Rulings of Senate Speakers 1994 – 2005

November 2008

Prepared by the
Chamber Operations and Procedure Office

Introduction

According to section 34 of the Constitution Act, 1867, the Speaker of the Senate is appointed by the Governor General and shall serve as Speaker until another Senator is appointed.

The Speaker is vested with certain authority for the purpose of assisting the Senate in managing its agenda during a sitting day. When points of order or questions of privilege are raised, either to seek clarification in relation to a proceeding or to bring to the attention of the Senate an occurrence which may have breached a parliamentary privilege or demeaned the dignity of the Senate, Senators can present the Speaker with their assessment of the particular situation. Having heard sufficient arguments, the Speaker will consider their merits and render a decision. Rules and practices obliged the Speaker to give reasons to explain the decision. The ruling of the Speaker, however, is not necessarily final. If a Senator wishes to challenge the Speaker, the Senate must vote to sustain the ruling.

This collection of rulings from 1994-2005 covers the decisions that were made by three Speakers: the Honourable Senators Roméo LeBlanc, Gildas Molgat and Daniel Hays.

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

Table of Contents
November 2008

First Session, Thirty-Fifth Parliament
January 17, 1994 – February 2, 1996

Speaker: The Honourable Roméo-Adrien LeBlanc
December 7, 1993 – November 11, 1994

Speaker: The Honourable Gildas L. Molgat
November 22, 1994 – January 25, 2001

Speaker *pro tempore*:
The Honourable Gerald Ryan Ottenheimer

Question of privilege – Right of Senate to claim attendance and service of its members

November 16, 1994 *Journals*, pp. 569-71

Honourable Senators, on October 5, 1994, the Honourable Senator Anne Cools, acting under the provisions of Rule 44 of the *Rules of the Senate*, raised a question of privilege in the Chamber.

At the outset, I would like to point out that the rather archaic expression "privilege" actually refers to the rights of the Houses of Parliament, and of their members, which enable them to discharge their functions and without which they could not do so.

When a question is raised, Rule 44(12) requires the Chair to determine whether a *prima facie* case of privilege has been made out. I have found guidance concerning the nature of my duty in citation 117 of *Beauchesne's* (6th Edition), p. 29:

> ... the Speaker's function in ruling on a claim of 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.

After the Senator raised her question of privilege, I reserved my ruling in order to consult and reflect. Today, I am prepared to rule. Since the Honourable Senator is present in the House, I will do so now.

Does the question, raised under the authority of Rule 44 of the *Rules of the Senate*, comply with the rules and the conditions which alone entitle it to take precedence?

Rule 44(1) provides:

> The preservation of the privileges of the Senate is the duty of every Senator. A violation of the privileges of any one Senator affects those of all Senators and the ability of the Senate to carry out its functions outlined in the *Constitution Act, 1867*. Action to ensure such protection takes priority over every other matter before the Senate. However, to be accorded such priority, a putative question of privilege must meet certain tests. It must, *inter alia*,
>
> (a) be raised at the earliest opportunity;
>
> (b) be a matter directly concerning the privileges of the Senate, of any committee thereof, or any Senator;
>
> (c) be raised to seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available; and
>
> (d) be raised to correct a grave and serious breach.

Citation 115 of *Beauchesne's* (6th Edition), p. 29, states that:

> A question of privilege must be brought to the attention of the House at the first possible opportunity. Even a gap of a few days may invalidate the claim for precedence in the House.

In her words, Senator Cools claims that "The court has repeatedly and systematically insisted on my attendance at court on Senate sitting days, and even during actual Senate sittings." However, the specific case that she has offered to the Chair for its ruling concerns an appearance that took place before the Ontario Court (General Division) on Tuesday, June 14. Between June 15, and October 5 when the question was formally raised, the Senate had sat at least eight separate days, five of them taking place in the month of June alone. It is true that the Senator gave an oral notice on July 7 of her intention to raise a question of privilege at the next sitting, but she provided no details.

Accordingly, I must conclude that I am not satisfied that the question was raised in the Senate at the earliest opportunity, given that "even a gap of a few days" may invalidate the claim for precedence in our proceedings.

Honourable Senators, I am left with no option but to hold that the question does not comply with Rule 44. It does not meet the conditions which alone entitle it to take precedence in the Senate proceedings. Therefore, under the terms of Rule 44(2), " ... the matter cannot be proceeded with under this rule".

This ruling should not be construed as a conclusion that Senator Cools has not raised important questions. To the contrary, she has raised questions concerning the fundamental right of the Senate to claim the attendance of its members, and the right not to have such attendance and service interfered with or obstructed. To use her words, the privilege of attendance at Parliament is "the first and oldest privilege."

Moreover, the elements of her case raise concerns about the adaptability to modern circumstances of our uncodified privileges, immunities and powers.

Honourable Senators, there is an additional circumstance to the context of this question of privilege that does not appear on the face of Senator Cools intervention of October 5. By letter dated September 20, Senator Cools advised the Chair that she has placed the privileges of the Senate before the Ontario Court of Appeal, on the same facts that gave rise to her question of privilege here. This is of course a matter of public record. It appears that the Senator signed a Notice of Motion of Leave to Appeal on June 28 and a Notice of Appeal in a related action on July 14.

The interests of institutional comity, and hence the best interests of the Senate, seem to me to dictate that the complaint of the Senator be dealt with in one forum or another, but not both at the same time. Since her appeal predates her question of privilege, I am of the view that Senator Cools should continue to pursue her remedy in the courts. This conclusion assuages my concerns to some extent. I am confident that the judgment of that court, after all the argument is heard, will shed

ample light on the facts and afford Senator Cools the full measure of remedy to which she may be entitled.

Honourable Senators will recall that, when the privileges of the Houses of Parliament and of the Legislative Assemblies from across the country were effectively placed before the Supreme Court of Canada in the Donahoe case, the Senate was quick to intervene before that court to speak to its rights. Since the Senate's privileges are now again, and even more directly, before the courts, I believe that its interests may well be served by an intervention to speak to the limited issue of the Senate's right as an institution to the attendance of its members.

I thank Senator Cools for putting the Senate on notice as to these events by raising her question.

Inclusion of dissenting opinions in reprint of Special Joint Committee report

February 14, 1995 *Journals*, pp. 710-13

Honourable Senators, on Wednesday, November 30, 1994, a point of order was raised by the Honourable Senator MacEachen, P.C., with regard to the report of the Special Joint Committee Reviewing Canadian Foreign Policy. The point of order concerned a ruling made by the Speaker of the House of Commons on November 24, 1994 in which he stated that should a reprint be required of the Special Joint Committee's report, he would instruct his officials to ensure that the dissenting opinions of the Official Opposition and Reform Party be printed after the signatures of the co-chairs in the same volume. Senator MacEachen's specific point of order was whether a ruling from the Speaker in the House of Commons carries with it the concurrence of the Senate in a matter which, in his view, is within the joint custody of both Houses.

The point of order generated important comments from many honourable Senators. Senator Gauthier questioned whether the Standing Orders of the House of Commons can be used in the case of a joint committee and he suggested that the Senate may wish to establish a common set of rules for approval by both Houses respecting joint committees. Senator Ottenheimer wondered if Senator MacEachen's point of order would be met if, in the Senate, the distribution of the next reprint was in the three volume format which exists now. Senator Lynch-Staunton expressed the view that should the Senate decide to participate in another joint committee, Senators must ensure that the rules of neither House prevail over those of the other. Senator Murray recalled certain procedural difficulties he and Senator Corbin had experienced when they were co-chairs of the then Special Joint Committee on Official Languages. Senator Stewart raised the analogy of whether a bill could go forward for Royal Assent having satisfied the rules of only one House. He suggested that there could be serious implications respecting this ruling; one being that a report produced by a special joint committee could be changed in its form in the other place and yet presented to the public as the report of a joint Senate-Commons Committee when it was not. Senator Corbin suggested that the matter should be referred to the committee again and the committee could take the matter in its hands and report.

At the outset I must say that I sympathize with what was said on November 30 regarding this point of order. I am mindful of a ruling made by the Speaker of the other place a few years ago when the Senate divided a certain bill from the House of Commons into two without seeking the Commons'

concurrence. In his decision, the Commons Speaker expressed his opinion that the Senate should have respected the propriety of asking the House of Commons to concur in its action of taking a bill that had originated and passed in that place and dividing it into two separate parts. The House of Commons subsequently sent a message to the Senate asking it to return the bill in an undivided form. I am referring of course to the proceedings on Bill C-103, the Atlantic Canada Opportunities Agency Bill of 1988.

Senator MacEachen's point of order does not ask the Senate Speaker to stand in judgement of whether the Speaker of the other place correctly interpreted its Standing Orders. This would be quite improper and unquestionably infringe the right of each House to the exclusive cognisance of their proceedings. *Erskine May*'s *Parliamentary Procedure*, 21st edition, page 90 states "... the right of both Houses to be sole judges of the lawfulness of their own proceedings or to settle - and depart from - their own codes of procedure is fully established. This is equally the case whether a House is dealing with a matter which is finally decided by its sole authority, such as an order or resolution, or whether, like a bill, it is the joint concern of both Houses."

This point of order more directly deals with the relationship between the two Houses. The discussion that followed revealed that many Senators felt strongly about this unilateral action on the part of the Commons to a report which is the product of both Houses. It is important to understand however that I, as your Speaker, am without power to take corrective action in the matter, no matter how much I may sympathize with the points raised. If the Chair may be permitted a suggestion, it would seem more appropriate that, since this question involves bicameral relations, in particular the proceedings of joint committees, the traditional methods of communications between Houses of Parliament such as the formal message, be utilized.

It would appear to the Chair that the whole question of the practices and procedures of joint committees should be better institutionalized. If one reads the British authorities, the principles of joint committee work are quite clear. Joint Committees are, in theory, to act on common authority. May's 21st edition, p. 665 states that: "Generally speaking, each House gives identical powers to the members appointed by it to serve on a joint committee. 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."

As well, the procedures of British joint committees are more thoroughly defined, particularly in cases where practice may differ from one house to the other. Again citing May on page 667: "The procedure of a joint committee follows the procedure of select committees of the House of Lords when such procedure differs from that of select committees of the House of Commons, whether the chairman is a member of the Commons or the Lords. For example, the practice of the House of Lords according to which the chairman of a committee votes like the other members, but has no casting vote, and the Lords' method of deciding the question if the votes are equal, are followed by a joint committee."

In our Parliament, the British principle that each House must give identical powers to joint committees is not always respected. For example, both Houses have not given the same powers to

the Standing Joint Committee on the Scrutiny of Regulations. The House of Commons has a Standing Order which specifically grants it a power which the Senate has not given. Their S.O.123 (1) reads as follows:

> 123. (1) *In addition to the powers granted, so far as this House is concerned,* to the Standing Joint Committee for the Scrutiny of Regulations, pursuant to Standing Order 108(4), the said Committee shall be empowered to make a report to the House containing only a resolution which, if the report is concurred in, would be an Order of this House to the Ministry to revoke a statutory instrument, or a portion thereof, which the Governor in Council or a Minister of the Crown has the authority to revoke.

The procedures of our joint committees are not adequately described in the orders of reference given them nor is there guidance as to what rules shall prevail when there are procedural differences between the two Houses. For example, the House of Commons' rules allow a committee chair to cast his or her vote only when there is a tie vote while, in the Senate, Rule 97(1) permits a Chairman to vote at all times. When votes are equal in Senate Committees, the decision is deemed to be in the negative.

I note also that many joint committees have formally requested the Government to table a comprehensive response to their report within 150 days pursuant to Standing Order 109 of the House of Commons. Such requests were most recently made by the Standing Joint Committee for the Scrutiny of Regulations in its Second Report dealing with illegal dispensations, tabled in the Senate on December 1, 1994 and the Special Joint Committee Reviewing Canadian Foreign Policy, tabled in the Senate on November 15, 1994. This discrepancy in our practices was mentioned in comments by Senators last December 14 when Senator Lewis initiated debate on the adoption of the second report of the Scrutiny Committee. Nonetheless, as was admitted then, the Senate has no equivalent rule to request a response from the Government.

More basically, there is not even agreement as to what are our Joint Committees. The Senate still lists in Rule 87 the Joint Committee on the Printing of Parliament and the Joint Committee on the Restaurant of Parliament. The House of Commons has not recognized these Committees for many years.

There are other problems as well. An action is sometimes taken by one House with respect to a mandate of a joint committee and a message is sent merely to inform that House of the change rather than to seek concurrence. The question of quorum and whether both Houses should be represented in any quorum count is not always clear. There have also been problems with regard to the division of financial and administrative responsibilities pertaining to the operations of joint committees.

I bring these matters to the attention of honourable Senators in the hope that action may be taken to resolve these differences to the satisfaction of both Chambers. Pursuant to Rule (87)1)(f), our Standing Committee on Privileges, Standing Rules and Orders has the power to study procedural questions on its own initiative. Following the suggestions made during the discussion on November 30, perhaps that Committee, in consultation with a committee of the other place, could propose a set of rules for approval by both Chambers.

I thank Senator MacEachen and other honourable Senators for bringing this to the attention of the Senate.

Motion – Acceptability (that the motion be not now adopted but referred to a committee)

March 2, 1995 *Journals*, pp. 777-78

Honourable Senators, last Wednesday, during debate on the motion of Senator MacEachen to order the printing of 500 additional copies of volume 1 of the Report of the Special Joint Committee Reviewing Canada's Foreign Policy in its original format, a motion was moved by Senator Lynch-Staunton not to adopt the motion, but to refer it to the Standing Committee on Internal Economy, Budgets and Administration. This motion was subsequently adopted.

Questions were then asked about the status of the original question. This confusion may have resulted from the uncertainty by Honourable Senators as to what type of motion had been proposed by the Leader of the Opposition, that is, whether it was a motion in amendment to the original question or a separate and distinct question?

Certainly, there was no disagreement as to the acceptability of the motion itself. The motion was in order. According to Rule 49(1)

> When a question is under debate, a motion shall not be received unless it is a motion to amend the question, to refer the question to a committee, to adjourn the debate, to postpone the debate to a certain day, for the previous question, or for the adjournment of the Senate.

Based on the wording of Rule 49(1), the motion of the Leader of the Opposition has the character of a distinct question. As such, if carried, there is no necessity to proceed to put the original question to the House as that question would have been superseded or displaced by the decision to refer the matter to a committee for consideration. The original motion to order the reprint of a committee report would no longer be before the Senate. It may presumably come before the Senate again once the committee has reported on this matter and the report itself becomes subject to a vote on concurrence.

It was agreed at last Wednesday's sitting that the Senate rescind the vote taken on the motion of the Leader of the Opposition so that the Chair could make a ruling. I therefore rule that the motion of Senator Lynch-Staunton is in order, that it is a distinct question and that if it carries, it will supersede the original motion that had been proposed by Senator MacEachen. I might point out that there are precedents in the Senate for such motions in the past. Barring an appeal to my ruling and, if no other senator wishes to continue the debate on the question proposed by Senator Lynch-Staunton, I will now proceed to put the question which is as follows:

That the motion be not now adopted but that it be referred to the Standing Committee on Internal Economy, Budgets and Administration.

Bill – Admissibility (C-79)

March 29, 1995 *Journals*, pp. 879-81

Honourable Senators, yesterday the Honourable Senator Tkachuk raised a point of order concerning Bill C-79 primarily on the grounds that bill goes beyond the scope of what is allowed in a supply bill. He argued that the bill is not in order for four reasons:

1. Since Bill C-79 seeks borrowing authority for the Canadian Museum of Nature, it does not fit the criteria for supplementary estimates as laid down by *Beauchesne*'s *Parliamentary Rules and Forms* Sixth edition as described in citation 946, page 260.

2. Since the *National Museums Act* does not allow the museum to borrow money, Bill C-79 contains an item, which is legislative in nature, specifically Vote 76d as described in the Schedule to the bill, . The Senator referred to a ruling by the House of Commons Speaker on March 25, 1981 in which the Speaker took the position that it should not be permitted that "a supply item be used to obtain authority which is the proper subject of legislation."

3. Consistent with past rulings of the Speaker in the other place, it is not in order to seek borrowing authority in supplementary estimates. The role of the estimates is to authorize spending, not borrowing; and

4. Senator Tkachuk felt that it is an affront to the privileges of Parliament to seek authority to borrow an unlimited amount of money for unspecified purpose, especially in a supply bill.

May I be permitted to comment at the outset, in case there is any doubt by those observing our proceedings, as to what is the role of the Senate in matters of supply. As far as I am aware, the Senate has never overturned the recommendations of the Ross Report of 1918 which was the report of a special committee of the Senate to consider the question of determining what are the rights of the Senate in matters of financial legislation and whether under the provisions of the *British North America Act, 1867*, it is permissible for the Senate to amend a Bill embodying financial clauses. This report, which was adopted by the Senate on May 22, 1918 stated that "The Senate of Canada has and always had since it was created, the power to amend Bills originating in the Commons appropriating any part of the revenue or imposing a tax by reducing the amounts therein, but has not the right to increase the same without the consent of the Crown".

The most recent case of the Senate amending a supply bill occurred as recently as May 11, 1989 when the Senate amended Bill C-14.

With regard to the first point raised by Senator Tkachuk, that the bill does not fit the criteria for supplementary estimates as laid down by *Beauchesne*, I must observe that, in my opinion, *Beauchesne* is discussing the business of supply from the perspective of the Standing Orders and practices of the House of Commons. The Commons has established a rather complex procedure for dealing with supply that is based on a series of rules which incorporate referring estimates to various standing committees for specified lengths of time, procedures for the Opposition to express grievances and motions of non-confidence before supply is granted, and the designation of specific

time periods for disposing of the various types of appropriation bills. Very few of these procedures have relevance for the way supply is dealt with in this place. The Senate has only two rules in our rule book which deal with supply - Rules 82 and 83. 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."

Rule 83 states:

> "A bill of aid or supply shall not have annexed thereto any clause the matter of which is foreign to and different from the matter of the bill."

It is my belief that neither of these rules have been breached by Bill C-79.

Senator Tkachuk's second point is that Bill C-79 contains an item which is legislative in nature. However, it appears to the Chair that this point is related more to a question of law than to parliamentary procedure. Whether or not the *National Museums Ac*t allows the corporation to borrow money and whether Vote 76d conforms to the provisions of the *Financial Administration Act*, are matters of legal interpretation. *Bourinot's Parliamentary Procedur*e, 4th edition, p. 180 states quite clearly 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."

Concerning the third point of this argument, here again the Senator is referring to the procedures of the House of Commons. I am not sure it is wise to refer to rulings from the other place on matters where the procedures of the two Houses are so different. With regard to the ruling of December 9, 1975 which Senator Tkachuk cited, in which the Commons Speaker ruled that a borrowing authority clause could not be included in a supplementary supply bill, among the reasons given by the Speaker, as described in the book *Selected Decisions of Speaker Jerome* on page 78, was the following:

Since a supply bill is concurred in without debate and without amendment, the strictest interpretation of the rules has to be applied to all clauses of the bill, that is to say, that all clauses of the bill must be based on estimates if the guillotine is to apply."

In the Senate, we have not established any specific guillotine or time allocation rules with regard to debating appropriation bills. They are treated like any other bills. Our procedure here is very different from that of the other place and therefore the reasons given by the Speaker, in my opinion, do not apply as far as the procedures of this chamber are concerned.

Finally, with regard to the point that the provisions of the bill are an affront to the privileges of the Senate, I am not sure that privilege is involved here. If it was, there is a specific procedure for raising questions of privilege in the Senate. I do not think it appropriate that the Senator should be rising on both a point of order and a question of privilege at the same time.

For these reasons, I think that Senator Tkachuk does not have a valid point of order. My ruling does not mean he or other Senators who object to this vote have no other procedures for recourse open to them.

Motion – Acceptability (motion in amendment)

May 9, 1995 *Journals*, p. 938

The Honourable the Speaker declared the Motion in amendment in order.

Motion – Acceptability (referring subject-matter of bill to committee and postponing 2nd reading until committee reports)

May 24, 1995 *Journals*, pp. 969-71

Honourable Senators, on Wednesday, May 10, during proceedings on Bill S-10, Senator Gauthier initiated a series of exchanges among Senators by asking what seemed to be two simple questions. As I understand it, he wanted to know where Bill S-10 would be if the motion of Senator Tkachuk were adopted. He also wanted to know if he would have an opportunity to raise a point of order respecting the Bill.

After Senator Gauthier raised his questions, the Senate decided to revert to the point where Senator Tkachuk had obtained the leave of the Senate to move his motion, effectively nullifying the actions just taken by the Senate to postpone the second reading of the Bill while its subject-matter was being examined by the Standing Committee on Aboriginal Peoples.

Let me try now to address the questions raised by Senator Gauthier and some other issues as well that came up during the discussions that day.

Should the Senate decide to adopt the motion of Senator Tkachuk, it would be resolved that the Bill stand on the *Order Paper* and remain there, notwithstanding the provisions of Rule 23, until such time as the Committee on Aboriginal Peoples reported on the Bill's subject-matter. The order for second reading of Bill S-10 would be suspended and it would be out of order to proceed to second reading before the committee reports unless the Senate should decide to further amend its order.

Had the adoption of Senator Tkachuk's motion not been nullified, Senator Gauthier could not have raised his point of order at this stage without the consent of the Senate. This is because there would have been nothing before the Senate to which he could link his point of order. Having decided what to do for the time being with Bill S-10, the Senate would proceed to another item of business.

However, since the Senate has yet to dispose of Senator Tkachuk's debatable motion and it is still before us, Senator Gauthier would be within his rights to raise his point of order during debate on it. I trust that I have successfully answered the two questions posed by Senator Gauthier.

Certain other comments were made May 10 regarding these proceedings. They relate to the procedural acceptability of Senator Tkachuk's motion to refer the subject-matter of a Bill to a committee while retaining the order for second reading of the same Bill on the *Order Paper*.

According to one point of view, the proper procedure would be to order the discharge of the Bill at the time that its subject-matter is referred to a committee. In support of this position, references were made to the practices of the other place.

It is my understanding that when this procedure is used in the other place, it ordinarily takes the form of an amendment to the second reading motion of the Bill which seeks to refer the subject-matter and discharge the second reading motion from the *Order Paper*.

What Senator Tkachuk proposed on May 10, in this House, was a different procedure. When the Order of the Day for the second reading of Bill S-10 was called, he rose and asked for leave to move a motion that the Bill's subject-matter be referred to the Aboriginal Peoples Committee and that the second reading of the Bill be suspended until the committee present its report. This type of motion, being an order of reference to a committee to examine the subject-matter of a Bill, normally requires one days notice according to Senate Rule 59(1) (e). However, since leave was requested and given, the notice requirement was waived.

As to the procedural acceptability of such motion, I can find nothing in the Senate Rules which would prohibit it. To the contrary, I have found examples of various kinds in which the Senate referred the subject-matter of a Bill to a committee while keeping the reading motion of the Bill on the *Order Paper* and not discharging it.

I refer Honourable Senators to the decision of this House made in November, 1982 with respect to Bill S-31, an Act to limit shareholding in certain corporations. During debate on second reading on November 8, an amendment was moved to not read the Bill a second time now, but to refer the subject-matter of the Bill to the Standing Committee on Legal and Constitutional Affairs. The amendment was adopted and the Bill remained on the *Order Paper*; it was not discharged. In subsequent discussions on this point several days later, on November 16, other examples were cited to support the notion that this was an established practice in the Senate. In fact, one precedent mentioned dated back to 1946.

I also refer Honourable Senators to the Debates of March 3, 1993 regarding Bill S-13, a private Bill that sought to incorporate the Dai Al-Mutlaq as a corporation sole in Canada. Again, an amendment was proposed and adopted without objection to refer the subject-matter of the Bill to the Standing Committee on Legal and Constitutional Affairs. Consequently, the Bill remained on the *Order Paper* and was not called for debate while the committee studied the issue. As it happened, no additional action was ever taken with respect to this Bill because Parliament was dissolved before the committee reported on the subject-matter.

These examples are meant to prove just one point - that it is possible, according to the practices of the Senate, to refer the subject-matter of a Bill without discharging the second reading motion. The motion of Senator Tkachuk is, I think, probably without precedent in taking the form of a motion, rather than an amendment. This fact, however, does not mean it is out of order.

Needless to say, it is also possible to move a motion to refer the subject-matter of the Bill to a committee and discharge the reading motion. It is an option that the Senate can use when considering what to do when a Bill has reached second reading.

Indeed, this is what happened initially with Bill S-8, an Act to prohibit smoking in public places, after it was called for second reading in May 1986, but the situation did not end there. Some days later, by unanimous consent, the Senate modified its decision to permit the restoration of the Bill to the *Order Paper* at the second reading stage once the committee had reported on its subject-matter.

In the final analysis, it is up to the Senate to determine how it wishes to proceed. And, depending on the circumstances, the decisions may not always appear consistent. Be that as it may, it is not the role of the Chair to obstruct the evident will of the Senate in the way it decides to pursue its deliberations.

With respect to the motion proposed by Senator Tkachuk, the Chair has no objection. If the Senate agrees to it, the Bill would continue to be on the *Order Paper*, and it would not be called for debate at second reading until such time as the Committee on Aboriginal Affairs has reported on the subject-matter of the Bill.

Motion – Acceptability (allowing standing committee to work with House of Commons committee)

June 21, 1995 *Journals*, p. 1091

Honourable Senators, on June 13, 1995, the Honourable Senator Corbin raised a Point of Order concerning a motion passed by the Senate on May 25 that the Standing Committee on Privileges, Standing Rules and Orders be authorized to act jointly with the House of Commons Standing Committee on Procedure and House Affairs with regard to its examination of the rules and practices governing the operation of joint committees. Senator Corbin questioned whether this was the correct procedure in setting up working committees with the other place.

On June 15, the Chair of the Privileges, Standing Rules and Orders Committee, the Honourable Senator Robertson, expanded upon the background of this issue, explaining that the arrangement with the corresponding Committee in the other place was to be informal. As Senator Robertson said in her letter to Mr. Milliken from which she quoted: "That, as opposed to a formal joint study by our two committees, perhaps this study could best be handled by creating an informal working group of Senators and Members of the House of Commons representing both Committees which could review these matters and report back". Senator Robertson stated that she agreed with Senator Corbin that if the study was to be a formal one, the normal procedure should be followed, namely that there should be a motion of the Senate authorizing such a study and ordering that a Message be sent to the House of Commons requesting that they join with the Senate in that particular study.

Honourable Senators, it would seem to the Chair that this matter has been resolved. Since the study of the rules and operations of joint committees is, at this stage, to be undertaken by an informal working group of parliamentarians which has no official status, I do not feel I can intervene. Since

no Senate rules or practices have been breached, I cannot agree with the Point of Order. I do want to thank Honourable Senators, however, for bringing the matter to the attention of the Senate.

Motion – Acceptability (Message from House of Commons)

June 21, 1995 *Journals*, pp. 1092-93

Honourable Senators, I have listened carefully to the presentations. I thank all Honourable Senators who joined in the discussion.

As Senator Murray has clearly pointed out, our rules are silent on the specific point of how to deal with Messages from the House of Commons. Senator Murray pointed out a number of precedents, and there are precedents for and against. It would not be wise to conduct our practices based on the numbers on either side. I propose, therefore, to take a logical look at the rules and their purpose.

Before I do that, however, I wish to deal with the question of substantive motions. I refer Honourable Senators to Rule 4(7)(*e*) of the *Rules of the Senate*. It states:

> "Substantive motion" means an independent motion, neither incidental to nor relating to a proceeding or order of the day already before the Senate;

The Senate has before it a proceeding or an Order of the Day in the form of a Message from the House of Commons. The Message is before us. Hence, the motion now is not a substantive motion.

Honourable Senators will understand that "substantive" does not mean "important" here. Obviously the subject is important, but the meaning of "substantive" in this instance is "standing by itself". The motion we may hear from Senator Graham hangs on the Message; hence, it is part of the proceeding.

Therefore, I rule that Rule 59(1)(*i*) does not apply.

What is the purpose of giving notice? The purpose of giving notice is to enable Honourable Senators to know what is coming so that they can have an opportunity to prepare. Why else would there be notice? They must have an opportunity to get themselves ready for the discussion. It is not meant to delay the work of the Senate. It is simply meant to bring order.

Honourable Senators, I refer you to Rule 60(8). It states:

> Notice is not required for:
>
> (8) Consideration forthwith or at a future sitting of Commons amendments to a public bill;

In other words, no notice is required to deal immediately with amendments to a public bill from the House of Commons. No notice is required at all.

What are we dealing with here? We are dealing with amendments the Senate passed some weeks ago. They are not new amendments. The subject-matter is well known to the Senate. We are prepared, under our Rules, to deal immediately with new amendments coming from the House of Commons. Therefore, it does not appear logical that we should insist on notice to deal with amendments which are from this House in the first place.

Honourable Senators, I rule the motion in order.

Bill – Admissibility (C-69)

June 22, 1995 *Journals*, pp. 1121-22

Honourable Senators, earlier today Honourable Senator Lynch-Staunton rose on a point of order and said:

> Honourable Senators know a deferred vote on Bill C-69 is to take place at 5:30 this afternoon.
>
> My Point of Order is to request that the Speaker determine if there will be any purpose served by this vote in light of the fact that Bill C-69 lapsed as of midnight last.

Considerable discussion ensued. The point revolved largely on legal issues. Indeed, if you listened carefully to what Senator Lynch-Staunton said, I am being asked to rule on a legal matter and not a matter of the *Rules of the Senate*.

Beauchesne is the only authority which speaks to this matter. I refer to *Beauchesne's Parliamentary Rules & Forms*, 6th edition, citation 324, which reads:

> 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.

Therefore, it is impossible for me to rule on whether any purpose will be served. That is not within my capacity.

Further, we have before us an Order of the Senate to have a vote at 5:30 today. It is not possible for me, as Speaker, to rescind an Order of the Senate. Only the Senate can do that. It is beyond my power. I cannot stop the process to which the Senate has agreed.

Divisions – Request for deferred divisions

June 22, 1995 *Journals*, p. 1122

Honourable Senators, before I call the vote, I should like to make a brief statement. Yesterday, when the standing vote was called, Honourable Senator Kinsella rose and asked that the vote be deferred under Rule 68(1).

Rule 68(1) reads as follows:

> "After a standing vote has been requested, pursuant to rule 66(3), on a motion which is debatable in accordance with rule 63(1), either Whip may request that the standing vote be deferred as provided below."

A motion to adjourn the debate is not debatable. Therefore, yesterday the deferred vote should not have occurred.

I am making this statement now because I do not believe that this incident should become a precedent in this House. An error was made, and I accept the responsibility.

Motion – Acceptability (constituting a special committee)

July 11, 1995 *Journals*, pp. 1159-63

Honourable Senators, a point of order was raised on Wednesday, May 10, 1995 by the Honourable Senator Robertson with regard to the motion proposed by the Honourable Senator Cools to establish a special committee to examine and report upon the conduct and behaviour of certain justices and barristers of the Ontario Court of Justice (General Division). The point of order questioned whether this motion is properly worded in that it seemed to include two distinct propositions and should therefore be divided. The point of order also questioned whether in the interests of parliamentary decorum, it is appropriate for the Senate to debate the conduct and behaviour of certain judges and other officers of the court whom our parliamentary authorities refer to as "protected persons".

Upon completing her statement, Senator Robertson asked for a ruling from the Chair. Both Senators Cools and Grimard then commented on the point of order. I wish to thank all three senators for their contributions.

What is before the Chair is strictly the point of order and not the question of whether the privileges of the Senate have been breached in any way. I remind honourable senators that last November 16, my predecessor, the Honourable Senator LeBlanc, ruled on a question of privilege raised by Senator Cools on October 5 which involved many of the points raised in the motion now before us. At that time, the Speaker ruled that because her question was not brought forward at the earliest opportunity, it could not be given priority of debate. The Chair has therefore already made a decision on the matter and should not intervene a second time to determine if there is a *prima facie* case of privilege.

In her point of order, Senator Robertson referred to Rule 44(2) which states that:

> "If the matter is not raised at the earliest opportunity, the Senator raising the matter may put it on notice, but the matter cannot be proceeded with under the terms of this rule".

Senator Robertson noted that it would appear that Senator Cools is availing herself of this alternative procedure and I would agree. Barring other procedural irregularities, Rule 44(2) allows Senator Cools to put the matter referred to in her October 5 statement on notice and to proceed by way of a substantive motion.

On the first part of the point of order, dealing with the wording of the motion, there is a problem according to Senator Robertson in that Senator Cools' motion implies two different propositions. These are:

i) that a *bona fide* question of privilege been established; and

ii) that a special committee should be established to examine the conduct and behaviour of the justices and barristers involved in this alleged breach of privilege.

In supporting her case, Senator Robertson referred to *Beauchesne*'s Sixth Edition, citation 557(1) at page 172 which states that:

> "A motion which contains two or more distinct propositions may be divided so that the sense of the House may be taken on each separately. The Speaker has a discretionary power to decide whether a motion should be divided".

I note, however, that *Beauchesne* goes on to say in citation 557(2) that:

> "It is only in exceptional circumstances, and when there is little doubt, that the Speaker may intervene and, of his or her own initiative, amend the motion proposed by a Member".

And according to *Erskine May*, Twenty-first Edition, at page 336:

> "A complicated question, however, can only be divided if each part is capable of standing on its own".

In Canadian parliamentary history, such divisible motions have been very rare.

In the Chair's opinion, while Senator Cools' motion does involve more than one idea, the propositions contained therein are all related. Given the way the motion is worded, I cannot see how it could be divided since the parts are not capable of standing on their own. Even if the motion were divisible, it would not render the motion out of order.

The second part of Senator Robertson's point of order, that the motion offends the established parliamentary practice that prohibits, or at least restricts, references to judges in the form of any personal attack or censure, is the more difficult for me to determine.

In order to be very clear on what might possibly be at issue in this aspect of the point of order, I have examined closely the arguments that were presented in May and I have also reviewed the authorities on the relationship between Parliament and the courts, particularly with respect to the censure of judges and their possible removal from the bench. Among the works that have been consulted are Alpheus Todd's *On Parliamentary Government in England*, *Halsbury's Laws of England* and most importantly perhaps a treatise by Shimon Shetreet entitled *Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary* published in 1976. I have also reviewed some of the relevant Canadian and British precedents as well as a 1994 decision of the Federal Court, Trial Division, in the case of *Gratton v. Canadian Judicial Council*. I have felt it my obligation to undertake this review in order to provide some guidance to this House on a matter of undoubted importance and consequence.

In explaining her second objection, Senator Robertson quoted a passage from *Erskine May*, at page 380, which states, in part, that

> "... reflections on a judge's character or motives cannot be made except on a motion, nor can any charge of a personal nature be made except on a motion. ... Any suggestion that a judge should be dismissed can only be made on a motion".

This practice has been sustained in recent years by various statements or comments by the Speaker of the British House of Commons. For example, on December 4, 1973, the British Speaker observed that:

> "No charge of a personal nature can be raised except on a motion. Any suggestion that a judge should be dismissed can be made only on a motion."

and again on July 2, 1987, the Speaker stated that:

> "It is not in order to criticize a judge. That must be done by motion".

Although the *Rules of the Senate* are not explicit on this point, I do not believe that any Senator would doubt the need to support such a practice either to maintain order and decorum in our debates or out of respect for the independence of the courts.

While recognizing the importance of maintaining the independence of the courts, it is still clear that Parliament does have the authority, and indeed the responsibility, to act when required. Senator Robertson referred to the Constitution Act, 1867, section 99(1) which states that

> "... the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons".

Our parliamentary history presents only a few instances when Parliament even considered availing itself of this constitutional right.

The most recent case, and the only one in which the Senate participated in such action, was in 1966 when the Senate agreed to join with the House of Commons to enquire into and report on the

expedience of presenting an address to His Excellency praying for the removal of Mr. Justice Léo Landreville from the Supreme Court of Ontario.

This action followed the presentation to Parliament of a report commissioned by the Government to examine allegations of impropriety that predated Mr. Justice Landreville's appointment to the provincial Supreme Court. This document written by the Honourable Ivan C. Rand determined that there was sufficient cause to seek the removal of the Judge.

The report also provided examples of British precedents where the conduct of judges had been reviewed by Parliament. There are, therefore, both constitutional provision and parliamentary precedent for such action by Parliament.

In order to further clarify the situation, I believe it would be useful to quote more extensively from the remarks made by the British Speaker referred to earlier. On December 4, 1973, when the House was about to begin debate on a supply motion, the Speaker made the following statement:

> "Before I call the right honourable Member ... to move the motion, I want to say this to the House. Certain inquiries and representations have been made to me about the scope of this debate. I do not in general believe in ruling upon hypothetical situations, but on this occasion however it might be helpful if I try to give some guidance.
>
> Any Act of Parliament which the courts have to operate can be criticised as strongly as honourable or right honourable Members desire. It can be argued that a judge has made a mistake, that he was wrong, and the reasons for those contentions can be given, within certain limits."

I wonder whether I might read to the House what Lord Atkin, one of the great judges of this century, said some years ago on this subject. He said:

> "But whether the authority and position of an individual judge, or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticising, in good faith, in private or public, the public act done in the seat of justice. The path of criticism is a public way, the wrong headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

In assessing Lord Atkin's position, the British Speaker continued and said:

> "That is very much the attitude of mind with which the Chair will approach this debate. Reflections on the judge's character or motives cannot be made except on a motion. No charge of a personal nature can be raised except on a motion."

For my part, it would seem that while reflections on a judge's character are not permitted as a general rule of debate since the people occupying these positions are described, according to *Beauchesne* in citation 493, as "protected persons" and to do so is unparliamentary, precedent shows that it is permissible to make such reflections if it is done by way of a substantive motion. Senator Cools has given appropriate notice and made such a motion. Although the motion does not specifically call for the removal of a judge of a superior court, the rules do not indicate this is necessary at this point. Parliament has the constitutional right to request the dismissal of a judge and I would hesitate to interfere with this right in any way.

In adopting this position I am guided by a precedent that happened in our own House of Commons in 1883. On that occasion a member moved a motion to inquire into the actions of a county court judge who had refused to authorize a re-count of ballots in his electoral district. During the course of debate on the motion, one member went so far as to suggest that the motion was possibly out of order, but did not actually seek a ruling from the Speaker to confirm his suspicion. Instead, the House itself came to a decision on the motion after a fairly short and vigorous debate. I believe that the Senate would be better served if it were provided with a similar opportunity to decide the fate of this motion.

Let me make clear again that the Chair is not in any way acknowledging the merits of the substance of the motion or the allegations contained therein but commenting strictly on its form. This is what Senator Robertson's point of order requested that I do. The role of the Chair is not to determine whether a motion is wise or not - that is for honourable senators to decide. The role of the Chair is to determine if a motion is in order according to rules and precedents. It will be up to the Senate to determine if it wishes this special committee to be established. My ruling is that I cannot accept the point of order. The debate on the motion may continue.

Question of Privilege – Statements contained in newspaper article

November 7, 1995 *Journals*, pp. 1263-64

On October 5, 1995, and as found on pages 2105 to 2107 of the *Debates of the Senate* the Honourable Senator Cools raised a question of privilege in accordance with Rule 44 of the *Rules of the Senate*. Her question of privilege related to an article in the *Edmonton Sun* in which a witness who appeared before the Standing Committee on Legal and Constitutional Affairs allegedly cast reflections upon the Senate and the Senators in connection with the work of the Committee concerning Bill C-68, An Act respecting firearms and other weapons. In Senator Cools' opinion, the comments by this witness as stated in the newspaper article "demonstrate her contempt of the Senate and for parliamentary process and make manifest the true reasons she appeared before the Senate Committee."

This is not the first time Senators have attempted to raise, as questions of privilege, complaints that newspaper articles cast adverse reflections upon this chamber. However, as *Beauchesne*'s Sixth Edition, citation 69, p. 20 states: "... It is very important ... to indicate that something can be inflammatory, can be disagreeable, can even be offensive, but it may not be a question of privilege unless the comment actually impinges upon the ability of Members of Parliament to do their job properly."

The Standing Committee on Privileges, Standing Rules and Orders, in its May 6, 1993 report on its consideration of a question of privilege raised in the Senate by the Honourable Senator Carney, P.C., and concurred in by the Senate on June 10, 1993, made the following observation:

> An adverse reflection upon a Senator or the Senate can constitute breach of privilege, but only if it impedes the Senator or the Senate from performing parliamentary functions. As such, it has a very narrow application, and is to be distinguished from actions for defamation, which are available to all citizens and are pursued through the civil courts. It is extremely difficult to bring oneself within the protection offered by this aspect of parliamentary privilege. There must be a link or nexus between the alleged defamation and the parliamentary work of the Senator.

I can find no link between the description given by Senator Cools of the comments by the witness and the ability of the Legal and Constitutional Affairs Committee or the Senators who serve on it to carry out their mandate with respect to Bill C-68. Finding no link, I cannot conclude there has been any *prima facie* breach of the privileges of the Senate. Senator Cools has had an opportunity to speak on the comments made by this witness and I think that is where this matter should end. In my opinion there is no question of privilege.

Question of Privilege – Power of Speaker to adjudicate on competence of Senate to pass legislation

November 23, 1995 *Journals*, pp. 1310-12

Honourable Senators, on November 6, 1995, the Honourable Senator Cools raised a question of privilege to challenge whether a certain kind of point of order can properly be raised and whether it is within the power of the Speaker to rule on such points of order. In her submission, Senator Cools stated that: "A point of order cannot be used to compromise the Speaker or the position of the Speaker, or to limit the powers and privileges of the Senate. No point of order may ask the Speaker to adjudicate on the competence of the Senate to pass legislation". [*Senate Debates*, pp. 2202]

By way of background, Honourable Senators will recall that on October 17, Senator Cools presented to the Senate Bill S-11, An Act concerning one Karla Homolka. On October 19, following the Table Officer's reading of the Order of the Day for the second reading of Bill S-11, Senator Kinsella raised a point of order to the effect that the matter contained in Bill S-11 was out of order and not properly before the Senate. Following a discussion involving a number of Senators and in which some interesting points were raised, the Speaker *pro tempore* reserved his decision. I refer Honourable Senators to the *Senate Debates* of that day at pages 2139 to 2143.

In her question of privilege on November 6, Senator Cools stated that:

> ... the Speaker of the Senate has no power or authority to adjudicate the substance and intention of Bill S-11 or of any other bill. He has no power to settle questions regarding the judicial result of Bill S-11 or regarding the Senate's pleasure to pass or not to pass

> Bill S-11 or the appropriateness or righteousness of the Senate's actions in this regard. The settlement of these questions belongs to the Senate institutionally, and the manner in which the Senate usually settles such questions is by consideration and debate of the bill. [2204]

The accepted definition of parliamentary privilege based on *Erskine May* and stated in *Beauchesne*'s (Sixth edition) and at citation 24 explains that parliamentary privilege "is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of ... Parliament, and by Members of each House individually, without which they could not discharge their functions ..."

Among these collective privileges *Beauchesne's* states at citation 33 that "the most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them. A few rules are laid down in the Constitution Act, but the vast majority are resolutions of the House which may be added to, amended, or repealed at the discretion of the House".

Citation 26(1) in *Beauchesne's* defines a point of order as a: "question of order [which] concerns the interpretation to be put upon the rules of procedure..."

Since the concern expressed by Senator Cools is about how this Chamber is to proceed when conducting its business, it seems clear to the Chair that she is not questioning the fundamental right of the Senate to lay down procedural rules. Rather, she is questioning the interpretation of our rules and their application to a particular fact situation. The essence of her question appears to be whether the point of order raised with respect to Bill S-11 is in order and how the presiding officer should act when asked to rule on such a point of order.

With respect to the substance of the Senator's concern, there are many examples where Senators have raised points of order and asked the Speaker to make a ruling as to the procedural acceptability of a bill or of amendments proposed to a bill. I refer Honourable Senators to the following precedents in the Senate *Journals* : 1977-78, (pp. 464-5), concerning a motion in amendment to a bill proposed by Senator Forsey; 1986-87-88, (pp. 2720-22), concerning a motion by Senator Graham with respect to Bill C-103, the Atlantic Canada Opportunities Agency Bill; and 1989-90-92, (pp. 156-157), concerning two bills, S-3 and S-4, dealing with veterans allowances. In this latter example, the Speaker was asked to rule whether the bills: "were in order and form suitable for the Senate to consider". The Speaker ruled that the bills infringed the financial prerogative of the Crown and ruled them out of order.

There are other precedents as well that clearly establish that a Senator may ask the Speaker to rule whether a certain bill or amendment is in order according to our rules and practices.

In the present case, Senator Kinsella has raised a point of order because, as he maintained, Bill S-11 should not be considered by the Senate, since, in his opinion, the bill is not one that falls within the traditions, customs and rules of this Chamber. To support his position he cited a precedent from the other place. By raising a point of order, Senator Kinsella was invoking Rule 18 whereby the Senate has authorized the Speaker "to enforce the *Rules of the Senate*". There

was nothing improper in what Senator Kinsella did, nor did Senator Ottenheimer or Senator Lynch-Staunton act improperly.

Accordingly, I rule that there is no *prima facie* breach of privilege with respect to the matter raised by Senate Cools.

Finally let me note that I am still considering Senator Kinsella's point of order raised on October 19, and I will give my ruling shortly.

Bill – Admissibility (S-11)

November 28, 1995 *Journals*, pp. 1317-19

On Thursday, October 19 when the order for second reading of Bill S-11, an Act concerning one Karla Homolka, was called, Senator Kinsella rose on a point of order. The purpose of his point of order was to object to proceeding with the bill because, in his view, the bill is not one that falls within the traditions, customs, and rules of this House.

In stating his case, the Senator explained that there are only two kinds of bills considered in our Parliament; these are either public or private bills. Assessing the nature and scope of Bill S-11, Senator Kinsella concluded that the bill is in the nature of a bill of attainder falling into a special category of public bill for which our practices do not provide.

To substantiate his position, Senator Kinsella referred to a ruling made by the Speaker of our House of Commons in May 1984 on a bill that had sought the execution of a specific criminal. The Speaker determined that the bill was unacceptable. Consequently, it is Senator Kinsella's opinion that "the matter contained in this bill is out of order and not properly before this chamber."

Speaking on behalf of the Bill, Senator Cools pointed out that the Bill is not, in fact, a bill of attainder, but rather one of pains and penalties and that our Parliament has the power to enact such bills. After describing the objective of such a bill to redress an injustice and impose a suitable penalty to a terrible crime when the courts have failed to exact one, Senator Cools went on to explain that Parliament and its individual Houses have the power of judicature.

Senator Stewart then intervened to suggest that the procedural issue for the Speaker to resolve was whether there might be "any prohibition, as a matter of order, against this House, dealing with a bill which is, in effect, retroactive in a criminal matter."

I wish to express my appreciation to the Honourable Senators who participated in discussion on this point of order. I have read the arguments that were made on October 19 and I have reviewed the authorities cited as well as the precedent of 1984 that took place in the House of Commons. Before proceeding with my ruling, I wish to make it clear that I am not commenting in any way on the substance of the bill itself. My task is to answer the point of order raised about the procedure on the proceedings of the bill, not its content.

First of all, let me begin by saying that I agree with Senator Cools that Bill S-11 is of the nature of a bill of pains and penalties and not a bill of attainder. The distinction between the two, as I understand it, is that the penalty provided in a bill of attainder is execution whereas a bill of pains and penalties inflicts a lesser punishment. Nonetheless, the special procedures that are traditionally used in the consideration of either a bill of attainder or a bill of pains and penalties are the same and so the point of order raised by Senator Kinsella is not affected by this distinction.

The real issue to be decided is the objection of Senator Kinsella that Bill S-11 is a species of public bill that is not known to our practice. Aside from the precedent of 1984 when a Member of the House of Commons sought to introduce a bill to secure the execution of Clifford Olson, I am not aware of any other similar bill of attainder or pains and penalties presented to our Parliament for consideration. As Senator Kinsella pointed out, in 1984 the Commons Speaker ruled the bill out of order. In his decision, the Speaker noted that the procedure regarding bills of attainder or bills of pains and penalties had been obsolete in Britain for many years and that "it has never existed in Canada."

In the absence of any precedent or substantial evidence to the contrary, I feel bound to take note of the provisions of Rule 1 of the *Rules of the Senate* which stipulates that "in all cases not provided for in these rules, the customs, usages, forms and proceedings of either House of the Parliament of Canada shall ... be followed ..." Accordingly, I accept the decision that was made by the Speaker in the House of Commons in 1984 and rule that for similar reasons Bill S-11 is out of order. The order for the second reading of this bill should be discharged and the bill struck from the *Order Paper*.

In conclusion, I might add that there are other means available to Senator Cools to respond to public opinion brought to the Senator's attention and she may wish to consider them.

Motion – Acceptability (instructing committee to report by a certain date)

November 30, 1995 *Journals*, pp. 1331-32

During Routine Business yesterday, Senator Carstairs sought to give a notice of motion to require the Standing Committee on Legal and Constitutional Affairs to report on the message of the House of Commons and the motion of Senator Graham of June 28 relating to the Electoral Boundaries Readjustment Bill (Bill C-69) no later than Monday, December 11, 1995. At the same time the notice of motion also instructed the committee not to insist on the Senate amendments to which the House of Commons has disagreed. On a point of order, Senator Phillips objected to the notice because, in his view, a similar question had already been proposed and voted on and to permit this motion to be debated would be contrary to our rules. Later in the sitting, I sought the advice of this House before considering any ruling.

In the exchanges that took place between the Senators just before yesterday's adjournment, three basic issues were contended. The first is that Senator Carstairs does not have the right to propose this motion under the rubric of Government Notices of Motions. The second objection relates to the point of order raised by Senator Phillips that a motion that has already been decided cannot

be raised again. On this issue, specific reference was made to Rule 64, and to several citations in *Erskine May* and *Beauchesne*. The third point relates to the ability of the Senate to instruct or guide the deliberations of one of its committees. With respect to this issue, Senator Phillips suggested that I consult a decision of the Honourable Speaker Deschatelets regarding a case where an instruction to a committee had been proposed.

I want to thank those Senators who participated in the debate on this point of order. I have had an opportunity to review the arguments that were made yesterday and to consult the authorities and precedents that were mentioned, including that of Speaker Deschatelets. In order not to impede the House in its proceedings, I am prepared to rule now on an issue which has proved surprisingly complex. I propose to deal with each of the three objections that were raised.

With respect to the objection that Senator Carstairs, not being the Leader of the Government, the Deputy Leader or a designate of the Government, should not be permitted to give a notice of motion under the rubric "Government Notices of Motions", I find that the objection is well founded. Before 1991, the daily Order of Business did not recognize any distinction between Government and Private Senators for the purpose of giving notice to a motion. Since 1991, however, the distinction has been recognized in our Rules and, if it is to have any meaning, then it must be to limit the right of those who may give notice under "Government Notices of Motions" to those who are designated to speak for the Government in this House. Consequently, I find that Senator Carstairs does not have the right to propose a Government notice of motion. This must be done by either the Leader or Deputy Leader or a designate in the absence of either. Alternatively, Senator Carstairs can propose the motion under Notices of Motions.

As to the second objection that a motion ought not to be put to the Senate a second time during the same session, the issue is not as simple as it may seem. The advice provided by the British parliamentary authority, *Erskine May*, is not straight forward. While it states that "a motion or an amendment which is the same, in substance, as a question which has been decided during a session may not be brought forward again," *Erskine May* goes on to explain that "whether the second motion is substantially the same is finally a matter for the judgment of the Chair."

It appears that the Senate's precedents for determining whether a question is the same in substance are not conclusive. I have examined the earlier motion of Senator Fairbairn seeking to have the Committee on Legal and Constitutional Affairs report on the message of the House and the motion of Senator Graham that was defeated on division last week. That motion proposed that the committee report no later than Wednesday, November 22. This new motion orders the committee to report no later than Monday, December 11. Given that we are soon approaching an extended adjournment and a possible prorogation of the parliamentary session, I am persuaded, that, on the whole, there is sufficient difference in this motion, in comparison with the one that was proposed last week, to allow it.

The third objection that was raised has to do with the instruction that is part of Senator Carstair's motion. The notice of motion directs the committee to recommend in its report that it not insist on its amendments to Bill C-69 to which the House of Commons has disagreed. I find this part of the motion to be quite troubling. As an instruction, I believe it is out of order. Most instructions are intended to allow a committee to do something it would not otherwise have the power to do.

In this case, the committee already has the power to recommend that it not insist on the amendments to Bill C-69. To order that the committee report with a specific recommendation by way of a mandatory instruction is, I find, quite irregular. The precedent of the decision of Mr. Speaker Deschatelets was mentioned yesterday. In a ruling dated March 10, 1971, the Speaker, faced with a point of order objecting to a similar instruction, noted that "many precedents are referred to by Bourinot ... whereby instructions to committees were declared to be irregular because the committee concerned already had the power to take the action indicated."

Furthermore, I would point out that an instruction can be inadmissible if it also proposes an objective which is inconsistent with a decision already taken. Applying this principle to the present case, it seems to me that the proposed instruction is seeking to nullify the decision of the Senate to authorize the committee to consider the message of the House and the motion of Senator Graham.

For these reasons, I do not find the notice of motion of Senator Carstairs to be in order.

Motion – Acceptability (change of date)

December 6, 1995 *Journals*, pp. 1361-62

Honourable Senators, if no other Honourable Senator wishes to participate in the debate, I would thank all of those who have participated.

I take the question of rulings seriously. If I am prepared to rule now, it is not because I have not given this matter serious consideration. I have met with my table officers on several occasions to thoroughly discuss this matter. Thus, I would make it clear that my decision has not been taken suddenly or lightly.

I would refer Honourable Senators to page 2390 of the *Debate of the Senate* of November 30, where my first comments on this matter can be found. At that time, I made the point that the issue is not as simple as it may seem. Once again, the discussion of this afternoon attests to that. At page 2390, I quoted from *Erskine May*, where I said:

> ...or an amendment which is the same, in substance, as a question which has been decided during a session may not be brought forward again...

However, I also stated that *Erskine May* goes on to explain that, whether the second motion is substantially the same, is finally a matter for the judgment of the Chair. I now find myself in the position of having to make a judgment call. That is not an easy task. Several aspects must be considered.

It was suggested that I was speculating on when this session might finish. Perhaps that is speculation. However, one thing is certain: Christmas Day is on December 25. There is no speculation in that regard. If we were to follow normal Senate procedure and practice, we would finish our work at the end of next week. However, that may not happen; we may continue.

I believe the original notice of motion was given on November 2. It is now December 6. Therefore, considerable time has elapsed since the first notice was given. The vote was taken two weeks ago. It seems to me that the time difference in a circumstance such as this is a valid consideration. It is conceivable that, as time marches on, Senators may adopt a different point of view from what they had two or three weeks ago.

That is a decision for the Senate to make, not the Speaker.

In addition to the conditions I mentioned last week related to the different time elements proposed in this motion as compared to the first motion, I draw Honourable Senators' attention to a portion of that discussion related to the procedural/substantive question. I will not go into detail on that; however, it is a point that Honourable Senators should keep in mind.

There are certainly precedents whereby the Senate has changed dates without rescinding the previous order. I would remind Honourable Senators that we frequently adopt orders of reference for special studies with a fixed reporting date. We set up a special committee and say and instruct the committee to report by a particular date. On more than one occasion, the reporting date has been changed. Never, to my knowledge, have we questioned whether we had to rescind the previous decision. The decision to change the date was made by a motion on the floor of the Senate. There was no regard to the fact that the same question was before the Senate with the only difference being a change in date.

Based on my ruling of November 30, as well as further study which indicated that, indeed, we have changed dates in regard to instructions to committees on previous occasions without rescinding, it being done simply by a decision of the Senate, I conclude that the motion is in order.

Second Session, Thirty-Fifth Parliament
February 27, 1996 – April 27 1997

President: The Honourable Gildas L. Molgat

Speaker *pro tempore*:
The Honourable Gerald Ryan Ottenheimer

Question of Privilege – Correspondence written to Members of Parliament by federal inmate at penitentiary

May 1, 1996 *Journals*, pp. 163-64

On Tuesday, April 23, 1996 Senator Cools rose on a question of privilege to ask the Chair to determine whether a *prima facie* case could be found respecting the correspondence to several members of Parliament by Clifford R. Olson, a convicted murderer who has been in prison for the past fifteen years.

In explaining the matter, Senator Cools cited a letter written by Mr. Olson and sent to Mr. John Nunziata, a member of the other place. Similar letters, according to Senator Cools, were sent to two other members of the House of Commons. These letters object to possible legislative action to repeal a specific provision of the Criminal Code, section 745, relating to the judicial review of life terms once 15 years of a prison sentence has been served. An account of these letters was printed in the *Toronto Sun*, Friday, April 12. The Senator also placed on the record a letter that she herself had received from Mr. Olson on another matter last October.

In the opinion of Senator Cools, these letters contain offensive language and were sent to parliamentarians with the purpose of seeking to intimidate them. Citing the British parliamentary authority *Erskine May*, Senator Cools maintained that such letters constitute a contempt of Parliament. Characterizing Mr. Olson's vexatious letters as obscene, an offence to Parliament and an abuse of its members, Senator Cools claimed that "It is time, that Parliament intervene by invoking its punitive powers to deal with his offensiveness, once and for all."

After Senator Cools had presented her arguments, Senator St. Germain made a brief statement about Mr. Olson.

I have reviewed the matter and consulted the authorities including *Erskine May* and *Beauchesne* and I must find that a *prima facie* case has not been made. Let me explain how I reached my conclusion. First of all, I note that the matter complained of relates to a letter written to members of the other House and I am not quite certain how to deal with this aspect of the issue. Be that as it may, the contempt alleged by Senator Cools as acknowledged in her reference to *Erskine May* must involve publicly stated or printed reflections upon the proceedings of Parliament or its members. These publicly made reflections are treated as contempt because they tend to obstruct Parliament in the performance of its functions.

No persuasive argument, however, has been made to suggest how Parliament or its members have been obstructed by these private letters sent through the mail from Mr. Olson to individual parliamentarians. This is not to suggest that the letters of Mr. Olson are not offensive, but they do not appear to be intimidations that might properly constitute a contempt of Parliament.

In connection with this assessment, I refer Honourable Senators to citation 69 of *Beauchesne* 6th edition found at page 20 which quotes a recent decision of Mr. Speaker Fraser:

> "It is very important ... to indicate that something can be inflammatory, can be disagreeable, can be offensive, but it may not be a question of privilege unless the

comment actually impinges upon the ability of Members of Parliament to do their job properly."

Reading the article that was printed in the Toronto Sun, last April 12, I find that the journalist's description of the letter as a sneer or a boast written to taunt parliamentarians to be a fair characterization. While such correspondence is almost certainly unpleasant, insulting and aggravating, it is not clear to me how this language constitutes a possible contempt. Indeed, I share the same general view expressed in *Odger's Australian Senate Practice* (sixth edition, 1991, p. 1014) which I think applies in this case that "The dignity of the House may be best served by ignoring those reflections on Parliament or its members which ... do not really obstruct proceedings". Accordingly, I find that no *prima facie* case of privilege for contempt has been made.

Bill – Admissibility (C-28) (Ruling appealed and sustained)

May 8, 1996 *Journals*, pp. 183-85

Last Tuesday, April 30, when Senator Kirby rose to move second reading of Bill C-28, the Leader of the Opposition intervened on a point of order to argue against proceeding further with this bill. Following the remarks of Senator Lynch-Staunton, there were several statements and exchanges by Senator Stanbury, Senator Stewart, Senator Nolin, Senator Graham, Senator Cools and Senator Berntson. I wish to thank all Honourable Senators for their participation in the discussion on this point of order. I believe this question to be very important as it touches upon the rights and powers of Parliament and the role of the Speaker to maintain order in the Senate's proceedings.

As I understand it, Senator Lynch-Staunton claimed that the Senate ought not to consider this bill for a number of reasons. The principal objection seemed to be the fact that the subject matter of the bill is now before the courts. Unlike the circumstances surrounding the consideration of Bill C-22 in the last Parliament, he noted that there are now two court judgments confirming the legality of the Pearson International Airport Agreement and permitting certain parties to sue the Government for breech of contract. In addition, as he pointed out, the trial for damages is currently before the courts. Were consideration of Bill C-28 to proceed and were the bill to pass, according to Senator Lynch-Staunton, it would have the effect of nullifying valid court judgments. He further maintained that he could find no precedent to support such a "gross violation of the independence of the judiciary and a gross interference in a judicial proceeding already underway."

I have reflected on this point of order over the past few days. I have also reviewed the authorities and I am now prepared to rule. Let me begin by noting that I understand why the Leader of the Opposition would claim that the circumstances associated with the consideration of Bill C-28 are different from those related to Bill C-22 when it was before the Senate in the last session. After an extensive inquiry, a Special Senate Committee has reported on the Pearson International Airport Agreements and, as Senator Lynch-Staunton has emphasized, the courts have rendered some judgments. These different circumstances may be material to the consideration of Bill C-28, but the question remains whether they are within the scope of my authority as Speaker of the

Senate. Do they, in fact, involve procedures of the Senate over which I have some jurisdiction? As *Beauchesne* explains at citation 317(2) on page 96 "A question of order concerns the interpretation to be put upon the rules of procedure..."

The Leader of the Opposition asserts that this question is not one of law, but one of procedure. He has asked me to use the authority of the Chair to halt proceedings on a bill firstly because this bill annuls two court judgments and secondly because a trial resulting from the judgments is in progress.

To allow the bill to go forward, he argued, would be to jeopardize the independence of the courts. To have me consider such a claim, let alone possibly oblige me to determine whether it is true or not, would involve the Chair *ipso facto* in constitutional and legal matters. As Speaker, I have no authority or right to look into such questions. The Canadian parliamentary authority, *Beauchesne,* is quite categorical on this. Citation 324 at page 97 of the sixth edition states 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."

Bourinot's Parliamentary Procedure and Practice (4th edition, 1916) also supports this position and cites several cases from both the Canadian and British Parliaments.

With respect to the issue of the trial now in progress, again I have no authority to intervene. While the actual term *sub judice* convention was not brought up during debate on the point of order, it directly relates to this objection. This convention is a voluntary restraint on debate observed by the House to avoid references to matters before the courts. In addition, the *sub judice* convention is intended to keep Members from making a court matter the subject of a motion or a question to a Minister. Its possible application in this case, however, is doubtful for two reasons. First, the dispute in question in this case is civil rather than criminal.
Being a civil case, the application of the *sub judice* convention based on Canadian precedents is less clear or certain and, in doubtful cases, it may be preferable to allow debate. Second, and more importantly, the *sub judice* convention cannot be applied to limit or impede the right of Parliament to legislate. *Beauchesne* and *Erskine May* are quite explicit on this last point. *Beauchesne* at citation 508(3), on page 153, summarizes the matter this way: "The convention applies to motions, references in debates, questions and supplementary questions, but does not apply to bills."

For these reasons, I cannot find for the point of order raised by the Leader of the Opposition. Whatever the merits of the case he presented, they are matters for debate and for the consideration of all Senators. They are not issues that I can rule on as Speaker of this House.

The Speaker's Ruling was appealed.

The question being put on whether the Speaker's Ruling shall be sustained, it was adopted.

Written questions – Effect of prorogation on unanswered questions

May 9, 1996 *Journals*, pp. 191-93

On Thursday, March 28, 1996 Senator Nolin put a question to the Deputy Leader of the Government regarding the status of some questions that were still unanswered when the first session was prorogued. The Senator pointed out that there were now 91 delayed answers awaiting a reply and most of them were from the previous session. The Deputy Leader replied by saying that the Government was trying to answer all questions as promptly as possible. And Senator Graham also noted that questions asked in the previous session of Parliament are not automatically restored.

This position was contested immediately by the Leader of the Opposition. Senator Lynch-Staunton asked for a ruling from the Chair. He explained that it was his understanding that delayed answers do not fall from the Government's agenda as a result of prorogation. He went on to state the practice that was followed when he held the position of Deputy Leader of the Government in the previous Parliament. According to him, it was his practice to provide answers to all unanswered questions within two weeks. As he put it, "with one or two exceptions, we held to that unwritten rule."

On Tuesday, April 30, Senator Comeau sought an answer during Question Period from the Leader of the Government on the matter of exports of groundfish from southwestern Nova Scotia. In putting his question, he noted that it had been originally placed on the *Order Paper* as a written question last autumn. In her answer, Senator Fairbairn indicated that she was awaiting a decision from the Speaker on the issue of outstanding questions from the previous session.

The original issue was raised again last Thursday, May 2, by Senator Nolin. Thus is the Chair sometimes reminded of its duty. I apologize to the House for the time that has been taken in making my ruling.

Before going any further with my ruling, I want to make clear what I have been asked to rule on. Senator Nolin has asked about the status of delayed answers which arise when notice is taken of an oral question asked during Question Period as stipulated under Rule 24(3). The information Senator Comeau is seeking, on the other hand, is based on a written question that was given to the Clerk to be placed on the *Order Paper* until answered in accordance with Rule 25.

Orders for Returns comprise a third category by which information can be solicited from the Government. This involves a procedure whereby the Senate itself adopts a motion to obtain information from the Government. While this practice is long established, it is not often used, but it is recognized in our written rules under Rule 131.

One further note, the responses to written questions are not printed in the Debates. They are simply tabled with the Clerk. The decision that I have been asked to make concerns only the status of delayed answers and written questions following a prorogation.

I have reviewed the authorities and discussed this matter with the Table Officers who are charged with the responsibility of preparing the Senate's records including the *Order Paper* and

the *Notice Paper*. The authorities and the Table Officers both confirm that virtually all items standing on the *Order Paper* die with a prorogation. *Erskine May* and *Beauchesne* describe the consequences of prorogation in identical language. “The effect of a prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed.” (*Erskine May*, 21st edition, p. 222; *Beauchesne*, 6th edition, cit. 235, p. 66).

The only exception relates to Orders for Returns. Since they are an order of the Senate itself, an Order for Return will remain on the *Order Paper* from session to session within a Parliament until an answer has been provided. This practice is confirmed in *Beauchesne* at citation 451(2) at page 132.

Written questions, on the other hand, are among the casualties of a prorogation and they disappear from the *Order Paper*. Like bills, they must be re-introduced; they are not reinstated automatically.

Delayed answers fall into another, but similar, category to written questions. In fact, they are more ephemeral since they never actually appear as a specific item on the *Order Paper* and they do not have any existence except in the understanding between the Government and the Opposition. With respect to both written and delayed answers, there is nothing in our Rules obligating the Government to provide a response within a certain period of time, if at all, and there is certainly no provision for their automatic reinstatement after a prorogation.

It is my understanding, however, that the House of Commons and some provincial jurisdictions have incorporated procedures into their practice through specific Rules or Standing Orders that require the Government to provide responses within a set time during a session, at least with respect to written questions. Standing Order 39 in the House of Commons states that a Member may request that a written question be answered within 45 days. If the answer to such a question is not given by the end of that time, the Member may seek to raise the substance of the question on the adjournment of the House. A written question can also be transferred to Notices of Motions or, if the Minister agrees, be made an Order for Return.

In the Legislature of Saskatchewan, there is a rule which requires the Government to respond to a written question within five sitting days. If the Government cannot meet this deadline, it can request that the question be converted into an Order for Return. And according to another rule, the Order for Return must be brought down by the Government within 180 calendar days.

The Standing Orders of the House of Commons and the Rules of the Saskatchewan Legislature are silent on the subject of delayed answers and when they should be provided, though both Houses allow Ministers to take notice of questions.

As I already noted, in his explanation as to how he managed delayed answers, Senator Lynch-Staunton stated that it was the Government’s policy when he was Deputy Leader, to answer questions within a set period of time. This was an unwritten rule which he recommended to the consideration of the Leadership of the current Government. This statement fairly reflects the nature of the problem and defines my role with respect to its resolution. If the Opposition is

dissatisfied with the disposition of written questions and delayed answers that remain outstanding from a previous session, it can perhaps approach the Government and work out a solution. As Chair, I have no explicit authority to rule on the issue.

Bill – Admissibility (C-28) (Ruling appealed and sustained)

May 14, 1996 *Journals*, pp. 202-06

When second reading debate was again about to begin on Bill C-28, Senator Kinsella rose on a point of order to object to any further proceedings on the bill. This objection rests on two main points. First, he believes that the message from the House of Commons is defective. Second, he feels that the proceedings on the bill in the House of Commons were contrary to established principles of parliamentary procedure. Following his statement, several other Senators participated in the discussion on the point of order. I wish to thank those who spoke on the matter.

Since then, I have read the *Debates* and have reviewed the authorities that were cited and I am prepared to make my ruling. I will deal with the issues raised by Senator Kinsella and other Senators in proper sequence.

The first matter I will address relates to an observation made by Senator MacEachen about the time when a point of order should be raised. He is generally correct in stating that a point of order relating to a breach in our practices should be raised when the breach is first noticed and before it becomes futile to point it out. *Beauchesne's Parliamentary Rules and Forms*, sixth edition, at citation 319 on page 97 states:

> Any Member is entitled, even bound, to bring to the Speaker's immediate notice any instance of a breach of order. The Member may interrupt and lay the point in question concisely before the Speaker. This should be done as soon as an irregularity is perceived in the proceedings which are engaging the attention of the House. The Speaker's attention must be directed to a breach of order at the proper moment, namely the moment it occurred;

And at citation 321:

> 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.

Although Senator Kinsella linked his point of order to the message which was received some days ago, it involves more than just the message itself. Moreover, Senator Lynch-Staunton is right in observing that the *Rules of the Senate* limit the opportunity to raise a procedural objection when a bill is introduced and read the first time. This point was made as well by Senator Phillips. Accordingly, I find that Senator Kinsella has raised his point of order within an appropriate time.

Citing *Erskine May Parliamentary Practice*, 21st edition, at page 510, Senator Kinsella noted that "If a bill is carried to the other House by mistake, or if any other error is discovered, a message is sent to have the bill returned or the error rectified." Looking beyond the message, the error that is the focus of his argument is the treatment the bill received in the House of Commons. Although the message that arrived here with Bill C-28 stated that it had passed the House, Senator Kinsella contends that the House did not abide by its procedures and that it sent to the Senate a defective bill. According to the Senator, Bill C-28 is not Bill C-22 as it was at the time of prorogation. This, he claims, is a violation of the order which the House of Commons itself adopted on March 4, 1996. Senator Lynch-Staunton subsequently reiterated and summarized the position stated by Senator Kinsella when he asked if the bill had been returned to the Senate in the same form as it was at the time of prorogation. For him, the answer clearly and emphatically is "no".

In response to this argument, Senator Stanbury maintained that the Senate had no right or authority to look into the proceedings of the House of Commons. Referring to *Beauchesne*, at citation 4, the Senator took note of an important privilege enjoyed by all legislative bodies, the right to regulate their internal proceedings. Yet the point of order, according to Senator Stanbury, seeks to do precisely this; it is, in his words, "an invitation to the Speaker to destroy unilaterally parliamentary tradition and constitutional conventions."

In addition to his objection about when the point of order was raised, Senator MacEachen argued that any comparison between Bill C-22 of the last session and Bill C-28 now before the Senate is irrelevant. Prorogation, as he put it, has wiped the slate clean and "it is irrelevant whether Bill C-22 was ever in the last session." Moreover, he stated that "The House of Commons is entitled to send any bill in any form to us and we are entitled to deal with it as we wish."

This then is the core of the argument on the point of order: on the one hand, it is maintained that this bill cannot be received by the Senate in its present form because it is not identical to Bill C-22 as at the time of prorogation; on the other hand, it is contended that any comparison is immaterial and to look into this question is to interfere with the internal proceedings of the other place. It is my task as Speaker to determine if this issue constitutes a valid point of order upon which I can rule.

As Speaker, I find that my authority is, and must be, limited by the mandate I have through tradition and the *Rules of the Senate*. Under Rule 18, for example, the Speaker is empowered to preserve order and decorum. The *Rules* also explain my role with respect to putting motions and calling votes. The responsibilities of the Speaker, moreover, are confined to the proceedings of the Senate itself. My jurisdiction does not extend beyond its four walls. It is with these limitations in mind that I must examine the substance of the point of order raised by Senator Kinsella.

An allegation has been made that the message is defective, but in what way remains unclear to me. While I believe that the Senate would have the right to consider bringing such a problem to the attention of the other place, it would likely do so only when confronted with incontestable evidence. If the message included a bill containing financial provisions without the requisite Royal Recommendation, it would be competent for the Senate to return the bill to the House

since, under the provisions of Rule 81, such bills cannot be considered in this place without a recommendation from the Queen's representative.

Alternatively, if the message somehow infringed the privileges of the Senate or impinged on the ability of the Senate to conduct its business adequately, the Senate might have to consider appropriate action. In this particular case, however, I can find nothing to justify the claim that the message or the bill contains a mistake or error or is defective in any way.

