Based on this analysis, it is clear that Bill S-212 is doing more than preserving tax reductions already in place. Bill S-212 also aims to provide tax relief in the form of refundable tax credits.

So far as I have been able to determine, these proposed tax credits have not had any expression in legislation. No bill was introduced in the last Parliament to implement them. They were certainly not any part of Bill C-80. In preparing my ruling, I found it instructive to review the procedures that were followed in the other place with respect to Bill C-43, entitled *Budget Implementation Act, 2005*. This bill was preceded by a Ways and Means motion. More importantly, when Bill C-43 was introduced and read the first time, it had a royal recommendation attached to it. This recommendation was necessary because of the proposed scheme to increase refundable tax credits. Unlike measures that affect non-refundable tax credits, bills proposing to alter refundable tax credits need a royal recommendation. This is because the payouts that will be made to taxpayers who are entitled to claim them must be authorized. This authorization is the royal recommendation. These payments can only be made from the CRF; they are expenditures of public money.

Rule 81 stipulates 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." Bill S-212 does not have a royal recommendation, though it is clearly necessary with respect to clauses 3 and 4. Had Bill S-212 contained only clauses 1 and 2, I would have been able to rule otherwise. However, given this level of certainty with respect to the meaning and operation of clauses 3 and 4, I am obliged to rule that the point of order that was raised with respect to further proceedings on Bill S-212 is well founded. The second reading motion on Bill S-212 will not be put for debate and the bill is to be stricken from the Order Paper.

(*Accordingly, the Order of the Day for the second reading of Bill S-212, An Act to amend the Income Tax Act (tax relief), was discharged and, by order, the Bill withdrawn*.)
