Rulings of Senate Speakers 1984 – 1993

September 2004

Prepared by the Legislative Services Sector

Introduction

The membership of the Senate is composed of those nominated by the Prime Minister and appointed by the Governor General. Most Senators usually identify themselves with the Government or the Opposition, while a number of them sit as independents. Because it is an appointed body, there have been occasions when a new Government has not had a majority in the Senate. This occurred in 1983 following the general election which resulted in a change of administration.

The challenge for Speaker Charbonneau, Chair from 1984 to 1993, was to preserve the integrity of the Chair while ruling on points of order and questions of privilege on matters that were often the subject of partisan dispute especially when dealing with controversial legislation. It was not an easy task. Of the 46 rulings he made, 11 were challenged and 4 were not sustained.

These challenges became less successful once the Government secured a majority, which it did in September 1990, by invoking for the first time section 26 of the *Constitution Act, 1867*, and appointing eight regional Senators over and above the normal maximum of the Senate, then 104.

As these rulings make clear, it was a memorable time in the history of the Senate.

Paul C. Bélisle
Clerk of the Senate and Clerk of the Parliaments

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November 5, 1984 – August 28, 1986

Speaker: the Honourable Guy Charbonneau

Speaker *pro tempore*: the Honourable Martial Asselin

Motion – Acceptability (Ruling by Speaker *pro tempore*)

February 20, 1985 *Journals*, pp. 264-265

The Hon. the Speaker *pro tempore:* Honourable senators, this is a difficult matter to resolve in view of the wording of Senator Roblin's motion. If the motion clearly states that the vote must be held later today, or on a specific day, I would probably have no difficulty with the point of order raised by Senator Flynn.

However, there is no date mentioned in the motion. Therefore, my interpretation of the motion is that it will be decided upon when the vote is taken. I think that the intention of the Leader of the Government was that this motion be put to the vote one day or another.

This is a difficult task in view of the seriousness of the point of order which was raised. However, under the circumstances I think that the motion will have to appear on the order paper for tomorrow's sitting. This is how I interpret the motion before me.

Motion – Acceptability (motion to refer subject-matter of motion to committee) (Statement by the Acting Speaker)

April 30, 1985 *Journals*, p. 406

Honourable Senators, last Wednesday during debate on Senator Godfrey's motion, Senator Phillips moved that the motion be withdrawn and that the subject-matter thereof be referred to the Standing Committee on Standing Rules and Orders. Senator Frith then rose on a point of order and asked the Speaker to make a ruling on whether it was out of order to refer the motion to the Committee. However, that was not the question before the Senate at that time, and I am reluctant to rule on a question in anticipation. In this regard, I would like to quote from *Beauchesne's Parliamentary Rules and Forms,* Fifth Edition, citation 239(1) which reads in part:

> "The Speaker decides questions of order only when they actually arise and not in anticipation...".

While I do not want to set a precedent by answering queries on procedure, nevertheless in order to assist the Senate in making a decision in this matter, I wish to inform the Senate that there are a number of precedents for referring the subject-matter of motions to committee. The latest precedent, which occurred this session, was Senator Sparrow's motion respecting the printing of an additional 10,000 copies of the Report entitled: "Soil at Risk", and can be found at page 115 of the *Minutes of the Proceedings of the Senate.*

This has been the practice for many years. However, there is nothing in our Rules to prohibit the referral of a motion to a committee, and in this regard a precedent can be found at page 77 of the *Journals of the Senate,* 1944-45.

There are therefore two ways of proceeding. In my opinion, the less cumbersome procedure would have been to simply move a motion, not an amendment, to refer the motion to a committee. Since such a motion was not proposed and instead Senator Phillips' amendment is before us, therefore, we will proceed with the debate on the amendment of Senator Phillips and it is up to Honourable Senators to decide on the amendment.

Motion – Acceptability (referring subject-matter of bill to committee)

May 8, 1985 *Journals*, pp. 430-431

Yesterday the Speaker was asked to rule on the following question:

> "Can a bill that is being debated at the second reading stage be referred to a committee?"

If I had to answer simply yes or no to the question as it stands, I would have to answer no. However, I believe the question warrants further clarification. The entire bill cannot be referred to a committee before it has been given second reading. However, the same cannot be said of the principle of the bill or of the discussion that I would term philosophical regarding the subject-matter of the bill.
I refer you to paragraph 740 of Beauchesne's Fifth Edition which reads as follows:

> "There are three types of amendments that may be proposed at the second reading stage of a bill. These are:
>
> 1. the six months' hoist;
> 2. the reasoned amendment;
> 3. the referral of the subject-matter to a committee."

Paragraph 746 of the same edition is even more explicit:

> "An amendment, urging a committee to consider the subject matter of a bill, might be moved and carried if the House were adverse to giving the bill itself a second reading and so conceding its principle. But where further information is desired in direct relation to the terms of the bill before the House, the advantage of referring the bill to a committee could be explained in the second reading stage."

Be that as it may, according to Beauchesne and the precedents of this House that I will call to mind, referral to a committee is provided for in the Rules.

As for our precedents, we note in the *Journals of the Senate,* 1982, pages 2545 and 2546, that during the debate on second reading of Bill S-31, the Honourable Senator Flynn, P.C., moved that the said Bill not be adopted in second reading and that its subject-matter be referred to the Standing Committee on Legal and Constitutional Affairs. The amendment passed and the subject-matter of the Bill was duly referred to the committee.

A similar precedent arose from the debate at the second reading stage of Bill C-201. I refer you to page 2477 of the *Journals of the Senate,* 1982.

In conclusion, I submit to you that from a purely procedural standpoint, at this particular stage, an amendment to the initial motion to refer the subject-matter of a bill to a committee may be proposed.

Motion – Acceptability (rule of anticipation)

June 18, 1985 *Journals*, pp. 534-537

Honourable Senators, on Thursday, June 13, the following motion was to be debated:

> That, in view of the adverse effects on the standard of living of senior citizens resulting from the elimination of full indexation of pension benefits, it is the view of the Senate of Canada that the government should rescind this particular provision of the Budget immediately.

The day before, on Wednesday, June 12, Senator Flynn raised a point of order and tried to defeat the motion on constitutional grounds.

In answer to your request, I shall develop the three important issues raised by this challenge.

Firstly, it was suggested that "the right to vote on a motion of censure rests exclusively with the House of Commons", which of course I do not dispute. A very old British tradition which we have always scrupulously observed says so. But a motion of censure must be drafted in very explicit terms and should actually contain a withdrawal of confidence. But in the afore-mentioned motion, we find the words "...it is the view of..." and the conditional "should". Evidently, even if this motion was put to a vote, it is essentially an expression of a point of view, a mere opinion that does not bind the government and even less to resign. An additional proof of my point is the fact that the House has itself, on Thursday, June 13, debated quite a similar motion, though the wording was different, which read:

> That the House urge the government to now commit itself to the upholding of the present total indexation of old age security benefits after January 1 of 1986.

During the debate, the mover specified from the outset that his motion was not a non-confidence motion.

My second argument deals with the notion of anticipation, and here we must tread with caution. Indeed, we should take it for granted that the important elements of a budget must be worked out in a bill during the same session. In the present case, it seems clear that a de-indexation formula will appear in a bill.

Article 416 of Beauchesne's Fifth Edition reads:

> An old rule of Parliament reads: "That a question being once made ... in the affirmative or negative, cannot be questioned again..."

It says, further:

> This rule also applies to decisions taken by the House on amendments to the Address in Reply to the Speech from the Throne and to the Budget Motion.

All these arguments apply more specifically to our case.

Let us now examine the motion in question more closely. For the sake of our discussion, I assume the motion has passed through the Senate. I must then ask myself how can such a motion prevent the Senate from subsequently examining legislation containing a de-indexation formula. Word for word, the motion reads
... it is the view of the Senate of Canada that the government should rescind this particular provision of the Budget immediately.

The government receives the notice and decides not to cancel de-indexation immediately. Essentially, all that the motion contains is: a point of view to rescind immediately. Therefore, nothing prevents the government from taking forthwith a different course of action by disregarding that point of view, or from choosing a specific formula at a later date. The motion allows the government complete freedom of action. If it rescinds de-indexation, there will be no further discussion in the Senate. If it does not rescind, we are unaware of the wording which will be used in a gradual formula of indexation or de-indexation. The substance to be discussed, therefore, remains pending, because the terms are unknown to us. We are unable to anticipate in a precise way.

We now have to consider closely our rule 47. The notion of repetition here is related to that of anticipation, save for slight differences that I shall endeavour to clear up.

Our rule 47 specifies:

> A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved...

Now, it is argued that if the Senate rules in the affirmative or in the negative—that is to say, resolves the proposed motion—this motion could not be debated further on second reading of prospective legislation. In my ruling I do not even make assumptions. I take it for granted that we shall consider the substance of a bill dealing with de-indexation after passage of the proposed motion.

Now, would rule 47 prevail? The bill which will be submitted to us will, no doubt, contain some kind of formula for deindexation. The budget does not specifically suggest total deindexation. It is matched with some quantified formula for pension benefits indexation. Our parliamentary jurisprudence requires that we have in hand identical texts for rule 47 to apply. One of the texts suggests rejection of de-indexation, while the other, in its present form, proposes to implement it gradually. The first motion, if passed, would reject partial deindexation. The difference is substantial. Nothing will prevent subsequent consideration of de-indexation under specific conditions rather than in the abstract.

The Honourable Leader of the Government has raised a fourth point with the following question, and I quote:

> If the motion were passed and accepted by the government it would, in effect, call for a payment from revenue because it would increase government expenditures. There is no reason why we cannot find proper wording to deal with resolutions calling on the government to spend money. There is a formula available to private members or anybody who wants to propose something that calls for the expenditure of government funds, without contravening the rule that only the government can produce a royal warrant. I am not sure that this resolution is properly worded to accommodate that important technicality.

I have studied the motion under two very specific angles. First, I looked at the wording and merely saw the statement of an opinion implying no request as such.

Secondly, I have studied the question of imposed expenditures, should the government agree to the motion. If we analyzed the situation more closely, we would be obliged to conclude that if the motion was accepted it would not impose additional expenses but would simply maintain the *status quo ante.* Presently, there is a pension act with indexation providing for the necessary expenditures. It would be an amendment to this act changing the indexation formula and, while debating this amendment, parliamentarians would not be in a position, unless they were ministers, to propose any additional expenditures. Which is not our case. The motion, in fact, only refers to the status quo.

I do admit that the objections raised last Wednesday provided a good reason for us to tread with care and insight, but in order to bar debate in this chamber arguments against the motion must be tight. Even if we are doubtful, we must encourage debate in keeping with the great tradition of freedom of speech in both chambers.

I, therefore, consider that the motion is acceptable.

Committees – Referring matters to joint committees

March 25, 1986 *Journals*, pp. 1197-1199

Honourable Senators, on March 11 Senator Frith asked the Chair to consider the question of the proper procedure to be followed when one House wishes to refer a matter to a joint committee.

In particular, Senator Frith cited two Messages from the House of Commons, one informing the Senate of the referral of Privy Council Vote 15 to the Standing Joint Committee on Official Languages and the other informing the Senate of the referral of Parliament Vote 10 to the Standing Joint Committee on Parliament. Both Messages were dated Thursday, February 27, 1986, and both were received by the Senate on Tuesday, March 4, 1986. No action has yet been taken by the Senate with respect to either Message.

In the case of the first Message, the reference is to an existing joint committee, namely the Standing Joint Committee on Official Languages. In the case of the second Message, the reference is to a joint committee that has been proposed but not yet established. As honourable Senators are aware, the House of Commons has asked the Senate to unite with it in forming a joint committee to be called the Standing Joint Committee on Parliament. The proposal for that Committee is contained in a Message from the House of Commons, dated February 27, 1986, and received by the Senate on the same day as the other two Messages. That proposal is now being studied by the Rules Committee.

The Message from the House of Commons proposing the establishment of the Standing Joint Committee on Parliament concludes with a request that the Senate unite with the House of Commons "in order to give full effect" to the proposals contained in the Message. No similar request for the concurrence of this House is contained in the Messages that are the subject of the question raised by Senator Frith. The Senator has drawn the attention of the Chair to this omission and has asked if it was "possible, correct and orderly" for the House of Commons to refer something to a joint committee and afterwards advise the Senate without asking the Senate for its concurrence.

Honourable Senators, it is not within the scope of my authority as Speaker of this House to comment on procedure followed in the other House. However, since a joint committee is a creation of both Houses, I do not believe it would be inappropriate for me to review for honourable Senators some of the basic rules that apply with respect to joint committees.

The most obvious rule with respect to the powers of any parliamentary committee is that it has exactly the powers given to it by the House or Houses that created it, no more and no less. It follows that the first place to look for the powers of a particular committee is in the resolutions of the relevant House or Houses that established the committee. Only when these resolutions or other resolutions in the form of applicable rules, standing

orders or orders of reference of either or both Houses are not helpful, does one then rely upon the principles that otherwise govern.

With regard to the powers of joint committees, it is a basic principle, as stated in *May's Parliamentary Practice* (20th edition), at page 732, that a joint committee

> has only such authority, and can exercise only such powers, as have been conferred upon it by the two Houses concurrently, nor can the powers of a joint committee be enlarged by an order of one House alone ... For a joint committee to act on an authority which had been delegated to it by one House only would be *ultra vires.*

With regard to instructions to joint committees, May, at page 733 of the same edition, comments as follows:

> A mandatory instruction can be given to a joint committee only with the concurrence of both Houses. If either House gives a mandatory instruction to a select committee appointed to join with a committee of the other House, but no corresponding instruction is given by the other House to its committee, the instruction ... is not binding on the joint committee, as a committee.

