SENATE SÉNAT

CANADA

RULINGS OF THE SPEAKER OF THE SENATE

39th Parliament

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Introduction

Ever since Confederation, the Speaker of the Senate has been appointed by the Governor General on the advice of the Prime Minister. The Constitution does not, however, assign specific responsibilities to the incumbent. These are found in the *Rules of the Senate*, and they have evolved over time. Originally, the Speaker of the Senate was not given any broad power to enforce the Rules, emphasizing the equality of senators and the fact that the institution is largely self-governing. This evolved over time, with the Senate granting the Speaker broader powers. However, most of these powers have remained subject to appeal to the Senate. As of the Rules revisions of 2012, the Speaker's primary roles are to preside over proceedings, to rule on certain procedural matters (points of order, the prima facie merits of questions of privilege and requests for emergency debates), and to preserve order and decorum during the sitting.

Because of the Senate's appointed nature and members' long terms of service, there are times when the government – which is based on the party that has the confidence of the House of Commons – does not have a majority – or even a plurality – of seats in the Senate. These transitional periods can be especially challenging for the Speaker, who has to assist the Senate in functioning smoothly and fulfilling its major role as a complementary legislative chamber of sober second thought. The rulings of the Honourable Noël A. Kinsella, P.C., for the 39th Parliament are contained in this book, and represent such a transitional period. Speaker Kinsella was named to the chair on the recommendation of Prime Minister Stephen Harper in 2006. He then continued in that position until his resignation from the Senate in 2014, becoming the second-longest serving Speaker since Confederation. Over his almost nine years in office there were well over one hundred rulings of points or order and questions of privilege, as well as statements from the chair. It is a testimony to the respect in which Speaker Kinsella was held by all his colleagues that only one of his rulings was appealed to the Senate.

The rulings in this collection provide clarification about the operation of Senate procedure and demonstrate how the Speaker seeks to balance the various principles that underlie Canada's system of parliamentary government. As such, these decisions will be invaluable to senators, their staff, the Senate administration, and anyone interested in better understanding Senate proceedings.

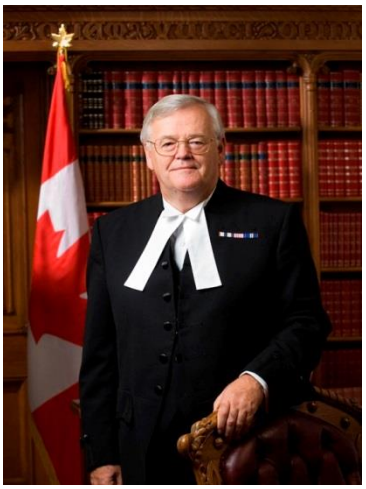
Charles Robert
Clerk of the Senate and Clerk of the Parliaments

TABLE OF CONTENTS

First session, Thirty-Ninth Parliament (April 3, 2006-September 17, 2007)

Second Session, Thirty-Ninth Parliament (October 16, 2007-September 7, 2008)

First Session, Thirty-Ninth Parliament
April 3, 2006 – September 17, 2007



Speaker: The Honourable Noël A. Kinsella

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

Senate Chamber — Electronic disturbances
April 5, 2006 *Journals*, p. 24

I thank Honourable Senator Carstairs for raising this matter at our session this afternoon, and I want to draw all honourable senators' attention to page 19 of our rule book, rule 19(4). It reads as follows:

> No person, nor any Senator, shall bring any electronic device which produces any sound, whether for personal communication or other use, into the Senate Chamber, whether on the floor, inside the Bar, outside the Bar, or in the galleries.

Honourable senators, the reading of the rule is crystal clear, and I would encourage all honourable senators to act accordingly.

Question Period — Conduct
May 10, 2006 *Journals*, pp. 134-135

Last Wednesday, May 3, a point of order was raised by Senator Hays, the Leader of the Opposition, with respect to the conduct of Question Period. As I understand it, his objection had to do with the fact that the Leader of the Government took time that day to respond to questions which had been taken as notice by the Deputy Leader of the Government during a previous Question Period. Senator Hays asked me to rule on the point of order so as to provide guidance in the future for Question Period.

Several other Senators spoke to this point of order. As I stated last week, I appreciate the participation of Senators in these discussions. I find it very useful. In carrying out my responsibility, however, I must also take into consideration the rules and practices of this House. Indeed, rule 18(2) obliges me to state the reasons as well as any rule or other written authority when called upon to decide a point of order.

With respect to the basic complaint of the point of order, that questions asked at a previous sitting ought not to be answered during Question Period, I find that there is limited guidance based on the *Rules of the Senate*. These rules provide for thirty minutes every sitting for the purpose of posing questions to the Leader of the Government, any Minister or to committee chairs about the work of their committees. According to rule 24(4) there is to be no debate though brief explanatory remarks may be made in asking and answering questions. Rule 24(3) states that when it is not possible to answer a question immediately, the Senator to whom the question was asked may take the question as notice. A literal reading of this rule might suggest that the presence in the Chamber of the Senator to whom a question may be asked is a *conditio sine qua non* of this rule.

However, in practice the rule operates two ways. More frequently, it is applied when the Leader of the Government, a Minister or a committee chair, takes a question as notice. Less often, the Deputy Leader or a committee member takes as notice a question intended for the Leader or a committee chair. This is what occurred last week.

I would also point out that the Senate sometimes foregoes Question Period when the Leader of the Government is unable to be present in the Chamber.

Delayed Answers are called at the end of the thirty minutes allowed for Question Period. It is at this time that answers to written questions on the Order Paper are presented. This is also when oral questions asked at a previous sitting can be answered. In either case, dealing with written or oral questions, the response is given in writing, one copy is tabled with *Hansard* and another is given to the Senator who asked the question. Much of this has come about through practice and through rulings of the Chair.

A year ago, May 3, 2005, my predecessor, Speaker Hays, made a ruling related to an element of Delayed Answers. On that occasion, the Speaker ruled on a point of order challenging an instance when the Leader of the Government, then Senator Austin, had used Delayed Answers to provide oral responses to questions that had first been asked from a Question Period of an earlier sitting. Reviewing this incident, the Speaker explained that "What occurred April 19, 2005 does not fall squarely within this pattern [of accepted practice]. 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 was a departure from the usual practice."

Honourable Senators, what occurred last Wednesday seems to me to fall outside of our usual practices. The rationale for prohibiting debate during Question Period and for creating Delayed Answers is due, in part, to the limited time given to Question Period. The thirty minutes allotted for questions and answers is to promote the immediate exchange of information about the policies of the Government or the work of a committee. Giving answers during Question Period that had been taken as notice at a previous sitting, detracts from this purpose and is a departure from established practice. Any response to questions asked at a previous sitting should be treated under Delayed Answers in the same way that all written questions are answered. These answers should be in writing with copies for the Table as well as for the Senator who asked the question. Upon request, these written answers can be read aloud so that they are incorporated into the *Debates*.

It is my ruling that the point of order is sustained. My purpose in making this ruling is primarily to explain how Question Period and Delayed Answers should be followed. I would expect that this problem would not come up again.

Bill — Requirement for Royal Recommendation

May 11, 2006 *Journals*, pp. 144-146

On Tuesday May 2, during Orders of the Day, Other Business, as Senator Austin was about to move the second reading of Bill S-212, Senator Di Nino rose on a point of order to argue that the bill was not properly before this House. The Senator explained that under the *Constitution Act, 1867*, bills that appropriate any part of the public revenue or impose a tax must originate in the House of Commons. Such bills cannot be introduced first in the Senate. Based on his reading of the bill, Senator Di Nino maintained that Bill S-212 was imposing a tax and was appropriating public revenue. In his view, the bill "should have been preceded by a Ways and Means motion, should have been accompanied by a Royal Recommendation, and should have originated in the other place." The Senator went on to explain the reasons why he thought Bill S-212 was out of order. The first reason is that the bill provides an increase in the child disability supplement which could lead to payments out of the Consolidated Revenue Fund, the CRF. Secondly, clause 3 of the bill increases the maximum refundable medical expense supplement. As a result, in instances where a taxpayer is entitled to a tax credit, a refund will be made out of the CRF. And finally, while Senator Di Nino acknowledged that Bill S-212 reduces the income tax rate from 16

per cent to 15 per cent, he suggested that this could actually result in an increased tax burden for a very small number of taxpayers.

Other Senators participated in the discussion on this point of order. Senator Rompkey characterized the arguments justifying the point of order as specious. Senator Baker claimed that the expenditures contained in Bill S-212 were not really expenditures within the meaning of the objection raised. For his part, Senator Austin, the sponsor of the bill, denied that there were any appropriations or tax impositions in Bill S-212. The Senator also pointed to several precedents to buttress his position including past rulings in which the Speaker declared that bills proposing reductions in taxes did not require a royal recommendation. Senator Stratton appreciated the intent of the point of order. He thought that the bill should be examined to determine if there is an increase on the public purse. Senator Murray then intervened. He repeated a point that had already been made by Senator Di Nino; that Bill S-212 is based in large measure on a bill that had been introduced in the House of Commons in the last Parliament. That bill, as Senator Murray recalled, had been preceded by a Ways and Means motion and accompanied by a royal recommendation. Whether right or wrong in his recollection, the Senator was convinced that the provisions of the bill implicitly involved payouts that would be drawn from public funds. Finally, Senator Hays spoke to caution against any misunderstanding of the fiscal process that might prompt any confusion about the purpose of the bill, which is "to preserve tax reductions that are already in place."

Following these exchanges, I stated that I would take the matter under advisement. Since then, I have reviewed the applicable *Rules of the Senate,* closely examined the bill and studied the relevant precedents and authorities. I am now ready to make my ruling on the point of order.

There were three arguments made by Senator Di Nino to justify his claim that Bill S-212 is not properly before the Senate. Let me begin with the last one. The Senator accepted that one objective of the bill is to reduce the federal income tax rate to 15 per cent from 16 per cent. This is achieved through clauses 1 and 2 of the bill. As he and other Senators acknowledged, this reduction first appeared in Bill C-80, a bill introduced in the other place in what turned out to be the closing days of the last Parliament. According to the *Journals* of the other place, that bill was preceded by a Ways and Means motion**.** However**,** I can find no evidence that the bill was also accompanied by a royal recommendation.

In his presentation, Senator Di Nino explained that when the percentage of the tax rate is lowered, the tax credits are also lowered. When this happens, when a tax credit is lowered, according to the Senator, a Ways and Means motion is required. Such motions are a distinct feature of the other place. There is no equivalent in any part of the Senate's rules and practices. While I accept that clauses 1 and 2 of Bill S-212 will reduce the tax rate, I do not agree that this tax reduction necessitates a Ways and Means motion. A tax reduction is clearly not a tax imposition even if, incidentally, it has a negative impact on a small number of taxpayers. According to *House of Commons Procedure and Practice* by Marleau and Montpetit, at page 759, "Legislative proposals which are not intended to raise money but rather to reduce taxation need not be preceded by a Ways and Means motion before being introduced in the House." This statement is supported by two rulings by Speakers of the House of Commons, dating back to 1957 and 1972. Based on this aspect of the point of order, I would not be disposed to rule Bill S-212 out of order. This is in keeping with my preference and underscores my intention, to allow debate which gives the Senate itself the opportunity to come to its own decision on the question.

There are, however, two other arguments that need to be considered in regard to this point of order. I propose to deal with both of them together. As has already been mentioned, much of Bill

S-212 is based on Bill C-80. Despite their similarities, there are some significant differences which may be reflected in their different titles. Bill C-80 was entitled, *An Act to implement certain income tax reductions*; Bill S-212 has as its title, *An Act to amend the Income Tax Act (tax relief)*. In addition to incorporating elements of Bill C-80, Bill S-212, in clause 3 and 4, also seeks to implement increases to the refundable medical expense supplement and the child disability benefit. As honourable Senators may recall, both of these refundable credits had been increased in the budget implementation bill, Bill C-43, adopted last June. Prior to the enactment of this bill, the formulas used to calculate the refundable credits for medical expense supplements and the child disability benefit were $500 and $1,600 respectively. As a result of the changes implemented through Bill C-43, the figures were increased to $750 and $2,000. Bill S-212 now proposes to increase the benefit again to $1,000 and $2,300. Based on this analysis, it is clear that Bill S-212 is doing more than preserving tax reductions already in place. Bill S-212 also aims to provide tax relief in the form of refundable tax credits.

So far as I have been able to determine, these proposed tax credits have not had any expression in legislation. No bill was introduced in the last Parliament to implement them. They were certainly not any part of Bill C-80. In preparing my ruling, I found it instructive to review the procedures that were followed in the other place with respect to Bill C-43, entitled *Budget Implementation Act, 2005*. This bill was preceded by a Ways and Means motion. More importantly, when Bill C-43 was introduced and read the first time, it had a royal recommendation attached to it. This recommendation was necessary because of the proposed scheme to increase refundable tax credits. Unlike measures that affect non-refundable tax credits, bills proposing to alter refundable tax credits need a royal recommendation. This is because the payouts that will be made to taxpayers who are entitled to claim them must be authorized. This authorization is the royal recommendation. These payments can only be made from the CRF; they are expenditures of public money.

Rule 81 stipulates 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." Bill S-212 does not have a royal recommendation, though it is clearly necessary with respect to clauses 3 and 4. Had Bill S-212 contained only clauses 1 and 2, I would have been able to rule otherwise. However, given this level of certainty with respect to the meaning and operation of clauses 3 and 4, I am obliged to rule that the point of order that was raised with respect to further proceedings on Bill S-212 is well founded. The second reading motion on Bill S-212 will not be put for debate and the bill is to be stricken from the Order Paper.

(*Accordingly, the Order of the Day for the second reading of Bill S-212, An Act to amend the Income Tax Act (tax relief), was discharged and, by order, the Bill withdrawn.*)

Senate Chamber — Interference with Sound System

May 16, 2006 *Journals*, pp. 155-156

Honourable Senators, a point of order was raised by Senator Corbin concerning the electronic interference with the sound system caused by certain handheld cell phones and Blackberries. This is not the first time this objection has been raised. In fact, on at least 4 occasions, going back to March 9, 2005, the effects of these devices on our sound system has been the subject of complaint.

Many honourable Senators contributed to the discussion on the point of order. Most concentrated on the annoying effect of the interference. A few Senators expressed concerns about the propriety

of using these devices at all, as it raises the question of whose words are being expressed by the Senator and distracts the attention of Senators from what is being discussed in the Chamber.

While this latter argument may have some merit, I believe it is more properly addressed in a substantive way either in debate in the Senate Chamber or as a study by the Standing Committee on Rules, Procedures and the Rights of Parliament, rather than as a part of this ruling. On the matter of interference, created by cell phones and Blackberries, the Rules of the Senate are quite explicit. Rule 19(4) stipulates that:

> No person, nor any Senator, shall bring any electronic device which produces any sound, whether for personal communication or other use into the Senate Chamber, whether on the floor, inside the Bar, outside the Bar or in the galleries

Speaker Hays gave a detailed ruling March 9, 2005, in which he outlined the problem, cited rule 19(4), and distributed a briefing note explaining the likely sources of the interference. The problem, however, persists. Perhaps there is still some confusion about the technical problem and the possible remedies. This may explain why this point of order keeps coming up.

