SPEAKER'S RULING

POINT OF ORDER
BILL S-219

Honourable Senators,

On April 1, when the order was called for resuming debate on the second reading of Bill S-219, An Act to amend the Bankruptcy and Insolvency Act (student loans), the Deputy Leader of the Government, Senator Comeau, rose on a point of order. He argued that the bill requires a Royal Recommendation, and therefore cannot continue before the Senate. Senator Comeau referred to the *Consitution Act, 1867*, Senate rule 81, and authorities such as Bourinot and Erskine May in explaining how, in his view, the bill violates the financial initiative of the Crown.

Senator Comeau's concern was that the amendments to the *Bankruptcy and Insolvency Act* proposed in Bill S-219 could possibly increase the government's liabilities under the *Canada Student Loans Act*. Fundamentally, bill S-219 seeks to implement two changes. First, a person declaring bankruptcy could seek relief from student loan debts at the end of five years, instead of waiting seven, as is now the case. Second, the bill would allow any former student to apply for changes to the terms of repayment, without having to wait five years as they must currently.

Since the government is the guarantor for loans made under the *Canada Student Loans Act*, it is liable to the lender if former students are discharged from debts or obligations with respect to such loans. The changes that Bill S-219 proposes would thus have the effect of increasing the contingent liabilities of the government, possibly resulting in additional charges on the Consolidated Revenue Fund.

The sponsor of the bill, Senator Goldstein, challenged the idea that the bill requires a Royal Recommendation. He noted it does not specifically appropriate public money, from which he concluded that rule 81 does not apply. He also mentioned that the bill had been before the Senate in previous sessions, and had been referred to committee, without this issue being raised.

At the outset, it should be noted that a point of order on such issues can be raised at any time while a bill is before the Senate. A point of order in a new session is certainly acceptable, and has occurred on a number of recent occasions.

The question of the relationship between the Crown's liabilities and the Royal Recommendation does not arise often in the Senate. There have, however, been some cases of relevance. On October 23, 1991, Bill S-5 was ruled out of order, since it would have imposed new liabilities on the Crown. In that case reference was made to the 20th edition of Erskine May, which states that both liabilities and contingent liabilities require the Royal Recommendation. Earlier, on February 20, 1990, the same text had been cited, among others, when some amendments proposed to a bill in a committee report were ruled out of order.

From the most recent edition of Erskine May, the 23rd edition, it is evident that a Royal Recommendation is still required for proposals that would incur a liability or a contingent liability. Page 884 specifically indicates that this includes charges that "might arise from a Treasury guarantee." While page 888 does state that the Royal Recommendation may not be required if the "liability arises as an incidental consequence of a proposal to apply or modify the general law," this does not save Bill S-219, since the changes proposed to the student loans regime are not merely incidental to the bill, but its primary purpose.

While there is a general preference in the Senate to favour debate in uncertain situations, this must be balanced against the need for a scrupulous respect for the financial initiative of the Crown, a basic principle of our parliamentary system. The passage of Bill S-219 would expand the range of conditions under which the government would have to make good its guarantee of loans under the *Canada Student Loans Act*. This would change the existing scheme, since payments from the Consolidated Revenue Fund might increase due to the change in possible obligations. As such, the bill should have a Royal Recommendation, and would have to originate in the other place.

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.