Bill C-28 has been sent to the Senate from the other place as passed on April 19, 1996. Noted on the cover of the bill is the statement that this bill is "in the same form as Bill C-22 of the First Session of the Thirty-fifth Parliament, as passed by the House of Commons in that session." The message attached to the bill, signed by the Clerk of that House, states that it was an Order of the House that the Clerk "do carry this Bill to the Senate, and desire their concurrence." Nothing in the message or the bill warrants any interference on my part as Speaker of the Senate.

With respect to the matter of the proceedings of the House of Commons, as I suggested earlier, I have no authority whatever to consider such a question as a point of order. I have no right to look into the proceedings of the other place to determine if it has acted in accordance with proper parliamentary practice. The privilege of that House, like our own, to regulate its own internal proceedings is indisputable and cannot be questioned. However, if the House of Commons itself determines that an error had been made in transmitting Bill C-28 to the Senate, it can advise the Senate accordingly by another message and this would be in keeping with the reference Senator Kinsella made to *Erskine May* at page 510. To date, there has been no notification from the House of Commons. Instead, I am asked to deal with a point of order raised here, but as I have tried to explain, it is beyond my authority. I cannot accept any point of order founded on the proposition that the other place did not follow adequate parliamentary procedure. The Senate must determine for itself how it will proceed with the consideration of this bill. I must rule that the bill is properly before the Senate.

Whereupon the Speaker's Ruling was appealed.

The question being put on whether the Speaker's Ruling shall be sustained, it was adopted.

Bill – Admissibility (C-28)

May 14, 1996 *Journals*, pp. 207-08

Honourable senators, the point of order raised by the Honourable Senator Phillips was that this bill was a bill of pains and penalties. I searched carefully to determine what is exactly a bill of pains and penalties, and I must say that the textbooks did not have much information on this matter. Therefore, I had to refer to dictionaries.

In quoting from *Jowitt's Dictionary of English Law*, going to "Bill of pains and penalties," we read:

> Bill of pains and penalties, a bill introduced, generally in the House of Lords but sometimes in the House of Commons, for the punishment of a particular person without trial in the ordinary way. A bill of attainder (q.v.) always imposed the penalty of death: a bill of pains and penalties inflicted some lesser penalty.

Later, in the same dictionary but under "Pains and Penalties, Bills of", we read:

> Acts of Parliament to condemn particular persons for treason or felony, or to inflict pains and penalties beyond or contrary to the common law, to serve a special purpose.

Honourable senators, I find that this bill does not fall under this category of inflicting penalty of death, or some lesser penalty. Second, I would point out that a reference in *Erskine May* at page 68 states:

> As in the case of the Lords, the Commons' constitutional role in passing Acts of attainder and of pains and penalties, and in prosecuting offences before the Lords in impeachments, is now of historical rather than current interest. But these powers have never been formally abolished.

Honourable senators, we find that they have now been abolished in the British practice. We find that they do not apply to this bill, even in the definition in its original state.

Coming back to our own book, *Beauchesne*, at page 191, citation 623, it is clear that:

> According to Canadian Standing Orders and practice, there are only two kinds of bills - public and private.

I understand perfectly that there are different points of view regarding this bill. I need only to listen to the debate to know that it is highly controversial. However, those points of view are for the Senate to decide and, if the bill is in committee, for the committee to decide, not for the Speaker to decide. I declare that this bill is a public bill, and should be proceeded with.

Question Period (recognition of Senators)

May 29, 1996 *Journals*, pp. 251-52

Honourable senators, under rule 18(3), I would indicate that I have heard sufficient argument on the subject. I am now prepared to rule on the point raised by Senator Phillips.

At the outset, I would thank the Honourable Senator Phillips for having raised the matter and those senators who have contributed to the discussion.

I refer honourable senators to rule 33(1) which states:

> When two or more Senators rise to speak at the same time, the Speaker shall call upon the Senator who, in the Speaker's opinion, first rose.

There is no specific rule regarding Question Period. This rule relates to speeches, but I have been following that rule for Question Period. The problem arises because, frequently, a number of senators rise, and those who are seated the front benches have no idea who has risen in the back benches. From my view of the chamber, it is apparent.

Insofar as seniority is concerned, I regret that I cannot show any preference to Senator Phillips. The rule is clear that my decision must be based on which senator, in my opinion, rose first.

Whether various caucuses prepare lists of speakers or questioners is not within my domain. I recommend that matter be raised within caucus; it is not a matter for the chair. If I do receive a list, I follow it to the extent that it applies to the party which has submitted the list, not to the extent that I apply it to the Senate as a whole, including the independent senators. As a matter of fact, I recognized Senator Prud'homme today when he rose. I shall attempt to continue to recognize senators as they rise.

The point made by Senator Murray, however, is germane. If senators would restrict themselves to questions and not embark on speeches and argumentative debate, senators would have an opportunity to ask more questions during the 30-minute Question Period.

I thank the Honourable Senator Phillips.

Motion – Acceptability (government motion to allocate time)

May 29, 1996 *Journals*, pp. 254-55

Honourable senators, if no other senator wishes to speak, I am prepared to rule at this point.

I would thank all honourable senators who participated in the debate.

I will deal first with the question which is not really part of the point of order but which was raised by Honourable Senator Lynch-Staunton regarding timing.

I am bound by the rules. I would refer honourable senators to page 46, rule 40, which states:

> (1) When an Order of the Day for a motion to allocate time for the consideration of any item of government business is called:
>
> > (b) the Speaker shall interrupt any proceeding then before the Senate and put every question necessary to dispose of the motion not later than two and one half hours after the order is called;...

Under that rule, I believe I have no alternative except, two and a half hours after the calling of the order, to call for the vote. I see no leeway for myself in that matter. Therefore, time spent on a point of order is unfortunately within that time period.

I have asked the Table how much time we have spent so far, and I have been informed that it is 45 minutes. I will make my ruling short so that I will not use any more time than is necessary from the allotted time.

Senator Kinsella has raised a point of order in which he questions the procedural acceptability of the motion. He has based it on a quotation from *Erskine May,* at page 409:

> A motion for the allocation of time to a bill...sets out in detail some or all of the provisions which are to be made for further proceedings on the bill.

It is on that basis that Senator Kinsella feels that Senator Graham's bill does not do this.

Honourable senator, I have looked at the citation. I must draw to your attention our own rule 39(3) which states in part:

> ...no motion moved pursuant this rule shall allocate time to more than one stage of consideration of any item of government business.

We are in a situation where our rules are specific. When our rules are not specific or when there is nothing in our rules, then we go to other sources. In this case, our rules are specific. There is no need to go to other sources. Insofar as this point of order is concerned, I find that the motion is in order.

Committee Report – Acceptability (Ruling appealed and sustained)

June 13, 1996 *Journals*, pp. 378-81

On June 11, 1996, last Tuesday, when the order was called for consideration of the ninth report of the Standing Senate Committee on Legal and Constitutional Affairs dealing with Bill C-28, Senator Kinsella rose on a point of order. He claimed that the committee in adopting a report proposing amendments that he viewed as contrary to the principle of the bill acted beyond its authority and that, in consequence, the report should not be put to the Senate. In making his case, he referred to the *Rules of the Senate* and several passages from different authorities including, *Erskine May, Beauchesne* and *Bourinot*. Senator Kinsella also cited a Senate precedent from 1973. Supporting Senator Kinsella in this view was the Leader of the Opposition, Senator Lynch-Staunton who made several interventions during the discussion on this point of order.

Presenting contrary arguments were the Deputy Leader of the Government, Senator Graham, the Chairman of the Committee, Senator Carstairs, and Senator Stewart. The basis of their argument was that the amendments to Bill C-28 adopted by the committee are in keeping with the principle of the bill and that there is nothing in the report that is objectionable from a procedural point of view.

I want to thank the Honourable Senators who participated in the debate on the point of order. I found it very interesting, though I feel that it is now the Speaker who is in a bit of a conundrum.

The crux of the matter is the identification of the principle of the bill. The opposing positions taken in the debate stem from the different assessments made as to what is the principle of the bill. Senator Kinsella and Senator Lynch-Staunton, on the one hand, claim that the principle of Bill C-28 is very specific. It is their view that the bill declares the agreement "not to have come into force and to have no legal effect." They also maintain that the bill "bars certain activity or other proceedings against Her Majesty in right of Canada in relation to the agreements". Senator Graham, Senator Carstairs and Senator Stewart, on the other hand, take a broader view of the principle of the bill. They claim that the bill seeks "to set aside the agreements and, at the same time, ... to define the liability of the Crown consequent upon the enactment of that clause".

If one accepts the position of Senator Kinsella and Senator Lynch-Staunton on the principle of Bill C-28, the committee would seem to have exceeded its powers and the report should be ruled out of order. Senator Graham and Senator Stewart argued, however, that such a specific assessment of the principle of the bill might unduly restrict the ability of the Senate or its committees to consider the substance of any bill.

In this regard, I was interested in the references to the ruling made by Senator Macnaughton cited by Senator Kinsella. The ruling of Senator Macnaughton was made November 21, 1973 in his capacity as Chairman of the Committee of the Whole while it examined Bill C-2, an Act to amend the Criminal Code. An amendment had been proposed to abolish capital punishment permanently. A point of order was raised challenging the amendment because it was thought to be contrary to the principle of the bill. To determine what was the principle of the bill, Senator Macnaughton reviewed the second reading debate as well as the bill itself. In this particular case, the amending bill sought to provide for a continuance of an experiment to limit the application of the death penalty for five more years and this intention was confirmed by the debate at second reading. As Senator Macnaughton pointed out, twenty-four of the twenty-eight senators who spoke during the second reading debate mentioned the principle of the bill and agreed on it. With such a consensus, Senator Macnaughton was able to rule that the proposed amendment was out of order and, as Senator Kinsella pointed out, his decision was sustained following an appeal to the Senate.

In the pattern of Senator Macnaughton, I have studied the bill and reviewed the debate at second reading. The debate on Bill C-28 took place over several days beginning May 15 when the sponsor of the bill, Senator Kirby, addressed the intentions of the Government in bringing forward this particular legislation.

Reviewing the history of this bill, he indicated that its purpose was "to cancel the Pearson airport agreements." At the same time, however, he indicated that the Government was prepared to introduce amendments to address legal objections to the bill that had been made during consideration of Bill C-22 in the previous session. During the course of his remarks, he explained what the amendments would seek to do. On page 350 of the *Debate of the Senate*, Senator Kirby outlined the specific nature and purpose of the amendments that the Government was prepared to move in committee.

Much of the remaining debate that took place on second reading acknowledged the fact of possible amendments with the caution that there could be no approval of the amendments before

they were actually presented in committee. Though he remained opposed to the Government's policy with respect to Pearson airport agreements, Senator Lynch-Staunton seemed to welcome the evident intention of Senator Kirby to introduce amendments that "will address the concerns of senators opposite him". At the same time, however, Senator Lynch-Staunton stated that he would not debate "what is not before us".

Second reading of Bill C-28 was given by the Senate on May 30 and the bill was then referred to the Standing Senate Committee on Legal and Constitutional Affairs where the amendments were duly moved and adopted. The Committee reported the bill with these amendments and an observation last Monday, June 10.

In my assessment, the principle of this bill is not a simple one to identify. Certainly the language of the bill itself does not identify its principle in precise terms. The title indicates that the bill relates to certain agreements concerning the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport. These agreements are to be abrogated and a mechanism established to compensate some of the affected parties. To what extent the specific provisions of the bill dealing with the status of the agreements and the issue of liability are to be counted as part of the bill's principle is subject to interpretation.

Senator Kinsella held that there were three criteria by which amendments to a bill could be assessed and, as if to prove the point, Senator Stewart suggested that the committee amendments fulfil these three conditions. In this connection, I am mindful of the fact that amendments similar to these now proposed were adopted by the Senate during consideration of Bill C-22 without objection.

As Speaker, my role is to see to it that the rules and practices of the Senate are followed and that Senators are provided with an opportunity to debate issues in an orderly manner so that the Senate can come to its decision on those issues it has elected to consider. In this case, I am reluctant to find for the point of order raised by Senator Kinsella. The arguments that have been presented were persuasive, but not conclusive. The one thing that is clear is that there is no consensus on the principle of this bill and it is not for the Chair to impose one.

Accordingly, I feel that it would be more appropriate to allow the Senate to determine what constitutes the principle of Bill C-28. The Standing Senate Committee on Legal and Constitutional Affairs has proposed certain amendments to the bill and it would be better for the Senate itself, rather than the Speaker, to determine whether those amendments should be incorporated into the bill. Therefore, the report will be put before the Senate for debate.

Whereupon the Speaker's Ruling was appealed.

The question being put on whether the Speaker's Ruling shall be sustained, it was adopted.

Motion – Acceptability (amendment referring report back to committee)

June 18, 1996 *Journals*, pp. 406-07

Honourable senators, I have met with the two deputy leaders and we have arrived at an agreement. First, I want to make it clear that this is not a precedent. No precedent is involved.

We have agreed to accept the amendment and proceed concurrently with debate on the amendment and on the main motion. At the end of the six hours, or whatever time is agreed by both sides, the vote will be held

We will put the amendment and proceed with the debate. I repeat, there is no precedent created.

Bill – Admissibility (C-42)

October 2, 1996 *Journals*, pp. 566-68

Honourable Senators, yesterday during debate on the second reading of Bill C-42, an Act to amend the Judges Act and to make consequential amendments to another Act, a point of order was raised asking for a ruling from the Chair. Senator Kinsella asked me as Speaker to determine whether Bill C-42 is a public or a private bill. He made this request following remarks of Senator Cools in which she suggested that there were elements of the bill that seemed to be essentially of a private bill nature. In supporting the request of Senator Kinsella, Senator Cools asked that the comments she had made during second reading debate be taken into consideration. She also suggested that I read an article that appeared in a newspaper. In addition, Senator Kinsella also asked me to assess whether the bill impinges any part of the Constitution.

I have reviewed these statements as well as earlier comments made during second reading debate, examined the bill and studied the relevant authorities and am now prepared to rule on Senator Kinsella's point of order.

Basically, the question before us seems to be one of definitions: What is a public bill and what is a private bill? Citation 623 of *Beauchesne*, 6th edition at page 192 states that:

> A public bill relates to matters of public policy while a private bill relates to matters of a particular interest or benefit to a person or persons. A bill containing provisions which are essentially a feature of a private bill cannot be introduced as a public bill. A bill designed to exempt one person from the application of the law is a private bill and not a public bill.

And at citation 1053 (page 285-6), *Beauchesne* further explains that:

> Private legislation is legislation of a special kind for conferring particular powers or benefits on any person or body of persons, including individuals and private corporations, in excess of or in conflict with the general law.

From these definitions, it is pretty clear to me that in order for Bill C-42 to be viewed as a private bill, it must be the case that its provisions do not relate at all to public policy, but rather confer particular benefits on certain individuals or provide an exemption from the general law. To assess this issue, it has been necessary for me to review the provisions of the bill. I also read the statements made by Senator Cools and the remarks of Senator Bryden, who is the sponsor of the bill, and the comments of Senator Berntson, who spoke in reply, when the motion for second reading was first moved on June 19th.

Based on the debates thus far, it seems evident that Bill C-42 is attempting to accomplish a number of objectives: One, it establishes a mechanism to permit judges to apply for a leave of absence without pay in order to participate in international activities or international technical assistance programs under certain conditions. Two, Bill C-42 transfers from the cabinet to chief justices the authority to approve leaves of up to six months. Three, it permits the appointment of a judge to the Ontario Court of Appeal and of two judges to the British Columbia Court. Four, the bill adds the Chief Justice of the Court Martial Appeal Court to the membership of the Canadian Judicial Council. Finally, the bill also makes a change with respect to the annuity entitlements of judges in certain circumstances and provides for representational allowances to the Chief Justice of the Court Martial Appeal Court as well as to the Chief Justices of the Yukon and Northwest Territories Courts of Appeal. While some of these changes may relate at the moment to identifiable individuals, they are designed to have lasting application; consequently, they are not in any way an exemption from the general law, but a change to it. Given this interpretation, it seems clear to me that Bill C-42 is a public bill, and not a private one.

In addition, I would refer Honourable Senators to citation 1055 of *Beauchesne* at page 286 where an explanation is given about four principles used to determine whether a bill introduced as a private bill should in fact be treated as a public one. Applying the appropriate principles to this particular bill in order to evaluate its public or private character, I believe that my assessment of Bill C-42 as a public bill is confirmed. As I have already indicated, its subject matter relates to public policy; it also proposes to amend or repeal a public act; and it has as its object what is essentially a public matter.

Accordingly, I must conclude that Bill C-42, which was introduced in the other place by a Minister of the Crown as a matter of public policy and with a Royal Recommendation attached to it, is a public bill.

With respect to the second question asked by Senator Kinsella whether or not this bill impinges upon provisions of the Constitution Act, I must reply that by long established tradition and practice, the Speaker generally refrains from any involvement in constitutional or legal questions. In support, I would refer Honourable Senators to citation 168(5) in *Beauchesne* at page 49 where it is stated 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 a question of privilege.

Debate will now resume where we left it yesterday.

Miscellaneous – Whether Speaker had said "adopté, carried"

October 2, 1996 *Journals*, p. 569

Honourable senators, yesterday afternoon a question arose as to whether I had said "adopté, carried". We had some discussion on this matter, and it was agreed that the transcripts would be reviewed. After the session yesterday, we obtained the tape and sought consultation with both sides, representatives of whom came to my chambers and listened to the tape. Subsequently the tape was played for Senator Prud'homme, the only member of the independent group who is here, and I think everyone was satisfied that, indeed, I had not said "adopté, carried". Therefore, the question before us is the motion in amendment proposed by the Honourable Senator Doody, seconded by the Honourable Senator Kinsella.

Orders of the Day (disposition of items)

December 10, 1996 *Journals*, pp. 744-45

On Wednesday, December 4, just before the Senate adjourned for the day, a question of procedure was raised by the Honourable Senator Lynch-Staunton concerning how Orders of the Day may be proceeded with. The Senator asked about the practice relating to the disposition of items on the *Order Paper* that stand adjourned in the name of a Senator over an extended period of time. Senator Lynch-Staunton also asked whether the practice of adjourning items could delay or even prevent a vote on that item.

While I offered some preliminary comments, I also stated that I would look into the matter more closely and return to the Senate with my conclusions. The need to provide an explanation about this practice became apparent the next day, Thursday, December 5, when the adjourned debate on Bill S-13 standing in the name of Senator Lavoie-Roux was called and subsequently debated.

The adjournment of *Order Paper* items is governed by rule 49 of the *Rules of the Senate*. Part 1 of the rule dealing with the disposition of non-government items states:

> A motion to adjourn a debate on an item, other than an item of government business, shall be deemed to be a motion to postpone that debate to the day specified in the motion, or, if no day is specified to the next sitting day. In either case, the said item shall stand on the *Order Paper* in the name of the Senator who moved the adjournment, or another Senator, if so indicated.

Part 2 relating to the disposition of government items states:

> A motion to adjourn the debate on any item of government business shall be deemed to be a motion to postpone that debate to the next sitting day. In this case, the item shall not stand on the Orders of the Day or the *Order Paper* in any Senator's name and may be called pursuant to rule 27(1).

Prior to 1991, there was no distinction between government business and other business. Any item adjourned would stand on the *Order Paper* in the name of the Senator moving the adjournment. Since 1991, however, this distinction has been a feature of our practice. And while there has been no apparent difficulty with the application of this rule with respect to government items, the situation with respect to non-government items is not as clear as evidenced by the questions put to me by Senator Lynch-Staunton, December 4.

When an adjournment is proposed to the debate of an item other than government business and the motion carries, the item will stand on the *Order Paper* in the name of the Senator who moved the adjournment or the Senator on whose behalf the adjournment was proposed. The name of the Senator is indicated in parenthesis and it merely identifies which Senator moved the adjournment the last time the item was dealt with. It does not give that Senator alone the right to decide if that item will be proceeded with, though it has sometimes appeared that way because of the courtesy usually extended by the Senate towards the Senator who adjourned the item. This is apparent whenever a Senator desires to speak on an adjourned item already standing in the name of another Senator. This, of course, is precisely what happened December 4 when Senator Lavoie-Roux indicated that she wanted to speak to the motion originally proposed by Senator Beaudoin. Senator Petten, in whose name the motion was last adjourned, agreed so long as the item would continue to stand in his name.

While this might suggest that the Senate requires Senator Petten's consent, the fact is that it does not. As rule 49 explains when the item was last adjourned, it was adjourned either to a specified day or to the next sitting day and that day having arrived, the Senate can debate the item according to the order it has adopted. Usually, when a Senator requests that the item again be stood, the Senate complies by its silence and the Senate proceeds to the next item. Should the Senate decide to debate the item, the Senator who had adjourned it will usually be accorded the opportunity to speak first; otherwise any other Senator will be recognized to speak.

If the item is debated and again adjourned, it can stand in the name of the Senator who actually adjourned it that day or, if the Senate agrees, in the name of the Senator who had previously adjourned it. To allow our practice to operate any other way, could create a situation where a Senator who had adjourned the debate could continually adjourn an item until such time as rule 27(3) required that it be dropped from the *Order Paper* or, as Senator Lynch-Staunton supposed, it could allow a Senator to prevent any decision from being made. I do not believe that such an interpretation would be in the best interests of the Senate.

Motion – Acceptability (amendment to a motion to refer a bill to a committee)

December 16, 1996 *Journals*, p. 790

On Friday, December 13, Senator Kenny moved the motion to refer Bill C-29, an Act to regulate interprovincial trade in and the importation for commercial purposes of certain manganese substances, to the Committee on Energy, the Environment and Natural Resources. Senator Kinsella then attempted to move an amendment. His amendment sought to have the committee produce an interim report to answer certain questions about MMT before submitting its final report on the bill.

Following an intervention by Senator Kenny objecting to the amendment as a proposition, Senator Corbin rose on a point of order. Referring to rule 58, he maintained that the amendment was not really an amendment, but an instruction, and as such it was out of order because it lacked the required notice.

Senator Kinsella replied that the amendment was indeed in order, and he cited the example of the amendment that had been moved June 11, 1996 to the order of reference to the Committee on Legal and Constitutional Affairs respecting Term 17. At the conclusion of his remarks, I stated that I would review the matter and come back with a ruling at the earliest opportunity.

Before considering the amendment of Senator Kinsella, it is necessary for me to point out that the motion of Senator Kenny seeks only to refer Bill C-29 to the committee. According to our practices, the motion referring a bill to a committee is now treated as a consequential motion that is automatically moved after a bill has received second reading. The motion of reference regarding Term 17, on the other hand, was a substantive motion independent of any other consideration. The two cases are not really comparable to each other.

According to my understanding of rule 62(1)(i) and 62(2), a motion referring a bill is not debatable or amendable while a motion referring any other kind of question, such as the substantive motion on Term 17, is both debatable and amendable. Rule 62(1)(i) states that "the reference of a question other than a bill to a standing or special committee" is a debatable motion. Rule 62(2) explains 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."

Consequently, the proposition of Senator Kinsella must be made as a separate substantive motion requiring notice, which is the basic point that Senator Corbin raised. It cannot be moved as an amendment to the motion to refer the bill to committee and is out of order.

Bill – Admissibility (S-12)

February 4, 1997 *Journals*, pp. 821-24

Honourable Senators, you will recall that when Senator Tkachuk attempted to move second reading of Bill S-12, an Act providing for self-government by the First Nations of Canada, a point of order was raised by Senator Stanbury who objected to the proceedings because the bill lacked a royal recommendation. As debate on the point of order proceeded, it became apparent that the issues raised were indeed significant. They relate to the right of the Senate to consider legislation. In preparing my decision, I have spent a great deal of time reviewing the authorities on the subject of money bills in general and the practices of the Senate in particular, with regard to financial legislation.

To better explain the issues involved, I will briefly review the arguments that were presented by Senators who spoke to this point order.

Citing rule 81 of the *Rules of the Senate*, Senator Stanbury asked me to rule whether Bill S-12 is properly before the Senate, since it could be regarded as a money bill requiring a royal recommendation which it does not have. Senator Stanbury argued that bills requiring an expenditure of public funds cannot be introduced in the Senate. In his view, Bill S-12 would result in the expenditure of federal funds for the transfer of reserve lands to First Nations because of a need to conduct land surveys and environmental audits. In addition, he argued that by extending to Indian corporations the tax exemption currently available to Indian individuals under the Indian Act, a significant amount of potential tax revenue would be eliminated. Because costs seemed to be involved in Bill S-12, Senator Stanbury claimed that it is a money bill and therefore requires a royal recommendation. He noted that a previous bill on the same subject, Bill S-18, had been ruled out of order on February 27, 1991, because the Speaker found it to be a money bill which lacked a royal recommendation.

Senator Tkachuk, having anticipated this point of order, argued that the Senate should proceed to consider this bill. He stressed that the Senate must not continually narrow its focus and run the risk of becoming irrelevant. Rather, Senators must be allowed to move bills in which they believe, as long as they do not overstep their constitutional bounds. Senator Tkachuk argued that the passage of Bill S-12 would have no impact on the public purse of the Government of Canada and should therefore be ruled in order.

In speaking to the point of order, Senator Cools referred to two reports of the Senate which have an important bearing on this question. The more recent of the two is the Ninth Report of the Standing Senate Committee on National Finance on the subject of royal recommendations, adopted by the Senate on May 29, 1990. The other is the Report of the Special Committee appointed to determine the Rights of the Senate in Matters of Financial Legislation, commonly known as the *Ross Report*, adopted by the Senate on May 22, 1918. Senator Cools voiced her concerns about so-called “money bills”. She also raised questions about the rights and privileges of individual Senators and Members of Parliament to move initiatives through their respective chambers and the level of government control over the parliamentary agenda. Senator Cools suggested that it is the Speaker’s duty to defend the rights and privileges of individual members of Parliament, particularly Senators.

When Senator Kinsella spoke to the point of order, he drew attention to clause 12 of the bill and asked whether that clause is attempting to give the power to tax. If so, he suggested that it would likely be “within the rubric of what constitutes an appropriation of public money.” This point about taxation was seized upon by Senator Stanbury who felt that it added to the arguments he had made earlier. Senator Tkachuk replied that there would be no tax consequences to the Government of Canada from Bill S-12, since it would impose no taxes, but rather “it would recognize the legislative jurisdiction of the Indian community to raise money by way of taxes and other assessments. The power to tax arises from the *Indian Act* and is an action already authorized by Parliament...The bill only recognizes the power and moves it from the *Indian Act* to Bill S-12.”

Finally, Senators Twinn and Marchand spoke to the importance of the legislation. Senator Twinn also noted that he saw no added costs being incurred through passage of the bill. I wish to thank them and all other Senators who participated in the debate on this point of order.

My obligation as Speaker is to apply the *Rules of the Senate* to the best of my ability. There are only two Senate rules which directly address the subject of money bills, and only one is relevant to the matter before us today. Rule 81, which was cited by Senator Stanbury, states that:

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

This rule extends to the Senate the constitutional requirement imposed on the House of Commons by section 54 of the *Constitution Act, 1867* which states that:

> 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.

By adopting rule 81, the Senate took the responsibility to ensure that bills appropriating public money are initiated by the Crown and recommended to Parliament. Non-ministerial parliamentarians, including Senators, do not have the opportunity to introduce bills that would appropriate any part of the public revenue or of any tax or impost.

The key question then becomes whether or not Bill S-12 appropriates public money. Past interpretations of rule 81 and what constitutes an "appropriation" have sometimes been quite broad, for instance when Bill S-18 was ruled out of order in February 1991. In that case, reliance was placed on statutes and practices in the British House of Commons which have, to some extent, been adopted by our House of Commons. However, I would like to remind Senators that with respect to the powers of the Senate and the House of Commons in dealing with money bills, the two chambers have not always agreed. Indeed, the *Ross Report* rejected the idea that British practice with respect to money bills was any part of the Constitution of Canada and noted that claims by the House of Commons to the broader powers and privileges of the British House of Commons were unwarranted under the *British North America Act , 1867.*

In addition, the Senate's National Finance Committee has expressed some doubts about the use of the current form of the royal recommendation. As the Committee Report of 1990 explained, prior to 1968, each bill or clause in a bill which sought or authorized an appropriation was preceded by passage in the House of Commons of a financial resolution which defined the amount and purpose of the appropriation. This resolution was recommended to the Commons by the Governor General and formed the basis of the subsequent bill. In 1968, the Standing Orders of the House of Commons were amended so that the royal recommendation would be given to the Commons in the form of a printed notice, rather than a proposed resolution. For several years after the change, the notice of the royal recommendation still provided sufficient detail to explain the amount and purpose of the appropriation. However, since 1976, the royal recommendation has taken on a standard form, and the purpose and amount of any appropriation is no longer evident. Indeed, testimony before the National Finance Committee indicated that the royal recommendation is sometimes attached to bills in which there is no apparent appropriation. As a

consequence, the Committee recognized that members of both Houses, including the Speakers, are now left without a clear statement from the Crown as to what appropriations are being sought by a recommendation. Seven years after the report was adopted, the problem still exists.

In the case of Bill S-12 now before us, the task is not to determine what the recommendation might mean, but whether one is required at all. I have carefully reviewed Bill S-12 with respect to the arguments that were made on November 27 and I have been unable to find any provision that clearly appropriates money from the Consolidated Revenue Fund. Moreover, while Senator Stanbury indicated that clauses 16 to 27 might possibly involve an expenditure by the government, it is not certain whether these anticipated operations would be funded by a new appropriation which would require a royal recommendation or by existing allocations established through previous legislation. Nor is there any language in the bill that effectively imposes any perceived appropriation. Yet these are the conditions to be satisfied when considering whether a royal recommendation should be attached to the bill.

Also, with respect to the concern about foregone tax revenue, I can find no basis for ruling the bill out of order. Bill S-12 would extend to Indian corporations the tax exemption currently available to Indian individuals under the *Indian Act*. The objection raised is that this extension would eliminate potential tax revenue and therefore amount to an appropriation of public revenue. However, there is no requirement for a royal recommendation in cases where a bill proposes to reduce a charge or extend an exemption from a tax.

Without sufficient evidence that Bill S-12 as drafted provides for an appropriation or creates a new charge, I have no authority to prevent debate on it. Based on the arguments that were presented, I find that a case has not been made that Bill S-12 requires a royal recommendation. With respect to rule 81, the bill is properly before the Senate. Accordingly, its fate rests with the Senate itself.

When I began my ruling I mentioned that I had taken a great deal of time to review this matter. I recognize that this may have been inconvenient to some Senators, but the time was needed in order to sift through the debate on Bill S-12 and to review the tangled history of money bills and the use of the royal recommendation. It has been a challenging task. It has also revealed to me that something really should be done to clarify the position of the Senate with respect to financial legislation and the proper use of the royal recommendation. The *Ross Report* and the National Finance Committee Report acknowledged these problems and recommended further study. Perhaps the time has finally come for the Senate to follow up on these proposals.

Bill – Consideration of committee report prior to examination of interim report of committee (Ruling appealed and sustained)

March 5, 1997 *Journals*, pp. 1067-69

Yesterday, after I had called “Orders of the Day”, Senator Kinsella rose on a point of order to object to the course of certain events that had occurred during Routine Proceedings. It is his contention that the order of the Senate setting the consideration for third reading of Bill C-29 “at the next sitting of the Senate” is out of order. He based his position on the fact that the Senate

had adopted a motion on February 4 ordering the Standing Committee on Energy, the Environment and Natural Resources to prepare an interim report related to Bill C-29 for the purpose of answering several questions. Using references to the practices of the National Finance Committee and its consideration of the Estimates, Senator Kinsella argued that, from a procedural point of view, there should be an examination of the interim report before debate proceeds to the third reading of Bill C-29. According to Senator Kinsella, "unless we are to rescind the order made by this House on February 4, 1997 ... we must first proceed with an examination of the interim report, and then with an examination of the report of the committee on the bill itself."

Although I suggested that I did not believe it was the appropriate time to raise the point of order according to my understanding of rule 23(1), I allowed debate to continue and invited other Senators to submit their arguments. The Deputy Leader of the Government, Senator Graham, challenged Senator Kinsella's position and maintained that there was no procedural link between the interim report and the report on the bill. As he explained, the terms of the resolution of February 4 were met by the presentation of the interim report, a position subsequently endorsed by Senator Kenny. Senator Graham went on to state that with respect to the report on the bill, as it was presented without amendment, it was deemed adopted and a motion was carried to have the item placed on the *Order Paper* for third reading consideration at the next sitting.

The Leader of the Opposition, Senator Lynch-Staunton, urged that we look to the intent behind the motion of February 4. From this perspective, he said, the case is very clear. "It was to give this chamber" as he stated, "guidance on three key questions relating to the subject-matter of the bill in order to help the Senate, in debating the interim report, to have a better understanding of the issues involved." However, by reversing the order, by allowing the third reading debate to proceed, before debate on the interim report, he claimed that the Senate would be contravening the intent of the February 4 motion. This position was also supported by Senator Nolin.

I want to thank Honourable Senators for the arguments that were presented. Based on what was said, I fully appreciate the different positions that have been taken on this matter.

First of all, I want to address the issue of when this point of order should be raised. Rule 23(1) states in part that:

> Any question of privilege or point of order to be raised in relation to any notice given during this time [of Routine Proceedings] can only be raised at the time the Order is first called for the consideration by the Senate.

Thus, the first appropriate opportunity to raise this point of order as to whether it is procedurally acceptable to proceed to third reading of Bill C-29 would be when that item is actually called the first time. The reason behind this rule, as I perceive it, is that points of order should be anchored to the proceeding that is being questioned, in this case the third reading of Bill C-29. Be that as it may, the Senate seemed disposed to hear the point of order raised by Senator Kinsella and so I decided to allow the arguments to be made despite the clear intent of rule 23(1). Let it be understood, however, that this should not be construed as a precedent. Unless the Senate decides to change the rule, I feel bound to apply it when required to do so.

As to the substance of the point of order, the dispute revolves around the difference in the interpretation of the motion adopted February 4. The relevant portion of the motion states:

> That, notwithstanding rule 98, the Standing Senate Committee on Energy, the Environment and Natural Resources present an interim report, before submitting its final report on Bill C-29...

On the one hand, it has been proposed that I follow the example of the courts when confronted with ambiguous language in the law and go behind the intent of the motion. On the other hand, I am advised that this is unnecessary since the language of the motion is clear and straightforward. In this particular case, I am inclined to agree that the terms of the motion are not particularly ambiguous or open to interpretation**.** The motion simply authorized the Committee on Energy, the Environment and Natural Resources to present an interim report before presenting its report on Bill C-29 and this is what has happened. The motion did not stipulate or suggest in any way what subsequent action was to be taken after these reports were presented. The motion provides no indication at all that one report was to be debated before the other. If the language of the motion had even suggested any follow up proceeding beyond the presentation of the reports, I would have considered the point of order differently. In this case, however, it is unnecessary to follow the cited example of courts since there is nothing ambiguous in the terms of the motion. Were I to do so, I believe I would be exceeding my authority as Speaker.

Accordingly, I rule that the order for the third reading on Bill C-29 is properly before the Senate and that it will be in order to move the appropriate motion when the order is called later this day.

Whereupon, the Speaker's Ruling was appealed.

The question being put on whether the Speaker's Ruling shall be sustained, it was adopted.

Motions – Notice (Right of Acting Deputy Leader of Government to give Government Notice of Motion)

March 18, 1997 *Journals*, p. 1127

Honourable senators, this might be an opportune time for me to rule on the point of order raised earlier this day by the Leader of the Opposition. The point of order was whether Senator Stanbury could, indeed, proceed to act as the Acting Deputy Leader of the Government for the purposes of the motion he had made.

I did not want to rule immediately because I first wanted to be sure that there was nothing in the books establishing how one becomes the Deputy Leader of the Government or the Deputy Leader of the Opposition. Indeed, there is nothing in the books. It has been by precedent.

The practice in the past, and I believe it has occurred on both sides of the chamber, is that the person who sits in the chair of the Deputy Leader, either of the Government or the Opposition, is deemed to have that authority. If honourable senators will check back, they will find that, on

both sides, it has happened that that person has acted in that position. The book does not say anything else, so I must operate on the basis of precedent.

Further, today, the Senate did accept that Senator Stanbury indeed had the right to proceed since, at the early part of the day's proceedings, under Government Notices of Motions, Senator Stanbury rose and asked leave of the Senate to move a motion, and no point of order was raised.

I therefore rule that the motion made by Honourable Senator Stanbury is in order.

Motions – Acceptability (government motion to allocate time)

April 8, 1997 *Journals*, p. 1150

I have been following the Rules while the discussion was going on. I must agree with what the Honourable Senator Kinsella says, namely, that Rule 39(1) states that:

> Such motion shall be placed on the Orders of the Day under "Government Motions" for the next sitting day.

On checking the *Journals of the Senate* for the next day, which was March 19 and 20, the motion did appear on the Orders of the Day under "Government Motions". It was called and postponed until the next sitting.

If you go to Rule 27(1), the Rule clearly states that:

> Government Business shall be called and considered in such sequence as the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate shall determine.

That leaves the complete responsibility in the hands of the Leader of the Government in the Senate or in the hands of the Deputy Leader of the Government to call or not to call an item and in whatever order.

I therefore find that, as far as the present Rules are concerned, the procedure that has been followed is proper and the point of order is not valid.

It may well be that Honourable Senators think that the Rule should be changed. As I work with the Rules, I find many changes that are necessary in my view. However, it is not within my responsibility to do so. Under the present Rules, I find that the procedure is proper and the debate can continue.

Bill – Admissibility (S-16)

April 24, 1997 *Journals*, p. 1276

If no other honourable senator wishes to speak, I am prepared to rule.

My opinion has not changed on this bill. When it was presented the first time. I ruled that it was out of order. This bill is identical. Therefore, I rule again that it is out of order.

First Session, Thirty-Sixth Parliament
September 22, 1997 – September 18, 1999

Speaker: The Honourable Gildas L. Molgat

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

Adjournment of debate – Decision of Senate to refuse

November 6, 1997 *Journals*, p. 166

Honourable senators, if there are no other comments on the point of order, I am prepared to rule now.

The Honourable Senator Lynch-Staunton has said that surely I would sympathize with him. My problem is that my job is not to sympathize; my job is to rule according to the *Rules of the Senate*, and those rules say nothing about when an adjournment can be taken. It can always be taken. Therefore, I am in the hands of the Senate.

Under the rules, the Senate has the right to refuse to grant the adjournment of a debate, if it so chooses, at any time. The rules do not address that matter. Perhaps it is something that the Rules Committee should look at. This may well be something that has been missed. At the moment, however, the rules are silent. Therefore, an acceptance or refusal of a request for adjournment is within the rules. I cannot rule otherwise.

I should like to address the point raised by the Honourable Senator Cools. When I asked whether leave was granted, as had been requested by the committee chairman, I did not hear any one say "No" to that question. I did hear "No" later, as to whether the motion could be put, but concerning leave, I did not hear anyone say "No". I have checked with my staff and they did not hear anything, either.

In future, please, when someone does not want something to be done, please say "No" clearly, so that we can hear. The staff is here to check, as I am. Frankly, I did not hear it. I heard it later.

In my opinion, I cannot accept the point of order. The debate may continue.

Motion – Acceptability (motion in amendment)

November 6, 1997 *Journals*, p. 167

Honourable senators have asked for a ruling on whether the amendment to the motion is in order. I have considered this matter carefully. I do not find the amendment to be contradictory. It, indeed, offers an alternative which, in my opinion, makes it a valid amendment. I, therefore, declare that the amendment is in order.

Bill – Admissibility (C-16)

November 20, 1997 *Journals*, pp. 194-95

Honourable senators, if no other honourable senator wishes to speak, I am prepared to rule on the matter.

I have listened carefully, honourable senators, to the arguments presented. I am very conscious of my responsibilities as Speaker insofar as protecting the rights and privileges of the Senate are concerned. I have listened because that is one of my main obligations.

I wish to remind honourable senators, however, that it is not my responsibility to rule on matters of law or the Constitution. That is totally outside my field of jurisdiction.

My responsibility is to deal with the rules of the Senate. I have looked over the bill carefully. I find nothing in it which differs from the normal bills which we receive. The bill has not come to us in any different way from bills that normally come to us. It has come to us via a message sent to us from the House of Commons. The procedure followed has been the normal procedure according to our rules.

It is not for me to go behind this matter. Regardless of what may have been said elsewhere or by the Supreme Court, it is not for me to judge, unless it impacts upon the privileges of the Senate.

I confess that I see no threat here. Some may see a threat expressed elsewhere, but there is no threat in this bill. There is no threat in the way in which it has come to us. It may well be that honourable senators do not like the bill, which is their privilege. It is for them to decide that in debate and when it reaches committee. It is not for me to prevent such debate, unless the bill was against the *Rules of the Senate*.

I find that no rule has been broken. As far as I can see, this bill has come to us in the normal way and is a normal bill. What has been said behind it is not for me to judge.

Therefore, I ask Honourable Senator Moore to proceed with his speech on second reading.

Motion – Right of Speaker to decide the acceptability of a motion in amendment without point of order being raised

November 27, 1997 *Journals*, p. 249

Honourable senators, I would refer you to rule 18(1), to which the Honourable Senator Kinsella referred. I read from the middle of rule 18(1), which states:

> Furthermore, the Speaker shall be authorized to act on his or her own initiative to interrupt any debate to restore order or to enforce the *Rules of the Senate*.

Obviously there is no question of order, but there is a question of the *Rules of the Senate*. Was the proposal that was made in order and within the *Rules of the Senate* of Canada?

I questioned whether it was within the *Rules of the Senate*. My comment was that this was a rather unusual proposal, one that we have not heard before. I am not sure whether it is within the *Rules of the Senate*. Under rule 18(1), I am authorized to review the matter. That is the responsibility assigned to me, and that is what I was assuming.

Of course, honourable senators are always in control of what happens in the Senate. I was operating under the instructions in the rule book, rule 18(1).

On that basis, unless honourable senators wish to overrule me, I maintain that I must look into this proposal to see if it is within the *Rules of the Senate*.

There is no need to adjourn the debate. If honourable senators are agreed, the matter is under advisement, and I will return to you when I have looked at the question.

I repeat that the Senate is the master of its own rules. If it is the wish of honourable senators at this time to say they want to proceed, that is perfectly in order. My suggestion is that we follow the *Rules of the Senate*.

Motion – Acceptability (motion in amendment)

December 2, 1997 *Journals*, pp. 260-61

Last Thursday, November 27, during debate on second reading of Bill C-16, an Act to amend the Criminal Code and the Interpretation Act (powers to arrest and enter dwellings), Senator Cools proposed an amendment. The amendment appears to be an alternative to the second reading motion. It declares the opposition of the Senate to the principle of the bill. The amendment also states that the Senate finds the actions of the Supreme Court repugnant because it is infringing the sovereign rights of Parliament and because the Court is in effect coercing Parliament.

When I received this amendment, I indicated to the Senate that I wanted time to consider it in case of any irregularity or any other substantial procedural objection. My action was questioned at the time, but I explained that I felt I had this duty under the broad terms of Rule 18.

In this case, there is no doubt that this amendment is framed in strong language which challenges certain actions taken by the Supreme Court. The amendment is also related to a point of order that Senator Cools raised Thursday, November 20. For these reasons, I felt it prudent to review the amendment. My purpose in doing this is not to restrict the legitimate rights of Senators, but to exercise my responsibilities, as I see them, in order to protect the interests of the Senate as a whole.

When I first saw the amendment and noted its language, I was concerned that it might violate an established rule of debate. This rule found at citation 493(1) of *Beauchesne* sixth edition states that “all references to judges and courts of justice of the nature of personal attack and censure have always been considered unparliamentary, and the Speaker has always treated them as breaches of order.”

However, as is explained in *Erskine May* at page 380 of the 21st edition, it can be procedurally acceptable to criticize a court and its decisions within certain limits. The most acceptable way to do this is by a substantive motion moved after notice. In this case, because of the particular circumstances of this bill, the motion has been moved as an amendment opposed to the second reading of the bill.

From a procedural point of view, the amendment that has been proposed by Senator Cools must be identified as a reasoned amendment. According to *Beauchesne* at citation 670 at page 200, a reasoned amendment can be proposed during second reading debate "to place on the record any special reasons for not agreeing to the second reading of a bill." The citation goes on to explain the various possible categories of reasoned amendments. One of them is particularly pertinent to the amendment proposed by Senator Cools. Subsection 5 of the same citation states that a reasoned amendment "may express opinions as to any circumstances connected with the introduction or prosecution of the bill, or otherwise opposed to its progress. It may oppose the principle of the bill but not propose that the bill be withdrawn and a new one introduced."

The effect of a reasoned amendment is to supersede the question for the second reading of the bill. If it is adopted, the motion for the second reading of the Bill C-16 will not be put to the Senate since, by adopting the reasoned amendment, the Senate will have declared its support for a proposition which is contrary to the principle identified with the bill. If the amendment is defeated, however, the motion for the second reading of Bill C-16 will not have been superseded; it will still be before the Senate for further debate and possible amendment.

There can be no doubt that the amendment moved by Senator Cools is clearly opposed to the principle of the bill and it also expresses opinions as to the circumstances related to the bill's introduction and consideration. Furthermore, as I reviewed citation 671 dealing with other procedural criteria that might be used to assess the acceptability of a reasoned amendment, I could only conclude that the amendment is relevant, it is not concerned with the detailed provisions of the bill, it attaches no conditions to the second reading motion and it is more than a direct negation of the principle of the bill. Accordingly, I rule that the amendment is in order.

Motion – Acceptability of government notice of motion respecting time allocation

December 10, 1997 *Journals*, p. 334

If no other honourable senator wishes to speak, I make the general observation that, indeed, much of the wording of the rules could be improved so that they are clearer. It would make life easier for the Speaker.

In general, debates on rules are interesting and useful as they are a means of arriving at improvements to our rules. I agree with the general principle that the Speaker must be conscious of the rights of minorities. I am quite aware of that.

However, honourable senators are asking me now to rule on something upon which I should not be asked to rule and upon which it is an impossibility for me to rule; that is, what has been said or done in private conversations at which I was not present. One senator is stating one thing, another is stating another about conversations to which I was not and should not have been privy. It is impossible for me to rule on that matter. I must accept that the notice of motion is in order.

Whereupon the Speaker's Ruling was appealed. Sustained.

Bill – Amendment to a reasoned amendment

December 10, 1997 *Journals*, p. 336

Yesterday, Wednesday, December 9, during debate on the reasoned amendment moved to the second reading motion of Bill C-16, an Act to amend the Criminal Code and the Interpretation Act (powers to arrest and enter dwellings), Senator Phillips proposed a sub-amendment. At the time, I indicated that I would take this under advisement because I wanted to consider any procedural implications.

As I previously indicated to the Senate, reasoned amendments have not been common in the Senate. Indeed, in the research, I find the last one to be on July 7, 1981, which was not sustained, and it referred to a previous ruling on May 8, 1946.

I have reviewed what few precedents we have with respect to reasoned amendments and I have considered procedures relating to sub-amendments. I could find no occasion in Senate practice where a reasoned amendment was amended. At the same time, however, I could find no clear authority stating that it could not be done. In fact, I am aware of recent precedents in the House of Commons where sub-amendments have been moved to reasoned amendments.

As I understand it, the purpose of this sub-amendment is to add to the reasons already provided in the original motion in amendment why Bill C-16 should not be read the second time. According to *Beauchesne*'s 6th edition, citation 580 at pages 176-177, a sub-amendment:

> "...should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment."

Further, at citation 584 dealing with the form and content of a sub-amendment, (2) explains that:

> "a sub-amendment must be relevant to the amendment it purports to amend and not to the main motion."

Based on these two relevant citations, I rule that the sub-amendment is in order.

Emergency debate – Request (Ruling appealed and sustained)

December 11, 1997 *Journals*, p. 344

Pursuant to Rule 60(4), the Honourable Senator Doyle requested that the Senate do now adjourn for the purpose of discussing a matter of urgent public importance, namely: Canada's blood supply.

After debate,

The Speaker ruled that the request did not meet the requirements for an emergency debate.

Whereupon the Speaker's Ruling was appealed. Sustained.

Routine of Business – Right to raise a point of order during

December 11, 1997 *Journals*, pp. 346-47

It is in order to raise a point of order now because we have not reached the daily Routine of Business. If the honourable senators would look at rule 23(1), it is clear.

> 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.

We have not reached the daily Routine of Business because it is clear under the rules that questions of urgent importance must come before statements. I have not called Senators' Statements, so we are not into the daily Routine of Business.

Honourable senators, all I have to work with is the rule book. You ask where we are in our business. In response, I would refer you to page 65, rule 60(4) which states:

> When the Senate meets, after a notice or notices has or have been received and distributed pursuant to sections (1) and (2) above, the Speaker shall, instead of calling "Senators' Statements," recognize the Senator or Senators who gave notice, in the order in which their notices were received.

At this point, we have not reached the daily Routine of Business. The very purpose of an urgent debate is to prevent the Senate from going into Routine Business. It is a motion meant to supersede the business of the Senate for that day. The motion must be on an urgent matter.

In reading that rule, honourable senators, I can only conclude from the fact that it states, "notice or notices," that it is proper to receive more than one.

I would rule, on the point made by Honourable Senator Taylor, that rule 61 (6) applies to sections (1) and (2) of rule 61 which states that, when leave is granted - and, at this point, leave has not been granted to any motion - new motions may come forward.

If a new motion comes forward and I find that it is in order and I ask that you agree to grant leave, then there can be no further motion put after that until such time as leave is granted. I rule that it is in order for the Honourable Senator Nolin to proceed.

Emergency debate – Request

December 11, 1997 *Journals*, pp. 346-47

The Senate resumed consideration of the request of the Honourable Senator Nolin for an emergency debate.

The Speaker ruled that the request did not meet the requirements for an emergency debate.

Whereupon the Speaker's Ruling was appealed. Sustained.

Committees – Acceptability of report regarding Sen. Thompson

December 16, 1997 *Journals*, pp. 379-80

Honourable Senators, yesterday, Monday, December 15, the Honourable Eymard Corbin raised a point of order questioning the authority of the Standing Committee on Internal Economy, Budgets and Administration to present its Seventh Report, dated and presented Tuesday, December 9.

Senator Corbin characterizes the measures recommended in the Report as disciplinary in nature. Consequently, he believes they involve the privileges of Senator Thompson, a matter beyond the mandate of this Committee. He finds in recommending this action that the Committee has taken upon itself the exclusive power of the full Senate in a matter that is essentially one of privilege. In support of this position, he refers to the requirement for a reference to the Committee on Privileges in Rule 86(1)(f)(ii). In addition, he submits that the power of the Internal Economy Committee to see to the administration of the Senate does not extend to the actions of individual Senators.

Speaking in support of the Report and the actions of the Internal Economy Committee, Senator Kenny pointed out that the Committee was merely reporting recommendations to the Senate for its consideration and decision. He noted that the Internal Economy Committee possesses statutory powers under the *Parliament of Canada Act*.

Senator St. Germain then intervened to draw the attention to Rule 43(1) which states that it the duty of every Senator to defend the privileges of the Senate and of all Senators. He also expressed concern about the possibility of developing a vigilante mentality.

In assessing the powers of the Internal Economy Committee, Senator Bolduc maintained there is an important distinction between its power to manage the Senate as a body and the power to manage each individual Senator. He questioned whether the Internal Economy Committee has the right to judge, prejudge or evaluate the performance of any particular Senator.

Finally, Senator Carstairs spoke to urge the Chair to rule as quickly as possible. I have reviewed the comments that were made yesterday and I am prepared to rule on the point of order.

Honourable Senators, the Standing Committee on Internal Economy, Budgets and Administration is unique among Senate committees in that it has a statutory mandate. I do not interpret the law, but must, of course, take note of it. Section 19.3 of the *Parliament of Canada Act* provides that the Committee may act on all financial and administrative matters respecting the Senate, its premises, its services, its staff and the members of the Senate. Powers, however, are to be exercised subject to the rules, direction and control of the Senate, as provided in subsection 19.1(4).

Under the *Rules of the Senate*, the Committee has a special power, possessed by only one other Committee, to act on its own initiative. The other Committee that has a power to act on its own initiative is the Standing Committee on Privileges, Standing Rules and Orders, whose participation in the study of this issue is mentioned in the Report. In the words of Rule 86(1)(g), the Internal Economy Committee is "... authorized on its own initiative to consider all matters of a financial or administrative nature relating to the internal management of the Senate."

The Internal Economy Committee decided to use its power to act on its own initiative to look into and consider a particular matter. Its Report is limited to recommendations that would temporarily suspend Senator Thompson's access to Senate resources, clearly a matter of a financial or administrative nature. The Report does not reflect upon Senator Thompson or his conduct. The recommendations are careful to preserve the Senator's ability to travel to Ottawa to safeguard his privileges to attend, to speak and to vote. They are careful to preserve his ability to regain access to Senate resources as soon as he sees fit to apply.

The Committee's recommendations as presented in this Report modify the application of general policies relating to the resource entitlements provided to all Senators. It must be noted, however, that the Committee is not undertaking this action on its own authority. Indeed, it has placed its recommendations before the full Senate for consideration as it must. Under this procedure, the suspension of Senator Thompson's access to resources will be determined by no less a body than the one charged with the protection of his privileges.

Honourable Senators, in these circumstances, it seems to me that the Committee has simply exercised its right to act on its own initiative and consider a matter of a financial or administrative nature. The recommendations seem carefully limited to matters concerning Senate resources.

The only mention of attendance is a factual and neutral reference to a public record which can explain why action of the kind being proposed is appropriate. The participation of the Standing Committee on Privileges, Standing Rules and Orders noted in the Report only serves, to my mind, to underline the respect that each committee is obviously showing for the mandate of the other in this area where mandates can overlap.

It is precisely because the Report is essentially about resources, and not about attendance, that I conclude that it does not involve a question of privilege. Had the Report reflected critically on the character of Senator Thompson, it would have triggered in my mind the privilege concerns invoked by Senator Corbin.

As to whether the power of the Internal Economy Committee is limited to the adoption and administration of general policies, to the exclusion of decisions relating to individual Senators, I know of no such limitation. On the contrary, I suspect that such a limitation would not be beneficial. In fact, it could impair the ability of the Committee to help individual Senators by providing resources in appropriate circumstances.

In my view, the Committee is limited in its mandate to financial and administrative matters, whether of a general or a particular application, and this limitation has been respected in this Report.

During his intervention yesterday, Senator St. Germain drew the attention of all honourable Senators to their duty to preserve the privileges of the Senate and of individual Senators. I thank Senator Corbin for giving Honourable Senators a chance to look into, and reflect on, what this Report does and does not do.

I rule the Report to be in order.

Question of Privilege – Circulation of information concerning new tax rates prior to passage of enacting legislation (C-2)

February 24, 1998 *Journals*, pp. 468-71

On Thursday, December 17, Senator Tkachuk and then Senator Kinsella claimed that a breach of privilege had occurred as a result of the premature release of certain information related to Bill C-2, an Act to establish the Canada Pension Plan Investment Board, while it was still before the Senate. As I indicated at the time, because both questions of privilege deal with the same question, I decided to consider them together.

Speaking first, Senator Tkachuk said that the Government had shown contempt for Parliament in general, and the Senate and its members in particular, by making available on its web site CPP premium deduction tables as recently as December 10, prior to the passage of Bill C-2. This occurred despite the fact that Senator Tkachuk had received a declaration from the Government, in the form of a delayed response on December 4, that it did not intend to release such information until the Senate had completed its consideration of the bill.

In making his case, Senator Tkachuk acknowledged the likelihood that the dissemination of this material was inadvertent. Nonetheless, he argued that it constituted a serious question of privilege. He cited several parliamentary authorities and some rulings of the Speaker of the "other place" in justification of his position. At the core of Senator Tkachuk's argument is the claim that "being deliberately misled by the Government of Canada in relation to a bill which we are in the process of debating is an interference with my parliamentary duties and fundamentally and detrimentally affects my rights and the rights of all senators to discharge our duties as members of the Senate."

Taking a similar position and quoting from like passages from relevant parliamentary sources and Speakers' decisions, Senator Kinsella claimed that by publishing the document before the

enactment of Bill C-2, the Government had pre-judged the work of the Senate and of its committees. In his view, this constituted a very serious contempt of the Senate and of the Parliament of Canada.

Following the statement of Senator Tkachuk, Senator Carstairs stated that neither the Department of Finance nor Revenue Canada had actually published or distributed, in printed form, the revised payroll deduction formulas. The Senator noted, however, that the formulas had been available briefly on the Revenue Canada internet site. According to her, this was a mistake and there was no intent to make it public. Revenue Canada, she said, had corrected the error and had apologized. As to some of the material which is still to be found on the site, Senator Carstairs explained that it now carries a disclaimer to the effect that the proposed changes will only become law if it is passed by Parliament. Senator Carstairs then tabled a letter from an official of Revenue Canada containing the text of the disclaimer.

In a second intervention, following the statement of Senator Kinsella, Senator Carstairs added that the draft formulas were prepared under authority of the Minister of National Revenue in preparation for the possible passage of Bill C-2. She reiterated her position that the hard copy distribution of the information would have been inappropriate before the bill was enacted. Senator Carstairs also accepted the position that the information should not have appeared on the internet without the disclaimer which was subsequently attached.

At this point, Senator Taylor joined in with some comments. While recognizing that it is annoying to be taken for granted, he asked what genuine remedy might be available in this case. Citing rule 47 of our Rules, he suggested that it would be futile to raise this issue as a question of privilege unless the Senate has the power to provide a remedy. Reading some citations from *Beauchesne*'s, he then raised the notion of intent, that is whether the actions of the Government in this instance were deliberately untrue and improper.

The arguments then turned to the question of whether the material on the internet site constituted a publication. Senator Tkachuk certainly thought they did. So did Senator Lynch-Staunton. As to the disclaimer, the Leader of the Opposition explained that it "came in a hurry after they were found to be not only irregularly and prematurely published, but in contempt of Parliament." This action, he maintained, affected the rights and privileges of all senators and Members of the House. According to him, "This information or any information should not appear and be distributed, even if it is regarded as instructions, before any bill is given Royal Assent."

I want to thank all Honourable Senators for their participation in this debate. It certainly gave me much to think about during the adjournment.

First of all, I want to make it clear that even though notices of these questions of privilege were provided December 11, and the arguments were not presented before December 17, the Senate did agree to postpone them for several days. Therefore, I will not be assessing the questions of privilege with respect to whether or not they were raised at the first opportunity as is required under rule 43. I will take it as given that they were raised at the first opportunity.

As well, these questions of privilege are not affected in any way by the fact that Bill C-2 was passed by the Senate unamended on December 18, 1997 and enacted the same day. To my mind, these subsequent actions do not mitigate in any way the claims made by Senator Tkachuk and Senator Kinsella. In making my decision, I confined myself to the arguments that were presented and to the circumstances then prevailing with respect to the Senate's consideration of Bill C-2.

My role as Speaker is to determine whether there is sufficient evidence *prima facie* to permit a motion to be presented immediately for debate to refer the matter to the Standing Committee on Privileges, Standing Rules and Orders.

In this case, the action complained of, the premature release on the internet site of CPP withholding tables, is in the nature of a contempt rather than any violation of parliamentary privilege such as freedom of speech or freedom from arrest or molestation. While contempt is not as precisely defined as privilege, it is a serious matter when it occurs because it can infringe the authority of Parliament or the rights of parliamentarians to carry out their duties. Certainly this is what is alleged in the complaint raised by Senator Tkachuk and Senator Kinsella.

With respect to the question whether these payroll deduction tables were a publication when they were only available on an internet site, I think the answer is clear. It is a publication. Even though it was true that the material was not published in printed form, it is impossible to disregard the impact of computer technology which allows information to be available far and wide. There is no option but to accept the proposition that by putting the payroll deduction tables on a publicly accessible internet site, they were to all intents and purposes published and distributed.

Of greater importance or significance than the matter of the publication of this information is the question that Senator Taylor raised with respect to intent. In order for me as Speaker to rule that a *prima facie* case has been made, in this particular instance, I need to be reasonably satisfied that there was a deliberate attempt on the part of Revenue Canada to show disrespect to Parliament and the Senate when this document was loaded onto the internet. There has also to be some evidence that this action was undertaken with the purpose of deceiving or misleading the Senate as it deliberated on Bill C-2. In addition, there has to be some indication as to how this action interfered with the work of Senators. On each of these points, I do not believe that a sufficient case has been made.

In presenting his argument, Senator Tkachuk twice acknowledged that the premature release of the CPP premium deduction tables was probably inadvertent. More to the point perhaps, Revenue Canada recognized its error and, based on the letter tabled by the Deputy Leader of the Government, took some steps to rectify it. In the letter stamped December 16, Mr. Burpee, an Assistant Deputy Minister of Revenue Canada, explained why the tables were prepared in advance. He also noted that a "disclaimer" had subsequently been attached to the 1998 tables stating that the bill was currently before the Senate and will become law if it is passed. Such evidence does not suggest that there was any deliberate attempt on the part of the department to deceive Parliament or to prevent it from doing its work. Indeed, had the Senate decided to amend the bill in any relevant way, it would have been the task of Revenue Canada to adjust its tables as required.

That being said, I would remind Honourable Senators of the words spoken by Senator Carstairs who told us that this episode was a mistake and that it should not have happened. It is a fact that laws cannot be enacted until they have passed both Houses. While departments of government have a legitimate duty to keep citizens informed about changes to the law, that duty should never conflict, or appear to conflict, with the pre-eminent constitutional responsibilities of Parliament. In seeking to advise our fellow citizens of proposals to amend the law, government officials should never forget this basic fact. It is all the more objectionable in this case because Revenue Canada had confirmed in writing that it would not make any information available until the bill had become law. While I am prepared to accept that no contempt appears to have been committed, I find the actions of the department inexcusable.

Nonetheless, based on the presentations made to me on December 17, I do not find that a sufficient *prima facie* case has been made.

Bill – Admissibility (S-13)

April 2, 1998 *Journals*, pp. 577-82

Honourable Senators, on Tuesday, March 17, I stated that I would take under advisement the important point of order that had been raised with respect to Bill S-13, an Act to incorporate and to establish an industry levy to provide for the Canadian Tobacco Industry Community Responsibility Foundation. Arguments were presented by several Senators and three separate documents were tabled by Senator Kenny. On March 25, with leave of the Senate, Senator Kinsella raised another question regarding the procedural acceptability of this bill. He asked the Chair to consider whether this bill might in fact be a private bill rather than a public one. I have reviewed all the statements made by Senators who participated in the discussion on the point of order, studied the documents that were tabled and examined the bill itself. I am now prepared to rule on the point of order.

There are two fundamental questions that were first raised with respect to Bill S-13 on March 17. The first has to do with the possibility that the bill requires a Royal Recommendation. The second is whether the levy described in the bill is in fact a tax. If the answer to either of these questions is affirmative, that the bill does require a Royal Recommendation or that the bill does impose a tax, then this so called “money bill” would not properly be before the Senate since such a bill must originate in the House of Commons. Under such circumstances, the order for second reading of the bill would have to be discharged and the bill itself dropped from the *Order Paper*. In order to determine the answers to these questions, it is necessary to review the basic arguments.

Senator Lynch-Staunton, who brought this matter to the attention of the Senate when the Bill S-13 was called for second reading, took no position on the matter. He raised the question simply for the purpose of clarification asking whether Bill S-13 was a money bill. A similar motive seems to have prompted Senator Stollery to rise on a point of order after the second reading of the bill was formally moved. In presenting his case, Senator Stollery pointed to the obvious financial implications of the bill and suggested that this bill may indeed be a money bill. After

citing sections 53 and 54 of the *Constitution Act, 1867* as well as rule 81 of the *Rules of the Senate*, the Senator noted that the bill appears to authorise the collection of money that is to be spent in pursuit of a public purpose. If such an assessment were accurate, the bill, in Senator Stollery's words, "must be introduced in the House of Commons by a minister, not in the Senate by a private member."

Speaking on behalf of the bill's procedural acceptability, Senator Kenny began by stating simply that Bill S-13 is not a money bill. He claimed that the financial provisions of the bill "do not appropriate any part of the public revenue and do not impose a tax." Developing his position in greater detail, he pointed to the clauses of the bill which indicate that the money raised through the levy is not public revenue. The Senator noted, for example, that the collected funds received by the non-profit corporation established through the bill, do not form any part of the Consolidated Revenue Fund, even if the corporation should be dissolved. He also cited a clause which states explicitly that the corporation is not an agent of the Crown and its funds are not public funds.

As to whether the levy is a tax, Senator Kenny explained that, based on relevant citations of the 21st edition of *Erskine May Parliamentary Practice*, the levy described in the bill is not a tax and as such is exempt from normal financial procedures including, presumably, the obligation to have this bill considered first in the House of Commons before the Senate. This is because, as he stated, the levy is being imposed exclusively on the tobacco industry and in pursuit of its own purposes even though there is a public benefit as well. In addition, he sought to buttress his case with references to legal opinions which concluded that the levy described in the bill was not a tax. Since it did not have as its primary purpose the collection of revenue for government purposes and because the levy was part of a regulatory scheme, the money collected through this bill was not a tax.

After Senator Kenny had spoken, several other Senators made some comments. Senator Kinsella attempted to find out if the Government had a position on this bill. This theme was subsequently raised again by Senator Murray after Senator Carstairs explained that because the bill was not sponsored by the Government, it had taken no position on it. Instead, she said that the Government was prepared to await the Speaker's decision. Senator Bryden then expressed some doubt about whether the levy was in fact a tax. Of greater concern to him was whether the bill was making the government some sort of ally of the tobacco industry. Speaking immediately after Senator Murray, Senator Gigantès suggested that the Senate should be more confident in exercising its own powers. Finally, Senator Stewart maintained that the real question, in fact the only question, was whether the levy involves a tax or impost. As he put it, "If it is a tax or impost, it is out of order here. If it is not a tax or an impost, the question of the Royal Recommendation for an appropriation does not arise."

A week after the point of order was originally raised, Senator Kinsella obtained the leave of the Senate to re-open the matter in order to ask another question with respect to the procedural acceptability of Bill S-13. His question concerned whether this bill was a private bill or a public one. In stating his case, he noted that the corporation established by this bill was for the benefit of the tobacco industry. This being so, he then wondered if perhaps the industry should be petitioning for this bill, a required preliminary to the introduction of any private bill. He then

referred to the four criteria listed in *Beauchesne's Parliamentary Rules and Forms* used to assess whether a bill should be viewed as private or public and suggested that the Chair take them into consideration. Senator Kinsella also took note of the fact that the bill conferred on the corporation certain powers including the power to collect levies. Without reaching a firm conclusion, he indicated that he was suspicious that this bill is more in the nature of a private bill. I want to thank all Honourable Senators who contributed their views to this point of order. As I already stated, I have taken the opportunity to review the arguments, the tabled documents and the bill itself since the point of order was first raised March 17.

Let me begin with this general proposition. It is my view that matters are presumed to be in order, except where the contrary is clearly established to be the case. This presumption suggests to me that the best policy for a Speaker is to interpret the rules in favour of debate by Senators, except where the matter to be debated is clearly out of order.

Addressing first the question that was raised by Senator Kinsella asking if Bill S-13 should be viewed as a private bill rather than a public one, I have taken his advice and looked closely at the four criteria spelled out in the sixth edition of *Beauchesne* at citation 1055. In addition, I have carefully reviewed the bill in light of the standard definition of a private bill. *Beauchesne*, in words closely based on *Erskine May*, states, at citation 1053, that "private legislation is legislation of a special kind for conferring particular powers on any person or body of persons, including individuals and private corporations, in excess of or in conflict with the general law." Proceedings on a private bill are initiated by a petition solicited by the parties interested in promoting the bill.

In this case, Senator Kinsella has suggested that if this bill is indeed a private bill, it would be out of order since it was not introduced into the Senate through a petition. If, on the other hand, it is a public bill, no petition would be necessary. Senator Kinsella identifies the possible petitioners as the "tobacco industry". He does not, however, identify the individuals or corporations who should be the petitioners for the tobacco industry. Nor does the bill define the tobacco industry or specify who are its members. Whatever the precise identity of the tobacco industry, the first question that must be decided is whether Bill S-13 is a private bill or a public bill.

Looking at the four criteria which would determine whether a private bill should be handled as a public bill, I am struck by two of the criteria which lead me to believe the Bill S-13 is properly a public bill. The first is the fact that the objects of the bill affect public policy. While it cannot be denied that the language of the bill highlights industry benefits, it is equally true that public policy is very much served by the bill in so far as it is aimed at the reduction of smoking by young people as is stated in subsection 3(2) of the bill. As well, the magnitude of the area covered by the bill and the multiplicity of interests involved, which is the third criterion listed in *Beauchesne*, suggest to me that the bill is a public bill.

In the absence of any compelling reasons to assess the bill any other way, I am satisfied that Bill S-13 can proceed as a public bill.

Taking the first question that was raised on March 17, does the bill require a Royal Recommendation, I must conclude that it does not. The fundamental purpose of the requirement

for a Royal Recommendation is to limit the authority for appropriating money from the Consolidated Revenue Fund to the Government. In section 2 of the Financial Administration Act, “appropriation” is defined to mean “...any authority of Parliament to pay money out of the “Consolidated Revenue Fund”; Consolidated Revenue Fund” is defined to mean “...the aggregate of all public moneys that are on deposit at the credit of the Receiver General”. Only Ministers can obtain the necessary approval from the Governor General for a Royal Recommendation to appropriate these funds. The Constitution stipulates that bills requiring or possessing a Royal Recommendation must originate in the House of Commons, a requirement enforced through rule 81 of the Senate.

With respect to Bill S-13, the money raised through the levy is to be collected by the Canadian Tobacco Industry Community Responsibility Foundation or its agent. The Foundation also disposes of the funds raised in the manner and for the purposes spelled out in the bill. While section 2 of the Financial Administration Act defines “public money” in part as “...all money belonging to Canada...”, clause 33(1) of the bill expressly states that “...the Foundation is not an agent of Her Majesty and its funds are not public funds of Canada”. Moreover, no part of the bill suggests that any money need be appropriated from the CRF in order to implement any aspect of this bill.

Therefore, I can see no requirement for a Royal Recommendation for this bill.

The second question of March 17 has to do with whether or not the levy scheme established through this bill constitutes a tax. In answering this question, I am constrained by the rule that the Speaker does not rule on questions of law. Citation 168(5) of *Beauchesne* states 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 a question of privilege.”

What is within my authority, however, is the examination of the bill in order to assess what it declares itself to be. I accepted the plain and ordinary meaning of its words and studied them to see if all the clauses relevant to the issue of the levy were internally consistent. I then measured the levy described in the bill against the criteria *Erskine May* sets out at pages 730-737 for identifying levies that are exempt from financial procedures governing the imposition of taxes.

With respect to the matter of the plain language of the bill, it speaks in terms of a levy rather than a tax. This is evident from Part II of the bill. It is also clear that the levy is imposed on the tobacco industry alone. The purpose of the levy, as stated in the bill, is to meet an industry purpose beneficial to it, although this industry purpose also has public benefit. Clause 3 states categorically that the purpose of the bill is “to enable and assist the Canadian tobacco industry to carry out its publicly-stated objective of reducing the use of tobacco products by young persons throughout Canada ...” The levy is imposed exclusively on tobacco products of whatever description and is to be spent in pursuit of the goals listed in clause 5. Consequently, with respect to the language of the bill, I must accept that what is proposed is a levy, not a tax.

Erskine May describes two criteria by which a bill proposing a levy is exempt from the financial procedures, including the adoption of a Ways and Means resolution that would normally apply to bills imposing a tax. The first criterion is that the levy must be for industry purposes. The second

is that the funds collected must not form any part of Government revenue. *Erskine May* includes examples of bills which were regarded as levies as well as those which failed to meet either or both of these two criteria. Some of these examples are of relatively recent date, suggesting that the criteria remain applicable in modern British practice. More importantly, they also seem to be applicable in Canadian practice.

Beauchesne at citation 980(1) states that "a Ways and Means motion is a necessary preliminary to the imposition of a new tax." It is the corollary to the principle behind the Royal Recommendation in that it requires the sanction of the Crown to provide the revenue that may be appropriated for public purposes at a future date. *Beauchesne* goes on to explain the circumstances relative to the introduction of a new tax. Citation 980(2) declares that "no motion can ... be made to impose a tax, save by a Minister ... nor can the amount of a tax proposed on behalf of the Crown be augmented, nor any alteration made in the area of imposition. In like manner, no increase can be considered.... except by a Minister, acting on behalf of the Crown." Once a Ways and Means motion has been proposed and subsequently adopted, it becomes a Ways and Means resolution. Following the adoption of this resolution, a bill is introduced based on its provisions, given first reading, printed, and ordered for second reading at the next sitting of the House. In Canadian practice, based on the British model, any bill proposing to introduce a new tax must be preceded by a Ways and Means motion. Without it, any charge proposed in a bill would not be identified as a tax.