My understanding is that these wireless devices use different radio frequencies, depending on which company is supporting them. The radio frequency used by certain suppliers causes interference with our audio system. The result is the repeated buzz we have been experiencing. This problem is not unique to the Senate: the Other Place is struggling to cope with this problem as are other jurisdictions across the country. Similar devices, supplied by other service providers, have no discernable effect on the sound system. Now, as it happens, due to differences in service levels provided, it would appear that Senators have opted to subscribe with providers whose systems are incompatible with our current sound infrastructure. In the last two years, a number of Senators have switched to such suppliers; this likely accounts for some of the aggravating audio interference.

In response to the latest incident, Senate staff has conducted tests with different devices in this Chamber, and learned that a unit receiving or sending an email or phone call can have an effect on an open microphone from as many as four seats away. This means the range of potential offending devices is from 16 to 20 seats surrounding the open microphone. As a result, even though the electronic device is causing a noise, it would be difficult for me to identify without qualification the offending device and to hold its user to account.

In the course of the debate on the point of order, it was suggested that new wiring or microphones should be investigated to minimize the effect. I have received preliminary reports on this proposal, but I will leave the consideration of the feasibility of any such implementation to the appropriate body, the Standing Senate Committee on Internal Economy, Budgets and Administration.

In the meantime, based on the information received from staff, it would appear that shutting down these devices is the only sure way we can be certain that the rule will not be offended. While I recognize that this dependence on cell phones and Blackberries is not so easily overcome, I have asked the Table to distribute to each Honourable Senator’s desk a document that details the devices that do, and do not, interfere with our sound system. I have also had this list circulated by way of letter to the office of each Senator. While it would be desirable if all Honourable Senators would use the suppliers who do not cause interference, I understand that the service levels individual Senators require may be better met by other non-compatible companies.

Honourable Senators who bring into the Senate Chamber any electronic device that produces any sound are at risk of causing a disorder. Honourable Senators who possess a device that is not compatible with our sound system are at greater risk, if the said device is not powered down or disabled before they enter the Senate Chamber. If Honourable Senators neglect to do so, it compounds the interference by shutting off the device only when the realization comes that it is causing a problem, since the process of shutting them off sends even greater amounts of data strings that will increase the level of interference.

It is my ruling that the point of order raised by Senator Corbin is well founded. Therefore, the collaboration of all Honourable Senators is requested to maintain order in the House.

Question of Privilege — Alleged Misleading Statements
May 30, 2006 *Journals*, pp. 178-179

On Wednesday, May 10, Senator Ringuette gave notice of a question of privilege under Senators' Statements. The adjournment of the sitting at 4:00 that day kept the Senator from presenting her question of privilege at the conclusion of Orders of the Day. As a consequence, the Senator was not able to present her case until the following day. Senator Ringuette claimed that the Leader of the Government misled the Senate in explaining her absence from Question Period, May 2. It is Senator Ringuette's contention that this account is contrary to certain evidence she had since collected. This assertion was denied by the Leader of the Government, who stated that her absence during part of the sitting that day, including Question Period, was because of a Cabinet meeting.

After hearing different views on this matter, I agreed to take it under advisement. I am prepared to declare my ruling.

Let me begin by stating that there is no *prima facie* basis to support a question of privilege. In my opinion, this case is the result of a misunderstanding or miscommunication. I heard nothing to persuade me that what happened breached privilege or involved contempt since the misunderstanding was neither intentional nor deliberate.

In making her case, which she was careful to identify as a contempt, Senator Ringuette assumed that the Cabinet meeting took place at the same time as Question Period in the Senate which, as it happened, overlapped Question Period in the other place, making a Cabinet meeting at that time unlikely. For her part, the Government Leader explained that Question Period in the House of Commons is held at a fixed time, from 2:15 p.m. until 3:00 p.m. She also advised that the meeting of the Cabinet Committee started shortly after 3:00 p.m.

There is no rule that prohibits the Government Leader from leaving the Chamber to attend to Government business. The statement made by Senator LeBreton concerning her activities does not affect the authority or dignity of the Senate, nor did it impede the Senate or Senators in the performance of their duties. As well, the Senator's explanation did not purposely mislead or deceive, which is a necessary condition to establish a charge of contempt as noted in *Beauchesne's*, 6th edition, cit. 62 at page 19. In the end, it seems obvious that there was a misunderstanding as to certain facts. It seems to involve nothing more than that.

Questions of privilege and contempts are intended to deal with genuinely serious matters. The privileges of Parliament are not a sword to assault the rights of others, but a shield to protect Parliament and its members in the fulfillment of their duties and responsibilities. Rule 43 states

that "the preservation of the privileges of the Senate is the duty of every Senator" because, as the rule explains, "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..." Among the privileges that we must be vigilant in preserving are freedom of speech and control over our proceedings and deliberations. Similarly, contempts allow either House of Parliament, the Senate or the House of Commons, to vindicate its authority and dignity when challenged.

Procedures have been incorporated into the *Rules of the Senate* to "fast track" the consideration of possible questions of privileges and contempts. Criteria have been established that I, as Speaker, must use in evaluating the *prima facie* merits of any question of privilege or contempt. These rules and procedures are also meant to provide guidance to Senators when they consider whether an issue should be treated as a possible breach of privilege or a contempt.

I do not believe that rule 43 should be used to address a simple complaint or grievance, especially when it is the result of a misunderstanding. It does not meet the threshold required for a question of privilege or contempt. Such disputes do not "directly concern the privileges of the Senate or its committees" nor are they "raised to correct a grave and serious breach".

Debate — Use of a Third Language
September 26, 2006 *Journals*, pp. 443-445

Earlier this year, on Thursday, June 22, just days before the Senate adjourned for the summer, Senator Corbin rose on a point of order concerning an incident that had occurred earlier in the sitting during Senators' Statements. Before getting to the point of order, I would like to briefly review that incident.

At the start of the sitting, I had asked the Chamber whether there was leave for Senator Watt to make a statement in Inuktitut. After leave was granted, Senator Watt proceeded to make his statement. Immediately thereafter, Senator Comeau rose to caution fellow senators as to what had just happened. As he explained, the Senate should be careful in consenting to requests to use a third language when it is not possible to ensure simultaneous interpretation in both official languages.

It was Senator Comeau's remarks that prompted Senator Corbin to raise his point of order in which he sought to raise several issues. First, he claimed that his rights as a senator had been infringed because he was unable to listen to Senator Watt's statement in his mother tongue. As it turned out, the French channel was mostly silent throughout the statement while the English interpretation was sporadic. Second, he claimed that Senator Comeau's statement violated rule 22(4) since it anticipated debate on Senator Corbin's own Order Paper motion advocating the right of aboriginal senators to speak their native language in this House. Finally, he asked for a ruling as to whether Senator Watt was indeed allowed to exercise "his ancient and Aboriginal right" to speak in Inuktitut and, consequently, whether the Senate must oblige and provide interpretation of Inuktitut in Canada's two official languages.

By way of response, Senator Comeau stated that he was prepared to leave the matter in my hands for a decision. As it appeared that no other Senator sought to contribute their views on this point of order, I then agreed to take the matter under advisement. During the summer adjournment, I have had ample opportunity to review the *Debates* as well as the procedural authorities and am prepared to give my assessment of what transpired.

Let me begin by addressing the three specific issues that Senator Corbin raised before exploring in greater detail some other aspects of the use of third languages in the Chamber. First of all, Senator Corbin's dissatisfaction with the lack of adequate translation echoes the comment that Senator Comeau made. On this point, both Senators appear to be in agreement. There is, however, a real challenge for the interpretation service when a third language is used, especially without sufficient notice. While French and English are, in law, the official languages of the country and their use in Parliament is guaranteed, no rule of the Senate prohibits the use of third languages. Indeed, there is precedent for permitting the use of third languages with leave of the Senate. At the same time, it must be stressed that no resources are allocated for the provision of translators for these third languages whatever they may be.

When Senator Watt successfully obtained leave to speak in Inuktitut, he also had an English translation of his text. Unfortunately, the current configuration of the Chamber's interpretation booth does not readily permit translation of a third language simultaneously in both English and French. Even if Senator Watt had also provided a French translation, there would still have been a problem for the interpreters since both interpreters share the same booth and sit side by side. Since only one microphone can be on at a time, it is not possible for the English and French interpreters to speak at the same time. In other words, only the English *or* the French microphone can be used at any given time. This explains why the French channel was mostly silent throughout Senator Watt's statement. This is a real problem and there is no easy remedy.

Senator Corbin also contended that Senator Comeau infringed the rule against anticipation in that his comments raised issues more properly addressed through debate on Senator Corbin's motion supporting the use of aboriginal languages in this Chamber. Senator Corbin has raised a valid issue. Rule 22(4) provides that when making a statement "a Senator shall not anticipate consideration of any Order of the Day ..." Senator Comeau himself acknowledged the fact that there was a motion before the Senate dealing with the issue of aboriginal languages. Nonetheless, I think it is fair to say that Senator Comeau did not intend to address specifically the subject of Senator Corbin's motion which involves, in part, the recognition of "the inalienable right of the first inhabitants of the land ... to use their ancestral language ..." In fact, both Senators, as I have already noted, were concerned with the circumstances of the incident that included the difficulties which Senators experienced in the provision of interpretation of Senator Watt's remarks.

The third part of Senator Corbin's point of order had to do with his motion on the Order Paper. The Senator asked me if I thought that, when Senator Watt spoke in Inuktitut, he was in fact "exercising his ancient and Aboriginal right as a member of the Senate to speak his living language..." This is a question I decline to answer as part of the point of order. To do otherwise would inappropriately prejudge a decision which belongs to the Senate itself under the terms of the motion which the Senator has placed before this Chamber for its determination.

With respect to the broader question of the use of third languages, it might be helpful to remind Honourable Senators of the long tradition that we have of seeking to accommodate special needs and interests so long as it is within our capacity. This practice of reasonable accommodation involves not only requests to use a third language, but also when Senators have sometimes asked if other Senators might read their prepared speeches on their behalf because of illness. More recently, Senators will know that our reporters have applied their stenographic skills to enable real time bilingual captioning of the proceedings here in the Chamber for the benefit of hearing impaired Senators and visitors in our galleries. This captioning service is also provided to the televised proceedings of committee meetings.

If we draw on these examples, perhaps there is a way that we can reasonably accommodate senators who wish to speak in a third language. In such a case, I would recommend that an English and French translation be provided to the Senate Chamber staff well in advance of the sitting to allow for distribution to all senators in the Chamber in a similar way that Speaker's rulings are distributed. Nonetheless, it is important to bear in mind that when a third language is used in the Chamber, meaningful debate is rendered more difficult given that few Senators, if any, will understand what is being said, and the ability to provide English and French interpretation remains a challenge. On this basis, I find that the concerns of Senators Comeau and Corbin are well founded. Senators should be able to listen to all deliberations in this Chamber in the official language of their choice. This does not necessarily mean that third languages can never be used. However, given the current circumstances, if they are to be used, they should be relatively brief and preferably in the form of a statement, tribute or other similar intervention, not substantive debate.

In the absence of any established rules or procedures with respect to the use of third languages, the concerns shared by Senator Comeau and Senator Corbin are real. At the same time, in keeping with the principle of reasonable accommodation, I suspect the Senate will do what it can to accommodate such future requests as best it can.

Content of Notice for Question of Privilege
October 19, 2006 *Journals*, p. 535

If a point of order is to be raised in order that the chair is not misunderstanding the rules, I would be happy to hear that point of order.

However, my understanding of where we are is that a point of order was raised about the notice that had been given on a question of privilege, and we heard the arguments. That matter is under consideration by the chair. The house agreed that everything is frozen in time, and it is Senator Stratton's right to raise this question of privilege, in which all honourable senators are interested because privilege is something we all share, so that the timeliness of giving the notice of the question of privilege is maintained. It is maintained until the chair rules on the point of order.

As to where we are now, it would be out of order to raise this matter under any rule. It is the ruling of the chair that we will proceed as we had agreed earlier in the day. A ruling will come down on whether or not the notice of the question of privilege was in order. If it is found to be in order, Senator Stratton will be not at any disadvantage in the order of time in presenting the argument as to whether there is a prima facie case.

Bill — Debate When Subject-Matter Referred to Committee
October 25, 2006 *Journals*, p. 550

Honourable senators, the chair will try to be helpful in dealing with the matter.

The point that was raised by Senator Carstairs and the manner in which she raised it is a valid one. Namely, if there were a report being drafted for submission the Senate cannot anticipate the report nor make it public, just as honourable senators of the given committee cannot make public the contents of that report until it is tabled.

The motion before us is a continuation of debate at second reading on the principle of the bill. That debate is very much before this house, notwithstanding the fact that the subject matter has been under study by the Special Senate Committee on Senate Reform.

I will conclude by recommending that Senator Tkachuk continue and that he, to every extent possible, not anticipate the content of the report because it is much better to speak as an historian than as a prophet.

Content of Notice for Question of Privilege

October 26, 2006 *Journals*, pp. 557-560

Last Tuesday, during the time for Statements, Senator Stratton advised the Senate that he had decided not to proceed with his question of privilege that he had raised last Thursday, October 19.

Honourable Senators will recall that I had reserved my decision on Senator Fraser's point of order which touched on the adequacy of the notice in relation to the alleged breach of privilege claimed by Senator Stratton. This point of order remains outstanding. Senator Stratton's decision with respect to forsaking his intention to pursue the question of privilege does not eliminate my obligation to deal with this point of order.

Let me briefly summarize elements of the exchanges brought up last Thursday with respect to this point of order. Senator Fraser began by objecting that the notices given by Senator Stratton were inadequate because there was too little information about the substance of the privilege complaint. Based on this limited information, she maintained that no senator could know what the question of privilege was about. A number of Senators also contributed their views. For his part, Senator Comeau, while generally empathetic with Senator Fraser's position, explained that rule 43, as it is currently written, requires only that a senator give notice "without in any way having to provide the substance of the motion." The Senator stated that the rules do not require more than a simple notice. Senator Cools echoed some of the arguments of Senator Fraser. According to Senator Cools, notice ensures that senators are not caught or taken by total surprise. As she explained, the notice should contain enough information to allow senators to prepare themselves should they want to speak on the question of privilege. Senator Austin was also of the view that the "disclosure of a general nature" of the question of privilege is necessary. Finally, Senator Banks, without taking a specific position, pointed to an apparent conflict between rule 43(1) and rule 59(10). I wish to thank all Honourable Senators who participated in the exchanges on this point of order.

Since the time when the point of order was first raised, I have taken the opportunity to study the rules, read the authorities and examine recent practices to inform myself as best I can about how rule 43 should be understood and applied. The specific issue at hand is whether Senator Stratton's written and oral notices were sufficient to satisfy the requirements of Rule 43.