Citation 760(2) of *Beauchesne's Parliamentary Rules and Forms,* (5th edition), supports May in the following terms:

> "(2) A mandatory Instruction can be given to a joint committee only with the concurrence of both Houses. If either House gives a mandatory Instruction to a joint committee, but no corresponding Instruction is given by the other House, then the Instruction ... is not binding on the joint committee, as a joint committee."

Another principle to which I draw the attention of honourable Senators concerns the use of past events. Precedents are the lifeblood of parliamentary practice. However, the fact that something has been done before does not necessarily mean that it was done in accordance with parliamentary practice and therefore does not necessarily mean that it was procedurally correct. A previous act has to be examined in the light of the principles of parliamentary practice before it may be considered as a precedent to be followed.

With respect to the reference to the Standing Joint Committee on Official Languages, I conclude from the above that, unless the powers given to that Committee by both Houses at the time of its creation allow it to receive references from one House alone, the concurrence of this House is required in order for the reference of February 27, 1986, by the House of Commons to be binding on the Committee. Having been informed by Message of the reference to the Committee by the House of Commons, the Senate may, if it chooses, concur in the action by adopting its own motion of reference in identical terms. It may do so, whether or not the House of Commons in its Message asked the Senate to concur.

With respect to the reference to the proposed Standing Joint Committee on Parliament, the Senate will no doubt wish to wait until it has decided whether or not to concur in the establishment of that Committee before deciding whether or not to join with the House in giving instructions to the Committee.

Point of order – Time to raise

April 23, 1986 *Journals*, p. 1270

Honourable Senators, yesterday the Honourable Senator Flynn, P.C., raised a point of order respecting the motion moved by the Honourable Senator Fairbairn for the adoption of the Report of the Special Joint Committee on Youth. Senator Flynn suggested that the motion was irregular and contrary to the *Rules of the Senate.*

Judging from the ensuing debate, it seemed normal to me that one cannot change, at will, the nature of a procedure by substituting a motion for adoption for a simple tabling proposal.

However, in view of the fact that the Senate is master of its own procedure and free to dispense from the strict implementation of the Rules, whether explicitly or implicitly, I must inform the Senate that I cannot rule on the point of order as raised because that point of order should, in fact, have been raised immediately following Senator Fairbairn's motion.

In this respect, I refer you to citation 237 of the 5th Edition of *Beauchesne's Parliamentary Rules and Forms,* which reads as follows:

> "A point of order against procedure must be raised promptly and before the question has passed to a stage at which the objection would be out of place."

I should comment, however, on Senator Flynn's statement that the Minutes do not conform to Hansard. He stated that, and I quote: "I object to the fact that the Minutes do not conform to Hansard. A change has been made, probably by the staff, and it does not apply. It cannot be accepted. The motion was not put."

I have examined the Clerk's Scroll for April 16, 1986, which indicates that the question on Senator Fairbairn's motion was indeed put by the Chair, as is recorded on page 1238 of the *Minutes of the Proceedings of the Senate.* One must admit that Hansard is not as comprehensive as the Journals, which constitute the official record of the Senate.

Thereafter, the debate on the motion was adjourned by Senator Doody on behalf of Senator Murray.

Motion – Acceptability (motion in amendment)

May 27, 1986 *Journals*, p. 1375

On May 7 last, during the debate on the motion for second reading of Bill S-8 intituled: "An Act to prohibit smoking in certain work areas and on board certain modes of transport", the Honourable Senator Godfrey moved the following amendment:

> "That the bill be not now read the second time but that the subject-matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs for examination and report."

During the debate on the amendment, the Honourable Senator Frith stated that:

> "...the question of whether this motion is in order is still in doubt", and, after discussion, asked for the Chair to rule on "...whether it is technically correct for the Senate to ask a committee to help it consider the principle of a bill."

While Senator Godfrey's amendment is in order, according to citation 746(1) of *Beauchesne's Parliamentary Rules and Forms,* Fifth Edition, the form of the amendment is incomplete. I would refer Honourable Senators to Form No. 40 of the Forms and Formulae of the same authority at page 280. In order for the amendment to conform to established parliamentary form, the following words should have been added to the amendment: "...that the Order for the Second Reading be discharged, the Bill withdrawn and...".

As I must base my ruling on established parliamentary practice, I rule that the amendment, as drafted, being incomplete, is out of order.

However, may I be permitted to suggest that if Senator Godfrey was given leave of the Senate, he could modify his amendment so that it would conform to Beauchesne's Form No. 40 and would be in order.

Motion – Acceptability (motion in amendment – reconsideration of clause in bill) (Ruling by Speaker *pro tempore*)

July 2, 1986 *Journals*, pp. 1576-1577

Honourable Senators, the Honourable Senator Frith has raised a point of order and has asked the Chair to rule on his point of order. First, I shall review the facts. The Honourable Senator Nurgitz moved:

> That Bill C-67, as amended, be now read the third time.

The Honourable Senator Cogger moved:

> That the Bill be not now read the third time but that it be amended by striking out the new sub-clause (8) of clause 5.

Honourable Senators, it is my opinion that this motion in amendment is in order. Rule 58 is quite clear:

> At any time before a bill is passed a senator may move for the reconsideration of any clause thereof already carried.

I do not believe that this in any way contradicts Rule 47 as suggested by Senator Frith. The Senate has not yet made a decision with regard to Bill C-67. It is true that the Bill was given second reading and that it received agreement in principle. It was then referred to Committee of the Whole so that the Senate could consider making certain amendments.

The Bill has now been returned to this House with an amendment, and the Senate is now considering whether to give the Bill third reading as amended. In my opinion, it is in order for a Senator to disagree with this motion by proposing an amendment, as Senator Cogger has done, so that Senators can vote against the Bill.

I refer you to *Beauchesne's* Fifth Edition, citation 802.(1), on page 239, and I quote:

> When an Order of the Day for the third reading of a bill is called, the same type of amendments which are permissible at the second reading stage are permissible at the third reading stage with the restriction that they cannot deal with any matter which is not contained in the bill.

Honourable Senators, I also refer you to citation 804 on pages 239 and 240:

> There are limitations on the type of amendments that can be moved on third reading. They must be relevant to the bill which they seek to amend. They should not seek to give a mandatory Instruction to a committee. They should not contradict the principle of the bill as adopted on second reading.

Senator Frith mentioned this problem as one that was covered by Rule 47. However, I think Rule 47 means that if in a session there is a vote on a bill and the bill is adopted by Parliament, we cannot, in the same session, introduce another bill that would contradict the substance of the bill previously adopted.

That is how I interpret Rule 47, and I think that in the present case, Rule 58 takes precedence. It is clear that Senator Cogger had the right to present his amendment and that is why I declare the amendment in order.

Second Session, Thirty-Third Parliament
September 30, 1986 – October 1, 1988

Speaker: the Honourable Guy Charbonneau

Speaker *pro tempore*: the Honourable Martial Asselin

Parliamentary documents – priority given when printed by Queen's Printer

February 3, 1987 *Journals*, pp. 243-244

Honourable Senators, I have received a letter (copies of which I have sent to the Leaders and Deputy Leaders) from Mr. Manchevsky, the Queen's Printer, concerning this matter.

I assigned the Clerk Assistant to consult with the Queen's Printer and to make recommendations to me with respect to the complaints raised by the Honourable Senators during debate on Senator MacEachen's motion on December 19th.

On January 27th, 1987, I met with the Clerk Assistant and Mr. Manchevsky to discuss recommendations which would improve our efficiency as well as the setting of priorities for the printing of Parliamentary documents in the future.

The Clerk Assistant reported that improvements and upgrading of our word-processing equipment will increase the efficiency of the system by 60%. This upgrading of equipment will eliminate any future delay in the preparation and transmission of text sent by the Senate to the Printing Bureau.

With respect to the question of priorities set by the Printing Bureau with regard to the printing of Parliamentary documents, I have been informed by Mr. Manchevsky that the printing of documents of both Houses is treated equally. With respect to the printing of Hansard and the Order Paper, priority has been given to the House of Commons due to the fact that the House sits at 11:00 A.M. four days a week. However, I have been informed by our officials that the printing of Senate Hansard and Minutes has not been delayed in the past because of the priority being given to the House of Commons Hansard.

The Queen's Printer has proposed the establishment of a formal process for setting priorities when a normal delivery schedule cannot be met.

Consequently, I have appointed the Clerk Assistant to be the liaison officer to act on behalf of the Senate when priority decisions have to be made. I understand that the Clerk Assistant will liaise with the Director of Parliamentary Reporting whenever normal printing schedules cannot be met.

With regard to the authority of the Chief Legislative Counsel of the Department of Justice in determining printing priorities, I am informed that when urgent bills have to be printed, a letter of priority prepared by the Department of Justice is sent, and this requirement has, in the past, been given absolute printing priority. I am informed by the Queen's Printer that as far as it can be determined, this understanding has no official status. Therefore, in future the priorities for the printing of Parliamentary documents will be established by the liaison officers of the Senate and of the House of Commons.

The one outstanding problem we are currently studying is the question of implementing an automated system for inputting the translated copy of the Senate Debates and Committee proceedings, which will eliminate major interventions by the Printing Bureau, a costly and time consuming operation. Our officials are presently discussing the matter with the Director of Translation Services, Secretary of State, and officials of the House of Commons Reporting Services, in order to arrive at a solution which will result in a more efficient and cost effective operation.

Honourable Senators, this is my report on this matter and if Honourable Senators have any further suggestions I am prepared to hear them.

Points of order – When to be raised (Ruling appealed and not sustained)

February 10, 1987 *Journals*, pp. 269-271

Honourable Senators, the Chair has considered the comments of Honourable Senators Murray, MacEachen, Frith and Doody as to when a point of order should be properly raised. The Chair notes that Beauchesne's citation 235 states that:

> "The Speaker's attention must be directed to a breach of order at the proper moment, namely the moment it occurred."

Erskine May also states that:

> "It is the right of any member who thinks that such a breach has been committed to rise in his place, interrupting any member who may be speaking and direct the attention of the Chair to the matter provided that he does so the moment the alleged breach of order occurs."

However, citation 235 of Beauchesne's further states:

> "A point of order may be taken after a debate is concluded and the Speaker is about to put the question to a vote or after the vote has been taken - in fact at any time ..."

Given the apparent conflicting remarks in the procedural authorities, the Chair briefly examined the precedents with regard to when a point of order has been raised. The Chair has found that on most instances points of order are raised promptly. However, the Chair has also found the following precedents:

> With regard to the Senate, the Chair noted that a motion was made and debated for the adoption of the Report of the Special Committee on Youth on April 16, 1986. However, it was not until April 22, 1986, that a point of order was raised by Senator Flynn with regard to the acceptability of the motion and the Speaker was asked to make a ruling.
>
> With regard to the House of Commons, the following example may be cited: Bill C-37, The Softwood Lumber Products Export Charge Act, was introduced and the Minister, the same day, moved second reading of the Bill. The second reading debate on the Bill took place on three successive days and on the fourth day the House Leader of the Official Opposition raised a point of order to the effect that the Bill was imperfect because there were blanks in the text. The Speaker of the House of Commons heard arguments on the point of order and subsequently ruled thereon.

The Chair is also faced with the dilemma that it has yet to hear the point of order Senator Murray wishes to raise.

Given our conflicting authorities and precedents, I would suggest that Senator Murray be allowed to raise his point of order at this time.

Whereupon the Speaker's Ruling was appealed.

So it was resolved in the negative.

Committee of the Whole – Witnesses appearing

February 11, 1987 *Journals*, pp. 277-278

Honourable Senators, the Chair has been asked to rule on the point of order raised by the Leader of the Government in the Senate.

I was not here yesterday to follow the deliberations of the Senate, but before coming in this afternoon I looked at the proceedings. I realized that a decision was taken by this House on whether the matter should be referred to a Committee of the Whole.

If we look at *Beauchesne's Parliamentary Rules and Forms,* citation 315. (2) on page 103, we see the following:

> "It is irregular to reflect upon, argue against, or in any manner call in question in debate the past acts or proceedings of the House..."

I also refer you to Beauchesne's, citation 416. (1) on page 150, which says:

> "An old rule of Parliament reads: 'That a question being once made and carried in the affirmative or negative, cannot be questioned again but must stand as the judgment of the House.' Unless such a rule were in existence, the time of the House might be used in the discussion of a motion of the same nature and contradictory decisions would be sometimes arrived at in the course of the same session."

Regarding the point raised by the Leader of the Opposition, I do not think it is well founded. Since the decision was made by this Chamber yesterday, we cannot ask the Chamber today, be it indirectly, to hand down a reversal of that decision, and that is why we will have to live with the decision made by the Senate yesterday.

Regarding the other question raised by the Leader of the Government in the Senate, namely, who should be allowed to appear before a Committee of the Whole, the answer is not quite as straightforward. I believe that according to custom the Minister responsible for the legislation appears before the Senate, accompanied by assistants who are not given the floor but who may advise the Minister on his answers.