Bill C-32, An Act to amend the Copyright Act, passed by the previous Parliament, was mentioned by Senator Kenny when he presented his case on this point of order. Certain provisions of Bill C-32, a Government bill, imposed a levy on the sale of blank tapes to be distributed to artists and artist groups as a form of royalty. The Senator indicated that Bill C-32 did not have a Royal Recommendation suggesting, at the very least, that the funds distributed were not regarded as an expenditure of Government revenue, and hence not collected by a tax. However, that is not the complete picture. There is further evidence that the levy was not viewed as a tax. I say this because, so far as I have been able to determine, the bill was not preceded by a Ways and Means resolution which would have been a prerequisite if the funds collected had been viewed as a tax.

Applying the criteria explained in *Erskine May*, and based on the model of Bill C-32, I can only determine that the levy proposed in Bill S-13 is not a tax from a procedural point of view. Consequently, the bill is not subject to the usual financial procedures that would require it to be considered first in the other place.

My ruling is that the bill is properly before the Senate.

Question of Privilege – Circulation of petitions soliciting public support for the abolition of the Senate

June 16, 1998 *Journals*, p. 841

Last Thursday, June 11th, Senator Cools raised a question of privilege. Her question of privilege relates to the announcement made earlier the same day that some Members of the other place

propose to circulate petitions soliciting public support for the abolition of the Senate. With leave, several documents relating to the matter were tabled. In Senator Cools' view, this intended action on the part of the Members of the other place constitutes a breach of the privileges of the Senate.

Without regard to the merits of the case per se, it is my task as Speaker to determine if a *prima facie* case has been made. If I find that there is a *prima facie* case, Senator Cools indicated that she was prepared to move the necessary motion.

After quoting several authorities as well as the Constitution Act, 1867, Senator Cools explained what I understand to be the crux of her position which is that abolition of the Senate is akin to the abolition of the country and that the resulting unicameral Parliament would be, in her words, "repugnant to the history, convention, background and culture and Constitution of Canada."

Whatever the merits of this point of view, Senator Cools has failed to show how the actions of Members from the other place in promoting this cause (by circulating petition forms) constitutes a grave and serious breach of the privileges of the Senate or of herself in particular. Yet if this issue is be accorded any priority as a question of privilege, it must meet this test, among others, according to rule 43(1)(d) of the *Rules of the Senate*.

Reform of the Senate, even its possible abolition, has been a subject of national debate for many years. I myself co-chaired a Special Joint Committee on the Reform of the Senate, some years ago. And I do not think I have to remind Honourable Senators about recent constitutional proposals regarding Senate reform nor about the inquiry of the Honourable Senator Ghitter that is currently on the *Order Paper*.

The right of Canadians to petition Parliament respecting any matter which might fall within its competence or jurisdiction is fundamental to our constitution. It is a right that cannot be denied. Certainly the reform of the Senate and its possible abolition are subjects that are appropriate for petition. I am advised that numerous petitions on Senate abolition containing several thousand signatures have been received in recent months in the other place. The question of privilege alleged by Senator Cools appears to challenge this fundamental right without providing any justification for the action.

It is my ruling that no *prima facie* case of privilege has been established.

Orders of the Day – Government's authority to determine priority of reports of committees

June 16, 1998 *Journals*, p. 842

I refer honourable senators to rule 26 on page 29 which states:

> Unless otherwise ordered by the Senate and except as provided elsewhere in these rules, the Orders of the Day shall take precedence over all other business according to the following order of priority:

And then under (1) Government Business, I refer honourable senators to (b):

> Orders of the Day for the consideration of reports from committees in relation to government bills;

I would then refer honourable senators to the *Order Paper* and Notice Paper No. 74 for today, Tuesday, June 16. On page 5, honourable senators will see in the list under Government Business, Reports of Committees, item No. 1:

> Consideration of the Fifth Report of the Standing Senate Committee on National Finance (Supplementary Estimates (A) 1998-99)...

I remind honourable senators that the consideration of Supplementary Estimates is proceeded with by way of a motion moved by the government. It is government business and it appears under Government Business on the *Order Paper*, not under Other Business.

I rule the point of order out of order.

Motion – Acceptability (motion in amendment)

June 18, 1998 *Journals*, pp. 895-96

Honourable Senators, I am now prepared to rule on the point of order raised by the Honourable Senator Phillips earlier today. I wish to thank honourable senators for giving me the time to carefully read the motion in amendment. I compared it with the original motion and I was also able to consult *Beauchesne's Parliamentary Rules & Forms*.

Senator Kinsella referred to paragraph 567, which I have carefully considered, was as well as other paragraphs, including those regarding inadmissible amendments, such matters as cannot be resolved in the negative, and so on.

Paragraph 567 states:

> 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 question.

As I look at the amendment, I find that it is indeed a different proposition which will increase its likelihood of passage. However, it would change the original motion. In a sense, it is a clarification. It does not negative the previous motion; it simply accepts one of the recommendations rather than all of the recommendations as put forward in the motion.

Therefore, I do not find it to be out of order. I agree with paragraph 567 of *Beauchesne*. It is in order.

Bills – Committee Reports - Acceptability of an amendment

October 29, 1998 *Journals*, pp. 1018-21

Earlier this week, Senator Milne moved the adoption of the fourteenth report of the Standing Committee on Legal and Constitutional Affairs proposing to make several amendments to Bill C-37 dealing with the Judges Act. Before there was any debate, however, Senator Cools rose on a point of order. While the Senator expressed her satisfaction about several amendments seeking to delete some clauses of the bill, she challenged the acceptability of an amendment to clause 6. This clause establishes the Judicial Compensation and Benefits Commission. The amendment proposed by the committee seeks to provide certain evaluative criteria that the Commission should apply in carrying out its mandate. Senator Cools argued that this amendment was procedurally objectionable for a number of reasons.

First, Senator Cools held that the amendment was out of order because it was different from, or contrary to, the principle of the bill as agreed to when the bill received second reading last month. Second, Senator Cools contended that the amendment in expanding the original scope, powers and objects of Bill C-37, exceeded the terms of the Royal Recommendation attached to this bill. Third, the amendment is objectionable, according to Senator Cools, because it infringes the Royal Prerogative relating to the right of the Crown to make judicial appointments. Fourth, Senator Cools asserted that the amendment was defective because it lacked the necessary Royal Consent indicating the Crown's agreement to the modification of its prerogative rights proposed by the amendment. Finally, to support her objection to the procedural acceptability of the amendment, Senator Cools referred to a precedent from the other place. In April 1975, Speaker Jerome ordered that amendments to a bill which had infringed the Royal Recommendation be struck from the committee report before allowing the report to be debated. Senator Cools suggested that I, as the Speaker of the Senate, should consider a similar course of action in dealing with this amendment.

Following Senator Cools' intervention, several other Senators rose to speak on the point of order, either in response to it or to solicit further information. First to speak was Senator Stewart who mentioned the problems that have arisen in modern practice with the present form of the Royal Recommendation. According to his assessment, not only must Parliament come to terms with the vagaries of the present Royal Recommendation when the appropriation it authorizes is more or less identifiable, but we must also try and fathom its scope and meaning when confronted with what Senator Stewart called "virtual" Royal Recommendations.

The Deputy Leader of the Government, Senator Carstairs, then explained that the committee had followed the proper procedures in reviewing the bill and presenting its report last Thursday, October 22. With respect to the amendment to clause 6, Senator Carstairs maintained that its effect was to provide some guidelines for the Judicial Compensation and Benefits Commission rather than leaving its mandate so open-ended. Next, Senator Kinsella, Senator Grafstein and then Senator Robertson made some comments.

Finally, Senator Milne, the Chair of the Committee on Legal and Constitutional Affairs, explained that the proposed amendments to Bill C-37 were unanimously adopted by the

committee. The Senator went on to state that the purpose of the amendment to clause 6 was intended "to narrow the sorts of things that the Commission could look at to come to its decision." Senator Milne also mentioned that clause 6 would require that the report of the Commission, which as she reminded the Senate, has only an advisory role, be tabled in both Houses and be referred to an appropriate committee. On this last point, Senator Cools replied that such a procedure was also out of order. As the Senator put it: "No statute can ordain that any report introduced into this chamber be referred to any committee."

Shortly thereafter, I said that I would be prepared to hear more arguments no later than the next sitting since some Senators had indicated they would like an opportunity to review the point of order raised by Senator Cools. Yesterday, Senator Beaudoin and Senator Joyal raised certain issues concerning the point of order. Senator Beaudoin challenged the merits of the objection raised by Senator Cools with respect to the claim that the amendment to clause 6 was contrary to the principle of the bill. Senator Joyal focused his remarks on the assertion that the amendment exceeded the provisions of the Royal Recommendation attached to Bill C-37.

I wish to thank all Honourable Senators who spoke to the point of order that was raised by Senator Cools. I have carefully reviewed the arguments that were made and I have also examined some of the references to the parliamentary authorities and to the particular precedent cited from the other place. In reaching my decision, I am guided by the proposition that, as Speaker, I should use my authority to rule on points of order to restrict debate on amendments only when the evidence is conclusive and compelling. In all other cases, my preference is to allow the Senate itself to reach its own decision on the subject-matter.

I propose to deal with the different procedural points that were raised in the order that Senator Cools presented them. The first point has to do with the claim that the amendment to clause 6 is contrary to the principle of Bill C-37. As we have all experienced at one time or another, the principle of a bill is not always easily grasped. With respect to Bill C-37, it appears to accomplish a number of related objectives dealing with the remuneration and compensation of judges and the proposal to replace the current triennial commission with one that would sit every four years. Senator Cools claims that the amendment dealing with the Commission has in fact substantially altered the principle of the bill. In my view, however, the amendment seeks to outline the criteria by which it might conduct its inquiry and nothing more. The language of the amendment makes this very clear.

According to citation 698 of *Beauchesne* 6th edition at page 207, amendments to the clauses of a bill are inadmissible if, among other things, they are irrelevant to the bill or beyond its scope. They are also inadmissible if they are inconsistent with the bill or contradictory to it. So far as I can determine, there is nothing in the amendment that would lead me to think it is inadmissible nor is there any evidence indicating that this amendment is inconsistent with the principle of the bill. If the purpose of the bill is, in part, to establish a Commission, how can the amendment be regarded as inconsistent or contrary if its purpose is intended to provide guidelines as to how the inquiry of the Commission should be conducted. Indeed, as citation 567 of *Beauchesne* at page 175 confirms, an amendment can have as its object the modification of a question so as to increase its acceptability or to present a different proposition as an alternative. This appears to be

the goal of this amendment. Whether it is in fact more acceptable to the Senate than the original proposition should be settled by debate.

The second question that Senator Cools raised concerns the impact of the amendment on the Royal Recommendation. According to the Senator, the amendment infringes on the financial prerogative of the Crown. In order to make a persuasive case, it seems to me that it would be necessary to demonstrate that the appropriation implied in this bill has been affected by this amendment. To do this requires the marshalling of some evidence indicating how an amendment that purports to outline the criteria the Commission should consider in conducting its inquiry affects the appropriation establishing the Commission itself. In this case, however, the Commission remains firmly bound by the terms set forth in clause 6 to which the Royal Recommendation is attached. The amendment does little to change the overall operations of the Commission.

Both Tuesday and again yesterday, some critical comments were made by several Senators about the form of the current Royal Recommendation. I think that there is a good deal of merit in these complaints. Perhaps, the Senate might consider reviving a proposal first raised, as Senator Stewart and Senator Joyal pointed out, nine years ago when the National Finance Committee first studied the question of the Royal Recommendation. As I myself have stated in some recent decisions, the vagueness and imprecision of the Royal Recommendation remains a problem that unduly affects the rights of parliamentarians to study legislation and propose amendments.

In making her case, Senator Cools referred to a decision made by Speaker Jerome of the other place. I have reviewed that 1975 decision and I find it to be relevant as a comparative example of how the Royal Recommendation can be affected by an amendment. On that occasion, as Senator Cools stated, the Speaker ruled out of order some amendments that had been made by the committee charged with the bill's examination. The bill in question dealt with parliamentary allowances and salaries. The Royal Recommendation attached to the bill established certain fixed levels of indemnity for various parliamentarians and ministers and also stipulated the duration of this remuneration. The amendments, however, sought to introduce a scheme to index these salaries and also to extend the time period to be covered by the bill. Consequently, the Speaker felt compelled to rule the amendments out of order.

With respect to Bill C-37, the situation is not at all comparable. As Speaker, I am not confronted by any clear evidence that the terms and conditions of the Royal Recommendation attached to Bill C-37 have been in any way altered by the proposal contained in the amendment to clause 6.

Next, Senator Cools argued that the amendment should be ruled out of order because it proposed that the Commission consider as one of its evaluative criteria "the need to attract outstanding candidates to the judiciary." Senator Cools contended that this aspect of the amendment infringed the Royal Prerogative with regard to the Crown's right to make judicial appointments. With respect, I do not find that the objection is well founded. The text of Bill C-37 establishes that the power of the Commission is limited to presenting a report to the Minister of Justice containing recommendations about the adequacy of salaries and other benefits payable under this Act. The bill says nothing about the process of judicial appointments. Even with respect to the recommendations on salaries, there is nothing to indicate that they are binding on the Minister.

Moreover, in so far as the amendment itself is concerned, the right of the Minister to exercise the prerogative right of the Crown to appoint judges is not affected. The portion of the amendment dealing with the need to attract outstanding candidates has nothing to do with the Royal Prerogative. Instead, it is simply a criterion to be used in guiding the work of the Commission in preparing recommendations on the adequacy of salaries and benefits for judges.

For similar reasons, I have reached the same conclusion with respect to the related objection that Senator Cools raised on the need for the signification of Royal Consent. As the Senator rightly pointed out, the consent of the Crown is necessary in matters involving the prerogatives of the Crown. As was already explained, however, the amendment to clause 6 does not infringe the Royal Prerogative and, consequently in this case, does not require Royal Consent.

Lastly, Senator Cools, in response to a point raised by Senator Milne last Tuesday, claimed that the provisions of the bill requiring that the report of the Commission be tabled in each House of Parliament and subsequently be referred to an appropriate committee of each House was out of order. Senator Cools indicated that this process encroaches on the right of Parliament to determine its own affairs. To my knowledge, this is not the first time that this question has been raised, but it would seem to be more a question of policy rather than one of procedure or law. Certainly this provision before us is not at all unusual in recent Acts adopted by Parliament. In passing these laws, the Senate and the House of Commons have sanctioned this procedure. There are now numerous laws providing the automatic referral of some report or document to a parliamentary committee. Be that as it may, this objection does not relate to the amendment that is the focus of Senator Cools' point of order. Rather, it is part of clause 6 that has been an element of Bill C-37 since it was received from the other place.

For these reasons, I find that the point of order raised by Senator Cools is not established.

Motion – Acceptability ("same question" rule)

November 19, 1998 *Journals*, pp. 1078-80

On Tuesday, November 3, after Motion No. 84, standing in the name of Senator Lynch-Staunton, had been moved, Senator Carstairs rose on a point of order to challenge its procedural acceptability. The Senator noted that an identical motion regarding the Senate's endorsement of recommendation 1 of the Krever Commission and the need on the part of the Federal and Provincial governments to take positive action had already been adopted by the Senate last June. Citing rule 63(1) of the *Rules of the Senate* and citation 558 of *Beauchesne*, 6th edition, at page 172, Senator Carstairs argued that the motion of Senator Lynch-Staunton contravened the "same question" rule which prohibits the introduction of motions or bills similar in substance to one already voted on.

Speaking in defence of the motion's procedural validity, Senator Lynch-Staunton cited the same authorities as well as *Beauchesne* citation 654 at page 198 and claimed that the motion was acceptable since it was not contradictory to the decision of last June. As he explained: "We want to reaffirm that it continues to stand as the judgement of the House."

Senator Kinsella then spoke to suggest that I, as Speaker, give particular attention to the meaning of the words "the same in substance" when considering my ruling. Shortly afterwards, Senator Stewart offered an explanation of the origins of the "same question" rule. Its purpose, he said, was to avoid the repetition of debate on motions that have already been decided earlier in the session. Senator Grafstein then made reference to the dictionary meaning of the phrase "in the affirmative" to support the position of Senator Carstairs.

I wish to thank those Honourable Senators who participated in the discussion on the point of order**.** I find such exchanges useful. While I am not always able to come up with a solution that will satisfy everyone, I make it my goal to apply the rules as best I can to promote the decision-making process of the Senate.

In this particular case, there seems to be little dispute about the fact that the motion now standing on the *Order Paper* in the name of the Leader of the Opposition is virtually word-for-word identical to the motion adopted by the Senate on June 18. Indeed, this fact is acknowledged by the use of quotation marks following the introductory statement of reaffirmation. That being the case, it would seem that the "same question" rule is applicable. The Leader of the Opposition contends, however, that due to changed circumstances, the request to have the Senate reaffirm its decision is appropriate. I note, however, that these circumstances are not incorporated into the motion proposed by the Leader of the Opposition. Instead, the motion simply seeks to reiterate the previous decision.

In preparing my ruling, I read the commentary to rule 63 that is provided in the Companion to our Senate Rules published in 1994. I have also reviewed some applicable precedents. While the information is certainly relevant, there is no example that matches the striking feature of this case. The motion Senator Lynch-Staunton proposes to have the Senate consider again is not one that was rejected, but one that was in fact adopted. Despite the unusual aspect of this case, I did find the precedents useful.

One that occurred in June 1985 addressed a point of order with respect to the contents of a bill as it related to a motion on the budget. The Speaker at that time stated that "Our parliamentary jurisprudence requires that we have identical texts for rule [63] to apply." In another ruling, from the other place, mentioned in *Beauchesne* at citation 654 at page 198, the Speaker found that clauses from one bill which were identical to a bill that had already been defeated by a vote of the House had to be deleted. To my mind, these rulings reinforce the conclusion that whenever the texts of the motions are virtually identical the "same question" rule is applicable. Whether the rule might also apply in circumstances when the motions in dispute are not identical, but are the "same in substance" is a hypothetical question that need not be answered on this occasion.

There is little doubt that the text of Motion No. 84 is basically identical to that which was adopted by the Senate on June 18. Consequently it is my decision that the point of order challenging the right to have the matter brought before the Senate again is well founded. To allow the motion to be put before the Senate would contravene the letter and intent of rule 63 and the established practices of this House. Motion No. 84 should be discharged from the *Order Paper*.

Bill – Withdrawing (S-15)

December 8, 1998 *Journals*, p. 1171

Last Tuesday, December 1, during debate on the motion to adopt the twelfth report of the Standing Committee on Legal and Constitutional Affairs respecting Bill S-15 and the motion in amendment of Senator Grafstein, Senator Lynch-Staunton sought leave to withdraw the bill. In making his request, he expressed some reservation about his right to do so. For my part, I, too, had certain doubts about the acceptability of the request given that the Senate was in fact debating the report on the bill rather than the bill itself. Senator Kinsella correctly pointed to the novel aspects of this proceeding. Subsequently, I agreed to take the matter under advisement.

I have now had an opportunity to assess the propriety of Senator Lynch-Staunton's request from a procedural point of view and I am prepared to rule on it.

Rule 30 establishes the right of a Senator who has made a motion or inquiry to withdraw or modify the same by leave of the Senate. Certainly then, Senator Lynch-Staunton seems to be within his rights to make such a request. Indeed, *Erskine May* 22nd edition at page 467 notes that "a bill originating in the House of Lords may (with the leave of the House, granted without a dissenting voice) be withdrawn by the Lord who presented it at any time after first reading."

However, there are certain restrictions that need to be taken into consideration before deciding if the request of Senator Lynch-Staunton can be accepted now, at this stage, while the Senate is debating a report recommending amendments to Bill S-15.

According to *Beauchesne* 6th edition, citation 587 at page 178, a motion cannot be withdrawn by leave whenever there is also an amendment to be disposed of since the question on the amendment stands before the original motion. In this particular case, what we are dealing with now is the report of the Standing Committee on Legal and Constitutional Affairs and the amendment of Senator Grafstein to refer the bill back to the Committee. Bill S-15 itself is not actually before the Senate for debate. As I understand it then, it would be necessary to dispose of Senator Grafstein's amendment and the report, before the Senate would be debating the bill. Until that happens, I do not believe that Senator Lynch-Staunton is entitled to make a request to withdraw the bill.

Question of Privilege – References to Minister of Canadian Heritage in Hustler magazine

February 16, 1999 *Journals*, pp. 1274-77

On Tuesday February 2, at the conclusion of Orders of the Day, Senator Kinsella rose to speak on a question of privilege of which he had given notice earlier. The subject of the Senator's question of privilege had to do with a current issue of *Hustler* magazine alleged to contain some lewd and obscene references to the Minister for Canadian Heritage, the Honourable Sheila Copps. According to the Senator, the intent of the magazine's publishers was to intimidate the

Minister, who is the sponsor of Bill C-55. This bill is currently being considered in the other place. The purpose of Bill C-55, as Senator Kinsella explained, is to make it illegal to solicit Canadian advertisers to place ads in split-run magazines including apparently *Hustler* magazine. In presenting his case, Senator Kinsella cited some recent newspaper accounts as evidence that *Hustler* magazine opposes the objectives of this bill.

By raising this matter as a question of privilege rather than as a substantive motion that could be debated after notice, Senator Kinsella is seeking to have all other Senate business put aside so that it might be considered as a matter of the utmost importance. To achieve this, the Senator has asked me, as Speaker, to recognize the *prima facie* merits of his question of privilege.

In presenting his case, Senator Kinsella did acknowledge that his question of privilege is somewhat unusual in that it involves a Minister who is not a member of this Chamber. The Senator also admitted that "a careful reading of the *Rules of the Senate* speaks of the duty of every Senator to preserve the privileges of the Senate and not necessarily the privileges of the other place." Nonetheless, the Senator expressed his conviction that the attack on the Minister is really an attack on all parliamentarians. It is Senator Kinsella's contention that unless Parliament takes steps to deal with this kind of attack, it could have a chilling effect on the process of debate that is at the very core of our parliamentary system. As Senator Kinsella put it, the work of Parliament should not be obstructed or influenced by the improper means utilized by *Hustler* magazine.

After some brief exchanges between Senator Kinsella and Senator Stewart, Senator Robertson intervened to recall a similar incident that had occurred several years ago. At that time, however, no question of privilege was raised.

The position taken by Senator Kinsella was then strongly endorsed and supported by Senator Cools. According to the Senator, Parliament has been timid in recent years in the defence of its own privileges and the media have often taken advantage of this situation. Explaining that she was speaking from first hand experience, Senator Cools stated that this technique to embarrass and shame politicians has often been used in the past. The attack on the Minister, in the Senator's judgement, was nothing less than a vulgar attempt to offend.

In the course of her remarks, Senator Cools also reiterated a point that had been stressed by Senator Kinsella. Both explained that the Speaker in making a *prima facie* ruling is not assessing the question of privilege itself. Rather, the role of the Speaker is limited to deciding whether there is sufficient evidence at first sight to give this issue priority of debate.

Senator Fraser then suggested that some consideration in this matter had to be given the right of freedom of speech and of the press. In her view, these constitutional guarantees which are fundamental to our free society mean that we, as parliamentarians, must accept the possible risk of exposure to cruel personal attack by the media. It is a price that must be paid, she said, in a society that professes to be free. The Senator's comments were made after noting that Minister Copps has responded to the *Hustler* magazine insult with dignity and forbearance. This was also indirectly acknowledged by Senator Kinsella who had noted that the Minister had taken no action to raise the matter as a question of privilege in the other place. Senator Fraser concluded

by expressing some apprehension in establishing a precedent that might have the effect of granting to parliamentarians privileges beyond those enjoyed by ordinary citizens.

Finally, Senator Carstairs joined the debate. Like the others, the Senator agreed that the article in the magazine was disgusting and degrading. As an attack on female politicians, the Senator said, the magazine was particularly offensive. Senator Carstairs took note of the fact that Senator Kinsella had mainly focused on the question of whether it had offended the privileges of parliamentarians as a whole, and not just the Minister. The question that the Speaker had to address, Senator Carstairs said, was whether the privileges of Parliament had been so jeopardized that they must override any claims to freedom of speech or press. The Senator concluded her remarks by citing two relevant references from the sixth edition of *Beauchesne*, including a citation about direct threats to influence the actions of parliamentarians.

Let me begin by thanking all the Senators who expressed their views on this matter. As Speaker, I find it useful when there is a full discussion of the issues involved in any alleged question of privilege or point of order. It assists me in coming to an understanding of the specific elements of the particular question or point. This, in turn, provides me with the framework I need to reach a decision on the merits of each case.

While the focus of my ruling is not the actual publication of *Hustler* magazine and the lewd depiction of the Minister of Canadian Heritage, I will confess that I myself was disgusted by it. Portraying Minister Copps in this loathsome fashion is, I think, a degrading sexist assault on all female parliamentarians. I am certain that there is no one in this Chamber who would doubt that this publication is indeed very objectionable. If it does in fact have any connection to the debate on Bill C-55, it need hardly be said that it is a despicable contribution to the process of public debate.

In presenting his case, Senator Kinsella made it clear that what he was seeking was an opportunity to bring the publishers of *Hustler* magazine before a parliamentary committee to have them explain "why they chose to resort to these sexist tactics in their opposition to Bill C-55." This is certainly an understandable request, given the facts that he presented. As Speaker, however, my task is to determine whether the question of privilege has sufficient merit *prima facie* to be accorded priority over all other business of the Senate.

To make this determination, I am obliged to consider the *Rules of the Senate* as well as any relevant precedents. Rule 43, which was adopted in its current form in 1991, lists certain criteria that must be met to be considered a valid question of privilege. The question must, for example, be raised at the first opportunity. Certainly with respect to this criterion, there is no doubt that Senator Kinsella raised the matter at the earliest possible opportunity he could, the very first day the Senate resumed its sittings following the holiday adjournment.

The second criterion is that a putative question of privilege must "be a matter directly concerning the privileges of the Senate, of any committee thereof, or any Senator." As to this point, Senator Kinsella acknowledged that "a careful reading" of the rules would indicate that his question of privilege would not appear to meet this condition. It is conceded that the target of the magazine article, the Minister for Canadian Heritage, is not a member of this Chamber. As well, no

evidence was presented to indicate that the Minister had been intimidated by the publication in anyway. It was also noted that the Minister has not sought to raise the matter in the other place as a question of privilege. Moreover, Senator Kinsella did not provide me with any precedent from Canada or any other jurisdiction where one House of Parliament considered a question of privilege that related directly to a member of the other House.

Senator Kinsella's argument for a question of privilege, however, was not limited to the attack on the Minister. The Senator went further to suggest that sordid publications of this kind could have an intimidating effect on other parliamentarians, including Senators, who could be deeply offended and hurt by such a disgusting portrayal. I agree that were this to happen - if it were ever claimed that Senators felt they were under some kind of direct threat that prevented them from discharging their parliamentary responsibilities - it could result in a serious question of privilege. But with reference to this specific case, the Senator provided no evidence to suggest that this had occurred.

A third criterion that needs to be taken into account is that the question of privilege must "be raised to seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available." Once a *prima facie* question of privilege is established, it is for the Senate to decide what corrective action should be taken. With respect to this case, however, there are other parliamentary procedures available to deal with this serious complaint. As I mentioned previously, Senator Kinsella expressed a desire to have the offending publishers appear before a committee to have them explain why they used such an offensive personal and sexist attack to express their opposition to a government bill. Senators will have an opportunity to consider this option if and when Bill C-55 comes to this Chamber from the other place. Alternatively, a motion after notice can be proposed at any time to refer this issue to an appropriate committee for investigation.

The final criterion listed in rule 43 is that the question of privilege must "be raised to correct a grave and serious breach." I have already indicated that no substantive evidence was presented during discussion on the alleged question of privilege suggesting that any Senators had been obstructed in the performance of their duties as a consequence of the repugnant *Hustler* publication.

Based on the criteria of rule 43, it is my assessment that, at first glance, the matter does not directly involve the Senate or a member of this House. It also appears to me that alternative parliamentary processes are available to address this complaint. I can see nothing to suggest that a grave and serious breach affecting the ability of Senators to perform their duties has actually occurred. Accordingly, I rule that no *prima facie* case of privilege has been established.

Bill – Admissibility (S-26)

March 16, 1999 *Journals*, p. 1352

Honourable senators will not be surprised that I had anticipated that a question might be raised. As soon as I saw the bill coming back on the *Order Paper*, I myself wondered whether or not it was in order. I consulted the rules, and our own rule 63(1) is very clear. It states:

> ...has been resolved in the affirmative or negative...

That has not happened, of course. What has happened is that the bill was withdrawn.

I then consulted *Erskine May*, which states clearly:

> ...but if a bill is withdrawn after having made progress, another bill with the same objects may be proceeded with.

Based on that, the bill was withdrawn with leave of the Senate. It was not proceeded with. I rule that the bill is in order.

Motion – Acceptability (endorsing a report of the House of Commons of which the Senate has no direct knowledge)

March 16, 1999 *Journals*, pp. 1354-55

On Thursday, March 11, just as Senator Roche was about to speak on his motion, Senator Kinsella rose on a point of order to question the procedural acceptability of a motion that endorses a report of the House of Commons of which the Senate has no direct knowledge. The motion of Senator Roche seeks to have the Senate support the disarmament and non-proliferation objectives of the report of the Commons Standing Committee on Foreign Affairs and International Trade respecting nuclear policy.

In making his case, Senator Kinsella asked whether it was proper given the independence and autonomy of the two Houses for the Senate to debate a report from the other place that has not been formally communicated to it. At the same time, the Senator made it clear that he was not challenging the right of the Senator Roche to present a motion supporting disarmament.

Several other Senators participated in the discussion to suggest that the motion of Senator Roche could be amended to avoid this apparent procedural obstacle. More than once, Senator Roche indicated that he was prepared to make whatever changes might be necessary so that his motion would be procedurally acceptable. Indeed, following the suggestion of Senator Stewart, he proposed a revised version of his motion that eliminated any direct reference to the Commons report.

At this stage, I asked Senator Kinsella if he might be prepared to withdraw his point of order. Though the Senator explained that he did not want to impede the work of the Senate, he felt a need to proceed with the point of order. Senator Kinsella went on to state his conviction that the rules are the best defence of the minority and this case was sufficiently important to merit a formal decision from the Chair.

Let me begin by thanking all the Senators who joined in the discussion on this point of order. As always, I find it helpful in highlighting this issue.

The practice of avoiding any reference to the proceedings of the other place in debate is an old and well-established restraint going back many years. Indeed, almost twenty-five years ago, this prohibition was formally incorporated into the *Rules of the Senate*. In 1975, the Senate adopted what is now rule 46. This rule stipulates that "the content of a speech made in the House of Commons in the current session may be summarised, but it is out of order to quote from such a speech unless it is a speech of a Minister of the Crown in relation to government policy." Though it was not explicitly acknowledged at the time, it appears that the language of the rule was based on the relevant text of the British parliamentary authority, *Erskine May* that has been part of that venerable book through many editions.

In this connection, the Senate may be interested in knowing that the present Select Committee on Modernisation in the British House of Commons has recommended that this long-standing prohibition be abandoned. In its fourth report presented in March of last year, the committee noted that "the rule is often difficult for the chair to enforce, since it is not always easy immediately to be certain that the Member is quoting rather than summarising, that the Peer in question is not a member of the Government, and that the debate quoted from took place in the current session. By the time the facts have been established, it is generally too late." Accordingly, the Modernisation Committee recommended "that the rule banning direct quotation from speeches made in the House of Lords in the current session should be abolished." Reviewing the debate on our Senate rule in 1975, similar problems were acknowledged at the time by Senator Argue and Senator Flynn even though the rule was subsequently adopted by the Senate. Perhaps this is a matter which the Committee on Privileges, Standing Rules and Orders might want to consider at some point.

This practice of forbidding the use of direct citations from the debates of the House of Commons, euphemistically identified as "the other place" was originally intended to prevent, according to *Erskine May*, fruitless arguments between Members of two distinct bodies who are unable to reply to each other, and to guard against recrimination and offensive language in the absence of the other party.

However, *Erskine May* and the Canadian parliamentary authority, *Bourinot*, have always recognised some exceptions to this rule of debate. All four editions of *Bourinot's Parliamentary Procedure and Practice in the Dominion of Canada*, dating from 1884 to 1916, note the exception in the same language. "It is perfectly regular, however, to refer to the official printed records of the other branch of the legislature, even though the document may not have been formally asked for and communicated to the house." For many years, *Erskine May* has been explicit in noting that these official records include not just the *Journals* of either House, but also committee reports. Even though reports from the other House may not have been communicated to the Chamber, practice has allowed for references to be made to them in the course of debate.

As far as I see it, that which can be debated can legitimately be the object of a motion. Once it is part of a motion, it is up to the Senate to adopt, to amend or to reject it. That is the core of the process of debate.

I rule, therefore, that the motion of Senator Roche can proceed.

Bill – Preparing amendments in both languages - references to judges

April 15, 1999 *Journals*, p. 1438

Yesterday's debate on this order was interrupted by points of order. The first point of order was on the question of the motions in amendment being only in one language. That has now been corrected, and the motions are before you in two languages. Nevertheless, I will be doing further work on exactly at what point must we have motions in both languages so that, in the future, there will be a clear understanding in the Senate by all members.

The second point of order was on the question of comments made by the Honourable Senator Grafstein regarding information he received from a judge. I refer Honourable Senators to the *Debate of the Senate* of yesterday, page 3033. In the left hand column, the fifth paragraph, Senator Grafstein says, in response to the point of order, speaking about his argument:

> I say only that it is tangential and I withdraw all my comments.

He repeats later on:

> ...I will withdraw. I agree with the honourable senator.

On that basis, I take it that the Honourable Senator has withdrawn his comments regarding Judge Arbour. Therefore, we can proceed with the debate.

Once again, I will be doing further study on this whole question of references to judges. It has come up before, and I think we should have a clear understanding as to what are the *Rules in the Senate*. I declare that debate can continue.

Bill – Preparing amendments in both languages - references to judges

May 11, 1999 *Journals*, pp. 1584-86

On Wednesday, April 14, during debate on the third reading motion of Bill C-40, Senator Grafstein spoke to several amendments he proposed to move. At the time, the text of these amendments was only in English. Furthermore, while explaining the reasons for these amendments, Senator Grafstein made reference to Madam Justice Louise Arbour, a Canadian judge who is currently serving as Prosecutor at the International War Crimes Tribunal in The Hague.

The absence of the French text of the proposed amendments and the references to Madam Arbour gave rise to a point of order from Senator Bolduc. The Senator expressed his objection that the proposed motions in amendment were in only one language. He also questioned the propriety of soliciting advice from a judge on a matter of public policy, in this case the policy relating to extradition.

Responding immediately to Senator Bolduc's second objection, Senator Grafstein admitted to his own reservations about the action he had taken in seeking Madam Arbour's views on Bill C-40. He admitted that Senator Bolduc had raised a valid objection and agreed to withdraw his references to Madam Arbour.

Despite this**,** Senator Bolduc asked for a ruling from the Chair. Several Senators spoke in support of this position and Senator Prud'homme noted how the additional time could be used to prepare the amendments in both languages. Senator Grafstein subsequently confessed his own misgivings about proceeding with his amendments in one language only. He explained that he had felt compelled to bring forward these amendments for fear that Bill C-40 would be passed without having an opportunity to explain his position on the current version of the bill.

Shortly afterwards, I indicated my readiness to study the issues related to the point of order and there was agreement to adjourn debate on the bill.

The next day, Thursday, April 15, when Bill C-40 was called, I made a statement proposing that debate be allowed to proceed. I made this suggestion in view of the fact that Senator Grafstein's proposed amendments were now in both languages and because he had withdrawn all references to Madam Arbour. At the same time, I indicated that I would be making a statement on the two issues raised by Senator Bolduc's point of order following some further study. Senator Grafstein's amendments were properly moved and debate has proceeded since then.

Having had an opportunity to review the matter more closely, I am now prepared to make a statement on the questions that were raised by the point of order.

I will begin by addressing the issue of whether there is an obligation to present motions, inquiries or amendments in the Senate in both official languages. The *Rules of the Senate* are silent on this question. This is also true of the other place. *Beauchesne's Parliamentary Rules and Forms* (6th edition) citation 552(3) at page 171 notes only that in the other place the written version of motions that must be provided to the Speaker prior to presentation to the House for debate can be in either of the two official languages.

In the Senate, the presentation of motions and inquiries in one language poses no inconvenience because neither is usually debated before a requisite notice period of one or two days has lapsed. By the time these motions or inquiries are called for debate, they are invariably available in both languages having been printed in the *Order and Notice Papers*.

The situation is somewhat different in the case of amendments including those made to the content of bills at report stage and third reading. Such amendments are routinely moved without notice and can be placed before the Senate for immediate consideration while still in one language. In Senator Grafstein's case, a lack of time and a sense of urgency prevented him from having his amendments ready in both languages as he had intended.

Such an occurrence is not without precedent. The Senate was faced with a similar circumstance in January 1993 during debate on Bill C-91 amending the Patent Act. At that time, a long and complex amendment was moved to one of the clauses of the bill at third reading. One Senator

objected on a point of order because the amendment had been presented in only one language. It was proposed, therefore, that debate on the amendment be suspended or adjourned until it was available in both languages. Although some Senators took note of the fact that the rules and authorities did not require that amendments be presented in both languages, it was generally agreed to have them in English and French prior to further debate. The Senate then decided to adjourn the debate in order to allow the preparation of the amendment in both languages.

The incident of 1993 parallels exactly what occurred on the amendments of Senator Grafstein to Bill C-40. Furthermore, it is my understanding that the practice in committees is to ensure that both language versions of any amendments to bills are available to Senators before a decision is taken. This suggests that whatever the requirements stipulated in the rules or authorities, the Senate recognizes the importance to have motions, inquiries and amendments in both languages. When this has not been done, it would appear that the Senate has been disposed to postpone any decision until the debated question, having been moved, is available in both languages. It seems to me that this is the proper way of proceeding.

As to the second issue raised in Senator Bolduc's point of order, the references to the views attributed to Madam Justice Arbour, I do not believe that there is a simple answer. *Beauchesne*'s notes, at citation 493 at pages 150-151, the deference that is due in debate to so-called protected persons. Certain prohibitions are normally observed or applied when these protected persons are mentioned in debate. For example, all references to judges and the courts that are in the nature of a personal attack or censure have always been considered unparliamentary. In addition, *Beauchesne*'s states that the Speaker has traditionally protected from attack, groups or individuals of high official status. As well, the Speaker has cautioned parliamentarians to exercise great care in making statements about persons who are outside the House and are unable to reply directly.

On the face of it, the precautions cited in *Beauchesne*'s do not seem to have any immediate bearing on the case at hand. Senator Grafstein's references to Madam Arbour were certainly not critical or offensive. Indeed, they suggest that the Senator was not particularly successful in obtaining information on the bill from Madam Arbour's office. As I understand it, Madam Arbour made no substantive comment on the details of the bill. The statement attributed to her simply suggests some satisfaction that Canada has taken steps in fulfillment of a treaty obligation and little else.

Equally important in this instance is the fact that Madam Arbour was not in fact cited in connection with her position as a Justice of the Ontario Court. Instead, Madam Arbour was mentioned in her current international role as Prosecutor at the International War Crimes Tribunal, a position she secured through an authorization by Parliament for a leave of absence from her judicial office.

Senator Bolduc also explained that the references to the views of Madam Arbour were objectionable because they transgressed the boundaries normally maintained between Ministers and their public servants. It is well accepted that the domain of policy is reserved exclusively to Ministers while public servants should normally confine themselves to statements on programs and implementation. Again, in this particular case, I am uncertain whether Madam Arbour, either

as a Prosecutor or even as a judge, can be looked upon as a public servant answerable to a Canadian Minister or how her comments can be construed as an unwarranted expression of opinion on public policy. I do not believe that this kind of objection is applicable to the situation that occurred April 14.

Nonetheless**,** I appreciate the point of view that prompted Senator Bolduc and others to speak to the issue, particularly with respect to the expressed concerns involving the judiciary. Very specific roles are assigned to the legislatures and to the courts. The independence of both is essential to the proper operation of our form of government. This independence can be undermined by Parliament commenting on judges and the courts in debate in ways that are inappropriate. While there is no doubt that parliamentarians have a right, and perhaps an obligation, to take note of the work performed by the courts, it must be done in a way that respects the integrity of the courts. How this is actually done in practice is a responsibility we all share.

Bill – Committee Report (acceptability of amendments)

June 3, 1999 *Journals*, pp. 1671-74

On Tuesday, June 1, when Senator Poulin, the Chair of the Committee on Transport and Communications, was about to move the adoption of the Twelfth Report recommending certain amendments to Bill C-55, *An Act respecting advertising services supplied by foreign periodical publishers,* Senator Lynch-Staunton raised a point of order. The Leader of the Opposition claimed that several of these amendments would have the effect of reversing the principle of the bill which is contrary to established parliamentary practice.

In making his case, Senator Lynch-Staunton explained what he understood to be the principle of the bill. In his words, "the intent of Bill C-55 was to prohibit absolutely the possibility of Canadian advertising being placed in American periodicals known as split runs." Citing Canadian and British parliamentary authorities, he noted that amendments that effectively reverse the principle of the bill are out of order.

Senator Lynch-Staunton also suggested that the amendments involve a possible tax expenditure rendering the bill, as he assessed it, into a money bill.

Senator Poulin then explained how the amendments recommended in the Committee report were in order procedurally. Based on her analysis of the title of the bill and the legitimate scope of committee review of a bill as characterized in the 6th edition of *Beauchesne's Parliamentary Rules & Forms,* citations 688 and 689 at page 205, she maintained that the recommended amendments were in order. In the Senator's view, Bill C-55, as amended by the committee, "remains unequivocally a bill respecting advertising services supplied by foreign periodical publishers." The fundamental policy behind the bill continues to be, as she put it, "the preservation and defence of our culture by enhancing the ability of Canadian magazines to succeed in the marketplace."

For his part, Senator Murray was not persuaded. In his brief intervention, the Senator stated that the committee amendments had the effect of reversing a long-standing policy to exclude foreign split-run publications from the Canadian market.

Speaking against the amendments, Senator Kinsella cited another Canadian parliamentary text, the 4th edition of *Bourinot's Parliamentary Procedure and Practice* in the Dominion of Canada, and invoked the standards of Aristotelian logic. Though admitting that the amendments recommended by the Committee to Bill C-55 were not the absolute negative of the bill's original proposition, he was in no doubt that they constituted a "contrary opposition by any standard of logic." Accordingly, the Senator contended that the amendments denied the principle of the bill and were unacceptable.

The discussion on the point of order continued with interventions by Senator Carstairs and Senator Graham as well as further statements by Senator Poulin, Senator Lynch-Staunton, Senator Murray, and Senator Kinsella.

It was at this stage that a second element of the point of order became the focus of some comment. Senator Lynch-Staunton, in his first intervention, had suggested that Bill C-55 might be a money bill. Senator Kinsella noted certain statements of the Minister during her appearance before the committee referring to a publishers' fund to be created to compensate those who will suffer financially as a result of the amendments now being proposed to this bill. By way of response, Senator Graham challenged the opposition to point to any section of the bill that provides for the expenditure of any money. He asserted flatly that "this bill does not create such a fund, nor does it authorize any money whatsoever for any such fund."

I want to thank those Honourable Senators who participated in the discussion on the point of order. I have since had an opportunity to review the arguments that were presented and to assess the parliamentary authorities that were mentioned with respect to the scope of committee amendments to bills and the underlying importance of the principle of a bill as adopted at second reading. I have also read the Clerk's copy of the bill that shows the amendments incorporated into it to have a better understanding of their significance.

Let me deal with the second aspect of the point of order first. A connection has been made with the amendments to the bill and the Minister's remarks about a related program that the Government might put in place to aid publishers adversely affected by the consequences of Bill C-55 as amended by the committee's report. Senator Kinsella indicated that he regarded these two elements as interlocking, as a package. At the very least, he suggested that I consider the matter as problematic. Senator Graham, on the other hand, challenged anyone to show any text in the bill that provides an expenditure of any government money. In his judgment, there is none to be found. This is certainly a critical point.

Any amendment that authorizes an expenditure from the Consolidated Revenue Fund (the CRF) would be out of order. As the chamber of sober second thought, it is not within the power of the Senate to introduce such an amendment. That is the responsibility of the other place.

It is not enough to suggest that there are consequences that might flow from the amendments, that there might be expenditures as a result of programs the Government might establish following the implementation of Bill C-55. While such a program might be part of a package, they are not directly part of the bill itself or the amendments now before the Senate. As Speaker, I can only look at the bill and the amendments. What I see does not explicitly provide for the appropriation of any funds from the CRF. Accordingly, the incorporation of these amendments would not convert Bill C-55 into a money bill. The amendments are not out of order based on this second objection.

The original argument first raised by Senator Lynch-Staunton is more problematic, but equally fundamental. It is his position that the amendments go against the principle of the bill. Citing the summary of the bill and clause 3, he maintains that the bill is seeking to prohibit absolutely the placement of Canadian advertisements in American split-run magazines. Any variation of this policy, whether 1% or 99%, according to the Senator, would violate this principle.

Holding a contrary position, Senator Poulin argues that the amendments are not contrary to the bill as understood by its long title which states that Bill C-55 is an Act respecting advertising services supplied by foreign periodical publishers. Furthermore, the Senator explained that the amendments fall clearly within the scope of the bill and are relevant to it. The committee, in making its recommendations to amend the bill, was operating properly.

Reliance on the terms of the long title of the bill as a guide to assess the procedural acceptability of amendments to a bill is derived from British practice. In the United Kingdom, the legislative drafting conventions, as I have been advised, provide for titles that are more fully descriptive of the bill's contents. In Canada, however, the long title of bills is rarely as descriptive. More often, the title simply suggests its subject matter. Indeed, with respect to amending bills, the title usually indicates only what Acts are being amended. Frequently, there is little substantive difference between the long and the short titles of the bill whether they are creating original Acts or amending parent Acts. That appears to be the case with Bill C-55. Consequently, the long title can not always be used as a reliable guide in assessing the procedural merits of any amendment.

A more useful approach, one that always needs to be considered in examining the procedural acceptability of amendments, is to determine if they are within the scope of the bill and relevant to it. In the case now before us, the only amendments that seem to be in dispute are the ones that add new clauses 20.1, 21.1 and 21.2.

I do not think that there is any doubt that the amendments are relevant to the bill. There is nothing in their content that suggests that they are bringing into the bill anything that is extraneous or foreign to it. The real question is whether they are destructive of its principle. Do they have the effect of reversing this principle? Unless they do this unmistakably, I would feel obliged as Speaker to allow them and so let the Senate itself come to a determination on their merits.

It has been argued that the principle of the bill is enunciated in clause 3 which states that the provision of advertising services by foreign publishers should be restricted. With respect, I do not think that just one clause can capture the entire principle or scope of a bill unless, of course,

it is a very simple bill. Indeed, the principle of the bill can be difficult to identify precisely. As Speaker Jerome from the other place once pointed out in a ruling he made in 1976, past precedents give "absolutely no assistance in attempting to define what is the principle of the bill." Certainly I had the same challenge when I was asked to rule on the acceptability of amendments proposed to Bill C-28, dealing with the agreements for the redevelopment of Pearson International Airport, considered during the second session of the last Parliament.

In summary, therefore, I would suggest that the identification of the principle of a bill can encompass the understanding reflected by Senators during debate at second reading as well as its title and content.

With respect to the principle of Bill C-55, the debate at second reading by several Senators on both sides seemed to include a somewhat broader meaning than just clause 3. As was explained then, the principle or objective of Bill C-55 is to provide some means to ensure the continued viability of the Canadian magazine industry. Moreover, the text of the bill suggests that clause 3 can be subject to some qualification. For example, clause 20(c) states that the Governor in Council has the authority to make regulations respecting "criteria to determine whether advertising services are directed at the Canadian market."

Even more importantly, clause 21 provides for what is described as the non-application of the Act. This clause spells out an exemption that is aimed to protect some foreign publishers from the punitive operations of Bill C-55. The proposed amendments, new clauses 21.1 and 21.2, expand upon the scope of that non-application within certain other parameters. Whether these are desirable objectives is not for me to decide. My responsibility is to assess whether these proposed amendments are beyond the scope of the bill, whether they are clearly destructive of the bill's principle or whether they unmistakably reverse that principle. It does not appear to me that they do this.

It is my ruling that the amendments are in order.

Committees – Participation by non-members in committee meetings (Ruling appealed and sustained)

June 7, 1999 *Journals*, pp. 1682-84

On Tuesday, April 27, Senator Kenny raised a point of order to object to some recent practices of the Committee on Internal Economy, Budgets and Administration and its subcommittees. Citing rule 91, the Senator noted that all Senators are entitled to attend and participate in meetings of any Senate committee even if they are not members. The Senator also stated that he had sent a letter to the Clerk of the Senate dated February 25, 1999 asking to be kept informed of any meetings of the subcommittees of the Committee. As well, he asked to be supplied with all agendas and working documents. Senator Kenny made this request, as I understand it, because of his conviction that every Senator has the right to attend the proceedings of the subcommittees as well as full committees.

In explaining his point of order, Senator Kenny went on to claim that some of the subcommittees of the Committee of Internal Economy, Budgets and Administration had failed recently to follow the traditional practice of issuing notices of their meetings. He was therefore asking me as Speaker of the Senate to determine whether there is in fact an obligation to provide notice of any and all meetings, either of the full committee or of any subcommittee. Moreover, Senator Kenny asked me to determine if the Committee on Internal Economy, Budgets and Administration**,** or any standing committee, has the authority to permit its subcommittees to meet without any notice.

The Chair of the Committee, Senator Rompkey, responded by saying that he believed that the actions of the full committee and its subcommittees had complied with the current rules and practices. All Senators, he said, receive notice of meetings of the full committee and it welcomes the participation of any Senator whether or not they are members.

Senator Rompkey went on to state that the Committee's subcommittees have recently been revived to facilitate its heavy workload. Their role is to look into policy and to make recommendations for the consideration of the main committee. In carrying out their work, the subcommittees frequently meet informally, whenever it is convenient and often in camera. The Senator went on to explain that the subcommittees do not make any decisions on their own. The main committee must endorse any recommendation proposed by a subcommittee.

I have had an opportunity to review the relevant *Rules of the Senate*, to consider current practices, and I am now prepared to make my decision. Let me state from the start that this decision has been a challenging one. While many of the rules regarding committees have been a feature of Senate practice for years, few, if any, have been the subject of any ruling. Nonetheless, I believe I can provide some direction on whether there is a requirement for all committees and subcommittees to issue notices of any meeting they propose to have and under what circumstances those meetings can be held in camera.

Senator Kenny is certainly correct when he notes that rule 91 permits Senators to attend and participate in meetings of any committee. To put it another way, committees do not have the authority to exclude Senators from their deliberations. Nonetheless, there are some restrictions on the application of this rule that are well established. Non-members are prohibited from voting and they cannot move motions or be part of the committee's quorum.

In addition, rule 92(1), requires that, except for specified circumstances listed in (2), all meetings of Senate standing and special committees shall be held in public and only after public notice. By giving public notice, committees ensure that all Senators, as well as members of the general public, are informed of upcoming meetings. Historically, notice has been provided by a variety of means, ranging from posting paper copies of the notices in various locations on Parliament Hill to the current practice of putting them on the Internet and faxing them directly to interested parties. This rule certainly applies to meetings of standing committees such as the Committee on Internal Economy, Budgets and Administration whenever it meets in public session.

It is not clear from the *Rules*, however, whether any select committee is obliged to issue a public notice when the committee is to meet in camera under the provisions of rule 92(2). The language

of the present rule suggests that there is no requirement to provide public notice for in camera meetings. Let me hasten to add that most committees do provide notices of their in camera meetings. Established practice seems to have filled-in for this apparent gap in rule 92(2) as adopted in 1991.

However, the notice requirements observed by committees, either by rule or by practice, do not necessarily apply to subcommittees. That it does not pertain to meetings of subcommittees is evident from rule 92(3) which states categorically that meetings of subcommittees shall not be subject to the requirements of rule 92(1). This means that subcommittees can choose to meet without public notice. Furthermore, rule 92(3) allows subcommittees to meet *in camera* at the discretion of the subcommittee members themselves. Subcommittees are not required, therefore, to seek authority from the main committee prior to making such a decision. This, I believe, answers one of the questions raised by the point of order.

Certain subcommittees, usually identified as steering committees that deal with agenda and procedure, routinely meet informally and in camera without public notice. Other subcommittees, those involved in conducting special studies, or for the purpose of hearing witnesses, usually meet publicly following public notice. The only time a subcommittee is explicitly required to sit in public session, according to the provisions of rule 92(3)(b), is when it is considering a bill clause-by-clause. For all other occasions, the choice to meet publicly or in camera is a decision of the subcommittee itself.

Accordingly, it would seem that the subcommittees of the Committee on Internal Economy**,** Budgets and Administration have not breached any rule of the Senate by meeting in camera and without public notice.

This conclusion provides the basis for what I believe to be the meaning of rule 91 understood in the context of other related rules and current practices. As was already explained, rule 91 allows Senators to attend meetings of committees. The rule, however, does not specify subcommittees which by practice have come to fulfil various support functions for the benefit of committees. I believe that Senators retain the right to attend and participate in meetings of subcommittees whenever they are meeting publicly. It is less clear that Senators have that right when subcommittees are meeting in camera for the purpose of considering issues that are subsequently reviewed and endorsed by the committee.

In my view, Senators do not have an undoubted right to attend these *in camera* meetings of subcommittees. The opportunity for them to comment on the recommendations that are developed by subcommittees will come when they are considered by the committee.

I realize that this decision depends upon an interpretation of several Senate rules and practices that might vary from the understanding held by some Senators. If this should prove to be the case, it would seem to provide an appropriate opportunity for the Committee on Privileges, Standing Rules and Orders to examine the rules and practices relating to the operation of committees. After all, committees are an important feature of the Senate and it is equally important that the rules relating to them be clearly and fully understood.

It is my decision, therefore, that the point of order has not been established.

Whereupon the Speaker's Ruling was appealed. Sustained.

Question of Privilege – Length of division bell

June 10, 1999 *Journals*, p. 1714

Honourable senators, it is my responsibility, once I have heard sufficient argument, to determine whether or not there is a *prima facie* case, and then Senator Murray can move his motion, according to our rules.

I will say at the outset that I thank Senator Murray for raising this matter. It is important. I appreciate the comments that have been made by every senator.

I remind you of rule 43(1), which says:

> The preservation of the privileges of the Senate is the duty of every Senator. A violation of the privileges of any one Senator affects those of all Senators and the ability of the Senate to carry out its functions outlined in the *Constitution Act, 1867*. Action to ensure such protection takes priority over every other matter before the Senate.

Our rules are very clear on this point. Insofar as whether or not there is a *prima facie* case, the conditions are outlined in 43(1)(a), (b), (c) and (d).

It must be raised at the earliest opportunity: It has been. It must be a matter directly concerning the privileges of the Senate, of any committee thereof, or of any senator. It is obviously one that concerns the privileges, the right to vote, of not only the one senator who has raised it but others who have spoken.

It must be raised to seek a genuine remedy which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available. That has been done, because Senator Murray told us in his oral statement that he was providing a remedy. It must be raised to correct a grave and serious breach. Anything that prevents senators from voting is a serious breach.

I therefore declare that there is a *prima facie* case.

Motion - Acceptability (motion in amendment)

September 8, 1999 *Journals*, pp. 1825-26

I have reread the main motion carefully. I agree that the main motion deals specifically with the Somalia deployment. It does indeed say:

> ...the Canadian Forces both in-theatre and at National Defence Headquarters, responded to the operational, disciplinary, decision-making and administrative problems encountered during the Somalia deployment to the extent that these matters have not been examined by the Commission of Inquiry into the Deployment of Canadian Forces to Somalia;

To bring in Croatia would, I think, fall outside of the main motion.

I, therefore, declare the amendment out of order.

Committees – Protection of witnesses

September 9, 1999 *Journals*, pp. 1840-41

Honourable Senators, I am prepared to rule on the question of privilege raised yesterday by the Honourable Senator Kinsella. As you will recall, Senator Kinsella received a letter from Dr. Shiv Chopra, alleging that his employer, Health Canada, has harassed him because of his testimony before a committee of the Senate. Senator Kinsella reminded us of the privileges accorded to parliamentary witnesses and our obligation to protect them from any retaliatory measures that might be taken against them for giving their testimony.

In response to a question of the Honourable Senator Stewart, Senator Kinsella confirmed that he had a written letter of complaint from the witness, which included details of the allegation. With leave of the Senate, Senator Kinsella tabled the letter.

I will quote again the essence of the allegation from Dr. Chopra's letter:

> "I tendered a personal example [of harassment] involving a five day suspension which my employer, Health Canada, imposed against me and which I stressed was, in fact, the latest of a series of retaliatory actions. I mentioned that all these actions were the direct consequence of my testimony which I was requested (required) to give before the Standing Senate Committee on Agriculture and Forestry for its Bovine Growth Hormone (rBST) investigations."

The Honourable Senator Carstairs noted that there was a difference in opinion between Health Canada and Dr. Chopra. In her words,

> "It is clear that there is some disagreement as to why this penalty was imposed. We know, for example, that Dr. Chopra feels that this was his appearance before this

> Agriculture Committee that resulted in his penalty. We have had correspondence with the Deputy Minister of Health which would indicate that that was not the case."

Senator Carstairs, however, refrained from attesting to the position taken by Health Canada, preferring to let the Senate make its own determination of the facts, if it felt so inclined.

It is clear to me that Dr. Chopra is convinced that his appearance before one of our committees has caused him harm at the hands of his employer. During the discussion of this question of privilege, I did not receive firm evidence that the employer acted for reasons other than those alleged. I am very reluctant to intervene in what could well be an unfortunate difference between an employer and its employee, a possibility indicated by the statements made by Senators Kinsella and Carstairs and Dr. Chopra's own letter. I also do not wish to dismiss out of hand what amounts to a very serious allegation, indeed. As it stands, a witness before a Senate committee has made a claim, which, if true, may well represent a serious contempt of this place. As yet, there is little evidence offered against the claim. The chronology of events as outlined by Senator Kinsella at least suggests that the claim could be true. I therefore find that a *prima facie* question of privilege has been established according to the provisions in Rule 43(1). I invite Senator Kinsella to move the appropriate motion.

Bill – Acceptability of deferred division on motion in amendment

September 13, 1999 *Journals*, pp. 1865-66

In his comments, Honourable Senator Lynch-Staunton indicates that he believes the motion that was passed is a hoist. I have looked into the authorities and I find that, indeed, a hoist motion, if it is a hoist motion, is a debatable motion in any case. However, if you look at the motion that was made on Friday, it is after debate, in amendment. The Honourable Senator Ghitter moved, seconded by Honourable Senator Cochrane:

> That the Bill be not now read a third time but that it be read a third time on Tuesday, September 21, 1999.

Therefore, that motion was moved as an amendment to what was then a debatable motion, and following the practices that we have would be a debatable amendment and, therefore, one that can also be deferred insofar as a vote is concerned.

I rule that the motion in amendment is in order.

Question of Privilege – Unauthorized release of working drafts of committee report

September 14, 1999 *Journals*, p. 1893

I would refer honourable senators to *Beauchesne*'s 6th edition, page 241, citation 877, which states:

> No act done at any committee shall be divulged before it has been reported to the House.

Further in the same citation, it states:

> The publication of proceedings of committees conducted with closed doors or of reports of committees before they are available to Members will, however, constitute a breach of privilege.

Then, of course, we have our own rules, which are equally clear in that regard. Rule 43(1) states as follows:

> The preservation of the privileges of the Senate is the duty of every Senator. A violation of the privileges of any one Senator affects those of all Senators...

Our rules then set out the conditions that the Speaker must consider in deciding whether or not there is a *prima facie* case. These are founded in rule 43(1), which states the matter must:

> (a) be raised at the earliest opportunity.

That has been done.

> (b) be a matter directly concerning the privileges of the Senate...

That has been established.

> (c) be raised to seek a genuine remedy...for which no other parliamentary process is reasonably available.

That will be accomplished with the motion that Senator Andreychuk has indicated she is prepared to make.

> (d) be raised to correct a grave and serious breach.

The comments that I have heard have convinced me that that is the case.

The four conditions having therefore been met, I rule that there is a *prima facie* case.

Second Session, Thirty-Sixth Parliament
October 12, 1999 – October 22, 2000

Speaker: The Honourable Gildas L. Molgat

Speaker *pro tempore*:
The Honourable Rose-Marie Losier-Cool

Question of Privilege – Unauthorized release of working drafts of committee report

October 13, 1999 *Journals*, p. 30

My ruling is the same as the one that I gave on September 14. I recognize that a *prima facie* case has been made and it is in order for the honourable senator to proceed with her motion.

Question of Privilege – Witness who appeared before a committee

October 13, 1999 *Journals*, p. 30

As I ruled on September 9, in my view, the honourable senator did establish a *prima facie* case and can therefore proceed with the motion referring the matter to committee.

Motion – Leave to move during Routine of Business

November 2, 1999 *Journals*, pp. 60-62

During the Routine of Business on October 14, Senator Hays sought leave under Government Notices of Motion to move a motion relating to an extended adjournment of the Senate. Leave was granted, but as soon as the motion was under debate, there was some confusion about the nature of the proceedings. One Senator suggested that the motion was still under notice, others claimed that the motion was not debatable and that there was no debate allowed during Routine of Business. In the end, the motion on the two-week adjournment was adopted and the Senate proceeded to other business. Nonetheless, when Orders of the Day were called, Senator Lynch-Staunton asked the Chair for a statement of clarification regarding this event so as to avoid the possibility of any confusion in the future.

Following this request, I studied the matter closely and I am now prepared to make a statement explaining my understanding of the way the rules and practices of the Senate operate. In making this statement, I have attempted to summarize the possibilities with some thoroughness, but I am not certain that I have actually exhausted all possibilities. Moreover, I believe that this exercise has revealed some discrepancies and anomalies in the current rules that should be assessed by the Standing Committee on Privileges, Standing Rules and Orders.

The Routine of Business in its current form has been a feature of Senate practice since 1991. In that year, amendments were made to the *Rules of the Senate* setting out the order in which different items of Routine of Business would be called after Senators' Statements. The sequence of Routine of Business is stated in rule 23(6). Other subsections of rule 23 stipulate that no point of order or question of privilege can be raised during Routine of Business and that any requested standing vote be deferred to 5:30 p.m. unless it is in relation to a non-debatable motion moved without notice. Other provisions of rule 23 seek to fix the time when Question Period will take place and when Orders of the Day shall be called if the time for Routine of Business is extended.

The items of Routine of Business include the presentation of reports from standing or special committees, Government notices of motion, as well as notices for motions proposed by other

Senators. Normally, Chairs simply present their reports and Senators just give notice of their motions. On occasion, however, leave will be sought to consider a committee report either immediately or later the same day. Similarly, under notices of motion, a committee Chair will seek leave to move a motion allowing a committee to meet at a time when the Senate might still be sitting. And, in recent years, every Tuesday the Senate is sitting, the Deputy Leader of the Government almost invariably seeks leave to move a motion to have the Senate meet at 1:30 p.m. on Wednesday rather than at 2:00 p.m.

Every time leave is sought during Routine of Business, it is a request to suspend the notice normally applicable under rules 57 or 58. Leave is granted once it is determined that no Senator present in the Chamber disagrees with the request. If only one Senator refuses leave, the affected item cannot be considered before the required notice period has lapsed. Furthermore, when leave is granted, the adoption of the report or motion is moved immediately, unless the leave request proposes to postpone consideration of the report or motion to later in the day.

When the question on the report or motion is placed before the Senate, it is subject to debate. The fact that notice is required for these items makes it clear that they are debatable. No committee report or substantive motion presented to the Senate for adoption is exempt from the possibility of debate. That there is often little or no debate on motions moved with leave during Routine of Business does not mean that they cannot be debated. Only motions that can be moved without notice are non-debatable.

Once debate has begun, all the rules relating to debate are applicable including the possibility of raising a point of order. This is because, in agreeing to grant leave and put the question, the Senate has, in effect, stepped out of Routine of Business for the duration of the debate until it is decided or adjourned. In my view, the restriction imposed by rule 23(1) preventing points of order or questions of privilege being raised during Routine of Business does not apply during the debate because the Senate is no longer in Routine of Business.

If, in addition, a standing vote is requested at the conclusion of any debate, rule 23(3) states that the vote will be deferred to 5:30 p.m. the same day unless, of course, there is leave to hold it at another time. There is another subsection of rule 23 that also remains pertinent even when there is a debate. Rule 23(7) provides that not later than thirty minutes after the first item of Routine of Business is called, the Senate will proceed to Question Period. It is possible, therefore, that proceedings on Routine of Business or a debate on an item during Routine of Business will be interrupted for the purpose of the Question Period. In fact, this did happen on May 6, 1993 when debate on third reading of Bill C-114, amending the Canada Elections Act, was moved immediately following the presentation of the report on the bill by the Committee on Legal and Constitutional Affairs without amendment. On that occasion, the bill received third reading before the thirty-minute time limit for Routine of Business was reached to begin Question Period. This proceeding also included a standing vote which, according to my reading of rule 23(3), should have been delayed until 5:30 p.m. There is no indication that leave was given to take the vote immediately. Leave might have been implicit given the understanding that Royal Assent was scheduled later the same afternoon. Thereafter, the Senate proceeded to Orders of the Day without reverting to Routine of Business.

This then is a summary of what can occur whenever leave is granted during Routine of Business. I hope that it is of some assistance to understanding this aspect of our procedures. What occurred on Thursday October 14 when Senator Hays asked for leave to move his motion for the extended adjournment of the Senate was consistent with our rules.

Emergency debate – Request

November 3, 1999 *Journals*, p. 87

Pursuant to Rule 60(4), the Honourable Senator Gustafson requested that the Senate do now adjourn for the purpose of discussing a matter of urgent public importance, namely: the current farm crisis.

After debate, The Speaker ruled that the request did meet the requirements for an emergency debate.

Accordingly, pursuant to Rule 61(1) leave was granted to move a motion that the Senate do now adjourn for the purpose of discussing the matter, later this day.

Motion – Acceptability (Papers and evidence received by a committee in a previous session)

November 17, 1999 *Journals*, pp. 119-20

When this issue was raised originally, I went to the precedents of the Senate. I shall try now to deal with this matter in a logical sequence.

First, I wish to deal with the question concerning whether or not Senator Oliver's motion was properly before us. Senator Cools referred to rule 58(1), which requires a day's notice. However, if you go back to the *Debate of the Senate* for November 3, it is clear that when Senator Oliver proposed the motion he said:

> ...with leave of the Senate, and notwithstanding rule 58(1)...
>
> **The Hon. the Speaker:** Is leave granted, honourable senators?
>
> **Hon. Senators:** Agreed.

Senator Oliver's motion was quite properly before the Senate because leave had been granted.

Second, I wish to refer all honourable senators to the *Rules of the Senate*, Part I, "Interpretation", which states:

> 1. (1) In all cases not provided for in these rules, the customs, usages, forms and proceedings of either House of the Parliament of Canada shall, *mutatis mutandis*, be followed in the Senate or in any committee thereof.

It is clear that our rules, practices, customs, and usages take precedence over *Bourinot* or *Beauchesne* or other such references. We first go to our rules and then we go to our practices and precedents. Two of our practices and precedents have been detailed by the Honourable Senator Kinsella. Regarding the motion by the Honourable Senator Stewart earlier today, the order of reference is clear:

> That the papers and evidence received and taken on the subject and the work accomplished by the Standing Senate Committee on Foreign Affairs during the First Session of the Thirty-sixth Parliament be referred to the Committee;

As well, Senator Oliver, as indicated by Senator Kinsella, had indicated again on November 3, in the *Debate of the Senate*, page 90, that there had been a previous occasion where this was done. He refers to the *Journals of the Senate* on April 2, 1998, at page 584, where papers and evidence received on Bills S-10 and S-12 were referred to the committee for its study of Bill S-14. I can find other precedents if honourable senators require them. However, my understanding is that this has been a common practice in the Senate. The reason for doing it is not to force witnesses to come a second time to speak on the same subject and also not to have to do all the research a second time on a matter that has already been discussed in a Senate committee or before the Senate. That is the reason for the past practice and that is how it has evolved.

Reference was made by Senator Cools to *Beauchesne*. As I pointed out, our practices take precedence over *Beauchesne*. However, even if you read *Beauchesne*, paragraph 874, it does not say that they shall report to the House, it says that "they may report to the House." In my view, that does not exclude, then, the Senate from taking another practice because there is no compulsion. It does not say that if this has not been done, you cannot take another practice. Our practice has been different. I rule that it is in order for us to proceed with Senator Oliver's motion.

Debate on the motion of the Honourable Senator Oliver was adjourned until the next sitting in the name of the Honourable Senator Cools.

Question of Privilege – Leak of draft report of a committee report (Ruling by Speaker *pro tempore*)

November 24, 1999 *Journals*, p. 151

I recall Senator Molgat being asked to rule on a similar question in September. I therefore accept the question of privilege raised by the Honourable Senator Bacon.

Unparliamentary language (use of the word “minion”)

December 6, 1999 *Journals*, pp. 203-04

Before I call Orders of the Day, I am prepared to rule now on the question raised by the Honourable Senator Corbin with regard to the use of the word “minion” by the Honourable Senator Cools.

I wish to thank the Honourable Senator Corbin for having brought the matter before the Senate as the issue of comments made in this house or in the other place about each other or about the Governor General is important. As honourable senators, we must always be cautious never to use language that could in any way be considered offensive to persons in other high positions.

However, I have read carefully the comments of Senator Corbin in this matter. He quoted from the *Concise Oxford Dictionary*, 9th edition, about the meaning of the word “minion”. While he did say it was used usually in a derogatory fashion, it does have other meanings.

I went to other dictionaries, notably the one we have here on our Table. I find that in this dictionary, the *Shorter Oxford English Dictionary*, the word “minion”, in most of the statements here, is considered to be a complimentary term. It is, first, a beloved object, darling or favourite; a lover or lady love; also a mistress or paramour; one specially esteemed or favoured; a favourite idol or a favourite of the sovereign. However, it does say “or servile defendant.” Most of the statements are complimentary.

Therefore, I would rule that the term “minion” is not an offensive term in its general use. However, I repeat that we must be very cautious not to use offensive terms regarding other people or institutions of importance in our country.

Bill – Referring to Committee

December 8, 1999 *Journals*, pp. 227-28

Honourable Senators, actions within committees are outside of my responsibility. What committees do is up to committees. However, insofar as reporting, I refer you to Rule 97(1), which states:

> A report from a select committee shall be presented by the chairman of the committee or by a Senator designated by the chairman.

When a report is presented, I have no authority to question whether the Senator presenting has been designated. I must depend upon the committee Chairman to have done that.

I will now attempt to clarify the second element of the point of order.

This goes back to last week, and I read from the *Journals of the Senate* of November 24 respecting the Senate’s decision with regard to Bill S-3:

The Bill was then read the second time.

The Honourable Senator Hays moved, seconded by the Honourable Senator Mercier, that the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce.

There was then some debate, following which:

With leave of the Senate and pursuant to Rule 30 the motion was modified to read as follows:

That the Bill be referred to the Standing Senate Committee on Banking, Trade and Commerce and to the Standing Senate Committee on Foreign Affairs.

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

Honourable Senators, I must say that this is a most unusual procedure. Certainly to send one bill to two committees is not good practice. After all, how is that done?

Therefore, it was sent, as I understand it, to the Standing Senate Committee on Banking, Trade and Commerce. The Committee studied the Bill and no amendments were proposed.

The Bill was reported back. I must refer you, then, to Rule 97(4), which states:

When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

However, there was an instruction from the Senate, which I have just read to Honourable Senators, that the Bill was to be referred to the other committee. Thus, having been reported by one committee without amendment, I concluded that it should not then proceed to third reading because it still had to go to the other committee. That is what the Senate decided. There had to be a mechanism to move it to the other committee, and that is what was stated in the motion.

I do not know how else the report could have been handled in view of the decision of the Senate the previous week. I was locked in by the decision of the Senate to send the report to two committees. I do not know what other vehicle could have been used to achieve the decision of the Senate.

Bill – Need for signifying Royal Consent

December 14, 1999 *Journals*, pp. 284-87

On December 1, during debate on the second reading of Bill S-7, respecting the declaration of Royal Assent by the Governor General in the Queen's name, Senator Cools proposed an amendment. This amendment would have the effect of postponing the second reading of the bill until its sponsor, Senator Lynch-Staunton, obtains the signification of Royal Consent. Senator

Cools maintained that this was necessary given that the bill, in her view, affects the Royal Prerogative.