In assessing the meaning of notice, which is central to the determination of this point of order, it is essential to look to the purpose of the particular notice required. I feel it appropriate to consider not just rule 43, but other Senate rules as well as current practices that provide a better sense of what notice is meant to be and the purposes that it serves. Part VI of the *Rules of the Senate*, from rule 56 through 59, is all about notices. Not only do these rules identify the period of a notice, either one or two days when notice is required at all, but they also confirm that the content of the notice must be meaningful. For example, as rule 56(1) states: "when a Senator wishes to give notice of an inquiry or a substantive motion, the Senator shall reduce the notice to writing, sign it,

read it during a sitting of the Senate ... and send it forthwith to the Clerk at the Table." Similarly, rule 56(2) requires that a Senator seeking to propose an inquiry shall "as part of the notice under this rule give notice that he will call the attention of the Senate to the matter to be inquired into." It is not adequate, as a notice, to state simply an intention to move a motion or to propose an inquiry. To suggest otherwise would seriously distort the meaning and intent of the notice. As an example, who would accept as adequate notice a Senator's declaration to move a motion without any indication of its content or to have a committee undertake a study without knowing what it was about? Notice must include some content indicating the subject being proposed for debate and decision.

The merit of this proposition is evident from any review of the authorities that are often used to guide the understanding of Senate procedures. Marleau-Montpetit's *House of Commons Procedure and Practice* at page 464, explains that the purpose of notice "is to provide Members and the House with some prior warning so that they are not called upon to consider a matter unexpectedly." Motions for which notice is routinely required usually seek to solicit a decision of the Senate, either to order something be done or to express a judgment on a particular matter. Such motions are always subject to debate and the notice is required in order to allow parliamentarians to inform themselves of this upcoming debate and to prepare themselves should they wish to participate in the debate. In a ruling of June 21, 1995, Speaker Molgat reiterated the explanation for 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.

As to the specific notice requirements for a question of privilege, it must be stressed that the rules are somewhat different as to the process to be followed. As already noted, a senator seeking to raise a question of privilege must deliver a written notice to the Clerk's office three hours before a sitting in order to allow enough time to distribute it to all Senators. In addition, the Senator must provide oral notice during Senators' Statements. This double notice requirement reflects the importance to be accorded any claim to a question of privilege which a Senator wishes to expedite under rule 43. In addition, the requirements were deliberately imposed in order to allow reasonable preparation for consideration of the question of privilege to be raised the same day. This, in fact, is the exceptional aspect of the notice. The written notice alerts Senators of the possibility that a certain question of privilege may be brought to the attention of the Senate. The oral notice confirms that a Senator intends to pursue the matter at the conclusion of business under Orders of the Day. This is why I feel that the proper reading of the rule demands that the notice be sufficiently explanatory and comprehensive. In other words, the notice must clearly identify the matter that will be raised as a question of privilege.

I have reviewed past notices since the inception of rule 43 in 1991. In all cases that I have seen, Senators had provided an indication of the claimed question of privilege. In one case, the Senator did not adequately indicate the nature of the question of the privilege in the oral notice, but the written notice was clear enough about the complaint and no point of order was raised to challenge the oral notice. In another example, I have discovered a situation where the written notice was not followed by the oral notice, presumably because the Senator had decided to abandon the matter as a question of privilege. In all other cases reviewed thus far, both notices indicated the subject of the complaint giving rise to the question of privilege.

In this particular case, neither the written nor the oral notice provided by Senator Stratton dealt with the subject matter of the question of privilege. They simply stated that the Senator was going to raise a question involving "a contempt of Parliament" that "constitutes an affront to the privileges of every senator and of this place". These notices were insufficient. Accordingly, the point of order raised by Senator Fraser is well founded and, therefore, it would not have been possible for Senator Stratton to proceed with his question of privilege under rule 43 based on the inadequate notice provided.

Before sitting down, I wish to deal with two other issues associated with this point of order. First, I want to refer to the attempt made by Senator Stratton to present his motion on the question of privilege at the close of last Thursday's sitting. The Senator explained that he was doing this in accordance with rule 59(10) which allows for raising a question of privilege without notice. Senator Fraser immediately intervened to object to the proceeding and I then reminded the Senate of the fact that I had already reserved my decision and that it would be out of order to proceed with the alleged question of privilege at this time.

When Senator Fraser spoke in objection to what Senator Stratton attempted to do, she explained that rule 59(10) was probably designed to deal with circumstances arising in the course of an actual sitting. As she said "That is the only explanation I can find for the fact that rule 59(10) exists..." As part of my investigation, I looked at the work on the rule changes made in 1991. Before those changes were adopted, there was no mechanism to raise a question of privilege on notice. The old rule simply provided that:

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

Rule 59(10) is clearly linked to this old rule that has been completely displaced by current rule 43. What I suspect happened is that in making the consequential changes to the rules, this particular change was not properly adjusted, either to delete it entirely or to modify it to explain under what conditions a question of privilege could be raised without notice. I suspect that this is one of perhaps several rules that remain inconsistent with other rules or that are not easy to understand. It might be appropriate at some point to have the Standing Committee on Rules, Procedures and the Rights of Parliament look into this matter and clean up any of the anomalies and inconsistencies still in our rules.

While the Rules Committee is looking at that problem, it might also look at the second issue that I want to mention. Last Thursday, just after Senator Stratton gave oral notice during Senators' Statements, Senator Fraser sought to challenge the notice on a point of order. I responded by explaining that it was not possible to raise a point of order at that time. When I made this statement, I was working under the impression that Senators' Statements are part of the daily Routine of Business and that, in accordance with rule 23(1), points of order or questions of privilege are prohibited until we come to Orders of the Day. This, I think, is a view which is widely accepted and which appears to be reinforced by some of the language of our rules and operating documents, including the Order Paper. As I was preparing this decision, however, I looked more closely at the *Rules of the Senate* and I have come to a different position. Contrary to what I had previously believed, Senators' Statements are not, in fact, part of the daily Routine of Business. This is evident from a careful reading of rule 23(6). The fifteen minutes allocated to Senators' Statements are not part of the thirty minutes allowed for the Routine of Business which

begins with the Tabling of Documents and continues through Presenting Petitions which is called immediately prior to Question Period. My revised understanding as to the proper boundaries of the Routine of Business has been supported by a previous Speaker's ruling made December 11, 1997. Nonetheless, I feel that some of the Rules could be more clearly written and perhaps the Rules Committee might undertake to do this so as to reduce some of the confusion and misunderstanding that sometimes occurs. In this respect, I share some of the sentiments that were expressed by Senator Comeau and Senator Cools during the exchanges on this point of order last Thursday.

Committee Report — Procedural Significance of Observations
October 30, 2006 *Journals*, p. 670

I think that Senator Murray once again is right. Observations follow the signature of the Honourable Donald H. Oliver, chair. What lies before the chairman's signature is the official report.

With that, Senator Stratton's motion, seconded by Honourable Senator Comeau, is to adopt the report signed by Senator Oliver. As far as the document that was circulated, we go from the beginning to page 30.

Question Period — Questions to Ministers
October 31, 2006 *Journals*, pp. 675-677

On October 19, 2006, Senator Murray rose on a point of order to challenge the propriety of a question put to Senator Fortier during Question Period. Senator Murray believed that the question should not have been permitted. In his opinion, it was a question relating to Senator Fortier's political responsibility for Montreal and was outside his ministerial functions.

Let me begin by reviewing the event that prompted this point of order. During Question Period, Senator Fraser began her question by addressing it to the "minister for Montreal." The question dealt with a "new targeted initiative for older workers announced... by the Minister of Human Resources and Social Development Canada" and its relationship to metropolitan areas like Montreal. After Senator Fortier answered the first question, Senator Fraser then asked a supplementary question, to which the minister again provided a response.

In making his point, Senator Murray began by quoting rule 24(1) which states:

> 24.(1) When the Speaker calls the Question Period, a Senator may, without notice, address an oral question to:
>
> (a) the Leader of the Government in the Senate, if it is a question relating to public affairs,
>
> (b) a Senator who is a Minister of the Crown, if it is a question relating to his ministerial responsibilities...

Senator Murray argued that since Senator Fortier is the Minister of Public Works and Government Services, the question and supplemental question relating to Human Resources and Social Development Canada should not have been addressed to him. Senator Murray explained that while Senator Fortier has political responsibilities on top of his duties as a head of a

department, questions directed to him during Question Period must directly relate to his departmental duties and not to other responsibilities, including geographical representation.

A number of Senators also contributed to the discussion. Senator Fraser stated that when Senator Fortier was summoned to this chamber and appointed as a minister, he was "identified as being the minister to represent Montreal." Since the senator is publicly known to have this additional duty, it was Senator Fraser's contention that questions relating to Montreal fall within Senator Fortier's ministerial responsibilities.

Senator Comeau noted that while some ministers have "special duties" assigned to them by the Prime Minister, these responsibilities do not relate to their departmental responsibilities. He argued that questions to ministers during Question Period must deal directly with their departments and not with any other duties.

Finally, Senator Moore suggested that I consult the appropriate records to determine Senator Fortier's responsibilities as a minister in order to guide me as I prepare a ruling.

I wish to thank Honourable Senators who participated in the exchanges on this issue. I have looked into the matter and I am now prepared to rule on the point of order.

The history of rule 24 goes back to December 10, 1968, when a formal question period under Senate Rules was first organized as a feature of Senate sittings. Rule 20 was established, permitting senators to ask questions to the Leader of the Government. On June 14, 1977, an amendment was passed resulting in the wording we now find in rule 24.

In developing our guidelines for Question Period, we have often followed some of the general practices of the House of Commons. That House has dealt with this type of issue before and has established principles to assist their Speaker in managing oral questions. In a decision relating to Question Period on October 16, 1968, Speaker Lamoureux, ruled that:

> ... a minister may be asked questions relating to a department for which he has ministerial responsibility or acting ministerial responsibility, but a minister cannot be asked, nor can he answer questions in another capacity, such as being responsible for a province, or part of a province, or, again, as spokesman for a racial or religious group.

This principle then found its way into the practices of that chamber as reflected in *Beauchesne's Parliamentary Rules and Forms*, 6th edition. At paragraph 412, Beauchesne cites Speaker Lamoureux's ruling and repeats the wording of his decision.

Beauchesne's advice is also found in Marleau and Montpetit's *House of Commons Procedure and Practice*. At page 426 and 427, it states that "a question should not address... any presumed functions, such as party or regional political responsibilities." Therefore, it is clear to me that questions which are outside a minister's departmental responsibilities are out of order.

The question then becomes, "What are the ministerial responsibilities of Senator Fortier?"

In Senator Fortier's Commission of Appointment as a minister of the crown, he is identified as the Minister of Public Works and Government Services. The Commission does not mention any regional responsibility for the region of Montreal. I therefore conclude that duties assigned by the

Prime Minister to Senator Fortier outside his department are political in nature and are outside his direct administrative responsibilities for Public Works and Government Services Canada.

During Question Period, the only questions put to Senator Fortier that will be in order are those that relate directly to his responsibilities as Minister of Public Works and Government Services.

Message from Commons
November 22, 2006 *Journals*, p. 782

It is the ruling of the Chair that the message has been received and is properly before the Senate. Reasons are to be provided in rulings. My reasons are several, *inter alia*. I would begin with a principle, and I apologize to the reporters, but it is a very ancient principle:

Nihil est in intellectu quod non prius in sensu, which means nothing is in the intellect which is first not in the senses.

Senator Cools has drawn our attention to the importance that, as Senators, we must know what is before us. How do we get things before us? One way is through the oral tradition. We table many things in this place, so the written tradition is equally an important process used in Parliament.

Furthermore, Honourable Senators will recall that we often do second reading of a bill and we never ever read the bill from cover to cover, which, if an Honourable Senator rose and insisted upon, would have to be done. The situation is the same for third reading.

Those are but some of the reasons why the Chair finds that the message is properly before us. The Speaker did rise and did commence to read it. The House expressed its unanimous view that the 30 pages ought not to be physically read but that the message and its contents would be before the House in its fullness. Thus, part of it has been presented in the oral tradition and the rest was presented in the written format. These are my reasons and that is my ruling.

Debate — Adjourning in Name of Absent Senator (Ruling given by the Speaker *pro tempore*)
February 7, 2007 *Journals*, pp. 1024-1026

I am ready to rule on the point of order raised yesterday by Senator Comeau when adjournment of Bill S-222 was proposed.

At the end of the initial speeches on the bill, Senator Moore moved that further debate be adjourned to the next sitting and that the item stand in the name of Senator Jaffer.

Senator Comeau rose on a point of order to argue that, since Senator Jaffer did not appear to be present at the time, the item should not be adjourned in her name. This led to a discussion of the practice of adjourning an Order of the Day in the name of a particular senator. During this discussion some senators asserted that items have often been adjourned in the name of another senator, while others considered this a questionable practice.

After discussion on the point of order, the item was adjourned by Senator Moore, seconded by Senator Robichaud, as indicated in yesterday's *Journals*, at page 1016. Given the different views that had been expressed, I indicated that I would address the matter in a ruling. Senator Fraser

then rose on another point of order to express concerns about a recent tendency to refer to absent senators and to encourage senators to avoid this in the future, a point that Senator Comeau noted reinforced his position on the original point of order. I indicated that I would also address this issue in the same ruling.

Let me begin by reading rule 49 in its entirety:

> 49.(1) 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.
> (2) 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).

This rule is key in dealing with adjournment of debate in a senator's name, and it leads to conclusions of relevance, depending on whether the item is government business or not.

With respect to government business, under rule 49(2) items are adjourned to the next sitting of the Senate and do not stand in the name of any particular senator. In practice, a senator's name will sometimes be specified when the motion for the adjournment of an item of government business is proposed, but this is of no procedural weight and the name does not appear on the Order Paper. Instead, it is an indication that a particular senator is interested in speaking to the matter.

In the case of an item of other business, rule 49(1) is clear that, when adjourned, it will stand either in the name of the senator who adjourned debate or in the name of another senator, if so specified. Accordingly, it is acceptable to move a motion to adjourn debate in another senator's name. The rules allow this, and practice confirms it. Indeed even substantive motions, which can trigger debate, are sometimes moved by one senator on behalf of another, as is the case with motion 131, currently on the Order Paper, which was moved by Senator Tkachuk for Senator Segal. Similarly, rule 56(3) allows for notice by one senator for another senator not then present.

Of course, adjournment by one senator in the name of another will most frequently occur if the senator in whose name the item is adjourned happens to be away from the chamber. A senator who expects to be absent, but who wishes to speak to an item, may ask a colleague to adjourn debate in the absent senator's name.

This does not mean that the senator in whose name an item is adjourned has a monopoly on speaking to it next and can therefore hold up debate. This matter was addressed in a ruling by Speaker Molgat on December 10, 1996, which appears at pages 744 and 745 of the *Journals*. This ruling noted that, although an item of other business may be adjourned in a particular senator's name, this "...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." The ruling goes on to note that "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." Therefore, a senator in whose name an item is adjourned has the right to speak first when it is next debated. If,

however, another senator is ready to speak and the senator in whose name the item stands is not, the senator who is ready to speak has every right to do so.