I would like to hear about some precedents. I have been here since 1972 and I have yet to see witnesses appear before a Committee of the Whole and come to the Bar of the Senate to testify.
It is possible, but precedents are hard to find. However, Bourinot, in *Privileges and Immunities of Parliament,* at page 70, says the following:

> "When the evidence of any person is shown to be material in a matter under consideration of the house or a committee of the whole, a member will move that an order be made for his attendance at the bar on a certain day."

It is possible, but I don't think I know of many precedents where this procedure was used. I believe that selecting the witnesses to be asked to appear before regular committees of the House is done by the chairman of the committee in consultation with the committee itself.

I do not think it is up to the Chair to decide that such and such a witness should appear before the Senate in Committee of the Whole.

An agreement should be reached by the Government and members of the Opposition on who shall appear before the Committee of the Whole.

As I said before, precedents are hard to find. Obviously, the Chair can hardly inform the Senate that it is going to hear such and such a witness, since the role of the Chair is to carry out the orders of the Senate.

Regarding the fact that leave must be asked of the Senate to sit in Committee of the Whole, that was decided yesterday. I cannot reverse that decision.

In the circumstances, the arguments raised in support of the point of order made by the Leader of the Government are not well founded and hence the Chair must rule them out of order.

Motion – Acceptability (motion in amendment)

June 11, 1987 *Journals*, p. 704

In my opinion, Senator Murray's amendment is beyond the scope of the motion proposed by Senator MacEachen. It sets forth a new proposition which was not contemplated by Senator MacEachen's motion.

I have carefully consulted the parliamentary authorities and I find the following citations: Beauchesne's Fifth Edition, citation 437, (1) and (2), read as follows:

> "(1) An amendment setting forth a proposition dealing with a matter which is foreign to the proposition involved in the main motion is not relevant and cannot be moved. *Journals,* February 26, 1923, p. 122.
>
> (2) An amendment may not raise a new question which can only be considered as a distinct motion after proper notice. *Journals,* October 16, 1970, p. 28."

A similar precedent occurred in October 1980, which may be found on page 474 of the *Senate Journals.* On that occasion the Speaker ruled the amendment out of order based on citation 437 of Beauchesne's.

I came to the same conclusion in reading May, 20th Edition, page 557, which reads:

> "Furthermore, an amendment may not be moved to insert words at the beginning of a clause with a view to bringing forward an alternative scheme to that contained in the clause ...".

I therefore must rule that the amendment is out of order.

Motion – Acceptability (motion in amendment)

June 11, 1987 *Journals*, p. 709

After debate,

A point of order having been raised as to the acceptability of the motion in amendment,

The Honourable the Speaker ruled the motion in amendment out of order.

Unparliamentary language

June 17, 1987 *Journals*, p. 786

Before proceeding with the Order of Business, I would like to rule on the Point of Order raised yesterday by Senator Corbin, regarding Senator Murray's remarks during the debate on the motion to appoint a Joint Committee on the 1987 Constitutional Accord.

Senator Corbin argued that Senator Murray's remarks about the Senate's decision last week to refer the Accord to Committee of the Whole were contrary to parliamentary practice insofar as they criticized a decision by the Senate.

I have read the text of Senator Murray's remarks, and the only derogatory allusion I find was the use of the term "majority" in connection to the Senate's decision. Beauchesne is very clear on this in chapter 315 of the Fifth Edition of his *Parliamentary Rules and Forms.*

Senator Murray has acknowledged that he was at fault and has made amends.

As far as Senator Murray's other remarks are concerned, I do not share Senator Corbin's objections, since Senator Murray neither criticized nor attacked the Senate's decision.

Motion – Acceptability (motion in amendment)

April 21, 1988 *Journals*, p. 2324

The Honourable Senator Flynn, P.C., moved, seconded by the Honourable Senator Roblin, P.C.:

That the motion as amended be further amended by adding after the last line the following paragraph:

That a Message be sent to the House of Commons to acquaint that House that the Senate has authorized the proclamation of an amendment to the Constitution in the terms of the above schedule and to which it desires their concurrence; the Senate adds however that if the House should not concur the Senate does not oppose the proclamation of an amendment to the Constitution in the terms of the resolution which the House has adopted on the 26 of October, 1987, if the House hereafter again adopts the said same resolution.

After debate,

A point of order was raised as to the acceptability of the motion in amendment.

After debate,

The Honourable the Speaker ruled the motion in amendment irreceivable.

Motion – Acceptability (motion in amendment)

April 21, 1988 *Journals*, pp. 2325-2326

When deciding whether or not a motion is in order, the Chair must rule according to the rules and practices of the Senate.

It appears to me that with respect to this motion most of the arguments centered around the logic of the motion.

It is not for the Chair to decide whether or not a motion is logical. For example, if a motion was proposed saying that "if it rains tomorrow the Senate will adjourn at three o'clock", the Chair would be bound to put such a motion and the Senators would decide on the merits of the motion.

With respect to the procedural problem of attaching a condition to a motion, in this instance the House of Commons is not bound to deal at all with the Senate's resolution. It appears to me that Senator Flynn is suggesting that <u>if</u> the House will deal with the resolution, certain events would follow which the Senate agrees with. If <u>that</u> is the desire of the Senate, I feel the Chair cannot stand in its way.

The Chair, however, has other procedural concerns about this motion. Rule 46(*s*) states that no notice is required for "motions of a merely formal or uncontentious character." It appears that this motion cannot be characterized as merely formal or uncontentious. It therefore requires some advance notice. This shortcoming disturbs the Chair, and it is for this reason that I must rule the motion of Senator Flynn not in order.

Bill – Dividing (C-103) (Ruling appealed and not sustained)

June 7, 1988 *Journal*s, pp. 2720-2723

On Wednesday, June 1, the Chair was asked to rule on the acceptability of the motion of the Honourable Senator Graham:

> That it be an instruction of this House to the Standing Senate Committee on National Finance that it divide Bill C-103, An Act to increase opportunity for economic development in Atlantic Canada, to establish the Atlantic Canada Opportunities Agency and Enterprise Cape Breton Corporation and to make consequential and related amendments to other Acts, into two Bills, in order that it may deal separately with Part I, entitled the Atlantic Canada Opportunities Agency, and Part II, entitled Enterprise Cape Breton Corporation.

In the discussion which followed, all Senators agreed that this motion was somewhat unusual to the proceedings of the Senate. It is for this reason that the Chair wanted to delay its ruling which had been promised for last Thursday. I wish to apologize to all Honourable Senators who may have been inconvenienced by this delay, but the matter is of such importance that more time was required to fully consider the point of order raised by Senator Flynn and the comments made by Senator MacEachen, Senator Stewart and Senator Molgat.

The issue before us is whether it is in order, within the procedures of the Senate, to move a mandatory instruction to a committee that Bill C-103, a bill passed by the House of Commons and sent to the Senate for concurrence, be divided into two separate bills. As Senator Stewart succinctly noted on Wednesday, Senators must ask themselves what reasons could there be for prohibiting the moving of such a motion.

In deciding this question, it is usual to examine the precedents for similar motions. After searching the Senate Journals, no Senate precedent can be found. With respect to House of Commons precedents, it does not appear that the House of Commons has ever divided a Senate bill. With respect to the House of Lords, Erskine May states on page 502:

> Only one attempt has been made to divide a bill brought from the Commons ... and this was defeated. But the instruction was objected to on its merits as well as on its unprecedented nature and the technical difficulties it would create, so that the propriety of dividing a Commons Bill has not been decided.

With respect to Australian procedure, Odger's *Australian Senate Practice,* third edition, states on page 214, "No precedent can be found in the records for an Instruction for the division or consolidation of Bills ...".

The Chair feels that searching for precedents, in this instance, is not very helpful. With respect to the motion made in the Lords on July 29, 1919, Erskine May states that the propriety of an Upper Chamber dividing a bill from the Lower Chamber has not been

decided. The 1919 motion would have been a more useful precedent had a Speaker's ruling been given. That no such ruling was rendered did not prove, in my opinion, that the motion was procedurally acceptable. Erskine May notes that "In the enforcement of rules for maintaining order, the Speaker of the House of Lords has no more authority than any other Lord, except in so far as his own personal weight and dignity of his office may give effect to his opinions and secure the concurrence of the House. As a consequence, the responsibility for maintaining order during debate rests with the House as a Whole. The Leader of the House has a special part to play in expressing the sense of the House and in drawing attention to cases where the rules of procedure have been transgressed or abused." The Chair has reviewed the debate in the Lords in 1919 and notes that the Civil Lord of the Admiralty (The Earl of Lytton) raised certain procedural problems which would occur if such a motion was adopted. In any event the 1919 precedent, in my opinion, remains somewhat tenuous.

The lack of precedents does not in itself prohibit the acceptability of Senator Graham's motion. Without precedents, Senators must examine the motion as it is presented to us and decide if it contravenes any procedural rules under which this Chamber operates.

The Chair finds that on many grounds, the motion presents no procedural difficulties. Proper notice was given of the motion. The Chair feels that, as a general principle, instructions to divide bills may be moved in the Senate when the bills originate in the Senate as they may be moved in the House of Commons when they originate in that House. With respect to Beauchesne's citation 761(2) that "such an Instruction is in order only if the bill is drafted into two or more distinct parts or else comprising more than one subject matter ...", the Chair agrees with the Leader of the Opposition that Bill C-103 is capable, from a drafting point of view, of being easily divided.

The main procedural problem the Chair feels, lies with the nature of Bill C-103 itself. It is a government bill and a money bill, having been recommended by Her Excellency the Governor General. Senator Graham's motion is quite clear that the National Finance Committee will be instructed to divide Bill C-103 into two Bills. Erskine May states on page 564 that when an instruction has been given to the committee that a bill may be divided into two or more bills, "the separate bills have been separately reported".

If it is divided, Bill C-103 will no longer be on the Senate Order Paper but will be superseded by two separate bills. The Chair notes there could be a technical problem with the numbering of such bills but feels such practical difficulties could be worked out. The Chair has a problem in accepting that these two separate bills are still government bills. Senator Graham's instruction does not deal with amending a government bill, but with dividing a government bill into two bills. These two bills would therefore have found their way before Parliament, not in the House of Commons, but in the Senate. Since they would both be bills appropriating public money, it would appear to the Chair that such action would be in contravention of Section 53 of the *Constitution Act, 1867* which states, "Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons".

For this very important reason, I must conclude that the motion of the Honourable Senator Graham is not in order.

Whereupon the Speaker's Ruling was appealed.

Therefore, it was resolved in the negative.

First Session, Thirty-Fourth Parliament
December 12, 1988 – February 28, 1989
(There were no Speaker's rulings during this session.)

Speaker: the Honourable Guy Charbonneau

Speaker *pro tempore*: the Honourable Gildas L. Molgat

Second Session, Thirty-Fourth Parliament
April 3, 1989 – May 12, 1991

Speaker: the Honourable Guy Charbonneau

Speaker *pro tempore*: the Honourable Gildas L. Molgat

Bill – Admissibility (S-3 and S-4)

June 13, 1989 *Journals*, pp. 156-158

On May 18, Senator Doody noted that Bills S-3 and S-4 are private members' bills and asked the Chair for a ruling to see if they were "in an order and form suitable for the Senate to consider". He stated, "I do not know if there are money implications in this or whether it is even within the Senate's purview to consider such bills, but perhaps the Chair could take them into consideration and give us a ruling at a later date".

The Chair has carefully considered Bills S-3 and S-4 and concludes that both bills have money implications.

The predominant intent of *Bill* S-3 is to amend the *War Veterans Allowance Act* to make equal the age at which men and women are entitled to an allowance by reducing the age at which a male person becomes eligible from 60 to age 55. Bill S-4 purports to amend the *War Veterans Allowance Act* to remove the requirement that those eligible under the Act reside in Canada.

One bill amends the Act to equalize the eligibility age by lowering it for men, thereby creating a greater demand for funds to pay for the increased number of eligible recipients; the other bill amends the Act to dispense with a residency-in-Canada requirement, thereby widening the scope of eligible recipients once again.
It seems clear to the Chair that both bills infringe upon the financial initiative of the Crown. *Erskine May, 20th Edition,* states the following on page 766:

> "The guiding principle in determining the effect of an amendment upon the financial initiative of the Crown is that the communication to which the royal demand or recommendation is attached must be treated as laying down once for all (unless withdrawn and replaced) not only the maximum amount of a charge, but also its objects, purposes, conditions and qualifications. In relation to the standard thereby fixed, an amendment infringes the financial initiative of the Crown, not only if it increases the amount, but also if it extends the objects and purposes, or relaxes the conditions and qualifications, expressed in the communication by which the Crown has demanded or recommended a charge. This standard is binding not only on private Members but also on Ministers, whose only advantage is that, as advisers of the Crown, they can present new or supplementary estimates or secure the royal recommendation to new or supplementary resolutions."

