

## SPEAKER'S RULING

### BILL S-223 AND THE ROYAL RECOMMENDATION

Honourable senators,

I am prepared to rule on the point of order that was recently brought up with respect to Bill S-223, An Act to amend the Canada Pension Plan (retroactivity of retirement and survivor's pensions).

On March 1 Senator Comeau raised a point of order challenging the proceedings on Bill S-223. He argued that the bill creates new expenditures which require a royal recommendation. Consequently, the Senator contended that the bill cannot originate in the Senate under rule 81.

Neither Senator Tardif nor Senator Callbeck, who introduced the bill, agreed with this position. They noted that the monies that would go to the recipients identified in the bill are already available in the Canada Pension Plan (CPP) fund. They also referred to a legal opinion obtained by Senator Callbeck. According to this opinion, the payments from the CPP are not part of the Consolidated Revenue Fund (CRF), and therefore Bill S-223 does not meet the test of a money bill under the terms of the *Constitution Act, 1867*.

Questions about the royal recommendation, what it is, and how it can be identified, frequently lead to points of order in the Senate like this one. Honourable Senators will remember a series of rulings on this topic in February 2009.

The *House of Commons Procedure and Practice* identifies the royal recommendation as an instrument by which the Crown advises Parliament of its approval of a legislative measure involving the expenditure of public funds. The royal recommendation can only be secured by a Minister and bills that require a royal recommendation cannot originate here in the Senate. Since 1976 the text of the royal recommendation is in the following words: "His/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 [long title of the bill]..."

The question raised by this point of order must be resolved in accordance with the forms and practices that are currently in place. The language of Bill S-223 clearly states that a CPP benefit will be extended to certain individuals who are not receiving it now. The bill states that "This enactment amends the *Canada Pension Plan* so that a person who applies for a retirement pension after reaching 70 years of age or who applies for a survivor's pension would be eligible to receive retroactive payments for a maximum of five years instead of the current maximum of 12 months."

On its face, the language of Bill S-223 certainly entails a requirement for the royal recommendation that also necessitates its initial consideration by the other place before coming to the Senate. However, the sponsor of the bill denies that this is the case on the basis that the bill is not properly a money bill since the funds of the CPP are not really part of the CRF.

The original Act that created the CPP dates from 1965. Its objective then was to "establish a

comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors.” The bill implementing the CPP was introduced in the House of Commons and was accompanied by a royal recommendation.

The funds that finance the CPP are public money. Although the Canada Pension Plan account is a separate account recording the financial elements of the plan, section 108 of the CPP provides that it is established within the CRF. While it is not used as a source of general revenue by the government, this does not mean that it is not public money for the purposes of rule 81. This rule 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.”

Parliamentary practice stipulates that any new or additional legislative authorization for spending from the CRF must be accompanied by a royal recommendation. Bill S-223 seeks to alter the conditions that are attached to the CPP by increasing the period of retroactivity to five years from the current 12 months. Although spending from the CPP is derived from its own separate account, it is made through the CRF. As such, any changes to the CPP which would entail increased spending require a royal recommendation.

In conclusion, it is my ruling that the provisions of Bill S-223 require a royal recommendation and that, as a consequence, it cannot originate in the Senate. The point of order is well founded; proceedings on the bill must cease and Bill S-223 will be discharged from the Order Paper.