As to the matter of referring to senators who may or may not be present, *House of Commons Procedure and Practice* by Marleau and Montpetit is clear, at page 188, that "the Speaker has traditionally discouraged Members from signalling the absence of another Member from the House because 'there are many places that Members have to be in order to carry out all of the obligations that go with their office'." This is just as much the case for senators. Similarly, *Beauchesne's*, at page 141, citation 481(c) of the sixth edition, prohibits reference to the presence or absence of specific members. This general caution applies most clearly to debate, and I should note that the very wording of rule 49(1) does provide the basis for an exception when dealing with motions to adjourn debate, as I outlined earlier. In other cases, where our rules require the recognition of a senator's absence, such as rule 11 under which the clerk must inform the Senate of the Speaker's unavoidable absence before the Speaker *pro tempore* takes the chair at the beginning of a sitting, reference to this absence is entirely appropriate, indeed required. Moreover, information about attendance is readily available in the *Journals* and the Attendance Registry — in fact the Senate has a comprehensive regime for tracking senators' work. Nonetheless, senators should be cautious in referring to the absence of members in debate.

In conclusion, I find that the proposal to adjourn debate on Bill S-222 in the name of another senator was in order.

Motion — Senate's Congratulations to Speaker (Ruling given by the Speaker *pro tempore*)
February 8, 2007 *Journals*, pp. 1037-1039

Last week, on Tuesday January 30, a point of order was raised by Senator Comeau while the Speaker was in the chair. I have had the opportunity to consult with the Speaker on this matter and am delivering this ruling on his behalf. The point of order occurred after Senator Joyal had completed his speech on his motion to express congratulations and confidence in the Speaker. While Senator Comeau felt certain that all Senators would agree with the intention of the motion, he questioned its acceptability as a confidence motion in the chair. After quoting section 34 of the *Constitution Act, 1867*, he stated that the Senate does not have the authority to appoint or remove its Speaker, since this power is reserved solely for the Governor General. Further, Senator Comeau suggested that if the Senate wished to take up Senator Joyal's proposal, it would have to seek another more appropriate vehicle to achieve this goal.

Several other senators contributed to the debate on the point of order. Senator Murray stated that the motion could be amended by deleting its second half, thus resolving Senator Comeau's objection. In addition, Senator Murray recalled that a motion of censure had been moved against one of our former Speakers in 1990.

Senator Hays, during his intervention, sought to draw a distinction between the text of the motion and the content of Senator Joyal's speech. He explained that although Senator Joyal's speech, which he felt was more in keeping with the investigative nature of an inquiry, could lead one to believe that the effect of adopting the motion would be to change the way our Speaker is appointed, there was nothing in the text of the motion to support that conclusion. He also noted that a great deal of leeway has always been accorded to senators with respect to debate on motions or inquiries. Senator Fraser, for her part, echoed Senator Hays' comments and reinforced the idea that the wording of the motion is not unconstitutional. Rather, as she noted, it states a

reality: the Speaker must enjoy the support of a majority of Senators, otherwise his rulings may be overturned and his service to the chamber rendered ineffective.

Senator Corbin, quoting *Beauchesne's*, 6th edition, cautioned senators that the Speaker is not authorized to render a decision on a constitutional question or a question of law. He contended that Senator Comeau was attempting to ask for such a ruling in his point of order. Finally, Senator Cools spoke to state her support of Senator Comeau's objection and Senator Murray's comments. She added a few other points to the discussion. First, she stated that the motion is composed of two distinct propositions and could be divided into two questions. She then appealed to Senator Joyal to consider making such a division to his motion. Second, Senator Cools raised the concern that the content of this motion and the nature of the point of order would require the Speaker to be a judge in his own cause. She believed that it would be more appropriate that any debate on the future of the role and functions of the Speaker occur in a separate motion without reference to the incumbent.

Before giving a decision on the matter, let me thank, on behalf of the Speaker, all honourable senators who participated in the discussion on this point of order. In the interval, the Speaker and I have had time to review the *Debates*, examine the procedural authorities and review relevant precedents.

The question to be decided is whether Senator Joyal's motion is procedurally acceptable for debate and decision by the Senate.

Although Senator Comeau's objection was based on both the motion and the speech of Senator Joyal, the question at hand is the motion's procedural acceptability. As a result, it is sufficient to limit consideration to the motion. In addition, while acknowledging Senator Corbin's *caveat* that the Speaker is not permitted to rule on constitutional questions, the chair's role is to give a ruling on whether debate may proceed on this motion.

After looking at the authorities, there are many precedents for motions of confidence in a Speaker or, as they are sometimes called, motions of censure. As Senator Murray recalled in his intervention, one censure motion in the Senate was moved against the Speaker in 1990, during the events surrounding the GST debate. This motion was debated and remained on the Order Paper for a considerable period of time. Furthermore, *House of Commons Procedure and Practice* by Marleau and Montpetit notes, on page 266, that there have been motions of censure brought against the Speaker of the House of Commons and its Deputy Speakers. In addition, at page 294, over fifteen examples of similar motions against Speakers of provincial and territorial legislatures are cited. From these cases, it is clear that motions of censure and confidence motions in a Speaker are in order and can be debated and decided by an assembly. These precedents are in keeping with remarks found in *Erskine May*'s, 23rd edition, on pages 386-387, explaining that any reflection on a Speaker, including confidence issues, may only be debated by way of substantive motion, which allows for a distinct decision of the House.

Thus far the issue that has been assessed relates to the acceptability of a censure motion. The authorities and precedents are clear, a censure motion is acceptable. In this case, however, there is nothing in the language of the motion suggesting censure. All the more reason to find it in order. Whatever the outcome, it would not bring about any changes in the current appointment process, role or functions of the Speaker; it would merely be a reflection of the Senate's opinion. Such motions are not uncommon. Already in this session, several motions have been proposed and adopted commenting on national and international events and issues. As a result, there are no

procedural reasons to disallow this motion. The point of order is not well founded, the motion is procedurally acceptable, and debate may continue.

Bill — Requirement for Royal Recommendation
February 20, 2007 *Journals*, pp. 1095-1098

On January 30, when the Senate resumed consideration of second reading of Bill S-221, an Act to establish and maintain a national registry of medical devices, Senator Comeau raised a point of order. He questioned whether it was appropriate that the bill originate in the Senate. Bill S-221 provides that the Minister of Health shall designate a Registrar of Medical Devices, and that this person shall maintain a registry. Senator Comeau contended that the bill would require that additional expenses be incurred, and that it must therefore involve an appropriation of public funds. What follows from such a finding, he argued, is that Bill S-221 then requires a royal recommendation and must originate in the other place.

Senator Comeau pointed out that, under clause 4 of the bill, the registry would be distinct from the department's regular activities and require a separate operating budget. He then drew the senators' attention to the 23rd edition of *Erskine May*, at page 886, which reads:

> When a bill contains a provision extending the purposes of expenditure already authorized by statute (for example, by adding to the functions of an existing government agency or publicly funded body, extending the classes of persons entitled to a statutory grant or allowance, or extending the range of circumstances in which such grants or allowances are payable), that provision will normally require authorization by Money resolution.

On the basis of the reasoning found in *Erskine May*, Senator Comeau concluded that receiving Bill S-221 in the Senate would offend sections 53 and 54 of the *Constitution Act, 1867* and rule 81 of the Senate.

Sections 53 and 54 of the *Constitution Act, 1867*, provide:

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

Senate rule 81 stipulates:

> 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.

Three other senators offered their contributions to this debate. Senator Carstairs expressed the view that, "It is not the purpose of this bill to spend money, therefore, it is not, by definition, a money bill." Support for Senator Carstairs' opinion came from Senator Fraser. She noted that almost all legislation may have monetary implications, without its main purpose being to spend

money. In her comments, Senator Fraser suggested that a bill that does not set out to change the budgetary situation or budgetary policy of the government and that does not affect taxes is not a money bill, even if its ancillary effect is the spending of some money.

The sponsor of the bill, Senator Harb, began by expressing his agreement with the comments of Senators Carstairs and Fraser, and went on to deal specifically with the notion of Bill S-221 as a money bill. He pointed out that regulations under the bill could conceivably impose a fee on those who use the registry; this could result in the initiative being revenue neutral, or even generating revenues for the Crown. Significantly, Senator Harb also pointed out that the Auditor General's report acknowledged the existence of an inspection strategy at Health Canada, although it recommended the elaboration of this strategy.

I would like to express my appreciation to those honourable senators who offered their contributions to the discussion on this point of order. I have had an opportunity to consult the authorities and am prepared to make my ruling.

The issue with respect to the introduction of Bill S-221 in the Senate is whether the provisions of this bill appropriate "any part of the public revenue or impose any tax or impost", as set out in section 53 of the *Constitution Act, 1867*. It is very difficult to ascertain, without extensive evidence and based purely on the provisions of a bill, what the financial implications of its enactment might be. Moreover, as Speaker, I am obliged to avoid ruling on questions of law. As Speaker Molgat noted in his ruling of April 2, 1998, in the case of Bill S-13, the *Tobacco Industry Responsibility Act*,

> The . . . question . . . 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 in my authority, however, is the examination of the bill in order to assess what it declares itself to be.

I was persuaded by the logic of Speaker Molgat's remarks and examined Bill S-221 to see what, on the face of it, the bill "declares itself to be". In considering this question I was guided by Speaker Molgat's decision in Bill S-12, the *First Nations Government Act*, rendered on February 4, 1997 and directly on point with the current case:

> I have carefully reviewed Bill S-12 . . . 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.
> [...]
> 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.

With respect to the present situation, no part of Bill S-221 discusses an appropriation of the public revenue, or the levying of any tax or impost. What it does do is create a new registry, staffed by a registrar who is to be a person already employed by the department. Are there expenditures involved with this process? Almost certainly. Whether these expenditures are new, however, is less certain. Under the *Department of Health Act*, the "powers, duties, and functions of the Minister", already include "the establishment and control of safety standards and safety information requirements for consumer products"; this function appears to cover the same type of activity contemplated by Bill S-221. In addition, as I mentioned earlier, the Auditor General's report confirmed the existence of an inspection strategy, which obviously has had funds granted to it. This current initiative may well be construed as an elaboration of the existing system.

Certainly it can be argued that the fact that this is an originating bill — as opposed to an amending bill — might increase the possibility of new spending, but I do not believe that such is necessarily the case. Rather, it is equally plausible that the bill will require that an existing function be carried out in a new way. Consequently, it is not certain that this bill adds to the functions of an existing government agency, as set out in the *Erskine May* test.

Senator Harb offered the possibility that this bill, through its authorization of regulations, might impose fees that could effectively raise enough funds to pay for the registry it creates. Admittedly, this talk of potential fees put forward by Senator Harb is speculative. Suggestions to the contrary on my part, however, would be equally speculative. It is not my place as Speaker to conjecture, but rather to do my utmost to maintain the role of the Senate, so long as it involves no trespass on the privileges of the other place or on the financial initiative of the Crown. Once again, I find compelling the comments of Speaker Molgat when ruling on Bill S-13:

> 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.

I am similarly persuaded by the common sense argument that it could certainly not be intended that every bill that has any monetary implications whatsoever must be introduced first in the other place. Such an interpretation would greatly impede the power of the Senate to initiate legislation. For this reason, and those I have previously stated, I find that Bill S-221 is properly before the Senate and that debate on second reading may proceed.

Question Period — Questions to Committee Chairs

March 20, 2007 *Journals*, pp. 1160-1162

At the end of Question Period on Thursday, February 15, while the Speaker *pro tempore* was in the Chair, Senator Comeau rose on a point of order respecting some questions posed to committee chairs. Referring to rule 24(1)(c), he expressed concern that several questions had dealt with matters not actually before any committee. He argued that such questions anticipate a decision of the Senate and should be ruled out of order.

In addressing this issue it seems pertinent to cite rule 24(1):

> When the Speaker calls the Question Period, a Senator may, without notice, address an oral question to:
>
> (a) the Leader of the Government in the Senate, if it is a question relating to public affairs,
>
> (b) a Senator who is a Minister of the Crown, if it is a question relating to his ministerial responsibility, or
>
> (c) the Chairman of a committee, if it is a question relating to the activities of that committee.

As noted in the Speaker's Ruling of May 10, 2006, the aim of Question Period "is to promote the immediate exchange of information about the policies of the Government or the work of a committee." As all senators will appreciate, the Senate functions best when its business, including Question Period, proceeds in a courteous and dignified manner appropriate to the Chamber of sober second thought.

In the Senate, it is the tradition and practice that decorum and mutual respect prevail during Question Period, even as issues that can arouse great passion are being considered. It is the norm that senators are respectful in asking questions, providing very brief contextual explanations when necessary. It is also the norm that questions are answered in a similar manner, as is shown by the practice of expressing thanks to the Honourable Senator for the question. In addition, it is the general practice that senators refrain from any disruptive outburst. In the Senate, Question Period is an opportunity to exchange information.

The Rules are clear as to which senators may be asked questions during Question Period. If it relates to public affairs generally, a question can be asked of the Leader of the Government. If it relates to the ministerial responsibilities of a departmental Minister, the question can be asked of that senator. If it relates to a committee's activities, the question can be asked of the chair of that committee. On this latter point, "activities" can be interpreted generously. As noted in a Speaker's Ruling of November 13, 1980, committee activities include "the specific things that are done by the committee, such as the holding of meetings, the election of a chairman, the calling of witnesses, the hiring of staff, advertising, and any other matter relating to the manner in which the committee conducts its proceedings." General issues about planning and upcoming work are included in the broad category of committee activities.

Rule 24 establishes that a very wide range of questions may be posed during Question Period. By contrast, rule 22(4) is quite explicit that Senators' Statements shall not anticipate any Order of the Day. The lack of such a restriction in rule 24 and its broad wording suggest that questions can cover the full range of public affairs, whether or not they anticipate an item on the Orders of the Day. It is also interesting to refer to page 420 of *House of Commons Procedure and Practice*, by Marleau and Montpetit, which notes that the House of Commons has permitted questions anticipating an Order of the Day since 1997.

Going beyond the issue of what questions can be addressed, and to whom, it is the Senate's practice that, if a Senator is comfortable answering a question, he or she should be allowed to do so.

It is well to emphasize that the Senate is, to a considerable degree, a self-regulating House. While rule 18 allows the Speaker to intervene on his or her own initiative to preserve order and decorum, this authority is used with circumspection. In most circumstances, the Speaker's duty is to preside over the proceedings, ensure the orderly flow of debate, and assist the Senate in moving through its daily business. For the Speaker to adopt an interventionist approach would be

a significant change in practice that is not often necessary and would likely be unwelcome. The self-regulating nature of the Senate is particularly in evidence during Question Period, since rule 23(1) prohibits the raising of points of order and questions of privilege at this time. In terms of the flow of business during Question Period, the Speaker should not normally interfere.