Many precedents can be found where Speakers have ruled against bills or amendments to bills which infringed on the Crown's financial initiative. I refer Senators to page 576 of *Decisions of Speaker Lamoureux* and page 166 of *Decisions of Speaker Jerome.*

I would like to quote from two such rulings. On September 13, 1973, the House of Commons Speaker ruled as follows regarding a bill which sought amendments to the *Family Allowances Act:*

> "Since the honourable Member's bill is not accompanied by a recommendation of the Crown, it cannot be put to the House at this time. I refer the honourable Member to citation 249(1) of Beauchesne's fourth edition. The principle explained in there is further confirmed in citation 250 as follows: 'If any motion, or bill, or proceeding is offered to be moved, whether in the House or in a committee, which requires, but fails to receive, the recommendation of the Crown, it is the duty of the Chair to announce that no question can be proposed upon the motion, or to direct the withdrawal of the bill.' "

On June 6, 1980, the Acting Commons Speaker made the following statement regarding a bill which sought amendments to the *Unemployment Insurance Act* respecting maternal benefits:

> "When a Private Members' bill provides for an extension in the benefit period, for an enlargement of the class of possible claimants, or for an increase in the benefits payable under the Act, the charge on the Consolidated Revenue Fund would consequently be increased. Therefore, in my view, any such bill would be a 'money bill' which must be introduced by a Minister of the Crown and accompanied by the recommendation of the Governor General."

With respect to Senators initiating money bills, the Chair must draw attention of the Senate to the following excerpt from *Bourinot's Parliamentary Procedure, Fourth Edition,* pages 412-413:

> "The recommendation of the Crown to any resolution involving a payment out of the dominion treasury must be formally given by a privy councillor in his place at the very initiation of a proceeding, in accordance with the express terms of the 54th section of the British North America Act, 1867, and in conformity with the practice of the English House of Commons...

Though the recommendation of the governor-general cannot be formally given in the Senate to a motion involving money, — since such matters must originate in the Commons — yet that house has a standing order which forbids the passage of any bill which, from information received, has not received the constitutional recommendation.

> 70. 'The Senate will not proceed upon a bill appropriating public money, that shall not, within the knowledge of the Senate, have been recommended by the Queen's representative.' "

Honourable Senators should note that Rule 70 has been renumbered and is now Rule 62.

For these reasons, I must rule that Bills S-3 and S-4 are out of order.

Motion – Acceptability (motion in amendment) (Ruling appealed and not sustained)

June 28, 1989 *Journals*, pp. 226-227

Honourable Senators, as I am very conscious that precedents in this place are extremely important and also that decisions of this kind are very much a matter of judgment, I have spent a considerable amount of time in discussion to try and arrive at a proper decision on this matter.

Honourable Senators will recall that the subject takes the form of a motion proposed by Honourable Senator Bonnell and a motion in amendment proposed by Honourable Senator Phillips. I listened very carefully yesterday to the points raised by Honourable Senators when the Point of Order to the effect that the amendment was not in order was raised. Since then I have consulted with the authorities, Beauchesne and Erskine May, and I have had a look at the precedents in both Houses.

I would refer Honourable Senators first to Beauchesne's Fifth Edition to which we normally go as a first reference, page 153 citations 425 and 426. Citation 425 reads:

> "The object of an amendment may be either to modify a question in such a way as to increase its acceptability or to present to the House a different proposition as an alternative to the original which must, however, be relevant to the subject of the questions."

Citation 426 reads:

> "It is an imperative rule that every amendment must be relevant to the question on which the amendment is proposed. Every amendment proposed to be made, either to a question or to a proposed amendment, should be so framed that, if agreed to by the House, the question or amendment as amended would be intelligible and consistent with itself."

The Twentieth Edition of Erskine May says the same thing as Beauchesne in its first paragraph. I am referring to page 395, and the heading is "Object of an amendment and effect on debate." The beginning of the second paragraph reads:

> "The latter purpose—
>
> And this is an alternative—
>
> "may be effected by moving to omit all or most of the words of the question after the first word 'That' and to substitute other words of a different import ..."

Indications are, from looking at the precedents, that in both Houses on motions of this kind, which are to reflect the views of the House, generally wide latitude has been given to amendments. The object behind this trend is that the purpose of debate and the purpose of amendments is to try and arrive at a consensus. That has been the practice in the past in both Houses.

While looking specifically at the rules as laid down in Beauchesne's and Erskine May, I also looked at what they considered to be non-admissible amendments. Upon reviewing the entire matter, it is my view that the amendment proposed by Senator Phillips is not inconsistent with the original motion, that it does provide an alternative proposition to the original motion. It is not irrelevant as it deals with the question of the closure of the base at Summerside. So, in my view, the amendment is in order.

The Honourable the Speaker's Ruling was appealed.

Therefore, the Honourable the Speaker's Ruling was negatived.

Committee Report – Acceptability of amendments

February 20, 1990 *Journals*, pp. 710-711

Honourable Senators, on Wednesday last, the Honourable Senator Beaudoin raised a point of order regarding the acceptability of certain amendments contained in the Third and Final Report of the Special Committee of the Senate on Bill C-21. Four amendments have been called into question as listed in Appendix A of the Report, they are amendments number 5, 7, 9 and 10.

With respect to amendments 5 and 7, the Chair is guided by Erskine May's 20th Edition, pages 797 and 810, which deals with matters requiring the Queen's Recommendation and matters that do not require the Queen's Recommendation.
Among the many precedents referred to that would require a Royal Recommendation, the following may be cited:

> "A charge is also involved by any proposal whereby the Crown would incur a liability or a contingent liability, payable out of money to be voted by Parliament." (p. 797)
>
> "Another type of expenditure is ... the imposition of charges to be paid directly out of the Consolidated Revenue Fund." (pp. 797-8)
>
> "When a bill contains provisions extending the purposes of expenditure already authorized by statute, such provisions may require the Queen's Recommendation. The following examples may be given: (1) Extension of cases in which compensation can be paid ... (2) Extension of classes or insured persons ...". (p. 802)

With respect to matters that do not require the Royal Recommendation, Erskine May states the following:

> "No special form of procedure applies to proposals to reduce existing charges, and they may be moved in the House of Commons or in Committee without the Royal Recommendation.
>
> A proposed reduction of a charge may consist in reducing its amount, or restricting its objects or inserting limiting conditions, or shortening the period of its operation ...
>
> The same principle explains an apparent anomaly in the case of amendments moved to a bill which abolishes or reduces a charge authorized by existing law. Amendments to such a bill, which are designed to restore a portion or the whole of the charge which the bill proposes to reduce or abolish, are in order without the need of a preliminary financial resolution. Such amendments do not in fact

> propose a charge but simply seek to determine the question to what extent, if any, an existing charge shall be reduced." (p. 805)

Based on the above citations in Erskine May, and after careful review of the proposed amendments, I find amendments 5 and 7 to be in order.

Dealing now with amendment number 9, I have consulted senior officials in the Department of Employment and Immigration, and independent economic consultants. I carefully studied their assumptions, with which I concur.

While the effects of the amendment must inevitably rely on a number of these assumptions, and are consequently somewhat subjective, I have concluded that the amendment will result in an increase in costs over and above the parent Act. Because of the interrelationship between Tables 1 and 2 and the consequent interdependence of the amendments proposed to each of these Tables, I must also rule amendment number 10 out of order.

When the order is called, the Senate can proceed with consideration of the Committee Report with the exclusion of amendments numbered 9 and 10.

Motion – Acceptability (motion in amendment) (Ruling appealed and not sustained)

May 23, 1990 *Journals*, pp. 999-1000

After debate,

The Honourable the Speaker was asked to rule on whether a point of order could be raised on the acceptability of the motion in amendment at this point in the proceedings.

The Honourable the Speaker ruled that pursuant to his Ruling of February 10, 1987, on the, same subject, the point of order be allowed at this time.

Whereupon the Speaker's Ruling was appealed.

Therefore, the Speaker's Ruling was negatived.

Committee Report – Acceptability of amendments

May 31, 1990 *Journals*, pp. 1069-1071

On Tuesday, May 22, 1990, a point of order was raised by Senator Roblin as to the acceptability of the amendments to Bill C-28, An Act to amend the Income Tax Act, the Federal-Provincial Fiscal Arrangements and Federal Post-Secondary Education and Health Contributions Act, the Old Age Security Act, the Public Utilities Income Tax Transfer Act, the War Veterans Allowance Act and a related Act, as contained in the Tenth Report of the Standing Senate Committee on Banking, Trade and Commerce, presented in the Senate on May 16, 1990.

Senator Roblin appears to have the following concerns. With respect to amendment number one, dealing with clause 24 of the Bill, he indicated that "fully indexing that specific clause will result in a loss of revenue, which will compound over time". With respect to amendment number two, dealing with clause 48, he stated that "in the family reporting system we have here, we are taxing people under the Senate amendments that are not taxed under the government's bill, and I think that is something that should be looked into". Senator Roblin's remarks are found on pages 1716 and 1718 of the Senate *Debates.*

The Chair has reviewed the amendments proposed by the Banking Committee and notes the following. With regard to an amendment which would result in a loss of revenue, Beauchesne's Fifth Edition states in citation 527:

> "So long as an existing tax is not increased, any modification of the proposed reduction may be introduced in the Committee on the bill, and is regarded as a question not for increasing the charge upon the people but for determining to what extent such charge shall be reduced."

With respect to an amendment which extends a tax to new classes of taxpayers, the Chair would like to refer to the Ross Report known by its proper title as the *Memorandum re: Rights of the Senate in Matters of Financial Legislation,* which is found on pages 194-204 of the Senate *Journals* of 1918. Paragraph I of the Ross Report, while asserting the right of the Senate to alter money bills, recognizes that the right to increase an appropriation of revenue is the prerogative of the Crown as expressed in the Royal Recommendation. Bill C-28 is not a bill to spend money but is rather a bill dealing with taxation or, in parliamentary terms, a bill based on ways and means.

The Ross Report also states the following at page 198:

> "Section 53 embodies the only point on finance ever conceded to the House of Commons by the House of Lords... When the House of Commons passes an appropriation or tax Bill it must either be for a sum recommended or for some smaller sum. When the Bill is for some smaller sum, and the Ministry of the day continues to hold office, it must be assumed that the Crown has assented to the reduction... When such a Bill goes to the Senate the amount mentioned in the Bill

> is therefore the amount mentioned by the Crown. The Senate could not increase this sum without coming in conflict with the prerogative of the Crown to say what money is wanted... The foundation of all Parliamentary taxation is the necessity for the public service as declared by the Crown through its constitutional advisers. The Senate, therefore, cannot directly or indirectly originate one cent of expenditure of public funds or impose a cent of taxation on the people."

The Chair rules that amendment number one does not appear to increase the amount or extend the incidence of a charge, but is rather an adjustment of a tax. It therefore seems to be in order.

However, amendment number two, dealing with clause 48, particularly with the addition of the proposed sub-clause 180.2(7), does appear to extend the incidence of a tax and therefore is not in order.

Committee Report – Presentation

September 26, 1990 *Journals*, p. 1245-1246

Last night, I was asked by Senator Ottenheimer to rule on a Point of Order respecting the relationship between the questions of privilege which had been raised earlier in the day and the presentation of the Thirteenth Report of the Standing Senate Committee on Banking, Trade and Commerce.

Senator Ottenheimer described his Point of Order as follows: "...if the ruling is that there is a *prima facie* case and therefore a motion can be made, the whole thrust of the Point of Privilege is that the report which Senator Buckwold wishes to table, its presentation and deliberation by the Committee and everything surrounding it in the Committee--it getting to this place in this manner and in this way--is tainted, null and void or vitiated ab initio. I do not intend to try to characterize it. If it were tabled now, there is no remedy because a document resulting from contempt of Parliament or breach of privilege has received the authorization or sanction of resumption in this body."

The Chair does not intend to rule today on the numerous questions of privilege raised earlier in yesterday's sitting. It appears however that many of the points raised touched on allegations of possible contempt of the Senate and disregard of its rules by the Chairman of the Banking Committee or the Committee itself. Since the Chair has not had time to review the printed copy of yesterday's Hansard, I will reserve my ruling on these questions of privilege.

If a contempt of the Senate has occurred, the Senate is free to take certain actions to deal with it. However, it does not appear feasible to the Chair that we can turn back the clock and prevent the presentation of a committee report on the grounds that a question of privilege regarding the breaking of the rules in a Committee is pending.

For this reason, I must rule that Senator Ottenheimer does not have a valid Point of Order.

Committee Report – Presentation

September 26, 1990 *Journals,* pp. 1249-1250

Earlier today, the Honourable Senator Murray raised a point of order with respect to the Thirteenth Report of the Standing Senate Committee on Banking, Trade and Commerce and asked the Chair for a ruling. As I understand it, the essence of his point of order is that because the Banking, Trade and Commerce Committee did not conduct a clause-by-clause study of Bill C-62, the Senate should not proceed at this time with the consideration of the report.

It is true that citation 763 of Beauchesne's Fifth edition reads as follows:

> "763. The function of a committee on a bill is to go through the text of the bill clause by clause and, if necessary, word by word, with a view to making such amendments in it as may seem likely to render it more generally acceptable."

As some Senators noted, in particular Senator Everett, it appears that this procedure has not always been followed by Senate Committees. Traditionally, Senate Committees are masters of their own procedure and some have made use of the clause by clause procedure while others have not.

The Chair is not being asked to decide whether or not Senate committees should study bills clause by clause. It is more proper that this question be decided by our Standing Rules and Orders Committee and by the Senate as a whole than by the Speaker. The Chair is being asked, however, to decide the question that because a certain practice or rule was not followed in a committee, should a subsequent proceeding flowing from the deliberations of the Committee be delayed?

As I ruled earlier today on the point of order of Senator Ottenheimer, it does not appear feasible that a proceeding can be prevented from happening simply because a question of privilege, or in this case a point or order, has been raised regarding alleged infractions of the rules or practices of the Senate by a committee or its Chairman. If contempt of the Senate or of its rules has occurred, the Senate can take certain actions to deal with it. I cannot uphold the point of order raised by Senator Murray.