Shortly thereafter, Senator Lynch-Staunton rose on a point of order to challenge the amendment. He claimed that Bill S-7 does not affect the Royal Prerogative and, consequently, that the amendment goes beyond the content of the bill and is out of order. Senator Carstairs and then Senator Kinsella spoke in support of Senator Lynch-Staunton's basic position. Senator Carstairs noted that the bill is intended to provide an alternative to the current ceremony of Royal Assent, not to eliminate it as an essential requirement to the enactment of bills passed by Parliament. For his part, Senator Kinsella suggested that the amendment seemed to be imposing an unnecessary restriction on the ability of any Senator to bring forward legislation.

In reply to these objections, Senator Cools denied that her amendment sought to impose any limitation on anyone. In this instance, however, Senator Cools maintained that since the bill would affect the Royal Prerogative by altering the Sovereign's powers with respect to Royal Assent, some evidence must be provided that the Governor General or Her Majesty the Queen consent to the proposal contained in Bill S-7. As an example, Senator Cools cited debate that occurred in the United Kingdom in 1911 during consideration of the *Parliament Act* which provided authority for Parliament to adopt legislation bypassing the House of Lords.

Since this point of order was raised, I have studied the matter and I am now prepared to rule on it. Let me begin by stating that, to my mind, there seem to be two distinct parts to this point of order. One, of course, has to do with the matter of the Royal Prerogative. The second relates to the kind of amendments that are permitted at second reading. I will begin with the second element first.

Second reading involves a decision of the Senate on the principle of the bill, whether the Senate accepts its basic intent or not. This focus on the bill's principle has led to a practice that limits the kind of amendments that can be moved at this stage. Leaving aside the motion for the previous question, which is a superseding motion, there are basically two kinds of amendments that are permitted at second reading - the hoist amendment and the reasoned amendment.

The hoist amendment seeks to postpone the consideration of a bill by proposing that the bill be read "this day six (or three) months hence." The form of the motion is well established; it was developed in British Parliament more than two centuries ago to circumvent the narrow meaning of the word "now" in the standard motion for second reading "That such and such a bill be now read a second time." Nowadays, it is more often used to prolong debate since it allows those who have already spoken on the main motion an opportunity to speak again.

A reasoned amendment, on the other hand, provides the means to put on the record, in the form of a motion, a statement or explanation as to why a bill should not receive second reading. By practice, as is explained in the 6th Edition of *Beauchesne's Parliamentary Rules & Forms* at citation 670 on page 200, reasoned amendments fall into one of several categories. Reasoned amendments must be declaratory of some principle adverse to the principles or policies contained in the bill or they may express opinions as to the circumstances connected with the introduction or prosecution of the bill, or otherwise oppose its progress. Furthermore, citation

671(3) on page 201 suggests that the reasoned amendment should not attach conditions to the second reading.

In the present case, the motion in amendment proposed by Senator Cools does not meet the requirements to be considered a reasoned amendment. This is because it clearly establishes a condition to be met prior to second reading. The amendment that Senator Cools proposed on December 1 reads as follows:

> That Bill S-7 be not now read a second time, but be read a second time when the sponsor fulfills the condition required by the law of Parliament that is necessary and preliminary to the passage in Parliament of a private member's bill altering the Royal Prerogative, that preliminary condition being the signification of Her Majesty's Royal Consent to Parliament's consideration of Her Majesty's interests in Bill S-7's proposed limitation and alteration to the manner, form, and style of Her Majesty's Royal Assent in Canada, which is simultaneously an alteration to the constitution of the Senate.

Accordingly, the motion in amendment is not in order and cannot be put as an amendment to the second reading of Bill S-7. This, however, does not settle the matter entirely. As I indicated earlier, there are two aspects to this point of order. I have dealt with the reasoned amendment, it is now necessary to address the more substantive question concerning the possible need to signify Royal Consent.

As Senator Cools stated in her intervention, Royal Consent is required whenever a bill proposes to affect either the prerogative of the Crown, its hereditary revenues, personal property or interests. With respect to this case, there is no doubt that the only issue involved with Bill S-7 is that of the Royal Prerogative. The bill contains no provisions relating to the personal property or interests of the Queen. The question to be answered then is whether a bill providing an alternative to the ceremony of Royal Assent touches upon a prerogative power of the Crown.

In making the case, Senator Cools referred to comments made in the United Kingdom Parliament in 1911. I am not altogether certain how useful this case is as a guide to the present circumstances. The remarks of Lord Lansdowne indicated the need to obtain Royal Consent for bills affecting the Royal Prerogative, but it does not provide any indication as to the nature and extent of the Royal Prerogative, particularly with respect to Canada's constitutional practices. However, given the importance of the issue, I decided to look into it further. I felt compelled to do this because of the possible consequences. According to *Beauchesne*, the question of Royal Consent can be highly relevant to the final disposition of a bill. At citation 726(2) on page 213 of the 6th edition, it is stated that "the omission [of Royal Consent], when it is required, renders the proceedings on the passage of the bill null and void."

As many honourable Senators will know, this is not the first time that a Royal Assent bill has been debated in the Senate. The Leader of the Opposition sponsored an identical bill in the previous session. In fact, that bill was based on one that had been presented to the Senate some years before by the Leader of the Government at the time, Senator Murray. The bill gave legislative expression to a proposal that had been advanced some years before by Senator Frith who spoke to an inquiry on the subject of Royal Assent in 1983 that was subsequently followed

up by a committee review. In 1985, the Committee on Standing Rules and Orders presented a report on the practice of Royal Assent that included a recommendation to draft a resolution for a joint Address to the Governor General seeking her approval to modify the Royal Assent ceremony. However, the report was never adopted by the Senate.

In my research, I also noted that when the British Parliament adopted a *Royal Assent Act* in 1967, Royal Consent was signified in both the House of Lords and the House of Commons prior to its passage. In fact, Royal Consent was announced before second reading, as Senator Cools has suggested be done with Bill S-7. On this point, *Beauchesne* notes at citation 726(2) that "Royal Consent is generally given at the earliest stage of debate." In the next paragraph, *Beauchesne* goes on to explain at citation 727(1) that "consent may be given at any stage of a bill before final passage: though in the House [of Commons] it is generally signified on the motion for second reading."

Furthermore, it seems that the practice of signifying Royal Consent in Canada has almost never involved both the Senate and the House of Commons. In the numerous instances when Royal Consent was sought and signified, I noted that it was usually signified in the House of Commons and rarely in the Senate. Indeed, I have found only one instance where Royal Consent was signified in this Chamber. It happened as long ago as 1951 just prior to second reading of Bill 192, an Act to amend the Petition of Right Act.

This Canadian practice of giving Royal Consent in the House of Commons was noted in the parliamentary authority, *Parliamentary Procedure and Practice in the Dominion of Canada* by Sir John Bourinot as long ago as 1884, when the first edition appeared. Indeed, an example dating from 1886 contained in the fourth edition of 1916 records an example of Royal Consent being signified to a Senate amendment to a Commons private bill in the House of Commons rather than the Senate. This then seems to be an accepted departure from what occurs in Westminster.

The question is what to do in the present circumstances. As I already explained, the issue cannot be addressed in the form of the reasoned amendment that Senator Cools proposed. Perhaps it would have been more appropriate to raise the matter as a point of order, rather than as an amendment to the second reading motion. Nonetheless, even as a point of order, I have heard nothing that would compel me as Speaker to delay the debate on the second reading of Bill S-7. Royal Consent might be necessary; yet based on the Canadian precedents, it would appear that there is no binding requirement that Royal Consent be signified in this Chamber. Accordingly, I am prepared to rule that the amendment is out of order and that debate on the second reading of Bill S-7 should be allowed to continue. I would suggest, however, that if this bill receives second reading, the issue of Royal Consent be studied by the committee to which it is referred as part of its examination.

Unparliamentary language

March 1, 2000 *Journals*, pp. 393-95

On Tuesday, February 22, as we reached the Orders of the Day, Senator Taylor raised a point of order regarding certain words that had been used by Senator Angus during Question Period.

The following day, Senator Gauthier was given leave to continue the debate at my request, since I was not in the Chair the day before and wanted to hear the opinions of the honourable senators.

I thank all those senators who took part in this most interesting debate. Faced with a question that might appear quite simple, I wondered exactly what authority the Speaker of the Senate has over such a question.

I remind honourable senators that the position of the Speaker in this place is very different from that of the Speaker in the other place. The practice and long-established custom is that senators regulate themselves, and that the Speaker has a limited responsibility insofar as interfering. I will admit the rule does provide, in case of serious conditions, that the Speaker can interfere, but normally that rule is not followed.

Also, I should like to remind honourable senators of the rule indicating when points of order can be presented. This issue was raised at that time because Senator Taylor had stood up earlier while we were still in Question Period. The practice that we have followed is as the rule states, that there are no points of order or questions of privilege during Question Period and Routine Business, and that normally, we will entertain them only after the Speaker has called Orders of the Day. Once Orders of the Day have been called, it is proper to come forward with either points of order or questions of privilege, unless it is a case where notice was given by letter previously. I should like to have that established as a clear practice so that there will be no difficulties.

I come back to the points that were raised. I will read directly from the *Debates of the Senate*. The objections raised by Honourable Senator Taylor and Honourable Senator Gauthier were to statements made by Honourable Senator Angus. I refer to page 671, where Senator Angus is reported to have said:

> ...after Minister Stewart had been caught with her hand in the cookie jar.

On page 672, Senator Angus said:

> Instead of integrity, we have seen a minister and a Prime Minister misleading the public day after day.

I should like to refer honourable senators to *Beauchesne*'s. I point out that this whole question of unparliamentary language is not necessarily as simple as it may appear. I refer honourable senators to paragraph 486(1), which states:

> It is impossible to lay down any specific rules in regard to injurious reflections uttered in debate against particular Members, or to declare beforehand what expressions are or are not contrary to order; much depends upon the tone and manner, and intention, of the person speaking; sometimes upon the person to whom the words are addressed, as, whether that person is a public officer, or a private Member not in office, or whether the words are meant to be applied to public conduct or to private character; and sometimes upon the degree of provocation, which the Member speaking had received from the person alluded to; and all these considerations must be attended to at the moment, as they are infinitely various and cannot possibly be foreseen in such a manner that precise rules can be adopted with respect to them.
>
> (2) An expression which is deemed to be unparliamentary today does not necessarily have to be deemed unparliamentary next week.
>
> (3) There are few words that have been judged to be unparliamentary consistently, and any list of unparliamentary words is only a compilation of words that at some time have been found to cause disorder in the House.

I wish as well to quote from what is the newest book on parliamentary practice. It is entitled *House of Commons Procedure and Practice*. I am most conscious that the practice and procedures of the House of Commons do not regulate ours. However, when ours are silent, we do use theirs. This latest book, written by the present Clerk and the Assistant Clerk of the House of Commons, states at page 526:

> The codification of unparliamentary language has proven impractical as it is the context in which words or phrases are used that the Chair must consider when deciding whether or not they should be withdrawn.

With that background, honourable senators will see that making a precise determination is not the easiest thing to do. I remind honourable senators again as to the custom and practices of this house. We are members of a house which always has taken the position that we be polite to each other. We treat each other with respect. We address each other as individuals, and I refer to each honourable senator by name. It is a very different context from that in the House of Commons. One has only to compare the Question Period in the other place with the Question Period in this place to see that. I make no criticism in that regard. They are a different house. We must remain ever conscious of the language that we use and that that language should always be respectful of each other.

The specific words that were used, namely, having one's "hand in the cookie jar," may not be a very polite description of one's activities. It may not be the best wording that could be used. However, it can always be interpreted as meaning a slight misdemeanour, someone who has been caught doing something that they ought not to have done. It is not necessarily dishonest. I think there are different ways of interpreting that phrase.

However, when I come to the next statement, I must confess that I am somewhat more disturbed, in particular, given that earlier Senator Angus is reported to have said:

> The cover-up is not working, honourable senators.

He then said:

> Instead of integrity, we have seen a minister and a Prime Minister misleading the public day after day.

If honourable senators will refer again to *Beauchesne*'s, they will find that the word "misleading" as mentioned in paragraph 489 has been ruled unparliamentary on many occasions under the following headings: attempted to misrepresent, deliberately misled, deliberately misleading, misled and misleading the public. However, to confuse the issue, paragraph 490 sets out words that have been ruled parliamentary. Under that paragraph, we find the words "misleading" and "misled". There is no clear rule.

I return to my comment that it is important in this house that we treat each other with respect. It is equally important when we speak to persons outside this house, particularly those who cannot respond, that we treat them with respect. I have also been told about some of the statements that have been made about senators by people in the other place. That should not affect the way in which we function in this chamber.

Having said that, honourable senators, the rules indicate that as Speaker I have no authority in this matter. I do not have, as the House of Commons has, the authority to name a senator. If I did take that authority, I would have no means of enforcing it. It is up to the chamber.

Honourable senators, I can only say to you that it is up to each of us to make a determination in regard to such matters. Accusing a member of the other place of deliberately misleading is not a term that we should use.

Perhaps a discussion that took place in the Legislative Assembly of Nova Scotia might give some insight into the problem. There, Mr. MacLellan, from the opposition, said after an honourable minister had spoken, "Mr. Speaker, I hope the next time the Minister of Health goes to see Ravine, he does not leave until he comes out of hypnosis." The Speaker replied, "Order, please. Not only was it unparliamentary, but it was not nice." The Speaker then added, "I know the Honourable Leader of the Liberal Party wants to retract." Mr. MacLellan stated, "I do not mind being unparliamentary, but I certainly do not want to not be nice. You really hit me in a soft spot."

Bill – Instruction to a committee (Ruling by Speaker *pro tempore*)

May 2, 2000 *Journals*, pp. 549-51

On Tuesday, April 11, when Senator Lynch-Staunton, the Leader of the Opposition, moved a motion of instruction, Senator Hays, the Deputy Leader of the Government, rose on a point of order. Senator Hays claimed that the motion of instruction was out of order because it was not in the correct form. The motion of Senator Lynch-Staunton seeks to instruct the committee that

would examine Bill C-20 to make certain amendments "to rank the Senate of Canada as an equal partner with the House of Commons." According to Senator Hays, this instruction is mandatory in form and consequently is out of order. Senator Hays argued that the instruction must be permissive, rather than mandatory, because the power to amend the bill is a power which the committee already possesses. In support of his position, Senator Hays referred to a ruling of November 1995 as well as to Bourinot on *Parliamentary Procedure and Practice in the Dominion of Canada*.

Subsequently, there were some other interventions by several Senators, including Senator Lynch-Staunton who supported his motion with a citation from *Beauchesne's Parliamentary Rules & Forms* as well as a reference to the *Companion to the Standing Orders and Guide to the Proceedings to the House of Lords*. I want to thank all Senators who spoke on the point of order. I have reviewed the material and the references that were cited during the discussion on the point of order. I am now prepared to give my ruling.

Motions of instruction are relatively infrequent in Canadian parliamentary practice. They are not a regular feature in either the Senate or the House of Commons and it is not altogether surprising that their use can give rise to some confusion. A motion of instruction was last moved in the Senate December 6, 1999 by Senator Murray. In that particular case, the instruction proposed to empower the committee to divide Bill C-6, a bill dealing with electronic commerce. This motion was taken up for consideration immediately after the bill had received second reading. As it happened, however, no decision was taken with respect to the motion because it was withdrawn some days later after the Senate had actually disposed of Bill C-6.

The point of order raised by Senator Hays focuses on the question of whether the motion of instruction should be in a permissive form rather than in the mandatory style proposed by Senator Lynch-Staunton. If it is determined that the point of order is well founded, then the motion must be ruled out of order. In trying to determine the proper answer to this proposition, I felt obliged to investigate some of the history of motions of instruction in earlier editions of *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, the British parliamentary authority. This seemed appropriate given the limited use made of instructions in the Canadian Parliament and the fact that these motions are derived from British parliamentary practice.

Motions of instruction developed in the British Parliament at a time when the powers of committees were narrowly defined and severely constrained. Through the eighteenth century and into the first decades of the nineteenth, it would seem that the authority of committees to amend bills was so limited that they frequently required instructions from the House to carry out their work effectively. A partial remedy to this problem was to incorporate within the rules or standing orders of the House, certain powers whereby the committees acquired the authority to make amendments to legislation so long as those amendments were generally within the scope of the bill and were relevant. Thereafter, the need for instructions became less frequent and they developed certain characteristics which remain generally the same to this day. Among these characteristics was the distinction between permissive and mandatory instructions. The more ordinary instruction was the permissive instruction which empowered a committee to exercise certain powers at its discretion. Instructions had to be in the permissive form if they were to

apply to committees which already possessed some authority under the standing orders. Instructions could be either permissive or mandatory if the committees involved possessed no powers because they were created on an ad hoc basis or if they concerned private bills.

Applying this basic distinction to the *Rules of the Senate* as they are presently written, it would seem to me that motions of instruction to a committee with respect to the study of public bills must be in the permissive form. This is because our rules already authorize any committee examining a bill to recommend any relevant amendments it deems appropriate. Thus, a committee looking at Bill C-20 has the power to amend it in the way suggested by the motion of instruction proposed by Senator Lynch-Staunton. The text of the motion, however, is mandatory in its form and this is contrary to established usage. This position is supported by recent Canadian authorities including *Beauchesne*'s and is confirmed in the latest Canadian parliamentary manual *House of Commons Procedure and Practice* at page 641: "Motions of instruction respecting bills are permissive rather than mandatory."

Moreover, the present motion of instruction, even if it had been written in the permissive form, would still not past muster procedurally. There are various criteria listed in *Erskine May* on admissible and inadmissible instructions. Admissible instruction can authorize a committee to treat legislation in a variety of different, but specific, ways. Among the instructions which are acceptable are motions empowering a committee to divide a bill, to consolidate several bills or to report separately on different parts of a bill. The motion of instruction of Senator Lynch-Staunton seeks to do none of these things. Rather it seeks to instruct the committee to do something which it already has the power to do. This in fact, is a form of instruction which is recognized to be inadmissible because it is superfluous.

Beyond this, there is still another reason why the motion would give rise to some doubts about its acceptability, quite apart from what has already been discussed. Any motion seeking to authorize or direct a committee in its study of a particular bill must be clear and explicit. As I read it, the current motion does not meet this standard. In seeking to have the committee make whatever changes are required "to rank the Senate of Canada as an equal partner with the House of Commons," the motion is not providing an instruction that is adequately explicit. The language is not clear or specific enough. It does not allow the committee to understand definitely what provisions the Senate desires that it should take into consideration.

For these reasons, therefore, I rule that the motion of instruction proposed by Senator Lynch-Staunton is out of order.

One final comment, while the point of order was raised at the earliest opportunity when the motion of instruction was first called, I think it advisable to note that a motion of instruction cannot properly be taken up for debate prior to the adoption of the second reading motion on the bill to which it relates. Again, all the authorities are clear on this. *Beauchesne*'s states at citation 684 on page 204 that "The time for moving an instruction is immediately after the committal of the bill, or, subsequently as an independent motion. The instruction should not be given while the bill is still in the possession of the House, but rather after it has come into the possession of the committee. If the bill has been partly considered in committee, it is not competent to propose an Instruction."

Accordingly, Order No. 61 was discharged and the motion withdrawn.

Question of Privilege – Unauthorized release of information contained in a committee report (Ruling by Speaker *pro tempore*)

May 4, 2000 *Journals*, pp. 565-66

Yesterday, when we reached Orders of the Day, Senator Tkachuk obtained leave to raise a question of privilege under rule 43 even though he had not met the requirement of providing written notice to the Clerk within the prescribed time prior to the Senate sitting. Senator Tkachuk's question of privilege concerned the publication of information based on the Fifth Report of the Standing Committee on Banking Trade and Commerce. This information appeared in a newspaper yesterday before the report was tabled in the Senate. In fact, according to the Senator, the Committee decided to rush the tabling of the report as a consequence of the newspaper story.

Senator Austin then made some comments about the case. He noted that the journalist himself acknowledged that the report had not yet been submitted to the Senate. Citing 877(1) of *Beauchesne's Parliamentary Rules & Forms*, 6th edition at pages 240-241, the Senator expressed the belief that the circumstances of the case clearly demonstrate that there is a *prima facie* breach of privilege. Shortly thereafter, discussion on this matter was halted when Senator Lynch-Staunton correctly pointed out that any review of the *prima facie* merits of the case should be postponed until after the Orders of the Day have been disposed of.

Today, additional arguments have been made. I want to thank all Honourable Senators who participated in the discussion. I have reflected on the recent rulings of the Speaker and the views expressed yesterday and today. I am prepared to make my ruling.

My obligation as the Speaker *pro tempore* is to consider only whether the evidence presented suggests that a breach of privilege is involved. My role is limited to determining whether there appears to be a *prima facie* case. It is not for me to decide whether there has in fact been a breach of the Senate's privileges. If, however, I do determine that there is a *prima facie* case, then the Senate must resolve how it will dispose of the matter. If the Senate also agrees that the issue might constitute a question of privilege, a motion is usually adopted to refer the matter to the Committee on Privileges, Standing Rules and Orders.

Based on several recent precedents, including the decision by the Speaker of October 13, 1999 dealing with the premature disclosure of a draft report of the Aboriginal Peoples Committee, and on the incontrovertible evidence provided by the journalist who wrote yesterday's newspaper story, I rule that a *prima facie* case of a question of privilege has been made. The matter should be put before the Senate for its determination. Senator Tkachuk you may now proceed.

Committees – Motion to create a special committee

May 9, 2000 *Journals*, pp. 575-77

Last Thursday, May 4, Senator Lynch-Staunton, Leader of the Opposition, rose on a point of order when the motion to create a special committee to study Bill C-20, the Clarity Bill, was moved by Senator Hays. The Senator had provided notice of the motion in properly drafted form earlier the same week, on Tuesday. In the view of the Leader of the Opposition, the motion is out of order for several reasons. Senator Lynch-Staunton argued that the motion anticipates a decision of the Senate with respect to Bill C-20 and, accordingly, it is not in order to debate the motion prior to the second reading of the bill. To support his position, he cited several procedural authorities including *Erskine May*, *Beauchesne*'s and the recently published *House of Commons Procedure and Practice* with respect to the rule of anticipation.

During the course of the discussion on the point of order, Senator Kinsella spoke in support of the position taken by the Leader of the Opposition. In his assessment, there is a problem with appointing a special committee when the *Rules of the Senate* provide for a standing committee whose mandate, he contended, includes such matters as those proposed in Bill C-20. A similar argument was made by Senator Cools who also suggested that there were some errors in the drafting of the motion. Senator Murray also intervened to question how the motion of Senator Hays could be in order especially in view of the ruling of Tuesday, May 2, 2000 on the motions of instruction.

At the conclusion of discussion last Thursday, the Speaker *pro tempore* agreed to take the matter under advisement. Since that time, the Speaker *pro tempore* and I have had an opportunity to review the matter in some detail. We have studied the various points that were raised during the discussion and have reviewed the parliamentary authorities that were cited. Based on this examination, I am now prepared to rule on the procedural acceptability of the motion proposed by the Deputy Leader of the Government to create a special committee to study Bill C-20 after second reading.

As I began my assessment of the point of order, it seemed to me that there was to be an interrelationship with respect to the some of the arguments that were raised against the motion. Nonetheless, I will try to deal with each of them separately.

The first point that was made by the Leader of the Opposition has to do with the objection that the motion to create the special committee anticipates an affirmative decision on the second reading motion on Bill C-20. While there is some sense to this position, I do not think that it violates customary parliamentary practice. Nor does it conflict with the *Rules of the Senate* as I understand them. It is true that the motion can be said to anticipate a favourable outcome with respect to the vote on second reading of Bill C-20, but it does not have any determinative effect on the outcome of the second reading vote. The two motions are separate and distinct questions from a procedural point of view. Even if the motion to create the committee is adopted before the second reading of Bill C-20, it does not preclude the possibility that the Senate might vote against second reading of the bill. If this were to happen, the motion creating the committee would simply become a nullity, as was explained by the Deputy Leader of the Government.

Senator Lynch-Staunton then noted that committees are limited and bound by their orders of reference. The consequence of this principle with respect to this particular case, in his view, is that it would not be proper to consider the motion creating the special committee until after second reading. Only then would it be certain that the Senate has approved the principle of Bill C-20 thus establishing the parameters of the order of reference. There is, however, a difficulty with respect to this assessment; one that also touches the intervention of Senator Murray who appeared to find a resemblance between a motion to create a special committee with a motion of instruction, at least to the extent that neither can be moved prior to the second reading of the bill to which it pertains.

As everyone who spoke on this point last Thursday seemed to acknowledge, a motion to create a special committee is debatable. In fact, this is based on Rule 62(1)(h) which explains that a motion for the appointment of a standing or special committee is debatable. Senator Hays went further to point out that under the terms of Rule 93, the Senate "may appoint such special committees as it deems advisable and may set the terms of reference and indicate the powers to be exercised and the duties to be undertaken by any such committee."

However, the motion to refer a bill to one committee or another following second reading is neither debatable nor amendable according to Rules 62(1)(i) and 62(2). This is because a motion of reference to a committee is what might be classed a procedural motion. It follows automatically as a consequence from the adoption of the second reading motion of the bill.

The only opportunity, therefore, for a bill to be referred to a special committee or a legislative committee, which is also permitted under our Rules, is to create that committee by a separate debatable motion. Moreover, as I have attempted to explain, that motion must be adopted prior to the decision on second reading of the relevant bill. Otherwise, under our current Rules, it will not be possible to send the bill to that committee because it does not exist. My understanding of this procedure seems to be confirmed by several precedents.

There have been three occasions in the last twelve years when the Senate decided to establish a special committee to deal with legislation. Two of the cases predate the rule changes of 1991, the third does not. The first occurred in July 1988 and related to Bill C-72, on official languages. The second happened the following year, in November 1989, and related to Bill C-21 dealing with unemployment insurance. Of these two cases, the first motion was adopted after second reading, but the second motion was adopted before second reading. The third and most recent precedent dates to 1995 and involved Bill C-110 on constitutional amendments. Notice of all three motions was given before the motion for second reading of the relevant bill was adopted. In fact, all of them were cast in the same language as the motion relating to the present case. They all proposed to establish a special committee to consider a specific bill "after second reading". As it happened, only the 1995 precedent gave rise to any debate, though all of them were moved as debatable motions.

In addition to these Senate precedents, there is another interesting example that occurred in the other place in March 1993. On that occasion, a motion was moved to establish a special joint committee to consider Bill C-116 dealing with conflict of interests for public office holders. Though the practices of the other place are not identical to our own, like the Senate, there is no

opportunity there to debate the question of the committee to which the bill will be referred once second reading debate has concluded. Consequently, the motion creating the special joint committee had to be adopted before the question for second reading was voted.

Taking a somewhat different approach than that maintained by the Leader of the Opposition, Senator Kinsella argued that the *Rules of the Senate* provide mandates for all of its standing committees including Legal and Constitutional Affairs. Bill C-20, he maintained, clearly falls within the mandate of this standing committee and, therefore, the bill should be referred to it rather than to any special committee. Whatever the merits of this point of view, it does not take into account another rule of the Senate. Rule 86(2) provides that "any bill message, petition, inquiry, paper or other matter may be referred, as the Senate may decide, to any committee." This rule allows the Senate to disregard, as it deems appropriate, the mandates of the standing committees. Thus there would appear to be no obstacle based on the rules for a motion to create a special committee.

Finally, there is the third argument put forward by Senator Lynch-Staunton which resembles in part his point regarding anticipation. As was mentioned last Thursday, the rule of anticipation is not an explicit rule of the Senate or of the other place, though it is a principle of practice. Citation 512(1) and (2) in the sixth edition of *Beauchesne*'s at page 154 notes that the rule of anticipation is dependent on the same principle as the rule on the "same question". The rule of anticipation provides that "a matter must not be anticipated if it is contained in a more effective form of proceeding than the proceeding by which it is sought to be anticipated." In a descending scale of possibilities, a bill trumps a motion which, in turn, has priority over amendments. Senator Lynch-Staunton's position was that the bill has priority over the motion to create the special committee and therefore must be given precedence.

I would be prepared to consider accepting this proposition if I could be convinced that the two questions are the same, or even substantially similar, but they are not. The motion for the second reading of Bill C-20 involves a decision on the principle of the bill and whether it warrants further study by the Senate. The motion to create a special committee to examine Bill C-20 does not directly address the principle or content of the bill, but rather seeks to provide an alternative to the possibility of referring the bill to another kind of committee. These two motions are not the same in substance and the rule of anticipation does not apply to their consideration.

For these reasons, I rule that the motion moved by Senator Hays is in order and debate on it can proceed.

Debate – Setting limits to requests for leave to extend time

May 11, 2000 *Journals*, pp. 591-93

On Friday, April 7, just when the Orders of the Day had been called, the Deputy Leader of the Senate rose on a point of order. Senator Hays asked for a ruling as to whether it is permissible to set limits to any request for leave to extend the time allowed a Senator for debate. This issue was being raised by the Senator as a follow-up to a series of exchanges that had taken place the previous day after Senator Sibbeston had asked for leave to continue his speech on third reading

of Bill C-9. According to Senator Hays, it is in the interest of order that a time limit be agreed to when seeking leave to extend the time for debate. In his view, granting leave should not be regarded as open-ended, as an opportunity to continue debate for an unlimited amount of time.

By way of response, Senator Kinsella, the Deputy Leader of the Opposition, agreed with the underlying position that he believed was at the root of the complaint made by Senator Hays. There was, he said, a need to review the rules of debate with respect to the time permitted to individual Senators and this task should be undertaken by the Rules Committee. Indeed, several other Senators who subsequently participated in the discussion on the point of order also mentioned the possibility of reviewing our rules of debate. Nonetheless, on the point of order raised by Senator Hays, Senator Kinsella argued in effect that the request for leave to suspend the time limits stipulated in the rules cannot logically be qualified by the imposition of another time limit.

As I have already noted, several other Senators then intervened to speak to the point of order to express their views. At the end, the Speaker *pro tempore* informed the Senate that we had already discussed aspects of this question following the comments of the previous day and that we would look at it again in light of the remarks made on the point of order raised by Senator Hays. Since then, I have read the relevant texts of Hansard, I have also examined our rules in consultation with the Speaker *pro tempore* and the Table Officers and I am now prepared to give my ruling.

During the course of his intervention, Senator Corbin noted that Rule 37(4) is categorical in its language. It states that “no Senator shall speak for more than fifteen minutes, inclusive of any question or comments which the Senator may permit in the course of his or her remarks.” This limitation on debate was incorporated into the *Rules of the Senate* in 1991 together with numerous other rules that were drawn up to more clearly structure the Senate’s sitting day and to better assure the ability of the Government to transact its business. Senator Murray suggested that now, almost ten years later, there might not be the same need to restrict the time allocated to speeches. Whether or not this is true cannot be decided by me. This is a subject that is best studied by the Rules Committee.

There is no doubt that the current rule is restrictive. With growing frequency, requests are being made to extend the time for debate and the question and comment period that can follow a speech. Only rarely are these requests denied. This practice, in turn, may now be giving rise to a sense of frustration. This appears to be evident based on the objections that have occasionally been raised by some Senators who find the process too open-ended. Senator Hays has raised his point of order to suggest a solution to this problem. Until there is a revision of the rules on debate, this solution might be the only effective means to address this situation. The question to be answered first, however, is whether it is procedurally viable.

Senator Kinsella noted that accepting the request for leave means, according to Rule 4(6), approval to do something or to proceed in some particular fashion “without a dissenting voice.” Normally, what is requested involves the suspension of a rule in whole or in part. This is done routinely every Tuesday, for example, when the Deputy Leader of the Government seeks leave to move without the required notice, a motion respecting the hour the Senate will sit on

Wednesday. Instead of meeting at 2:00 p.m. Wednesday, the Senate usually agrees to meet at 1:30 p.m. and to adjourn by 3:30 p.m. in order to allow committees to sit. Leave is also used sometimes to suspend the rule on a deferred vote in order to hold the recorded division at a time more convenient than 5:30 p.m. as specified in Rule 67(2). In both cases, leave is used not just to suspend the notice requirement, but to offer something else in place of the relevant rules for the purpose of allowing the Senate to conduct its business more conveniently and effectively.

Based on these examples, I do not find it procedurally objectionable to have a request for leave to suspend the rules limiting the time for debate combined with a proposal to fix the time of the extension. Indeed, following the model of the House of Lords that Senator Kinsella mentioned it might be useful and advantageous to the Senator, who is requesting more time, to indicate how much time is needed in order to improve the likelihood of a favourable response. Moreover, such an approach would, I think, be in keeping with the intent of Rule 3 regarding the suspension of any particular rule. According to this rule, the purpose of any proposed suspension should be "distinctly stated." As much as possible, I have usually permitted an explanation so long as it did not involve any prolonged discussion. This I think is a sensible approach that could serve the Senate well until the rules of debate are revised.

Accordingly, it is my ruling that a request to extend time for debate can be qualified with a statement indicating the time of the extension. This statement can be proposed either by the Senator making the request or by any other Senator so long as any discussion related to the request for leave is kept very brief.

It is my hope that such a procedure, in addition to the current practice with requests for leave to extend debate, will provide satisfactory alternatives to the Senate until such time as the Rules Committee comes up with a more comprehensive review of our rules of debate.

Motion – Acceptability (declaring proceedings null and void and requesting committee to review and make recommendations concerning the procedure of messages between the two Houses and defective bills)(Ruling by Speaker *pro tempore*)

June 13, 2000 *Journals*, pp. 696-99

Last Thursday, June 8, the Deputy Leader of the Government, Senator Hays, moved a motion with two objectives. The first seeks to nullify the proceedings thus far on Bill C-12 respecting amendments to Part II of the Canada Labour Code. The second objective is to refer the subject of messages between the two Houses and defective bills to the Committee on Privileges, Standing Rules and Orders. Once the motion was moved, the Leader of the Opposition, Senator Lynch-Staunton, promptly rose on a point of order to challenge its procedural acceptability. His remarks were followed by numerous interventions from different Senators. During the course of these exchanges, a variety of objections were raised concerning the motion in addition to what Senator Lynch-Staunton had raised. As well, there was some discussion about the Senate's practices regarding the suspension of the rules, rescinding decisions and multi-purpose motions.

I have reviewed the *Senate Debates* of last Thursday; I have also studied Canadian and British precedents and consulted my procedural advisors. I am prepared to give my ruling. In doing so, I will try to deal with each of the different issues that were raised.

One question is whether this motion is legitimate procedurally because it seems to deliberately thwart certain explicit rules of the Senate. It must be noted, however**,** that rule 58(1)(a) allows for this. Any Senator is entitled to propose a motion, after notice, to suspend any rule or any part thereof. As I read it, the motion of Senator Hays seeks, in part, to suspend the application of rule 63 that provides a mechanism for rescinding decisions. Instead, the Senator wants to completely nullify and void the proceedings relative to the introduction and first reading of Bill C-12.

I am not certain, in this case, that this is really a substantive issue. In speaking in defence of his motion, the Deputy Leader of the Government indicated that the reference to rule 63 was made out of a sense of caution. In his view, the introduction of a bill and its first reading do not strictly speaking come within the ambit of rule 63. I find this to be a reasonable assessment.

Rule 23(2) states that:

> The Introduction and First Reading of Government, Public and Private Bills are *pro forma* stages of consideration and shall be decided without debate or standing votes. In such cases the provisions of rule 65(3) shall not apply.

This means, in effect, that the introduction and first reading of a bill do not really involve a decision of the Senate. Whenever a bill is introduced, the entry in the *Journals*, since 1991, simply states that a bill was read a first time. As an ancillary matter, an order is then adopted fixing the day when the bill will be called for second reading. Consequently, a motion to nullify the proceedings for the introduction and first reading of a bill does not properly involve the use of rule 63 which pertains "to an order, resolution or other decision of the Senate". If the nullification motion were to be adopted, the order fixing the date to begin second reading of the bill would be discharged and stricken from the *Order Paper* since it would be a nullity.

As I noted, there was considerable discussion last Thursday about rule 63. Even though I do not believe that this rule is directly relevant to the motion of Senator Hays, I would like to take this opportunity to make a comment relating to a reference made by Senator Boudreau. In his intervention, the Leader of the Government cited section 36 of the *Constitution Act, 1867* which states that "Questions arising in the Senate shall be decided by a Majority of Voices ..." Normally, as Speaker, I would have no authority to involve myself in this kind of question, but this case is an exception because section 36 is also rule 65(5) word for word.

To my mind, there is a conflict between rule 65(5) and rule 63 and also rule 58(2), both of which set a two-thirds majority vote to rescind or correct orders, resolutions or other votes of the Senate. Given the source of rule 65(5), it might be appropriate for the Committee on Privileges, Standing Rules and Orders to determine the validity of any rule which appears to conflict with an explicit provision of the Constitution.

There was also some discussion about the complexity of the motion. An objection was made suggesting that having more than one proposition invalidated the motion procedurally. I do not accept this argument. While there may indeed be two distinct propositions contained in this motion, it does not render the motion unacceptable. In this particular case, there appears to be a relationship or connection between the two of them and the motion is not out of order because of this.

As I have explained, I find the motion proposed by the Deputy Leader of the Government to be procedurally acceptable. Its effect is to nullify all the proceedings connected with the message that was received June 1 concerning Bill C-12. It was widely acknowledged and admitted last Thursday that the purpose of the motion was to provide an opportunity to bring in a corrected version of the bill. Apparently, there were some textual errors in Bill C-12 as originally transmitted from the House of Commons to the Senate. Once this error was discovered by officials in the House of Commons, the bill was reprinted in its corrected form. The Senate must now be seized of this information so that it can do its work properly with the right bill.

In speaking to the point of order, Senator Lynch-Staunton argued that the proper traditional way to do this is by message. The Leader of the Opposition maintained that there was an obligation for the House where the error occurred to send a message to recall the bill. The Leader of the Opposition cited numerous cases in the British Parliament where bills transmitted from one House to the other that were defective were recalled through a message. As it happens, this process is also known to Canadian practice. There is a precedent dating back to 1913 relating to a bill respecting a canal company. On that occasion, a bill was sent to the Senate from the House of Commons that was defective. On February 20, 1913, the sponsor of the bill in the Commons secured the adoption of a motion recalling the bill from the Senate because it had not been printed as passed.

I am in complete agreement that messages between the two Houses provide the proper formal way to deal with problems of this kind. Furthermore, I am in sympathy with what I perceive to be the irritation underlying much of this point of order. Nonetheless, as an occupant of this Chair, my obligation is to maintain the rules and practices of the Senate. In this specific case, I must note that there is a valid alternative to deal with this problem. This alternative possibility is admitted in the passage of *Erskine May* that has been cited by both Senator Hays and Senator Lynch-Staunton. At page 545 of the 22nd edition, it is stated that “If a bill is carried to the other House by mistake, or if any other serious error is discovered, a message is sent to have the bill returned or the error otherwise rectified.”

The motion of Senator Hays seeks to implement this alternative to rectify the problem of the printing error in Bill C-12. In pursuing this approach, he is doing what was accepted last month when we confronted a similar problem with Bill C-22, a bill dealing with money laundering. Honourable Senators will recall that on that occasion, Senator Hays moved a motion on May 11 to declare the proceedings with respect to the introduction and first reading of Bill C-22 null and void. As noted in the *Journals* of that day at page 594, the motion was adopted after a brief debate. Later in the same sitting, a message was read leading to the introduction and first reading of Bill C-22. Of course, this message contained the corrected text of the Bill C-22 was the corrected version.

The procedure used with respect to Bill C-22 was reasonable and procedurally acceptable in every way. In the absence of a message asking for the return of the defective bill, there is no reason why the approach proposed in the motion of Senator Hays cannot be used as an alternative. I would also note that the second element of the motion of Senator Hays, if accepted, would mandate the Committee on Privileges, Standing Rules and Orders to review this issue and to provide possible recommendations that might prove more satisfactory in dealing with matters of this kind in the future.

Debate on the motion can now proceed.

Motion – Acceptability (motion in amendment)

September 19, 2000 *Journals*, pp. 841-42

Honourable Senators, you will recall that during the sitting on Wednesday, June 28, the Senate heard some debate from Senator Roche on the Eight Report of the Standing Committee on Privileges, Standing Rules and Orders. That report recommends that the Senate establish two new committees - one on Defence and Security, the second on Human Rights. At the conclusion of his speech, Senator Roche proposed that the report be amended to make two additional changes to the *Rules of the Senate*. This first would authorize the Committee of Selection to recommend the nomination of two more Senators to any standing committee over and above what is currently allowed in the rules. The second part of the Senator's amendment would permit Senators to apply to sit on any standing committee by application either to their whip or directly to the Committee of Selection.

Immediately after Senator Roche had proposed his amendment, the Deputy Leader of the Opposition, Senator Kinsella, raised a point of order to challenge its procedural acceptability. Senator Kinsella expressed the view that the amendment was inadmissible because it was incongruent with the content of the Eighth Report and beyond its scope. After several brief exchanges among Senators, I agreed to take the point of order under advisement.

Let me begin by putting this point of order into context. The motion of Senator Austin seeks the approval of the Senate for the recommendation of the Eighth Report to amend the rules to allow for two new committees. It is the Senate itself that will pronounce itself on the substance of the report. All Senators are involved in a question of this sort. All of us have a right to decide what rules we will have. It is permissible for a Senator to move an amendment. As with every amendment, however, it must be valid procedurally.

This, of course, is the issue that Senator Kinsella brought up in the point of order. Senator Roche made reference to the fact that when the Rules Committee looked at the number and size of committees last year they had done so in one report. Senator Austin also stated that he had no problem with this amendment being considered as part of the report. Neither position, however, deals with the challenge raised by the point of order.

I have reviewed the Eleventh Report of the Rules Committee that was presented in the previous session on June 2, 1999. It is true, as was claimed, that the scope of that report included the addition of two new committees and the possible addition of members to all standing committees. The report also proposed new rules on the variable size of all standing committees. Moreover, it is evident that the wording of Senator Roche's amendment follows closely the text of the Eleventh Report. On its face then, it would seem that the amendment might be in order. However, I am obliged as Speaker to take into account other criteria.

Senator Kinsella objected to the amendment because he alleged that it was not congruent to the content of the report and beyond its scope. I find myself in agreement with this assessment. The Eighth Report is very limited in its subject matter, unlike the Eleventh Report. It seeks only the creation of two new committees and nothing else. Any amendment to this report must fall within its limited scope and be relevant to its purpose. This amendment does not do this. Instead, the amendment seeks to empower the Committee of Selection to recommend the addition of two members to any standing committee. This amendment is really a new question and should be treated as a separate motion. This conclusion agrees with citation 579(2) of *Beauchesne's Parliamentary Rules and Forms* 6th ed. on page 176 which prohibits amendments from raising new questions. Consequently, this amendment should be moved as a distinct motion after notice which according to rule 57(1)(a) is 2 days.

Motion – Acceptability of government notice of motion respecting time allocation

September 20, 2000 *Journals*, pp. 857-58

First, let me point out that the motion before us is identical to previous motions of the same type that have been moved. There are no changes in the wording.

I refer all honourable senators to rule 39(1), which can be found on page 41 of the red book. It sets out the procedure exactly. That rule will answer the questions raised by Honourable Senator Nolin and Honourable Senator Roche.

The proposed notice of motion by Honourable Senator Hayes is as follows:

> I give notice that tomorrow, Thursday, September 21, 2000, I will move:
>
> That, pursuant to Rule 39, not more than a further six hours of debate be allocated to dispose of third reading of Bill C-37, An Act to amend the Parliament of Canada Act and the Members of Parliament Retiring Allowances Act;
>
> That when the debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the third reading of the said bill; and

> That any recorded vote or votes on the said question be taken in accordance with the provisions of Rule 39(4).

Honourable senators, it is clear that the proposed motion sets out the day, the hour and the terms concerned and that the third reading will take place at the end of that debate.

Insofar as the point raised by the Honourable Senator Kinsella is concerned, I refer specifically to rule 39(1), which simply states that if "the Deputy Leader of the Government in the Senate, from his or her place in the Senate, may state that the representatives of the parties have failed to agree to allocate a specified number of days or hours," that allows the deputy leader to give notice.

Honourable senators, the deputy leader has stated that an agreement has not been reached. I have no means of knowing whether an agreement will be reached. All I have before me is a motion stating that if they have reached no agreement at this point, the rule has been followed and the terms have been set out. Therefore, I rule that the point of order is not valid.

Motion – Acceptability (amendment to amend a committee report)

October 19, 2000 *Journals*, pp. 936-37

As honourable senators know, the practices of our house determine what our orders are to be. It is true that we refer to the authorities when our practices are not clear, but essentially our practices supersede the authorities.

I might add that the authorities themselves are not always very clear. There is a reference made to *Beauchesne*, and it is true that *Beauchesne* says a report from a committee may not be amended in a substantive manner by the house. On the other hand, if one goes back one page, to paragraph 889(2), it states that "A report may be adopted in total or in part."

Obviously, if honourable senators are to adopt a report in part, then you must amend it to get to that part. *Beauchesne*, to say the least, takes a vague stance.

I refer back to our own references now. This is why I delayed my ruling. I wanted to be sure to check our own practices. I will read to honourable senators from the May 9, 1995, *Journals of the Senate*:

> Resuming the debate on the motion of the Honourable Senator Hastings, seconded by the Honourable Senator Stanbury, for the adoption of the Twenty-second Report of the Standing Committee on Internal Economy, Budgets and Administration (reprint of Volume I of the Report of the Special Joint Committee Reviewing Canada's Foreign Policy), presented in the Senate on March 30, 1995.
>
> After debate, In amendment, the Honourable Senator Di Nino moved, seconded by the Honourable Senator Lynch-Staunton:

> That the report be not now adopted but that it be amended by adding the following words at the end of the second paragraph, after the figure "$7,500":
>
> ...provided that the costs of reprinting the report are shared on a 30-70 per cent basis with the House of Commons.

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

After debate, The Hon. the Speaker declared the motion in amendment in order.

That was accepted by the Senate.

Coming to somewhat more recent times, April 15, 1999:

> Resuming debate on the motion of the Honourable Senator Kelly, seconded by the Honourable Senator Beaudoin, for the adoption of the Report of the Special Committee of the Senate on Security and Intelligence, deposited with the Clerk of the Senate on January 14, 1999,
>
> And on the motion in amendment of the Honourable Senator Carstairs, seconded by the Honourable Senator Fairbairn, P.C., that the Report be not now adopted but it be amended by deleting recommendation No. 33; and
>
> That recommendation No. 33 be referred to the Standing Committee on Privileges...

More recently still, from the *Journals of the Senate* on April 7, 2000:

> Consideration of the Seventh Report of the Standing Committee on Internal Economy, Budgets and Administration... presented in the Senate on April 4, 2000.
>
> The Honourable Senator Poulin moved, seconded by the Honourable Senator Mahovlich, that the Report be adopted.
>
> After debate, In amendment, the Honourable Senator Hays moved, seconded by the Honourable Senator Fairbairn, P.C., that the Report be amended by deleting the amount of $2,630 allocated to the Social Affair's Subcommittee to update "Of Life and Death" and substituting therefor the amount $7,890.
>
> After debate, The question being put on the motion in amendment, it was adopted.

We have three clear precedents that we did indeed accept amendments to committee reports. Therefore, I must accept that the amendment is in order.

Divisions – Request for deferred division

October 19, 2000 *Journals*, p. 938

The word “request” implies that something is being asked for; however, that something may not necessarily be received. Before I proceed along that line, I wish to say to honourable senators that the role of the Speaker is not to take into consideration whether there is a unanimous report, whether there are extraneous outside considerations, or whether there might be an election called on Sunday, or anything of that nature. The Speaker’s role is to interpret the rules, not to take extraneous matters into consideration. It is incumbent upon the Speaker to ask: What do the rules say, and what do the precedents say?

Let us come back to the request. Honourable senators will find that the word “request” appears in other places in our rules. For example, rule 65(3) reads as follows:

> 65(3) Upon the request of two Senators before the Senate takes up other business, the Speaker shall call for a standing vote...

That is a request by two senators. It is never challenged. I do not believe it could be challenged. If two senators rise, we call a standing vote. It is automatic.

We have searched the precedents. There is not a single instance where the request of a whip on either side has not been accepted. It has been accepted. The precedent in this place, frankly, is that this is the procedure. I am sorry, but I can only rule that a request is mandatory.

First Session, Thirty-Seventh Parliament
January 29, 2001 – September 16, 2002

Speaker: The Honourable Daniel Hays

Speaker *pro tempore*:
The Honourable Rose-Marie Losier-Cool

Question of Privilege – Recognition of claim for position of Leader of the Opposition in the Senate (Ruling appealed and sustained)

February 21, 2001 *Journals*, pp. 77-83

On February 6, Senator St. Germain filed a notice with the Clerk of the Senate of his intention to raise a question of privilege. This notification came within hours of my receiving a letter from Mr. Day, M.P., Leader of the Canadian Alliance and Leader of the Opposition in the House of Commons, advising me that he had nominated Senator St. Germain, the only Senate member of the party, to be the Leader of the Opposition in the Senate. For the information of Honourable Senators, I sent a reply to Mr. Day the same morning explaining how I thought the matter might be treated in the Senate.

At the appropriate time during the Routine of Business, Senator St. Germain provided the required oral notice and, at the conclusion of the Orders of the Day, he presented his case. In summary, the breach of privilege alleged by Senator St. Germain, as I understand it, is that he is entitled to the position and rank of the Leader of the Opposition. A failure to recognize his claim to this position, he argued, is a denial of precedent and tradition. It also constitutes a breach of privilege because it prevents him from fulfilling all of his duties.

The substance of the presentation made by Senator St. Germain involves a complex set of issues. The Senator began with an acknowledgement that the current situation is "so new and unusual that it begs for resolution." It is his contention that no Senate precedent exists to guide this House to properly identify the Leader of the Opposition. Senator St. Germain then made reference to rule 1 of the *Rules of the Senate* that sanctions recourse to the practices of other Parliaments in all unprovided cases. Senator St. Germain then cited the British House of Lords and the Australian Senate as sources for guiding precedents. According to the Senator, the practice in both Parliaments would appear to be that the political leadership in the Lower House is mirrored in the Upper House. That is to say, there is a direct correlation in the recognized leadership of the Official Opposition in the Upper House with that of the Lower House. Indeed, evidence would suggest that they are almost always of the same party affiliation, notwithstanding the relative numerical strength of party membership in the Upper House.

Following this review of practices in the United Kingdom and Australia, Senator St. Germain continued with an assessment of what occurred here in the Senate in 1994. At the outset of the 35th Parliament, the party representing the Official Opposition in the House of Commons, the Bloc Quebecois, had no membership in the Senate. The Opposition in the Senate was provided by the Progressive Conservative Party. In the view of the Senator, this outcome has no real bearing on the merits of the case he is making with respect to his alleged question of privilege and is not relevant as a precedent.

Finally, Senator St. Germain argued for the need to recognize, as he put it, the "changing nature of Canada's political landscape." He urged the Senate to accept this reality, whatever the outcome of the ruling in this case. He also proposed that I as Speaker give "some strong direction regarding the resolution of this matter." In closing, the Senator made additional references to the statutory authority of the Speaker of the British House of Commons to determine the Official Opposition when the question is in dispute. He then cited the example of the decision by Speaker

Parent in the “other place” in 1996 to maintain the status of the Bloc as the Official Opposition on the basis of incumbency in view of the numerical equality between that party and the Reform Party. Before taking his seat, Senator St. Germain made mention of a document that he had already tabled explaining in greater detail the precedents he had noted in his presentation.

By way of rebuttal, Senator Robichaud, the Deputy Leader of the Government, contended that no *prima facie* case had been made to support the allegation of a breach of privilege by Senator St. Germain. The Deputy Leader of the Government denied the Senator’s claim to the title of Leader of the Opposition based exclusively on the status of the Canadian Alliance as the Official Opposition in the House of Commons. Senator Robichaud went on to refute the notion that the failure to recognize Senator St. Germain as Leader of the Opposition impairs his ability to function as a Senator and is therefore a breach of parliamentary privilege.

In explaining his position, Senator Robichaud noted that Senator St. Germain’s ability to participate in various activities - moving motions or amendments, soliciting information in Question Period, speaking during Senators’ Statements, and attending committee meetings - is the same as that of any other Senator. Senator Robichaud went on to state that Senator St. Germain enjoys the benefits of office space, a global budget and access to parliamentary documents and a research fund just like any other Senator.

With respect to the issue of who recognizes the position of Leader of the Opposition as defined in rule 4(d)(i), the Deputy Leader explained that it is the Senate itself that determines the meaning of its own rules. After acknowledging what he described as a longstanding practice to recognize, as the Opposition, the party of the greatest number that is not the Government, Senator Robichaud agreed that it was perhaps time to review the Senate’s internal organization and the manner in which parties are recognized. The Senator concluded his intervention by suggesting that the Standing Committee on Privileges, Standing Rules and Orders study this question.

Senator Prud’homme then spoke to the question of the alleged breach of privilege. He proposed that I as Speaker take the necessary time to review this important question carefully. I want all Honourable Senators to know that I have taken this advice seriously. I believe that the issue raised in the question of privilege of Senator St. Germain is very important. In the days since it was first brought up, I have reviewed closely the arguments presented as well as the document that was tabled. I have also studied the relevant precedents of our Parliament as well as those of other Westminster-style Parliaments. I am now prepared to give my decision.

In making my ruling, I want to address three inter-related issues: the question of privilege raised by Senator St. Germain; the role of the Speaker of the Senate in deciding certain questions; and thirdly, possible methods to determine the Leader of the Opposition.

Let me begin with the question of privilege claimed by Senator St. Germain. Rule 43(1) reminds us that “the preservation of the privileges of the Senate is the duty of every Senator. A violation of the privileges of any one Senator affects those of all Senators and the ability of the Senate to carry out its functions ...” The struggle of Parliament with the Crown for the recognition of its privileges several centuries ago is in fact the history of the rise of parliamentary government and

democracy in Great Britain. This history is also a proud part of our Canadian constitutional heritage. The underlying principles of privilege established so long ago still remain important today, although the application of these privileges continues to evolve.

According to the British parliamentary authority, *Erskine May*, "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively … 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." The foremost privileges that are exercised by the House collectively are the power to punish for contempt and the power to regulate internal proceedings as a body. Pre-eminent among the rights enjoyed by Members is freedom of speech. Other rights enjoyed by Members individually include freedom from arrest, hindrance or molestation. These latter privileges remain important, in the words of *Erskine May*, "as a means to the effective discharge of the collective functions of the House …"

Whether or not a Senator is acknowledged as Leader of the Opposition does not fall within the traditional privileges enjoyed by individual members or even the privileges exercised by the Senate as a whole. It is, therefore, difficult for me to see how the matter of any Senator's recognition in the position of Leader of the Opposition could constitute a question of privilege. This view is supported by Joseph Maingot in his book on *Parliamentary Privilege in Canada*. At page 224 of the second edition, he notes that parliamentary privilege applies to members in their capacity as members, not in their capacity as ministers, party leaders, parliamentary secretaries or whips. Accordingly, it is my ruling that no *prima facie* case of a breach of privilege has been established in this case.

There may well be instances, however, where the status of the Leader of the Opposition can give rise to points of order. For example, the Rules provide that in most instances, the Leader of the Government and the Leader of the Opposition will be granted unlimited time for debate. An attempt to limit that right could lead to a point of order that could be the subject of a Speaker's ruling. It must be stressed that the protection of these rights does not involve their recognition as parliamentary privileges over and above the privileges accorded to all parliamentarians. It is also necessary to point out that in such a case, as in all matters relating to the enforcement of the *Rules of the Senate*, the ruling itself could be the subject of an appeal to the Senate for confirmation or rejection. This is because the Senate retains for itself the exclusive authority to determine its practices even to the extent of passing judgment on decisions of the Speaker. In this regard, the Senate is quite different from many other Parliaments including the United Kingdom and Australia, where the decisions of the Speaker are not subject to appeal.

At this point, I am already well into the second issue that I wished to raise in this ruling - the role of the Speaker of the Senate. That role is, in fact, quite limited. As Speaker, I have an obligation to enforce the Rules to the best of my ability, but the Senate alone has the ultimate authority to determine its practices, not the Speaker. Precedents, therefore, do not have any binding character. They would, of course, influence the assessment of a situation by a Speaker, but they could not bind the Senate. Under our current practices, the Senate is not constrained by any obligation to follow precedent.

In this particular case, I have looked closely at the precedents mentioned by Senator St. Germain which are also explained more fully in the document that he tabled February 6. It is Senator St. Germain's contention that these precedents are useful and provide guidelines that could influence the outcome in this case. The first example that he referred to in his presentation was that of the British Parliament. The Senator makes the case that in Westminster, the opposition leadership in the House of Lords is determined by reference to the political composition of the House of Commons. I think that this is a correct account of how the system operates in the United Kingdom Parliament.

Should there be any doubt in the United Kingdom as to which party should be recognized as the Official Opposition based on parity, the Speaker of the House of Commons is authorized under statute to make a final and conclusive determination. In all other instances, however, the Speaker has no role to play. Under the same law, the *Ministerial and other Salaries Act*, the Lord Chancellor is given the same authority to determine the Official Opposition in the House of Lords, but this authority must be exercised by way of reference back to the decision made in the House of Commons. These provisions of the Act date back to 1937 and I am unaware of any occasion where the Speaker or the Lord Chancellor had to resort to it; nor did Senator St. Germain indicate that it had ever been used. In any case, it is the view of the Senator that I as Speaker can exercise the same authority through the provisions of rule 1. I do not accept this proposition. Moreover, my position appears to be shared by my counterpart in the "other place". In a ruling that was made February 26, 1996 dealing with the status of the Bloc Quebecois, Speaker Parent explained that "Unless the House wishes, either in the rules or in legislation, to give the Speaker precise powers and guidelines by which to designate the official opposition, I must state at the outset that I do not feel it is within my power to make such a decision …" The Speaker went on to acknowledge the *status quo* incumbency of the Bloc Quebecois as the Official Opposition.

In my assessment of the position taken by the Commons Speaker in that instance, this was not a typical ruling at all. In character, it resembled the approach the Speaker would be expected to take in respect of a casting vote which is to keep the question open by opting for the *status quo*. The Speaker simply recognized the *status quo*. Speaker Parent acknowledged that he had no authority to alter the *status quo* and recognize the Reform Party as the Official Opposition. Such a decision, as he explained, "has never been decided on the floor of the House of Commons, and the House has never put in place a procedure for the selection of the official opposition."

Australia was another jurisdiction that Senator St. Germain raised as a possible model. There too, it seems a correlation exists between the identity of the Official Opposition in the Senate and the House of Representatives. In explaining the history of the Australian experience, Senator St. Germain referred to an account that had been secured from the Senate Clerk Assistant of Procedure, Dr. Rosemary Laing, in Canberra. While the experience in Australia has been largely consistent, with the anomalous exception of what occurred in the early 1940's involving different opposition parties that were in a coalition, the practice is regarded as a convention. This convention, however, is not unalterable or inflexible. The Clerk Assistant has provided the Table with some information about the character of this convention. This document, as well as the research paper tabled by Senator St. Germain and my correspondence with Mr. Day, is available in the Clerk's Office. As Dr. Rosemary Laing describes it: "The fact is that while the position of

Leader of the Opposition in the Senate has to date been determined by reference to the party in opposition in the lower house, changing circumstances in the future may well lead to a different outcome. If the situation arose in the Senate in which the party constituting the Opposition in the House of Representatives was not also the largest party in the Senate not included in the government, it is highly likely that the right of the leader of such a party to the title of Opposition Leader would be disputed. The issue of which Senator is designated as Opposition Leader is a matter of custom and practice only. If a dispute arose about which party could claim the title, the matter could be resolved only by the Senate itself. Custom and practice (or 'precedent') may well not be the determining factor in the resolution."

Senator St. Germain explained that he felt obliged to refer to the examples of the Parliaments of the United Kingdom and Australia because there seemed to be no precedents in our Senate history that address the problem of determining who should be the Leader of the Opposition. This is, no doubt, because there was no difficulty in deciding who should have the title. Until recently, the Senate has been almost exclusively a two-party House with a handful of independents. The two political parties represented in the Senate are the only parties that have ever formed the Government. Thus, there was never a problem in deciding which party formed the Government, and which the Opposition. This may have established a practice, it is not clear that it has established a convention.

Reference to authorities such as E. Russell Hopkins and Robert MacKay suggest that there has been some variation on how the Leader of the Opposition in the Senate has been designated. Although Hopkins indicates at page 17 in an unpublished manuscript in the collection of the Library of Parliament that it was by the decision of the Leader of the Opposition in the House of Commons, MacKay states in his book entitled *The Unreformed Senate* at page 66 that it was a decision of the Senate opposition party caucus. F. A. Kunz in his work, *The Modern Senate of Canada / 1925-1963,* at page 85, takes a position that more closely resembles the account provided by MacKay.

In any case, these options were exercised in an era when two parties dominated the political landscape, a landscape which, Senator St. Germain told us, is now changed. In any event, it seems to me that there is precedent to indicate how the Senate will designate its Leader of Opposition. In 1994 and again in 1997, the Leader of the Opposition was chosen by the caucus representing the largest number of Senators not of the Government. The proposition that these examples do not count because there were no representatives from the Bloc Quebecois or the Reform Party in the Senate at the time is not altogether persuasive. I say this because these precedents prove that there need not be a corresponding relationship in the political composition of the House of Commons and the Senate. Our parliamentary system continued to function even though the Senate had an Opposition that did not match the Official Opposition in the House of Commons when it was the Bloc or the Reform Party. Parliament is flexible enough to accommodate this possibility. This is because, in large measure, the Senate and the House of Commons are, and remain, independent, autonomous bodies performing roles that are complementary to each other.

Whether the identity of the Opposition in the Senate will change or ought to change at some point in the future is not for me as Speaker to decide unless I should be authorized to make such

a decision. As I stated in my response to Mr. Day, I believe that this is a matter to be determined by the Senate itself. With respect to the identity of the Opposition in the current session, let me point out that the Senate has already indicated whom it recognizes. On Thursday, February 8, the Senate adopted, on division, the second report of the Committee of Selection. In addition to identifying the membership of the standing committees, the report also identified the *ex officio* members, Senator Carstairs or Senator Robichaud for the Government and Senator Lynch-Staunton or Senator Kinsella for the Opposition. For the moment at least, the matter seems to be settled.

I have made an effort to go into the substantive issues raised by Senator St. Germain even though I ruled that no *prima facie* case of a question of privilege had been established. I did this, not only because the Senator asked me to, but also because I believed it was important to explain what I understand to be the practices related to identification of the Leader of the Opposition. In view of the current circumstances, I am satisfied that the Office of the Clerk has dealt with this issue appropriately. It may be that I have not answered all the interesting and important questions raised by Senator St. Germain. Should this be the case, it might be useful, as was suggested, to have the status of opposition parties studied by the Standing Committee on Privileges, Standing Rules and Orders. This is an avenue that Senator St. Germain may want to pursue or the Committee itself may choose to explore.

Whereupon the Speaker's Ruling was appealed.

The question being put on whether the Speaker's Ruling shall be sustained, it was adopted on division.

Bill – Presentation of committee report and mover of motion for third reading

March 28, 2001 *Journals*, pp. 254-56

On Thursday, March 22, 2001, Senator Wiebe, on behalf of Senator Kolber, presented the Second Report of the Standing Senate Committee on Banking, Trade, and Commerce, dealing with Bill S-16, *An Act to amend the Proceeds of Crime (Money Laundering) Act.*

Since the Bill was reported without amendment, the report stood adopted without motion under Rule 97(4). When I, as Speaker, asked when the Bill should be read a third time, the Deputy Leader of the Government in the Senate, Senator Robichaud, moved that it be placed on the *Order Paper* for consideration at the next sitting.

At the appropriate time, Senator Kinsella raised a point of order based on two principles. First, he questioned whether the Bill was properly reported. Second, he sought clarification as to whether Senator Robichaud had acted correctly in moving the motion to set the date for third reading.

On the first point, Senator Kinsella expressed the view that the practice has been that, when a Chair is not available to perform his or her functions, it falls upon the Deputy Chair to do so. He

asked whether the Banking Committee had authorised Senator Wiebe to present the report. His fundamental concern was whether any member of a committee may present a committee report.

Senator Kinsella's second concern was whether Senator Robichaud acted properly in moving the motion to set the date for third reading. He noted that Rule 97(4) provides that it is the Senator in charge of the bill who should move such a motion, and suggested that, since Senator Robichaud was not the sponsor, he should not have moved that motion.

A number of Senators then spoke to the issue. Senator Robichaud quoted Rule 97(1), which deals with the presentation of committee reports: "A report from a select committee shall be presented by the chairman of the committee or by a Senator designated by the chairman." He felt that Senator Wiebe had acted properly, since Senator Kolber had asked him to act on his behalf. As to the second matter raised by Senator Kinsella, Senator Robichaud noted that the Bill in question was government legislation. He suggested that as Deputy Leader of the Government, he could move the motion to set the date for third reading. Senator Wiebe then intervened to confirm that Senator Kolber had asked him to present the report.

Subsequently, Senators Tkachuk, Carstairs, Lynch-Staunton, and Taylor also participated in the debate, which can be found at pages 422-424 of the *Debates of the Senate*.

I would like to thank all Honourable Senators for their contribution to the consideration of this issue.

Senator Kinsella's point of order touches directly on section (1) of Rule 97, as quoted above, and section (4) of the same Rule, which states that:

> "When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day."

With regard to the first element of the point of order, that relating to the propriety of Senator Wiebe presenting the report, similar issues have been raised in the past.

On February 24, 1998, Senator Callbeck presented reports of the Banking Committee on behalf of Senator Kirby, the Committee's Chair. Senator Kinsella asked why the reports had not been presented by the Chair or Deputy Chair. Senator Callbeck replied that she had been asked by Senator Kirby to present them. Senator Kinsella accepted this response, although he indicated that he did not view it as a precedent.

On December 8, 1999, Speaker Molgat dealt with a point of order raised the previous day by Senator Kinsella. In his point of order, Senator Kinsella questioned, among other things, whether the Banking Committee had adopted a motion to report Bill S-3, an income tax convention bill, and whether the Committee had authorised Senator Hervieux-Payette to report the Bill. At that time, Senator Kolber, the Chair of the Committee, noted that he had authorised Senator Hervieux-Payette to act on his behalf. Senator Molgat made a point of noting that, as Speaker, he had no authority to question whether the Senator presenting a report had been designated, and

that he must depend upon the committee Chair to have done so. In light of Rule 97(1), Speaker Molgat did not find that Senator Kinsella's point of order had been established.

As noted previously, in the present case, Senator Wiebe also confirmed to the House that Senator Kolber had asked him to present the report, as Rule 97(1) allows. I would like to confirm my support for Speaker Molgat's position. In my opinion, the statement by Senator Wiebe was not strictly necessary. If an Honourable Senator declares that they are doing something on behalf of another, this declaration should be taken in good faith, and should only become an issue if the designator were to indicate that there had been a misunderstanding.

Pursuant to Rule 97(1), I therefore find that the report to the Senate was properly presented.

I will now turn to the second element of the point of order, as to whether Senator Robichaud acted properly by moving the motion to set the date for third reading of Bill S-16.

In relation to Rule 97(4), I would note that our Rules do not provide a clear definition of "the Senator in charge of the bill." In the case of a government bill such as S-16, the Leader of the Government in the Senate is ultimately responsible for it - indeed that position appears on the cover of the Bill. In keeping with Rule 4(d), the Deputy Leaders on both sides often act on behalf of their respective Leaders in this Chamber.

In addition, the Senator serving as sponsor of a bill -- who begins debate at second reading -- also has a high degree of involvement throughout the process, often including moving the motion to set the date for third reading. Finally, in matters resulting directly from a committee's work, as in this case, the committee Chair may also be involved.

Senate practice with respect to moving the motion to set the date for third reading reflects the variety of Senators who may be involved in the process. For government bills, there have been many cases in which a Senator other than the Leader of the Government has moved this motion. This motion has often been moved by the Deputy Leader of the Government. To take a few examples, during the 2nd Session of the 36th Parliament, the Deputy Leader moved this motion for Bills C-10, C-22, and C-26. During that same Session, Chairs of committees reporting government bills sometimes moved the motion in question; this was the case, for example, with Bills S-18, C-2, and C-7.

Therefore, while the Rules do not define the term "Senator in charge of a bill," Senate practice would suggest that, at least for government legislation, the Leader of the Government, the Deputy Leader of the Government, the sponsor of the Bill, or their designate can move the motion to set the date for third reading.

In light of the *Rules of the Senate* and Senate practice, I find that the second element of this point of order has also not been established. Bill S-16 was properly reported and the motion to set the date for consideration at third reading was properly moved.

Question of Privilege – Unequal treatment of Senators under the *Rules of the Senate*

March 28, 2001 *Journals*, pp. 257-58

Honourable Senators, yesterday, at the conclusion of the Orders of the Day, Senator Carney rose on a question of privilege raised in accordance with the provisions of Rule 43. The essence of Senator Carney's argument was that her privileges were breached when leave was denied when she appealed to the Senate to allow her to extend her remarks past the 15 minutes allowed by the *Rules of the Senate*. This incident came to pass on Thursday March 15, 2001 while Senator Carney was speaking on an inquiry of which she had previously given notice. Senator Carney explained that the denial of leave was inequitably applied to her in that other speakers had been allowed to extend their remarks, while her request for leave to continue speaking had been denied.

Senator Carstairs responded to Senator Carney's remarks by referring to the tests laid out in the *Rules of the Senate* in Rule 43(1), which aid us in determining the validity of a claim that privileges have been breached. Specifically, Senator Carstairs argued that, in her opinion, Senator Carney had not met the test of raising this question at the earliest opportunity, as specified in 43(1)(a), since three sitting days had passed since the 15th of March before Senator Carney raised this matter under Rule 43. Secondly, Senator Carstairs argued that privilege cannot be breached by the observation of, and strict adherence to, the *Rules of the Senate*. Senator Carstairs and Senator Robichaud both pointed out in their remarks that Senator Carney had already been extended the courtesy of leave earlier to allow her to get to her item of business ahead of other Senators who held positions of priority on the *Order Paper*.

Finally, Senator Kinsella and Senator Grafstein had an exchange on the principle of freedom of speech and the individual rights and immunities of Senators.

Honourable Senators, as I indicated at the conclusion of debate on this matter, I am obliged by Rule 43(12) to explain my ruling, using references to any rule or written authority relevant to the case. I am also obliged by Rule 43 to ensure the question of privilege being raised meets certain tests. Having considered the remarks made by those Senators who intervened, to whom I extend my thanks for their assistance, and having consulted the authorities and precedents, I am prepared to give my ruling.

Senator Carney has used the provisions of Rule 43 to bring her question of privilege to the Senate. I would like to remind Honourable Senators that Rule 43 exists to give precedence in the business of the Senate to this type of question, underlining the importance all Westminster-style Parliaments give to matters of privilege. As a result, any matter raised using these provisions must meet certain conditions precedent to being afforded that priority.

In my judgement, this matter was not raised at the earliest possible opportunity, according to 43(1)(a). While I am sympathetic to the medical limitations cited by Senator Carney, three sitting days did, indeed, pass before the matter was raised. The Rules do not reveal an exemption from this imperative for any reason, medical or otherwise.

Further, I am not convinced that, according to 43(1)(b), this matter directly concerns the privileges of Senator Carney. It is true that, as Senator Kinsella argued, freedom of speech is an unquestioned privilege of any Member of Parliament. However, in the same authority to which Senator Kinsella referred, just a little further down the same page, on page 51 of Marleau and Montpetit's *House of Commons: Procedure and Practice*, another privilege is listed, that of the privileges of a house of parliament to regulate its own internal affairs. In fact, in *Beauchesne*'s 6th edition, citation 33 says: "The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them. A few rules are laid down in the Constitution Act, but the vast majority are resolutions of the House, which may be added to, or repealed at the discretion of the House."

In *Marleau and Montpetit*, pages 71 to 79, the freedom of speech is further explained. If I may paraphrase, freedom of speech is not necessarily the freedom to speak. The principle behind the freedom of speech is that a Member of Parliament, while speaking within what is defined as a proceeding of parliament, cannot be prosecuted through either civil or criminal means for what has been said. This principle allows Members of Parliament to express themselves freely on any matter being debated, without fear of legal consequences. Since Senator Carney is not arguing that she is being punished legally for what she was saying, I do not believe her freedom of speech privileges have been breached.

As for equity of treatment by colleagues as a privilege, I cannot find anything in the authorities that suggests that one must be treated by one's colleagues exactly the same as one perceives others are treated in the application of such devices as leave. While Senator Carney may have a grievance over how she perceives she has been treated by her colleagues, there does not appear to be a related privilege she may claim.