Another issue affecting the decorum of Question Period, and which needs to be reiterated, is the use of personal electronic devices. They interfere with the sound system and make it difficult to follow proceedings. Once again, all Honourable Senators are called upon to keep these devices out of the Chamber. Even when they are in the off position they can cause static in the sound system.

Returning to the specific issue of the point of order, the questions that were put to committee Chairs on February 15th were not out of order. More generally, however, all Honourable Senators are encouraged to reflect on the manner in which we conduct ourselves in order to ensure that we preserve the useful flow of information that has long been the tradition and hallmark of Question Period in the Senate. In this manner we shall best serve all senators.

Debate — Extension of Time for a Determined Period
April 24, 2007 *Journals*, pp. 1361-1364

On Tuesday, March 27, 2007, Senator Murray participated in the debate on the motion to amend the second reading motion of Bill C-288, dealing with the Kyoto Protocol. At the end of the fifteen minutes allotted to him for debate, the senator agreed to ask leave for an extension of his speaking time in response to a request by Senator Fraser to pose a question. Leave was granted with the condition that the extension be for no more than five minutes. Following the exchange between Senator Fraser and Senator Murray, Senator Cools rose to put a question to Senator Murray. However, as the agreed extension of five minutes had expired, as Speaker I informed Senator Cools of that fact and indicated that she was being recognized for debate. While acknowledging that Senator Murray's time had by agreement been extended for only five minutes, Senator Cools objected to this limitation on debate and proceeded to put a question to Senator Murray, which was duly answered. Senator Cools then continued with some comments that led to a request for a further response from Senator Murray. I then recognized Senator Joyal who asked whether Senator Murray's time had been extended so that he could ask him a question. I answered by stating that the debate had passed to Senator Cools. This led Senator Cools to state that she had thought she had "asked the Chamber if we could extend Senator Murray's time. Senator Murray stood up and spoke and I was answering him." After some additional exchanges with several senators about what had actually happened, debate on Bill C-288 was adjourned and Senator Cools rose on a point of order to challenge the practice of granting leave to extend a senator's debate for a five minute period of time. According to the senator, this practice is "unfair" because it denies senators the right to express themselves on important issues that require further debate.

Intervening to speak to the point of order, Senator Fraser reminded those present that the Senate is master of its own proceedings and suggested that the Senate should perhaps reconsider the practice of automatically giving five additional minutes each time leave is sought to extend debate. Senator Comeau was of the opinion that the practice of granting leave for five minutes had created the equivalent of a Senate convention or practice, which serves everyone's interests fairly. It was his opinion that the five minutes was originally a courtesy period given to allow the orator to wrap up a speech. He added that, if the Senate wanted to change the practice of granting

an extension of only five minutes, the senator requesting leave to extend debate should indicate how much additional time was needed.

Senator Cools rose again to stress the importance of taking advantage of the immediacy of questions and comments following a senator's intervention. In her opinion, a comment or question does not carry the same weight when it takes place after the fact and senators should be able to put comments or questions directly to the senator involved. In closing, Senator Cools repeated that she had thought she had asked for an extension of Senator Murray's time and that was how she believed that she had participated in the debate on Bill C-288.

I wish to thank, as always, those senators who contributed to the discussion on the point of order. At the time, I decided to take the issue under advisement. While the Senate was adjourned, I reviewed the *Debates of the Senate*, *Rules of the Senate*, precedents and relevant authorities and am now prepared to give my ruling.

First, I would like to point out that rule 37(4), which deals with the time limit on senators' speeches, is quite categorical. It states that "[...] no Senator shall speak for 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." This time limit 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.

Despite these mandated time limits on debate, it remains possible to extend the time for an individual senator's debate through leave. Originally, such requests were without any restriction. This then led to objections that too much time was being monopolized when leave was granted. Speaker Molgat acknowledged this situation in a ruling made on May 11, 2000, when he addressed a point of order similar to this one. Referring to rule 37(4), Speaker Molgat recognized that:

> 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.

Speaker Molgat went on to state that, through rule 3, it is procedurally acceptable to suspend rule 37 strictly limiting the time available for debate and, at the same time, impose specified conditions or limits of time to a request to extend the time for debate. As Speaker Molgat explained in his ruling:

> [...] 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 [...], 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.

I concur with Speaker Molgat's assessment and I accept his ruling, which was not appealed. In addition, I have found that *House of Commons Procedure and Practice*, by Marleau and Montpetit, supports this position. It states on page 498 that: "During debate, unanimous consent has been sought to extend briefly the length of speeches or the length of the questions and comments period following speeches." I believe that it is perfectly in order to set a specific time limit when requesting an extension of a senator's time in debate. Indeed, there is nothing prohibiting the inclusion of any condition in a request for leave to suspend a rule.

At the same time, I should note that in reviewing the precedents, there have been numerous instances since Speaker Molgat's ruling when rule 37(4) was suspended in order to give leave for a few additional minutes of debate. As mentioned by Senator Comeau, it would seem that the Senate does generally give leave for no more than five minutes, probably because it is usually sufficient to allow senators to wrap up their speech or to answer a few questions. This is not to say that it has become a convention or practice. In fact, no rule or precedent is ever created through the use of leave. However, I should add that there is nothing that binds the Senate to a particular limit, if any, in extending the time for a particular senator in debate. Indeed, in my study of precedents, I identified a number of instances when the Senate gave leave to extend debate by more than 5 minutes. I have examples when the Senate granted an additional ten minutes, 15 minutes and even as much as 30 minutes.

In addition, there is nothing preventing an additional request for an extension of time in debate when the original extension is exhausted. This is what I think Senator Cools thought had happened on March 27. However, as the *Debates of the Senate* show, the request was not actually put to the Senate and there is no indication that the Senate had agreed to the extension of additional time to Senator Murray beyond the five minutes. This, in turn, led to some confusion about whether Senator Cools was participating in debate on her own time or asking Senator Murray a question, prompting Senator Cools to raise her point of order.

In summary, it is my ruling that a request seeking leave to extend debate is procedurally acceptable. Equally, it is competent for the senator requesting leave, or for any other senator, to specify the length of time for that extension. In all such cases, however, the leave of the Senate is required to suspend the limits of debate established by our rules.

Senate Chamber — Decorum
April 24, 2007 *Journals*, p. 1364

Honourable senators, I would like to thank all senators for their input and, as Speaker, I am prepared to give my ruling on this point of order.

I agree with everything that has been said by the senators. The new position of the House of Lords of Westminster states that the Speaker has the same level of responsibility as the Lord Chancellor in the past. It was not up to the Speaker to rule; rather, it was up to the Lords.

Things here in the Senate of Canada are not the same as in the other place. As Senator Cools very clearly indicated, it is the senators who are responsible for the running of this honourable chamber. I would therefore like to remind all senators that, as parliamentarians, they are all responsible for respecting all the rules.

As Speaker of the Senate, I try to facilitate the full participation of all senators in the debates and during question period, while respecting both ethics and collegiality. That is the tradition of our chamber, although it is very different from the other place.

Motion — Resolution of the OSCE Parliamentary Assembly
April 24, 2007 *Journals*, pp. 1368-1370

On Tuesday, April 17, 2007, Senator Cools raised a point of order challenging the procedural acceptability of the motion moved by Senator Fraser, for Senator Grafstein, to authorize the Standing Senate Committee on Human Rights to consider the resolution on combating anti-Semitism and other forms of intolerance as adopted by the 15th Annual Session of the OSCE (Organization for Security and Co-operation in Europe) Parliamentary Association.

Senator Cools had four concerns with the motion. I propose to address each in turn.

The first concern is that the motion asks the committee to table its report no later than March 31, 2007. Given that this date is now passed, I agree with Senator Cools that the reporting date will require an amendment.

Secondly, Senator Cools noted that the motion refers to "Parliamentary Association", but observed that it should refer to the "Parliamentary Assembly". Senator Cools is correct with respect to the nomenclature and this error should also be corrected by an amendment.

Senator Cools then turned her attention to the larger question of whether it is in order to ask a committee of the Senate to "judge a proceeding of another Assembly," which, in her view, is prohibited by long standing parliamentary practice. The first issue to be determined, in my mind, is the nature of the OSCE Parliamentary Assembly. Honourable Senators, those of you who are participants in the Canada-Europe Parliamentary Association, will be familiar with this organization. The Parliamentary Assembly is, in essence, the vehicle by which the parliamentarians from OSCE- member nations can convene to consider and debate issues that touch on the mandate of the OSCE intergovernmental organization. In other words, it exists as a construct of its member parliaments, of which Canada is one. In my opinion, the OSCE Parliamentary Assembly is not a body with the same standing as our Parliament or another parliament. Furthermore, in that one of the fundamental goals of the OSCE Parliamentary Assembly is to promote inter- parliamentary dialogue and co-operation, this type of motion seems to be in keeping with the very objectives of the organization and would not constitute any violation of its status.

In addition, the motion itself does not in any way direct the committee to take any stand whatsoever, nor does it ask the committee to in any way pass judgment on the resolution. A motion to refer the subject-matter of the resolution to the committee would be in order. It is only a very small additional step to refer the resolution itself to the committee for consideration and report. Accordingly, I do not find that the motion is acting in the manner feared by Senator Cools.

This leads us to the last issue raised by Senator Cools in the point of order. Senator Cools questioned the ability of the Senate to refer to its committees "proceedings of other assemblies other than from the House of Commons." We are familiar with the privileges that apply, especially in Westminster-style parliaments, to the proceedings of their legislatures. However, as has already been established, the OSCE Parliamentary Assembly has no such standing and its

proceedings are not really analogous to those of a parliament such as ours. To the contrary, the motion does not attempt to refer proceedings of another parliament, but the conclusions of a body of which Canada's Parliament is a member for the consideration of one of our committees. Furthermore, a similar motion referring a resolution from the same institution to the Standing Committee on Human Rights was adopted by the Senate on February 10, 2004. Therefore, I also find that this aspect of the point of order is not sustained.

Having disposed of the various points raised in Senator Cools' point of order, I wish to consider the two issues raised by Senator Murray. First, he questioned the manner in which Senator Cools called the Senate's attention to her concerns. In Senator Murray's opinion, it appeared to him that Senator Cools followed a novel approach whereby she debated the merits of the motion, before signalling that she objected to its procedural acceptability. The Senator then concluded by again debating the subject of the motion. In my reading of the *Debates of the Senate*, I will accept that Senator Cools' concluding remarks may have strayed back into the merits of the motion, but I will also accept her contention that they did so in the context of her point of order. Nonetheless, Senator Murray's point is logical: any Honourable Senator, being of the opinion that an item on the Order Paper is not procedurally correct, should ask that the matter be resolved first, before entering into debate on the merits of the motion. I would, therefore, ask Honourable Senators to bear this in mind in the future.

The second matter raised by Senator Murray was whether a committee, such as the Human Rights Committee, needs an order of reference in order to consider a matter such as is put forward in the motion. In his comments, Senator Murray noted that only two committees are explicitly authorized to undertake work of their own volition, the Rules Committee and the Committee on Internal Economy, Budgets and Administration. Despite this limitation, Senator Murray noted that "some committees allow themselves a great deal of latitude in discussing and reporting on matters within their mandate without a specific order of reference." For the record, I would like to remind Senators that the *Rules of the Senate* also authorize the Committee on Conflict of Interest to initiate work within its areas of responsibility.

The *Rules of the Senate* are clear that it is only these three committees that can initiate consideration of matters that fall within the mandates spelled out in the rules. All other committees must have the matters referred to them by the Senate. There is no question that there is a wide range in the specificity of orders of reference given to committees. As noted by Senator Murray, some are very broad, and give committees a great deal of latitude, while others are more narrowly focused. For example, the Foreign Affairs Committee has an order of reference authorizing it to "examine such issues as may arise from time to time relating to foreign relations generally," a very broad order of reference. Others, such as the order of reference to the Transport and Communications Committee to examine and report on the objectives, operation and governance of the Canadian Television Fund, are more specific.

In his intervention, Senator Murray asked me to reflect on "the extent to which the Senate wishes to keep its standing committees on a short leash." While the Senator raises an interesting issue, it is not a matter for me, as Speaker, to decide. Rather, it is a matter only the Senate can decide when it considers proposed orders of reference.

In conclusion, debate on the motion may continue, but amendments relating to the reporting date and the name of the OSCE Parliamentary Assembly should be moved to correct it.

Motion — Action by a Foreign Government
April 24, 2007 *Journals*, pp. 1372-1373

On Tuesday, March 27, 2007, while the Speaker *pro tempore* was in the Chair, the Order was called for resuming debate on the motion urging the Government of the People's Republic of China and the Dalai Lama to enter into dialogue about the future of Tibet. Senator Cools then rose on a point of order about the form or acceptability of the motion. She emphasized that she was not speaking to the motion itself. She suggested that the motion was improper because, "[t]he Senate cannot directly communicate with or address a foreign sovereign." Communications with a foreign government, she suggested, should be from the Canadian Government and not from the Senate.

Senator Cools quoted approvingly a motion adopted by the House of Commons on February 15, 2007, suggesting that it offered a more appropriate model to follow. That motion stated that the Government of Canada should, in the opinion of the Commons, urge the Government of China and the representatives of the Tibetan Government in exile to continue dialogue. Senator Cools suggested that a motion of this type is in keeping with the "lawful and appropriate mode of proceeding," since it does not speak directly to the Government of China, but rather asks the Government of Canada to speak to it.

In making her case Senator Cools made reference to *Erskine May*. To quote the most recent version — the 23rd — at pages 712 and 713, "Addresses have comprised every matter of foreign or domestic policy; the administration of justice; the expression of congratulation or condolence...; and, in short, representations upon all points connected with the government and welfare of the country; but they ought not to be presented in relation to any bill in either House of Parliament." This indicates that, in the United Kingdom, Addresses have been used to communicate formally with the Crown.

Upon close reading, however, it will be noted that the citation does not clearly state that an Address is the only parliamentary vehicle whereby a House can make known its views on one of these classes of topics. The quote makes clear that they are a legitimate tool, but does not make it clear that Addresses are the only option available.

Motions of the type in question are not frequent in the Canadian Parliament, but a few can be found. On September 20, 1983, the Senate passed a motion demanding that the Soviet Government provide a full explanation of the unwarranted August 31, 1983 attack on a Korean Airlines passenger flight and co-operate with the investigation into the matter. In this case, the motion called upon the Speaker to convey the resolution to Presidium of the Supreme Soviet. There had been leave to put the motion, since no notice had been given.

Similar motions have also been adopted occasionally in the House of Commons. Instances occurred on September 30, 1998, December 10, 1998, October 10, 2002, and October 1, 2003. These motions were adopted after unanimous consent and, with one exception, without debate.

In the United Kingdom House of Commons, motions urging action by foreign governments frequently appear on the *Notice Paper* as Early Day Motions, for which no day has been fixed. These motions are tabled by backbenchers to draw attention to some matter of concern, typically without any expectation of debate, although it does appear that they are subject to review to ensure their acceptability. As noted at page 390 of *Erskine May*, "[a] notice which is wholly out of order may be withheld from publication on the Notice Paper."