I might add in closing that there is an obligation on the part of all Honourable Senators, whether they be in the Senate or in committees of the Senate, that notwithstanding their party affiliations and the seriousness of the great questions which are before them, they obey the rules, customs and traditions of the Senate at all times.

Question of privilege – Rights of new senators

October 3, 1990 *Journals*, pp. 1812-1813

A question of privilege raised and debated all day yesterday objected to the right of eight new Senators to take their seats and vote in the Senate of Canada.

In the discussion, the Speaker was asked to rule whether or not a prima facie case of privilege existed.

I have reflected on that matter and I think I need not hear further to make my ruling.

Since the question raised is more properly one which deals with an interpretation of the Constitution Act, 1867, the Chair must be guided by the reference in Bourinot's Fourth Edition, on page 180, and Beauchesne's Fifth Edition, on pages 38-39, citation 117(6), that:

> The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

As the parliamentary authorities state, whether or not these appointments were constitutional is not a matter for the Speaker to rule on. Consequently, I cannot find a prima facie case of privilege in the matters raised.

Therefore, I rule that this question should not be further debated at this time.

Question of privilege – Committee proceedings

October 4, 1990 *Journals*, pp. 1816-1817

On Tuesday, September 25, 1990, questions of privilege were raised by the Honourable Senators Ottenheimer, Poitras, Robertson, Simard, David, Barootes, and Doody. Many Senators contributed to the discussion on these points of privilege which followed, and I wish to thank all those who participated. I indicated that I would take these questions of privilege under advisement and, after reviewing the Hansard of that day, come back to the House with a ruling as soon as I possibly could. I am now prepared to render my ruling.

Many of the points raised by Honourable Senators touched on the proceedings of the September 24, 1990 meeting of the Banking, Trade and Commerce Committee. Complaints were raised that some members of the Committee were denied the opportunity of fulfilling their parliamentary duty. Some Senators felt that they had insufficient time to give due consideration to the matters referred to them and had been denied access to the draft Committee report on Bill C-62. Some felt it was inappropriate that the staff of the Committee were not available to the deputy chairman of the committee and to other members. Some objected that a motion had been withdrawn without the unanimous consent of the Committee and that debate on a certain motion was not permitted. Some criticized the way the meetings of the Steering Committee had been conducted and objected to the manner by which the draft report had been distributed, specifically that both official language versions of the report had not arrived in Senators' offices at the same time. Complaints were also made that the draft report had been divulged to the press before it had been presented to the Senate.

It appears to the Chair that these points may constitute grievances but in my opinion they are not questions of privilege. Beauchesne defines parliamentary privilege as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament and by Members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals". While parliamentary rules may have been transgressed, parliamentary rights or privileges do not appear to have been.

Some Senators criticized certain actions and rulings of the Chairman of the Committee.

On this point I would refer Honourable Senators to citation 607 of the Fifth Edition of Beauchesne's Parliamentary Rules and Forms, which reads as follows:

> "607.(1) All decisions of the Chairman may be appealed to the committee.
>
> (2) There is no appeal to the House for the Chairman's ruling except by way of a report from the committee."

These matters were not reported from the Committee.

In addition, many of the points raised seem to deal with questions of order and committee procedure. On this Beauchesne is quite clear. Citation 608 of the Fifth Edition states: "Procedural difficulties which arise in committees ought to be settled in the committee and not in the Housed".

For these reasons, I must rule that the Honourable Senators who raised these points on Tuesday last do not have valid questions of privilege.

Question of Privilege – Role of Speaker

October 5, 1990 *Journals*, pp. 1817-1818

Yesterday, Honourable Senator Murray raised a Point of Order when Honourable Senator Frith proposed to move a motion pursuant to Rule 33 to enable the Senate to take action on a matter which Senator Frith asserted was a breach of privilege.

Rule 33 reads as follows:

> "When a matter or question directly concerning the privileges of the Senate, of any committee thereof, or of any Senator, has arisen, a motion calling upon the Senate to take action thereon may be moved without notice and, until decided, shall unless the debate be adjourned, suspend the consideration of other motions and of the Orders of the Day."

In discussing the Point of Order, some Senators felt that any Senator, at any time, could propose a motion under Rule 33 which would take priority over all other business of the Senate.

Other Senators argued that the procedure under Rule 33 would require that the Chair, if asked, should first determine that a *prima facie* case of privilege had been established. If the Chair agrees and there is no appeal to the Ruling, the motion should be permitted to proceed. Furthermore, it was contended that the motion proposed by Honourable Senator Frith should not be received inasmuch as the Chair had previously ruled on the same matter, that no such *prima facie* case existed.

After careful reflection and study, it seems to me that the terms of Rule 33 are rather laconic. Therefore, I have first to be conscious of the Senate's Rule 1.

> "In all cases not provided for in these rules, the customs, usages, forms and proceedings of either House of Parliament of Canada shall, so far as is practicable, be followed in the Senate or in any committee thereof."

Citation 84, at page 25 of Beauchesne's Fifth Edition is particularly enlightening as to the limited function of the Speaker in matters of privilege:

> "84(1) Once the claim of a breach of privilege has been made, it is the duty of the Speaker to decide if a *prima facie* case can be established. The Speaker requires to be satisfied, both that privilege appears to be sufficiently involved to justify him in giving such precedence (or as it is sometimes put, that there is a *prima facie* case that a breach of privilege has to be committed); and also that the matter is being raised at the earliest opportunity.
>
> (2) It has often been laid down that the Speaker's function in ruling on a claim of a breach of privilege is limited to deciding the formal question, whether the case

> conforms with the conditions which alone entitle it to take precedence over the Notices of Motions and Orders of the Day standing on the Order Paper; and does not extend to deciding the question of substance, whether a breach of privilege has in fact been committed - a question which can only be decided by the House itself."

Secondly, I underline that Rule 15 of the Senate places a duty on the Chair to "preserve order and decorum", which is not presently the case; but more important in this instance, to "decide points of order, subject to an appeal to the Senate." Since there is an appeal residing with the Senate on any decision of the Speaker as to a *prima facie* case, I feel that the procedure outlined in citation 84 best preserves the orderly conduct of Senate business and the rights of the Senate as a whole.

Otherwise you would have to accept that the moving of a motion under Rule 33 would not be subject to any Point of Order and remain in the absolute discretion of any member even if the motion is futile and not based on a *prima facie* case. That discretion would give any honourable member the power to delay the proceedings of the Senate even under any pretence.

Honourable Senators, I believe that this lays out a practice which is directly applicable in the case of Rule 33 and the role of the Speaker under Rule 15. This rule preserves for the Senate itself the final word to determine if a *prima facie* case of a breach of privilege has been established. The Chair's role, as outlined in citation 84 is the same as established in Rule 15, that is limited to determining whether the facts placed before the Senate meet the conditions necessary for a *prima facie* case of a breach of privilege, subject again to the decision of the whole Senate.

The interpretation that I submit, and which has been accepted by the Chair on many occasions, is one which provides for the orderly conduct of parliamentary business. In the absence of such a procedure, the Senate might quickly fall into disorder.

Therefore, it is my decision that the procedure outlined in citation 84 shall be followed for any proposed proceeding in the Senate pursuant to Rule 33. Accordingly, the motion proposed by Honourable Senator Frith yesterday is not receivable since it raises the same questions about which I ruled yesterday that they do not constitute a *prima facie* case of privilege.

Motion – Acceptability (Reading of the Orders of the Day) (Ruling appealed and sustained)

October 30, 1990 *Journals*, pp. 1875-1876

Earlier today, a point of order was raised that the motion to proceed to the reading of the Orders of the Day can only be moved when a question is under debate and not when the item "Presentation of Petitions" has been called. Beauchesne's 5th edition, citation 417(2)(b) states: "Superseding motions, though independent in form, are moved in the course of debate on questions which they seek to set aside. They may only be moved when a question is under debate, and cannot be moved by a Member rising on a point of order."

This citation has been the object of some controversy, not only in the Senate but in the other place as well. The Annotated Standing Orders of the House of Commons states the following on page 201, with respect to Standing Order 59 which reads, "A motion for reading the Orders of the Day shall have preference to any motion before the House":

> "This Standing Order, derived from an earlier British rule, has been used frequently throughout successive Parliaments, and although its wording has not changed since Confederation, it has been the object of several interpretations. The most consistent issue raised in regard to the motion this Standing Order allows has been whether it may be moved at any time (before Orders of the Day), or whether it can be moved only when debate on another motion is currently underway.

Precedents vary. In 1956, the Speaker ruled out of order a motion to proceed to the Orders of the Day on grounds that there must be a motion before the House before this second motion can be entertained; a similar ruling was rendered ten years later. In 1970, the Speaker accepted the motion moved during Question Period, and in 1983, the motion moved during Routine Proceedings under "Petitions" was similarly accepted. In February 1987, the Speaker put the question on the motion moved at the commencement of the sitting. The following day, a Member's right to move such a motion when there was nothing before the House was the object of a point of order. The weight of recent precedents favours the admissibility of motions to proceed to the Orders of the Day, if moved before Orders of the Day, whether or not debate on another motion is currently in progress."

It should be noted that the Senate does not have a rule equivalent to Standing Order 59 of the House of Commons. A motion for reading the Orders of the Day is permitted in the Senate, however, pursuant to Rule 46(e), which states that such a motion may be moved without notice. If this motion could only be moved when a question is under debate, the effect would be that the motion becomes, for all practical purposes, non-operational, since no motion is normally moved under the items which precede the Orders of the Day, specifically "Presentation of Petitions", "Reading of Petitions", "Reports of Committees", "Notices of Inquiries", "Notices of Motions", and "Question Period". It is not the opinion of the Chair that the Senate would want as part of its procedures and practices a motion which can never be moved.

It seems that a motion for reading the Orders of the Day is in order if moved under the item "Presentation of Petitions" and whether or not debate on another motion is proceeding. The Chair therefore rules against the point of order.

Whereupon, the Speaker's Ruling was appealed.

The Speaker's Ruling was sustained.

Motion – Acceptability (motion to adjourn) (Ruling appealed, but with leave, appeal withdrawn)

December 11, 1990 *Journals*, p. 1992

A Point of Order was raised respecting the conduct of the business of the Senate.

After debate,

The Honourable Senator MacEachen, P.C., moved, seconded by the Honourable Senator Frith:

That the Senate do now adjourn.

After debate,

The Honourable the Speaker ruled the motion irreceivable.

Whereupon the Speaker's Ruling was appealed.

With leave of the Senate, the division concerning the Speaker's Ruling, which was deferred pursuant to Rule P-3. (c), was withdrawn.

Bill – Speaker to put question (C-62) (Ruling appealed and sustained)

December 12, 1990 *Journals*, pp. 1994-1995

Concerning the Point of Order by Senator Kelly yesterday, I wish to make the following statement:

This is not an issue for me to finally decide. It is, however, a matter which a majority of voices in the Senate can decide, like any other question. This is clearly provided for in Section 36 of the *Constitution Act, 1867*, and Rule 49(5) of the Senate. I suggest that nobody can dispute that fact.

The dilemma I face is that, should I rule that I cannot put the question and an appeal to my Ruling is requested, then, the Senate could overrule my decision not to put the question. Obviously, I would have to put the question.

On the other hand, if I decide to rule that the Bill be disposed of as requested, and the decision is appealed, whether the Senate decides to sustain or overrule that decision, the Senate itself will have made a final decision in the matter.

Therefore, in order to give the Senate a clear and definitive opportunity to decide, which is its undoubted right, I rule, that not later than 5:45 p.m., on Thursday, December 13, 1990, I will put every question necessary to dispose of Bill C-62 at the third reading stage forthwith and successively without any further debate or deferral of divisions.

Since it is for the Senate to decide this matter, it can do so by either sustaining or rejecting my Ruling in the usual way.

Whereupon the Speaker's Ruling was appealed.

The Speaker's Ruling was sustained.

Motion – Acceptability (motion in amendment)

January 30, 1991 *Journals*, pp. 2214-2215

Before we proceed with the first order, I was asked at the last sitting for the Chair to rule on specifically what we might call amendment No. 4 from Senator Haidasz. I have looked over the amendment and I would refer Honourable Senators to *Beauchesne's Fifth Edition*, page 79, citation 240, which states:

> The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege.

I find that this particular amendment and the question that was raised is one of constitutionality and law and that must be settled by Honourable Senators themselves and not by the Chair. Hence, I leave it for the Senate to decide as to its validity.

Bill – Procedure when Senate negates a committee decision

January 31, 1991 *Journals*, pp. 2239-2240

I am prepared to give a ruling on the matter that was raised earlier today.

I must tell you that this is an extremely difficult ruling to make, because essentially there are no precedents that can be found where a Bill was thrown out because a committee report recommending amendments was negatived. There is no such case.

What we do have is cases where the adoption of a committee report was negatived on a recorded division. I can refer you there to one on August 3, 1977, concerning Bill C-34. It was negatived on a recorded division of the Senate and we then went to third reading of the Bill. Admittedly, there had been no amendments proposed *per se*.

Today we have the case of that Report on Bill C-84, where the Committee specifically states:

> ... the Committee recommends that Bill C-84 should not be passed by the Senate, and new legislation to privatize Petro-Canada should not be introduced for a period of at least six months.

