SPEAKER'S RULING

SIXTH REPORT OF THE STANDING SENATE COMMITTEE ON BANKING, TRADE AND COMMERCE

Honourable senators,

Yesterday, during debate on the sixth report of the Standing Senate Committee on Banking, Trade and Commerce, a point of order was raised as to whether the report, which recommends that the Senate not further consider Bill S-216, was properly before the Senate. This concern arose from the fact that the committee had not gone through the bill clause-by-clause, a usual requirement under rule 96(7.1). That rule states that "[e]xcept with leave of its members present, a committee cannot dispense with clause-by-clause consideration of a bill". Against this requirement, there is rule 100, which states, in part, that "[w]hen a committee to which a bill has been referred considers that the bill should not be proceeded with further in the Senate, it shall so report to the Senate, stating its reasons".

There are relatively few instances in which Senate committees have used the process allowed under rule 100. Research has identified eight cases since 1975, of which the 1998 example of Bill C-220 is the most recent. According to the available records, committees have always made the decision to report against a bill without starting clause-by-clause study. That is to say, the basic issue of whether a committee considers that a bill should be proceeded with is decided, either explicitly or, most often, implicitly, before clause-by-clause. If the committee decides to make a recommendation under rule 100, it does not ever reach the clause-by-clause stage.

This helps to understand how rule 96(7.1), which was added to the *Rules of the Senate* in 2005, is to be used. This rule only applies if the committee actually gets to the stage of considering a bill clause-by-clause. If that point is not reached, because a committee decides to recommend against the bill pursuant to rule 100, the requirement of rule 96(7.1) does not come into play. To oblige that a committee go through a bill clause-by-clause when it has already decided to report against the bill would be contradictory and inconsistent.

A review of the blues of the meeting of the Banking Committee on November 25, indicates that, although the term "dispense with clause-by-clause" was used at one point, this was quickly corrected to "not proceed with clause-by-clause". A motion to that effect was put to a recorded vote and carried. A report was then proposed, with a recommendation that the Senate not continue consideration of the bill. This report was adopted on another recorded vote. The proceedings, except for the passing reference to dispensing with clause-by-clause, which was corrected, were thus in order. Not proceeding with clause-by-clause when the committee is recommending against a bill is, as already noted, proper practice.

Honourable senators, as a ruling of September 17, 2009, noted, "[w]hile committees are often said to be 'masters of their own proceedings,' this is only true insofar as they comply with the

Rules of the Senate." This is in keeping with rule 96(7), which prohibits committees from adopting inconsistent special procedures or practices without the Senate's approval, and also reflects points to be found at pages 1047-1048 of the second edition of *House of Commons Procedure and Practice*.

This said, the practice in our committees has been that they are permitted considerable freedom in governing their proceedings. When there are concerns about the propriety of proceedings in committee, they should be raised at that time and in that venue, when corrective action can be more easily taken.

The ruling is that the sixth report is properly before the Senate, and debate can continue.