Accordingly, I do not find that Senator Carney has met the particular tests of raising the matter at the earliest opportunity or that denial of leave directly affects her privileges. Therefore, I do not find that a *prima facie* of privilege has been established.

In closing, if I may, 43(1)(c) also asks if a question raised as a matter of privilege could possibly be remedied by another parliamentary process. In the hope that it is of use to Senator Carney and other Senators, I would suggest to her that the questions of time limits on speeches and of leave to extend remarks are both elements of our rules of procedure. We do have a committee that concerns itself with these questions. Senator Carney might consider at some time in the future moving a motion to have the Standing Committee on Privileges, Standing Rules and Orders study this question, as well as that of medical exemptions to raising questions of privilege. I should also note that the Speaker's Advisory Committee has in the past, and most likely will in the future, consider the issue of the adequacy of 15 minute speeches and the question of granting leave.

Bill – Admissibility (C-4)

June 12, 2001 *Journals*, pp. 700-02

Yesterday, when debate was to resume on the third reading of Bill C-4, a bill establishing a foundation to fund sustainable development technology, Senator Lynch-Staunton raised a point of order to challenge the proceedings. In making his case, the Leader of the Opposition spoke to two issues. The first had to do with the fact that the government has already appropriated the monies intended to support the work of the foundation through the estimates. The second argument was based on the rule of anticipation.

The Senator claimed that according to the testimony of the Minister of Natural Resources before the Standing Committee on Energy, the Environment and Natural Resources, funds that were originally earmarked for the foundation in Bill C-46, the predecessor to Bill C-4 in the last Parliament, were set aside in the 2000-2001 budget. When Bill C-46 died on the *Order Paper* last year, the government proceeded to establish a non-profit corporation to hold these funds, or a portion of them, so that they would not lapse at the end of the fiscal year. These monies are to be transferred to the Foundation once Bill C-4 is enacted.

In his view, the government's action was irregular, and possibly even illegal. To support his case, the Senator cited comments made by the acting Auditor General during her testimony before the committee. Should Bill C-4 be adopted under these circumstances, the Senator claimed, the Senate would be sanctioning an act of government which runs completely contrary to modern parliamentary democracy. In particular, he argued, it by-passes the House of Commons and the exercise of its authority over supply. To support this contention, the Senator referred to several parliamentary authorities including, *Erskine May, Beauchene's, Bourinot* and *Marleau and Montpetit*.

With respect to the second matter, the rule of anticipation, Senator Lynch-Staunton argued that the establishment of the non-profit corporation presupposed the passage of Bill C-4 and, thus, clearly violated the rule of anticipation. Such an approach to legislation, the Senator noted, could pose some serious problems and financial accounting irregularities if it should happen that Bill C-4 not pass.

The Senator was careful to stress that he was not asking for a ruling from me as Speaker on the administrative practices of the government. Instead, he insisted that the Senate had only one choice: "to return this bill to its sponsor in order that the government first have the proper funding in place through the proper budgetary procedures."

Once Senator Lynch-Staunton had argued his case, several other Senators then intervened. Senator Robichaud challenged the right to raise a point of order since it had not been raised at the earliest opportunity. The Deputy Leader of the Government noted, moreover, that the funds in question were approved in the Estimates adopted by both Houses of Parliament. As he put it, "the government determined that the best means of furthering the objections for which Parliament [had] appropriated funds would be to transfer funds to a not-for-profit corporation established under Part II of the *Canada Corporations Act, 1970*."

Senator Kinsella then spoke to reject any suggestion that it was too late to raise a point of order, a position subsequently re-iterated by Senator Lynch-Staunton. If the Senate, according to Senator Kinsella, determines that there is a procedural problem with a bill prior to its final passage, it has a right to take remedial action. In this case, the procedural issue relates to the oversight by Parliament of government appropriations, particularly if Bill C-4 does not pass.

The Leader of the Government, Senator Carstairs, next spoke to deny that a valid point had been raised because nothing in the bill contravenes the *Rules of the Senate*. Indeed, it is her position that "the rules were followed. They were followed in the chamber. They were followed in committee. They are now being followed … at third reading of this bill. The government had approval for this money." Whatever dispute there might be about certain processes followed by the government with respect to Bill C-4, it was undeniable according to Senator Carstairs, that the bill was reported by the committee to the Senate without amendment.

Finally Senator Taylor provided some background information on some matters already raised in previous exchanges, particularly with respect to the testimony heard by the standing committee.

I want to thank all Honourable Senators for their participation in the debate on the point of order. I have paid special attention to the arguments made in respect to the role I might have in assessing this point of order and the steps that were proposed to deal with it by the Senate. Senator Lynch-Staunton has made it clear that he does not want a ruling from me addressing the administrative practices of the government. This is just as well because I have no authority as speaker to rule on them. Similarly, I have no authority to rule that the Senate return the bill to the other place so that the so-called proper budgetary process can be followed to fund the sustainable development foundation established through Bill C-4. Such a decision can only be taken by the Senate itself. As Speaker, I cannot rule on what was done, or not done, in the other place. All I can do is rule on what transpires here, in the Senate. In this regard, the position of the Leader of the Government seems particularly relevant. In all the arguments that were presented yesterday, there was no indication that any specific rules or practices of the Senate were breached. Consequently, there is nothing on which to make a ruling that would sustain the point of order.

As to the rule of anticipation raised by the Leader of the Opposition, I would observe that his comments revolve around the funding issue for the foundation and the presumption, allegedly assumed by the government, that Bill C-4 would pass the Senate and the other place substantially unchanged. Whatever one might say or think about such an assumption, it does not properly involve the rule of anticipation. This rule, in fact, deals with a conflict that can arise when the Senate takes decisive action on one of two or more items standing on the *Order Paper* that deal with substantially the same subject in the same way. Traditionally, the Senate, like most other parliamentary bodies, imposes on itself a restriction of deciding the same question more than once in the same session. The rule of anticipation supposes that the Senate will give priority to the item that is regarded more effective procedurally. This is my understanding of the rule of anticipation and it does not apply in this case.

For these reasons, it is my ruling that there is no point of order.

There still remains one matter on which I feel I should comment on and that is the question of "first opportunity" with respect to raising a point of order. As it relates to a bill still before the Senate, there is no time limit on raising a point of order at anytime the bill is called for debate following first reading. The notion of "first opportunity" does not really apply to points of order; it is rather a qualification that pertains to questions of privilege and the "fast track" procedures outlined in rule 43. Thus it was perfectly in order for the Leader of the Opposition to raise his point of order whatever the outcome of the ruling.

Debate on the motion for the third reading of Bill C-4 can now continue.

Bill – Need for signifying Royal Consent

June 14, 2001 *Journals*, pp. 734-35

You will recall that earlier this month, on June 5, Senator Joyal raised a point of order with respect to the possible requirement for royal consent in relation to Bill S-20. This bill, sponsored by Senator Stratton, seeks to establish a particular process within the Privy Council for the appointment of individuals to certain government positions.

In presenting his case, Senator Joyal urged me as Speaker to take the time necessary to study this matter, since it involved an important constitutional question. For his part, Senator Stratton suggested that the matter of royal consent could be discussed in the Senate Committee on Legal and Constitutional Affairs together with the bill after second reading. This was followed by a proposal from Senator Kinsella who asked that I not consider this to be a point of order "in the ordinary sense that would hold up debate on the principle of the bill." At the time, I expressed to the Senate my view that debate would be allowed to continue while I considered the point of order.

As I have tried to come to grips with the issue, I have found it more difficult than I had anticipated to identify the scope of the royal prerogative that might require the signification of royal consent when it is to be affected by a bill. Even the standard procedural authorities, normally useful guides to parliamentary practice, have not been fully satisfactory. Nor have the Canadian and British precedents, that I am reviewing, helped me to resolve all the questions that I have about the purpose of royal consent. I will need more time to look into this surprisingly complex question more thoroughly.

With the indulgence of the Senate, I intend to continue my study into the matter and report back to the Senate with a ruling at the earliest opportunity. In the meantime, I would remind all Honourable Senators that it remains proper to continue the debate on Bill S-20. There is no absolute requirement to secure royal consent, if it is considered necessary to the bill, before third reading. Should consideration of this bill be referred at some point to committee, I would be very interested to see if expert testimony could be heard with respect to royal consent in general and with specific regard to its possible application with respect to Bill S-20.

Question of Privilege – Statements made by Minister of Citizenship and Immigration regarding a bill presently before the Senate

October 2, 2001 *Journals*, pp. 804-06

On Thursday, September 27, the Leader of the Opposition, Senator Lynch-Staunton raised a question of privilege with respect to Bill C-11, dealing with immigration and the protection of refugees, that is now before the Senate, and certain remarks made recently by the responsible Minister, Elinor Caplan, a member of the "other place." On September 26, according to Senator Lynch-Staunton, the Minister has made comments to a journalist that suggest that the Minister was already implementing provisions of the bill even though it is not yet law. This position, he said, seemed to contradict earlier statements of the Minister who had then claimed that her department could do nothing until Bill C-11 was passed into law. The Senator found these more recent statements to be offensive. In his view, such remarks demonstrated a contempt for Parliament and a breech of the privileges of all Senators as they anticipated passage of the bill by the Senate and Royal Assent. As the Leader of the Opposition put it when he gave oral notice of his question of privilege, "Ministers of the Crown cannot act without parliamentary authority. They are not above the law."

The issue of the Minister's statements to the media had already been the focus of the Opposition Leader's question to the Leader of the Government, Senator Carstairs, the day before, Wednesday, September 26. At that time, Senator Lynch-Staunton had reserved the right to raise a question of privilege which he did on Thursday. Forewarned by what had happened on Wednesday, Senator Carstairs contacted the Minister and obtained from her a letter that was read out at the outset of Question Period on Thursday, before the debate on the *prima facie* merits of the question of privilege. The letter explained, according to Senator Carstairs, that the media comments had not accurately reflected the Minister's wishes. The letter described that the Minister was intensifying security screening actions to keep out undesirable immigrants or refugees already authorized under the current law. In closing, the Minister also regretted any confusion caused by the reports of her actions.

Debate on the *prima facie* merits of this question of privilege followed at the end of the Orders of the Day. At that time, Senator Lynch-Staunton spelled out the nature of his complaint against the Minister of Immigration and Citizenship. In presenting his case, the Senator was emphatic in declaring that it was the public statements of the Minister that constituted a contempt of Parliament.

In reply to an explanation offered by the Leader of the Government, Senator Lynch-Staunton dismissed it. "The question," he stated, "is not whether the Minister is acting under parliamentary authority or not. The question is whether she said that she would exercise some of the powers that would be granted to her if Bill C-11 was passed."

Several other Senators then participated in the debate. During the course of her remarks, Senator Cools offered an analysis of the Minister's statements to the media and suggested that the Minister be offered a proper opportunity to explain what she meant. The Senator urged the Senate not to rush to any judgment on the matter. In her view, it appeared to be a "political problem." Senator Nolin then spoke. He suggested that, at this stage in the proceedings, the only

real question to be determined was whether the Minister, in light of her conversation with a journalist, had breeched the privileges of the Senate. Citing the British parliamentary authority, *Erskine May,* Senator Taylor asked me, as Speaker, to consider two questions: whether the Senate can assert privilege when it involves the action of a member from the other place and whether the Senate has a case of constructive contempt based on the comments made by the Minister. By way of reply, Senator Rompkey then referred to a citation from *Beauchesne*'s, a Canadian parliamentary authority, asserting that a question of privilege cannot be based on statements by a Member made outside the House. This seemed to prompt another intervention by Senator Carstairs who reiterated the point raised by Senator Rompkey after noting again that, according to the Minister's letter, the actions of her department are legal under the current immigration law. This point was then challenged one more time by Senator Lynch–Staunton who was supported by Senator Murray who suggested that the *Beauchesne* citation might not be entirely relevant to this case since the Minister is not a member of this House. Finally, Senator Andreychuk reminded the Senate that not so long ago a *prima facie* question of privilege was admitted by the Speaker in a recent ruling based on a newspaper account.

Following these contributions, I agreed to take the matter under advisement. At that time, I expressed a desire to review the authorities that had been cited in order to determine if there is a *prima facie* question of privilege. I have now done this and I am prepared to rule on this question of privilege.

As I have been reminded by Senators, and as I fully acknowledge, my role as Speaker is limited. It is to find whether or not, in this case, there is a *prima facie* question of privilege; that is to say, whether or not the matter appears either to involve a breach of the privileges of the Senate, as a parliamentary body, or to constitute a contempt against its authority.

Senator Lynch-Staunton brought his question of privilege to the attention of the Senate under the provisions of rule 43 of the *Rules of the Senate*. In order for the question of privilege under rule 43 to be accorded priority over all other business, it must meet certain tests. There are four specific tests listed in the Rules. The first is that of earliest opportunity. The second is that the matter must directly relate to the privileges of the Senate, its committees or any Senator. The third is that it must seek a genuine remedy within the power of the Senate for which no other parliamentary process would be as satisfactory. The fourth, and the last, is that the question of privilege must be raised to correct a grave and serious breach. It is my obligation, as Speaker, to determine whether the alleged question of privilege satisfies these requirements.

First of all, I am satisfied that the alleged question of privilege was raised at the earliest opportunity. Senator Lynch-Staunton indicated that he had first seen recent statements of the Minister last Wednesday, when he put some questions about them to the Leader of the Government. At that time, he reserved the right to raise this matter as question of privilege since it had not been possible to provide the necessary three hours notice on Wednesday as required under rule 43(3).

I find that the remaining three criteria that must be assessed to determine a *prima facie* case are not quite as simple to evaluate. For example, the second criterion under rule 43 requires that the matter must directly relate to the privileges of the Senate. In other words, have the statements of

the Minister impeded the ability of the Senate to deal with Bill C-11? No one has indicated that it will not now receive a thorough study in committee as a result of the Minister's comments. For this reason, I do not accept the notion that Senator Taylor raised with respect to "constructive contempt". No evidence was presented that the Minister's remarks to the media have obstructed the Senate in the performance of its functions by diminishing the respect due to it. There has been no substantial interference in our debate on Bill C-11.

As a related point, Senator Taylor also raised the question about the authority of this House over the actions of a member of the "other place". According to *Erskine May*, "Since the two Houses are wholly independent of each other, neither House can claim, much less exercise, any authority over a Member … of the other." This seems to touch upon the question of whether or not there is a real remedy that is within the authority of the Senate. While it is an option for the Senate to express its objection about the behaviour of a member of the "other place" given the appropriate circumstances or provocation, I am not persuaded that the present case is sufficiently egregious to merit such a step. This conclusion, of course, relates also to the fourth criterion – whether the complaint involves a grave or serious breach. It is relevant to point out that the Leader of the Government has read a letter from the Minister stating her position. While it did not amount to a direct apology, the letter explains that the Minister has no intentions of acting without the necessary parliamentary authority. It also expresses regret for any confusion caused by her comments.

All of us are well acquainted with the common misunderstanding about the role of Parliament in general and the functions of the Senate in particular. In the end, it cannot do our parliamentary system any good to undermine, even if inadvertently, its fundamental authority and its bi-cameral composition.

Bill – Need for signifying Royal Consent

October 25, 2001 *Journals*, pp. 887-91

On June 5, 2001, Senator Joyal raised a point of order with respect to Bill S-20, *An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions*, which was presented to the Senate by Senator Stratton. His contention was that because the bill seeks to establish compulsory procedures that Ministers must follow when nominating someone to fill certain high-profile public positions, it would affect the prerogative of the Crown. Accordingly, the Senator maintained that it appeared that Bill S-20 required Royal Consent.

Other Senators made comments on the point of order. Senator Stratton suggested that the matter could be discussed in the Legal and Constitutional Affairs Committee for determination. Senator Kinsella felt that the authority of the executive is not ultimately impeded by the bill. He made the point that nowhere did it state that the purpose of Bill S-20 is to impede the authority of the Crown in exercising its appointment powers. Instead, the bill sets in place some measures to assure transparency in making various appointments.

I thank all Honourable Senators for their comments. Having taken the question under advisement, I am now in a position to make my ruling. I will begin by reviewing the parliamentary authorities, then examine the meaning of the prerogative, review the thrust of Bill S-20 and consider whether the prerogative is affected by it, and finally consider the nature of royal consent and the procedural consequences of it being required.

Parliamentary Authorities

As Honourable Senators are aware, the Speaker does not give a decision upon a constitutional question nor decide a question of law. However, it is undoubtedly the duty of the Speaker to ensure that the proper procedure is followed even with respect to assessing bills that might require Royal Consent because the prerogative is somehow affected.

The obligation of the Chair to do this is admitted in our parliamentary authorities. Let me begin, however, with some references that explain when Royal Consent needs to be signified. Citation 726 (1) of *Beauchesne*'s 6th edition, for example, provides:

> "726. (1) The consent of the Sovereign (to be distinguished for the Royal Assent to Bills) is given by a Minister to bills (and occasionally amendments) affecting the prerogative, hereditary revenues, personal property or interest of the Crown."

Marleau and Montpetit, *House of Commons Procedure and Practices,* pp. 643-644 states:

> "Royal Consent … is taken from British practices and is part of the unwritten rules and customs of the House of Commons of Canada. Any legislation that affects the prerogatives, hereditary revenues, property or interests of the Crown requires Royal Consent, that is, the consent of the Governor General in his or her capacity as representative of the Sovereign."

Moreover, as is pointed out in *Bourinot's Parliamentary Procedure*, (4th edition), p. 413:

> "the consent may be given at any stage before final passage, and is always necessary in matters involving the rights of the Crown, its patronage, or its prerogatives".

As well, I also note with interest what the Leader of the Government in the Senate said with respect to the reasons for which Royal Consent was obtained for Bill S-34, the *Royal Assent Act*, which is now before one of our Committees. Senator Carstairs stated on page 1380 of the Senate Debates of October 4th, 2001:

> "As Dicey's classic work *The Law of the Constitution* states, it is a longstanding parliamentary practice, politeness and civility to obtain royal consent in advance to any bill which might affect the royal prerogative or interest, whether the bill is in relation to the prerogative or not. In keeping with this practice, the government sought, obtained and has declared in this chamber royal consent to proceed with Bill S-34."

Meaning of the Prerogative

Two commonly used definitions of the prerogative are those of Blackstone and Dicey. Blackstone describes it as: "that special pre-eminence which the King hath, over and above all other persons, and out of the ordinary course of the common law, in right of his real dignity."

For his part Dicey viewed the prerogative as the residue of discretionary power left in the hands of the Crown. Consequently, "[e]very Act which the executive government can lawfully do without the authority of an act of Parliament is done in virtue of this prerogative".

While the prerogative is obviously an important consideration in the United Kingdom, it is not without significance in Canada as well. According to Paul Lordon, Q.C. author of Crown Law, at p.61:

> "As a general rule, the prerogative of the Crown in Canada exists to the same extent as in England. The Constitution Act, 1867 did not detract from or in any way affect its form or content."

And at p. 71:

> "In Canada, prerogatives are exercised by the Governor General at the federal level and by the Lieutenant-Governor in each province. As members of the Privy Council, the Prime Minister and other ministers also have some powers of the nature of prerogatives."

Bill S-20

Turning now turn to Bill S-20, there is no doubt that its object is to legislate with respect to the appointment process for certain public positions. The bill proposes to establish a committee of the Queen's Privy Council to develop selection criteria and procedures, that is a process to identify and assess candidates and to provide for a review by the Senate of these appointments. Nominations to the positions of Governor General, Chief Justice of Canada, Speaker of the Senate, Lieutenant Governor of a province, Commissioner of a territory, and to the Supreme Court of Canada and the Senate, must be reviewed, while appointments to the Federal Court of Canada and to the superior courts in the provinces may be reviewed.

I must note, however, that the bill seems carefully structured not to change the power of the Sovereign or of the Governor General to make appointments directly. Its scope is limited to governing the actions of their advisors in recommending appointments to be made.

Bill S-20 and the Prerogative

Of particular concern to Senator Joyal, when he raised his point of order, was the matter of the appointment of the Governor General because it is an appointment that is made by the Queen.

In my view, it is a direct exercise of the royal prerogative. According to Hogg, *Constitutional Law of Canada* (2nd edition), at p. 10:

> "…the Crown possessed certain prerogative legislative powers over British colonies. These powers are mainly of historical interest for Canada today; but … the office of Governor General still depends upon a prerogative instrument."

This prerogative instrument is the Letters Patent Constituting the Office of Governor General, 1947, which is still in force.

I conclude, therefore, that, at least with respect to the office of the Governor General, Bill S-20 is about a matter involving a prerogative of the Crown.

This conclusion leads to the next question: does Bill S-20 "affect" the prerogative, that is to say, the exercise by Her Majesty of the prerogative power to create the office of Governor General. The passages from *Beauchesne* and *Marleau and Montpetit*, mentioned that the prerogative must be affected for consent to be required.

Under the conventions developed under our Constitution to provide for representative government, the Sovereign acts on the advice of the Prime Minister. Conventions are not legal rules in that they are not capable of enforcement in the courts. However, the *Letters Patent* provides that the Governor General is to be appointed by Commission under the Great Seal, which means that the signatures of the Sovereign, the Prime Minister and the Registrar General are all required on the Commission to appoint a Governor General.

Therefore, until the 1947 *Letters Patent* are amended or revoked, the participation of the Prime Minister in the naming of a Governor General is required in law. Furthermore, since the appointment of a Governor General is an exercise of the prerogative and since the participation of the Prime Minister in an appointment is necessary, the Sovereign is legally entitled to the advice of the Prime Minister on the exercise of Her rights.

The operation of Bill S-20 could give rise to situations in which Her Majesty would be deprived of the ability to make an appointment on advice. I conclude that Her exercise of the prerogative is affected in that, while the bill may preserve the prerogative, it would have an impact on its exercise.

The Royal Consent

Having now arrived at the conclusion that Bill S-20 affects the prerogative, I must conclude that it requires the royal consent. But what is the royal consent?

Marleau and Montpetit state the following on page 644:

> "It may be given in the form of a special message, but normally it is transmitted by a Minister who rises in the House and states: 'Her Excellency the Governor General has been informed of the purport of this bill and has given her consent, as far as Her Majesty's prerogatives are affected, to the consideration by Parliament of the bill, that Parliament may do therein as it thinks fit'."

In the case of Bill C-20, the *Clarity Act*, in the last session, and Bill S-34 of this session, a variation was used.

There is no known example in Canada of consent being refused. This raises the issue of whether a convention may have evolved here that consent will be granted, making the request for it a formality. The alternative is that, by operation of an advice that consent will not be forthcoming, Parliament could actually be prevented from debating a legislative measure that members considered to be in the public interest.

A possible reason to refuse consent may be to prevent debate. However, note should be taken that consent does not mean endorsement. *Marleau and Montpetit* note at p. 644 that:

> "The fact that the Crown agrees to give consent does not, however, mean that it approves the substance of the measure: it merely means that it agrees to remove an obstacle to the progress of the bill so that it may be considered by both Houses, and ultimately submitted for Royal Assent."

I would like to draw the attention of Honourable Senators to a precedent from Westminster where the Queen's Consent, what we term Royal Consent, was required for a private member's bill. This bill, entitled "*Crown Prerogatives (Parliamentary Control) Bill*", was proposed by a backbencher, Mr. Tony Benn, and sought to provide a parliamentary role to the exercise of a whole range of prerogative powers. The object of the bill, as I understand it, was to subject these prerogative powers to the approval of the House of Commons through an affirmative resolution. In the end, the bill was finally dropped from the *Order Paper*, but not before receiving the Queen's Consent, signified by a Minister of the Crown, when the bill was scheduled for second reading. This Consent was given despite the fact that there was no indication at all of the Government's agreement to the bill. This highlights another important characteristic of Royal Consent. The fact that consent is signified or accorded to a bill does not necessarily mean that the bill is supported or approved either by the Crown or its advisors. Therefore, it is important to note that there is a tradition, at least at Westminster, that the Government does not use its unique access to the Crown to limit debate, since it is not bound by convention to support matters which require Royal Consent.

Parliamentary Practice

Honourable Senators, when this point of order was raised I accepted to take it under advisement, but ruled at the time that, while the point of order was under advisement, debate on the bill might proceed. Now that I have ruled that consent is required, it continues to be the case that debate on the bill may proceed.

In support, I note the precedents where consent is given in one House to legislation originating in the other. *Bourinot*'s records an example of consent being signified in the House of Commons, rather than the Senate, to a Senate amendment to a Commons private bill. I also note Bills S-2, S-6 and S-25 in the 2nd Session, Twenty-Fourth Parliament, which lasted from January 15, 1959 to July 18, 1959, where consent was signified to Senate bills in the House of Commons after the

bills had passed the Senate. Royal consent has also been signified with respect to House of Commons bills in this Chamber; in 1951, just prior to second reading of Bill 192, *An Act to amend the Petition of Right Act*, and most recently, on June 29, 2000, to Bill C-20, the *Clarity Act*, just prior to third reading.

In the 1999 ruling in this House, the Speaker noted that this was "an accepted departure from the practice at Westminster" (where consent in signified in each House), and also noted that "based upon the Canadian precedents, it would appear that there is no binding precedent that royal consent be signified in this Chamber."

Committees – Propriety of having a Chair sponsor a report that she does not support

November 21, 2001 *Journals*, pp. 996-98

On Tuesday, November 20, Senator Milne in her capacity as the Chair of the Standing Committee of Legal and Constitutional Affairs moved the adoption of its 10th report which seeks to amend Bill C-7, *An Act in respect of criminal justice for young persons and to amend and repeal other Acts*.

At the conclusion of her remarks summarizing the various amendments that the Committee was recommending be made to the bill, Senator Milne indicated that she herself would be voting against the adoption of the report. For this reason, Senator Milne also declined subsequently to answer any questions about the report following her summation. The declaration of Senator Milne that she intended to vote against the report caused Senator Lynch- Staunton to rise on a point of order. While commending the Chair for her honesty, the Leader of the Opposition questioned the procedural propriety of having a Chair sponsor a report that she does not support. Senator Lynch-Staunton asked me, as the Speaker, to make a ruling with respect to this practice.

This request was followed by several interventions. Senator Taylor noted that an incident similar to this one had happened before. He is right, as it turns out. It occurred in 1997 when Senator Ghitter as Chair of the Committee on Energy, the Environment and Natural Resources presented a report on Bill C-29, the MMT bill, to which he disagreed. On this occasion, I can find no evidence that the Senator actually voted against the bill, since no recorded vote was taken. There are, however, two other more telling examples. The first occurred with respect to Bill C-68, dealing with gun control. A report was presented November 20, 1995 by the Chair of Legal and Constitutional Affairs, at that time Senator Beaudoin. Two days later, the Chair voted against the adoption of the report in a recorded division. The second example dates from January 1991. At that time, the Chair of Transport and Communications, former Senator Findlay MacDonald, presented a report on Bill C-40, dealing with broadcasting. When the recorded vote on the report was taken, the results confirm that Senator MacDonald voted against it.

In a subsequent intervention, Senator Taylor referred to citation 873 in the sixth edition of *Beauchesne's Parliamentary Rules and Forms* which explains the obligation of a Committee Chair, or someone else delegated for the purpose, to sign a report on behalf of the Committee in

order to authenticate it. This is done whether or not the Chair actually supports the report adopted by the Committee.

The position taken by Senator Taylor dovetailed with remarks previously made by Senator Kinsella who had based much of his comments on the meaning of Senate Rules 98 and 99. These two rules require that a committee recommending amendments to a bill to report these amendments and the Senator presenting the report "shall explain to the Senate the basis for and the effect of each amendment." And according to Senator Robichaud, this is exactly what Senator Milne had done. As Chair of the Committee on Legal and Constitutional Affairs, Senator Milne presented the report on Thursday, November 8 and yesterday, she moved its adoption and provided an explanation of its recommendations.

For her part, Senator Cools took a somewhat different position. In her view, the Chair, like every other member of the committee, is bound by its decisions. According to the Senator, it is only through a process of debate in this Chamber, that any member of the committee, or perhaps of the Senate for that matter, can come to a position different from that stated in the committee's report. Senator Cools also referred to rule 99 which, as she interprets it, imposes an obligation on the sponsor of the report to provide a suitable and proper explanation of the amendments recommended by a committee.

Senator Corbin also intervened on this point of order. Speaking just before Senator Cools, Senator Corbin made two points. First, the Senator explained that a committee Chair functions as a messenger of the Committee and is bound by this function to present its report to the Senate. Such a role, he stated, does not commit the Chair "ideologically, morally, personally or in any other fashion to the contents of the report." Secondly, in response to Senator Kinsella, Senator Corbin noted that anyone wishing to know the position of individual committee members with respect to the amendments can consult the transcripts of the committee's deliberations.

I want to thank all Honourable Senators who spoke to this point of order yesterday. I have reviewed the authorities that were cited and have looked at our relevant precedents. Not wishing to delay unduly the proceedings on this report, I am prepared to make my ruling now.

In ruling on this point of order, I am conscious of the need not to interfere with the legitimate proceedings of a committee. I do not believe that I am since we are dealing with the report of the committee in this Chamber. I have been asked to determine whether or not it is procedurally acceptable for a Chair of a committee to present a report of that committee even though the Chair disagrees with it and, in fact, has stated an intention to vote against it.

In order to answer this point of order adequately, I think it is useful to review briefly the process that we follow in considering legislation. Once a bill has been adopted at second reading and agreed to in principle, it is usually assigned to a committee for detailed examination. This normally involves hearing witnesses prior to going through the bill clause-by-clause. At this stage, it is proper to consider amendments which, if adopted, become the basis of the committee's report which it must make to the Senate according to rule 98. Further, rule 99 requires that the Senator who is sponsoring the report to explain the basis for, and the effect of,

each amendment. This is what happened yesterday, when Senator Milne spoke to the report on Bill C-7.

Our rules, however, are silent on the matter that was raised in the point of order by Senator Lynch-Staunton. Nonetheless, I think it is possible to come to an understanding as to whether or not what occurred is acceptable procedurally. Under our rules and practices, decisions of committees, just like those of the Senate itself, are made by the majority. There is no binding obligation for consensus or unanimity. The fact that a bill receives second reading, for example, does not mean that all members of the Senate agree with it and will no longer oppose the bill either at report stage or third reading. Nonetheless, the decision stands as a legitimate decision of the Senate and is, in this limited sense, binding. Similarly, in a committee, decisions are reached by a majority. There is no requirement for all committee members to agree in order for it to report a bill back to the Senate. Accordingly, it is possible that the Chair of the committee may disagree with all or part of a report. Nonetheless, as Senator Taylor pointed out through his reference to *Beauchesne*'s, the Chair will sign the report authenticating it. And as Senator Corbin suggested, in presenting the report, the Chair is really acting as a messenger of the committee. Once the requirement of rule 99 to explain the amendments has been carried out, the Chair, or whoever is the sponsor of the report, is under no additional obligation. If the Chair should ever be uncomfortable in carrying out this function, arrangements can be made under our rules to find another member to act as sponsor of the report. Such a decision, however, does not rest with the Speaker. This can only be determined by the Chair as allowed under rule 97(1) which states that "a report from a select committee shall be presented by the chairman of the committee or by a Senator designated by the chairman.".

Accordingly, I find that there is no point of order in this case and debate on the report of the Committee on Bill C-7 can proceed.

Bill – Motion for third reading

December 10, 2001 *Journals*, pp. 1099-1100

Before proceeding beyond Orders of the Day and other business, I will rule on the question raised earlier today by Senator Kinsella relating to the second report of the Special Committee of the Senate on the Subject Matter of Bill C- 36.

I thank Senators Robichaud and Kinsella for their comments and their help with respect to whether the motion of Senator Carstairs that the bill be read the third time at the next sitting is in order, or whether it should be set down for third reading two days hence.

Honourable senators, the practice here has been that when a committee reports a bill without amendment, we immediately proceed to third reading. I refer you to Bill C-11, an immigration bill dealt with by the chamber on October 23 of this year. It was reported back with observations but without amendment, and it did proceed to third reading, as Senator Carstairs has moved with respect to Bill C -36. Another example dates from June 22 of last year, being Bill C-473, a bill dealing with electoral district names. It was treated in the same way.

An issue was raised by Senator Kinsella in terms of the comments creating a substantive part of the report which required additional time for preparation so that debate on those observations could be full and complete. Senator Robichaud pointed out that there is no impediment to using the observations in terms of debate at the third reading stage. Accordingly, I do not find that a compelling argument.

Going specifically to the rules, the rule that Senator Carstairs is relying on in making the motion to proceed to third reading, the committee on Bill C-36 having reported the bill without amendment, is rule 97(4):

> When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

There is then the question of whether that rule or rule 97(5) would be applicable. That rule refers to a report that recommends amendments, which this committee report did not do. That particular rule refers to two previous rules, 57(1)(e) and 58(1)(g), one of which provides for one day's notice, the other for two days' notice. The question becomes whether rule 97(4) or 97(5) is applicable.

The question of the committee on Bill C-36 being a special committee was raised as a possible reason for the application of rule 97(5) and not 97(4). However, I believe that matter is resolved by the definition of "committee" in section 4(b)(i) of the rules, which defines "committee" as meaning, in part, a special committee.

Accordingly, honourable senators, I do not find the argument that the motion to proceed to third reading on one day's notice is anything but in order. That is my ruling, honourable senators.

Bill – Application of Rule 63, size of majority, and the need to rescind a Senate decision

December 17, 2001 *Journals*, pp. 1155-58

Last Friday, December 14, the Deputy Leader of the Opposition, Senator Kinsella, raised a point of order just before the adjournment of the Senate's sitting for that day. The point of order addressed several issues related to the Senate's consideration of the amendment of Senator Lynch-Staunton seeking to insert a five-year sunset clause into Bill C-36, the anti-terrorism legislation of the Government which is now at third reading.

First of all, Senator Kinsella questioned the size of the majority that would be required for the decision on the question of the amendment of Senator Lynch-Staunton. This is because, as the Senator observed, the amendment is virtually identical to that which had been recommended by the Special Committee that studied the subject-matter of Bill C-36. Following some debate, the Senate adopted that first report of the Special Committee on November 22.

In Senator Kinsella's view, the Senate is now confronted by two reports that are inconsistent with each other. In addition to the first report of the Special Committee already adopted, the Senate has before it the third reading motion on Bill C-36 which is, as Senator Kinsella described it, the second report of the Special Committee which recommended no amendments to Bill C-36. Under our rules, this report was adopted automatically. In order to deal with the third reading of Bill C-36, Senator Kinsella contends that the decision on the first report of the Special Committee would have to be set aside, it would have to be rescinded. To do this properly under our rules, he argued, would require a vote of two thirds of the Senators present in the Chamber.

To buttress his case further, Senator Kinsella spoke of the underlying principles of our parliamentary system and the balance accorded the rights of the majority and the rights of the minority. Senator Kinsella referred to resolutions of the British House of Commons dating back to 1604 and 1610. In addition, the Senator took note of the fact rule 63 dates back to 1915 and is, consequently, of long standing. Senator Kinsella also supported his contention by observing that Senate practices provide for different levels of support depending on the nature of the decision. Beyond simple majority and the two-thirds majority, there is also the unanimity requirement for certain requests such as one to change the recorded vote of a Senator. Finally, Senator Kinsella cited references to parliamentary authorities and to a decision made by a previous Speaker of the Senate in 1991.

For his part, the Deputy Leader of the Government, Senator Robichaud, disagreed with the case presented by Senator Kinsella. As Senator Robichaud explained, the first report of the Special Committee dealt with the subject matter of Bill C-36. The objective of the subject matter review was to make known certain views of the Senate to the House of Commons while the bill was still in the other place. The work of the Special Committee was successful in that amendments adopted in the other place were based, in part, on some of its recommendations. Now, according to Senator Robichaud, the Senate is seized of Bill C-36 itself as amended by the other place. Following second reading, the bill was studied by the Special Committee which subsequently presented its report.

In Senator Robichaud's view, if the position of Senator Kinsella were to be followed, it would render almost impossible any pre-study of a bill, since the Senate would be bound by the recommendations made by the committee. According to Senator Robichaud's analysis, the two exercises, the pre-study of a bill and the consideration of the bill itself, are separate procedures and the Senate could not have intended to be constrained in its review of the bill by any approved pre-study.

In a rebuttal, Senator Kinsella stated that the problem arises in this case because the Senate adopted the first report of the Special Committee and thus pronounced itself with respect to the recommendations contained in that report. Accordingly, the Senate cannot pronounce itself again, based on the same question rule, without rescinding its previous decision which requires a two-thirds vote under rule 63.

I wish to thank the Deputy Leaders for their views on this point of order. I have reviewed the *Debates* of last Friday, the parliamentary authorities, and the history of Senate rules and

practices. I have also searched for any precedents that might be useful to my understanding of this particular case. I am now ready to rule on this challenging point of order.

Let me begin by stating that I think the Senator Kinsella has raised an interesting issue. Rule 63(1) is quite clear. It states that "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…." Accordingly, the Senate should not consider the same matter a second time in the same session if it has already pronounced on it. This rule is used not just by the Senate, but by many other parliamentary bodies as well including the other place. As Senator Kinsella explained, the underlying principle dates back centuries to the British House of Commons.

That being said, however, I believe that the Senate has never treated pre-study as a procedure subject to the same question rule. Pre-study has been a feature of Senate practice for more than thirty years. It was a device developed originally by the late Senator Salter Hayden, the long-time Chair of the Banking, Trade and Commerce Committee. Its purpose was to allow the Senate more time to examine bills, particularly complex or controversial bills, while accommodating the broad legislative time-table of the Government. At the same time, it permitted Senators greater input into the legislative process by allowing the work of the Senate to have some influence on the study of a bill while it was still in the other place. This is precisely what happened with regard to the study of this bill. Certain recommendations of the Special Committee were incorporated into the original version of Bill C-36 while it was still in the possession of the other place. Thus, the work of the Special Committee on the pre-study of the bill was not without effect.

Applying the logic of Senator Kinsella strictly to the circumstances now before us, it seems to me that the problem is far greater than the one he made out. If the same question rule is to be applied vigorously, it affects more than just the amendment of Senator Lynch-Staunton and the third reading of Bill C-36. It affects the entire proceedings of the bill from the moment it was introduced in the Senate. The first report of the Special Committee, it could be argued, dealt with the subject matter of Bill C-36 and made numerous recommendations that were subsequently adopted by the Senate. Thus, the Senate has pronounced itself with respect to the entire contents of what is now Bill C-36. Under the terms of the same question rule, understood in this restrictive way, the Senate should not reconsider Bill C-36 at all. I do not believe, however, that this is the intent of the rule.

Senator Kinsella noted that the 1610 resolution of the British House of Commons enunciated a principle with respect to legislation "That no bill of the same substance be brought in the same session." This has also been a part of our practice since Confederation. It is my view that this principle has not in fact been violated with respect to the consideration of Bill C-36. The pre-study of the bill was a preliminary stage of examination that was not intended to be definitive and that was also distinct from any subsequent proceedings related to the review of the bill itself. This is critical to the question at hand. According to *Erskine May*, the 22nd edition at page 334, "a question which has not been definitely decided may be raised again." Any decision taken with respect to a pre-study phase of legislation can not be the last word on the subject.

To take the contrary position would fly in the face of other practices followed with respect to the legislative process. When, for example, the Senate amends a House of Commons bill and it is returned to the Senate with a message rejecting the amendment, the Senate is not precluded from either dropping its amendment or changing it, despite having already taken a decision on it.

I would concede that most reports dealing with pre-study have not been adopted by the Senate. This is because the vast majority of these pre-study reports have been tabled. With respect to Bill C-36, the first report of the Special Committee was tabled; however, it was subsequently adopted by motion from the floor. Does this make a difference? In my view, for the reasons that I have already given, it may call into question the same question rule, but it does not actually constitute a violation of it. There is a precedent to support my interpretation. It occurred in 1992 and involved a bill on telecommunications, Bill C-62. That bill had been the object of a pre-study the report of which was subsequently adopted. As with Bill C-36, the pre-study report on Bill C-62 had an impact on the study of the bill in the House of Commons, even though not all of the pre-study recommendations were incorporated into it. When the bill was at third reading in the Senate, an amendment was proposed to include a missing portion of a recommendation that had only partially been accepted in the House of Commons. In the end, the amendment was negatived. The result, however, is not the principle point of this case. Rather, it is that the pre-study report with its numerous recommendations and the third reading debate were implicitly recognized to be two separate, although related, proceedings. As one would expect, the pre-study report certainly informed the debate on the bill, but it did not limit the course of that debate nor did it determine its outcome. They were treated as two different and separate procedures.

It is my ruling that a case has not been made on the point of order. Rule 63 does not apply to Bill C-36 and there is no need to rescind any decision of the Senate.

Bill – Committee study (briefing material prepared by a department)

February 5, 2002 *Journals*, pp. 1198-99

On Tuesday, December 11, 2001, the Leader of the Opposition, Senator Lynch-Staunton, raised a point of order to object to certain procedures that had been followed in relation to Bill C-44, which amended the *Aeronautics Act*. The substance of the Senator's complaint had to do with the fact that the Department of Transport of Canada seemed to anticipate a decision of the Senate with respect to the second reading of this bill, and did not prepare its documents adequately.

In making his case, Senator Lynch-Staunton noted that the briefing material on the bill had not been written to reflect the fact that it was to be used by a committee of the Senate rather than of the House of Commons. Even the copy of the bill that was distributed to committee members was not the usual "as passed" version, but the first reading copy presented in the House of Commons together with a page appended to it indicating the amendments that had been made to the bill in that House before final passage. Senator Lynch-Staunton was also disturbed by the fact that the Library of Parliament had prepared for the benefit of committee members questions that could be posed to witnesses in advance of the second reading of the bill in the Senate. All this, according to the Senator Lynch-Staunton, seemed "symptomatic of a malaise that has slowly

crept into this place and, if allowed to continue unchecked, will push us even further down that slippery slope to irrelevance."

The Leader of the Government in the Senate, Senator Carstairs, expressed sympathy for some of the Senator Lynch-Staunton's complaint. Senator Carstairs shared Senator Lynch-Staunton's annoyance with the fact that the department's briefing material had not been properly prepared for Senate use. Nevertheless, Senator Carstairs took note of the fact that the bill is an important piece of legislation which had been hived off from Bill C-41 to deal with the urgent matter of air security. Given this importance, Senator Carstairs did not find it too surprising that the department would have sought to anticipate events to the best of their ability and would have prepared briefing material for distribution to all members of the committee as expeditiously as possible following second reading. For their part, as Senator Carstairs observed, Senators would have been upset had they not received this documentation in time.

Senator Bacon, the Chair of the Committee on Transport and Communications, then spoke to explain how the steering committee had agreed to a standing committee meeting Tuesday morning in order to hear the testimony of a list of witnesses in connection with Bill C-44 in anticipation of its adoption at second reading by the Senate.

Also sharing the misgivings of Senator Lynch-Staunton, Senator Cools proposed that a committee, or perhaps the Senate itself, should study the issue of the relationship of the Senate, the House of Commons and the Executive given the nature of the events surrounding consideration of Bill C-44 and other instances of a similar kind that have occurred in recent years.

I wish to thank Honourable Senators for their interventions. I have investigated the matter and I think that I have a proper understanding of what happened. I am prepared to make my ruling now.

Let me begin by stating at the outset that I do not believe there is a point of order in this particular case. The legitimate complaint that Senator Lynch-Staunton raised has to do with a certain carelessness, if I may put it that way, on the part of the department with respect to the preparation of briefing material. Even Senator Carstairs recognized that the documentation had not been suitably prepared for the use of the Senate. While the specific instance complained of may not seem important on its own**,** it is because it is part of a growing pattern that it has now become disturbing. Nonetheless, it is not properly a point of order over which I have any authority. The offended committee can raise a complaint with departmental officials when they are present before the committee. In this particular instance, however, I heard nothing to suggest that members of the Transport Committee raised this problem with the officials when reviewing Bill C-44.

As to the matter of the printed version of the bill that was used by the committee, an **"**as passed" version should have been distributed. I have been informed that an "as passed" printing of Bill C-44 was available as of Friday, December 7, 2001. However, I am uncertain who has the responsibility of distributing the copy of the bill to the members of the committee. It is unclear to me why this task should be the responsibility of the officials of the Department rather than our

own staff. I suspect that the rush with which the bill was considered by the Committee on Transport and Communications was a relevant factor.

With respect to the other issues mentioned by Senator Lynch-Staunton, the preparation of questions by the Library of Parliament and the scheduling of witnesses for a committee meeting even before the Senate had approved Bill C-44, these are matters that are determined by the committee itself. They do not normally involve the Speaker and, so far as I can determine, there is no basis for my intervention. As I understand from what Senator Bacon stated, the steering committee approved these arrangements as a way to expedite the consideration of a bill it deemed to be urgent.

Even Senator Lynch-Staunton in recounting the chronology of events surrounding the consideration of this bill acknowledged that the notice of the meeting and the distribution of the documents, in the form complained of, occurred only after the second reading. Based on my experience in the Senate, this is not really an uncommon practice especially when the legislation is recognized to be urgent. In the end, it is the membership of this Chamber that sets the pace, not the Speaker.

I hope that this explanation in some way answers the understandable complaint that was raised by the Leader of the Opposition.

Unparliamentary language

March 19, 2002 *Journals*, p. 1312

Last Thursday, March 14, Senator Cools claimed a breach of parliamentary privilege in connection with debate on Bill S-9, the definition of marriage bill. The incident that sparked the Senator's claim occurred the previous day, Wednesday, March 13, when there was an exchange between the Senator and Senator LaPierre following the speech of Senator Wilson on Bill S-9.

In making her case, Senator Cools raised the following points. First, the Senator maintained that the arguments of Senator LaPierre, when he spoke to Bill S-9 on March 6, were blasphemous and unparliamentary, and called into question the motives of Senator Cools in sponsoring the bill. More importantly, Senator Cools alleges that, through several exchanges that occurred between her and Senator LaPierre, some recorded in *Debates*, some not, Senator LaPierre showed disrespect to a Justice of the British Columbia Supreme Court. In the view of Senator Cools, these remarks constitute a breach of privilege that could be properly remedied through a motion of apology addressed to the particular Justice, were I to find that a *prima facie* question of privilege had been made.

In commenting on the case made by Senator Cools, Senator Murray noted that there was nothing on the public record that supported the contention of Senator Cools that Senator LaPierre had spoken disrespectfully of any judge. Senator Murray also suggested that in raising this question of privilege, Senator Cools seemed to be in a conflict with her own professed belief in the importance of protecting freedom of speech in the Senate.

Senator LaPierre then made some comments explaining his assessment of what had occurred last Wednesday. This was followed by brief interventions by Senator Lapointe and Senator Stratton.

Having reviewed the transcript of last Thursday, it is my ruling that there is no *prima facie* case of privilege. The complaint raised by Senator Cools, as I understand it, is more in the nature of a point of order than a question of privilege. In so far as it is founded, in part, on the remarks of Senator LaPierre from March 6, it is clearly out of date. With respect to any comments that might have been exchanged between these two Senators last Wednesday, these too might have been the object of a point of order at that time if they had been on the public record. Be that as it may, Senators should be mindful of the need to respect their colleagues' right to speak and should refrain from unnecessary interruptions.

The *Rules of the Senate* provide a mechanism for bringing a question of privilege to the attention of the Senate quickly. It is not a procedure to be invoked lightly. As rule 43(b) and (d) state any alleged breach must "be a matter directly concerning the privileges of the Senate" and it must "be raised to correct a grave and serious breach". Once proper notice is given, in writing and then orally under Senators' Statements, a Senator is allowed an opportunity to bring the alleged breach of privilege to the attention of the Senate after Orders of the Day. In this instance, nothing I heard met the usual tests as described in our Rules and the parliamentary authorities that would justify a claim to a breach of parliamentary privilege.

Bill – Need for signifying Royal Consent

May 7, 2002 *Journals*, pp. 1586-87

Last Thursday, May 2, Senator Cools raised a point of order in connection with second reading of Bill S-20, a bill designed to increase transparency and objectivity in the process of appointment to certain public offices.

The point of order raised doubts about the propriety of proceeding with second reading given that royal consent has not yet been signified for this Private Member's bill even though a ruling has already been made that royal consent will be needed before Bill S-20 can become law. According to Senator Cools, the only way Senator Stratton, the bill's sponsor, can obtain royal consent is through a motion for an Address to the Governor General. Several other Senators intervened in the discussion on this matter before I closed the proceedings and stated that I would review the transcript as well as earlier decisions on royal consent.

As Honourable Senators are aware, I have already ruled on the question of whether Bill S-20 requires royal consent. Last autumn, on October 25, 2001, in response to a point of order that had been raised by Senator Joyal on June 5, I ruled that Bill S-20 required royal consent since it affected the royal prerogative of appointment. At the same time, I noted the fact that, in Canadian practice, as distinct from procedures followed by the Parliament of the United Kingdom, there is no evidence that royal consent for a bill needs to be signified in both Houses. In fact, based on the precedents, it would seem that royal consent has been signified to most bills that required it in the House of Commons alone, not the Senate and that, up to now at least, no case was found where royal consent to a bill had been signified in both Houses. Based on this

established practice that spans more than 130 years, and motivated by a preference to allow debate on a bill, I ruled that the bill could proceed through the Senate.

Senator Cools is attempting to raise a concern that was not directly addressed in my original ruling on Bill S-20. The fundamental position of Senator Cools is that, because Bill S-20 is sponsored by a private member, and one from the Opposition at that, the only way that royal consent can be secured is through an Address to the Governor General.

Senator Cools cited two recognized Canadian parliamentary authorities, *Beauchesne's Parliamentary Rules and Forms* and *Bourinot's Procedure and Practice in the Dominion of Canada*. The Senator also made references to two cases from the British Parliament, one dating from 1868, involving William Gladstone, and another, from 1911 involving Lord Lansdowne.

While I do not dispute the accuracy of the Senator's references and examples, I do question their binding relevance to modern practice. All Senators can appreciate that the law of Parliament is not static; it changes and evolves to suit the needs of Parliament and its members.

As an example of change, one that is not entirely irrelevant to the point of order we are dealing with now, I would note that in the other place, it is now possible for private members to bring in bills that involve an expenditure of money. This new development, which was introduced about ten years ago, allows private members greater scope in preparing bills that are of particular concern to them. Formerly, this practice would not have been possible. Any bill that involved an expenditure required a royal recommendation that can only be obtained by a Minister. This requirement no longer impedes a private member from introducing a "money" bill, but the Government must be willing to provide the royal recommendation before the bill receives third reading.

Similarly, in the United Kingdom, it has been possible for some time now for a parliamentarian to introduce a bill that requires royal consent without seeking an Address. Normally what happens is that the sponsor will communicate in writing to a Secretary of State to inquire if the Government would be prepared to seek royal consent for the bill. From what I can gather, the royal consent is usually forthcoming since it is not taken to be an endorsement of the bill by Government.

Whether Senator Stratton will avail himself of this British procedure will be for him to decide. For my part, as I indicated in my ruling of October 25, I do not think it is in the best interest of the Senate to curtail debate on an issue of undoubted importance. Consequently, it is my ruling that there is no valid point of order and debate on second reading of Bill S-20 can proceed.

Question of Privilege – News release sent out by a Member of the House of Commons

June 11, 2002 *Journals*, pp. 1710-13

On Wednesday, June 5, Senator St. Germain raised a question of privilege with respect to Bill C-15B, a bill amending the Criminal Code with respect to cruelty to animals. The Senator's

complaint revolves around a press release issued by Mr. Murray Calder, M.P. This document urged members of the Liberal Rural Caucus "to support the government's cruelty to animals legislation on the understanding that the bill can be amended in the Senate." As it happened, the bill passed the House of Commons June 4th and it is now before the Senate.

According to Senator St. Germain, the press release is offensive because it suggests, in his view, that the Senate is being used to secure the support of some backbench MPs who had been prepared to vote against the bill. The Senator cited this passage of the press release in making this point: "Previously Calder had indicated that he and others would vote against the bill unless it could be amended. The breakthrough came when Justice Minister Cauchon agreed that he would look favourably on a rural caucus initiated amendment in the Senate that would offer limited assurances to responsible animal owners."

It is Senator St. Germain's contention that this kind of political strategy or manipulation diminishes the role and independence of the Senate. It suggests that, from the public's perspective, it is the Minister of Justice, not the Senate, who will determine the outcome of amendments proposed in the Senate.

Citing previous rulings by a Speaker of the House of Commons, Senator St. Germain asked the Speaker of the Senate to find a *prima facie* question of privilege asserting that, if the Senate is to function with authority and dignity, it must be respected, especially by Members of the House of Commons and the Executive.

There were interventions by several Senators supporting the position of Senator St-Germain. The Leader of the Opposition, Senator Lynch-Staunton, as well as the Deputy Leader of the Opposition, Senator Kinsella, spoke in support of the question of privilege. As Senator Lynch-Staunton put it: " … we are being practically instructed, once we get this bill, to look with favour on an amendment that we have not even seen. …If that is not an attack on our privilege, I do not know what is."

To buttress his case, Senator Lynch Staunton cited the 21st edition of the British parliamentary authority, *Erskine May*, dealing with the broad definition of contempt, which can be any act or omission that obstructs or impedes either House in the performance of it functions to be treated as a contempt even though there is no precedent of the offence.

Senator Kinsella raised at least two inter-related points in arguing on behalf of the question of privilege. The Senator suggested first that the promise of the Minister of Justice, as he put it, to amend the bill in the Senate goes to the essence of the matter of a breach of privilege. This is evident, according to Senator Kinsella, who cited the 6th edition of *Beauchesne* where it states that "It is generally accepted that any threat, or attempt to influence the vote of, or actions of a Member, is breach of privilege." The Senator's second point has to do with an element of the argument that was made by Senator St. Germain as well. This has to do with the public perception of the Senate. In his opinion, the Senate will be viewed as a "laughing stock," irrelevant to the proper functioning of Parliament because its reputation is being undermined.

For his part, Senator Corbin seemed more offended by the actions of the House of Commons in passing a bill that he described as "incomplete or defective". While sympathetic to Senator St Germain, Senator Corbin explained that if he were a member of the other place, he would raise the question of privilege there.

Several other Senators argued against the alleged question of privilege. The Deputy Leader of the Government, Senator Robichaud, found the statements of the press release to be basically neutral. According to the Senator, it did not assert, one way or the other, that amendments would be made in the Senate. To prove his point, the Senator cited an answer of the Justice Minister during Question Period when he said "We must be careful and respect the Senate's processes. There are different stages … The Senate will have to look at the bill. We will see what takes place at the time."

Though also opposed to the question of privilege, Senator Taylor had a different view of the press release. He claimed that it flattered the Senate because it suggests that the Minister is willing to accept an amendment proposed by the Senate if it wishes to make the change. Senator Fraser, on the other hand, questioned whether any alleged arrangement between the Liberal Rural Caucus and the Minister of Justice actually pre-empts the Senate's freedom to conduct its business. As the Senator noted, it does sometimes happen that when an amendment fails to get through in the other place, they are frequently proposed in the Senate in another attempt to get it through. It is important, however, as the Senator explained, to separate the question of what a Senate committee does from the question about whether the press release was in some way reprehensible.

Senator Fraser's position was subsequently echoed by Senator Milne, the Chair of the Legal and Constitutional Affairs Committee. The Senator noted that the committee "rarely takes marching orders from anyone." Nor, as the Senator put it, does the committee make amendments lightly. Amendments are not made, she explained, unless evidence has been presented before the committee that supports those amendments.

I wish to thank all Honourable Senators who participated in the debate on this question of privilege. As rule 43 explains: "The preservation of the privileges of the Senate is the duty of every Senator. A violation of the privileges of any Senator affects those of all Senators and the ability of the Senate to carry out its functions..." It is the responsibility of the Speaker to assist the Senate in this task by assessing all claims to a *prima facie* breach of privilege or a contempt against the rights and interests of the Senate.

In this particular case, it is alleged that the apparent understanding, as presented in the press release, between the Minister of Justice and some members of the other place with respect to amendments that might be proposed in the Senate actually infringes the rights of the Senate. It is viewed as calling into question the independence of the Senate and its autonomous authority to examine legislation. There are several aspects to this question that need to be assessed in order to determine its *prima facie* merits.

One argument that was made by Senator Kinsella in support of the breach of privilege suggested that the content of the press release somehow involved a threat or an attempt to influence the

vote of a Member. This is a very serious charge. Any clear threat would obviously constitute a breach of privilege. So, too, would any attempt to influence the vote of a Member either through a bribe or some other means. No evidence was presented in the exchanges heard Wednesday that this is, in fact, the case. No Senator alleged that the content of the press release implied, directly or indirectly, any improper action on the part of the Minister or anyone else that would constitute a threat against any Senator or an attempt to influence the vote of any Senator through a bribe or any other illegitimate means. In my judgment, there is no substance to any claim of a *prima facie* breach of privilege based on these grounds.

Other Senators maintained that the press release amounted to a contempt against the Senate. Though it is admitted that contempt, unlike privilege, has no precise definition, the notion of contempt is reasonably well understood. Both Senator St. Germain and Senator Lynch-Staunton relied on this understanding in making their case. A contempt, as they explained it, must involve some action or omission that has the affect of obstructing or impeding the Senate from properly fulfilling its duties or functions, even though there is no precedent for the offence. The arrangement alleged to exist with the Minister of Justice based on the press release of Mr. Calder, they charged, is a contempt because it assumes or presumes that amendments will be made by the Senate. But is this really a contempt?

Referring to *Erskine May* on the subject of contempt, and in particular on constructive contempts, none of the examples cited in this British parliamentary authority resemble anything even broadly equivalent to what is alleged in this case. Among the constructive contempts reviewed are harsh reflections on the House, the publication of false or perverted reports of debates, and the premature publication of committee reports or proceedings. *Erskine May* also lists another category of offence that includes “other indignities offered to either House”, but none of the examples, which involve disorderly conduct or insolent language, either spoken or written, corresponds to the Calder press release. Without the benefit of further evidence, it is difficult for me as Speaker to rule that a *prima facie* case has been made that a contempt has been committed against the Senate.

Finally, it has also been argued that Bill C-15B is, in one way or another, defective or incomplete. The standard parliamentary authorities prohibit the introduction of bills that are blank or imperfect. When such a bill is identified, a point of order can be raised either to correct the bill or to discharge it. In this case, the bill is alleged to be defective. It has been asserted that the House of Commons may have passed Bill C-15B in anticipation of possible amendments in the Senate. Does this, however, properly constitute a question of privilege or a contempt? Any bill that comes to the Senate from the House of Commons is subject to amendment. It is the fundamental task of the Senate to review, revise and possibly reject legislation received from the other place. That the Senate can amend bills does not necessarily mean that the bill received from the House of Commons is defective. No suggestion has been made that Bill C-15B, as it is written now, is a defective piece of legislation from a procedural point of view. As Speaker, I have no basis to inquire into the bill and I have no authority to question the decision of the House of Commons that has passed this bill. I can see no question of privilege or contempt of the Senate based on the status of the bill itself.

Despite the fact that I have ruled that there is no basis for a *prima facia* question of privilege or contempt, I do share some sympathy with the concern that was expressed by some Senators about the press release. Any suggestion, however inadvertent, that any House of Parliament can be improperly influenced or manipulated should be avoided. Both Houses, the Senate and the House of Commons, are wholly independent and autonomous. We can acknowledge and admit that political and partisan interests play a part in our deliberations. This is a fact, but this does not mean that one or another House is actually subject to manipulation by a Minister. While I do not believe that the Minister of Justice is impeding the Senate's review of Bill C-15B, I recognize that the public may have a different perception based on the press release. Greater care should be taken, in the future, to avoid creating this false perception.

Second Session, Thirty-Seventh Parliament
September 30, 2002 – November 12, 2003

Speaker: The Honourable Daniel Hays

Speaker *pro tempore*: The Honourable Lucie Pépin

Motion – Acceptability (motion in amendment)

October 3, 2002 *Journals*, pp. 32-33

The question was whether an amendment moved by Senator Kinsella is in order. I will begin by reading the motion in amendment of Senator Kinsella, seconded by Senator Stratton:

> That the motion be amended by adding after the last paragraph:
>
> > That the Committee of Selection shall nominate Senators to select committees on the basis of the principle that Progressive Conservative Senators have a minimum of one-third of the membership of select committees.

As to the question of whether that amendment is in order, I refer honourable senators to *Beauchesne's Parliamentary Rules & Forms*, 6th edition, at page 176, paragraph 579, which deals with inadmissible amendments. I will read this paragraph in that I rule it is the only one relevant to this question. The first part of the paragraph states:

> 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.

I find that the proposition contained in Senator Kinsella's amendment is not foreign to the main motion.

The second part of the paragraph states:

> An amendment may not raise a new question which can only be considered as a distinct motion after proper notice.

I rule that Senator Kinsella's amendment does not raise such a new question. Accordingly, I find that this amendment is not an instruction such as a new order of reference.

Rule 85(1) provides the Selection Committee with the order of reference. The amendment in question merely expands the order of reference. Accordingly, I find the amendment to be in order.

Divisions – Acceptability of deferring standing vote (Ruling appealed – not sustained)

October 3, 2002 *Journals*, pp. 33-34

We are at a point in a division just prior to the bells ringing to call in the senators. In the course of a discussion on whether the bell be one hour, it was put by the opposition whip, as the rules provide, that the vote be deferred to the next sitting day at 5:30, which gave rise to Senator Carstairs' point of order which is that, because of the provisions of rules 85(1) and (2), there can be no deferral of the vote because we are so close to the fifth day — we are on the fourth day — and therefore, I should not look to those procedural rules, but only to rule 85.

By way of a ruling, I would not be able to consider that until the question is ripe; that is, until the Senate is on the fifth day, because that would interfere with matters that the Senate, itself, is responsible for and that the rules provide are engaged by the Senate and senators until such time as that question might arise. I do not rule on that question. It is not timely to rule on it until we are faced with it.

The next sitting day could be tomorrow, if the vote is deferred to tomorrow and taken tomorrow. If the government whip uses the rules, it could be deferred to the next sitting day, which could be tomorrow or the next sitting day next week.

In any event, my ruling is that it is not timely to rule on the point of order because we are not at the fifth day.

Whereupon, the Speaker's Ruling was appealed.

The question then being put on whether the Speaker's Ruling shall be sustained, it was negatived.

Motion – Acceptability of notice

October 8, 2002 *Journals*, pp. 41-42

On Thursday, October 3, during the Daily Routine of Business Senator Morin gave notice of a motion on behalf of Senator Kirby. The purpose of the notice is to authorize the Standing Committee on Social Affairs, Science and Technology to examine several aspects relating to Canada's health care system. The motion would also permit the Committee to make use of evidence collected by the Committee during the second session of the 36th Parliament and the first session of this Parliament with a view to submitting a final report on this study no later than October 31, 2002. Once the notice of motion was given, I reminded the Senate that it would not be possible to deal with this motion until the standing committees are underway.

Just before Orders of the Day, I recognized Senator Kinsella on a point of order relating to this issue. It was his contention that the notice of motion is out of order because the committee does not yet exist. In his view, the Senate cannot authorize a non-existing entity to do something or refrain from doing something.

By way of rebuttal, Senator Carstairs noted that the object of the notice was to alert the Senate about possible future activity of the committee. Moreover, the Senator explained that there are precedents of the Senate adopting motions referring bills to committees even before the committees were formed. In this case, however, the Senator indicated that it would seem to be more appropriate not to move it until the Standing Committee on Social Affairs, Science and Technology is formed.

In the intervening time, I have had an opportunity to look into this question more closely. Let me begin by noting that I neglected to mention last Thursday that under rule 23(1) the point of order

is somewhat premature. The rule explains that a point of order in relation to any notice given during the daily Routine of Business can only be raised at the time the Order is first called for consideration by the Senate.

Be that as it may, I have been able to confirm that there have been two recent precedents when the Senate agreed to refer a bill to a standing committee before the membership of the committee was approved by the Senate. The first instance occurred on November 3, 1999 when Bill S-6, amending the Criminal Code, was referred to Legal and Constitutional Affairs. The second instance happened January 31, 2001 when a different Bill S-6, dealing with wrongdoing in the Public Service, was referred to the National Finance Committee. In the first instance, the motion was amended with leave of the Senate to qualify the reference by inserting the phrase "when and if the committee is formed". In the second case, the motion proposed by Senator Kinsella was moved with this qualification included.

Despite these two precedents, it seems to me that the use of the phrase "when and if" is redundant, particularly when applied to standing committees. As the term implies, standing committees are permanent committees of the Senate recognized as such in the *Rules of the Senate*. These permanent committees are reconstituted early in every session in order to carry out the tasks assigned to them.

Applying the reasoning of the precedents to the present case, there are two options available. Either the Senate can agree, if leave is granted, to amend this debatable motion by adding the phrase "when and if the committee is formed" or the Senate can accept the proposition of the Government leader that the motion not be moved until such time as the Senate agrees to a report of the Committee of Selection recommending the membership of the Committee of Social Affairs, Science and Technology, in which case no leave is required. Any decision on this need only be made when the Order is actually called for debate.

It is my ruling, therefore, that the notice of motion is in order.

Question of Privilege – Public statements made about the Queen by the Deputy Prime Minister

October 9, 2002 *Journals*, pp. 56-57

Yesterday, October 8, Senator Cools rose on a question of privilege and drew our attention to certain remarks made by the Deputy Prime Minister and Minister of Finance, Mr. John Manley, regarding the monarchy in Canada. The Senator cited a newspaper in which the Minister is quoted as saying that "It is not necessary, I think, for Canada to continue with the monarchy... personally, I would prefer if we could have a uniquely Canadian institution after Queen Elizabeth."

In making her case, Senator Cools spoke of the constitution, the oath of allegiance and the principle of Cabinet solidarity. The Senator claimed that Mr. Manley's views about the Crown breached her privileges because, as she put it, "he expects me, as a government supporter, to

uphold him and what he has done. I cannot do that," she continued, "I will not do that and I will not defend that. As a matter of fact, I condemn that!"

Several other Senators spoke briefly on the matter. Senator Kinsella suggested that Mr. Manley would have saved himself considerable embarrassment had he exercised "custody of the tongue." Senator LaPierre questioned the claim of Senator Cools that the Deputy Prime Minister was actually seeking to overthrow the Queen. Senator Robichaud, the Deputy Leader of the Government, stated that the remarks of Mr. Manley expressed a personal opinion that did not in any way reflect the views of the government. Finally, Senator Murray raised some questions about the convention of Cabinet solidarity.

In considering the merits of Senator Cools' question of privilege, it is useful to restate the modern definition of privilege as explained in the British parliamentary authority, *Erskine May's Parliamentary Practice*. On page 65 of the 22nd edition, it is stated that "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively ... 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."

In addition, the *Rules of the Senate* provide certain criteria by which I, as Speaker, am bound to consider the *prima facie* merits of any question of privilege. Among the criteria listed in rule 43, a question of privilege must "be a matter directly concerning the privileges of the Senate, of any committee or any Senator." It must also "be raised to seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available." Finally, the alleged question of privilege must "be raised to correct a grave and serious breach."

In accepting the modern meaning of privilege and applying the criteria provided in our Rules, I fail to see how the remarks of the Deputy Prime Minister constitute a *prima facie* question of privilege that affect the rights either of the Senate or of an individual Senator. Senator Cools herself cited Mr. Manley's comments in which it is clearly stated that his views on the future of the monarchy in Canada are personal. They do not reflect the position of the government, a point that was reiterated by the Deputy Leader of the Government. Whether or not the Deputy Prime Minister's opinion breaches the convention of Cabinet solidarity is not a matter that comes within the scope of parliamentary privilege. What is also clear is that the Senator has not in any way been impeded in performing her parliamentary duties as a result of Mr. Manley's comments. Consequently, I must rule that there is no *prima facie* question of privilege in this case.

Question of Privilege – Tabling a committee report with the Clerk of the Senate when the Senate is not sitting (Ruling by Speaker *pro tempore*)

October 24, 2002 *Journals*, pp. 91-92

Yesterday, October 23, Senator Murray rose on a question of privilege to object to the announced intention of the Social Affairs, Science and Technology Committee to deposit a report with the Clerk of the Senate this Friday. Despite an admitted authorization from the Senate granting the committee this power, Senator Murray argued that this was not the intent of this

authorization and that the report ought to be tabled as soon as possible while the Senate is sitting since, as he put it, the report "is ready."

By way of reply, Senator Kirby, the chair of the Social Affairs Committee, expressed sympathy with Senator Murray's position. He went on to explain, however, that the 300 page report is with the printer and that bound copies sufficient for distribution will be ready Thursday, that is today, probably late in the day. Despite the circumstances of this case, Senator Kirby suggested that the practice of tabling reports with the Clerk should be studied by the Standing Committee on Rules, Procedures and the Rights of Parliament so that any ambiguities with respect to it could be clarified.

Several other Senators made comments on the merits of the alleged question of privilege. Senator Bolduc explained that a report is normally seen by Senators first and that, in this instance, since the report may not be ready before Thursday afternoon after the Senate rises, it should not be released until the Senate next sits, likely next Tuesday. Senator Lynch-Staunton, the Leader of the Opposition, echoed this view. As he put it: "I think the committee has an obligation to those who mandated the terms of reference to report first to the Chamber." This position was also supported by Senator Cools, who proposed, like Senator Kinsella afterwards, that the matter be resolved by allowing Senator Kirby to table one copy of the report when it is available before the end of the sitting today, Thursday.

At the conclusion of these exchanges, I agreed to take the matter under advisement. Given the pressing nature of the situation, it would be inappropriate to defer a decision on the *prima facie* merits of this question of privilege. Accordingly, I am prepared to rule now.

Honourable Senators, I think it only right to inform you that I was a member of the Social Affairs Committee during the last session and I was just reappointed to it for this session until I resigned yesterday.

Rule 43 of the *Rules of the Senate* states that a question of privilege must involve "a matter directly concerning the privileges of the Senate, of any committee, or any Senator." In addition, it must "be raised to correct a grave and serious breach." Do these criteria apply in this case? Senator Murray has acknowledged that the Senate itself did confer on the Social Affairs Committee the authority, notwithstanding usual practices, to deposit any report with the Clerk if the Senate is not then sitting. This permission was granted less than two weeks ago, on October 8. The Senator maintains that it was only intended to apply when the Senate was facing a prolonged adjournment. However, there is nothing in the motion to explain the circumstances or qualifications by which this permission is to be exercised. In addition, there are recent precedents to suggest that a prolonged adjournment is not a necessary requisite or precondition. The most relevant of these precedents occurred on April 18 this year and it involved the Social Affairs Committee. As recorded in the *Journals of the Senate* that day at page 1425 Senator Kirby moved the consideration of the seventeenth report of the Committee which "he had deposited with the Clerk earlier today." Although Senator Murray commented on the event at the time, no objection was raised. A similar incident occurred the previous month. This one involved a report of the National Security and Defence Committee. A complaint was made, though not as a point

of order, about the fact that the media had knowledge about a report that had been deposited with the Clerk before members of the Senate.

Honourable Senators, aside from these precedents, there is another more fundamental reason to find that there is no *prima facie* question of privilege. To be valid, a question of privilege or contempt must involve, as I have already explained, a grave or serious breach of our parliamentary practices. It has been argued that Senators are entitled to receive the report of one of its committees first. Normally, this is true. It is admitted in the standard parliamentary authorities that the premature release of a committee report can constitute a question of privilege or a contempt. In this case, the Senate, exercising its undoubted privilege of governing its own internal proceedings, has waived this right, or at least qualified it, by granting permission to the committee to deposit any report with the Clerk. The Senate cannot now pretend that the exercise of this permission is a breach of the privileges of the Senate. To think that it can, is to contend that one privilege can trump another. The Senate has given license to a committee to deposit its reports with the Clerk whenever the Senate is not sitting. This permission was granted without qualification. Under these circumstances, I find that there can be no *prima facie* question of privilege and I so rule.

Opening of Parliament – Problems encountered

October 29, 2002 *Journals*, pp. 123-127

On Wednesday, October 2, Senator Murray rose on a point of order to comment about two issues relating to the opening of the second session of the 37th Parliament and the Speech from the Throne that was read by Her Excellency, the Governor General in this Chamber on September 30. The first had to do with the sound system and the fact that the volume of the translation was so high as to be disruptive, not only to the Senators, but also to the Governor General herself. While it was unclear what might have been the cause of this problem, the Senator urged that steps be taken to prevent it from happening again. The second matter of the point of order related to the behaviour of several Senators and visitors in the Galleries as well, who applauded portions of the Speech from the Throne, contrary to established practice. As the Senator mentioned, the Governor General, as the Queen's representative, must be kept from any political involvement. Accordingly, her Speech is always to be heard in silence. The applause was inappropriate and ought not to be condoned. This intervention by Senator Murray led to a series of other observations about various aspects surrounding the opening of the session.