That came to a vote this afternoon. It was negatived, and we proceeded to third reading. The issue is whether, if a committee recommends amendments, that changes the situation. There is nothing in the Rules or the precedents. The only way that I can rule is to proceed by logic.

The Senate is not obligated to send a Bill to a committee. There is nothing in the Rules that says that we must do that. It is true that that is our general practice, but there are many precedents where we have not done so. I can quote one in 1988 dealing with a motion by Senator Nurgitz on Bill C-104. It was introduced, the Bill was read the second time and it was immediately put on the Order Paper for third reading the following day. So there are several precedents where we do not send Bills to committee.

When we send Bills to committee we do so essentially to get advice from the committee. But in my view the Senate cannot be bound by the advice that it receives from a committee. In other words, the Senate must remain master of its own decisions. If you followed otherwise -- and let us take the case of the Bill presently in question -- because the Senate did not like the Report we could say, "We will send it back to the committee." That is allowable. The committee could report exactly the same thing as that it has presently reported. The Senate would then be faced with the same question coming back. We could then end up with a situation in which the Bill could simply navigate back and forth from Senate to committee.

I repeat, the Senate must remain master of its own affairs. It cannot be subject to committees' decisions. In my view, the Senate can negate a committee decision. When it

does so, the Bill can then proceed to third reading. Therefore, in this case I rule that we should now proceed to third reading of the Bill.

Bill – Admissibility (S-18) (Ruling appealed and sustained)

February 27, 1991 *Journals*, pp. 2262-2263

Honourable Senators, on December 17, 1990, Senator Doody raised a point of order with respect to the admissibility of Bill S-18, An Act to further the aspirations of the aboriginal peoples of Canada. Senator Doody stated that there seemed to be financial implications in the Bill which may be beyond the authority of the Senate to inaugurate. On December 20, Senator Doody further explained his point of order regarding the receivability of the Bill. He felt that two of its clauses, specifically 8(2) and 8(3), imposed new duties on an existing department that caused a new charge upon the Consolidated Revenue Fund and hence infringed on the financial initiative of the Crown.

On January 22, Senator Frith spoke to the point of order raised by Senator Doody. He carefully reviewed Rule 62 of the Senate *Rules* and sections 53 and 54 of the *Constitution Act* which deal with bills appropriating public money. He argued that sub-clauses 8(2) and 8(3) are not appropriating clauses within the meaning of section 53 of the *Constitution Act* because they do not appropriate money and are not intended to invoke a "new" administrative function for the department requiring a "new" charge on the public revenues. Senator Frith asked that a legal opinion furnished to him by Parliamentary Counsel on Bill S-18 be appended to the Senate Debates of that day. With respect to clause 8(2), the legal opinion stated "the measures in themselves need involve no expenditure of public revenues and could probably be undertaken now as a matter of exercising ministerial power in areas of the Minister's jurisdiction under other statutes and appropriations". With respect to clause 8(3), the legal opinion stated "There is not thought to be any action required under this clause that cannot now be done by the Minister within the general administrative powers the Minister has from other sources. The clause will turn the power into a duty. It does not require additional charges on the public revenue".

As a result of their disagreement over the nature of clauses 8(2) and 8(3), both Senator Doody and Senator Frith asked the Chair for a ruling on this matter. I have given careful consideration to the serious submissions made by both Senators and now rule as follows.

May I begin by stating that the issue of what defines a money bill and what does or does not require a royal recommendation has been a key concern of this House in recent years. An important study on the form and use of royal recommendations was undertaken last year by the Standing Senate Committee on National Finance and a report was presented to the Senate in February, 1990. In its conclusion, the Committee noted that the use of royal recommendations raises important legal and constitutional issues, on which further light may be cast by additional study. It recommended that the issue of royal recommendations be referred to the Standing Senate Committee on Legal and Constitutional Affairs. It would appear that the issue is still a difficult one and that Senators will want to pursue it in more detail in the near future.

With respect to Bill S-18, the Chair believes that it must judge subclauses 8(2) and 8(3), not against sections 53 and 54 of the *Constitution Act*, since pursuant to Citation 117(6) of Beauchesne's Fifth Edition, "The Speaker will not give a decision upon a constitutional question nor decide a question of law", but against Rule 62. That Rule states "The Senate shall not proceed upon a bill appropriating public money that has not within the knowledge of the Senate been recommended by the Crown". With respect to Rule 62, which at that time was Rule 70, Bourinot's Fourth Edition states:

> "Though the recommendation of the governor-general cannot be formally given in the Senate to a motion involving money - since such matters must originate in the Commons - yet that house has a standing order which forbids the passage of <u>any</u> bill which, from information received, has not received the constitutional recommendation". (page 413)

The Rules therefore provide that the Senate will not proceed upon a bill appropriating public money that does not have attached to it a royal recommendation. Bill S-18 has no such recommendation attached to it and yet a point of order has been raised that it has clauses within it that do infringe upon the financial initiative of the Crown. In order to determine whether or not Bill S-18, or more specifically clauses 8(2) and 8(3), would normally require a royal recommendation, the Chair must turn to the following authorities. Erskine May, 21st edition, cites the following conditions, among others, with respect to matters which require a royal recommendation: (i) "The expenses arising out of the imposition of new duties on an existing department or authority" (page 797); (ii) "charges upon the consolidated revenue fund" (pages 797-8); (iii) "increase of charge by extension of purpose" (page 802). Likewise, the document tabled by the Justice Department at the November 2, 1989, meeting of the National Finance Committee entitled: "Requirement of the Royal Recommendation for Money Bills", gives the following instances: (i) "departments and regulatory bodies - provisions establishing, or imposing new duties on, departments or regulatory bodies"; (ii) "extending purposes - provisions extending or altering the purposes of a previously authorized expenditure".

The Chair is of the opinion that clauses 8(2) and 8(3) clearly impose new statutory duties on the Minister of Indian and Northern Affairs, and hence on the department. They therefore infringe upon the financial initiative of the Crown and are not in order. Bill S-18, as long as it contains these contravening clauses, should not be proceeded with and should be removed from the Order Paper.

Whereupon, the Speaker's Ruling was appealed.

The Speaker's Ruling was sustained.

Bill – Admissibility (same question rule) (Ruling appealed and sustained)

February 27, 1991 *Journals*, pp. 2265-2266

On Tuesday, January 22, 1991, Senator Doody raised a point of order regarding the permissibility of the Senate continuing with its consideration of Bill S-7, An Act to amend the Criminal Code (protection of the unborn child), after a substantial decision had been taken on Bill C-43, An Act respecting abortion. Senator Doody referred Honourable Senators to Citation 725 found in Beauchesne's Fifth Edition, page 223:

> "A motion for leave to bring in a bill, the objects of which are substantially the same as those of a bill upon which the House has come to a decision in the current session, is out of order."

Citation 416 of Beauchesne also states:

> "...a question being once made and carried in the affirmative or negative, cannot be questioned again but must stand as the judgement of the House. Unless such a rule were in existence, the time of the House might be used in the discussion of a motion of the same nature and contradictory decisions would be sometimes arrived at in the course of the same session."

The principle that no motion can be received which is essentially the same as a question which has been previously resolved is reflected in the Senate Rule 47(1) which states:

> "A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded as hereinafter provided."

Although Bill S-7 and Bill C-43 have different objectives and represent alternatives on the subject of abortion, the Chair feels, in that they both deal specifically with amendments to Section 287 of the *Criminal Code*, a strong case may be made that they are "the same in substance".

The Chair also notes that in the course of its deliberations of Bill C-43, amendments were proposed by the Honourable Senator Haidasz which resembled very closely the objectives and provisions of Bill S-7. These amendments were debated and rejected by the Senate on recorded divisions on January 31, 1991, the same day that the Senate made its final decision of Bill C-43. I refer Honourable Senators to the *Minutes of the Proceedings of the Senate* at pages 2232 -2238 with respect to these amendments and their disposal.

It would seem to the Chair that if ever Rule 47 were to be invoked, now would be the time. I recognize that what defines the term "the same in substance" is a question of judgement and that there may be Honourable Senators who disagree with my opinion and

I respect that. The issue itself is an emotional one and feelings understandably run high. The Senate has pronounced itself this session on the question of abortion. Given that the substance of Bill S-7 has been considered and disposed of during the debate on Bill C-43, it is not in order to proceed any further with Bill S-7. The order for second reading should be discharged and the Bill removed from the Senate Order Paper.

After debate,

By unanimous consent, the right to appeal the Speaker's Ruling was reserved until the next sitting of the Senate.

The Speaker's Ruling was sustained.

Third Session, Thirty-Fourth Parliament
May 13 1991 – September 8, 1993

Speaker: the Honourable Guy Charbonneau

Speaker *pro tempore*: the Honourable Rhéal Bélisle
May 28, 1991 – November 3, 1992

Speaker *pro tempore*: the Honourable Gerald Ryan Ottenheimer
December 7, 1992 – January 18, 1998

Committees – Number of senators nominated by Selection Committee to serve on committees

May 30, 1991 *Journals*, pp. 57-58

Honourable Senators, Rule 66(1) states:

> "At the commencement of each session a committee of selection consisting of nine senators shall be appointed whose duties shall be to nominate
>
> (a) a senator to preside as Speaker pro tempore;
>
> (b) the senators to serve on the several select committees."

Rule 67 of the *Rules of the Senate* lists the various committees of the Senate as well as their maximum number of members.

In the brief time allowed to me I have noted that while the committee of selection has often provided a list of the maximum number of members to be nominated, it has not always done so. I would draw the attention of the Senate to the second report of the committee of selection dated October 9, 1986. In that report, the committee of selection nominated only fourteen members to serve on the committee on internal economy, budgets and administration although Rule 67(1)(*g*) states that that committee shall be composed of fifteen members. In the same report, the committee nominated only eleven members to serve on the standing committee on national finance although Rule 67(1)(*i*) states that that committee shall be composed of twelve members. In the same report, the committee nominated only eleven members to serve on the standing committee on fisheries even though Rule 67(1)(n) stated that that committee shall be composed of twelve members.

More recently, on June 6, 1989, the committee of selection nominated only four senators to serve on the joint committee for the scrutiny of regulations although Rule 67(1)(*d*) states that eight senators shall be appointed to that committee. In that same report, the committee of selection nominated only eight senators to serve on the joint committee on official languages although Rule 67(1)(*e*) states that nine senators shall be appointed to that committee.

It would appear therefore to the Chair that while Rule 67 of the *Rules of the Senate* sets the maximum number of members which a committee may have, the committee of selection is not obliged to nominate a full complement of senators for each committee.

I therefore rule that the Point of Order raised by the Leader of the Opposition is not valid.

Question of privilege – Notice requirement

June 19, 1991 *Journals*, pp. 188-189

During proceedings earlier today, Honourable Senator Haidasz rose to present a point of privilege. While he was doing so, Honourable Senator Doody rose on a Point of Order to the effect that under Rule 35(3), notice is required for the presentation of points of privilege. Honourable Senator Frith, under Rule 20(1), correctly noted that points of order cannot be raised under the heading of routine proceedings. This rule states: "During the time provided for the consideration of the daily routine of business and the daily question period, it shall not be in order to raise any question of privilege or point of order. Any question of privilege or point of order to be raised in relation to any notice given during this time can only be raised at the time the order is first called for consideration by the Senate."

However, I note under Rule 16(1) the Speaker can intervene in the debate in order to enforce the Rules of the Senate. I attempted to do so earlier today.

With regard to the presentation of the point of privilege, I refer all Honourable Senators to Rule 35(3) and I quote: "Except as provided in Section (4) below, a Senator wishing to raise a question of privilege shall, at least three hours before the Senate meets for the transaction of business, give a written notice of such question to the Clerk of the Senate."

No notice was received by the Clerk. The Point of privilege cannot be raised today. I urge Honourable Senator Haidasz to comply with Rule 35(3) and to give notice. This point of privilege can be raised first thing tomorrow after prayers.

Bill – Admissibility (S-5) (Ruling appealed and sustained)

October 23,1991 *Journals*, pp.288-289

The Chair has reviewed the provisions of Bill S-5, An Act to amend certain statutes of Canada to recognize the war-time service of the veterans of the Canadian merchant navy, to determine whether this bill requires a royal recommendation and whether it can be properly introduced in the Senate. The Chair is satisfied that the original point of order by Senator Lynch-Staunton has been properly raised since it was made before the question had passed to a stage where objection would be out of place.

It is the opinion of the Chair that, notwithstanding clause 15 of the bill which states "No payment shall be made out of the Consolidated Revenue Fund to defray any expenses necessary for the implementation of this Act without the authority of an Act of Parliament for such purposed", Bill S-5 falls into the category of measures which, according to our parliamentary tradition, requires a recommendation of His Excellency. It does not appear, therefore, to be procedurally in order.

I must say that in reviewing this matter, the Chair was faced with a serious and complex procedural problem. On a prima facie basis, it seems that Bill S-5, because it contains the above-quoted clause 15, is not in violation of our Senate Rules. Rule 82 states "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". Clause 15 clearly denies any appropriation of public money for Bill S-5 until a further Act of Parliament is passed authorizing such expenditures. Thoughtful argument has been made that Bill S-5 does not contravene either section 53 or 54 of the *Constitutional Act, 1867*, since these sections, while placing restrictions on the other place, place no such restrictions upon the powers of the Senate to initiate bills of expenditure for novel purposes. These sections read:

> 53. Bills for appropriating any Part of the public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.
>
> 54. It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

In its February, 1990 report *The Form and Use of Royal Recommendations*, the Senate National Finance Committee noted that "advice given to ministers that a royal recommendation must be attached to all bills having implications for current or future expenditure would seem to go beyond the provisions of Section 54". Based on this interpretation of Rule 82 and of Sections 53 and 54 of the Constitution Act, the Chair concedes that a strong case could be made regarding Bill S-5's procedural acceptability.