Turning to the specific motion in question, no direct consequences seem to flow from it. It only provides an expression of the Senate's view. The motion does not require that its content be communicated to anyone, and it does not require action or follow-up. As Senators know, there is a general preference in the Senate to allow debate on a motion or an inquiry, unless it is clearly out of order. Both Canadian and UK practice suggest that there is sufficient flexibility to allow for motions of the kind proposed by Senator Di Nino. Of course, a motion framed in the way Senator Cools suggested would also be in order, and would avoid the concerns she raised.

In conclusion, the motion of Senator Di Nino is in order and debate on it may continue.

Bill — Message from Commons
May 1, 2007 *Journals*, p. 1396

Honourable Senators, I have heard enough to satisfy that I am able to issue a ruling on the point of order that has been raised by the Honourable Senator Cools. I thank her for raising it because there must be clarity in these matters.

When a message like this is read by the Speaker, it is accompanied by the bill, and in this case, Bill C-16. The record of the journey of the bill is contained in the latter pages attached to it. As Senator Cools rightly pointed out, on April 24, 2007, the document signed by Ms. Audrey O'Brien, Clerk of the House of Commons, ordered that the Clerk do carry this bill to the Senate and acquaint their honours that the House disagrees with their amendment. The message, Honourable Senators, which I read, had Bill C-16 attached to it, thereby ensuring that this House is in full possession of the bill. As I read, the House disagreed with the amendment that this honourable House has made. The motion in reply was made by the Leader of the Government in the Senate and that motion is before the House. All of this is quite in order, and that is my ruling.

Senate Chamber — Electronic Disturbances
May 2, 2007 *Journals*, p. 1415

I have heard enough to make a ruling on the point of order of the Honourable Senator Corbin. Pursuant to the *Rules of the Senate*, the Speaker determines when he or she has heard enough on a point of order. On the first part of Senator Corbin's point of order, he very correctly reads the rule that governs what is appropriate for statements during the time for Senators' Statements.

Senator Fraser has parsed correctly what has transpired. I looked at today's Order Paper and found nothing indicating that what Senator Goldstein said, anticipated anything on it. However, Senator Corbin was correct in saying that statements cannot concern matters that are on the Orders of the Day.

With reference to the matter of electronic devices in the Chamber, there was a ruling of the Speaker on May 16, 2006. That ruling was not appealed, which means it has the agreement of this House and it is categorical. The *Rules of the Senate* provide that electronic devices, which create a disturbance, not be brought into the Chamber.

In this Chamber, I have heard, as other Honourable Senators have heard, bells and other sounds go off. Having such electronic devices here is contrary to the *Rules of the Senate* and to the Speaker's ruling. The matter has been decided. Some Honourable Senators might wish to refer this problem to the Rules Committee for review in the light of changing technology, et cetera,

including better microphones. Even when some kinds of Blackberries are turned off, the wavelengths continue. Not all of the microphones in the Chamber have been changed and that is why even when the devices are turned off, the signal comes through and causes static.

Honourable Senators, that is my ruling.

Committees — Membership Changes

May 9, 2007 *Journals*, pp. 1509-1512

On Wednesday, April 25, 2007, Senator Banks rose on a point of order respecting the membership of the Standing Senate Committee on National Security and Defence. He raised several issues. As Senator Banks recognized, the less serious of his concerns was that the membership change form that removed three senators from the committee on February 27, 2007, without indicating replacements, gave the incorrect name for the said committee and referred to rule 86(4) rather than rule 85(4). His principal concern, however, was that rule 86(1)(r) provides that the committee is to be composed of nine members. Senator Banks questioned the propriety of removing members without replacements, since it effectively reduced the committee's membership from nine members, plus the ex officio members, to six, plus the ex officio members.

Senator Kenny spoke in support of this point of order, and Senator Cools then addressed concerns about the membership of committees. The senator suggested that such changes should only be done with the agreement of the senators involved and that changes made by the leaders should not permanently override the decision of the Senate, made when it adopts a report of the Committee of Selection. Senator Hervieux-Payette also participated in debate, underscoring the disruptive effects that unexpected changes or vacancies can have on the work of committees and inviting guidance about how this situation might be improved.

Finally, Senator Tkachuk suggested that there was no valid point of order. The senator referred to the *Rules of the Senate*, *Beauchesne*, *Erskine May*, and general Senate practice to argue that the membership of committees can be changed and that the changes made to the National Security and Defence Committee respected normal practice and were in order.

Given the importance of this question, I took the issue under advisement. I thank all senators who participated in discussion. A consideration of Senator Banks' principal point, that the membership change of February 27, 2007 should have replaced one senator by another senator, has led to a consideration of several closely related issues. The specific situation cited by Senator Banks did respect general practice and was not in contradiction with the rules. At the same time, there are several points needing clarification, and it might be appropriate for the Rules Committee to consider them.

An understanding of subsections (3), (4), and (5) of rule 85 is essential to this issue. Subsection (3) states that, once appointed, a senator is a member of a committee for the duration of the session. The appointment is, however, subject to subsection (4), which authorizes changes of membership by notices filed with the Clerk of the Senate. Subsection (5) specifies that the change of membership shall be made by the Leader of the Government for a government senator, by the Leader of the Opposition for an opposition senator, or by the leader of a recognized third party for a senator who is a member of such a party. In all these cases, the leaders may name another senator, typically the whip, to exercise this authority on their behalf.

Allowing changes in membership during the course of a session provides a convenient way to co-ordinate caucus work. If, for example, a senator is obliged to be away from a meeting for other responsibilities or if a senator who is not a regular member of a committee has particular expertise in a matter under consideration, rule 85(4) provides a way to accommodate these circumstances.

The Committee of Selection has recommended the appointment of independent senators to committees. These independent senators can indicate, in writing, that they agree to accept the authority of either the government or the opposition whip for the purposes of membership changes. This arrangement is entirely voluntary. If an independent senator does not write such a letter, or withdraws it, the rule respecting changes does not apply. Similarly, if a senator withdraws from a caucus, rule 85(4) would cease to apply. In the latter case, that senator would retain any then current committee memberships unless removed, either through a report of the Committee of Selection or a substantive motion, adopted by the Senate.

I will now turn to Senator Banks' concerns. On his first point, the rule number and the name of the National Security and Defence Committee, the changes sent by the whips have at times made reference to rule 86(4) rather than rule 85(4), most likely due to the use of forms antedating the renumbering of the *Rules of the Senate*. This can be easily corrected. Furthermore, the forms sometimes use abbreviated or incomplete names for committees. This particular form referred to "National Defense (*sic*) and Security," so the intent was clear. The inaccuracies were by no means so egregious as to render the form invalid. As Senator Banks noted, they should be viewed as typographical errors.

The more substantive complaint relates to changing membership by removing a member without designating an immediate replacement. Rule 85 is clear that the leaders do have authority to make changes with respect to their members. Once a change is made, the senator added is a member for the rest of the session until and unless another change is received.

As Speaker, I am bound to interpret the rules and practices as they exist. Whether a requirement for consultation and limits on the duration of a change in membership are desirable is not an issue that can be appropriately addressed in this ruling. Any guidance or changes should come from the Standing Committee on Rules, Procedures, and the Rights of Parliament.

Returning to the main issue raised by Senator Banks, the removal of a committee member without making an immediate replacement, this has been a long practice in the Senate, developed since 1983, when the leaders were empowered to make changes to committee membership. During the current session, there have already been at least two dozen such changes, done by both sides. In some cases the vacancies were subsequently filled, while in others they remain to be filled. Such changes often occurred during previous sessions.

It will be noted that rule 85(4) simply refers to "a change in the membership of a committee." Removing a member from a committee with the replacement to follow clearly constitutes a "change" in committee membership that fits within the general wording of the rule and this practice has been sanctioned by long use. Again, if there is an interest in the Senate taking a new direction on this matter, the Rules Committee could make the appropriate recommendations.

Since the removal of committee members without making immediate replacements falls within the terms of rule 85(4) and has long been part of Senate practice, it follows that there have been many cases of committees not having the full membership as set out in rule 86(1). The general acceptability of this situation is to some degree supported by a ruling of the Speaker of May 30,

1991. That ruling stated that, while current rule 85, which was rule 86 at the time, "sets the maximum number of members which a committee may have, the committee of selection is not obliged to nominate a full complement of senators for each committee." Since then, some reports of the Committee of Selection have not recommended the maximum number of members.

A committee can function, from the time members are appointed, with fewer members than the number in the rules, provided it has quorum. This situation is endorsed by the Senate when it adopts the report of the Committee of Selection. Practice has been that a committee can also function if its membership falls below this number during the course of a session, as long as it continues to have quorum. What distinguishes the case Senator Banks raised is not only its duration, but also the fact that the entire membership of one caucus is involved. There is, however, no cut-off point as to how long this situation can last, nor can the Speaker impose one. Furthermore, while recognizing that the permanent withdrawal of all members from one side could alter the operations of a committee, this aspect of the issue is also beyond the authority of the Speaker, as long as there still can be quorum at meetings.

These issues, while important, are not strictly matters of procedure. In conclusion, the removal of certain members from the National Security and Defence Committee on February 27, 2007 respected the practices as they have evolved in the Senate, and was not inconsistent with the rules. The senators removed on that date, or other senators from the government caucus, can be added to the committee by the Leader of the Government in the Senate or her designate.

As noted, Senator Banks' point of order has brought to light a number of significant points on which clarification would be helpful, but the Rules Committee is the appropriate venue for such discussions. In closing, therefore, I urge that committee to take up these issues.

Question Period — Duration
May 9, 2007 *Journals*, p. 1512

The Rules state that question period is to last 30 minutes. By my watch, question period lasted 30 minutes, but if my watch is not working properly, I will find another one.

I would like to take this opportunity to point out that we prefer a good exchange during question period. One question may lead to many supplementary questions and this creates a dilemma for the Speaker, as to whether he should interrupt the flow of the debate. I also try to recognize all senators who rise in this chamber so that they may take part in question period.

In any event, Senator Nolin was right to point out that question period is to be 30 minutes long. As for me, I am going to get a new watch.

Senators' Statements — Anticipating an Order of the Day
May 17, 2007 *Journals*, p. 1549

At the end of Question Period on Wednesday, May 16, 2007, Senator Tardif rose on a point of order to object to statements made by Senators Angus and Cochrane. Referring to the Ruling of May 2, she noted that Rule 22(4) states that, when making statements, "a Senator shall not anticipate consideration of any Order of the Day."

Honourable senators, guidance on this matter is to be found in Rules 23(8) and 44(3). Rule 23(8) states that, after Question Period, the Speaker shall call for Delayed Answers, Orders of the Day, Inquiries, and Motions. Rule 44(3) is in turn quite clear that a putative question of privilege is taken up after the Senate has completed consideration of the Orders of the Day or by 8:00 p.m., whichever is earlier. By its very language, stating that consideration of a putative question of privilege will occur "when the Senate has completed consideration of the Orders of the Day," it is clear that, under Rules 43 and 44, this does not fall into the category of items included in the Orders of the Day. A putative question of privilege, rather than being an Order of the Day, is an opportunity for a senator, providing certain conditions respecting notice are met, to raise an urgent matter relating to privilege.

As Senator Corbin explained, Senators' Statements and Question Period are not times for debate. The essential characteristic of debate is that it is a process whereby the senators participating seek to support their own position and to bring others around to it. This was not the case with respect to the statements in question. Senators Angus and Cochrane were expressing themselves, in accordance with Rule 22(4), on a matter they considered to be of public consequence. This is distinct from, although it may be close to, the more argumentative process characteristic of debate. This issue happened to relate to the question of privilege of Senator Tkachuk, of which he had given oral notice only moments earlier. There is nothing to prohibit several senators addressing the same topic during Senators' Statements, just as can be the case during Question Period. Furthermore, giving oral notice does not deprive another senator of the opportunity to make a statement before the matter has been taken up by the Senate.

The statements in question did not, therefore, violate Rule 22(4) and were in order.

Question of Privilege — Participation in Committee Work
May 29, 2007 *Journals*, pp. 1562-1564

On Wednesday, May 16, 2007, the Honourable Senator Tkachuk, acting pursuant to rule 43, provided written and oral notice of his intention to raise a question of privilege relating to a meeting of the Standing Senate Committee on Energy, the Environment and Natural Resources to conduct clause-by-clause study of Bill C-288, An Act to ensure Canada meets its global climate change obligations under the Kyoto Protocol, held the evening before. Since the Senate adjourned at 4:00 p.m., pursuant to order, the matter was taken up the following day, Thursday, May 17. I wish to thank all senators who contributed to the discussion, which helped to clarify the full range of issues involved.

It would be helpful to explain how the process for dealing with questions of privilege works. At this stage, the Speaker's role is solely to determine whether a *prima facie* case of privilege has been made out. If there is found to be a *prima facie* case of privilege, the senator raising the matter has the opportunity to move a motion, which is then debated by senators. The decision as to whether anything should be done is, ultimately, the Senate's.

As explained in *Maingot*, the second edition, at page 221, "A *prima facie* case of privilege in the parliamentary sense is one where the evidence on its face as outlined by the Member is sufficiently strong for the House to be asked to debate the matter..." In effect, this is a means to allow the Speaker to weed out cases that are not questions of privilege. If the Speaker rules that a reasonable person could conclude that there may have been a violation of privilege, the senator who raised the matter is given the opportunity to propose some type of remedy by immediately moving a motion either to refer the matter to the Rules Committee or to call upon the Senate to

take some action. In the end, the matter remains in the hands of the Senate, with the Speaker only providing an initial review.

Certain facts of the situation prompting Senator Tkachuk's question of privilege do not seem to be in dispute. The Senate adjourned at 7:20 p.m. on Tuesday, May 15. The committee, sitting in Room 257 of the East Block, began its meeting to conduct clause-by-clause consideration of Bill C-288 at 7:23 p.m., and the committee completed this process and adjourned at 7:26 p.m. The committee met in public on an order of reference with quorum, after necessary notice, with interpretation available, and did not meet while the Senate was sitting. In terms of the *Rules of the Senate*, the meeting was in order. This point was emphasized by a number of senators on May 17.

A question of privilege is, however, different from a point of order. The privileges of this Chamber exist because they are necessary to fulfil our obligations as parliamentarians. A question of privilege is therefore a serious matter. As rule 43(1) notes, "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*."

Four basic conditions must be met for a putative question of privilege to be accorded priority over other matters before the Senate. It is the Speaker's role to evaluate these criteria.

Firstly, rule 43(1)(a) requires that the matter be raised at the earliest opportunity. This is clearly the case here.

Secondly, rule 43(1)(b) requires that the matter directly concern the privileges of the Senate, a committee, or a senator. This case involves a complex interaction between the rights and duties of committee members, the rights of the Senate to the presence of its members, and the freedom usually accorded to committees to conduct their business. This second criterion is also met.