Senator Carstairs, the Leader of the Government, then spoke in support of the observations made by Senator Murray and added one of her own. One of the MPs who came to the bar of the Senate to hear the Speech from the Throne actually took a Senator's seat and only gave it up after the Government Whip requested that he join his Commons colleagues behind the bar. To avoid any similar occurrence in the future, Senator Carstairs suggested that notes be prepared advising everyone about the traditional decorum that is expected during the Speech from the Throne.

When Senator Kinsella, the Deputy Leader of the Opposition, rose to speak on the point of order, it was to agree with the remarks of both Senator Murray and Senator Carstairs. At the same time, he raised three other issues about the opening events that troubled him. The first was another

problem touching decorum. In the Senator's view, it was improper for the Senators and others to rise when the justices of the Supreme Court entered the Chamber to take their seats in front of the Thrones where the Table is normally located. The second matter had to do with the sitting of the Senate at 11:30 a.m. when Senator Smith was formally introduced. Since the time for the Speech from the Throne had been set in the Proclamation for 2:00 p.m., the Senator wondered by what authority the Senate held the earlier meeting. Finally, Senator Kinsella cast doubt about the Senate proceedings that followed the Governor General's departure after the Speech from the Throne because the mace was not in its proper place on the Table.

Other Senators also participated in the discussion on the point of order. Senator Austin spoke about the broadcast cameras using "cheap shots", as he described it, of Senators to project a certain image of this place. For his part, Senator LaPierre wondered what all the fuss was about and defended the practice of applauding elements of the Speech from the Throne. Senator Prud'homme suggested that strict rules should be in place regarding cameras and what is to be portrayed. Senator Grafstein spoke to defend the importance of parliamentary tradition and to explain his actions with respect to the entrance of the justices of the Supreme Court. Senator Cools also agreed with Senator Murray's point of order and lamented the declining knowledge about parliamentary government in a constitutional monarchy. Then Senator Comeau used the opportunity of the point of order to raise a question about attendance. Finally, Senator LaPierre spoke again to suggest that the photographers should be removed from the Chamber.

I wish to thank all honourable Senators for their contribution to the discussion. It is clear that some elements of the Opening did not go as well as they should have and that some practices seem to be misunderstood. I will try to deal with each of the different matters in turn. First of all, however, it is useful to point out that the role of the Speaker during the Speech from the Throne is not the same as during a Senate sitting. With Parliament assembled in this Chamber, with the Crown representative on the Throne, the Senators in their places, and the Commons at the bar, I do not think that it can be said that the Speaker is presiding over the proceedings. Nonetheless, I do think it is important that all of the concerns raised in the point of order be addressed even though they may not be legitimate points of order.

With respect to the problem that we had with the sound system, this point of order and the concerns of Senate officials prompted an investigation that determined that there were some difficulties associated with a sudden breakdown in the sound system just prior to the Opening and that there had been insufficient time to perform an final sound check before the ceremonies began. As well, there were other sound level problems with the equipment of the broadcaster. In any case, I have been assured that steps will be taken to avoid these problems in the future.

As to the matter of the applause made to certain parts of the Speech from the Throne, I am in agreement with the view that it is not proper and it should be avoided. This is for the reasons that were cited by several Senators. The Government prepares the Speech from the Throne that is a declaration of its agenda for the session. The merits or objections of this agenda should be expressed, not in the presence of the Governor General, but during the time the Senate allocates for the Address-in-Reply. At the same time, I must acknowledge that should applause occur, or should any disapproval be expressed, I as Speaker am not in a position to stop it. To rise and then cut off any audible reaction to a passage of the Speech from the Throne when it happens would

be to compound the offence. It would put the Governor General in an embarrassing position and would seriously detract from the dignity of the event.

This is also true with respect to what happened when the justices of the Supreme Court entered the Senate to take their seats. By practice, Senators should not rise, but would it have been acceptable for me to intervene to stop it? I do not think so. It is for this reason that I agree with the suggestion that was made by several Senators that notes should be prepared to accompany any material issued explaining the schedule of the proceedings relating to the Opening. In other words, the best approach is to do more in order to ensure that those in attendance are aware of the proper procedures.

In the matter of the MP who took a seat within the bar, this was clearly a violation of tradition and also the *Rules of the Senate*. Members of the other place when they come to the Senate to witness Royal Assent or to hear a Speech from the Throne as they did on September 30 should always remain behind the bar. Rule 126 reserves several places "without the bar" for former Senators or Members of the House of Commons who wish to follow the proceedings of the Senate during a sitting. At no time ought members to take a seat inside the bar. Senator Prud'homme indicated that a Senator invited the member to take a seat. Other senators, however, objected and the Government Whip was successful in persuading the member to leave. This incident should not have happened, yet it provides one more reason to prepare and distribute some documentation explaining the traditions and practices that are to be observed at the opening of a parliamentary session.

Senator Kinsella raised questions about the authority for the morning sitting and about the propriety of the sitting following the Speech from the Throne given that the mace was not on the Table. Research has been done to determine the history of our practices. The results are interesting and it may provide Senator Kinsella with part of the answer to his first question. As Speaker, however, I have no authority to give a decision on a constitutional question or a point of law and there is clearly an aspect to his question which is constitutional in nature. Prior to 1930, the Proclamation announcing the date of the opening of Parliament, whether for a new Parliament or a new session, did not indicate the time of the Governor General's arrival on Parliament Hill. Even before the change in 1930, the Senate always met earlier. This happened for several reasons: to receive the message from Rideau Hall indicating the time for the opening; to acknowledge a new Senate Speaker appointed by the Government; and frequently to introduce new Senators. The *Journals* suggest that all of these sittings were brief. It is less clear, before 1930, whether these meetings took place a short time before the Governor General's arrival or some hours before, though some of them clearly took place a few hours earlier. This is more clearly the case in many of the openings since 1930, but not all. While every opening of a new Parliament has involved an earlier sitting of the Senate, a small number of the openings of a new session have been timed to coincide with the Governor General's appearance in the Senate for the reading of the Speech from the Throne. What occurred, therefore, on September 30 is well within the practices that the Senate has followed since 1867.

The issue of the mace is also interesting. Again without taking a position one way or the other, Senator Kinsella suggested that I as Speaker consider the matter of the proper place for the mace following the departure of the Governor General when the Senate conducted some business. As

Honourable Senators will recall, certain proceedings did take place on September 30 following established practice. In accordance with the *Rules of the Senate*, the pro forma bill is introduced and read a first time and I met my obligation to report the Speech from the Throne. In addition, the Deputy Leader of the Government moved the motion for the creation of the Committee of Selection. During these proceedings, the mace was present in the Chamber, but not on the Table which had been removed temporarily. So far as I can determine, the Table has been removed at every opening since 1920 when the Senate first occupied this Chamber. Indeed, whenever there is a "large" opening, Senators' desks are also taken away and replaced by rows of benches. The Speaker's Chair is also removed for part of the day so as not to obstruct the Governor General's access to the Throne. These modifications to the Chamber including as well the installation of platforms for cameramen are now an established part of the preparations related to the opening ceremonies of Parliament. None of these modifications, including the absence of the Table, undermine the legitimacy of the Senate's brief sitting following the Speech from the Throne. The mace is present even if not on the Table. This is the minimum requirement and it is sufficient. As Marleau and Montpetit at page 238 explains with respect to the mace in the House of Commons: "The Mace is integral to the functioning of the House; since the late seventeenth century it has been accepted that the Mace must be present for the House to be properly constituted."

Another question was raised about the practice of treating the morning sitting as one distinct from the afternoon event. The history on this is mixed. It appears to date back to 1930 and has been followed intermittently since. How it figures in the tabulation of Senators attendance is an administrative matter, not a procedural one, and I will not offer any comment on it.

Finally, several Senators deplored the use of "cheap shots" by television cameramen. A suggestion was made that the Senate should insist on rules or guidelines comparable to those applied in the House of Commons during sittings. Presumably, such guidelines would be formulated by the Standing Committee on Rules, Procedures and the Rights of Parliament. Among other things, these House of Commons guidelines require the camera to focus with a head-shot on the member speaking. In the alternative, it was proposed that cameras be banned from the Opening. Frankly, I do not think either option is feasible. The opening is not a regular sitting of either the Senate or the House of Commons. Moreover, there are a variety of different camera crews and still photographers present and it would be difficult to impose on them the rules that are applied by the House of Commons to its proceedings on its own camera crew. They are too restrictive for an event like the Opening.

This resolves the issues that were raised during the discussion that was initiated by Senator Murray's point of order. As I indicated earlier, there is little that I as Speaker am able to do to regulate the proceedings related to the Speech from the Throne. Where possible, however, steps will be taken to minimize and hopefully avoid the technical distractions that occurred on September 30. As well, I will undertake to have prepared a document explaining the traditions and practices of the Opening of Parliament and make it available for circulation before this event next occurs.

Motion – Appropriateness of motion being placed under "Government Business" on the *Order Paper*

November 27, 2002 *Journals*, p. 219

I would like to rule on the point of order named by Senator Kinsella yesterday concerning the motion of Senator Robichaud, P.C. "that the Senate call on the government to ratify the Kyoto Protocol on Climate Change". Senator Kinsella questioned whether it is appropriate that it be placed under "Government Business" on our *Order Paper*.

It is my view that it is within the sole discretion of the Government to determine what is Government Business.

In the other place — Government Business — is defined as any bill or motion introduced in that House by a Minister or Parliamentary Secretary. This definition comes from a Glossary of parliamentary terms prepared under the authority of the other place.

Furthermore, according to *Beauchesne*'s 6th edition, c. 372, "A Government Order is, as the name implies, an Order of the House for the consideration of business proposed by the Government for debate and possible decisions. The normal vehicle is a Government Bill or Motion... After notice, a Government notice of motion is placed on the *Order Paper* as an Order of the Day under Government Orders".

In the Senate, our practices are very much the same. Once the Leader or the Deputy of the Government gives oral notice under "Government Notices of Motion", the item is then placed under the appropriate heading of Government Business and can be called for debate at the discretion of the government in accordance with Rule 27(1) once the required notice has lapsed.

In the Senate — the representatives of the Government are the Leader and the Deputy Leader of the Government.

Last Thursday, November 21, the Deputy Leader gave notice of this motion under Government Notices of Motions. This provides sufficient evidence for me to determine that the Government is the sponsor of this motion.

As to the form of the motion, here again, I believe that the Government has some discretion. That is to say — it need not be in the form of an Address, as was suggested yesterday. In fact, this is not without precedent. In 1966, a similar kind of motion was debated in both Houses of Parliament with respect to the Auto Pact.

It is my ruling, therefore, that there is no point of order.

Bill – Dividing (C-10A)

December 3, 2002 *Journals*, pp. 270-271

I will begin by reading the relevant authority, which is found in *Erskine May's Parliamentary Practice*, page 532, under the heading "Division of bills."

> When an instruction has been given to the committee that a bill may be divided into two or more bills, those clauses which are to form a separate bill have been postponed or considered in the position assigned to them by the bill. When they have been considered, preambles (if necessary), enacting words and titles have been annexed to them, and the separate bills have then been separately reported.

That, I believe, is the operative authority. Hence, I rule that it is not necessary to proceed in two steps. In fact, on November28, as recorded on page 228 of the *Journals of the Senate*, the Standing Senate Committee on Legal and Constitutional Affairs reported back to the Senate its second report as follows:

> Your committee, to which was referred Bill C-10, an Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act, and to which instructions were given to divide Bill C-10 into two bills, has, in obedience to both orders of reference, examined the said bills and now reports that it has divided the bill into two bills, Bill C-10A, an Act to amend the Criminal Code (firearms) and the Firearms Act, and Bill C-10B, an Act to amend the Criminal Code (cruelty to animals), both of which are set out in Appendices A and B respectively to this report.
>
> Your committee has agreed to report Bill C-10A without amendment, and further reports that it is continuing its examination of Bill C-10B.
>
> Respectively submitted,

Further, in the *Journals of the Senate*, at the bottom of page 228 and at the top of page 229, it is noted:

> After debate,
>
> The question being put on the motion, it was adopted on division.
>
> The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Rompkey, P.C., that Bill C-10A, an Act to amendment the Criminal Code (firearms) and the Firearms Act, be placed on the Orders of the Day for third reading at the next sitting.
>
> The question being put on the motion, it was adopted.

Honourable senators, that is how this matter came before us earlier today. The committee reported a bill back to the house, not a draft of a bill or a document. The Senate took it as such —

a bill. It was the subject of a motion that gave rise to the order to vote today, as recorded on page 230 of the *Journals of the Senate*.

> The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Kinsella:
>
> That, pursuant to Rule 38, in relation to Bill C-10A, An Act to amend the Criminal Code (firearms) and the Firearms Act, no later than 5:30p.m. on Tuesday, December3, 2002, any proceedings before the Senate shall be interrupted and all questions necessary to dispose of third reading of the Bill shall be put forthwith without further debate or amendment, and that any votes on any of those questions not be further deferred; and
>
> That, if a standing vote is requested, the bells to call in the Senators be sounded for thirty minutes, so that the vote takes place at 6:00p.m.
>
> The question being put on the motion, it was adopted.

In conclusion, the way in which the committee dealt with the order of the Senate is in order. Bill C-10 has not disappeared and the committee to which it was referred has properly carried out the order of the Senate. Accordingly, it is in order to proceed.

Motion – Acceptability (motion in amendment)

December 3, 2002 *Journals*, p. 272

A Point of Order was raised as to the acceptability of the motion in amendment.

After debate,

The Speaker ruled that the motion in amendment was irreceivable.

Bill – Dividing (Message to House of Commons – C-10A)

December 4, 2002 *Journals*, pp. 286-289

Yesterday, the Senate agreed to the third reading and passage of Bill C-10A, *An Act to amend the Criminal Code (firearms) and the Firearms Act* without amendment. This bill is the end result of a decision of the Senate to divide Bill C-10. Bill C-10B remains before the Standing Committee on Legal and Constitutional Affairs. The Senate agreed to this when the second report of the Committee was adopted Thursday, November 28.

As is required, I read out the Message to be sent to the House of Commons following the adoption and passage of Bill C-10A. Following my reading of the message, Senator Kinsella rose on a point of order to seek clarification about Senate practices with respect to these messages and whether the Senate would follow the precedent of 1988 when another message, also related to a bill that was divided by the Senate, was the object of some discussion and amendment.

There followed a series of interventions by Senators. Senator Lynch-Staunton asked questions about the origin of the message, its content and its author. He also asked why the message had not been distributed to Senators before being read. Like Senator Kinsella, he suggested that this message is a debatable motion subject to amendment. In a subsequent intervention, Senator Kinsella cited rule 123 of the *Rules of the Senate* respecting messages that are transmitted between the Senate and the House of Commons through the Clerk. He also made reference to the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords* and its use of messages to support his contention that the message is equivalent to a debatable motion, confirming the validity of the Senate precedent of 1988 relating to Bill C-103.

Senator Carstairs and Senator Robichaud contended that the message is not debatable. Senator Carstairs disagreed with the position of Senator Lynch-Staunton that the message contained editorial commentary. In her view, the message is simply stating the actions that have been taken by the Senate. As Senator Robichaud put it, the message is providing information to the House of Commons with respect to the decisions of the Senate.

In her comments, Senator Cools noted that messages have been debated before in the Senate and have even been referred to committee for study. Further, the Senator noted that there is nothing routine about this bill and there is nothing routine about what has happened. Finally, as Senator Cools put it, this message is the Senate's message and Senators have an interest in making their voices known and expressing their opinions on the actual wording of the message.

I wish to thank all honourable Senators for their contributions to this discussion on the point of order.

The purpose of a message is to provide a vehicle for a formal communication between the two Houses. The House of Lords Companion, to which Senator Kinsella referred, states that messages are used "for sending bills from one House to the other, for informing one House of the agreement of the other to bills or amendments, for requesting the attendance of officers of either Houses as witnesses, for the exchange of documents, for the setting up of joint committees ... and for other matters on which the two Houses communicate." The use of messages is generally much the same in our Parliament.

When the Senate receives a message from the House of Commons, the content of the message is often debatable, but not always. For example, yesterday, I read a message from the House of Commons to inform the Senate that it had passed Bill S-2, dealing with a series of tax treaties, without amendment. In this particular case, there is nothing to debate; the purpose of the message is simply to convey information. In other cases, however, a message may require some action on the part of the Senate. When, for example, the House of Commons either disagrees to a Senate amendment to a Commons bill, or the Commons amends a Senate bill, the message is taken as notice, and its contents are ordered for debate and determination at a subsequent sitting.

In order for a bill to become an Act of Parliament, it must be adopted by both Houses. It is part of established practice that when a bill is adopted at third reading and passed by one House, a message must be sent to the other House informing it of the actions taken and the decisions

made. This message is an automatic consequence flowing from the decision to pass a specific bill. The message itself is not debatable. The debate took place on the bill; the message is simply a method of informing the other House of the decision taken with respect to the bill.

Furthermore, the message on a bill must relay all relevant information that would allow the receiving House to understand what has happened. When it is a House of Commons bill, the message must provide all the information necessary for the House of Commons to understand what the Senate did while reviewing the legislation.

Messages of this kind conveyed from the Senate to the House of Commons are routine. Whenever the Senate has amended a Commons bill, the message sent by the Senate to the House of Commons identifies the amendments and seeks its concurrence. So far as I have been able to determine, these messages are not the object of a debate. I can only assume that this is because, as I have already explained, the message itself is not a motion. Certainly it is not listed as a debatable motion under rule 62 of the *Rules of the Senate*.

The one exception appears to be the case mentioned by Senator Kinsella yesterday. In 1988 after the Senate had already agreed to divide Bill C-103 into two bills and then adopted and passed Bill C-103 (Part I), there was some discussion on the content of the message. As recorded in the *Debates* of July 7, at page 3888, a portion of the message was deleted. I am being asked if this case constitutes a precedent that is binding with respect to the matter now before the Senate, namely Bill C-10A.

Having reviewed the *Debates* carefully, I am uncertain as to exactly how this incident occurred. It would appear that Senator Flynn contested an assertion made by Senator MacEachen that the decision of the Senate with respect to the adoption of the first part of the divided bill was unanimous. Senator MacEachen made this claim immediately following the Speaker's pronouncement of the message. In the ensuing exchanges, Senator Flynn proposed that the first phrase of the second portion of the message, soliciting the concurrence of the House of Commons with respect to the division of the bill, be deleted. The remainder of the message informed the House that the Senate passed Bill 103 (Part I) without amendment and that it is further considering Bill C-103 (Part II). The proposal to delete the concurrence request was accepted and the message was subsequently sent to the House of Commons.

Based on my reading, it does not appear that his action was in the form of an amendment to a motion. There is no identified mover and seconder. It just seemed to happen. That this decision was not an amendment to a motion is confirmed by reference to the *Journals* for that date on pages 2908-2909. The message was not moved by any Senator and the change suggested by Senator Flynn was not moved as an amendment. Consequently, I am not sure how I can take this event as a precedent. If it is being suggested that this action was done implicitly by leave, that may be true, but anything done by leave can never be taken as a precedent. If anything, it may prove the exception to the rule that messages like this are not normally the subject of any discussion. To my mind, it was an exceptional occurrence and was done without a dissenting voice.

As I have mentioned already on a previous occasion, the Speaker of the House of Commons objected to the message from the Senate because, in part, it departed from customary usage in not seeking the concurrence of the House of Commons. In the end, the Commons did not accept the Senate's action in dividing the bill because it claimed that it infringed its rights and privileges.

As we have acknowledged, instructions to committees to divide or combine bills are very rare in Canadian parliamentary practice. Nor are they that frequent in the United Kingdom Parliament yet it is British practice that constitutes our model. This difficulty is compounded because Westminster has no precedent for the Lords dividing a Commons bill. As *Erskine May* states in a footnote on page 470 of the twenty-second edition: "the propriety of dividing a Commons bill has not been decided." As a result, there is no established formula for the message.

In 1941, when the Senate combined two Commons bills dealing with war revenue, a message was sent immediately upon the third reading and passage of the bill. The message read as follows:

> Ordered, That the Clerk do carry this Bill back to the House of Commons and acquaint them that the Senate has passed the same with an amendment, and with the incorporation therein of Bill (101) of the House of Commons intituled: "An Act to amend the Special War Revenue Act," to which they desire their concurrence.

Despite the lack of a clearly established formula, one thing is clear. A proper message must seek the concurrence of the House of Commons to any changes made by the Senate to a Commons bill. This is the only element of the message in 1988 that was deleted. The original message informed the House of Commons that it divided the Bill into two Bills, both of which were attached as appendices. Further, the message informed the House of Commons that the Senate had passed one part of the bill and was continuing its examination of the second part.

Is the current message much different from the original version of the 1988 example? Any comparison would suggest that they are almost identical. Certainly, there is no substantive difference. The 1988 message on Bill C-103 with the deletion was sent by the Senate.

Taking into account what happened in 1988, I think it can be said that the original version of the 1988 message is a fair model. That being said, it is possible for Senators to raise points of order on the content of the message if there is any suspicion as to a factual or procedural error in it. However, with respect to the claim that the message is a debatable motion, it is my ruling that the point of order raised by Senator Kinsella is not substantiated. Accordingly, the message that I read yesterday is in order and will be sent to the House of Commons forthwith.

Bill – Dividing – Wording of the Message to House of Commons (C-10A)

December 4, 2002 *Journals*, p. 289

The question raised by Senator Lynch-Staunton is whether the message is incorrect in that it sends back Bill C-10 when the committee only dealt with Bill C-10A, having divided it. I believe the message is correct. To not return the bill to the House would be incorrect because the House may, for instance, decide not to accept the Senate's message that it has divided the bill, similar to their process when dealing with amendments. They could treat it like an amendment and accept or not accept it. To receive only the appendices created by the committee would leave the House of Commons without the bill to send back. To receive the bill, we must send the bill back. In the message to the House we have asked that the bill be divided because the committee of our chamber reported it to Senate in that form.

Honourable senators, I must say that I am relying also on the rulings given on this point by the then Speaker of the Senate and the then Speaker of House of Commons in 1988 when Bill C-103 was the subject of a similar conversation, debate or discussion in this place and in the other place. Those rulings, one of which was voted against by a majority of voices in the Senate, did not raise the message as a concern. In other words, I am relying on the fact the Senate accepted that process then. It was also accepted as the correct procedure in the House of Commons in then Speaker Fraser's ruling. Accordingly, I rule that there is no error in the message.

Bill – Dividing (Proceedings concerning divided bill – C-10)

December 9, 2002 *Journals*, pp. 368-370

Last Thursday, December 5, Senator Lynch-Staunton rose on a point of order regarding the whereabouts of Bill C- 10. He wanted to know whether the bill is still before the Committee on Legal and Constitutional Affairs or whether it was returned to the House of Commons with a message.

Several Senators made some comments on this point of order before I closed the proceeding with a commitment to return to the Senate with a ruling. I am prepared to rule now.

Honourable Senators, there seems to be little doubt that the proceedings on Bill C-10 have been somewhat difficult to follow. This is largely because dividing a bill has not been a frequent feature of our practice, though it is within our power to do it. Be that as it may, there have been few instances or attempts recorded in the *Journals* of the other place and, as all Senators now know, the only previous attempt to divide a bill in the Senate occurred in 1988.

In describing the nature of the process, I will explain what in fact happened to Bill C-10 and why the Committee remains in possession of Bill C-10B.

The Senate received Bill C-10 on October 10, 2002 and gave it second reading on November 20 when the bill was also referred to the Committee on Legal and Constitutional Affairs. At the same time, the Senate instructed the Committee to divide the bill into two bills. This instruction allowed the Committee to report its study of Bill C-10 as two separate bills. The Committee

reported on November 28 and, following the instruction of the Senate, it divided Bill C-10 and reported one portion as Bill C-10A without amendment. The balance of the original Bill C-10, dealing with cruelty to animals, now designated Bill C-10B, was retained by the Committee for more study.

That same day, November 28, the Senate adopted the report of the Committee. As of that date, therefore, for all intents and purposes within the Senate, and I must stress this point, from within the Senate, Bill C-10 existed as two bills, Bill C-10A and Bill C-10B. The Senate proceeded to debate Bill C-10A while leaving Bill C-10B in the Committee on Legal and Constitutional Affairs. The Committee has yet to report the results of its work on this second bill, but as we know from the comments that were made on this point of order, the Committee is continuing its hearings. Consistent with our practice, the scheduling of hearings is a matter for the Committee to decide. Once a committee has an order of reference from the Senate, it is master of its own agenda and procedure.

Bill C-10A was read a third time and passed on December 3. Following this decision, I read out to the Senate, as is our custom, the message to be sent to the House of Commons informing them of what we had done. The message indicated that the Senate was returning to the Commons their Bill C-10, as divided by the Senate, together with the information that the Senate has passed Bill C-10A without amendment and was continuing with the study of Bill C- 10B.

Of particular importance, the message requested the concurrence of the House of Commons in the division of Bill C- 10. This is highly significant. From the point of view of the House of Commons, only Bill C-10 exists. We, in the Senate, have elected to divide the bill, creating Bills C-10A and C-10B, but as it is a Commons bill, the concurrence of the House of Commons is necessary to fully implement the actions taken by us in the Senate. In reality, this is no different than when we as the Senate amend a Commons bill. The agreement of the Commons is required in order to properly perfect the amendment.

In due course, the Senate will be advised of the Commons decision by a return message. If the House of Commons agrees to the division and accepts Bill C-10A without amendment, Bill C-10 will cease to exist and Bill C-10A will proceed to Royal Assent. If the Senate completes its review of Bill C-10B without amendment, a message will be sent to the Commons informing them that we have passed Bill C-10B and it too will be placed on the list for Royal Assent. If the Senate amends this bill, it will have to be returned to the House of Commons, but as Bill C-10B this time, for the concurrence to any amendment.

If the House of Commons does not agree to the division of Bill C-10, the Senate will have to decide whether it will insist on the division or whether it will accept the position of the Commons to keep Bill C-10 whole. If the Senate accepts the position of the House of Commons, Bill C-10A will be rejoined to Bill C-10B. One obvious way to do this would be to return Bill C-10A to Committee with an instruction to combine it to Bill C-10B thus restoring Bill C-10.

Of course, there may be different permutations and combinations, but this, I believe, is the general outline or sequence of events that can take place as we proceed to the final steps in our

deliberations on what was received from the Commons as Bill C-10, out of which we made Bill C-10A and Bill C-10B.

Finally, with respect to the notice of the Committee on Legal and Constitutional Affairs, this is an administrative matter and is of no important procedural significance. It may be that the notice reflected the original order of reference relating to Bill C-10. It might have been preferable if the notice had read Bill C-10B which would have taken into account the consequences flowing from the decision of the Senate adopting the second report of the Committee dividing Bill C-10, reporting Bill C-10A without amendment and retaining Bill C-10B for further study. As I indicated, this is an administrative matter that does not impact the work of the Committee.

If Senator Lynch-Staunton's point of order is that Bill C-10 is still before the Committee, I am obliged to inform him that, based on my understanding of the proceedings that have taken place thus far, there is no point of order. Bill C-10B is still in Committee, not Bill C-10.

Committees – Acceptability of committee report (Supplementary Estimates (A) 2002-03)

December 9, 2002 *Journals*, pp. 370-371

As honourable senators have heard me observe before, the presiding officer must make a decision as to when he or she has heard enough on a point of order to be able to deal with it. With respect to this point of order, I thank honourable senators for their assistance. Of course, we are not unfamiliar with such a matter being raised by Senator Cools and so I will deal with it now.

The honourable senator's point is: Is the current proceeding in the house in respect of the second report of the Standing Senate Committee on National Finance in order or out of order? Senator Cools has expressed her concerns about the way in which proceedings occurred in the other place. With respect to that, we have no control over what happens in the other place. The Senate communicates with the House of Commons by message. As it happens, with respect to this matter, we have a message from the Commons on Bill C-21, which is now on our *Order Paper*. I do not find that to be a matter that we can even inquire about because the orderliness in the other place is a matter for the other place.

The issue has arisen as to whether the adoption of the report equates with the adoption of the Estimates. If it were to equate, then this would be improper because the Estimates that were studied by the committee do not contain all of the changes that Senator Cools has described, which, according to her, were made in the other place. Other senators commented on that fact.

My view is that the study of the Estimates is simply that. What is available to the committee in its study and in the preparation of its report is within the power of the committee to determine. The committee has, as Senator Murray commented, discussed the Estimates, made recommendations and reported on them. That is all. The Supplementary Estimates are not the report of the Senate committee studying them; rather, the Estimates concurred in by the House of

Commons are contained in Bill C-21. In that regard, I do not consider anything to be out of order with respect to what has happened in the other place and what is happening here.

Senator Day expressed the view that the report is an opinion of the committee; and that, with respect to changes as time has passed since the Supplementary Estimates were tabled, referred to committee and studied. The study does not render the work of the committee invalid. I find that there is no point of order in this instance, honourable senators.

I make no comment on Bill C-21. That will be dealt with at a later time.

Bill – Committee report (acceptability)

December 11, 2002 *Journals*, pp. 412-413

Yesterday, as the Senate was about to proceed to the resumed debate on the third reading of Bill C-5, respecting the protection of wildlife species at risk in Canada, Senator Kinsella rose on a point of order. In substance, the Senator challenged the report of the committee that had been presented December 4 because, in his view, it contained remarks that were inconsistent with its recommendation reporting the bill without amendment. To support his claim, he cited references from the British parliamentary authority, *Erskine May*, the 21st edition at page 644, and in the 22nd edition at page 666.

By way of rebuttal, Senator Robichaud claimed that it was inappropriate to raise the point of order now since the report had been adopted immediately after it was presented since it had recommended no amendment to the bill and the debate on third reading was already well underway. In his assessment, the time had passed for any point of order on the committee report.

Several other Senators then intervened to explain their understanding of the report's observations and the procedural acceptability of our practices with respect to observations generally. Other Senators also commented on the deliberations of the committee as it studied Bill C-5.

I want to thank all honourable Senators for their contributions. They were useful in helping me to better understand the issue in dispute with respect to the point of order. I have had time to consider the arguments that were made and I am now ready to rule.

Let me deal first with the position taken by Senator Robichaud. There is merit to the claim that the point of order ought to have been raised earlier. The report of the committee was presented last Wednesday, December 4, and the motion forthird reading of Bill C-5 was moved on Thursday, December 5. Citation 321 of *Beauchesne's Parliamentary Rules and Forms*, 6th edition, at page 97, states that "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."

Under rule 97(4) of the *Rules of the Senate*, when a committee reports a bill without amendment, it stands adopted immediately and the Senator in charge of the bill is obliged to indicate when third reading will be moved. The automatic adoption of the committee report would have made it difficult to raise the point of order last Wednesday, but it should have been raised on Thursday,

when third reading of Bill C-5 was moved. The objection of Senator Robichaud, therefore, is valid. Nonetheless, I am willing to waive this matter with respect to the point of order because I feel it would be useful to the Senate to review certain aspects of our practices as they pertain to observations in committee reports.

For about twenty years now, committee reports on bills have sometimes contained observations. These observations are not a procedurally significant part of the reports. Their value, in the view of some Senators, is as an advisory to the government to pay attention to certain elements of the law when considering future amendments to legislation. Some Senators, like Senator Stollery and also Senator Murray, have tended to object to the use of observations, but they have, nevertheless, found a place in our practice. They are now fairly routine as was pointed out by Senator Milne.

In the case of Bill C-5, Senator Banks informed the Senate that the observations were adopted unanimously. Thus, in this instance, the observations cannot be said to represent the views of a minority of the committee. For other bills, however, the observations have represented the views of a dissident minority. Of course, none of these differences matter because, as Senator Andreychuk correctly explained yesterday, the observations are not, and have never been, a substantive part of a committee's report. That is why, when the Committee on Energy, the Environment and Natural Resources reported Bill C-5 last Wednesday without amendment, the report was adopted immediately as required under rule 97(4) of the *Rules of the Senate*.

This brings me now to the core of the argument that was made by Senator Kinsella and also Senator Stratton. Both objected to the committee report on Bill C-5 because, as they put it, the observations, these statements, invalidate it procedurally. As Senator Kinsella described it, the report presents difficulties in substance and process. To substantiate their position, Senator Kinsella and Senator Stratton cited *Erskine May* where it is made clear that a committee report must not "be accompanied by any counterstatement, memorandum of dissent, or protest from any dissenting or non- assenting member or members; nor ought the committee to include in its report any observations which are not subscribed to by the majority." It is relevant to point out that the citation in the British authority pertains to minority reports. In the United Kingdom, it is established practice that the report of a committee must reflect only the views of the majority. There can be no minority report. On the same pages already cited, *Erskine May* states: "It is the opinion of the committee, as a committee, not that of the individual members, which is required by the House, and, failing unanimity, the conclusions agreed to by the majority are the conclusions of the committee." This position is not much different from our own rule 96(2) which provides that "A report of any select committee shall contain the conclusions agreed to by the majority."

Honourable Senators, as I have already mentioned, Senate practice has permitted appending observations to reports for almost twenty years, but they have never been accepted as minority reports. Indeed, the observations have no substantive value in terms of our procedure. They can serve, as Senator Andreychuk explained, as a notice to the government of the views of committee members; they can even provide material for debate, but they have no substantive significance or procedural weight. In this context, therefore, the citation to *Erskine May* is not relevant, because the observations attached to a committee report of the Senate do not constitute

a minority report. Thus, I can find nothing in substance or process that substantiates the point of order. Debate on the third reading of Bill C-5 can proceed.

Question of Privilege – Premature disclosure of committee report

December 12, 2002 *Journals*, p. 424

I have listened carefully. In the course of the interventions, I came to the conclusion that I should deal first with the procedure because it is important that I deal with it. It has been raised. A number of the interventions have illustrated the importance of the new procedure in that some of the interventions go to the very issue of whether there is not just a *prima facie* case but an actual breach of privilege. The new provisions of our rules, which have never before been used under these circumstances, have considerable merit, highlighted by the tendency to get into the specifics before setting forth the manner in which a decision will be made.

The rules as they are now, with the appendix from which Senator Austin quoted, Appendix C, would indicate that the substance of the question of privilege would not be dealt with by the Senate until the committee had completed its investigation. This answers the concerns of Senator Lynch-Staunton and Senator Cools. If we follow the rules, the Banking Committee will present a record to this place, which will be part of the debate because the motion to refer is a debatable motion that can be dealt with by all senators before the matter goes to the Standing Committee on Rules, Procedures and the Rights of Parliament. That is a wise procedure to follow.

The subject matter of the question of privilege is a Reuters newspaper article, which, if I am not mistaken, came out today. While the steering committee has a view on this matter, it may well be that discussion in the committee will produce a record that is important to the decision of the Senate as a whole, which it must make on the debatable motion, which, if the Speaker finds a *prima facie* case, goes to the whole chamber to then be referred to or not, on a vote of everyone here, to the Rules Committee.

I believe there is wisdom in following that approach. I am not sure what the Speaker's role is in that respect. The words of Appendix IV(c) are interesting: "...it would be expected." I thought I would make that point first.

It is fairly clear from the past practice of this place that the leak of a document constitutes a *prima facie* case of privilege. Accordingly, I so find. If we follow the procedures set out in Appendix IV of the *Rules of the Senate*, it would then fall to the Banking Committee to do an investigation and present a record, which would then be the subject matter of debate as part of the motion that comes back here, as it is adjourned until the Banking Committee does the report. It would come before all senators, who would then be asked to make a decision as to whether to refer it to the Rules Committee.

Royal Assent – Written Declaration

February 13, 2003 *Journals*, p. 501

I might add that this event was the first occasion that the procedure for signifying royal assent by written declaration to a bill passed by both Houses of the Parliament of Canada has been used. History was made this morning when the Clerk of the Senate and Clerk of the Parliaments presented Bill C-4, *An Act to amend the Nuclear Safety and Control Act*, to the Honourable John Major, Deputy of the Governor General, for royal assent.

As you are aware, many attempts had been made over the years to modernize our procedure for royal assent. This morning's event culminated the work of many Honourable Senators, in particular, the work of the Leader of the Government, Senator Carstairs, who had sponsored Bill S-34, *An Act respecting royal assent to bills passed by the Houses of Parliament*, which became law on June 4, 2002, and the work of the Leader of the Opposition, Senator Lynch-Staunton, who presented a number of bills on this subject in past sessions.

Tabling of government documents

February 27, 2003 *Journals*, p. 541

The tabling of this document disposes of the point of order raised earlier by Senator Roche. Therefore, there will be no need for a Speaker's Ruling on the issue.

Senators' Statements – correction to Hansard

March 27, 2003 *Journals*, p. 617

Yesterday afternoon before proceeding to Orders of the Day, Senator LaPierre rose to ask if he could correct the record of *Senate Debates*, our Hansard, with respect to a statement that was attributed to him during Senators' Statements on Tuesday, March 25. He explained that the record on page 1002 should read "So did the Americans."

Following the normal practice of the Senate, I asked the Senate if leave was granted to allow this correction to be made. Leave was denied. At that point Senator Robichaud rose to explain that Senator LaPierre had the right to request that Hansard be corrected so that it would faithfully reflect what was said. Other Senators then rose to speak. The question that emerged from these exchanges was whether the request was to correct Hansard or to change it. This situation was summarized in the remarks of Senator Cools. As the Senator said: "The substance of the issue is the question of correcting a mistake versus the phenomenon of altering the record. It seems to me that if a senator has made a mistake, or the reporters genuinely made a mistake as they took the record, it should be corrected without any fuss." The Senator then proposed, as did others, that it would be a reasonable thing to listen to the tapes to determine if the record is being corrected or altered.

I have taken the opportunity to listen to the tape. In fact, I listened to it very carefully several times. I must frankly admit that it is not easy for me to determine with any certainty what was

said in the interventions by Senator LaPierre, and I do not have the means to enhance the recording to make a more definitive determination. Off-mike comments are not always clearly picked up. However, it is my assessment that Senator LaPierre did probably say "So did the Americans". At the same time, in reaching this conclusion, I do not wish to suggest in any way that the reporters behaved improperly in carrying out their work. Faced with these facts, it seems only right to accept the word of Senator LaPierre that in making this request, the Senator is seeking only to correct Hansard, not to change to it. Based on the precedents that I have reviewed, this kind of request, as Senator Cools said, is usually done without any fuss. There is a request and the Senate approves it. This is our practice.

Therefore, I will ask again, Honourable Senators, is there leave to correct the record of Hansard as was requested by Senator LaPierre? [Leave was granted.]

Bill – Message from House of Commons regarding amendments made by the Senate

May 8, 2003 *Journals*, pp. 813-816

Yesterday, just before Orders of the Day, I read the message from the House of Commons stating that it had agreed to the Senate's request to divide Bill C-10. The message also stated that the House of Commons waived its claim to insist on its privileges in this case and did not want this action to be taken as a precedent. Senator Lynch-Staunton then rose on a point of order to ask about the status of Bill C-10B that is still before the Committee on Legal and Constitutional Affairs. There then followed a series of exchanges involving a number of Senators on this question and other aspects of the message as well.

I wish to thank all Honourable Senators for their contributions on this point of order. The Senate study of Bill C-10 has been a difficult one. There is no doubt that in some ways, the Senate has ventured into uncharted procedural waters and it has been somewhat of a challenge for the Senate to keep its bearings. I have already made a number of rulings on the process that has been followed with respect to the study of Bill C-10 and the instruction made by the Senate last November 20 authorizing the Committee on Legal and Constitutional Affairs to divide the bill into two bills. As I have explained to the Senate in my earlier rulings, there are no identical precedents to help guide our procedures. I have also stated, however, that I do not doubt the authority of the Senate to take this course of action and I believe that the Senate has proceeded correctly. Now, I propose to deal with the various questions raised with respect to the point of order. I hope that this will allow the Senate to better understand where things stand as a result of the message received yesterday from the House of Commons.

As I see it, there are two basic questions that need to be answered based on the discussion on the point of order. The first is the one that Senator Lynch-Staunton raised on the status of Bill C-10B. The second question has to do with the language of the message expressing the position of the House of Commons and the fact that it does not regard its consent to the division of the bill to be a precedent. A third question, which I touched on yesterday, related to the matter of a message being debatable or not.

The status of Bill C-10B was the subject of a ruling that I made on December 9. At that time, I provided the Senate with an account of the chronology and the procedures that were followed with respect to Bill C-10. This ruling is in the *Journals* between pages 368 and 370. As I pointed out on that occasion, Bill C-10 came to the Senate October 10. The Senate agreed to refer the bill to the Legal and Constitutional Affairs Committee in late November. It also agreed to a motion permitting the committee to divide the bill into two bills. The committee did divide the bill and reported one portion as Bill C-10A without amendment. Bill C-10B was retained by the committee for further study. On November 28, the Senate adopted the committee's report. From that day, November 28, quoting from my ruling, "for all intents and purposes within the Senate, and I must stress this point, from within the Senate, Bill C-10 existed as two bills, Bill C-10A and Bill C-10B." Third reading was given to Bill C-10A on December 3. The message sent to the House of Commons spelled out the actions that the Senate had taken and asked for its concurrence. Quoting my ruling again, "The message indicated that the Senate was returning to the Commons their Bill C-10, as divided by the Senate together with the information that the Senate has passed Bill C-10A without amendment and was continuing with the study of Bill C-10B. Of particular importance, the message requested the concurrence of the House of Commons in the division of Bill C-10. This is highly significant. From the point of view of the House of Commons, only Bill C-10 exists. We, in the Senate, have elected to divide the bill, creating Bills C-10A and C-10B, but as it is a Commons bill, the concurrence of the House of Commons is necessary to fully implement the actions taken by us in the Senate."

Yesterday's message from the House of Commons announced that the Commons has agreed to the division of Bill C-10. This means that Bill C-10A had been approved by both Houses and is now ready for Royal Assent. It means also that, for the House of Commons, Bill C-10B exists now as well. In reality, this means that the Commons has accepted that the substance and text of this bill were approved by them and sent to the Senate when it was still part of Bill C-10, but it has now agreed post facto to designate it as Bill C-10B. A parchment version of Bill C-10B was attached to the message as confirmation. What the Senate had proposed with respect to the division of Bill C-10, the decision it took to make Bills C-10A and C-10B have been agreed to by the House of Commons. The Legal and Constitutional Affairs Committee can now complete its study and report Bill C-10B. When the bill is reported back, the Senate will have the opportunity to consider the bill further. If Bill C-10B is passed, with or without amendment, a message will be sent to the House of Commons acquainting it of the Senate's decision and soliciting its concurrence if there are any amendments. If and when this process is satisfactorily completed, Bill C-10B will also be ready for Royal Assent.

I take it that the reason why there has been so much confusion is because it has been difficult to appreciate the different perspectives of the two Houses during this process. The House of Commons adopted Bill C-10 last October 9 as one bill. The Senate divided it into two separate bills and returned one to the House of Commons while keeping the second bill in a Senate committee for further study. From the Senate's perspective, there were now two bills. This was not the perspective, however, of the House of Commons and the message that was sent to them by the Senate had to take this difference of perspective into account. The message, therefore, had to inform the Commons that the Senate had studied Bill C-10, divided it into two, and adopted Bill C-10A without amendment. From the Commons' perspective, Bill C-10 was not yet divided; it was still one bill. It was only when the House of Commons agreed to the division first made by

the Senate that there was a convergence in perspective. Now, there is no Bill C-10 and Bill C-10A has been adopted by both Houses. It remains for the Senate to complete its work with respect to Bill C-10B already passed by the House of Commons when it was still Bill C-10. This is why the parchment to Bill C-10 was returned to the Senate where it will remain part of the permanent parliamentary record as evidence that the Commons did pass what now constitutes Bill C-10A and Bill C-10B. I trust that this explanation will help to resolve some of the confusion that has troubled some Senators through this admittedly unusual process. After all, it is only the second time in Senate history that it has attempted to divide a Commons bill.

Let me turn now to the second question that was raised as part of this point of order, the language of the second paragraph of the message. Its force apparently offended some Senators. This paragraph declared that the House of Commons was prepared to waive its claims even though it disapproved "of any infraction of its privileges or rights by the other House." Furthermore, the Commons made it clear that it was not prepared to consider this event as a precedent. Several Senators suggested that this message infringed the privileges of the Senate. Others argued that if the Senate accepts this message, it would amount to an admission of wrongdoing on the part of the Senate. The House of Commons, it was argued, can agree or disagree with the Senate's decision to divide Bill C-10, but the Commons does not have the right to disapprove of the Senate's decisions, at least not in this way. Another Senator was more indifferent to the meaning of the message explaining that whether the Commons or the Senate accepts this event as a precedent is really a decision for each Chamber to make.

Honourable Senators, there is little doubt that the language of the message seems stern, almost harsh. It is not, however, without precedent. Identical language was used in a message sent to the Senate March 20, 1997 and printed in the *Journals* on page 1141. On that occasion, the message concerned amendments proposed by the Senate, and accepted by the Commons, to Bill C-70, a tax bill entitled An Act to amend the Excise Tax Act, the Federal-Provincial Fiscal Arrangements Act, the Income Tax Act, the Debt Servicing and Reduction Account Act and related Acts. And as we are aware from the traditional Royal Assent ceremony involving Supply, the House of Commons is jealous of its authority with respect to money bills. Supply bills are always presented at the Senate bar by the Commons Speaker and are tied in a green coloured ribbon, emblematic of that House rather than the usual red ribbon. Nor is the 1997 message unique though it is infrequent. Whenever the Senate has made amendments to a tax bill that were subsequently accepted by the Commons, the Commons message invariably declares that the Senate should not regard the acquiescence of the Commons as a precedent, as an indication that it is surrendering its proprietary authority over the purse of the Government. It is consistent with the past practice of the House of Commons to send the Senate such messages relating to matters that they feel infringe their rights and powers. I do not think that there is cause for the Senate to have any misgivings. Certainly there is no point of order requiring my intervention.

Finally, as I stated in my ruling of December 4, 2002, messages between the two Houses are a vehicle for formal communication. The content of the message received from the House of Commons will often determine whether the message is debatable or not. In this particular case, there is no subsequent action flowing from the message itself that would require debate. The message advises the Senate that the Commons has passed Bill C-10A. It also includes a standard declaration about claims to privileges that are being set aside in this instance without prejudice to

the merits of those claims. There is nothing that I can see in the text that would warrant debate on the message. Despite the harsh language, it is conveyed to the Senate for information purposes only.

In conclusion, Honourable Senators, I rule that there is no point of order based on the arguments that were made yesterday.

Question of Privilege – Unauthorized disclosure of a confidential draft committee report

May 27, 2003 *Journals*, p. 851

I thank the honourable senator for the elaboration on the matter of privilege.

I wish to confirm my understanding that this leak of information as described by the Honourable Senator Comeau occurred during the break week. This is timely, both in that respect and in respect to the notice given and the proceedings that we have taken today, including the honourable senator's notice during Senators' Statements and his comments at this time.

I do not intend to spend much time on this matter because there are a number of precedents. Whenever there has been an incident like this, it has been found that that constitutes a *prima facie* case of privilege.

In this case, Honourable Senator Comeau recommends that we proceed as provided for in appendix IV to the *Rules of the Senate*. We also have the benefit of having done that on one previous occasion with respect to a leaked report from Standing Senate Committee on Banking, Trade and Commerce.

Accordingly, I find that there is a *prima facie* case and that this matter should proceed in accordance with our rules. That means that the Fisheries and Oceans Committee should now carry out an investigation and bring a report back to the Senate as a whole, which is a debatable report. That report may or may not be referred to our Standing Committee on Rules, Procedures and the Rights of Parliament.

That is my ruling.

Bill – Dividing (proceedings on divided bill – C-10B)

May 28, 2003 *Journals*, pp. 863-864

I thank all honourable senators for their interventions on this interesting point. It is obviously something to which honourable senators have given much thought and have had some difficulty with in terms of the series of events that bring us to this point at third-reading stage of Bill C-10B as amended.

Normally, I would want to give some thought to such a matter. However, as we all know, this has already been the subject of two rulings in this place and at least one ruling in the other place. I find myself fairly familiar with the matter, and my view will be the basis of the ruling that I give.

I remind honourable senators of the importance of this matter in terms of the stage of proceedings at which we are. We are dealing with a piece of legislation amending the Criminal Code. We have a very high duty and responsibility. If we were to interfere in any way with the processes by which laws become law, it would have enormous consequences.

I will address the matter of the bill not having received first or second reading, as brought out in the comments of Senator Carstairs and Senator Beaudoin, by pointing out that the bill had indeed received consideration at those stages in this place as Bill C-10. If we regard, as I do, the change of Bill C-10 into Bill C-10A or Bill C-10B as being in the nature of or analogous to an amendment, that is within the power of the Senate to do. We did that, and I do not believe that that matter is any impediment to dealing further with Bill C-10B at this time.

I will speak to all of the other matters, with the exception of the one raised by Senators Andreychuk and Kinsella, as also discussed by Senator Cools, which is the wording of the message. The other matters relate essentially to that which is the responsibility, province and privilege of the other place. I believe so strongly that it is not for us to decide for them whether they have followed correct procedures that I will not even comment on that point. I would note that some interesting questions have been raised with respect to the resuscitation of Bill C-15B and Bill C-10A and Bill C- 10B, and how they were dealt with in the other place.

However, that is their business and their rules. Those rules are different from our rules.

Honourable senators, I reviewed the messages to remind myself how the matter has proceeded through this place. I have confirmed that the matters are in order. That has been referred to in prior rulings.

The question of the wording of the message was raised by Senator Cools at an earlier time. It was addressed in a ruling that I gave on May 8. 2003. I refer all honourable senators to that ruling.

At this point, I find that there is no breach of our rules or conventions in the way in which we are proceeding. Accordingly, it is in order for to us resume debate on Bill C-10B at this time.

Motion – Acceptability (to refer to committee proposed motion to concur with House amendments)

June 10, 2003 *Journals*, p. 917

I have had an opportunity to consider the point of order that was raised by Senator Lynch-Staunton and commented on by a number of senators, and I thank all senators for their interventions.

I will start by quoting from our rule 62(1) which states:

> Except as provided elsewhere in these rules, the following motions are debatable:
>
> > (i) for the reference of a question other than a bill to a standing or special committee;

As I have perhaps commented already, but will repeat, we have before us under our proceedings, Government Business, Bills, No. 1: "Consideration of the Message from the House of Commons concerning Bill C-10B, An act to amend the Criminal Code (cruelty to animals)," to which Senator Carstairs spoke. At the beginning of her comments, she moved a motion that has been distributed to honourable senators, in effect asking the Senate to concur in the amendments set out in the message from the other place.

In the course of her comments, without having brought this matter to a vote, she made a second motion which is the subject matter of the point of order. Relevant to that is rule 62(1)(i), which I read, to the effect that a question before the Senate can be referred to a committee and is debatable.

The issue raised by Senator Lynch-Staunton was that the matter could not be dealt with, as I understood it, until the first question had been resolved. In the course of comments there was concern expressed about the way in which the first motion was proposed from the government side to the effect that the message be concurred in.

The issue is this: Is there anything not in order with the motion proposed by Senator Carstairs, with leave, that the question first proposed, which I believe includes all matters referred to in the motion she made first, be referred to the Standing Senate Committee on Legal and Constitutional Affairs?

I have discussed this matter and looked at the precedents and rules, and I can find no impediment, no problem with the Senate voting on the motion currently before the Senate. I so rule.

Motion – Wording of motion adopted to refer to committee for consideration proposed motion for the concurrence with House amendments

June 11, 2003 *Journals*, pp. 926-927

Senator Lynch-Staunton's point of order, as I understand it, is that the proceeding yesterday did not reflect the intent of this chamber. He relies on the wording of the motion that we adopted, which is that the question now before the Senate be referred to the Standing Senate Committee on Legal and Constitutional Affairs and that the committee report no later than Thursday, June 12. The word "question" in that motion refers to the motion of Senator Carstairs, which reads:

> That the Senate concur in the amendment made by the House of Commons to its amendment 4 to the Bill C- 10B, An Act to amend the Criminal Code (cruelty to animals);
>
> That the Senate do not insist on its amendments 2 and 3 to which the House of Commons has disagreed; and
>
> That a Message be sent to the House of Commons to acquaint that House accordingly.

We then got into a discussion of intent, and I have the benefit of having heard pretty much all of the exchanges that have occurred here in the course of debate on this matter. Even so, I believe it is my obligation to interpret the motion in accordance with the plain meaning rule.

Can I read into it more than it says? For instance, can I read into it that the question, which was Senator Carstairs' motion that was referred to the committee, is more than that; that being those matters in which the House did not concur? I cannot. I do not believe that the message is included, and in that respect, Senator Lynch-Staunton and Corbin and some others are correct.

What I was asked to do yesterday was to answer the question as to whether or not the motion that was put before us was a proper one, and one that was in accordance with all of our rules and practices. I ruled that it was, even though, as has been brought out in discussion here, it did not follow the past practice where reference is made to both the question and the message.

I add parenthetically to Senator Lynch-Staunton that Senator Doody's motion, Senator Graham's motion, and Senator Kinsella's motion, all of which he referred to, were in essentially the same situation, where we had two motions. In none of those cases was the first motion disposed of before the matter was referred to committee. Therefore we are not in a different situation now than we were during those past practices that he has referred to in his argument.

Accordingly, I rule that what we have done is correct. In terms of the point of order, I cannot interpret in it that which, under its plain meaning, does not exist. Having said that, I wish to add the comment that our rules apply to proceedings in this place. The rules of committees, unless they are mandated by this place to the committee through direction, are for the committee. The committee would be the master of its proceedings in terms of what it took into consideration in fulfilling what it is that the Senate has asked it to do, and that is study Senator Carstairs' motion.

To sum up, the motion, in terms of the issue of order, stands as it is. There is nothing I can do as Speaker to read into it more than is indicated by the plain wording of the motion. I do not need to comment on the regularity of the motion because I have already done that, as Senator Carstairs observed. I ruled that it was in order, and that we have done nothing out of order. Nor have we breached any of our rules or practices of parliamentary procedure in doing what we did.

Motion – Acceptability (motion in amendment)

June 13, 2003 *Journals*, pp. 946-947

I should like to point out that the bill we are debating has received the Royal Recommendation. The second thing I should like to do is to read the rule of the Senate that, I believe, is relevant to this point of order. Rule 81 states that:

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

I will deal first with the timeliness of Senator Gauthier raising the point of order because it is an important question. Senator Murray argues that once debate has commenced, it is not within the practices of this place, either by the rules or by the precedents, to do something to interfere with that debate for procedural reasons. I find that this is not what Senator Gauthier is doing. He raised this matter in committee and explained that he voted in a certain way because of his reservation about the Senate being able to proceed as we are on this question, and he is simply raising it again here at this point.

The real question is this: Is this amendment to the bill that carries the Royal Recommendation one with which we can deal?

The other interesting argument is that once the Royal Recommendation is given to a bill, does that open the door for Parliament, including the Senate, to do anything with it by way of spending additional money, simply because the bill carries the Royal Recommendation? My ruling on that question would be that the Royal Recommendation being given to a bill — a money bill, as we call it — does not open the door for this place to pass amendments to spend more money, or as our rule indicates, to appropriate public money. That is the province of the House of Commons, in my interpretation of this rule.

I do not want to get into the Constitution or into questions of law because it is not proper for me to do so. However, let me accept that Senator Beaudoin's point is to address something that is *res judicata*; that is, a court has decided that Canada is obliged to do something that involves the expenditure of money. Is it something that takes the Senate to a place where it could introduce a measure such as an amendment to a money bill, which Senator Beaudoin's amendment is, that removes the impediment to the Senate of not being able to appropriate money? My finding is that it does not do that. The spending of money, or appropriation of money, to use the wording of the rule, is not something we can do.

That brings me to Senator Murray's point, which is that the Senate has in the past received amendments which if passed would mandate the reduction of monies flowing to the general revenue for whatever reason. I do not believe that falls within the wording of "appropriation." That matter, I believe, is quite well settled; that is, the Senate could defeat a money bill or reduce expenditures. However, increasing the expenditures is the question.

I premise my ruling on my belief, based on my close attention to the comments of senators who spoke to the bill, that the amendment would involve the spending of additional monies to comply with, as has been described in the debate, a decision of the court that Canada is obliged to follow.

As painful as it is for me to do this, I find that the motion in amendment is not in order in that it is not in compliance with our rules because it does not carry the Royal Recommendation as to the additional expenditure of money that would be required. The fact that the question is *res judicata* does not change our rule in respect of dealing with an amendment that would involve appropriating or spending more money.

I rule the motion in amendment out of order.

Motion – Acceptability (motion in amendment)

June 17, 2003 *Journals*, pp. 965-966

During last evening's sitting, Senator Nolin spoke on the third reading motion of Bill C-28, a budget implementation bill. During the course of his remarks, he proposed an amendment to delete certain lines at clause 64 on page 55 of the bill. The effect of the amendment was to delete the entire clause.

Senator Murray then intervened to explain his interpretation of the significance of this deletion. As he put it, "the effect of the amendment that Senator Nolin has proposed would be to allow the Federal Court judgment to operate across the board, as it were, to all those school boards that would be affected by that judgment." As if anticipating a possible point of order, Senator Murray went on to provide some information about the somewhat confusing views expressed in the parliamentary authorities. At the same time, however, he seemed to express the opinion that, in the end, the amendment was not out of order.

Senator Murray's participation was prescient for it just preceded a point of order that was raised by Senator Carstairs, the Leader of Government who suggested that the amendment "is in substance exactly the amendment that was raised last week, which Your Honour declared to be out of order."

Senator Murray then spoke again to offer a more detailed statement of his position with respect to the point of order. After reviewing numerous precedents he noted that "there are a number of things that can be done in the context of a bill of this kind that are perfectly in order, and perfectly consistent with both the constitutional and parliamentary tradition and practice in this Parliament." He then went on to list some of those options available.

I want to thank Honourable Senators for their intervention. I have reviewed the matter and I am ready to rule on this point of order.

In assessing the merits of this point of order, it was necessary to take into account that the Senate is currently debating the third reading motion of a bill. Senate practices, acknowledged in our own *Rules of the Senate*, make it clear that it is possible to amend clauses at third reading. In

addition, it is even possible to move the reconsideration of any clause at this stage so long as the bill is still before the Senate. This is provided for in rule 77. The fact that we are reconsidering an amendment on clause 64 does not, in and of itself, make the amendment out of order. I do not think that was the rationale behind Senator Carstairs' objection.

Instead, I believe that the thrust of the Senator's objection is that the amendment itself is out of order because it infringes the financial initiative of the Crown with respect to the authorization of expenditures. This was the substance of my ruling during last Friday's sitting to which Senator Carstairs referred.

In this case, however, whatever the results of the amendment, it is not identical to the proposal that was made last week. That amendment sought to insert a phrase in clause 64 at the end of line 19 on page 55: "into force on December 17, 1990, except in respect of cases in which school authorities and lawyers representing Her Majesty in right of Canada, have agreed to file consents to judgment before the appropriate court". I interpreted that as an amendment to the bill which involved the expenditure of money. The amendment moved by Senator Nolin may or may not have the same effect, Senator Murray explained what that effect might be, but it is certainly in a different form from last week's amendment proposed by Senator Beaudoin.

The parliamentary authorities are consistent in recognizing the procedural validity of any amendment to a bill that seeks to delete a clause. For example, the most recent Canadian manual of practice, *Marleau and Montpetit* states at page 666 "... since 1968 when the rules relating to report stage came into force, a motion in amendment to delete a clause from a bill has always been considered by the Chair to be in order, even if such would alter or go against the principle of the bill as approved at second reading..."

In the Senate, our rules and practice are equally generous with respect to amendments. There are numerous examples that could be cited as Senator Murray himself did last evening. Consequently, it is my ruling that the amendment moved by Senator Nolin is in order. Third reading debate on Bill C-28 and the amendment can proceed.

Question of Privilege – Accusations made against Privacy Commissioner by House of Commons committee

June 19, 2003 *Journals*, pp. 983-985

Following the proper notice requirements, Senator Murray stood in his place at the conclusion of Orders of the Day last Monday, June 16 to raise a question of privilege. The matter that the Senator brought to the attention of the Senate relates to events that have recently occurred in the other place with respect to an investigation into the conduct of the Privacy Commissioner, Mr. George Radwanski. Senator Murray explained that as a consequence of accusations made against Mr. Radwanski by a committee of the House of Commons and the failure of the government to accept its responsibility and take timely parliamentary action to deal with this matter, Mr. Radwanski, who is an Officer of Parliament, is now in an untenable position.

After detailing the history of this situation, Senator Murray concluded with this declaration: “As far as the dignity of Parliament is concerned and as far as our rights, our reputation and the status of one of our officers are concerned, we cannot allow matters to stand where they are.” This then is the basis of the question of privilege that Senator Murray has raised. The Senator seems to favour the idea that the government ought to recall the House of Commons to resolve the situation of Mr. Radwanski’s status one way or the other. As an alternative, Senator Murray raised the possibility to the Senate inviting the Privacy Commissioner to appear before the Committee of the Whole.

Other Senators spoke to the issue. Senator Carstairs, the Leader of the Government, explained that since the matter involved the House of Commons, it might not be proper for the Senate to interfere. In the course of her intervention, the Senator said “The two Houses work quite independently from one another. What we are doing is using a question of privilege to call into question the proceedings of the other place. ... As a chamber, I do not know exactly what we can do.”

The issue was then broadly canvassed by other Senators who spoke on the question of privilege including Senator Kinsella, the Deputy Leader of the Opposition, Senator Cools, Senator Fraser and Senator Joyal.

I wish to thank all Honourable Senators who participated in this discussion. It has assisted me in coming to terms with the issues that are relevant in this question of privilege. Let me begin by stating that my role as Speaker is to apply the provisions of rule 43 which list the criteria I must apply in evaluating any claim of a question of privilege. In carrying out this responsibility, I am not assessing the merits of the case itself. It is not for me to pronounce on the circumstances in which Mr. Radwanski now finds himself or how he arrived at this position. My task is to determine whether this question merits consideration as a question of privilege, giving it a priority status that would then be resolved through a decision of the Senate. My ruling only concerns whether or not, on a *prima facie* basis, the issue that has been raised by Senator Murray deserves to be treated as a question of privilege.

Rule 43(1) lists four criteria that I need to evaluate with respect to this case. The first has to do with timing; was the matter raised at the earliest opportunity. Given that Senator Murray brought up this subject as a result of the summer adjournment of the House of Commons that occurred last Friday, I am satisfied that the question has been raised at the earliest opportunity.

I am less certain about the applicability of the remaining three criteria. It must, for example, “be a matter directly concerning the privileges of the Senate, of any committee thereof, or any Senator.” Senator Murray, as well as several other Senators, pointed out that Mr. Radwanski, as the Privacy Commissioner, is a Parliamentary Officer. This is certainly true, but the actions complained of were taken by a committee of the House of Commons. As a Senate and as Senators, we might dispute what has occurred in the other place, but as Senator Carstairs pointed out, both Houses are fully independent and autonomous. Each are entitled to the protection of privilege and each have the right to conduct their proceedings as they see fit. I do not see how the Senate can invoke privilege in this case to challenge what was done in the other place.

As to whether the question of privilege is "raised to seek a genuine remedy, which is in the Senate's power to provide, and for which no other parliamentary process is reasonably available", the third criterion stipulated in rule 43(1), again I see a problem. In so far as the preferred remedy raised by Senator Murray is that the government should request the Speaker to recall the House of Commons so that the status of Mr. Radwanski as the Privacy Commissioner could be resolved, this is not a solution that is within the power of the Senate to provide. Any recall that the government might undertake would be made pursuant to its prerogative as the Executive. The Senate has no role in this kind of decision. As an alternative, Senator Murray suggested that the Senate could invite Mr. Radwanski to appear in Committee of the Whole. This is certainly within the Senate's authority, but it is also a "parliamentary process that is reasonably available." As an option, it does not require a ruling by me on a question of privilege. I believe that it would be more appropriate for the Senate itself to consider this course of action by way of the necessary motion moved in accordance with our usual practices. In this regard, I share the view expressed by Senator Cools, though perhaps for different reasons, that this is a decision for the Senate that should not be prompted by a ruling from the Chair.

Finally, with respect to the fourth criterion, that the alleged question of privilege must "be raised to correct a grave and serious breech", I am obliged to state that while the matter appears to be a serious one, I do not think that it is one of parliamentary privilege. It may be that the action or, more accurately, inaction of the House of Commons raises some serious issues about natural justice, as some Senators mentioned in their comments, but this does not make it a question of privilege that falls within the responsibility of the Senate.

If the Senate wishes to consider the issues involved in the circumstances surrounding the current status of the Privacy Commissioner, there are means readily available. As I have already noted, Senator Murray has mentioned one of them and there are others. For this and the other reasons that I have explained, it is my decision that there is no *prima facie* question of privilege in this case that can be addressed using rule 43.

Bill – Referring bill back to committee

June 19, 2003 *Journals*, p. 987

If no other honourable senator wishes to speak on this point of procedure about the appropriateness of Senator Watt's motion, I think the motion is in order. I will explain why.

I wish to draw to the attention of honourable senators paragraph 737 of *Beauchesne*'s sixth edition, which states:

> A bill may be recommitted to a Committee of the Whole or to a committee by a Member moving an amendment to the third reading motion.

That is what Senator Watt is doing. He is moving an amendment to the motion for third reading. He says, no, send it back to committee. I believe that is in order.

Bill – Instruction to the Law Clerk to make clerical corrections in parchment of bill (C-24) in committee report

June 19, 2003 *Journals*, pp. 991-993

The point of order was raised by Senator Kinsella. I thank Senator Kinsella and all those who intervened for their interventions and comments. I am now prepared to rule.

I would observe that, when honourable senators gave me an opportunity to consider my ruling, we had before us Bill C-24 at third reading stage.

I start by reciting rule 97(4) which provides:

> When a committee reports a bill without amendment, such report shall stand adopted without any motion, and the Senator in charge of the bill shall move that it be read a third time on a future day.

In the case of the Seventh report of the Standing Senate Committee on Legal and Constitutional Affairs, leave was given to consider the report later this day. Before putting the motion, Senator Kinsella rose on his point of order.

I refer to the rule to point out that I believe the bill is properly before us in terms of compliance with our rules. The committee reported the bill without amendment, a very important fact which I bring to your attention.

The point of order, as I understand it, concerns the requested changes referred to in the observations made by the committee in the context of asking the law clerk to deal with those changes as clerical errors. The request was that those changes should be dealt with as amendments in the absence of the unanimous consent of the committee to adopt that part of the report.

I remind honourable senators that this form of instruction in a committee report is consistent with past practice in the Senate. I do not want to go into a lot of detail, but I refer honourable senators to the *Debate of the Senate* of June 28, 1988, at page 3751 and 3752. The Senate received a report with an observation which stated:

> Having found, however, that there were certain incorrect cross-references in the Bill as passed by the House of Commons, the Committee has asked that these editorial errors be corrected in the parchment of the Bill by officials of both Houses prior to its third reading in the Senate.

Another example would be from the *Debate of the Senate* of December 6, 2001, at page 1885, concerns the thirteenth report of the Standing Senate Committee on Legal and Constitutional Affairs, then chaired by Senator Milne. The observation stated:

> Your Committee notes that it instructed the Law Clerk and Parliamentary Counsel to correct a printing error in the parchment. On page 12...

I would also refer honourable senators to the exchange recorded in the *Debate of the Senate* of May 18, 1988, at pages 3436 to 3437, and on May 19, 1988, at 3448 to 3450. I will quote in part from that section, from an intervention by Senator Frith where a request was made for an opinion from parliamentary counsel. A memorandum to the Clerk of the Senate, then Mr. Lussier, from Mr. du Plessis, was read into the record. It stated, in part:

> No guidelines have been established for deciding which errors are the proper subject-matter of clerical correction and which require parliamentary amendment. A good guide for clerical correction is to work by analogy to errors that the courts would feel comfortable in characterizing as "an obvious typographical error or slip of the draftsman's pen." Dreidger, *Construction of Statutes*.

That brings me to the heart of what I will be ruling on: That is, the concern highlighted by the point of order that something like that could only be done with unanimous consent. I quote from *Beauchesne's Parliamentary Rules and Forms*, Fifth Edition. Paragraph 728 at page 223 is not necessarily right on point, although it is partly on point and it covers the matters before us.

> When a variance occurs in either the English or French texts of a bill, it may be treated, with unanimous consent, as an editorial change.

The words "editorial" and "clerical" have been used interchangeably in many of the references I have seen.

I emphasize the word "may" in that paragraph from *Beauchesne*. Certainly unanimous consent is one way to proceed but not the only way. The committee proceeded in accordance with Senate practices; that is, by majority vote. I believe that the committee acted correctly, that the report is properly before us and that we should not go behind the integrity of the committee.

The only time that we require unanimous consent is when we suspend a written rule or when we depart from an established practice. In those cases, unanimous consent is required. That is not the situation before us.

Accordingly, honourable senators, I do not feel that there is a point of order. The observations of the committee, which contain instructions, are in order. It is in order for us to proceed to deal with the bill at third reading.

Bill – Admissibility (S-20)

September 18, 2003 *Journals*, p. 1033

On Wednesday, September 17, Senator Kinsella raised a point of order during the second reading debate on Bill S- 20 seeking to amend the Copyright Act. He asked Senator Day, the sponsor of the bill, whether the bill might require a royal recommendation. By way of reply, Senator Day stated that he had not considered the matter. He did suggest, however, that the issue could be assessed during committee study of Bill S-20.

A short time later, Senator Corbin intervened and explained that following his reading of the bill, there was nothing entailing an appropriation that would trigger the need for a royal recommendation. He also asked whether the need for a royal recommendation was to become an automatic question that would be put to the Speaker anytime a Senate bill was introduced.

After some additional comments, I agreed to consider the point of order and bring back a ruling as soon as possible after giving myself time to read the bill.

In answering the point of order, I, as Speaker, was obliged to review the text of the bill in order to identify, if possible, any clause authorizing a new appropriation of money from the Consolidated Revenue Fund. The question is important because bills that have a royal recommendation are introduced in the House of Commons, not the Senate. In the event, the task of review was not particularly arduous since the bill is just 6 short clauses. Bill S-20 deals with copyright and the application of certain provisions dealing with the term of a copyright in certain circumstances. While it is true that two government departments are involved, this in itself does not mean that a royal recommendation is needed. Based on my assessment of Bill S-20, I have determined that no royal recommendation is required.

As to the suggestion posed by Senator Corbin whether it is going to be an automatic procedure to ask the Speaker to review the content of legislation to determine the need for a royal recommendation, I am in the Senate's hands. At the moment, no such procedure exists and I am unclear about its utility. However, if the Senate were to institute a practice on this, as Speaker I would be bound to follow it.

As it is, there is no point of order and debate on second reading can proceed.

Bill – Need to signify Royal Consent

September 24, 2003 *Journals*, pp. 1048-1050

Yesterday Senator Cools raised a point of order during debate on the third reading of Bill C-25.

The Honourable Senator claimed that Bill C-25 required the royal consent, but that the Senate had not been advised that consent had been granted. As I pointed out in undertaking to give a ruling, *Beauchesne*'s, (6th Edition), page 213, citation 727, provides:

> It will also be seen that a bill may be permitted to proceed to the very last stage without receiving the consent of the Crown but if it is not given at the last stage, the Speaker will refuse to put the question.

I have now had a chance to consider the points made by Senator Cools, as well as the interventions of Senator Carstairs and Senator Kinsella, for which I thank them.

Senator Cools read to us citation 727(1) of *Beauchesne*'s in which the point is made that:

> The consent of the Crown is always necessary in matters involving the prerogatives of the Crown.

The Senator clarified for us that her point of order was limited to a question of the prerogative, and that it had nothing to do with the personal properties of the Crown, for which the royal consent may also be required.

The Senator explained that in her view "there is something very wrong in how Bill C-25 has endeavoured to remove the oath of allegiance. One simply cannot just obliterate the oath of allegiance as a requirement of public service for Canadians." She referred to the entitlement of the Sovereign to allegiance, and suggested that: "One may not simply repeal the Sovereign's entitlement to that allegiance or fidelity by a simple bill".

Honourable Senators, if Senator Cools' point is that Canadians owe allegiance to their head of state, she is of course right. That said, as far as I can see, Bill C-25 does not abridge the relationship of Canadians to their head of state. Bill C-25 is not about all Canadians; as the bill's sponsor Senator Day pointed out to us, it is about the public service and about public servants.

Bill C-25 does propose to repeal the requirement in section 23 of the *Public Service Employment Act* that every deputy head and employee shall, on appointment from outside the Public Service, take and subscribe the oath or solemn affirmation of allegiance. On the other hand, the Bill does not amend the *Oaths of Allegiance Act*, section 2 of which allows persons to take an oath of allegiance of their own accord. Section 4 of the Act even allows the Governor in Council to make regulations requiring any person appointed to or holding an office that is under the legislative authority of Parliament to take an oath of allegiance notwithstanding that the taking of the oath is not required by any other law.