However, after carefully reviewing the parliamentary authorities, the Chair has concluded that this interpretation of the general rules and practices of financial procedure is much too narrow. Our parliamentary tradition, strictly adhered to over many years, consistently indicates that bills emanating from private members which bind the House to future legislation appropriating monies is not in order in either Chamber of Parliament.

The Chair does not agree that the concept "the financial initiative of the Crown" emanates solely from Standing Order 80 (1) of the House of Commons. Bourinot, Fourth Edition, page 407, refers to it as a "constitutional obligation" and writes that "No principle is better understood than the constitutional obligation that rests upon the executive government of alone initiating measures imposing charges upon the public exchequer." Erskine May, 21st edition, page 691, defines the financial initiative of the Crown as "the long established and strictly observed rule of procedure, which expresses a principle of the highest constitutional importance, that no public charge can be incurred except on the initiative of the Crown...."

Bourinot's *Procedures and Practice* notes that, with respect to its financial procedures, the British House of Commons has historically been more strict than the Canadian Parliament. The United Kingdom Standing Order specifically states that "this House will receive no Petition for any sum relating to Public Service or proceed upon any Motion for a grant or charge upon Public Revenue, whether payable out of the Consolidated Fund or out of moneys to be provided by Parliament, unless recommended from the Crown". Although the Canadian Parliament's Standing Orders are not as definite and do not go as far as those of the United Kingdom, Bourinot infers they are substantially the same and that the invariable practice under numerous decisions of Canadian Speakers has been to interpret section 54 of the Constitution Act in terms of the Standing Order of the British House. I refer Honourable Senators to pages 406 and 408 of Bourinot's Fourth Edition. Even the 1990 report of the National Finance Committee notes that "the Canadian House of Commons apparently has chosen to bind itself by this British rule...". (p. 7)

In the opinion of the Chair, despite its words to the contrary, Bill S-5 represents a charge upon the public revenue because it proposes relaxing the conditions, objects and purposes of existing statutes to which spending authorization of the Crown had previously been given. With great respect, I must state, as other Speakers have done in similar circumstances, that the simple incorporation of a clause denying any appropriation of funds is not an acceptable way of eluding the requirement for a royal recommendation where it is required.

If Bill S-5 were enacted, it would seem that many Canadians, including the merchant seamen of Canada during World War II, and their spouses, would feel that Parliament is obliged to directly appropriate monies to provide the benefits promised by the bill, since the bill amends the appropriate categories of the *Pension Act* and the *War Veterans Allowance Act* to include war-time Canadian merchant sailors. It seems clear to the Chair that the provisions of Bill S-5 represent liabilities to the Crown. Erskine May, 20th edition, states at page 797, "A charge is also involved by any proposal whereby the Crown would incur a liability or a contingent liability payable out of money to be voted by Parliament". On these grounds, Bill S-5 requires a royal recommendation.

The Chair is well aware of citation 611 of Beauchesne 6th edition, page 185, which states "A bill from the Senate, certain clauses of which would necessitate some public expenditure, is in order if it is provided by a clause of the said bill that no such expenditure shall be made unless previously sanctioned by Parliament". In my opinion, Citation 611 is not relevant in this instance. Citation 611 refers only to "certain clauses" of a bill necessitating some public expenditure. This is not the case regarding Bill S-5. The whole purpose of Bill S-5 and most of its fifteen clauses involve public expenditures.

Since Bill S-5 infringes upon the financial initiative of the Crown and therefore requires a royal recommendation and since Rule 82 of the *Rules of the Senate* states "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", it is not in order. I therefore direct that the order for second reading of Bill S-5 be discharged and that it be removed from the Senate Order Paper.

The Speaker's Ruling was appealed.

Therefore, the Speaker's Ruling was sustained.

Motion – Acceptability

December 4, 1991 *Journals*, p. 402

Honourable Senators, last Thursday I informed the Chamber that I would take under advisement the procedural acceptability of motion No. 7 standing in the name of the Honourable Senator Haidasz.

The Chair has examined the said motion and feels that because it relates to a motion referred to in the motion as "order No. 2, under Other Business", which has now been dropped as it had not been proceeded with for fifteen sitting days pursuant to Rule 28(3), motion No. 7 as it now stands, is not comprehensible, and should therefore be removed from the Order Paper.

Senator Haidasz should note that he is at liberty to bring another notice of motion before the Senate in its corrected form at any time, which of course he did yesterday.

Bill – Admissibility (C-280)

February 13, 1992 *Journals*, pp. 528-531

Honourable Senators, last December I was asked to rule on the admissibility of Bill C-280 and specifically whether this Bill requires a royal recommendation. The Chair appreciates that Bill C-280 did not originate in the Senate but was sent up to us from the House of Commons. The Chair also notes that the Bill is not a Government Bill. It is instead a private members' public bill, introduced in the Commons by the Honourable Member for Don Valley East (Mr. Redway) and sponsored in this place by the Honourable Senator Atkins. The procedural question before the Chair is whether Bill C-280 contravenes Senate Rule 82 which states, "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".

Honourable Senators will know that since I have occupied the position of Speaker of the Senate, I have consistently attempted to ensure that Rule 82 be observed with respect to all bills and amendments and that the financial initiative of the Crown be always protected. Since 1984, I have made many rulings on this point, some of which this House has sustained, and some which it has not. Most recently, I ruled Bill S-5, an important and a most desirable bill regarding pensions for merchant seamen sponsored by the Honourable Senator Marshall, out of order on the grounds that it infringed upon the financial initiative. I do not believe there should ever be a double standard on this question. There must only be one standard and it must apply equally to all bills or amendments introduced in the Senate and to those which come to us from the other place.

Honourable Senators, I have examined Bill C-280 closely and notwithstanding that this proposal addresses a very serious problem in the administration of the Canada Pension Plan, I must rule that on procedural grounds it is inadmissible in this Chamber.

Bill C-280 proposes to change the limitation period for the Canada Pension Plan disability pension for someone who has not reached the age of 65. The bill modifies the present eligibility or qualification criteria that require a disable CPP contributor to meet minimum contributory requirements. The Chair is aware that subsection 108(4) of the *Canada Pension Plan* (R.S.C. C-8) states that "No payment shall be made out of the Consolidated Revenue Fund under this section in excess of the amount of the balance to the Credit of the Canada Pension Plan Account". As I understand, pursuant to this provision, the federal government is not necessarily obliged to provide the CPP with funding. The problem is, however, that all funds relating to the Canada Pension Plan are placed within the Consolidated Revenue Fund. I refer Honourable Senators to subsections 108(1), (2) and (3) of the parent Act. Citations 599 and 600 of Beauchesne's Sixth edition imply that charges upon the Consolidated Revenue Fund require the use of a royal recommendation.

Citation 599(2) states:

> (2) In like manner, after the question has been proposed on an amendment, and it has appeared that the amendment would vary the incidence of taxation or increase the charge upon the Consolidated Revenue Fund, the Speaker has declined to put the question.

Citation 600 states:

> The principle that the sanction of the Crown must be given to every grant of money drawn for the public revenue applies equally to the taxation levied to provide that revenue.

In the opinion of the Chair, Bill C-280 is in violation of citation 596 of Beauchesne's Sixth edition which states:

596 The guiding principle in determining the effect of an amendment upon the financial initiative of the Crown is that the communication, to which the Royal Recommendation is attached, must be treated as laying down once for all (unless withdrawn and replaced) not only the amount of the charge, but also its objects, purposes, conditions and qualifications. In relation to the standard thereby fixed, an amendment infringes the financial initiative of the Crown not only if it increases the amount but also if it extends the objects and purposes, or relaxes the conditions and qualifications expressed in the communication by which the Crown has demanded or recommended a charge.

Bill C-280 also contravenes Erskine May's Twenty-First Edition, p. 715 which states that "When a bill contains provisions extending the purposes of expenditure already authorized by statute, such provisions may require the Queen's recommendation." The Bill also goes against the guidelines used by the Department of Justice regarding the requirement of the royal recommendation, which was tabled before our National Finance Committee on November 11, 1989. Those guidelines state that provisions extending or altering the purposes of a previously authorized expenditures and which provide for regular charges to be paid out of the Consolidated Revenue Fund require the recommendation of His Excellency.

Private Member initiatives in the area of amending public pension legislation have always had great difficulty. I would refer Honourable Senators not only to my ruling of this session regarding Senator Marshall's Bill S-5, but also to the ruling made in other place on April 20, 1971 regarding Bill C-34, An Act to amend the Canada Pension Plan (Pension Index) which was sponsored by Senator Macquarrie when he was a Member of the House of Commons. I would like to quote the following passage from the book *Selected Decisions of Speaker Lucien Lamoureux, 1966-1974*, page 423:

> "Background: During private Members' hour, the Deputy Speaker questioned the acceptability of allowing the second reading of Bill C-34, An Act to amend the Canada Pension Plan (Pension Index), standing in the name of Mr. Macquarrie (Hillsborough). The Deputy Speaker expressed concern that the bill contained financial provisions that seemed to be in conflict with the Standing Orders related to

imposing a charge or impost, and did not have the necessary Royal Recommendation. The Chair invited comments from Members. Mr. Macquarrie maintained that the pension plan was not funded by public revenue, but from the contributions of "the would-be pension recipients".

Issue: Can a private Member's bill that appropriates a part of the revenue obtained by way of an impost be read a second time if it does not have a Royal Recommendation?

Decision: No. A Royal Recommendation is an indispensable requirement in such cases.

Reasons given by the Deputy Speaker: Although the Standing Order refers specifically to imposts, without defining what these might be, it is clear that the rules and practices of the House concerning money bills present an insuperable barrier to the proposed bill."

This same "insuperable barrier" stands in the way of Bill C-280 just as it did to Bill S-5. It is not my place to comment upon why this point was not raised in the House of Commons. I will take the liberty to observe that Bill C-280 was agreed to at second, committee of the whole, and third reading stages all in one day, that is, November 26. Perhaps by not proceeding with Bill C-280, the Senate will be fulfilling its role of dealing with "hastily considered" legislation sent to us from the other place.

I would therefore rule that the order for second reading of Bill C-280 be discharged, that the Bill be withdrawn from this House and that a Message be sent to the House of Commons informing them that the Senate declines to proceed with the consideration of this Bill as it contravenes Rule 82 of the *Rules of the Senate*.

Inquiry – Application of fifteen day rule

February 27, 1992 *Journals*, pp. 554-555

Honourable Senators, on February 18, 1992, I was asked to rule on whether the inquiry standing in the name of the Leader of the Opposition, the Honourable Senator Frith, calling the attention of the Senate to the violence against women in Canadian Society and the desirability of investigation of the subject by a Senate Committee, should be dropped from the Senate Order Paper, pursuant to Rule 28(3). That Rule states "Unless previously ordered, any item under "Other Business", "Inquiries" and "Motions" that has not been proceeded with during fifteen sittings shall be dropped from the Order Paper".

This inquiry was first moved on November 26, 1991. After debate on that day, Senator Frith moved, seconded by Senator Molgat, that further debate be adjourned until the next sitting of the Senate. Since then there has been no further parliamentary proceeding on the inquiry. The definition of "proceeding in Parliament" is taken from Beauchesne's Fifth Edition, p. 85 citation 251 which states: "The word "proceeding" is derived from the verb "to proceed" which means "to advance" or "to carry on a series of actions"".

The question before the Chair therefore is whether an item having been "proceeded" with once becomes exempt from the provisions of Rule 28(3). In other words, when an order has had some action taken on it once, such as the adjournment of debate, is it any longer subject to a parliamentary clock to count the number of sittings thereafter in which action is not taken?

In making my decision, I must look at the wording of Rule 28(3) itself as well as what the intention was when the regulation was first proposed, in this case by the Standing Rules and Orders Committee.

Regarding the provisions of Rule 28(3), the wording is clear that "any" item under "Other Business", "Inquiries" and "Motions" is dropped if it has not been proceeded with during fifteen sittings or unless previously ordered otherwise. It would seem to the Chair that the word "any" would include an item which was subject to a proceeding of the Senate at one time but which had experienced no action for fifteen sittings thereafter. This is the case of the item standing in the name of the Leader of the Opposition.

Regarding the intention of those proposing the rule, I note the comment made by the Honourable Senator Kinsella as indicated on page 1:75 of the *Proceedings of the Committee on Standing Rules and Orders* dated June 4, 1991. Regarding the new Rule 28(3), he stated "The purpose of this proposed change is to avoid having items on the Order Paper for months on end. As a newcomer to the Senate, it often strikes me that items sit there for a very long time. If it is serious "Other Business", then let us deal with it within a proper timeframe. However, it will not prevent the senator from reintroducing that matter".

To permit any adjourned item to stand beyond the fifteen sittings would, in the opinion of the Chair, go against the stated objective of Rule 28(3) which is to encourage Senators to deal with business within a certain timeframe.

It appears therefore that the inquiry standing in the name of the Leader of the Opposition is not exempt from Rule 28(3) and since fifteen sittings have passed without any action being taken, it must be dropped.