Thirdly, rule 43(1)(c) requires that the question "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." The Speaker's role is limited to evaluating whether there is some option that could fulfil this condition. Senator Tkachuk can move a variety of motions meeting this condition. He has indicated that he is prepared to do so. Thus, the third criterion can reasonably be met.

Fourthly, rule 43(1)(d) requires that the question be raised to correct a grave and serious breach. Fundamentally, Senator Tkachuk has suggested that he was obstructed from his ability to discharge his duties in committee. This is a grave and serious matter.

The putative question of privilege under consideration meets the conditions to be accorded priority under the special processes for a *prima facie* question of privilege. Senator Tkachuk has outlined how he felt that he was impaired in fulfilling his parliamentary role, given the limited time available to go from the Senate Chamber to the committee room. Senators will now have the opportunity to debate whether this matter should be pursued further.

Again, let me reiterate that this decision on the *prima facie* aspect of this question of privilege is not a definitive resolution of the issue. This ruling does not establish that Senator Tkachuk's privileges were breached. Nor does it conclude that any action must be taken on the matter. That is a decision for the Senate. Senator Tkachuk now has an opportunity, under rule 44(1), to move a motion either calling on the Senate to take some action or referring the matter to the Rules Committee. The motion must be moved at this time, although it will only be taken into consideration at the end of Orders of the Day or 8:00 p.m., whichever comes first. Debate on the

motion can last no more than three hours, with each senator limited to speaking once, and for no more than 15 minutes. Debate can be adjourned and, when concluded, the Senate will decide on Senator Tkachuk's motion. So the final decision is with the Senate.

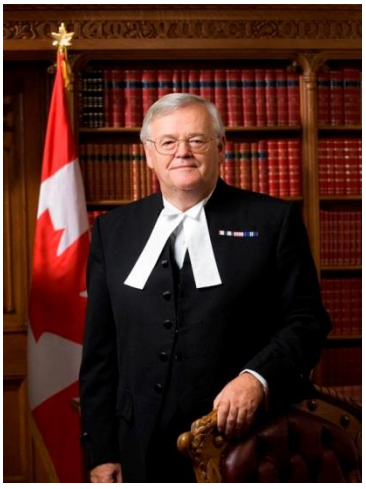
Therefore, the ruling on this matter is that a *prima facie* case of privilege has been established and the conditions of rule 43 have been met.

Debate — Question Before Senate
May 30, 2007 *Journals*, p. 1576

The matter before us was consideration of the report. The Chair recognized Senator Comeau. Senator Comeau rose to speak on consideration of the report and he moved a motion which was seconded. We are considering a report and a motion asking that that report be adopted. We went over a couple of potholes along the way, but the question that was clearly before the Senate, when Senator Ringuette got up to speak, was the question to adopt the report.

I apologize for any confusion. I think it was all done in good faith. We were considering the report; there is now a motion before us. We have at least one question at the end of the debate: Shall it be adopted or not? When we see the Orders of the Day for tomorrow it will reflect the motion to adopt.

Second Session, Thirty-Ninth Parliament
October 16, 2007 – September 7, 2008



Speaker: The Honourable Noël A. Kinsella

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

Committee of Selection — Nomination of Members of Committees (Ruling given by the Speaker *pro tempore*)
November 1, 2007 *Journals*, p. 88

Senator Cools, our rules allow that when the Speaker feels that the chair has heard enough to make a decision, it can.

Since last Tuesday night when you talked about the nominations, when the committee report was given out, I have looked at the rules. What we have now in front of us is the report. The dispute is over the nomination of the people who are on the committees. This report can be amended. I declare that there is no point of order.

Report from Past Session — Motion to Adopt
December 11, 2007 *Journals*, pp. 365-369

On Thursday, November 29, when the Senate had reached the Notice Paper, Senator Carstairs raised a point of order to challenge the propriety of a motion moved by Senator Stollery. This motion sought to adopt the report of the Standing Senate Committee on Foreign Affairs and International Trade on Sub-Saharan Africa, tabled in the last session, and to request a response from the government in accordance with rule 131(2).

Senator Carstairs warned that the motion of Senator Stollery posed some serious problems. This was because the report proposed for adoption was not actually before the Senate, since it had died with the prorogation of the previous session. In any debate, she argued, it would not be possible to amend the contents of the report. If the report were to be considered revived through motions like this, Senator Carstairs asked whether it might be possible to do the same with reports from ten or fifteen years ago.

After this initial intervention, several other Senators spoke to the point of order. Senator Cools noted that the Senate did not have cognizance of the report in question as it was not a report of the current session produced by a committee in this session. Senator Corbin, on the other hand, recounted how the Standing Senate Committee on Foreign Affairs and International Trade had agreed at its first meeting to mandate Senator Stollery to propose this motion, an account subsequently corroborated by Senator Di Nino.

When he spoke, Senator Stollery explained how, once he had the mandate from the committee, his motion was prepared in light of a previous case.

In her intervention, Senator Fraser proposed a possible solution to the specific problem raised in the point of order. The Senator suggested that a motion might be phrased to reference the report of the last session without seeking its adoption, and then solicit a statement from the government with respect to it.

In considering this issue, it is essential to underscore that a committee report that has not been adopted by the Senate is exactly that, a report of a committee to the Senate. A report only becomes a report of the Senate if and when it is adopted. Except in the case of a report on a bill without amendments, which is automatically adopted under rule 97(4), adoption gives the Senate the opportunity to debate and possibly amend a report. As Senators know, under rule 97(3) a tabled report does not have to be moved for adoption, but adoption is a necessary step for requesting a government response under rule 131(2).

The issues in this point of order are complex. Indeed in certain respects it recalls discussions that took place at the end of last session on the meaning and operation of rule 131(2). In considering the current point of order, it is helpful to begin by addressing the fundamental question of whether business from a previous session can be reinstated or revived. Practices in the Senate, in the Commons, in the provinces, and in the Parliament at Westminster make it clear that business can indeed be revived or reinstated from a previous session, at least within the same Parliament. This is done by a clear and deliberate decision, either by adopting a motion or by establishing provisions in Rules or Standing Orders.

This in no way reduces the significance and impact of prorogation. All business then before a House of Parliament dies at prorogation. With reinstatement or revival, the House exercises its fundamental control over its own affairs and decides how it will conduct new business in the new session. In the Senate, we have had many motions relating to committee work that have had the effect of continuing studies and referring work and evidence from past sessions. We have also had motions to request government responses to reports adopted in a previous session or even a previous Parliament. In the Commons, all non-government public business — both bills and motions — is reinstated in the following session of the same Parliament. In addition, government business is frequently reinstated by House order. The Commons also provides for the automatic continuation of requests for papers, including requests for government responses to committee reports. Finally, in some provinces and at Westminster, various practices exist to allow the reinstatement of bills.

As Senators know, a proposal is currently before the House to allow for the reinstatement of bills. While this proposal has not been adopted, it is nonetheless competent for the Senate to revive or reinstate other types of business, such as committee business, if a clear decision to that effect is made. This respects the competing principles of the prerogative of the Crown to prorogue Parliament and the fundamental freedom of parliamentary Houses to structure their business as they see fit.

In reviewing the issues raised by Senator Carstairs and others, I noted a relevant ruling, given by my distinguished predecessor on February 19, 2004, which dealt with two similar points of order. The first concerned a motion, in a new session, to request a government response to a report adopted during the preceding session. That motion was held to be in order, and the motion was subsequently adopted. Since then, there have been five such motions adopted, including two earlier in this session. Given that such motions request responses to previously adopted reports, this practice is acceptable.

The second point of order raised in 2004 dealt with a motion both to adopt a report from a previous session and to request a government response. The ruling found the motion to be in order. Until now, this had been the only instance of this kind of motion. The motion moved by Senator Stollery paralleled the 2004 example, and, accordingly, it was properly drafted in light of that ruling.

This said, Senator Carstairs' point of order raises issues that were not fully addressed in the 2004 case. In particular, she asked how far into the past such motions can reach, and, equally important, whether the report proposed for adoption by the Senate can be amended.

Such uncertainty is not conducive to orderly proceedings in the Senate. My analysis of the situation suggests that the motion under consideration would not necessarily allow the Senate to amend the report. I find the indirect closing off of one important element of free and full debate

unacceptable, in this case. The objection about how far back in time such motions can go is also real. In light of these problems, it would be more appropriate to find a different approach to reach the objective sought by Senator Stollery in his motion.

An additional difficulty with the motion is that rule 131(2) clearly requires that the report in question be from a committee. The question is, therefore, whether this report from a past session, cited in the current session, is, truly, a report of a committee of this session. There was no order of reference in the current session, and no report has been tabled or presented. As noted, prorogation does have real practical effects in Parliament, and the report should not be seen as a report of this session to which rule 131(2) could apply. Because the motion in question invokes rule 131(2), it must fulfill the conditions stipulated in that rule.

What is needed, therefore, is a clear and direct procedure that unambiguously places the report before the Senate in the current session and allows Senators ample opportunity for debate. Several such processes seem to be available. As already noted, committees often seek to revive studies from the previous session and to have the relevant papers and evidence referred back to them. A Senator could, therefore, move a motion, on notice, to authorize the Standing Senate Committee on Foreign Affairs and International Trade to study issues relating to Africa, and to refer the papers, evidence, and work from last session back to the committee. If this motion were adopted by the Senate, the committee would then be seized of all that information. It could adopt a new report, identical to the old one, or evaluate whether some of the previous work should be adjusted. The new report could then be tabled in the current session and treated like any other tabled report.

A second approach might be to follow the process outlined in citation 890 of the sixth edition of *Beauchesne's*. Although the 2004 ruling referred to the citation, it appears to me that its meaning was not fully followed. Taking into account the citation and Senate practice, a motion might be moved, on notice, to place a report from a previous session on the orders of the day for consideration at the next sitting. This type of preliminary motion would effectively, and clearly, reinstate or revive the report of the previous session. It might then be treated as a report in the current session, subject to possible amendment, and also allow for a motion to adopt and request a government response.

While these approaches may be more time-consuming, they have the great advantage of allowing the fullest possible opportunity for debate and discussion. They avoid the pitfall of forcing the Senate to accept or reject entirely a report from the previous session without the possibility of amendment.

There is yet another viable approach that might be available, along the lines suggested by Senator Fraser. As already stated, the report addressed by the motion in question does not fall under rule 131(2), being a report from a previous session that was neither adopted nor revived. Consequently, the Senate is not bound by the processes of the rule. It might be possible, therefore, for a Senator to move, on notice, a motion simply requesting a government response to the committee report of the previous session, without asking for its adoption by the Senate. Since the Senate would not actually adopt the report, it would remain simply a report of the committee, not of the Senate. This could be a third approach.

As a final point relating to government responses and prorogation, I would like to take this opportunity to clarify that, because the Senate does not have rules providing that requests for government responses are automatically revived in a new session, such requests do, in fact, die at prorogation. If a response is still desired in the new session, it must be renewed by motion, with a

new period of 150 days, if the motion is adopted. This is different from the House of Commons, which does have a Standing Order allowing requests for government responses to committee reports to survive in a new session of the same Parliament. In the Senate, the government does, of course, have the option of tabling on its own initiative a response to a committee report from a previous session, under the authority of rule 28(3). This has occurred several times during the current session. Such responses are not, however, made under rule 131, and are not automatically referred to committee under rule 131(4).

This point of order, like the discussion late in the last session, shows that the process for requesting government responses has many unexpected complexities. The Standing Committee on Rules, Procedures, and the Rights of Parliament may, therefore, wish to consider revisiting the entire issue in detail to provide needed clarification. The committee could also examine how far back in time such requests can go. While recognizing the importance of this aspect of the issue, a decision by the Speaker at this time would be highly speculative, and a solution requires detailed consideration. Let me emphasize that any decision by the committee to undertake such work belongs not to me, as Speaker, but to the committee itself, under rule 86(1)(i), or to the Senate, if it gives the committee a specific order of reference.

As it stands, if a report was adopted in a past session or a past Parliament, a government response can be requested under rule 131(2), and must be renewed in each subsequent session, whether in the same Parliament or a new one. If, however, the report was not adopted, a motion such as this one is not adequate, given the factors raised in discussion of the point of order. However, other means are available to achieve the objective of Senator Stollery's motion.

Debate on the current motion cannot proceed, and it is to be discharged from the Order Paper.

(*Accordingly, the Order of the Day for resuming debate on Motion No. 64 was discharged*.)

Motion — Receivability of Subamendment
December 12, 2007 *Journals*, p. 418

Honourable senators, I feel comfortable in ruling on the point of order. I do not think I need to hear any more arguments.

The essence of the point of order that was raised by the Honourable Senator Comeau speaks to the issue of the Constitution. As all honourable senators know, the Speaker does not decide matters of Constitution. I believe, and it is my ruling, that this is a matter that is not procedurally out of order. It is a matter that is best decided by and through debate.

The chair rules that the sub-amendment to the amendment is in order.

Motion — Not Yet Moved by Sponsor
February 6, 2008 *Journals*, p. 487

The Speaker is prepared to rule. I rule that Senator Corbin is absolutely correct. No motion was made. Therefore, no debate can occur if there is no motion on the floor of the house. That is my ruling.

Message from Commons — Content
February 12, 2008 *Journals*, p. 538

Honourable Senators, I have no difficulty in ruling now because I have done nothing more than read a message that we received from the other place. The messenger would not want to get in the line of fire.

This House has no cognizance of what is done in the other place until such time as a message is sent here, whether with a bill or whatever. Given that I have already read it, the message is before the House. What the House does with it, if anything, is up to the House.

There is nothing on the Order Paper relating to this message. In the Hansard of the day, it will simply report that the message was read by the Speaker as it had been received from that other place.

Motion — To Send Message to the Commons
February 14, 2008 *Journals*, p. 561

Honourable Senators, I am prepared to rule on the point of order that was raised. Notice was given, and the House was seized of the motion to be debated. The motion was moved and no objection or point of order was raised. We are now into debate. However, on the content and the plain language of the motion, I find it to be in order.

Written Questions — Printing on *Order Paper and Notice Paper*
February 14, 2008 *Journals*, pp. 571-572

Honourable senators, I would like to inform you that Senator Nolin was kind enough to raise this with the Speaker earlier, which gave me the opportunity to do some research.

Honourable Senators, I can report that on December 16, 1981, our former colleague, Senator Graham, who was then chair of the Internal Economy Committee, submitted a report to the Senate, which is cited on page 1811 of the *Journals of the Senate* of that day. The Standing Committee on Internal Economy, Budgets and Administration recommended among other things:

> That all questions asked pursuant to Rule 20A(1) be printed on the Order Paper on the next sitting day, after they are sent to the Clerk of the Senate and only once a week on the first sitting day of each week thereafter, until they are answered.

The next day, December 17, 1981, at page 1836 it is recorded:

> Pursuant to the Order of the Day, the Senate proceeded to the consideration of the Report of the Standing Committee on Internal Economy, Budgets and Administration respecting the printing of certain information in the *Minutes of the Proceedings of the Senate* in the *Debates of the Senate*.