Senator Cools pointed out to us, correctly, that the law of the prerogative is most complex. This has required the Chair to consult other texts in addition to the traditional procedural authorities. My review of the authorities revealed that the prerogative does sometimes play a role in the relationship between Her Majesty and public servants.

I would refer Honourable Senators to such citations as Halsbury's *The Laws of England* (1st Edition) (1909), citation 487 on page 342 of Volume 6; Halsbury's, at citation 26 on page 24 of Volume 7; as well as Mr. Paul Lorden, Q.C., *Crown Law*, Section 4. I would also refer Senators to the 1983 *House of Commons Debates*, at pages 29216 and 29217 with respect to the proceedings on Bill C-171, *An Act to amend the Garnishment, Attachment and Pension and Diversion Act*.

These authorities, both British and Canadian, touch on where public servants may be affected by the prerogative, but none leads us anywhere near the conclusion that the Queen has a prerogative right to an oath of allegiance from our public servants.

To conclude, Honourable Senators, no Senator has offered evidence to the Senate that a prerogative relating to oaths of allegiance by public servants currently exists. My research has also failed to uncover authority for such a proposition with respect to the general body of public

servants, as opposed perhaps to distinct officeholders. My conclusion is that no such prerogative exists in Canada today. This conclusion in no way derogates from the duty of loyalty that all Canadians, and not just public servants, owe to the Sovereign.

I rule therefore that there is no point of order and that I am not prevented from putting the question on third reading of Bill C-25.

Bill – Debating message from House of Commons

October 1, 2003 *Journals*, p. 1106

We normally put matters before the chamber by way of motion. The fact that the motion urges a conclusion on the Senate does not mean that the Senate will reach that conclusion. Accordingly, I see no problem procedurally in beginning the debate on the message by way of motion. I do not believe I require time to consider this point of order.

I draw to the attention of honourable senators our Hansard of June 10 of this year, at page 915, where we received a message on this same bill. We proceeded to debate that message by way of motion. Accordingly, I rule that it is appropriate to consider again our response to the message from the House of Commons by way of motion.

Bill – Proceeding by way of motion rather than conference in response to message from House of Commons

October 1, 2003 *Journals*, pp. 1106-1107

In effect, Senator Cools is making the point that the only way to deal with this matter would be to follow the procedures that she described from *Beauchesne*'s, fifth edition, which relate to conferences. This is not a new matter to us in this place. We have established practices; I am not sure of the date of the fifth edition, but we are using the sixth edition of *Beauchesne*'s at the present time, and I would like to use that as the authority. I think it is important, given the matter raised by the Honourable Senator Cools, to read the relevant provisions in *Beauchesne*'s sixth edition. I am quoting at page 216, paragraph 743:

> When the House of Commons does not agree to the Senate amendments, it adopts a motion which states reasons for its disagreement. This is communicated to the Senate by a written Message. If the Senators persist in their amendments, they send a Message informing the House of this fact. The House may adopt the amendments, or return them to the Senate with a further Message.

I emphasize these next words.

> This may occur a number of times.

I will end there and let honourable senators read it for themselves.

I will quote as well from another text that we use — *Marleau and Montpetit* — quoting from the only edition that has been published to my knowledge, at page 675, under the heading, "Passage of Senate amendments (if any) by the House of Commons." In the last paragraph, before the heading "Conference Between the Houses," it states:

> It —

— the Senate —

> — may decide to accept the decision of the House, to reject that decision and insist that its amendments be maintained, or to amend what the House has proposed. Regardless of what the Senate decides, it sends another message to the House to inform it of the decision. Communication between the two Houses goes on in this way until they ultimately agree on a text.

There are provisions for conferencing that are available to the two Houses. However, there is also the procedure available to the two Houses that we are following: that is, sending messages back and forth until such time as we agree.

Accordingly, I find nothing out of order with the way in which we are proceeding, particularly nothing in the sense that the only alternative to us now would be to use our conferencing procedures.

As to the question of notice, Senator Kinsella's reading of the rule is correct. This matter could have proceeded yesterday; there is no notice required. We are proceeding today. I rule that the debate can continue.

Committees – Authority to travel (Ruling by Speaker *pro tempore*)

October 8, 2003 *Journals* pp. 1150-1151

Yesterday, as debate was to begin on the motion for the adoption of the Fifth Report of the Standing Committee on Human Rights, Senator Lynch-Staunton raised a point of order. The Leader of the Opposition explained that the terms of the order of reference under which the Human Rights Committee is now operating did not include the authority to travel. The present mandate of the committee, as the Senator stated, authorizes it to hear witnesses with specific Human Rights concerns. As he noted, there is no suggestion that the committee would travel. It is Senator Lynch-Staunton's contention that, and I quote, "It has always been our practice that if a committee believes that it must travel to fulfill its terms of reference, it include that request in its original terms of reference so that the Senate is informed, at the time of the request, exactly how the committee intends to carry out the commitment the Senate is asking it to undertake." The Leader of the Opposition then cited two parliamentary authorities to the effect that committees are strictly bound by their orders of reference and are not at liberty to depart from them. Based on this analysis, Senator Lynch-Staunton maintains that the Standing Committee on Human Rights in fulfilling its current mandate is limited to the national capital region "because no authority was requested at the time to pursue its study beyond that geographical area."

In reply, Senator Maheu reviewed the nature of the committee's mandate and the importance of the requested trip to Geneva and Strasbourg. Such trips, the Senator explained, are an essential part of the committee's work because it allows the membership to better understand Canada's international human rights obligations as well as provide an opportunity for the committee to view the structure of human rights protection and promotion at an international level. In summary, Senator Maheu claimed that the proposed trip, like the one made by the committee to Costa Rica in the context of a previous study, helps to advance the work of the Senate.

Senator Robichaud, the Deputy Leader of the Government, explained that the process being followed by the committee in requesting the trip through a report was in keeping with the practices of the Senate. A committee undertaking a special study seeking to travel must first prepare a budget estimating the cost of the trip. This budget is then reviewed by the Committee of Internal Economy, Budgets and Administration. Once Internal Economy has made its findings, the committee must then submit a report to the Senate. This report, which includes, as an appendix, information on the costs of the trip as approved by Internal Economy, must be adopted by the Senate. Without the Senate's sanction, the committee cannot travel anywhere.

There were other interventions on this point of order. Senator Kinsella, Senator Stratton and Senator Nolin expressed views in support of the general position taken by Senator Lynch-Staunton. I wish to thank all Honourable Senators for their contribution on this matter. This topic has already been the object of comment at various times during this session. As recently as last May, Senator Lynch-Staunton had several exchanges with Senator Kenny about the procedures in place to determine the costs of committee studies.

Whatever the merits or flaws of our procedures in setting committee budgets especially in connection with requests to travel, as Speaker I am bound by the practices and policies that the Senate itself has approved. Since 1986, the Senate has followed certain procedural guidelines with respect to what are termed "special expenses," including travel, that might arise in connection with committee studies. These guidelines have been printed as Appendix II of the *Rules of the Senate.*

In addition to setting out the steps that must be followed to secure approval for travel that Senator Robichaud mentioned, paragraph 2:02 of the guidelines states that "A notice of motion to establish a special committee or to authorize a committee to conduct a special study shall not refer to special expenses but shall set a date by which the committee is to the report to the Senate." This passage has been taken to mean that no order of reference mandating a "special study" by a particular committee ought to contain any blanket authorization to travel.

Yesterday, some Senators referred to an earlier study undertaken by the Human Rights Committee respecting the Inter-American Convention on Human Rights. The Senate adopted that order of reference on November 21, 2002. In keeping with paragraph 2:02 of the guidelines, the order of reference contained no mention of traveling. It simply authorized the committee "to examine and report on Canada's possible adherence to the American Convention on Human Rights." The order of reference also established a reporting date of June 27, 2003. At some point during its work, the committee came to the realization that it needed to go to Costa Rica to

properly fulfill its mandate even though the original order of reference contained no provision for travel anywhere. In order to obtain permission of the Senate to go to San José, the committee followed the procedure stipulated in the guidelines. It prepared a budget, which was submitted to the Committee of Internal Economy, Budgets and Administration for approval, and then sought the permission of the Senate to travel through a separate report.

The object of the Fifth Report is no different. The steps that have been taken by the Human Rights Committee in seeking authorization to travel to Strasbourg and Geneva are in keeping with the established guidelines. Accordingly, I find that there is no point of order and debate on the Fifth Report can now proceed.

Bill – Third Reading – Proposed amendment to a hoist amendment

October 20, 2003 *Journals*, pp. 1165-66

Earlier on, I volunteered some comments by reference to the rules not in request for a ruling but to assist Senator Watt in terms of the orderliness of what he had proposed. I have now been asked by Senator Watt to rule in a formal way.

I begin by referring to the rule I quoted earlier, which is rule 39(7). It is fairly clear. It states:

> When an Order of the Day has been called, to which a specified period of time has been allocated for its consideration —

— which is exactly what we have here —

> — the same shall not be adjourned and no amendment thereto, nor other motion, except that a certain Senator be now heard or do now speak, shall be received.

The latter words refer to another provision of the rules that allows the Senate as a whole to override a decision of the Speaker when he or she sees a senator. That part of the rule is not relevant. I am explaining it because it can be confusing the first time it is read.

The rule is clear. No amendment can be proposed.

There are also the texts that we often use in cases such as this. The sixth edition of *Beauchesne*'s deals with hoist motions, which is what Senator Gill has proposed and which is the matter we are debating now and have to deal with first before we return to the main motion.

Senator Gill, seconded by Senator Watt, moved a motion that the bill not now be read a third time but that it be read a third time this day six months hence.

Paragraph 668 of *Beauchesne*'s sixth edition states:

> A traditional way of opposing the second reading of a bill is to move an amendment to the question that deletes all the words after the word "That" and substitutes the following;

> "Bill C-..., An Act ..., be not now read a second time but that it be read a second time this day (six months) hence."

Paragraph 669 states:

> An established form of amendment such as the "six months" formula, used to obtain the rejection of a bill, is not capable of amendment.

Thus, both our rules and the general practice are clear that this amendment of Senator Gill's, seconded by Senator Watt, is not capable of amendment. I think the reasoning would be fairly clear: In effect, it kills the bill. To revert to a motion that would end deliberation on the bill is not consistent with what is before the chamber at this time.

Therefore, I rule that the motion is not in order.

Bill – Acceptability of the bill title (C-41)

October 22, 2003 *Journals*, pp. 1184-86

Yesterday, when Bill C-41 was called to begin second reading debate, Senator Lynch-Staunton promptly rose on a point of order to challenge the procedural acceptability of the bill in its current form.

The basis of the Senator's challenge, as he explained it, has to do with the bill's title which he claimed was inadequate. Citing various Canadian and British parliamentary and legal authorities, the Leader of the Opposition maintained that the current long title of Bill C-41, *An Act to amend certain Acts*, is defective because it is not sufficiently descriptive to cover all that the bill actually seeks to accomplish. As the Senator stated: "The language used in the long title of this bill does not give anyone any sense of what is being amended or corrected." Equally problematic, according to the Senator, is the fact that the bill proposes to amend a regulation and that it also has attached to it a royal recommendation signifying the authorization of expenditures from the Consolidated Revenue Fund. Given this situation, the only appropriate course, in Senator Lynch-Staunton's view, is to withdraw the bill and introduce a new one with a more accurate long title.

By way of reply, Senator Carstairs maintained that the title of Bill C-41 was indeed sufficient and that its table of provisions makes it clear which Acts the bill purports to amend. The Leader of the Government also referred to previous bills similar in nature to this one which had titles that did not indicate all the miscellaneous statutes they were amending. The Senator concluded by stating that "there is no authority … for the assertion that the title must be relevant to each and every clause … and there is no authority to sustain … the alleged point of order." In a subsequent intervention, Senator Carstairs cited as a relevant precedent a bill considered in the previous session, Bill C-40, which, as the Senator explained, amended or repealed 37 statutes, none of which were mentioned in the title of the bill which was "An Act to correct certain anomalies, inconsistencies and errors and to deal with other matters of a non-controversial and uncomplicated nature in the Statutes of Canada and to repeal certain provisions that have expired, lapsed or otherwise ceased to have effect."

Senator Cools also participated in the exchanges on the point of order to generally support the position taken by Senator Lynch-Staunton.

I wish to thank the Honourable Senators who spoke to this point of order. I have taken the time to review Bill C-41 and to consider the arguments, precedents and authorities that were mentioned. I am now prepared to make my ruling. In doing so, I am particularly conscious of the need to avoid delving into any questions of law that are beyond the scope of my authority as Speaker. Nonetheless, I have had to look into elements of Bill C-41 in order to properly consider the arguments that were presented on the point of order.

Following what I understand to be established drafting conventions, Bill C-41 has two titles, a long title and a short title. The long title is *An Act to amend certain Acts*. The short title is the *Amendments and Corrections Act, 2003*. Both are meant to be descriptive of the purpose of the bill. In recent years, the length of the long and short titles has varied and, on occasion, we have in fact seen bills where the short title was actually longer and more descriptive than the long title. While it is admitted that a title is important with respect to determining the scope of a bill and the amendments that can be proposed with respect to it, this can be somewhat less important in the case of amending bills intended to correct a battery of statutes. This is because amending bills do not have the same integrity as a bill that constitutes an original Act. Once enacted, the content of an amending bill is absorbed into the various Acts to which it applies. The amending bill, as an Act, has no independent existence. Its title, therefore, has a limited value.

According to the authorities cited by Senator Lynch-Staunton, the long title should set out in general terms the purpose of the bill and it should cover everything in the bill. The Senator argues that with respect to Bill C-41, the long title fails to meet this requirement and is, therefore, procedurally defective. Whatever the merits of this claim, I am not certain that I have the authority as Speaker to rule the bill out of order on this basis. I say this for several reasons. It is agreed that the general purpose of the bill is to amend certain Acts. In this case, the question seems to be how specific the general terms must be. Given the uneven practice of long and short titles, particularly with respect to these omnibus amending bills, I do not feel that I can make that determination.

In addition, the remedy of withdrawing a bill belongs to the Senate rather than to me as Speaker. In this instance, however, we are dealing with a House of Commons bill, not a Senate bill. We cannot overlook the fact that this bill that has already been debated and passed in the House of Commons. As Senator Lynch-Staunton has acknowledged, it is possible to amend the bill in its title, if the Senate determines that this is appropriate. Furthermore, as Senator Carstairs pointed out, Bill C-41 has a detailed Table of Provisions, which constitutes a list of all the Acts being affected by the bill. It may be that this Table will be a feature for this kind of legislation to make up for any descriptive inadequacies of a bill's title. In any case, I do not think that this feature can be ignored.

Senator Lynch-Staunton raised two other issues in addition to the problem of the title in presenting his point of order. Though I do not believe they are determinative, I do feel it is appropriate to address them in this case. The first issue is the matter of the royal recommendation

that has been attached to the bill. In my review of the bill, I can point to at least one explanation for it. Clause 20 of the bill seeks to replace the position of the Executive Director of the Round Table on the Environment and the Economy with a President. Clauses 21 and 22 provide for remuneration and expenses of this replacement position which requires a royal recommendation since the funds previously paid to the Executive Director are now allocated to the President are public monies.

Senator Lynch-Staunton also mentioned the fact Bill C-41 amends some regulations. What clause 28 does is to change the effective date of the regulation's enforcement. The bill proposes to set the regulation's effective date back from January 2003 to April 1998. There is another provision in the bill, clause 24.1, that does the same thing with respect to a regulation under the *Parliament of Canada Act*. The regulations per se are not being changed, only their coming into force date. This kind of change cannot be done by regulation; it must be done by statute.

For these reasons, it is my ruling that the point of order is not well founded and it is no impediment for moving the motion for second reading of Bill C-41.

Bill – Admissibility (C-41)

October 23, 2003 *Journals*, pp. 1206-07

Following my ruling on a point of order regarding the title of Bill C-41, Senator Stratton raised another point of order respecting two other alleged problems with this bill. The first has to do with its short title; the second relates to its omnibus character.

Quoting a specific Standing Order of the other place as well as some Canadian parliamentary and legal authorities, Senator Stratton claimed that the short title of Bill C-41 is irredeemably flawed. Furthermore, according to two authorities, the Chief Opposition Whip maintained that Bill C-41, as an amending bill, should not have a short title at all. As to the content of the bill, the Senator argued that it has no unifying theme and this fact makes the bill inherently offensive to the legislative process. In conclusion, Senator Stratton contended that Bill C-41 is fundamentally defective in both structure and form. It should, he said, be withdrawn or simply returned to the other place.

Speaking in response to this point of order, Senator Carstairs began by stating how the rules and practices of the other place are not the proper concern of the Senate. The Government Leader then proceeded to explain that miscellaneous statute law amendment bills and technical corrections bills can encompass a wide range of statutes. The only difference between the two, as the Senator noted, is that the MSLA bills do not contain any controversial amendments whereas technical corrections bills can. Both, however, are omnibus in character with the potential to address many different and disparate Acts.

Senator Cools also participated in the discussion on this point of order. The Senator raised several issues in her intervention. First, Senator Cools expressed her understanding of the nature of these omnibus amendment bills suggesting that they did indeed have to possess a common theme. Second, the Senator noted that there has been at least one case in the Senate of the

Speaker ruling a bill out of order. In this connection, Senator Cools cited her own experience with Bill S-11, the Homolka bill that was the object of a Speaker's ruling in 1995. The Senator also made some interesting comments on the nature of precedents and practice.

I wish to thank Honourable Senators for their contributions to the discussion on this point of order. I am prepared to rule on it now.

As I noted in my earlier ruling on Bill C-41, this bill has come to the Senate from the House of Commons. It did not originate in the Senate. Whatever process of consideration might have been followed in the other place with respect to Bill C-41, it is not a matter that can properly be raised in the Senate. As to the matter of this amending bill having a short title, this feature, even if it may be unusual, cannot, in my view, be regarded as fatal. The presence of a short title to this bill does not, and cannot, constitute a valid ground for me as Speaker to rule it out of order.

It is acknowledged that Bill C-41 is an omnibus bill that seeks to amend or correct a number of statutes. I am unaware of any requirement that such a bill must possess a common theme and no authority has been cited to substantiate such a claim. To the contrary, I am aware of numerous miscellaneous statute law amendment bills and some technical corrections bills in the past that have addressed many different Acts within the same bill. This is nothing new and Bill C-41 is no different in this respect.

Accordingly, I rule that there is no valid point of order in this case and second reading of Bill C-41 can now proceed.

Bill – Admissibility (deficiency because title not complete) (C-49)

October 27, 2003 *Journals*, pp 1226-27

This point of order is quite similar to the matter on which we had a ruling earlier — similar enough that the principles are basically the same. It is something with which I should be able to deal, and I intend to rule now.

I have also benefited from the two-hour break in terms of having had an opportunity to review the matters that I have noted from the interventions, for which I thank all senators. I have also had a chance to consider the differences that are being put to me in terms of distinguishing this point of order from a similar matter where I ruled that there was no point of order, essentially because the deficiency complained of in the bill is something for the Senate as a whole to address and remedy by way of amendment rather than something that should be directed to the Speaker of the Senate in terms of having the matter taken off the *Order Paper* for procedural reasons.

In this case, the Senate has received a message from the House of Commons telling us that it has passed Bill C-49. Bill C-49 has received first reading in the Senate. The Senate has ordered that it be placed often the Orders of the Day for second reading. I recognize, however, that this initial stage is pro forma.

The point of order is essentially that the bill is deficient because the title is not complete and fully descriptive and that it is distinguished from the previous ruling on a similar matter. Honourable senators are asking me, in effect, to pass judgment on the decision of the House of Commons that adopted Bill C-49 and the way in which it was received by us and is presented here today on our *Order Paper*.

As Speaker of the Senate, I have no authority to rule on decisions of the House of Commons. This point is referred to in the previous ruling, and I would like to further substantiate it by referring to a newer text than the one we normally use. It is of no less authority, and it is of great interest to us. That is Marleau and Montpetit, *House of Commons Procedure and Practice*. I am looking at page 674, the section entitled "Passage of Senate Amendments (If Any) by the House of Commons." The observation is made there that, "It is not for the Speaker of the House of Commons to rule as to the procedural regularity of proceedings in the Senate and of the amendments that it makes to bills." I could go on because the section does refer to amendments, but I think by direct analogy it refers to the general principle of questioning what has taken place here by way of the procedures we have followed.

The principle followed in the other place is clear, and I think the rationale for that decision is the same for this place. We have no power to change or remedy, other than through amendment and through the sending of messages. Accordingly, I do not think this is something that the Chair has any power to remedy; rather, this is for the Senate as a whole to address in the way that it normally does — by message, indicating an amendment, and, of course, the Senate can amend the title to a bill.

My ruling on this question is that it is sufficiently the same as the matter already ruled on, that the same principles apply. The question is not for the Speaker of the Senate to address by way of having withdrawn a bill such as the one before us because of a deficiency in the title, but rather it is a question for the Senate as a whole to address, if it believes that it is necessary to do so, by way of amendment.

Accordingly, I rule that there is no point of order and that we now return to debate on Bill C-49.

Bill – Admissibility (rule of anticipation) (C-41)

October 28, 2003 *Journals*, p. 1246

Last Thursday, October 23, 2003, Senator Atkins raised a point of order on the acceptability of Bill C-41, *An Act to amend certain Acts*. This bill has already been the subject of two rulings.

The basic objection raised by Senator Atkins has to do with the complexity of the bill. This complexity arises in connection with the bill's coordinating amendments. Some of the clauses in Bill C-41 have a direct relationship to Bill C-25, the *Public Service Modernization Act*, that has been adopted by the House of Commons and is currently at third reading stage here in the Senate.

It is Senator Atkins' view that Bill C-41 violates the rule of anticipation because these coordinating amendments assume that the Senate will dispose of Bill C-25 in a certain way. Consideration of Bill C-41, the Senator argues, should not be allowed to proceed until the Senate has completed its examination of Bill C-25. "The government has assumed," Senator Atkins said, "that the Senate will pass Bill C-25. It is assumed that the Senate will not make changes to Bill C-25 in terms of terminology used in the bill."

For her part, Senator Carstairs agreed that there are coordinating amendments in Bill C-41. Their purpose, as the Leader of the Government explained, "is to resolve possible conflicts between successive amendments to the same provision and to avoid having one bill undo the work of another."

I have taken the opportunity to review the relevant amendments and I am now prepared to give my ruling. As Senator Atkins pointed out when he referred to *Beauchesne*, a standard Canadian parliamentary authority, the purpose of the rule of anticipation is to avoid having the House debate an item that might anticipate debate on the same subject in a more effective form. Debate on an amendment, for example, could violate the rule of anticipation if it blocked debate on a motion or, more importantly, on a bill or any other Order of the Day. This rule is not always easily understood, but its purpose is related to the rule and practice of avoiding debate on the same question twice.

In this particular case, the rule of anticipation does not come into play. This is because the rule cannot be invoked where the item or subject being anticipated is in an equally effective form. The alleged anticipation involves coordinated clauses contained in two separate bills, Bill C-25 and Bill C-41. Being clauses to bills, they are in equally effective form. Furthermore, the same question rule, which is related to the rule of anticipation, is not always applicable to cases involving legislation. This is particularly the case with a bill such as Bill C-41, the very purpose of which is to make technical corrections to various bills or statutes including Bill C-25.

Accordingly, it is my ruling that there is no point of order and debate on Bill C-41 can now proceed.

Bill – Admissibility (same question rule) (C-41)

October 29, 2003 *Journals*, pp. 1265-67

Yesterday, Tuesday, October 28, Senator Kinsella raised a point of order to again challenge proceedings on Bill C-41. It followed my ruling addressing a point of order that had been brought up in connection with the rule of anticipation. This new point of order invokes the same question rule which prohibits the consideration of substantially the same question a second time once the Senate has pronounced itself. In substantiating his position, the Deputy Leader of the Opposition cited Rule 63(1) of the *Rules of the Senate* which provides that:

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

In this case, the Senator is claiming that since clause 30 of Bill C-41 is identical to an amendment that had been proposed and negatived to Bill C-25 at third reading, it is no longer possible to proceed with the consideration of Bill C-41 because of the same question rule. Various authorities and precedents were cited to bolster this position. References were made to *Erskine May*, the British parliamentary authority, as well as to *Beauchesne*, the standard Canadian text, and a ruling of Speaker Francis from the other place.

Senator Robichaud challenged this point of order and expressed doubt about Senator Kinsella's interpretation of the same question rule. The Deputy Leader of the Government also took note of the fact that this is the fourth point of order with respect to Bill C-41. Points of order have been raised continually and have thus far kept the Senate from considering the second reading motion. Senator Robichaud raised some concern about possible obstruction.

Other Senators participated in the debate including Senator Prud'homme, Senator Bryden, Senator Lynch-Staunton, Senator Rompkey, and Senator Nolin. After their interventions, Senator Kinsella reiterated his basic position and stated that "the rule is clear: You cannot bring the same question before us again."

I wish to thank all Honourable Senators for their contribution to my understanding of this point of order. I have considered the arguments that were made and I have reviewed the relevant authorities. I am now ready to make my ruling.

The same question rule, as Senator Kinsella explained, is an established part of parliamentary practice. In fact, I believe, the same question rule is observed in many parliaments and legislatures patterned on the British model. In the Senate, as was pointed out, it is also an explicit part of our rules. The purpose of the same question rule is to avoid the wastage of time and effort in reconsidering a question that is already a decision of the House.

To do otherwise, to ignore the integrity of the decision, would lead to an abuse of process. Within this context, the same question rule applies only to questions that are moved and decided in the Senate. It cannot apply to questions that are received from the other place. The rule is not intended to thwart the ability of the Senate to properly pursue its work, particularly in the consideration of legislation, including bills that come to the Senate from the other place.

Essentially, I am being asked to rule Bill C-41, or a part of it, out of order because it contains a provision, clause 30, that is identical to a third reading amendment to Bill C-25 that was moved and defeated. To accede to this request, I must be satisfied that the question before the Senate is one that has been previously moved in the Senate and that it is the same in substance.

Is this in fact the case? There is little doubt that the defeated amendment to Bill C-25 is identical to clause 30. This fact alone does not fully meet the requirements of the same question rule. It is not sufficient in itself to oblige me to rule all or part of Bill C-41 out of order. Bill C-41 comes to the Senate from the House of Commons; it is a legislative measure that proposes to amend or correct a number of laws, including Bill C-25. Clause 30 is only one element of this bill.

According to my reading, Bill C-41 seeks to change more than ten Acts. Clause 30 is not the only question that is being placed before the Senate to resolve through this bill.

To accept the point of order, it would be necessary to sacrifice the consideration of all the other elements of Bill C-41 that are obviously different questions. Such a proposition is clearly unacceptable. Alternatively, I am being asked to suppress clause 30, but this too is unacceptable because it would impose what is in effect an amendment by the Speaker. I do not believe that I have the authority to take such action, even if it were appropriate.

The same question rule has been invoked to prevent consideration of Bill C-41 in its present form because one element of it is identical to a defeated amendment to Bill C-25. The same question rule cannot be used this way. It would be too restrictive and would prevent the Senate from properly carrying out its work. Rule 63(1) states that "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 …" Clause 30 is not a discrete question; it is a part of Bill C-41. Unlike the defeated amendment to Bill C-25, clause 30 has not been proposed in the Senate either as a motion or an amendment; it is part of a bill from the House of Commons. Moreover, there is no doubt that Bill C-41 is not the same "in substance" to Bill C-25 or to the defeated amendment. Bill C-41 has been duly passed by the House of Commons and has been placed before the Senate for its consideration. The task of the Senate is to review this bill in accordance with established practices and procedures.

It is my ruling that there is no point of order in this case and the Senate should now proceed to the second reading of Bill C-41.

Committees – Meeting outside usual time slot

November 3, 2003 *Journals*, pp. 1298-1300

Honourable Senators, you will recall that last Thursday, October 30, Senator Kinsella rose on a point of order to complain about a meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament earlier that day. The committee met at 10:00 a.m. to hear two witnesses on Bill C-34, which seeks to amend the *Parliament of Canada Act* for the purpose of establishing separate ethics officers for the Senate and the House of Commons. Senator Kinsella's objection had to do with the fact that the committee meeting was outside its usual time slot and that, as a consequence, none of the Opposition members of the committee were able to fully attend the meeting because of conflicting schedules. The Deputy Leader of the Opposition claimed that what had occurred violated the traditional practices, customs and usages of the Senate. In raising his point of order, Senator Kinsella urged me to take this into account and to find that the Thursday morning meeting of the Rules Committee was "illegally constituted".

Other Senators spoke in favour of the position taken by Senator Kinsella. Senator Lynch-Staunton objected to the fact that all but one of the Opposition members of the committee were not consulted about the Thursday morning meeting. As the Leader of the Opposition put it: "What we resent, and perhaps it is allowed by the rules, is that a committee chair, with the support of one member of the steering committee, can unilaterally disrupt the schedule of the

committee and have it sit at a time of his or her choosing. Maybe that is done and can be done, but surely basic courtesy and our custom and hopefully respect for each other should not allow that to be done."

Senator Cools also participated in the discussion on the point of order. Among the issues that the Senator raised was the fact that, in her understanding, a committee can meet outside its agreed upon time slot only by decision of the entire committee; it is not a decision that can be made by the steering committee alone. In separate statements, Senator Joyal and Senator Andreychuk objected to the difficulty they had in balancing their commitments to committees that meet at the same time. Such conflicts, they explained made it impossible for them to meet their responsibilities effectively. Taking note of what had occurred last Thursday, Senator Andreychuk stated that "The rules must be read in line with what is fair, just and appropriate. The rules are not there simply to be taken advantage of." Senator Grafstein also expressed his discomfort with what had occurred. Finally Senator Kinsella reiterated his view that I as Speaker need to take into account practice, custom and usage because not everything is captured in the *Rules of the Senate*.

Senator Carstairs, the Leader of the Government, and Senator Milne, the Chair of the Committee on Rules, Procedures and the Rights of Parliament also spoke to the point of order. Claiming that there was no point of order, the Leader of the Government took note of the fact that meeting conflicts are not uncommon particularly when a great number of committees are sitting. Despite this reality, Senator Carstairs went on to explain that attempts are made to minimize these conflicts and to accommodate the interests of Senators, especially early on when the Committee of Selection first establishes the membership of all standing committees. Nonetheless, as Senator Carstairs said conflicts will inevitably arise due to a variety of factors; it is the nature of the parliamentary system. As the Leader of the Government explained in concluding her intervention: "The other side clearly does not like what happened. I can respect that they do not like it; but frankly, that does not give them a point of order."

For her part, Senator Milne explained that the steering committee of Rules had been empowered by the committee to set the agenda and schedule hearings. This authorization, as the Senator stated, did not restrict the committee to meet only within its allotted time slot. According to Senator Milne, the decision to meet on Thursday was made by the steering committee on Tuesday of last week though, unfortunately, it was not announced to the committee at its Wednesday meeting. Nonetheless, as Senator Milne pointed out, proper notice was given of the meeting and the *Rules of the Senate* were fully respected.

I wish to thank all Honourable Senators for their participation in the discussion that took place last Thursday. As you may recall, I left the Chair briefly following the exchanges on the point of order to consider my decision. I was prepared to rule on the question, but circumstances intervened to keep me from doing this. I have taken advantage of the additional time and am prepared to make my ruling now.

In considering my decision, I am mindful that I have been urged to take into account the customs, practices and usages of the Senate. I am asked not to rely exclusively on the *Rules of the Senate*. There is no doubt that our way of doing things in the Senate does not depend just on

the written rules. What goes on here and how we work is due, in large measure, to cooperation, collegiality and mutual respect. The Senate traditionally prides itself on its ability to work through consensus when it can. Even when it cannot, it is rare for the Senate to give way to partisan bickering and harsh confrontations pitting the Government against the Opposition and possibly others in some cases in a show of force.

At the outset of his point of order, Senator Kinsella recognized the relative importance of practice in comparison to the rules. As he put it, "unless there is an explicit rule to trump a practice, the custom must be respected." This is good advice and I have tried to follow it. At the same time, I have noted that several Senators, including both Leaders, have recognized that no explicit rules of the Senate were violated when the Rules Committee held its meeting last Thursday morning. The issue, as Senator Lynch-Staunton said, is one of respect and courtesy and this goes back to the usual approach the Senate takes to conducting its business. As Speaker, however, I do not have the authority to impose cooperation. This is something that can only be achieved by Senators themselves. Whatever the merits of the grievance, my task is to interpret the rules as best I can and to exercise what authority I have in the best interests of the Senate.

Based on the arguments that were presented, there is no reason for me to intervene in this extraordinary way to nullify the proceedings of the Thursday morning meeting of the Rules Committee. Indeed, I do not believe that I have such authority. So far as I can assess it, there was nothing "illegal" about the meeting of the Rules Committee. The proper rules have been observed. Notice of the meeting was given and quorum was present. The Opposition has indicated its objections, and several Senators have complained about the conflicts that arose from simultaneous and overlapping committee meetings. Such conflicts are indeed frustrating and can lead to a genuine sense of grievance. However, there is nothing that I can do as Speaker since the *Rules of the Senate* were not breached.

Comments have been made that the Opposition whip did not consent to the Rules Committee meeting outside of its time slot. It has been acknowledged that the consent of both whips is usually obtained before a committee holds a meeting outside its time slot. This is a practice or custom that has developed in recent years to accommodate the interests of the Government and the Opposition as well as Senators generally. It is not a practice that involves the Speaker. I should also observe that it is not a practice that has been incorporated into the Senate's Rules. The Senate has not sought to formalize this practice by making a part of our Rules. It is thus beyond the scope of my authority to enforce.

As was mentioned last Thursday, committees are generally masters of their own procedures. *Beauchesne* 6th edition at citation 760(3) states that the Speaker of the other place has ruled many times "that it is not competent for the Speaker to exercise procedural control over committees." I feel that this is no less true here in the Senate absent any violation of an explicit Senate rule.

There is, therefore, no point of order.

Committees – Committee meeting while decision on point of order concerning previous meeting still outstanding

November 4, 2003 *Journals*, pp. 1314-17

In accordance with Rule 43, Senator Kinsella gave written and oral notice of a question of privilege that was subsequently considered yesterday at the conclusion of Orders of the Day. The question of privilege being raised by Senator Kinsella challenges the meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament held last Friday, October 31. During the course of that meeting, the committee completed clause-by-clause consideration of Bill C-34, an Act establishing separate ethics officers for the Senate and the House of Commons. Earlier today, the committee presented its report on the bill without amendment. All of these actions, according to Senator Kinsella, constitute a contempt of Parliament.

In the view of the Deputy Leader of the Opposition, the contempt arises from the fact that the conduct of the committee was already under review through a point of order that was awaiting a Speaker's decision. "Holding a meeting while the validity of a previous meeting has been taken under advisement by the Speaker carried with it" as the Senator explained it, "the clear implication that the ruling of the Speaker and, thus, of the chamber is irrelevant." The meeting of the committee last Friday, according to Senator Kinsella, was an improper action taken in contempt of the chamber itself.

Senator Robichaud, the Deputy Leader of the Government, then spoke to contest the merits of the question of privilege. In his estimation, no *prima facie* case for a question of privilege has been established. The actions taken by the Rules Committee last week were, according to the Senator, the result of decisions that had been made by its steering committee with respect to the consideration and disposition of Bill C-34. In the Deputy Leader's view, there was no motion or order of the Senate to prohibit the committee from meeting and no Senator was prevented from participating in the committee's deliberations at meetings that were properly called following the required notice.

In supporting the position of the Senator Kinsella, Senator Lynch-Staunton requested that due consideration be given to the long-standing customs and traditions of the Senate, not just to its written rules. In fact, as the Leader of the Opposition explained, this is the basis of the question of privilege. Alluding to the point of order that had been raised last week, Senator Lynch-Staunton maintained that the rights of certain Senators sustained by custom and tradition have been violated. This breach of their rights was now compounded by the committee's actions to meet last Friday and to adopt a report on Bill C-34.

Several other Senators participated in the debate on the question of privilege. Senator Milne, the Chair of the Rules Committee, disputed the notion that the committee was effectively immobilized by virtue of a pending ruling from the Speaker. Senator Andreychuk, on the other hand, suggested that the point of order raised with respect to the committee's meeting last Thursday also had inferential implications that undermined the validity of what occurred last Friday. Senator Fraser defended the process that the Rules Committee followed in providing notice for the Friday meeting. The Senator also noted that, in comparison, to the complaint regarding the Thursday meeting, there were no scheduling conflicts affecting the ability of any

Senator to attend. For Senator Stratton, the fundamental question is one of cooperation or rather the lack of it. Next, Senator Rompkey asked me to take into account what occurred in 1991 when the Rules Committee met to adopt important amendments to the *Rules of the Senate* despite a deliberate boycott by the Liberal Opposition.

Finally, Senator Kinsella made another intervention to close the debate on the question of privilege. He reiterated the point that, in his view, there is a tradition suspending any activity that is the object of a ruling by the Speaker until the ruling is made. Based on this understanding, the Rules Committee's meeting last Friday and the presentation of its report on Bill C-34 violated this tradition and constituted a breach of privilege. That the ruling made earlier today did not sustain the point of order, according to Senator Kinsella, did not materially affect this basic proposition. The meeting of the Rules Committee last Friday, based on this perspective, is invalid and the report adopted by the committee is equally invalid.

Let me begin by thanking all Honourable Senators for their participation in the debate on the question of privilege. It is always a challenge for the Speaker to come to terms with these complex procedural issues. As Speaker, I am duty bound to be concerned with my obligation to balance as best I can the opposing principles that are at the core of our parliamentary system – to permit the transaction of business in a timely manner while at the same time preserving the right of opposing factions to be properly heard. In fulfilling this responsibility, I am conscious of the need to take into account the traditions and customs of the Senate, but I am equally obliged to abide by the *Rules of the Senate* whenever they provide clear direction.

Rule 43 provides some guidance on the procedures to be followed in raising a question of privilege for the purpose of obtaining a ruling from the Speaker on its *prima facie* merits. The notice requirements have been met and the arguments for and against the question of privilege have been made. The question of privilege was raised at the first opportunity and it involves a matter within the competence of the Senate to correct. What remains to be determined, however, is whether the matter of the question of privilege is a "grave and serious breach."

Senator Kinsella has argued that the question of privilege he alleges in this case is in fact a contempt of Parliament. According to *Marleau and Montpetit* at page 52, a contempt of Parliament refers to "any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed." The text continues and states that "Contempt may be an act or an omission; it does not have to actually obstruct or impede the House or Member, it merely has to have the tendency to produce such results." *Erskine May* points out that it is not really possible to list every conceivable contempt though it generally relates to misconduct of some kind that impedes either House of Parliament in the performance of its functions.

In this case, the contempt of Parliament that allegedly infringed the rights of some Senators relates to the decision of the Rules Committee to meet last Friday despite the fact that questions about the committee meeting on Thursday, October 30 were the object of a point of order awaiting a ruling from the Speaker. It is being asserted that because of this impending ruling, the committee was not entitled to meet and to pursue its business until such time as the ruling was made.

Although I have been asked not to neglect the traditions and customs of the Senate, I am hard pressed to understand how they relate to this case in the way that has been suggested. It is true that an item on the *Order Paper* is normally suspended once a point of order has been raised concerning a procedural question requiring a ruling from the Speaker. This is because it is usually not possible to pursue the item within the Chamber while its procedural probity is in question. There are numerous examples where this has occurred. It is not invariable however. Debate on two Royal Assent bills last year, for example, was not suspended following a point of order on the possible need to seek royal consent from the Crown.

In dealing with committees, we are confronted with something that is quite different than an item of Senate business on the *Order Paper*. The workings of a committee are not the same as items on the *Order Paper*. By tradition, custom and practice, Senate committees are generally autonomous in the way they conduct their business. This is the case despite the fact that committees receive their authority from the Senate. Each standing committee has a mandate under the *Rules of the Senate* and receives from time to time orders of reference to undertake certain specific work. Committees expect to conduct their affairs without undue interference from the Senate itself. Arrangements are often made between members of the Government and the Opposition to guide the operations of committees. As has been discussed, time slots are assigned to committees based on an understanding reached between the leadership of the parties, not by order of the Senate. This is done, in part, to better accommodate the needs of Senators who are often members of several committees. Each committee elects a Chair and a Deputy Chair to regulate the proceedings of committee meetings. Most committees also establish steering committees to set the agenda and schedule of their meetings. All of this is done without reference to the Chamber and even less to the Speaker.

In my ruling last Monday, I referred to a passage from *Beauchesne* 6th ed. at citation 760(3) which explained that the Speaker of the other place has declined many times to exercise procedural control over committees. I stated at that time that this proposition is no less true in the Senate; it is one of our customs and practices. Now, however, it would seem that the question of privilege is expecting me to do the reverse and to go against this practice.

The point of order that was raised last Thursday addressed an objection to the arrangements that had been made to a meeting of the Rules Committee that morning. As I understood it, neither the committee's mandate nor its specific order of reference was in question. Though I was fully prepared to make my ruling at the time, circumstances intervened to prevent me from doing so. Nonetheless, there was nothing in the point of order to indicate that the committee was not competent to carry on its work. The objection to the method followed by the committee with respect to one meeting did not put into question the entire operations of the committee or its ability to call more meetings. To suggest otherwise would seriously undermine the ability of committees to function and would even jeopardize the work of the Senate itself. If I were to accept the underlying proposition of the question of privilege, any point of order could halt the operations of any Senate committee at any time. I do not believe that this is right. This is not correct procedurally and is contrary to the Senate's traditions.

As I tried to indicate in my ruling on the point of order, I appreciate the sense of grievance that some Senators of the Opposition as well as some Senators from the Government side have expressed in respect to the pace that is being followed in the deliberations on Bill C-34. Some Senators are convinced that there is need for more time to study this complex question. The Government, on the other hand, feels that the work already done by the Rules Committee should be sufficient to enable it to review the bill within a limited time. This is not a procedural issue, but a political one. With respect to this point, I appreciate the analogy that was made by Senator Lynch-Staunton regarding the decision of the Supreme Court and the matter of a unilateral decision to patriate the constitution: legally it was possible, but it might not be prudent or right. As Speaker, however, I have no role in resolving these different points of view because they are political and not procedural.

Based on the arguments that have made, it is my ruling that there is no *prima facie* question of privilege. No compelling case has been made that the Rules Committee committed a contempt of Parliament in meeting last Friday and adopting its report on Bill C-34.

Third Session, Thirty-Seventh Parliament
February 2, 2004 – May 23, 2004

Speaker: The Honourable Daniel Hays

Speaker *pro tempore*: The Honourable Lucie Pépin

Bill – Second reading (S-7)

February 12, 2004 *Journals*, pp. 91-92

Honourable Senators, the question raised here is not a question of *Beauchesne* or the *Rules*. This is essentially a question that relates to the record. What transpired on the occasion or at that point in our proceedings has been brought into question by Senator Lynch-Staunton's point of order.

I believe that this is an important matter that I should rule on now because the Bill is on our *Order Paper*. Taking something off the *Order Paper*, having been disposed of by a procedure that is in dispute, is an important matter that we should have the answer to as soon as possible.

The issue, as I understand it, is that Senator Lynch-Staunton believes that the words that I used as your presiding officer — and I will not try to remember the exact words; I do not have the record in front of me— were to the effect that the motion was not adopted or that the vote was not to that effect. However, the substance of my words is clear. It was that. Whatever I said was regarded as a final disposition of whether a bill was to be given second reading and that — something very rare — the defeat of the bill at second reading occurred by virtue of my words.

The question as I recall— and it is fairly fresh in my memory— was "no" to what question? For me, the answer to that is "no" to final disposition of the matter at this time. The words "at this time" should have been used by me; I feel badly in applying them now to give a ruling on this matter. Of course, honourable senators can dispose of my ruling as they wish. However, our practices are important and should be observed with as much precision as possible.

We also have developed a way of doing our business, which I do not think is consistent with the precision that the point of order draws to my attention in terms of what normally happens at this early stage of debating a bill at second reading and finally disposing of it.

I did hear Senator Kinsella say that he did not intend to speak. I was a bit puzzled as to why he said that. I now know why he said that. He had had a discussion with his counterpart, which set the stage, as has been suggested by Senator Lynch-Staunton, for a quick disposal of the matter. I did not take it that way. I took it that we would be sensitive to the desire that senators often have to speak and that they are sometimes not paying close attention to the precise words, to the precise things that are happening in a moment. That is why, even though there is no rule to this effect, that I take a moment to say that I will put a question in a formal way if I feel there is any confusion in the chamber.

My ruling is that the matter remains properly on the *Order Paper* and that we did not finally dispose of it through the words as provided for and stated in Senator Lynch-Staunton's point of order.

Senate Chamber – Use of electronic devices

February 12, 2004 *Journals*, p. 92

Senator Kinsella quoted Rule 19(4). The operative words are "No person, nor any Senator, shall bring any electronic device which produces any sound... "

The Rule continues as follows:: "...whether for personal communication or other use..." Those are the operative words.

As to devices that fit within that Rule, the Rule speaks for itself — that is, devices that do not make any sound. This particular Rule is the only one, I believe, that is relevant — although I have not checked *Beauchesne*. However, for our purposes, honourable senators, I will make the ruling based on our own rules that cover the subject, that is, that as long as the electronic device does not make any sound it does not offend our Rules.

Bill – Adjournment of the debate (C-250)

February 13, 2004 *Journals*, p. 109

I did not think that anything that Senator Banks did was outside of our regular practices. Rule 37(1) provides specifically for what occurred.

When we have an intervention such as a speech, which is provided for in the rule, the normal practice is that the debate is adjourned. It may be adjourned in the name of the same senator, although occasionally it is not, but we have not followed a precise way of doing that. The only issue that I can think of that is a problem here is that Senator Stratton did not use the words, "I move the adjournment of the debate" but rather said "stand." I put words in his mouth, I guess, and perhaps I will take this as an admonition to myself that I must be more careful in the future, and I will try to be.

However, my ruling is that the proceeding that took place is within the rules and, in particular, within the provisions of the rule that Senator Banks used to intervene a second time and that the process that was followed is not out of order.

Inquiry – Acceptability of a Notice of Inquiry

February 16, 2004 *Journals*, pp. 123-25

On Wednesday, February 11, Senator LeBreton gave notice of an inquiry, the purpose of which was to call the attention of the Senate to the "culture of corruption pervading the Liberal government currently headed by Prime Minister Paul Martin." Prior to Orders of the Day, Senator Milne rose on a point of order to object to the language of the notice. Citing *Marleau and Montpetit*, the parliamentary authority of the other place, Senator Milne asserted that the language of the inquiry was unparliamentary and she requested that I rule it out of order.

Several other Senators offered their views on the merits of the point of order. Senator Carstairs noted the criminal implications in using the word corruption. Senator Cools also noted the imputation and underlying motivations being attributed to unnamed individuals. Senator Robichaud, for his part, found the use of the phrase "culture of corruption" both offensive and provocative. Senator Kinsella, on the other hand, citing supporting references from the Auditor General's report on the activities of Government Services Canada, found the word "corruption" perfectly acceptable. This view was shared by Senator Di Nino who noted that the phrase "culture of corruption" was being used in the other place with apparent impunity.

Following final remarks by Senator Milne I agreed to review the arguments that had been made relative to the merits of the point of order. I also indicated that I would look at any precedents and authorities that might assist me in reaching a decision. I have done this and I am now prepared to make my ruling.

In considering this point of order, I am mindful of the role I have as Speaker. My task, as I see it, is to assist the members of this Chamber in the pursuit of their parliamentary duties by permitting the greatest possible latitude in debate. At the same time, however, I am obliged by the *Rules of the Senate* to maintain order and decorum in this place. Without this order, which is essential to the proper conduct and dispatch of business, it would be much more difficult for all Senators to exchange views and reach decisions.

Without exception, every parliamentary institution, whether the "other place" or assemblies and legislatures across the country and throughout the Commonwealth, must deal with the matter of orderly debate and unparliamentary language. In the Senate, rule 51 prohibits "all personal, sharp or taxing speeches." This rule has been part of our practice since 1867. In addition, as a preemptive measure, rule 64 provides that "a notice containing unbecoming expressions or offending against any rule or order of the Senate shall not be allowed by the Speaker to appear on the *Order Paper*.

The 6th edition of *Beauchesne's Parliamentary Rules and Forms*, a standard Canadian authority for many years, provides a list of words or expressions which involved an intervention by the Speaker of the other place because they were considered by some members to be intemperate or unparliamentary. Among the words listed on page 149 is the word "corrupt." In reviewing *Beauchesne*'s further, I found, as a cautionary note, a passage indicating that "no language is, by virtue of any list, acceptable or unacceptable. A word which is parliamentary in one context may cause disorder in another context, and therefore is unparliamentary." This then is one guide which I have used in sorting out the merits of this point of order.

Last May, an event occurred in the Senate which relates in some measure to what the Senate is confronting now. During its study on code of conduct, the Committee on Rules, Procedures and the Rights of Parliament heard from a witness who made a reference to the public perception of corruption in government and in Parliament. Senator Carstairs, then the Leader of the Government, made a reference to these remarks which led to numerous exchanges between the Senator and others in this Chamber including Senator Lynch-Staunton, the Leader of the Opposition. While no one sought the retraction of the word on the basis of its unparliamentary nature, it clearly offended many and led to numerous pointed exchanges. My purpose in

mentioning this incident is that the word "corruption" does convey a charged meaning and should only be used with caution.

The Senate has a tradition of being generous in the opportunities it allows members to present motions and inquiries for debate. In this respect, the Senate remains true to its early history and its fundamental purpose. It is easy for Senators to initiate debate on virtually any topic of concern to them. Given this liberty, I would suggest that Senators have a responsibility to draft their motions and inquiries in such a way that would not likely provoke unnecessary disorder. This is not to deny the right of all Senators to a vigorous debate with contending views and exchanges strongly expressed. Rather, it is an admonition to avoid rancour and bitterness that are clearly counterproductive to the healthy exercise of free expression.

Even though I have the authority as Speaker under rule 64 to disallow the inquiry that was proposed by Senator LeBreton, I do not feel it would be in keeping with the traditions of the Senate to actually exercise this authority in this case. Instead, I will rely on the good judgment of Senators who choose to participate in this debate to refrain from using any language that is unparliamentary in its context.

It is my ruling, therefore, that the inquiry proposed by Senator LeBreton is in order.

Motion – Acceptability (committee report tabled in previous session)

February 19, 2004 *Journals*, pp. 152-54

Two related points of order have been raised objecting to separate motions made with respect to the application of a relatively new rule, namely rule 131 (2) of the *Rules of the Senate*. In the first instance, Senator Gauthier has moved that the Government provide a response to a report of the Standing Committee on Official Languages, which was tabled and adopted late in the previous session. In the second instance, a motion stands in the name of Senator Sibbeston that a report from the Standing Committee on Aboriginal Peoples, which was also tabled during the 2nd Session of the 37th Parliament, but was not adopted at the time, be adopted now and that a response from the Government be requested. Senator Corbin objects to these two motions on procedural grounds.

Senator Corbin has argued that, in both cases, it is beyond our rules and practices to take into consideration committee reports from a previous session. In the case of the motion from Senator Gauthier, Senator Corbin has also argued that the rule requires that the motion for a response be made immediately following the report's adoption. In the case of the motion of Senator Sibbeston, Senator Corbin pointed out that, in his words "we are faced here with…an even greater sin", since the report had not even been adopted in the previous session. Senator Corbin received support from Senator Kinsella on this latter point, who also provided input on other aspects.

I am indebted to Senator Gauthier, Senator Milne and Senator Robichaud, who also intervened on these points of order. As always, I appreciate the participation and assistance of all honourable Senators in sorting out these matters.

The impact of prorogation on the *Order Paper* is well known. The 6th edition of *Beauchesne*'s, citation 235(1), page 66, says "The effect of prorogation is at once to suspend all business until Parliament shall be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time are quashed. Every bill must therefore be renewed, as if it were introduced for the first time." It is important to make a distinction here as to what is quashed. The citation clearly specifies "proceedings". Proceedings on bills, reports and motions may no longer continue; all proceedings are at an end.

The citation continues: "In recent years it has become common, by consent, to reinstate certain bills on the *Order Paper* of a new session at the same stage that they had reached before prorogation." In fact, since the 6th edition of *Beauchesne*'s was published in 1989, it has become a routine practice in the House of Commons for Government Business and Private Member's Business to be reinstated. It is now a well-established precedent in Canadian practice to bring forward matters from a previous session.

Returning to *Beauchesne*'s again, citation 890, page 244, makes it clear that reports from previous sessions, may, if the House agrees to such a motion, be considered by the chamber in a subsequent session. Both committee reports referred to in the contested motions were properly before the Senate prior to prorogation. Clearly, then, prorogation does not represent an insurmountable obstacle that prohibits the Senate from considering in a new session, any item that remained on the *Order Paper* from a previous session.

This is the first time a point of order has been raised with respect to this new rule and it differs in substantial ways from the relevant Standing Order in the House of Commons. Rule 131(2) is silent on the effect of prorogation, if any, on a request for a Government response. In the other place, according to the procedural authority *House of Commons Procedure and Practice*, by Marleau and Montpetit, such requests are treated in the same manner as orders for the production of papers, which, by their Standing Orders, survive prorogations and may even be reinstated following dissolutions. Therefore, the 150 calendar days continue to be counted as though no prorogation had occurred. As another example, the practice in the other place is to refer such requests for Government responses by motion, adopted in committee, not by motion in their chamber, as is the case in our rules.

Rule 131(2) provides for the possibility that a motion seeking a Government response may be moved "…subsequent to the adoption of a report." No time frame is specified to define "subsequent", so I cannot agree with Senator Corbin's interpretation that the motion must be moved "…immediately after the report is adopted." In fact, in the scenario he addresses, where there is no recommendation in the report to be adopted asking for a Government response and where the motion for adoption of the report does not include a request for a Government response, two days notice would be required to move a substantive motion for the referral of a request for a Government response.

A suggestion was made that committees should be asked to re-Table a report in a new session, to ensure that it is properly before the Senate. This would require new orders of reference, the referral of evidence from the last session, and the readoption of reports by committees before

tabling them again in the Senate. However, I do not believe this is necessary. The Senate, as evidenced by the motions it has been passing the past few days, routinely refers unfinished committee matters from previous sessions back to them so they can continue their work. By the same logic, the Senate has the discretion to refer outstanding matters from previous sessions for its own consideration.

What we are faced with are two motions asking the Senate to consider a distinct proposition – in one case, whether or not to ask for a response to a committee report adopted in a previous session and in the second case, to adopt a committee report from a previous session, and at the same time, to request a Government response to it. To my mind, the principle behind this is sound; two of our colleagues are making specific proposals for the Senate's consideration.

So long as the motion is clear and unambiguous, I see no procedural impediment depriving Senators of the opportunity to debate and decide such motions on their respective merits. It is my decision, therefore, that debate on these two separate motions may proceed.

Motion – Acceptability (motion in amendment)

February 19, 2004 *Journals*, pp. 154-56

On Monday, February 16, Senator Gauthier raised a point of order to object to the amendment that Senator Corbin had proposed to a motion that Senator Gauthier had moved several days earlier. Senator Gauthier's motion seeks to authorize the Committee on Rules, Procedures and the Rights of Parliament to report on Senate practices with respect to the consideration of petitions. The amendment of Senator Corbin substituted the original proposition with another requiring that information about the history of the practice of petitions in the Senate and the House of Commons and at Westminster be tabled in the Senate before being referred to the Rules Committee.

According to Senator Gauthier this amendment, if adopted, would supersede his original proposition altogether. He based his analysis on several parliamentary authorities including *Beauchesne* which he cited specifically. He claimed that such an amendment was procedurally irregular, unacceptable and out of order. Whatever the merits of Senator Corbin's proposition, Senator Gauthier maintained that it should be introduced as a separate motion, after notice, not as an amendment.

By way of reply, Senator Corbin indicated that the sole purpose of his amendment was to ensure that any changes made to current practice and the *Rules of the Senate* be based on an understanding of their historical origins, application and development. As he explained it, "people rarely take the time to carry out a historical overview in order to try to understand why the rules are worded in such a way, and why they are sometimes so strictly applied." As to being a dilatory motion, Senator Corbin denied any motive or intent to thwart the objectives of Senator Gauthier's motion.

Following these comments, I indicated that I would consider the point of order and return to the Senate with a decision as soon as I could. Having reviewed the Debates and both the motion and the proposed amendment, I am now prepared to give my ruling.

Standard parliamentary authorities, such as *Marleau and Montpetit* at page 454, state that a superseding motion is "proposed with the intention of putting aside further discussion of whatever question is before the House." Superseding motions are divided into two classes: one is the Previous Question; the other is a dilatory motion. Dilatory motions include motions to adjourn the House, to adjourn debate or to proceed to another order of business. The amendment of Senator Corbin is none of these.

Instead, Senator Corbin's amendment addresses the substance of Senator Gauthier's motion and proposes to alter it significantly. If adopted, Senator Corbin's amendment would displace entirely the proposition of Senator Gauthier. By practice, amendments can be quite broad and encompassing in their effect. *Beauchesne*'s citation 567 at page 175 explains that, "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 question." To accomplish this, motions may be amended by leaving out certain words, leaving out certain words in order to insert other words, or inserting or adding other words. Amendments may even substitute a proposition with an opposite conclusion.

This being said, I think it is useful to point out that the amendment of Senator Corbin may not be drafted to achieve what he wanted. I say this because, in reading the text carefully, I note that there is no appropriate responsibility identified for preparing the history of the petitions, nor is there a date for the production of this history. Equally significant, while the amendment insists that this history be prepared and distributed to members of the Senate before going to the Rules Committee, it does not actually refer the matter to that Committee. The lack of clarity in this amendment makes it somewhat problematic in its intent.

It may be that further refinement of his amendment would assist us all in understanding exactly what should happen and when. I will remind Senators of our rule 30 which allows that a motion may be modified with leave of the Senate. In conclusion, I can find no reason for this amendment to be ruled out of order on procedural grounds. It is my ruling that debate may continue on the amendment.

Division – Procedure on taking a standing vote

February 20, 2004 *Journals*, pp. 184-85

Honourable senators, thank you for your patience. I now have all the material that I require to make a ruling on the question before us. It did take a bit of time to obtain the transcripts that I wanted.

It is the point of order of Senator Austin that as there is no mutual understanding with respect to when the standing vote on the second reading of Bill C-5 is to occur, that is, either now or at 5:30 p.m. this afternoon, there is no agreement. Therefore, we will proceed to the Speaker's ruling on

the question of whether two senators had indeed risen in time to request a standing vote on Bill C-5.

In making a determination, honourable senators, the Speaker can only refer to the record of what was said by honourable senators while the Senate was in session. I have requested the relevant parts of the record — which I know honourable senators do not have — from the reporters. There were a number of interventions, but I will quote from the relevant portions.

Following my seeing Senator Rompkey and before I gave a ruling on the first matter on which a ruling was requested, the request was made by Senators Rompkey and Kinsella to have the floor for the purpose of determining what would have been the subject matter of the ruling. Senator Rompkey's words were:

> **Senator Rompkey:** We on this side would agree that, indeed, there were members opposite who indicated that they did want a recorded vote. We would be agreeable to one recorded vote.

Another quotation, for your information, honourable senators, is Senator Kinsella's comment, which followed almost immediately:

> **Senator Kinsella:** Therefore we are simply at the *status quo* ante. The question was put. The "yeas" had it. Two senators on this side have risen. It is now in your hands, Your Honour.

There was an intervention by Senator Prud'homme, which stood on its own. My words were that the record would show what Senator Prud'homme, an independent senator, wanted to say. I then said:

> I now return to the point we were at on Bill C-5: I will say now, honourable senators: Call in the senators for a vote.

At that point, Senator Stratton rose, and that is where we started the interventions made by senators to get us to this point of order.

My ruling therefore, honourable senators, is that there was only an agreement, by the record, to have a standing vote. In the absence of any announced agreement as to when the vote is to take place, I must conclude that the vote will take place in accordance with rule 39(4)(b), which states that the vote will take place at 5:30 this afternoon.

I have decided that I am not in a position to inquire into the minds of the Deputy Leader of the Government and Deputy Leader of the Opposition as to consensus or whether they each understood the same. I have to rely on the record. Accordingly, my ruling is, as I have already said, that the vote will take place at 5:30 this afternoon.

Bill – Admissibility (C-4)

February 23, 2004 *Journals*, p. 194

Honourable senators, I was asked to make a ruling on Bill C-4. I left the chair and gave consideration to the questions that were raised by Senator Kinsella as to the orderliness of proceeding. I thank him and other honourable senators for their interventions.

I have considered the point of order. The conclusion that I have come to is that the note on the face of the bill which was quoted in full by Senator Kinsella, namely, as to the reprint of the bill, does not constitute a marginal note; rather, it is something on the face of the bill, I can only conclude, telling us what the House of Commons considers the document to be, namely, a reprint of Bill C-34 as adopted.

The question then comes forward in the point of order that the reprint of the bill contains what was treated as a parchment error in the previous disposition of the bill. The question is whether that would require the matter to be treated again as a parchment error or whether the bill should be referred back to the House of Commons for further deliberation and returned to this place.

My conclusion, in accordance with the interventions, is this: What the other place does is up to the other place, and they, in their deliberations, have decided to characterize the bill as they have, and it is within their purview to do so. Accordingly, it is in order to continue with debate on this bill.

Adjournment proceedings

February 24, 2004 *Journals*, p. 204

The question is one I think we can deal with on two grounds: One is the timeliness in raising the matter in question. The motions passed with unanimous consent were with respect to matters that had already taken place. For a remedy to be given, if the point of order were a good one, it would have had to have been raised before the matter that it related to was executed or completed. It is not our practice to go back to rescind or nullify a proceeding that was carried out with unanimous consent.

The other reason that I believe the point of order is one which does not affect matters that we have dealt with in this house is well covered in *Beauchesne*, sixth edition, at paragraph 18 on page 7. I will read Part 1 and Part 2. They deal with unanimous consent:

> (1) Within the ambit of its own rules, the House itself may proceed as it chooses; it is a common practice for the House to ignore its own rules by unanimous consent. Thus, bills may be passed through all their stages in one day, or the House may decide to alter its normal order of business or its adjournment hour as it sees fit.
>
> (2) The House is perfectly able to give consent to set aside —

This is the most relevant part:

- its Standing Orders and to give its unanimous consent to waive procedural requirements and precedents concerning notice and things of that sort.

That is perhaps the strongest ground we have in terms of the authorities that we rely on in this place.

Accordingly, there is no point of order.

Bill – Withdrawing ("same question" rule) (S-7)

March 23, 2004 *Journals*, pp. 340-43

On Thursday, March 11, Senator Kinsella raised a point of order to have his bill, Bill S-7, struck from the *Order Paper*. Citing first the British parliamentary authority, *Erskine May*, and then subsequently a precedent that had occurred in the Senate some years ago, Senator Kinsella explained that when a decision has been made with respect to one of two bills on the *Order Paper* dealing with the same subject matter, it is not possible to proceed with the second bill. In this case, Bill C-5, setting the effective date of the representation order of 2003, received royal assent March 11. Bill S-7, dealing with the same subject as Bill C-5, still remains on the *Order Paper* and Senator Kinsella has now proposed that I as Speaker discharge the bill.

For his part, Senator Robichaud suggested that it would be just as effective to vote on his motion of the previous question that he had moved to the second reading motion of Bill S-7. If the previous question were to be defeated, he said, it would lead to the discharge of the bill. Senator Rompkey then proposed to follow up on Senator Kinsella's point of order by agreeing to provide unanimous consent to withdraw Bill S-7 from the *Order Paper*, an offer that Senator Kinsella declined.

According to Senator Kinsella's understanding of the Senate precedent and the procedural literature, it is the responsibility of the Speaker to discharge the bill. In his view, unanimous consent is not the appropriate means to meet this procedural step. Senator Robichaud again intervened to express a concern that by discharging Bill S-7, the Senate might establish a precedent that could, in the future, block consideration of a Government bill based on a prior decision taken with respect to a Senate bill on a similar subject.

It was at this stage that I agreed to review the authorities and the precedent and come back with a ruling. In the interval between March 11 and today, I have considered the references that were provided by Senator Kinsella. I have also reviewed the relevant *Rules of the Senate* and am now prepared to give my ruling.

Let me begin by addressing the concern that was raised by Senator Robichaud. The Senator indicated that the request of Senator Kinsella to discharge Bill S-7 might create a precedent that could lead to the blockage of consideration of any future bill coming from the House of Commons. As Senator Robichaud explained it on March 11, "if Senator Kinsella's bill had been defeated … the Government would not have been able to introduce its bill because a ruling

would already have been made on the issue." I have considered the matter carefully, but can provide no simple answer.

It is useful to explain how the different parliamentary authorities and our own rules operate in circumstances where the House is confronted with bills that are substantially the same. The passage at page 499 of the 22nd edition of *Erskine May* that Senator Kinsella referred to, in raising his point of order, states that "There is no general 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 second reading, the other is not proceeded with if it contains substantially the same provisions." This passage closely resembles citation 624(3) in the sixth edition of the Canadian authority, *Beauchesne*.

The Australian Senate authority, *Odgers*, provides a much narrower interpretation. As it explains at page 203 of the 9th edition, "the same question rule is seldom applied because it seldom occurs that a motion is exactly the same as a motion moved previously. Even if the terms of a motion are the same as one previously determined, the motion almost invariably has a different effect because of changed circumstances and therefore is not the same motion. There may be different grounds for moving the same motion again."

The principle of the "same question rule," also forms a part of the *Rules of the Senate*. Rule 80, for example, provides that "When a bill originating in the Senate has been passed or negatived a new bill for the same object shall not afterwards be originated in the Senate during the same session." In addition, rule 63(1) states that "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 …"

The purpose of rule 80 is to prevent the consideration of a Senate bill that has substantially the same object as another Senate bill that had already been adopted or rejected during the same session. Rule 80 applies strictly to bills that originate in the Senate. It does not apply to bills that come from the "other place". Rule 80, therefore, does not apply to the present circumstances since Bill C-5 did not originate in the Senate.

Erskine May, unlike *Odgers* does not seem to observe the distinction provided in Senate rule 80. In fact, it may be that neither *Erskine May* nor *Odgers* are appropriate guides to our practices. It is worth noting that the *Companion to the Rules of the Senate* published in 1994, on page 247 cites section 42(2) of the *Interpretation Act*, which specifically allows that "An Act may be amended or repealed by an Act passed in the same session of Parliament." There is nothing to suggest that a proposed amendment or repeal of an Act could not be similar in substance to the earlier Act that was already adopted by Parliament in the same session.

How can we sort out these conflicting provisions and statements? I am not really sure that we can. It may not be possible to square the circle. The role of the Speaker is to ensure that best practices are followed while at the same time protecting the interests of the Senate. This is what the Speaker strives to do through rulings. If, at any time, the Senate disagrees with that judgment, with a decision, any Senator can challenge the ruling and the Senate itself will decide what the

outcome will be by either accepting or overturning that ruling. In any case, it might be prudent to follow the advice of Hatsell, also cited in the Companion at page 190, which explains that it is "the good sense of the House that must decide, upon every question, how far it comes within the meaning of the [same question] rule."

With respect to this point of order, the Senate has adopted a C-bill and it is now left with the task of discharging a similar S-bill from the *Order Paper*. Senator Robichaud's concern, however, has to do with the possibility of the Senate taking a decision to adopt an S-bill that might block consideration of a C-bill. A solution for the future might be to propose the withdrawal of the S-bill in order to allow unimpeded consideration of the C-bill. The Senate did something similar to this in October 2001 when it unanimously agreed to withdraw Senator Lynch-Staunton's bill on royal assent in order to permit the introduction a similar bill sponsored by the Leader of the Government. Alternatively, it could be argued that rule 80 recognizes an implicit exception and that C-bills do not come under the "same question" prohibition if it thwarts the Senate's ability to fulfill its obligation as the "Chamber of sober second thought" to review the legislation that comes to it from the "other place".

In the end, the boundaries of the same question rule can only be drawn when the Senate is confronted with a concrete event. During discussion on the point of order on March 11, reference was made to a Senate precedent. On February 27, 1991, the Speaker ruled that a bill sponsored by Senator Haidasz, coincidently also Bill S-7, entitled *An Act to amend the Criminal Code (protection of the unborn child)*, should be removed from the *Order Paper* following a substantial decision on Bill C-43, *An Act respecting Abortion*, since both bills sought to amend section 287 of the Criminal Code. As the Speaker noted in the ruling "Although Bill S-7 and Bill C-43 have different objectives and represent alternatives on the subject of abortion, the Chair feels that … a strong case may be made that they are 'the same in substance'." This impression was strengthened by the fact that Senator Haidasz had moved amendments to Bill C-43 that resembled the objectives and provisions of Bill S-7, all of which were rejected by the Senate.

The case that is now before the Senate is broadly similar to the precedent of 1991. In both instances, the Senate completed consideration of a Government sponsored bill received from the House of Commons before voting on the second reading motion of a Senate bill. Bill S-7 was introduced or presented February 4 and debate on its second reading began on February 11. The Senate received a message from the House of Commons concerning Bill C-5 on February 11 and, following our usual practice, the bill was read the first time immediately. Second reading debate commenced on February 13 and ended February 20 when the bill was subsequently referred to the Standing Committee on Legal and Constitutional Affairs. After it was reported without amendment, Bill C-5 was debated and passed at third reading on March 10. Royal assent was given on March 11. At the same time, I note that no further action was taken with respect to Bill S-7 until the point of order was raised.

In passing Bill C-5 at third reading, the Senate did pronounce itself on the effective date of the representation order of 2003. As such, it would be inappropriate to now proceed on Bill S-7 since, in my view, it does deal with the same object as Bill C-5. Based on this assessment, I agree with Senator Kinsella and it is my ruling that Bill S-7 be discharged from the *Order Paper*.

Debate – General time limit on speeches

March 30, 2004 *Journals*, p. 402

The rule is fairly straightforward. It has been quoted in full by Senator Kinsella. I shall not do that again; rather, I shall focus on the words of rule 37(4), which reads:

> 37(4) ...no Senator shall speak from more than fifteen minutes, inclusive of any question or comments from other Senators which the Senator may permit in the course of his or her remarks.

I read it that the word "question." — "which the Senator may permit in the course of his or her remarks" — and the word "comments" — "which the Senator may permit in the course of his or her remarks" — have equal weight. Accordingly, if the senator who has the floor does not permit further comment or questions, then that is the end of the matter.

Motion – Acceptability of a notice of motion (Ruling by Speaker *pro tempore*)

April 22, 2004 *Journals*, p. 455

The Point of Order raised by the Leader of the Opposition is that the motion of Senator Murray is in a possible conflict with the previous Order of the Senate setting the vote for the sub amendment on the motion in amendment respecting the third reading of Bill C-250.

This question is actually hypothetical. There is no conflict as of yet. This motion has not been adopted nor has it been put to a vote. I might also point out that if there is a decision taken today on the motion of Senator Murray, it could be deferred which would eliminate the anticipated conflict.

All of this is to say that, at the moment, there is no valid point of order. Senator Murray will now put his motion.

Question of Privilege – Events and actions during Senate proceedings on Bill C-250

April 28, 2004 *Journals*, pp. 475-78

At 8:00 p.m., yesterday evening, Senator Cools was recognized to speak on a question of privilege. The Senator had given proper written and oral notice earlier in the day as required by rule 43. The object of the question of privilege involved several claims as to the validity of proceedings of last Thursday, April 22 on Bill C-250, *An Act to amend the Criminal Code (hate propaganda)*. These proceedings, according to Senator Cools, were irregular and out of order. As such, they breached the privileges of the Senator as well as other Senators who were thus deprived of their right to debate. It is the Senator's position that the *Rules of the Senate* do not provide any opportunity for any closure or guillotine motion to be moved by a private member or on a private member's bill. In addition, Senator Cools claimed that as Speaker, I had acted

improperly to curtail debate on Bill C-250 last Thursday when I recognized one Senator over several others who had sought to be recognized.

Other Senators expressed themselves with respect to the question of privilege. Senator Lynch-Staunton, the Leader of the Opposition, also challenged the nature of the proceedings of last Thursday. Although he accepted that Senator Murray's motion was in order, Senator Lynch-Staunton decried the fact that the Senate had been deprived of an opportunity to debate that motion through the use of the previous question. As he explained it, the result was that closure was imposed on Bill C-250 without the chance for further debate. Senator St. Germain and Senator Di Nino concurred with the views of Senator Lynch-Staunton and also questioned the right of a member to move closure because of the possible impact it could have on the rights of Senators to participate in debate.