In closing, It should be noted that Rule 28(3) does use the words "unless previously ordered...", perhaps to indicate that there may be special cases that merit an item remaining on the Order paper beyond fifteen days without a proceeding.

However, barring agreement of the Senate on a special order for the inquiry, I must rule that pursuant to Rule 28(3), the item in question be dropped from the Senate Order Paper.

Motion – Acceptability (Ruling appealed and sustained)

March 26, 1992 *Journals*, pp. 720-721

During consideration of Motion No. 2 moved by Senator Lynch-Staunton, Senator Frith raised a Point of Order to the effect that the wording of the motion was irregular and therefore out of order.

I listened to the points made regarding the Point of Order and have considered Rule 40. I find that Rule 40 applies to the motion before the Senate in that it allots six hours of debate for the consideration of this motion. The words "a single period" in Rule 40(2)(d) are applicable to the situation where you have a report stage and third reading. In this case, since we have only third reading before us, Rule 40(2)(d) still applies. If this motion is passed, a further six hours of debate is allocated before the vote must take place. I therefore rule that the motion is in order.

Whereupon the Speaker's Ruling was appealed.

Therefore, the Speaker's Ruling was sustained.

Motion – Whether motion was debatable

April 8, 1992 *Journals*, pp. 774-775

The Honourable Senator Nurgitz, Chairman of the Standing Senate Committee on Legal and Constitutional Affairs, presented the Tenth Report of the said Committee, stating that the Committee had examined the Bill C-12, An Act to amend the Young Offenders Act and the Criminal Code, and had directed him to report the same to the Senate without amendment, but with observations.

The Honourable Senator Di Nino moved, seconded by the Honourable Senator Sylvain, that the Bill be placed on the Orders of the Day for a third reading at the next sitting of the Senate.

After debate,

A Point of Order was raised as to whether the motion is debatable (Rule 63(1)).

After debate,

The Speaker ruled that the motion was not debatable.

Motion – Whether motion was debatable (detailed explanation of April 8, 1992 ruling) (Ruling appealed and sustained)

April 9, 1992 *Journals*, pp. 799-800

Honourable Senators, a question was raised yesterday whether or not the motion moved by Senator Di Nino "that Bill C-12 be placed on the Orders of the Day, for third reading, at the next sitting of the Senate" is a debatable one. I ruled at the time that, in my opinion, it was not debatable and promised to return to the House today with a more detailed explanation for my ruling. I do so now.

Honourable Senators, Rule 63(1) describes explicitly which motions are debatable. Rule 63(2) states that:

> "All other motions unless elsewhere provided in these rules or otherwise ordered, shall be decided immediately upon being put to the Senate, without any debate or amendment."

The motion, "that a bill be read a third time on a certain date" is neither a substantive motion or a dilatory motion. According to our parliamentary authorities, quite clearly, it is what is called a "subsidiary motion". *Beauchesne's* Sixth Edition, citation 559(4) states:

> "Subsidiary motions are used to move forward in different stages of procedure through which they must pass before their final adoption. Motions for the readings of bills are in this class."

Erskine May's Twenty-First Edition, at page 321-2 states:

> "Substantive motions are self-contained; subsidiary motions may be (1) ancillary motions dependent on an order of the day, such as the motion that a bill be now read a second time, or that the House agrees with a report of a committee; (2) motions made for the purpose of superseding questions such as motions for the adjournment of a debate; (3) motions dependent on other motions such as amendments."

Some subsidiary motions are debatable. For example, Rule 63(1)(b) allows for debate for the second reading of a bill; Rule 63(1)(c) for any amendment; Rule 63(1)(e) for the third reading of a bill. However, nowhere in Rule 63(1) does one find that a motion for the appointment of a reading of a bill, be it second or third reading, can be debatable. Since Rule 63(2) specifies that all other motions, not listed in Rule 63(1) are to be decided without any debate or amendment, which Rules were the basis for my ruling that the motion proposed yesterday by Senator Di Nino regarding Bill C-12 cannot be subject to debate.

The Speaker's Ruling of yesterday was sustained, on division.

Bill – Admissibility (S-15)

December 17, 1992 *Journals*, pp. 1673-1675

Honourable Senators, on Tuesday, December 10, 1992, Senator Frith raised a point of order concerning the procedural acceptability of continuing consideration of Bill S-15, An Act to amend the Canadian Human Right Act (sexual orientation), introduced by Senator Kinsella on December 1, 1992. Bill S-15 stands at the second reading stage on our Orders of the Day.

In his remarks, Senator Frith noted that a similar bill had been introduced in the House of Commons. It is Bill C-108, An Act to amend the Canadian Human Rights Act and other Acts in consequence thereof, introduced by the Minister of Justice on December 10, 1992.

Senator Frith cited Beauchesne's 6th edition, page 192, citation 624(3) which reads:

> "There is no rule or custom which restrains the presentation of two or more bills relating to the same subject and containing similar provisions. But if a decision of the House has already been taken on one such bill, for example, if the bill has been given or refused a second reading, the other is not proceeded with if it contains substantially the same provisions and such a bill could not have been introduced on a motion for leave. But if a bill is withdrawn, after having made progress, another bill with the same objects may be proceeded with. *Journals*, October 29, 1957, p. 64."

Senator Frith asked the Chair for a ruling on the question of the two bills being before Parliament and whether or not Bill S-15, the bill standing in the name of the Honourable Senator Kinsella, should be withdrawn.

An important principle of parliamentary procedure, as honourable Senators are aware, is that no motion can be received which is essentially the same as a question which has been previously resolved. This principle is reflected in Rule 64(1) which states:

> 64.(1) A motion shall not be made which is the same in substance as any question which during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded as hereinafter provided.

It should be noted, however, that there are occasions when separate bills originating in the Senate and in the House of Commons deal with the same subject. For example, in the second Session of the Thirty-Fourth Parliament, the Senate considered Bill S-7, An Act to amend the Criminal Code (protection of the unborn child) at the same time that it considered Bill C-43, An Act respecting abortion. It was not until after the Senate had given its final decision with regards to Bill C-43, in this case at third reading, which it defeated on January 31, 1991, that the question of whether the Senate was pronouncing itself twice on the same

subject was raised. In this instance, a ruling was made by the Chair on February 27, 1991, that, because Bill C-43 had been disposed of, it was not in order to proceed any further with Bill S-7. It was agreed by the Senate that the order for second reading of Bill S-7 be discharged and the Bill removed from the Senate Order.

It should be noted, however, that the Senate has not yet pronounced itself, in either the affirmative or the negative on Bill S-15, which is at second reading, or Bill C-108 which is in the other place. The question of the applicability of citation 624(3) of Beauchesne's, and of Rule 64(1) is hypothetical. I therefore cannot rule that Bill S-15 be withdrawn.

Unparliamentary language

February 4, 1993 *Journals*, p. 1747

Honourable Senators, the matter under consideration this afternoon was one of extreme importance. That fact was recognized by all Honourable Senators who spoke on this matter. I thank Honourable Senators on both sides for their participation and contribution in that consideration.

I indicated previously that, because of the intrinsic importance of the matter and its complexity, I was prepared to reserve judgment after I had heard what I considered sufficient discussion. The Chair did not indicate at any time during those proceedings that it had heard sufficient discussion but latterly there was a statement made by the Honourable Senator Gigantès. I shall read that statement. It states: "Honourable Senators, I do not now and did not intend last evening or this afternoon to allege that any Senator voted last night for reasons of personal pecuniary gain. I said what I just said without equivocation or reservation." In my opinion that statement of the Honourable Senator Gigantès is an unequivocal withdrawal of the statements and allegations to which Honourable Senators took offence. It is my understanding that the Chair only makes a decision not in a hypothetical case but when it is required. Therefore, in my opinion it is not necessary and it would be hypothetical and improper to make any consideration with respect to the hypothetical situation of *prima facie* or not.

I consider the withdrawal an unequivocal one and the matter concluded.

Question of privilege – Statements contained in newspaper article

April 1, 1993 *Journals*, pp. 1940-1942

In her submission yesterday, the Honourable Senator Carney rose on a question of privilege. She stated that her privileges were infringed by the publication of certain allegations which were false and the publication of which was damaging to her reputation.

What the Chair has to decide is whether a *prima facie* case of privilege has been established.

I refer Honourable Senators to Rule 44 of the *Rules of the Senate*.

The procedure is succinctly described in *Parliamentary Privilege in Canada* by Joseph Maingot, Q.C. p 189-190:

> "A *prima facie* case of privilege in the parliamentary sense is one where the evidence on its face as outlined by the member is sufficiently strong for the House to be asked to send it to a committee to investigate whether the privileges of the House have been breached or a contempt has occurred and report to the House.
>
> While the Speaker may find that a *prima facie* case of privilege exists and give the matter precedence, it is the House alone that decides whether a breach of privilege or a contempt has occurred, for only the House has the power to commit or punish for contempt."

Parliament is an institution where, protected by the Constitution, its members are free to perform their duties without the interference of improper allegations.

The citations in this ruling are from a ruling in the House of Commons. Obviously there are differences in practice between the two Chambers. The matter of privilege, however, adheres to members as members of the parliamentary institution of whichever Chamber.

In searching for precedents within the Canadian Parliament I wish to refer Honourable Senators to a Ruling of Madam Speaker Sauvé in the House of Commons on March 22, 1983 (House of Commons Debates p. 24027):

> "The effect of parliamentary privilege is to place a Member of Parliament above the law in circumstances where it provides his only protection in the fulfilment of his duties as a Member. It is not designed to create a privileged class of citizens as such. The Member enjoys his privileges on behalf of those he represents,

> not for his personal advantage. Defamation of a Member of Parliament certainly falls within the ambit of privilege."

Since 1969 at least 7 different occurrences with question of privilege were raised in the Senate with reference to printed allegations.

In this case the Honourable Senator Carney has asked the Chair for a ruling on a *prima facie* case of privilege so that the matter could, by motion, be referred to a Committee of the Senate.

I would like to quote from the previously mentioned ruling:

> "A reflection upon the reputation of an Hon. Member is a matter of great concern to all Members of the House. It places the entire institution under a cloud, as it suggests that among the Members of the House there are some who are unworthy to sit here. An allegation of dishonourable conduct inevitably affects the Member's ability to function effectively while the matter remains unresolved."

The Speaker also referred to a memorandum submitted by Mr. L.A. Abraham, to the British Select Committee on Parliamentary Privilege in December 1967 and I quote:

> "The object of an action for defamation is to obtain for the plaintiff compensation for the loss of that esteem in which other people previously held him. But when the House proceeds against a person who has published a libel on a Member in his capacity as a Member it is not moved by concern for the injury to the Member's reputation, nor is it's object to secure reparation therefore...
>
> No, the reason for treating libels on Members in their capacity as Members as contempt is their tendency to obstruct Members in the performance of their functions by bringing them into hatred, contempt or ridicule...
>
> Bearing in mind the dilatoriness and uncertainty of litigation, the possibility of the defamed Member's succeeding in an action for defamation cannot be regarded as an adequate substitute for the summary infliction of punishment by the House itself as a means of preventing Members from being obstructed in the performance of their functions."

This argument would appear to be conclusive justification for a finding that a *prima facie* case of breach of privilege exists following the submission of the Honourable Senator.

I would also like to refer to a Ruling of former House of Commons Speaker Jerome given on July 23, 1977 which supports what has been said earlier and which Madam Sauvé referred to in her previously cited ruling.

Upon review of the submission by Honourable Senator Carney and of parliamentary precedents cited I therefore rule that a *prima facie* case of privilege has been established.

The Honourable Senator Carney, P.C., moved, seconded by the Honourable Senator Comeau:

That the allegations made in the Canadian Press article by Mr. Gordon MacIntosh which appeared in a number of newspapers on or about March 27, 1993, concerning the issue of missing ministerial international trade papers be referred to the Standing Committee on Privileges, Standing Rules and Orders.

The question being put on the motion, it was adopted.

Committee Report – Government response

June 2, 1993 *Journals*, p. 2110

On Tuesday, May 4, 1993, Senator Marshall rose on a point of order to complain of the fact that the Government had not complied with a resolution of the Senate requesting the Government to respond to the Report of the Standing Senate Committee on Social Affairs, Science and Technology entitled: "The Valour and the Horror".

The resolution to which Senator Marshall referred, was adopted by the Senate on February 4, 1993, and reads as follows:

> "That, within 60 days of the adoption of this motion, the Leader of the Government shall provide the Senate with the response of the Government to the Report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled: "The Valour and the Horror", tabled in the Senate on 25th January, 1993."

As Senator Marshall explained, the response was to have been tabled no later than April 5th, that is, within sixty days of the adoption of the resolution.

In response, Senator Murray, the Leader of the Government in the Senate, indicated that the Minister of Communications had sent the response directly to Senator Marshall. Senator Murray then tabled the letter in the Senate. Despite the brevity of the letter, Senator Murray made it clear that it was the Government's response and, as such, meets the requirements of the resolution.

Honourable Senators, Senator Marshall has asked the Chair to rule as to whether the resolution adopted by the Senate has been complied with. The role of the Speaker is to preserve order and decorum in the Senate. The Speaker does not interpret nor enforce orders or resolutions of the Senate. Consequently, I must inform Senator Marshall that the Chair will not rule on this matter.

However, there are other procedures available to Senator Marshall if he wishes to pursue this matter further.

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