Senator Joyal then intervened to challenge some of the arguments that had been presented. The Senator disputed the assertion that only a Minister could ever propose closure or a guillotine. He also cited rule 48 to explain how the previous question is permissible under current Senate practices. Shortly thereafter, Senator Austin, the Leader of the Government, spoke to the question of privilege stating that the government had played no role in using the rules in the deliberations on Bill C-250. With respect to the possible use of closure on a private member's bill, the Senator suggested that the matter was a serious one that deserved the attention of the Committee on Rules, Procedures and the Rights of Parliament. On the question as to which Senator should have been recognized in debate last Thursday, Senator Austin cited rule 33 which provides a mechanism to resolve such a dispute when two or more Senators are seeking to participate in debate at the same time.

Senator Cools then replied to some of these arguments contesting her position on the question of privilege. The Senator rejected Senator Austin's suggested about the use of rule 33 given what she described as the confused circumstances of last Thursday's proceedings. Senator Cools also dismissed the proposal to have the Rules Committee review the use of closure or the guillotine as it applies to private member's business since it would not be good enough to address the current problem facing the Senate. As to the position taken by Senator Joyal, Senator Cools contended that the fact that a practice is not forbidden in the *Rules of the Senate* does not mean that it is allowed in the context of the grand tradition of Parliament.

It was at this point that I agreed to take this question of privilege raised by Senator Cools under advisement.

I wish to thank honourable Senators for their participation in this question of privilege. As you can appreciate, this is a difficult matter for me to address since my actions as Speaker have been called into question. Nonetheless, I feel duty bound to deal with the issue of the question of privilege raised by Senator Cools. I believe that it is best to do this as expeditiously as possible. To delay a ruling would not serve the interests of the Senate. In the end, however, it will be up to the Senate to determine if my ruling, like my actions in the Chair, meet the standards required of the position.

Senator Cools has rightly reminded the Senate that the role of the Speaker in considering a question of privilege is limited to assessing whether there is a *prima facie* case, that is, whether the subject of the alleged breach is sufficiently serious to warrant further consideration by the Senate. My ruling is not intended to determine whether a breach of privilege has in fact occurred, but to assess the nature of the alleged breach. In order to do this properly, I will confine myself to the facts and events of last Thursday and determine whether they were within the rules and practices of the Senate. This would allow me to determine whether a "grave and serious breach" has occurred as required by rule 43(1). If the events of Thursday were outside our rules and practices, then it would seem to me that a *prima facie* question of privilege will have been established and Senator Cools would then have the right to move a motion to seek corrective action.

Let me begin then with an assessment of the motion of Senator Murray. The intent of the motion was very clear. By its terms, debate on Bill C-250 would be limited and all questions to dispose of the bill would be put at a set time. The motion does not pretend to use rule 39 which allows the government to seek time allocation with respect to an item of government business. Instead, it is a substantive motion, requiring one day's notice under rule 58(1)(i), creating a special order to deal with the disposition of a particular bill. Is such a motion in violation of the rules and practices of the Senate? While there is no doubt that it is unusual, I do not think so. Since the Senate has complete control over the disposition of the motion, it maintained its fundamental privilege to determine its own proceedings. It did not happen as a result of a decision by the Chair. Therefore, there is no *prima facie* question of privilege based on this motion.

A question has been raised with respect to the fact that Senator Joyal was recognized after Senator Murray had moved his motion. It has been argued that, as Speaker, my actions interfered with the rights of other Senators who had wanted to speak in debate. This allegation is based, at least in part, on the fact that Senator Joyal moved the previous question. While it is true that other Senators did seek to be recognized, Senator Joyal was among them and so I called on him. This was not unwarranted and it is within the rules and practices of the Senate. Senator Joyal was, in fact, the seconder of Senator Murray's motion. Citation 462 of the sixth edition of *Beauchesne*'s at page 137 points out that in "the mover and the seconder are recognized first". While it is not usually the case in the Senate for seconders to seek recognition immediately following the mover of a motion, there is no binding prohibition to prevent it. I saw Senator Joyal rising and I called on him to speak in the debate. Did my action constitute a *prima facie* breach of privilege? I do not think so.

Senator Austin suggested during his intervention, that in any dispute about who should be recognized for the purposes of debate, it is in order to invoke rule 33 to request that a particular Senator "be now heard" or "do now speak". Such a question is put without debate or amendment and it allows the Senate itself, not the Chair, to decide who will speak next in debate. This did not happen last Thursday. Consequently, Senator Joyal properly had the floor. He promptly moved the previous question which is allowed under rule 48. This rule stipulates that when a question is under debate, it is permissible among other things to move the previous question. There is no restriction on the application of the previous question so long as there is no amendment outstanding to the original question. It can be applied to bills or motions whether sponsored by the government or a senator. Furthermore, rule 48(2) explains that the previous

question is debatable and that it has the effect of preventing the introduction of an amendment to the original motion.

If carried, the previous question will immediately terminate debate on the original motion. If defeated, however, the original motion is dropped from the Orders of the Day. The outcome is a decision of the Senate. It is not imposed by the Senator who moved the previous question. No Senator was improperly deprived of a right to speak in debate, either on the previous question or the motion of Senator Murray since it is perfectly in order to address the motion of Senator Murray while speaking on the previous question moved in relation to it. As I mentioned, the only limitation was that it would not have been possible to move an amendment to Senator Murray's motion while the previous question was before the Senate.

This is where there seems to have been some confusion about the operation of the previous question. In reviewing the *Debate of the Senate* of April 22, various exchanges among the Senators leave the impression that some Senators thought that the previous question had completely deprived them of their right to speak in debate. This is my reading of the exchanges that are recorded between Senator Stratton and Senator Robichaud on page 894 before Senator Robichaud explained how the motion of the previous question actually operates on page 895. Shortly thereafter, Senator Stratton moved to adjourn the debate on the previous question. This motion was defeated on a recorded division and the sitting of the Senate was then suspended for approximately two hours. When the Senate resumed at 8:00 p.m., there was debate on the previous question by Senator Stratton. In the course of his brief remarks, he stated that "the previous question forces an immediate vote." He then moved a motion to adjourn the Senate which was defeated on another recorded division. What follows are several pages of debate on the merits of the previous question as a procedural tactic before the motion was put to the Senate as a question and the vote was deferred until Tuesday, yesterday, at 5:30 p.m..

Do the debates and proceedings of last Thursday afternoon and evening substantiate in any way the finding of a *prima facie* question of privilege? I do not think so. While there was some misunderstanding about the nature of the previous question, this confusion does not itself invalidate the use of that motion. As I have already mentioned, the *Rules of the Senate* specifically allow for it without regard to the nature of the motion to which it can be applied. More importantly, perhaps, the Rules do not restrict how soon it can be applied; it can be proposed at any time as long as there is no amendment outstanding to the motion. With respect to the opportunity to debate, the parliamentary authorities admit that the previous does not deprive members of the opportunity to debate. On the contrary, they often note how members who have already spoken to the main motion can speak again once the previous question is moved. That this did not happen in this case, because the previous question was moved so quickly, does not constitute a breach of our rules and is not a *prima facie* question of privilege.

Rule 43 (1) states that an alleged question of privilege must meet certain criteria if it is to be given priority of consideration over all other business before the Senate. Among them is one "to correct a grave and serious breach". Based on my review and explanation of the events which occurred in the Senate last Thursday, I do not find that there is any *prima facie* evidence to support the allegation of a question of a privilege. Accordingly, it is my ruling that there is no *prima facie* question of privilege.

Question of Privilege – Ruling of Speaker *pro tempore*

May 5, 2004 *Journals*, pp. 512-13

Last Thursday, Senator Cools raised a question of privilege to challenge a Speaker's ruling of Wednesday, April 28 regarding the validity of proceedings on Bill C-250, *An Act to amend the Criminal Code (hate propaganda)*. The conclusion of that ruling was that there was no *prima facie* question of privilege. According to Senators Cools, there was an error in the ruling that is "egregious and fundamental and founds a new breach of privileges."

According to Senator Cools, the error is in the summary of her position stated in the first paragraph of the ruling. It states that: "It is the Senator's position that the *Rules of the Senate* do not provide any opportunity for any closure or guillotine motion to be moved by a private member or on a private member's bill." Senator Cools contends that this summary misrepresents her view.

I have had a chance to review the arguments that were made April 27, as well as the ruling of the Speaker *pro tempore* April 28. I am now prepared to make my ruling.

Senator Cools is correct that the summary of her position in the ruling is not entirely accurate. In her arguments of April 27, the Senator equated the guillotine with time allocation and the previous question with closure, and she recognized that private members can move the previous question. The summary did not accurately reflect her understanding. However, I believe that it is worthwhile to distinguish between the terms previous question and closure. As noted in the *Glossary of Parliamentary Procedure* (3rd edition), closure is a "procedure forbidding further adjournment of debate on any motion or on any stage of a bill and requiring that the motion come to a vote at the end of the sitting in which it is invoked." However, the previous question is defined as a "debatable motion preventing any further amendment to the motion or bill before the House." They are related, but not identical, concepts.

When challenging the right of Senator Murray to have proposed his motion, the Senator said the following: "Outside of that [being rules 38 and 39] there is no power within any rule of the Senate for a private member to move a guillotine motion." [*Debates*, p.934] This is a power, according to the Senator, that can only be exercised by a Minister following rules 38 and 39 on time allocation. The Senator did not, however, challenge the right of a private member to move the previous question, though she did explain that the motions of both Senator Murray and Senator Joyal were an abuse of the house and a breach of Senators' privileges. Senator Cools had also suggested that it was a responsibility of the Speaker as Chair to protect the Senate "from motions that are unusual or irregular, particularly questions of closure or guillotine which are exceptional procedures." [*Debates*, p. 932]

The clarification that Senator Cools has brought to the attention of the Senate does nothing to undermine the reasoning of the decision or its result. If any Senator wished to challenge the ruling, the correct procedure would have been to appeal the ruling immediately. Since there was no appeal of the Speaker's decision when it was made last Wednesday, April 28, it stands as a decision of the Senate itself. It is not appropriate to try to appeal the ruling indirectly through a question of privilege.

Rule 43 stipulates the criteria that must be met in raising a question of privilege. Among other criteria, it must be raised to "correct a grave and serious breach" of the privileges of either the Senate itself or any of its individual members. While there was indeed an error in the summary of Senator Cools' position, it does not in my opinion have any effect on the substance, logic or conclusion contained in the ruling of April 28.

Therefore, it is my ruling that there is no basis of a *prima facie* question of privilege.

Motion – Acceptability of government notice of motion for time allocation motion

May 13, 2004 *Journals*, pp. 556-57

I have now had an opportunity to consider the point of order. I have also had a chance to look for other authorities or rules that might be applicable, although I have been unsuccessful in that quest.

In terms of precedents in our chamber, we have done this before, and I refer honourable senators to a specific example in the *Debate of the Senate* of December 17, 2001, at page 2095. Notice was given at 2:10 p.m., which interrupted the proceedings on Bill C-36, the terrorism bill. The notice to allocate time was given after a vote had been called and deferred and before the vote was taken. For what it is worth, we have done this before, and that is the example. However, this matter perhaps deserves more comment than that.

In my mind, the issue boils down to this: Are there categories in which items of business are put on our *Order Paper* under Government Business that are different in terms of awaiting the next procedural step, whether it be a vote, a decision of the Senate to proceed with further debate or any other matter that relates to Government Business? There are matters on our *Order Paper* under Government Business that, by operation of the Senate rules, are deemed subject to an order, such as the case at hand where the vote is deferred by virtue of the operation of the rules. We have other examples where there may be unanimous agreement that an item of Government Business stays on the *Order Paper* because we have adjourned early. It is unusual in respect of Government Business, but it has happened. Are items on the *Order Paper* in different categories other than adjourned because they rest or stay on the *Order Paper* by operation of some action of the Senate that has a name such as a deferred vote or by some other action? In my opinion, there is no difference. An item stays on the *Order Paper* under Government Business, whether it is adjourned by agreement of the Senate, that is, it stands; whether it is adjourned by the operation of a vote of the Senate or dealt with in some other way by unanimous consent; or, whether, as in the case at hand, by the operation of the rules, it is an item to be dealt with on our agenda under Government Business on the next sitting day. It remains in the same place that it would have been had it not been subject to a deferred vote. The only thing that is different is that, by operation of the rules, there is a deemed order that there will be a vote at 5:30 p.m. That does not imply that it is not an adjourned item. If that were not the case, we would have to determine refined categories of items, other than those that are adjourned and remain in their normal place

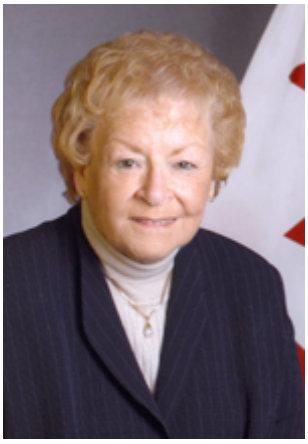
on the *Order Paper*. I do not believe that is applicable in the current instance. Accordingly, I rule that the matter is adjourned for the purposes of rule 39.

No other objection was made. I will not go into that in detail. The Senate was sitting at the time the appropriate person, namely, the deputy leader, put the notice. There was no objection to the precedent, which is an important part of the operation of this rule; namely, that the parties have failed to reach an agreement for a number of days or hours of consideration before a matter is voted on and dealt with at all stages.

The rule is a rather harsh and controversial one. It always has been. I think it is in keeping with the nature of rule 39 — time allocation — that decisions such as the one I am making in this ruling must be made on a fairly hard-line basis, and that is that there is no separate distinction of "deferred," which would remove this item from the "adjourned" category for purposes of the operation of rule 39.

First Session, Thirty-Eighth Parliament
October 4, 2004 – November 29, 2005

Speaker: The Honourable Daniel Hays



Speaker *pro tempore*: The Honourable Shirley Maheu

Bill – Need for signifying Royal Consent

November 17, 2004 *Journals*, pp. 176-78

On Thursday, November 4, Senator Murray raised a point of order during second reading debate on Senator Oliver's bill, S-13, which seeks to introduce an election process for the offices of the Senate Speaker and Deputy Speaker as well as provide the Chair with a casting vote in instances where there is a tie. Without being definitive about his position, Senator Murray asked for a ruling to clarify whether royal consent was required for this bill.

Following a request from Senator Kinsella, the Leader of the Opposition, to provide some explanation to support the point of order, Senator Murray then cited section 34 of the *Constitution Act, 1867* which states that the Governor General may from time to time, by instrument under the Great Seal of Canada, appoint a Senator to be Speaker. In Senator Murray's view, the election of the Speaker would remove a prerogative now exercised by the Governor General and turn it over to the Senate. Senator Austin, the Leader of the Government, then intervened to support the request for a ruling. Senator Joyal spoke next to suggest that based on previous rulings of the Speaker when confronted with a point of order respecting the possible need for a royal consent to a bill, the point of order need not impede debate since the Chair is not required to provide a ruling until the vote for third reading. This position was subsequently supported by Senator Stratton, the Deputy Leader of the Opposition.

After some brief exchanges relating to the election of the Speaker in the House of Commons, Senator Cools also spoke about the recent rulings on royal consent in the Senate. Senator Cools explained that it has been the consistent position of the Speaker as expressed in several rulings that royal consent can be given at any time during the proceedings and that a bill is not rendered defective for want of royal consent at second reading nor does it impede debate on the bill. Senator Kinsella then cited some decisions from *Rulings of Senate Speakers 1994-2004* that confirmed this assessment.

Once the arguments had been made, the Speaker *pro tempore* agreed to take the matter under advisement. Since then, I have had time to read the exchanges on this point of order, consult the relevant procedural authorities, and review the recent rulings that have been made in the Senate on royal consent. I am now prepared to give a ruling.

The issue of whether royal consent is required for this bill is not new. It has been raised in debate with respect to a prior version of this bill on September 30 and October 21, 2003. No ruling, however, was ever actually sought or made at that time.

Royal consent is a feature that has been incorporated into our parliamentary practices from Westminster. As is stated in Marleau and Montpetit, *House of Commons Procedure and Practices*, p. 643:

> Royal Consent…is taken from British practices and is part of the unwritten rules and customs of the House of Commons of Canada. Any legislation that affects the prerogatives, hereditary revenues, property or interests of the Crown requires Royal

> Consent, that is, the consent of the Governor General in his or her capacity as representative of the Sovereign.

In the twenty-third edition of *Erskine May's Parliamentary Practice* the royal prerogative is described as being "…powers exercisable by the Sovereign for the performance of constitutional duties…" (p. 708). Many of these prerogatives, in turn, have been vested, as Dicey explained in his study on the Law of the Constitution, in the office of the Governor General.

Both the Canadian and British authorities explain the consequences of failure to signify royal consent for a bill requiring it in a similar way. *Erskine May* at p. 710 states:

> If Queen's consent has not been obtained or is not signified, the question on the relevant stage of a bill for which consent is required cannot be proposed. Similarly, where a bill affecting the interests of the Crown has been allowed, through inadvertence, to be read the third time and passed without the Queen's consent being signified, the proceedings have been declared null and void.

Erskine May goes on to explain that the Queen's consent involves the willingness of the Crown to place its prerogatives or interests at the disposal of Parliament for the purposes of the bill. There is an element to this procedure that is very much pro forma. In the United Kingdom, at least, it would appear that the government will invariably provide the consent even to bills of which it disapproves. As *Erskine May* explains:

> The understanding is that the grant of consent does not imply approval by the Crown or its advisers, but only that the Crown does not intend that, for lack of its consent, Parliament should be debarred from debating its provisions.

As was noted, one objective of Senator Oliver's bill is to amend section 34 of the *Constitution Act, 1867* by providing for the election of the Senate Speaker by secret ballot. This would effectively extinguish the authority of the Governor General to appoint the Speaker. Such an action clearly affects the prerogative power exercised by the Governor General. Accordingly, it seems to me appropriate that royal consent be obtained for this bill.

A review of Senate practice as decided in recent rulings by both my predecessor, the late Senator Molgat, and myself, clearly show that the requirement for royal consent need not be signified in both chambers. In fact, in most precedents, consent was signified in the other place only. There are a few notable exceptions to this, one being in 1951, and two others of more recent date. As Honourable Senators will recall, the Senate was advised of royal consent to Bill C-20, the *Clarity Act*, in the second session of the thirty-sixth Parliament and Bill S-34, the *Royal Assent Act*, in the first session of the thirty-seventh Parliament. Further, the Senate rulings by the chair show that the requirement for royal consent is not an impediment to debate since it need only be given before final passage of the bill. There is no reason for me to dispute either of these assessments.

To clarify the point brought up by the Honourable Senator Murray, royal consent will indeed be necessary. It will not, however, prevent the debate on second reading from continuing.

Bills – Rule 46

December 9, 2004 *Journals*, pp. 285-87

On Tuesday, December 7, when the Senate reached Orders of the Day, Senator Tkachuk raised a point of order. The Senator claimed that the sponsor's speech on the motion for the second reading of Bill C-4 violated rule 46 in that, as he claimed, its content repeated in large measure a speech given by the Parliamentary Secretary at the second reading of the bill in the other place. During the course of his remarks, Senator Tkachuk noted that much the same thing had happened as well with respect to the second reading speech on Bill C-7. As a remedy, the Senator proposed that the offending speech on Bill C-4 be declared out of order and struck from the *Debates of the Senate*.

Senator Austin, the Leader of the Government, responded to the alleged infraction of rule 46. The Senator acknowledged the importance of the rule and he agreed that it was not good practice to duplicate in substance a speech given by a Minister in the other place. Nonetheless, in his view, Senator Austin did not believe that what had occurred was against the rules of this place.

Other Senators also participated in the discussion of the point of order. Senator Kinsella, the Leader of the Opposition, took the position that the fault in this incident rested mainly with officials who did not adequately understand the distinctions that exists in a bicameral Parliament. Senator Cools then intervened to deplore the use of repeating speeches prepared by others. This practice, she argued, was not worthy of senators. For his part, Senator Stratton questioned whether citing the speech of a Parliamentary Secretary, rather than a Minister, fell within the meaning of rule 46. Denying that there was a point of order, Senator Carstairs joined in criticizing departmental officials who recycled speeches written for a Minister or Parliamentary Secretary when preparing material for the Senate sponsor of a government bill. Nonetheless, as the Senator explained, since government legislation is clearly an expression of policy, the use of a speech made by a Minister or Parliamentary Secretary in the other place, while not good practice, is permitted under rule 46. Following some additional exchanges, the Speaker *pro tempore* agreed to take the matter under advisement and reserved a decision.

I have had time to consult with the Speaker *pro tempore*, to read the *Debate of the Senate* on the point of order and to review rule 46 and the relevant parliamentary authorities. I am now prepared to give my decision.

Rule 46 states that "The content of a speech made in the House of Commons in the current session may be summarized, but it is out of order to quote from a speech unless it be a speech of a Minister of the Crown in relation to government policy. A Senator may always quote from a speech made in a previous session." According to the Companion of the *Rules of the Senate* published in 1994, this rule dates back at least to 1975 and similar rules exist, or have existed, in the other place and at Westminster for a very long time. The Companion on pages 138 and 139 also refers to rulings of Senate Speakers dating back to 1954 and 1956 that prohibited any attempt to allude to the debates and proceedings of the other place. The purpose of this rule is very simple. As is explained in the 22nd edition of the British parliamentary text, *Erskine May*, this constraint on the content of speeches is intended to avoid "anything which might bring the

two Houses into conflict and to prevent a debate in the House of Lords becoming a continuation of a debate in the House of Commons." I should note, however, that the 23rd edition of *Erskine May*, published just this year, indicates that this rule has been abolished both with respect to references to Commons speeches in the Lords and to Lords speeches in the Commons. Given this change, it appears that the threat of open conflict between the Commons and the Lords is now recognized to be more apparent than real. Be that as it may, rule 46 is still part of our practices and, as Speaker, I am obliged to interpret its applicability when confronted with a point of order raised with respect to it.

As I read it, rule 46 allows that the content of speeches made in the other place during the current session can be cited in the Senate. These references, however, should be in summary form unless "it be a speech of a Minister of the Crown in relation to government policy". Rule 46, therefore, actually permits the direct use of a speech made by a Minister on government policy. With respect to this important exemption in rule 46, I accept the view that a government bill is an expression of its policy. Moreover, I do not think it is reasonable to read this rule in such a way that it would limit the right to cite a ministerial speech that was delivered by a Parliamentary Secretary for a Minister. One reason why Parliamentary Secretaries were created was, in fact, to allow them to act on behalf of Ministers. Acting in that capacity, there can be little doubt that a speech made by a Parliamentary Secretary for a Minister is an expression of government policy. This is the critical element that provides the exemption permitted by the rule.

Now, where does this leave us with respect to the allegation that the speech made by the Senate sponsor of Bill C-4 was based largely on the second reading speech of the Minister in the other place? In answering this question I mean to apply it as well to the case of the speech made by the Senate sponsor of Bill C-7 since Senator Tkachuk included this second bill within the scope of his point of order on Bill C-4. Given my understanding of the rule, there is not sufficient justification to substantiate the complaint of the point of order. Indeed, as I have already stated, rule 46 expressly allows for the citation of a ministerial speech related to government policy. It may be that the text used in the Senate duplicates much that had been said in the other place, and there was much said here deprecating this practice of recycling, but this is not forbidden by rule 46.

Let me add, parenthetically that I agree with Honourable Senators who maintain that this Chamber operates best when its members engage in debate that does not rely entirely on a prepared text. That is why there is a practice that discourages reading speeches, though this too is rarely enforced.

As to the point of order, I read nothing in the exchanges to suggest that either of the Senate sponsors acknowledged that they were citing a ministerial speech previously used in the other place. To my mind, this raises two possible alternate explanations. One, they were not informed that their speeches prepared with the assistance of government officials used material of earlier speeches. Alternatively, either or both Senate sponsors gave speeches that they accepted as an expression of their views on their respective bills. Either possibility would make an acknowledgement that their remarks cited the text of a ministerial speech unlikely. Even if there had been an acknowledgement, for the reasons I have already explained, it would not constitute a breach of rule 46 to justify the point of order.

I wish to make one final comment before we resume debate. The remedy that Senator Tkachuk proposed had the point of order been sustained was that I, as Speaker, strike the offending text from the *Debates*, that I effectively expunge it from the record. In point of fact, rule 46 does not give the Speaker such an authority. There is nothing explicit in the rule to allow this. Had there been a violation of rule 46, and had I been aware of it, or had the Speaker *pro tempore* been aware of it, as it was occurring, my authority would have been limited to counselling the Senator to refrain from citing the House of Commons speech. As to an after the fact point of order, my authority would be limited to deprecating the violation. Rule 46 does not provide for the suppression of an offending speech. Such a measure could only be made by the Senate itself on motion.

Accordingly, it is my ruling that no point of order has been made on the basis of a breach of Rule 46 and second reading debate on Bill C-4 and Bill C-7 can continue.

Question of Privilege - Definition

December 13, 2004 *Journals*, p. 298

While the normal practice is that questions of privilege are raised only with notice, there may be an exception. In any event, I can deal with this matter in that Senator Prud'homme has raised a grievance, in effect. For it to be a question of privilege that would require any action from the Senate pursuant to the provisions of rule 43, it would be a matter directly concerning the privileges of the Senate that is raised to seek a genuine remedy, which is in the Senate's power to provide and for which no other parliamentary process is reasonably available, and is raised to correct a grave and serious breach.

I cannot find that the putting of a question — perhaps it was serious, perhaps it was not serious, I am not sure — constitutes a grave and serious breach of the privileges of the Senate.

Therefore, while I appreciate the honourable senator raising the matter, it is in the nature of a grievance and not one which affects the privileges of all senators and rises to the test of a grave and serious breach.

Bill – Procedure - Acceptability (C-14)

February 23, 2005 *Journals*, pp. 490-92

On Tuesday, February 15, Senator Lynch-Staunton raised a point of order to object to proceedings that had occurred Thursday, February 10 with respect to the third reading and passage of Bill C-14. This bill, which provides for certain land claims and for a self-government agreement among the Tlicho, was adopted with leave the same day it was reported from committee without amendment. Indeed, the third reading motion was put almost immediately following the presentation of the committee report. Senator Lynch-Staunton objected to this accelerated consideration of a bill, especially as it occurred during the Routine of Business. The Senator has asked me as Speaker to rule out of order these requests for leave because, in his

view, such requests distort the meaning of Routine Proceedings and deprive Senators of an opportunity to debate a bill which would normally have taken place the next sitting day.

While I was prepared to give my decision before today, I decided to wait until now as a matter of courtesy to Senator Lynch-Staunton. This seemed to be the more suitable course to follow given that the ruling does not affect any matter currently before the Senate. In addition, the extra time taken in preparing this ruling has allowed me an opportunity to explain in greater detail some elements of our practice with respect to leave which I thought useful to bring to the attention of all Honourable Senators.

Let me point out that I did not take from Senator Lynch-Staunton's point of order that he wanted me to rule out of order what occurred on February 10. It is far too late for this. As I indicated at the beginning of the sitting on Tuesday, February 15, Bill C-14 has already received Royal Assent and is now law. The real objection of Senator Lynch-Staunton, as I understand it, is that asking for leave as happened on February 10 is contrary to good practice and, consequently, as Speaker, I should use my authority to keep it from happening again.

Two other Senators participated in the discussion on this point of order. Senator Rompkey, the Deputy Leader of the Government, indicated his surprise at events of February 10; it had not been planned. However, he also observed that in the final analysis, the Senate is the master of its fate and, if leave is given, then business can be conducted outside the boundaries of usual practices as governed by the rules.

Senator Robichaud made the same point in his intervention. While he agreed that the quick consideration of a bill is not normally the best approach, once leave is sought and granted, without any objection from any Senator then present, the Senate can dispose of the bill in this way. According to the Senator, there is no reason to believe that what happened was an error in procedure.

I want to begin by thanking the Senators who spoke to the point of order. In the time since this matter was raised by Senator Lynch-Staunton, I have had an opportunity to review the *Debates of the Senate* of Thursday, February 10, the relevant passages from parliamentary authorities, particularly in *Beauchesne*'s and *Marleau and Montpetit*. I have also benefited from research of past instances in the *Journals of the Senate* when similar events have occurred. As well, I have re-read a ruling dated November 2, 1999 that was given by my predecessor, Speaker Molgat, on a similar matter. Having considered all this information, I am prepared to give my ruling.

As Senator Lynch-Staunton pointed out the daily Routine of Business is a class of parliamentary proceedings where the Senate deals with items that enable it, by and large, to organize its Orders of the Day for subsequent sittings. Thus, for example, during the Routine of Business, notices of motions or inquiries are given, petitions for private bills are received, and committee reports are presented or tabled. All of these items are to be taken up at a future sitting day depending on which rule applies.

The *Rules of the Senate* are clear as to the order and sequence of the Routine of Business. Rule 23(7) also stipulates that the time of the Senate in handling these items is limited to 30 minutes at which time I, as Speaker, must call Question Period.

Thus far, I have described what the Senate does as a matter of course when it follows standard practice. This flow of business, however, can be altered by a suspension of the rules by leave of the Senate. Rule 3 states that "any rule or part thereof may be suspended without notice by leave of the Senate".

This in fact, is what happened on February 10. Under "Presentation of Reports from Standing or Special Committees", the second rubric of the Routine of Business, the Chair of the Committee on Aboriginal People, Senator Sibbeston, presented the report on Bill C-14 without amendment. In accordance with rule 97(4), I then asked when shall the bill be read a third time. Senator Sibbeston was prepared to move the routine motion for third reading at the next sitting, but before I put his motion, Senator St. Germain suggested that the bill be given third reading now in view of "exceptionally special circumstances". In making this request, Senator St. Germain indicated that the Leadership of the Opposition had been consulted. For his part, Senator Austin, the Leader of the Government, stated that he was also prepared to see the bill passed immediately. Accordingly, I asked if the Senate would grant leave for this. Once it was clear that the Senate had consented, Senator Sibbeston proceeded to move third reading of Bill C-14, seconded by Senator St. Germain. The motion was adopted immediately and so the bill passed.

There was nothing out of order in this, though I acknowledge that it is an infrequent event. Within the past dozen years, three examples have been found in the *Journals*. Two instances occurred in 1994; another happened in 1998. All three bills were adopted at third reading with leave immediately following the presentation of the committee report.

Of course, none of these instances, including that of February 10, constitute a precedent. By definition, what occurs by leave can never be a precedent; it can never be considered binding on the Senate, obliging it to follow what was done by leave as if it were a rule. Nonetheless, the earlier examples confirm that a request for leave can legitimately be made and, if accepted, can result, as was seen with Bill C-14, in the immediate consideration of the bill at third reading. There is nothing that I can do as Speaker to prevent this from happening if it is the will of the Senate to proceed in this way.

Finally, I wish to take this opportunity to reiterate an explanation about the nature or impact of such leave as it relates to the Routine of Business. In a ruling that Speaker Molgat made on November 2, 1999, he explained that whenever the Senate agrees to grant leave "now" either for the third reading of a bill, the adoption of a committee report, or a notice of motion, it is agreeing to consider a motion that is debatable. Whether or not an actual debate takes place is immaterial to the consequences of the decision to proceed this way. As Speaker Molgat explained "in agreeing to grant leave and put the question, the Senate has, in effect, stepped out of the Routine of Business for the duration of the debate until it is decided or adjourned". If debate is engaged, "the restrictions imposed by rule 23(1) preventing points of order or questions of privilege during the Routine of Business do not apply". It is important to keep this in mind because it addresses one of the objections raised by Senator Lynch-Staunton through his point of order.

Accordingly, it is my ruling that what occurred with respect to Bill C-14 on Thursday, February 10 was out of the ordinary, but not out of order. It was the unanimous will of the Senate to proceed as it did and, I as Speaker have no authority to prevent the proceeding or to overrule it.

Motion - Acceptability (Approving Appointment of Senate Ethics Officer)

February 24, 2005 *Journals*, p. 508

I have listened, and I believe I understand the point of difference between Senator Cools' point of order and Senator Austin's response. It falls to me as the presiding officer to make a decision.

The point of difference is essentially over the language used in the resolution that the Senate approve the appointment of Jean T. Fournier and whether this is an attempt to do something that will, as is anticipated by the motion and the comments on the point of order, be done following any decision by the Senate as to whether it approves the appointment. Accordingly, I take this to be the issue, and on this issue, my reading of the motion is not that the Senate is attempting to make the appointment or to do something that the government will do by Order-in-Council, but rather, as is indicated by Senator Austin, that the Senate approve the appointment. I do not believe that to be in any way out of order.

As to the question of whether or not an element of the *Parliament of Canada Act* is in effect and in place, this is a matter which I do not believe falls in my jurisdiction. If it did, then on any matter that came up, a point of order could be raised seeking to prove the fact that an act had been passed and proclaimed. That is a question of law, and a question of law clearly under our rules is not decided by the Speaker. The Speaker decides points of order on procedure and on matters to do with our rules and practices.

Accordingly, it is my ruling that it is in order to proceed with the debate on this motion.

Bill – Need for signifying Royal Consent

March 8, 2005 *Journals*, pp. 544-47

You will recall that on Wednesday February 23 when Senator Banks moved third reading on Bill C-6 which establishes the Department of Public Safety and Emergency Preparedness, Senator Cools raised a point of order. The purpose of the point of order, as Senator Cools explained, was to claim that Bill C-6 requires royal consent.

According to the Senator, there are two basic interrelated reasons why Bill C-6 requires royal consent. The first is that the bill deals with matters which involve the prerogative powers of the Crown. The numerous prerogatives that Senator Cools said are affected by this bill involve pardons, mercy and clemency. In support of her position, the Senator made reference to several authorities including specifically the Letters Patent of 1947 regarding the office of the Governor General of Canada, in particular Article XII and the authority to grant pardons. Associated to this, the Senator stated, is the fact that the bill "attempts to alter, jettison or abolish the position

of Solicitor General". If I understand the Senator's position correctly, such an action cannot be done without royal consent because the Solicitor General is a law officer of the Crown, and, as such, belongs to the office of the Queen or the Queen's representative, the Governor General.

At the outset of her presentation on the point of order, Senator Cools explained that she had waited deliberately until the Senate had come to the third reading stage of Bill C-6 in compliance with previous Speaker's rulings. These rulings acknowledge that, according to established practice, royal consent on a C-bill need not be signified until it reaches its final stage in the Senate if it has not been granted in the other place.

Following Senator Cool's initial intervention, three other Senators spoke to the point of order. Senator Rompkey, the Deputy Leader of the Government, argued that the point of order in not being raised promptly was now out of place as an objection. More to the point, Senator Rompkey asserted that Bill C-6 does not affect in any way the prerogative, hereditary revenues, personal property or interests of the Crown. As the Senator maintained, "This is a change in government departments which we have acknowledged from time to time on both sides of the House is the prerogative of the advisors of Her Majesty."

For his part, Senator Kinsella, the Leader of the Opposition, supported the point of order because, in his view, Bill C-6 affects an office of the Crown. Consequently, in seeking to abolish the office of the Solicitor General, there is a clear need, in the Senator's opinion, to secure royal consent.

Senator Banks, the sponsor of the bill, then spoke to challenge the merits of the point of order. The Senator took note of the fact that the position of Solicitor General in Canada is not the same as in the United Kingdom. He also explained that Canada did not always have a Solicitor General. This being so, Senator Banks argued that "The connection between the majesty of the Crown and the office of the Solicitor General in Canada, which is vastly different from the office of the Solicitor General in the United Kingdom then or now, has not been made. There is no point of order."

After Senator Cools made a final statement, I agreed to take the question of the possible requirement for royal consent under advisement. In keeping with established practice, I also informed the Senate that debate at third reading of Bill C-6 could continue.

I wish to express my appreciation to all Honourable Senators for their participation on this point of order. As Senator Cools stated, the question of royal consent has come up several times in recent years. In this particular case, there are two questions to be answered based on the arguments that were made: are the prerogative powers of the Queen or the Governor General being affected by this bill; and does the abolition of the Solicitor General as an officer of the Crown require royal consent.

In looking to answer these two questions, I will put aside the objection to the point of order that was made with respect to timeliness. While there was nothing to prevent anyone from raising a point of order about royal consent earlier, Senator Cools is right in noting that the need to secure royal consent for a C-bill that is deemed to require one, if it has not already been obtained in the

other place, must be no later than when third reading of the bill is finally put to a vote here in the Senate.

As Speaker, my role is to rule on points of order, citing the relevant authorities or practice applicable to the case. Most points of order relate directly to the conduct of business in the Senate. Such is not the case in matters related to royal consent. To determine the merits of this point of order, I have been obliged to look into subject matter that is somewhat beyond the normal purview of the Speaker. To the extent that I have been required to do this, I hope to have the Senate's indulgence and understanding.

As I mentioned, the first question to be answered deals with the alleged effect Bill C-6 has on the prerogative powers of the Crown. Among the powers that were identified by Senator Cools are mercy, clemency and pardon. These powers date back in England to medieval times and to the extent they still exist in Canada, they are a part of our constitutional heritage. They are powers vested in the Crown that are exercisable by the Governor General upon the advice, depending on the nature of the offence, of either the Privy Council or at least one Minister according to Article XII of the Letters Patent of 1947. I note that no specific reference is made to the Solicitor General in Article XII.

Prerogative powers, despite their long history, need not be forever immutable. They can be abolished or limited by statute. Once these powers have been eliminated or curtailed by law, the powers of the Crown are appropriately restricted. When Parliament seeks to limit or abolish these powers, royal consent is required. Through the signification of this consent, the Crown acknowledges that its prerogative powers are being affected by proposed legislation and concedes to Parliament the authority to consider the matter.

I listened closely to the discussion on the point of order on February 23 and I read the *Debates of the Senate* afterwards to better understand the nature of the arguments that were made. I also looked into the substance of Bill C-6, the purpose of which is to establish the Department of Public Safety and Emergency Preparedness. Despite the allegation that the prerogative powers are being affected, I have neither heard nor read anything that supports the claim. There is nothing in the bill to suggest that any of the prerogative powers themselves are in any way restricted or constrained, let alone abolished. There is nothing to lead me as Speaker to believe that royal consent is required due to any limitation on the prerogative powers of Article XII being imposed through Bill C-6.

It may be, however, that the claim regarding the prerogative powers is founded not so much on their direct restriction, but rather through the abolition of the position of the Solicitor General. This is the second question that I identified in the point of order.

The claim being made, as I understand it, is based on the assertion that the Solicitor General is an officer of the Crown. This view is founded largely on the history of the office in the United Kingdom. The position of Solicitor General has existed in England for centuries. In modern times, as was explained, the British Solicitor General functions as a sort of Deputy Attorney General. In the United Kingdom, the position is styled Her Majesty's Solicitor General for England and Wales. In former times, there were several Solicitors General of which some were

actually listed as members of the royal household, particularly that of the Queen consort, a situation which is still true, as Senator Cools stated, for the holder of an equivalent position in the household of the Prince of Wales.

The history of the Solicitor General in Canada is very different. It is not equivalent in its history to the position in the United Kingdom. Contrary to what was claimed during the point of order, the Solicitor General is not a constitutional office; there is no mention made of a federal level Solicitor General in the Constitution Act of 1867. Indeed, according to the information that I have obtained, the office of the federal Solicitor General was first created by statute in 1887 though not proclaimed in force until 1892. It was not originally a cabinet level position and it was occasionally left vacant, sometimes for several years at a time. It was not until 1917 that the first Solicitor General was sworn to the Privy Council, and it was not until 1926 that this practice became consistent. For a two-year period in 1950, the duties and functions of the Solicitor General were transferred to the Minister of Justice and Attorney General. In 1966, the old *Solicitor General Act* was repealed and a new Act was adopted creating the Solicitor General of Canada as a ministerial office. Almost fifteen years ago, an attempt was made to restructure the portfolio of Solicitor General into a new Public Security function. None of these bills or Acts presented to Parliament, so far as I have been able to determine, obtained or required the signification of royal consent.

Furthermore, having been established by statute law, I see no reason why the abolition of the Solicitor General, or rather the transfer of the authority and responsibilities of the old position into the expanded position of the Minister of Public Safety and Emergency Preparedness, by new legislation would require royal consent. I have found no evidence to convince me that the objectives of Bill C-6 affect the prerogatives, interests or personal property of the Crown in any material way so as to require royal consent.

Accordingly, it is my ruling that the point of order is not well founded and that there is no requirement for royal consent with respect to Bill C-6. Debate at third reading may continue to its conclusion as there is no impediment to making a decision with respect to the third reading motion.

Unparliamentary language

April 14, 2005 *Journals*, p. 727

I thank Senator Tkachuk for raising the matter and honourable senators for reviewing the details of what transpired yesterday. The exchange I think speaks for itself.

Senator Stratton drew our attention to rule 51, which reads:

> All personal, sharp or taxing speeches are forbidden.

That is the extent to which the presiding officer of the Senate can involve himself or herself in a matter such as this, other than to draw attention to the fact that such has occurred and that senators should judge themselves accordingly.

Senator Tkachuk made reference to rule 52, which reads:

> A Senator considering himself or herself offended or injured in the Senate, in a committee room, or in any of the rooms belonging to the Senate, may appeal to the Senate for redress.

Rule 53 is also relevant in that it has the same language in referring to a senator appealing to the Senate.

The rules that Senator Tkachuk has drawn to our attention refer to the Senate as a whole, and I thank him for doing that. It is not for me to suggest how that might be done, but there are rules and procedures for a senator to proceed under rule 52 or other rules to request a remedy of the Senate.

In terms of the request to the chair to address the matter, my ruling is that it is not within the power of the chair to do other than what I have done on this occasion, and that is to draw attention to rule 51. The other matters are for the Senate itself or for a senator to use the rules to seek the remedies that are provided for in the rules.

Committees - Autonomy

April 20, 2005 *Journals*, p. 777

The rules of this place are well established in terms of the relationship of the Senate to its committees. The committees are the masters of their own proceedings. Short of an order from the Senate directing the committee, the committee decides on the conduct of its business. In terms of the discussion I have heard, but in particular of Senator Murray's concern, that is the answer to that question.

I do not know how helpful it is, but I have a quotation from *Beauchesne's Parliamentary Rules & Forms*, 6th Edition, page 222, paragraph 760(3):

> The Speaker has ruled on many occasions that it is not competent for the Speaker to exercise procedural control over committees. Committees are and must remain masters of their own procedure.

You can ignore the reference to the Speaker, but the words, "Committees are and must remain masters of their own procedure," I believe answers the point of order.

Delayed Answers - Procedure

May 3, 2005 *Journals*, pp. 825-26

You will recall that on Tuesday, April 19, at the conclusion of Question Period during Delayed Answers, Senator Austin, the Leader of the Government took the opportunity to provide an oral

response to a question that had been put to him some days previously by Senator Comeau. Immediately after, Senator St. Germain rose on a point of order to question the propriety of this proceeding, since it seemed to him to be an unwarranted extension of Question Period.

After several brief exchanges, I agreed to look into the practices related to Delayed Answers. In the interim, I have looked into this matter and am prepared to give my ruling on the point of order.

Delayed Answers has been a designated feature of the *Rules of the Senate* since 1991 and reference to it can now be found in Rule 23(8). This supplemented the practice of taking questions "as notice" which was formalized in our Rules in June 1977. Evidence in the Debates, however, shows that both of these practices antedate their respective Rule changes.

The *Rules of the Senate* provide for two circumstances that might lead to a delayed answer. The first relates to Written Questions that Senators place on the *Notice Paper* as outlined in Rule 25.

The second occurs when an oral question cannot be answered during Question Period. Rule 24(3) allows a Senator to whom such a question is addressed to take the question "as notice".

The practice that has developed over the years is that when Delayed Answers is called, the Deputy Leader of the Government will table written responses, a copy of which is also provided to the Senator who asked the question. It is clear, therefore, that Delayed Answers is not an extension of Question Period.

Research by the Journals Office has found one recent instance when a Senator requested that a written delayed answer be read aloud. This occurred in 2001. On March 22 of that year, Senator Corbin asked a question to Senator Carstairs, then the Leader of the Government, about a foreign affairs issue. The question was taken as notice. On April 25, when the Deputy Leader of the Government, Senator Robichaud, was prepared to table a written response, Senator Corbin requested that the answer be provided verbally. Senator Robichaud then read the text into the record.

What occurred April 19, 2005 does not fall squarely within this pattern. Senator Austin provided an oral answer to a question that had been asked originally on April 13 by Senator Comeau. In making his answer, to which there was no written version, Senator Austin also suggested that he was prepared to answer additional questions. On both counts this is a departure from the usual practice.

As Speaker I am bound to apply the rules that maintain recognized practices. With respect to Delayed Answers this means that, at a minimum, a written version of the response either to a previously unanswered oral question or to a written question standing on the *Notice Paper* must be prepared for tabling with a copy being given to the Senator who asked the question. In addition, upon request, it is possible for the written response to be read into the record. On no account, however, without the express leave of the Senate to suspend the rules, can the time provided for Delayed Answers become an occasion to extend Question Period.

Before concluding, I would like to draw to your attention a related practice that occurs with some frequency. The Leader of the Government has, on occasion, responded orally during Question Period to questions taken as notice from previous sittings. Both Senator Carstairs and Senator Austin have done this. Some recent examples that were found occurred on October 26 and December 15, 2004. As well, since this is done during Question Period, it would allow Senators to ask supplementary questions. It may be that Senator Austin was confusing the two practices when he acted the way he did resulting in Senator St. Germain's point of order. In any event, what happened April 19 was not in order. When responding to Delayed Answers, it is necessary to table a written response, even if a request is made to repeat it orally.

The Rules do not allow me, as Speaker, to change the record or to reverse what happened on that day. However, I would hope that the clarification I have made today will be kept in mind for the future.

Committees - Motion – Consistent with Rules (Ruling of Speaker *pro tempore*)

May 18, 2005 *Journals*, pp. 924-25

Bill C-15 was given second reading in the Senate on February 2, 2005. It was referred to the Standing Senate Committee on Energy, the Environment and Natural Resources. The committee held 13 meetings and heard the testimony of more than 40 witnesses. At its meeting yesterday, the committee adopted a motion to dispense with clause-by-clause consideration of the bill. The bill was reported by the committee on May 17, yesterday, without amendment. The Senate then adopted an order to have the bill considered at third reading at the next sitting of the Senate.

Traditionally the committee is regarded as the master of its own proceedings. At the same time, rule 96 (7) provides that:

> ...a select committee shall not, without the approval of the Senate, adopt any special procedure or practice that is inconsistent with the practices and usages of the Senate itself.

The purpose of the reference of a bill to a committee is to allow for detailed examination of the bill, which usually includes clause-by-clause as well as the hearing of witnesses. As Senator Banks noted in citing *Marleau and Monpetit*, clause-by-clause is a practice that allows members to propose amendments to a bill as the committee proceeds through its consideration of the bill. In making my ruling, I need to consider various issues. A motion that has the effect of preventing members from the ability to move amendments, a fundamental purpose of the reference by the Senate, strikes me as irregular. However, it is difficult for me, as Speaker, to take retroactive action on the proceedings that appear to have taken place in the committee, given that the Senate adopted yesterday the order to proceed to third reading today.

It is important that all senators be mindful of the right possessed by each senator who is a member of a committee to propose amendments as they see fit. A motion that prevents senators from exercising this right seems to me to be out of order. It might be contrary to rule 96(7) of the *Rules of the Senate*.

If the committee seeks to suspend a rule or practice with respect to clause-by-clause consideration, the committee might consider the advisability of doing it through leave, rather than by motion, to ensure that no rights to which a senator is entitled are unduly infringed.

As I mentioned, I do not feel I have the authority to undo decisions that have already been taken by the Senate. At the same time, I remind senators that they still retain the right to propose amendments to clauses in the bill during third reading debate. It is my ruling, therefore, that I cannot undo what was done by the committee and already accepted by the Senate. Debate on third reading can begin in the full knowledge that senators have the right to move amendments to clauses of the bill.

It is my personal feeling that the Rules Committee could examine the advisability of reviewing the practice, that unless leave is granted by members of the committee to dispense with the procedure, committees are bound to examine bills that are referred to them clause-by-clause.

Therefore, there is no point of order.

Committees - Report under Other Business on Order paper corrected to appear under Government Business

May 31, 2005 *Journals*, p. 944

Those honourable senators who have examined the *Order Paper* appreciate that the eleventh report of the Finance Committee deals with the estimates.

I rule that proper notice has been given. The reports are on the *Order Paper* and because they deal with the estimates, they are government business. An error has been made in printing the *Order Paper*, placing them under Other Business. It is an error and it is correctible by simply noting the error and proceeding to place the reports under Government Business.

Honourable senators may wish to stand or adjourn the matter. In any event, we are properly on the item Reports of Committee under Government Business, the report of the Finance Committee on its eleventh report.

Bill – Admissibility (S-33)

June 14, 2005 *Journals*, pp. 996-98

On Tuesday, May 31, before resuming debate on the motion for the second reading of Bill S-33 to amend the Aeronautics Act, Senator Tkachuk rose on a point of order because of doubts he had regarding the need for a royal recommendation. In making his case, the Senator referred to the appropriate Senate rules and to the constitutional provisions which clearly stipulate that any bill seeking the appropriation of public money must be sanctioned by a royal recommendation and must originate in the other place. The Senator asked me as the Speaker to consider whether certain clauses in the bill might not need this royal recommendation.

There followed a brief statement by Senator Austin, the Leader of the Government, who doubted that there was a need for a royal recommendation though he asked for time to consider the matter. Senator Stratton, the Deputy Leader of the Opposition, then spoke to indicate that there was another portion of the bill that raised some additional questions about a possible requirement for a royal recommendation. The Senator asked whether Part II of the bill, establishing an Airworthiness Investigative Authority, might not involve new expenditures not previously authorized through legislation.

Other interventions were made by Senator Rompkey, the Deputy Leader of the Government and Senator Cools before I recognized Senator Tkachuk for a second time. I wish to thank all honourable Senators for their contributions to this point of order. As Senator Tkachuk indicated in his remarks, this is a challenging issue. For some years now, royal recommendations have been attached to government bills without clearly identifying the clauses which authorize the expenditure from the Consolidated Revenue Fund, even though this identification is supposed to be obligatory according to procedural authorities. As an example I would cite *Marleau and Montpetit*, the manual of practice for the other place. It states, on page 711, that "A royal recommendation not only fixes the allowable charge, but also its objects, purposes, conditions and qualifications." In fact, as was mentioned, this issue was reviewed by the National Finance Committee in 1990.

This point of order is particularly important because of the consequences that flow from it. If it is determined that a royal recommendation is required for any part or clause of Bill S-33, then it must be discharged from the *Order Paper* so that it can be properly introduced in the House of Commons as constitutional practice requires. In order to decide this question to the best of my ability, I have reviewed the bill and studied several past rulings as well as consulted various relevant procedural authorities. I have tried to be diligent in this respect in particular because I declined the request to carry the discussion on the point of order to the next sitting day.

Clause 17 of Bill S-33 replaces section 5.81 of the *Aeronautics Act* and would allow, among other things, the Minister of Transport to pay certain costs in clearing lands adjacent to airports of natural growth for safety reasons. The Minister is entitled to recover any costs incurred in carrying out this activity from the airport operator who is, in fact supposed to be responsible for this. In commenting on this provision, Senator Tkachuk recognized that these recoverable payments could be quite small. Nonetheless, he believed that they still constituted a charge on the public purse and that, as a matter of principle, they required a royal recommendation.

As to the second objection which was raised by Senator Stratton, I note that the Airworthiness Investigative Authority is to be an individual designated by the Minister. This designate is be an employee of National Defence. According to the clause of the amended bill, the scope of this investigating authority is to include the power to investigate, to identify safety deficiencies, to make recommendations addressing identified deficiencies, and to publish reports on any investigations.

Based on the explanations presented, it is not certain whether either of these anticipated operations would be funded by a new appropriation which would require a royal

recommendation or by existing allocations established through previous legislation. While it is the presence of a clause specifically authorizing a new appropriation that is supposed to be the trigger for a royal recommendation, I would point out that in recent years, the practice has been to use a non-specific royal recommendation that details nothing but rather covers many possibilities.

My guarded assessment about whether there is any clear authorization of a new expenditure in Bill S-33 calls to mind the conclusions of the National Finance report of February 1990. More than fifteen years ago, the Senate agreed that the present use of the royal recommendation is unsatisfactory as a guide to understanding whether or not a new expenditure is being authorized through legislation. The report noted that the form of the current royal recommendation, in use since 1976, does not define or specify the appropriation approved by the Governor General. This, in turn, leaves members of both Houses, including the Speakers, without a clear statement from the Crown as to what appropriation is being sought.

The committee's report also included some interesting testimony from the Chief Legislative Counsel of the Department of Justice. According to him, in advising the Government House Leader of the Commons about the introduction of government legislation, the Department prefers to err on the side of caution. That is, confronted with any dubious case, Justice would normally advise the Government to seek a royal recommendation to a bill and avoid introducing it in the Senate because it might be ruled out of order. Nothing has changed to clarify the use of the royal recommendation since the Senate adopted the National Finance report.

Honourable Senators, we are confronted by an unusual situation. My ruling, if it were to permit the Senate to proceed with debate on Bill S-33, would run the risk of being effectively overturned in the other place if a point of order similar to this one were raised there. The Speaker of the other place is duty bound to jealously protect the rights and privileges of that House. Given the uncertainty that Bill S-33 may authorize new expenditures, though I remain unconvinced about this based on the arguments presented to me, it is possible that the Speaker could rule in favour of a point of order challenging the constitutional propriety of introducing legislation with financial implications in the Senate.

Faced with these circumstances, I have come to the following conclusion and make it my ruling that, since there is a plausible case that the bill may involve a new appropriation, second reading debate on Bill S-33 should not proceed. Consequently, unless the Senate wishes to challenge my ruling, I am ordering that the second reading motion of Bill S-33, amending the *Aeronautics Act*, as well as the bill itself, be discharged from the *Order Paper* effectively nullifying all proceedings in connection with this bill.

In concluding, let me repeat that the challenge of assessing the requirements for a possible royal recommendation is more difficult than it should be. While the Crown has every right to preserve its prerogatives with respect to financial initiatives that appropriate new expenditures, the exercise of this prerogative should not impede the rights of parliamentarians, either in the Senate or the other place, in carrying out their responsibilities to consider and possibly amend legislation. Perhaps the time has come to again review the problems that National Finance identified in 1990.

Motion - Acceptability (adjournment motion)

June 28, 2005 *Journals*, pp. 1064-65

I gather that honourable senators are ready for a ruling on the point of order raised by Senator Kinsella.

I thank honourable senators for their contributions to the point of order. As I understand it, the point of order is with regard to whether the motion of Senator Rompkey to adjourn the sitting to the call of the chair is in order. Senator Rompkey explained, in the course of putting the motion, that the purpose for this suspension is to receive letters confirming Royal Assent, which are expected later this day.

Senator Kinsella's position is that a motion to adjourn to the call of the chair would be in order only if there were further business to conduct today.

The real question, as I see it, honourable senators, is whether this longstanding practice requires leave, whether it is put in the form of a motion, as Senator Rompkey did in this case, or whether there is request for the unanimous agreement of the Senate to do something such as adjourn to the call of the chair.

In the case of a motion, I have looked at a rule that might have application, that being rule 59, which says:

> Notice is not required for:

It then lists a number of steps that can occur in the Senate by way of a motion which, because of rule 59, do not require notice. The only subsection of rule 59 that might apply to this situation would be (18), which says:

> Other motions of a merely formal or uncontentious character.

I will not rule on whether the motion is debatable, but as to whether it is contentious. I think that is evident in that to adjourn to the call of the chair would require a request for agreement of the house by way of a vote. Therefore, I do not believe this matter falls under rule 59(18).

Where does this leave us? I have, with the assistance of the table officers, tried to find precedents for this procedure which is very common in our proceedings. As I indicated at the beginning of my remarks, this has been done in two ways. I will give an example of the first way from page 1243 of the *Journals of the Senate* of April 22, 1997. The Journal entry reads:

> At 4:15 p.m. the sitting was adjourned during pleasure to resume at the call of the bell at approximately 6:30 p.m.

It could have said "the call of the chair," but it was a time specific, and I do not, for purposes of this ruling, distinguish between a time certain and the call of the chair.

I do take, however, from what I have read in the journals, that, either as a result of no objection being made or by asking for and receiving leave, leave was given to take this step.

The other way in which we do this is the way in which Senator Rompkey has proceeded on this occasion. I draw the attention of honourable senators to the *Journals of the Senate* for May 12 of this year, page 901. The recital is clear. It reads:

> With leave of the Senate,
>
> The Honourable Senator Robichaud, P.C., moved, seconded by the Honourable Senator Losier-Cool:
>
> That the Senate do now adjourn at pleasure to reassemble at the call of the chair and that the bells ring for five minutes.

I repeat, I do not distinguish between whether it is to the call of the chair, in the chair's discretion, provided it is within our sitting times, or to a time certain. Our practice, honourable senators, is clear. Leave is required to proceed with the motion that was put by Senator Rompkey.

I assume leave was not granted, but that can be clarified very easily. However, my ruling is that the proceeding Senator Rompkey has initiated requires leave, that is, to put a motion to the chamber to adjourn for a time certain or to the call of the chair.

Bill – Use of List of Speakers

July 20, 2005 *Journals*, pp. 1126-27

Yesterday, during debate on third reading of Bill C-38, a point of order was raised by Senator Corbin, who objected to the practice of using lists as a guide for the Speaker to recognize Senators who have indicated an interest in participating in debate. The Senator made reference to several rules of the Senate which make it clear what Senators must do when they wish to speak in debate. Senator Cools also joined in on the point of order. In her view, the use of lists is "one of those creeping practices in this place that have the effect of eroding the individual rights of Senators." Following these brief interventions, I suggested that I would look into the matter and report back to the Chamber with a ruling.

Having reviewed some parliamentary authorities and considered the merits of the point of order, I would like to explain to the Senate the purpose of using these lists, which are supplied to me by the leadership of both sides, the Government and the Opposition. There is nothing really new in using such lists. It is part of the established, albeit informal, practice of facilitating the conduct of business. There is also nothing binding about these lists. They serve simply as an aid to help me as Speaker to be aware of who in the Senate has expressed an intention to speak in a debate. In

practice, these lists are flexible and discretionary. Their purpose is to assist the flow of proceedings without depriving any Senator of the right to join in debate.

The use of such lists is not unique to the Senate. Speakers' lists are used elsewhere. At page 505 of *Marleau and Montpetit*, there is a statement confirming the use of lists in the other place. This recently published authority states that, "Although the Whips of the various parties each provide the Chair with a list of Members wishing to speak, these lists are used as a guide." References in the 23rd edition of *Erskine May* at pages 428 and 521 make it clear lists are used to assist in the arrangement of debate in both the Lords and the Commons. In fact, in the United Kingdom House of Commons, one acknowledged benefit of the use of lists, in accordance with the practices followed there, is to allow the Speaker "a means of distributing the available time as equitably as possible between the various sections of opinion …" Honourable Senators will be aware that I do this frequently myself with respect to Question Period, when I advise the House of the number of Senators who have indicated a desire to ask a question when only a few minutes remain in the time allotted to this proceeding.

With respect to an issue raised by Senator Corbin, the use of speakers' lists is not contrary to the *Rules of the Senate* -- specifically those rules mentioned by the Senator that stipulate how a Senator is to seek recognition in debate. It must be noted that some Senators do not at times seem to know where they fall in the order of speaking, and so have not always been recognized if other Senators stand to participate in the debate.

Let me repeat, Honourable Senators, these lists are informal aids that are intended to facilitate the conduct of business. They are not solicited by me as the Speaker. They are provided voluntarily by those responsible for House business and, sometimes, independent Senators. These lists are not binding nor do they in anyway limit the rights of any Senator to participate in debate. That this is so was evident even as we proceeded to debate Bill C-38, following the point of order. I had already mentioned the sequence that I had cited based on a list given to me and that was immediately adjusted to accommodate an intervention from another Senator.

Whether a parliamentary chamber has 700, 300 or, like ours, just 100 members, speakers' lists are useful. They are neither rigid nor binding, but flexible and discretionary. These lists do nothing to adversely impact the rights or opportunities of any Senator to engage in debate.

If there is any limitation, it may be that the lists emanating from the Government and Opposition Leadership do not take into account the independent Senators, of which there are now eleven. While the use of the lists does not keep the independent Senate from speaking in debate, their contribution to the composition of the list might reinforce the idea of balance and completeness. This is a matter, I suggest, that might be reviewed at some point by the Speaker's Advisory Committee. Whatever is done, I will continue to exercise vigilance in recognizing Senators rising in their places whether or not they have previously indicated their intention to speak. As we saw last evening, Senators are often prompted to participate as they become engaged in the exchanges of a healthy and vigorous debate which often occurs in this Chamber.

Honourable Senators, for the reasons that I have explained, I rule that there is no point of order in this case.

Question of Privilege – Absence of notices prior to committee meetings

October 20, 2005 *Journals*, pp. 1217-19

Tuesday, October 18, 2005 Senator LeBreton raised a question of privilege claiming that her rights as a Senator had been infringed by certain activities that she attributed to the Standing Committee on National Security and Defence. Senator LeBreton contends that the Committee met Monday and Tuesday morning without issuing a notice as required by rule 92(1). In addition, the Senator explained that these committee meetings were conducted without simultaneous interpretation and outside the assigned time-slot allocated to the committee. In consequence, the Senator argued that she had been deprived of her rights under rule 91 to attend and participate in those meetings, even though she is not a member of this committee.

By way of response, Senator Kenny, who is the Chair of the National Security and Defence Committee, explained that the meetings beginning Monday and Tuesday morning were not in fact committee meetings. Instead, they were private meetings involving a senator and a group of individuals assisting him and some members of the Library of Parliament in preparing research. Even though members of the Committee were advised of these meetings, this was done only as a matter of courtesy and in an effort to be transparent. In the end, as Senator Kenny recounted, only one Senator took him up on his offer and then for just a brief time. Had the meetings been official, like the meeting held Monday afternoon, Senator Kenny insisted that all the rules for notice, interpretation and transcription would have been followed.

Several Senators then intervened. Senator Tkachuk supported the views expressed by Senator LeBreton. Senator Banks, on the other hand, admitted to holding similar preparatory meetings for his committee. In his comment Senator Meighen warned against the proliferation of semi-official or unofficial meetings. There is a risk, as he indicated, that many will come to believe that the real purpose of these meetings is to do indirectly what cannot be done directly. Following a brief comment from Senator Plamondon, Senator Forrestall and Senator Cools also expressed their views regarding the merits of the question of privilege. For his part, Senator Forrestall generally supported the efforts of the National Security and Defence Committee to prepare solid reports addressing complex topics. At the same time, Senator Forrestall suggested that there might be a need to look at the process to avoid any misunderstandings. Taking up the same theme, Senator Cools proposed that it might be a better approach to consider this problem not as a question of privilege but as an issue that requires study and review through a different avenue.

I want to thank all honourable Senators who contributed through their exchanges to this question of privilege. The views that were expressed to the Speaker *pro tempore* have assisted me in understanding the nature of the alleged question of privilege which I must now address in order to determine if *prima facie* it warrants further consideration by the Senate itself.

This issue is in fact complex and several points need to be carefully considered. As Speaker, however, my primary obligation in considering this complaint is to assess it in terms of the criteria provided in rule 43 that must be met to establish its merits *prima facie* as a question of

privilege. The threshold established by these criteria is fairly high as it must be for any question of privilege.

According to the rule, four criteria need to be met. The alleged breach must be raised at the earliest opportunity. It must deal directly with a privilege of the Senate, its senators or its committees. The grievance to be remedied must constitute a grave and serious breach of privilege. And finally, the issue must be raised in order to seek a genuine remedy for which no other parliamentary process is reasonably available.

With respect to the first two criteria, there is no real difficulty. I am satisfied that the complaint of Senator Le Breton was raised at the earliest opportunity and that it involves an issue that touches the privileges and rights of the Senate and its members. It remains, now, to analyze more closely the two other criteria.

The rule states that a point of a privilege must "be raised to correct a grave and serious breach." As Speaker, it is incumbent upon me to make a ruling within the context of the normal operations of the Senate with respect to this point. As was mentioned during the exchanges that took place on the question of privilege, the Senate uses its committees to conduct much of its business to examine bills and inquire into different governmental policies. An adjunct to this work involves the use of subcommittees and, as well, informal private meetings with individuals or groups. Both are common and necessary practices that enable senators to more effectively carry out their responsibilities.

At the same time, there is a need to maintain a certain balance especially with respect to the use of private meetings whose objectives are designed to serve the broader interests of the committee. A fundamental purpose of the rules and practices followed in the Senate is to provide for openness and accessibility. For this reason, the rules require that public notice be given, interpretation services provided, and proper records of decisions kept. It is also why rule 91 allows Senators who are not members of the committee to attend and participate. It should be noted that subcommittees can and do meet while the Senate is sitting and without public notice. However, in their actions and decisions, subcommittees are directly accountable to their main committee which operates in full public view. This is not the case with respect to so-called private meetings.

What needs to be asked is whether the use of private meeting can cross the line and become in substance, if not in reality, a meeting of a committee or subcommittee in disguise. If committee meetings are held under the guise of private meeting, there is a serious possibility that the Senate could lose control of its ability to manage its affairs effectively. A proliferation of informal and unofficial private meetings could easily conflict with other committee work or even with the sittings of this Chamber itself. The substantial risk of diminished participation by senators could also seriously compromise the Senate's ability to conduct its affairs properly and thoroughly. Seen in this perspective, the abusive use of private meetings could constitute a grave and serious breach under the terms of rule 43(1)(d) and lead to a finding of a *prima facie* breach of privilege.

The final criterion to consider is whether or not there are other parliamentary processes available to deal with this potential breach. This question of privilege has at its core the activity of

committees. Traditionally, committees are regarded as the master of their own proceedings. While this does not mean they operate above the *Rules*, their less formal nature often creates certain grey areas of practice that our rules do not conclusively govern. An example of a grey area may very well be the situation we are considering today.

As Speaker, I am reluctant to become involved in regulating the affairs of committees. It seems to me that there are other more appropriate mechanisms available to do this. With respect to the issue raised in Senator LeBreton's question of privilege, committees themselves could consider how they might standardize the role of subcommittees in performing the kind of important preparatory work guiding their research efforts. This would likely reduce the need for the sort of private meetings complained of in this question of privilege. It might also be useful for the Rules Committee to look into the matter if it thinks that certain practices need to be more formally regulated. This can be done by the Committee on its own authority or it can be done by way of an order of reference adopted by the Senate. There may be other means involving the political leadership of the Senate to address this issue. Given that these different options are reasonably available within the meaning of paragraph 43(1)(c), I am unable to find that a *prima facie* case of privilege has been properly established in this case.

Question of Privilege – Accuracy and consistency of answers to written questions

November 23, 2005 *Journals*, pp. 1302-03

Yesterday, Tuesday, November 22, Senator Spivak rose on a question of privilege to complain about the answers that she has received to a series of written questions she had placed on the *Order Paper*. Under our rules and practices, Senators are entitled to ask written questions soliciting information from the government on any matter that comes within its jurisdiction or administrative authority. In this particular case, Senator Spivak had posed a number of questions regarding the boundaries of Gatineau Park which is controlled and managed by the National Capital Commission, the NCC.

According to Senator Spivak, the answers provided by the NCC through Canadian Heritage were contradictory. Her complaint is based on the fact that the responses that she received were different in material respects from those made to identical questions asked by a member of the other place. Senator Spivak explained that in three specific instances the information given to her about the boundaries of Gatineau Park was inconsistent with the answers provided elsewhere.

The failure to prepare complete answers that are accurate or consistent is, in the Senator's view, a serious breech of privilege since it deprives parliamentarians of the information that they need to do their job properly. To prove her point, Senator Spivak mentioned the work that she is doing on a draft bill relating to Gatineau Park for which solid data on its boundaries is important.

Following the Senator's remarks, I indicated that I would seek to provide a ruling as soon as I was able on the question of privilege, to determine if a *prima facie* case had been established. I have considered the matter carefully and am prepared to make my ruling now.

Senate rule 43 outlines the criteria that I must use in order to determine a question of privilege *prima facie*. I am satisfied that the matter has been raised "at the earliest opportunity", but I am less clear about the remaining criteria. It is not obvious to me how an inconsistent response provided by the NCC through Canadian Heritage constitutes a matter that directly concerns the privileges of the Senate, a committee or a Senator.

While the Senator has made a good case that the information received from the NCC is not consistent with the information it has provided elsewhere, I do not see how this, in itself, is a matter of privilege or contempt. As the Senator herself stated at the opening of her intervention, parliamentarians often complain that answers from the government are slow or incomplete. None of these instances would normally give rise to a question of privilege. In addition, no evidence was presented to suggest that these errors or inconsistencies were deliberate. I am also uncertain about whether it is the information that was provided to the Senator or to the other parliamentarian that is inaccurate. Had a compelling case been made that the NCC had sought to deliberately mislead the Senator, my ruling would have been different. As it happens, however, with respect to this case, there are other means readily available to seek some clarification about the NCC information. For example, the matter could be taken up again by another written question or perhaps through a Senate committee hearing officials from the NCC. These alternative approaches would be in keeping with the traditional oversight function of the Senate and would be more suitable than having the matter considered as a contempt.

Having reviewed the complaint based on the criteria stipulated in rule 43, I am unable to support the contention that a *prima facie* question of privilege has been established.

Bill – Application of the same question rule (Ruling of Speaker *pro tempore*)

November 23, 2005 *Journals*, pp. 1307-09

When the second reading of Bill C-259 was reached today, the Leader of the Government raised a point of order questioning the propriety of proceeding to the resumed debate on this bill. Citing several rules, decisions and authorities, Senator Austin argued the case that Bill C-259 should not be allowed to proceed. Other Senators also spoke to the matter contesting the proposal that debate on the bill should not continue.

I wish to thank honourable Senators for the views that were expressed on this point of order. I have considered the arguments that were made and have reviewed the matter sufficiently to make a ruling which I am prepared to give now. In making this decision, I am exercising the authority granted to me under rules 11 and 12 of the *Rules of the Senate* and this authority is no different in its effect and validity than that of the Speaker.

Rule 63 (1) stipulates, in part, that "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 ..."

The point of order that has been raised deals with the suggestion that Bill C-259 which deals with the elimination of the excise tax on jewellery is substantially the same as Bill C-43, a budget implementation bill that was enacted by Parliament last June. In order to make the case, it

should be possible to identify the subject matter or clauses in both bills that address the same subject.

Bill C-43, which is now Chapter 30 of the Statutes of Canada 2005, contains an amendment to Schedule I of the *Excise Tax Act* that will phase out the excise tax on jewellery through a series of rate reductions over the next four years. Among the items to be affected by this tax change are articles of all kinds made of various materials including ivory, coral, jade and onyx and semi-precious stones. Other items to benefit from this tax reduction include personal objects made of real or artificial diamonds as well as gold and silver jewellery.

Of particular interest, for purposes of this point of order, is the tax reduction that will be given to clocks. Chapter 30 specifies that the phase-in tax reduction will apply to the following items when their value exceeds fifty dollars:

> Clocks and watches adapted to household or personal use, except railway men's watches, and those specially designed for use of the blind.

Bill C-259 is a one clause bill that provides an immediate 10 per cent reduction for:

> Clocks adapted to household or personal use, except those specially designed for the use of the blind ...
>
> if their sale price or duty paid value exceeds fifty dollars.

There is little doubt that these two clauses resemble each other, but they are also different in certain critical respects. The question to be determined is whether they are sufficiently the same to disallow further consideration of Bill C-259 or whether they are sufficiently different to allow Bill C-259 to proceed.

In seeking to answer this question, it should be noted that practice has changed over the years to accommodate the reality of extended sessions that can continue through several years. This has had the consequence of requiring a greater degree of similarity between two items before a bill or other business will be ruled out of order on the basis of the "same question rule".

With respect to with this issue, I would refer Honourable Senators to page 898 of *Marleau and Montpetit*. In a ruling by Speaker Fraser made in 1989 dealing with items proposed by Private Members, that is with respect to items not proposed by the Government, the Speaker explained that for two or more items to be substantially the same "they must have the same purpose and they have to achieve their same purpose by the same means." I am prepared to take this approach as a guide to the consideration of similar items whether they are sponsored by the Government or by Senators.

In taking this position, I am also mindful of British practice which is very clear. *Erskine May* states at page 580 of the 23rd edition: "There is no rule against the amendment or the repeal of an Act of the same session."

Bill C-259 amends the application of the excise tax on clocks at an accelerated speed in comparison to the proposal enacted through the budget implementation bill adopted earlier this year. The means, therefore, are not the same. If the Senate adopts this bill and it is made law by royal assent, it will have the effect of changing the rate of tax reduction now in place through the enactment of Bill C-43. I do not regard this measure to be the same, based on the criteria established by the decision of Speaker Fraser. The same end is not achieved by the same means. The two measures are substantially different and I am prepared to rule that debate on Bill C-259 can continue.

INDEX TO RULINGS