The Honourable Senator Graham moved, seconded by the Honourable Senator Riley, that the Report be adopted.

Thus in 1981, it was decided by the Senate that questions on the Order Paper are published the first day of each week that the Senate sits. They are not published every day. I thank the Honourable Senator for giving me the opportunity to do a little research. The decision of 1981 explains why we find that our *Order Paper and Notice Paper* appears in this way today.

Bill — Requirement for Royal Consent
February 26, 2008 *Journals*, pp. 579-580

Honourable Senators, on Thursday, February 14, 2008, Senator Comeau raised a point of order with respect to proceedings on Bill S-224, An Act to amend the Parliament of Canada Act (vacancies). He argued that, by imposing a time constraint on the Prime Minister to give advice to the Governor General, the bill would affect the prerogative powers of the Crown and therefore requires Royal Consent.

The issue of the Royal Consent has been raised on a number occasions in the Senate in the recent past.

As noted by Marleau and Montpetit in *House of Commons Procedure in Practice* at page 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 UK, Royal Consent is signified in both Houses at some point before third reading. The Consent is usually given whether the government approves of a bill or not. In Canada, practice as to when the Royal Consent is given has not been the same. In the past, here in Canada, it has been signified in only one House.

The central issue in the current point of order is whether Bill S-224 requires the Royal Consent. Clause one contains the proposal that has led to the issue being raised. The clause stipulates that a Prime Minister would have to give advice to the Governor General to fill a Senate vacancy within 180 days of its occurrence. The only element of the Senate appointment process affected by the bill would be the time allowed to the Prime Minister to give advice to the Governor General. Nothing else would change. Whether this is a desirable change is for Parliament to decide. All that must be noted here is that the bill in no way affects the powers of the Governor General with respect to actually making Senate appointments. Simply put, no prerogative powers would be affected by the bill, and the Royal Consent is not required.

As a final issue, I would like to address when a point of order can be raised. This was a matter on which clarification was requested on February 14, in light of an earlier Ruling. I wish to make it clear that there is no obligation that a point of order be raised at the earliest opportunity, although that is always preferable. A point of order—that is to say a complaint or question raised by a Senator who believes that the rules, practices, or customary procedures of the Senate have been incorrectly applied or overlooked—can be raised at any point during debate.

In the Ruling of February 14 on the motion for a Message, I had sought to describe the process followed to that point: proper notice had been given, the motion was correctly moved, and debate had started. The point of order had, as I understood it, questioned the content of the motion. I

wish to be clear that the timing for raising the point of order was not an issue. Instead, based on the content and plain language of the motion, the Chair found that there was nothing defective about the motion itself, and so there was no point of order.

In conclusion, the objection raised with respect to Bill S-224, that it requires Royal Consent, is not well founded, and debate can continue.

Question Period — Duration
February 27, 2008 *Journals*, p. 594

I thank the Honourable Senator Nolin for raising the point of order. What is written is written; he is absolutely right. The rule book, which is the standing orders of this House, says exactly that. Maybe we will ask our table officers to rise a minute or so before the 30 minutes expire.

Question Period — Reference to Vote in Commons
April 8, 2008 *Journals*, pp. 742-743

On Tuesday, March 11, 2008, at the beginning of Orders of the Day, Senator Murray rose on a point of order to complain about the conduct of Question Period during recent sittings. In particular, he objected to several questions touching on a confidence vote that occurred in the House of Commons in May 2005.

Senator Murray expressed concerns about these questions and answers for two reasons. First, he argued that they did not fall within the administrative responsibility of the Government. Second, he said they involved reflections upon proceedings in the other place, and were therefore inappropriate.

In response, Senator Mercer noted that similar questions have been dealt with in the other place. Senator Fraser, in turn, argued that the issues raised were of such a nature that they could be discussed. For her part, Senator Carstairs referred to *Beauchesne's* to remind the Senate that Question Period involves the Cabinet submitting its conduct of public affairs to the scrutiny of the Opposition. Senator Nolin expressed the view that the issue to be considered is whether the question relates to "public affairs."

I would like to thank all Honourable Senators for their contributions to discussion on this point of order.

Question Period in the Senate provides an opportunity to seek information from the Government or from Chairs of committees. Rule 24(1) outlines what questions can be asked of whom. A question posed to a committee Chair must relate to the activities of that committee. Questions posed to the Leader of the Government in the Senate should relate to public affairs. Other Ministers in the Senate can also be asked questions, but only in relation to their ministerial responsibilities.

Question Period in the Senate is, therefore, not the same as that in the other place. The Leader of the Government has broader responsibility for answering questions than any other single Cabinet Minister. Moreover, the atmosphere here tends to be calm and reflective, as befits the high respect Honourable Senators have for each other, despite their range of views on many issues.

In considering Senator Murray's first point, that the recent questions do not relate to the administrative responsibilities of the Government, we must take into account the different roles for the Leader and any other Ministers in the Senate that have already been noted. The latter are only answerable for their "ministerial responsibilities." This point was dealt with in the October 31, 2006 Ruling on questions addressed to the Minister of Public Works and Government Services, and is similar to the restriction noted at page 426 of *House of Commons Procedure and Practice*, where Marleau and Montpetit state that questions should be "within the administrative responsibility of the government or the individual Minister addressed."

However, rule 24(1) clearly gives the Leader of the Government in the Senate a larger role. The Leader can be asked questions about "public affairs" in general. This is a very broad term, in keeping with the expansive responsibilities encompassed by that position. The Senate has not chosen to narrow its meaning or to develop guidelines as to acceptable questions.

We must be cautious, therefore, about imposing restrictions on questions to the Leader that appropriately apply to those asked of other Ministers in the Senate. In considering the nature of questions asked of the Leader, a Ruling by Speaker Molgat is perhaps relevant. On April 2, 1998, he stated "that matters are presumed to be in order, except where the contrary is clearly established to be the case." This is a sound general principle for us in the Senate. Applied to Question Period, it suggests that, unless clearly out of order—as would be the case of overly-broad questions addressed to Ministers other than the Leader—the Speaker should err on the side of allowing questions.

In practice, of course, the Senate is to a great extent a self-regulating Chamber. As such, Senators have considerable responsibility for determining how business is to be conducted. In the absence of clear guidance from the Chamber itself, Senators rely on their own understanding of "public affairs." Senators should only ask questions that they believe are, in fact, related to "public affairs." Similarly, the Leader should only answer questions that she believes to be related to "public affairs." Senators themselves are best positioned to determine whether a question is appropriate, and how it should be answered.

Given that the questions at the source of this point of order were asked and answered, and guided by the principle that it is preferable to err on the side of allowing an exchange of information, unless clearly prohibited, it would be inappropriate for the Speaker to rule the questions at issue out of order.

With respect to Senator Murray's second point, questioning the propriety of references to votes in the other place, I note that Marleau and Montpetit state, at pages 522-523, that disrespectful reflections on either House are not permitted and that references to Senate proceedings are "discouraged" in the Commons. Similarly, in the Senate our practice is to focus on what occurs here and outside Parliament; it is not to engage in discussions on the proceedings or procedures of the other place. This is a sound practice. During Question Period and at other times Senators should be guided by this limitation.

Question Period in the Senate is an important part of the sitting, and it is in all our interest to ensure that it remains effective. The model of Question Period in the other place has not been embraced as one to be followed in the Senate. Nevertheless, from time to time, the nature of a given issue may generate lively reactions among Senators. We must, however, be wary of an appearance of disorder seeping into our proceedings.

While the questions on which the point of order was raised were not out of order, I once again encourage all Honourable Senators to reflect on the manner in which we conduct ourselves in order to ensure that we preserve the useful flow of information that has long been the tradition and hallmark of Question Period in the Senate.

Debate — References to a Previous Ruling

April 29, 2008 *Journals*, pp. 1001-1003

On April 15, 2008, Senator Corbin rose on a point of order, concerned that a speech by Senator Cools contained inappropriate comments about a Speaker's ruling of December 11, 2007. Senator Cools' speech dealt with a motion by Senator Di Nino proposing that a committee report from last session be considered in this session.

I have had the opportunity to review the debates of April 15. Senator Cools made clear that she disapproves of Senator Di Nino's reinstatement motion. She stated that the Senate "cannot vote on Senator Di Nino's motion" and that various perceived difficulties are "sufficient to disable or cripple Senator Di Nino's motion entirely."

In her speech, Senator Cools spoke about the December 2007 ruling. This juxtaposition of reference to a Speaker's ruling with criticisms of the reinstatement motion may have left the impression that the speech was actually a reflection on or criticism of the ruling, as Senator Corbin feared.

Citation 168(1) of *Beauchesne's* sixth edition notes that "The actions of the Speaker cannot be criticized incidentally in debate or upon any form of proceeding except by way of a substantive motion." Similarly, pages 262-263 of *Marleau and Montpetit* state that "Once the Speaker has ruled, the matter is no longer open to debate or discussion," although, in the Senate, almost all decisions of the Speaker can be appealed when rendered. It would be helpful, therefore, for Honourable Senators to consider these citations when engaged in debate. During discussion of the point of order Senator Cools did indeed make clear that no such criticism of the December 2007 ruling was intended.

Honourable Senators, as I have already noted, Senator Cools voiced unease about the reinstatement motion. Such concerns, particularly from a Senator with such interest in procedure, inevitably raise questions about the orderly conduct of business. I feel obliged, therefore, to make some comments on this matter.

The December 2007 ruling dealt with a proposal by Senator Stollery to have a report from last session simply adopted, without being placed on the Orders of the Day first. The motion was ruled out of order, but various approaches to achieve its objective were identified. These approaches were not mere *obiter dicta*; they were essential for clarity and balance. Rejecting Senator Stollery's motion without outlining means to achieve the goal of dealing directly with business from a past session might have left the false impression that the objective is itself unachievable.

The ruling therefore confirmed that business from a previous session can be revived by a clear decision to that effect in a new session, at least in the same Parliament. Practice in Canada and in the United Kingdom confirms that this is procedurally acceptable. Having been the subject of an unchallenged ruling, this matter is *res judicata*. That is to say, the issue is settled.

A major preoccupation of Senator Cools was that Senator Di Nino's reinstatement motion does not follow each nuance of *Beauchesne's* citation 890. Authorities from other Chambers, although helpful, do not bind the Senate in every detail. They are interpreted in the context of our rules and practices. This is reflected in rule 1(1), which states that in unprovided cases the customs and usages of either House may be followed, *mutatis mutandis*, that is to say with alterations required by Senate practice and common sense.

At its core, citation 890 reflects the fact that a clear and deliberate decision is needed to revive business from a previous session of the same Parliament. Senator Di Nino's motion allows the Senate to make such a clear decision.

A Senator who opposes simply reviving the report can speak and vote against the reinstatement motion. A Senator who thinks that the report should be considered at a date other than the next sitting can move an amendment. Both aspects of the issue can be fully debated. Following citation 890 to the letter would also be acceptable, but is not obligatory. With that approach, however, the decision as to when to deal with the report would probably be by means of a non-debatable procedural motion moved immediately after an affirmative decision on the motion to deal with the report.

In conclusion, to return to Senator Corbin's specific point of order, Senator Cools stated that she did not intend her remarks to be an indirect point of order or comment on the ruling of December 2007, so that matter is settled. As I already noted, however, Senator Corbin's concerns are important, and I invite all Honourable Senators to show care in how they frame remarks.

Senators' Statements — Content
May 7, 2008 *Journals*, pp. 1043-1045

At the end of Question Period on May 1, 2008, Senator Fraser rose on a point of order relating to Senators' Statements. She had two specific concerns: that a statement made earlier in the day had not met the criteria of rule 22(4) and that its content may have violated rule 51. On a separate issue, she asked for guidance as to when, if ever, mention may be made to the absence of Senators.

Senators Comeau, Carstairs, Goldstein, Banks, Corbin, and Stratton all spoke to the matter, focussing on specific aspects of Senator Fraser's point of order. I thank all the Honourable Senators for their helpful contributions.

On the first point, I will read rule 22(4) in full.

> When "Senators' Statements" has been called, Senators may, without notice, raise matters they consider need to be brought to the urgent attention of the Senate. In particular, Senators' statements should relate to matters which are of public consequence and for which the rules and practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate. In making such statements, a Senator shall not anticipate consideration of any Order of the Day and shall be bound by the usual rules governing the propriety of debate. Matters raised during this period shall not be subject to debate.

Senators must, usually, rely on their own understanding of the appropriate matters for statements. This is evident from the rule itself, which states that Senators may raise matters that "they

consider" to be urgent. The rule reflects the fact the Senate remains in large measure a self-regulating Chamber.

Senator Fraser's second concern was that the statement may have violated rule 51, which forbids "All personal, sharp or taxing speeches." Her objection concerned some of the language that was used.

Rule 51 seeks to preserve decorum and order. As I have noted in previous Rulings, the Senate functions best when its business proceeds in a courteous and dignified manner appropriate to the Chamber of sober second thought. I again underscore this point for Senators, and invite them to show care in how they frame remarks at all times during the sitting.

As a final point, Senator Fraser also sought guidance about restrictions on referring to the absence of a Senator. This is not the first time the topic has come up during the current Parliament. A Ruling of February 7, 2007, addressed this very issue. It stated that:

> As to the matter of referring to Senators who may or may not be present, *House of Commons Procedure and Practice* by Marleau and Montpetit is clear, at page 188, that "the Speaker has traditionally discouraged Members from signalling the absence of another Member from the House because 'there are many places that Members have to be in order to carry out all of the obligations that go with their office'." This is just as much the case for Senators. Similarly, *Beauchesne's*, at page 141, citation 481(c) of the sixth edition, prohibits reference to the presence or absence of specific Members.

Canadian practice discourages any reference to the absence of Senators. Practices in other countries, which were mentioned in discussion on the point of order, are not of direct relevance to the conduct of Senate business in this case.

Just as reference is not to be made to the absence of a Senator, members should also refrain from drawing attention to the arrival or departure of any Honourable Senator. We all understand that Senators have many legitimate competing obligations on their time.

As already noted, Honourable Senators are themselves to a great extent in control of how the Senate runs. We must share responsibility for this.

I would like also to take this occasion to address the concern raised by Senator Mercer yesterday. He made reference to rule 19, which deals with the demeanour of Senators in the Chamber. The purpose of this rule is to maintain an appropriate level of respect and dignity amongst Honourable Senators. The first item in the rule indicates that it is out of order for any Senator to pass between the Chair and the Senator who is then speaking. I urge all Honourable Senators to observe all the proprieties established in this rule 19 scrupulously.

In conclusion, I wish to thank all Honourable Senators for their comments. I once again encourage all Honourable Senators to reflect on the manner in which we conduct ourselves during the sitting, to ensure that we preserve the useful and respectful exchange of ideas and information that is the hallmark of the Senate.

Adjournment of Debate — Other Business
May 8, 2008 *Journals*, p. 1055

I agree with Senator Dallaire. Rule 27(3) states:

> Unless previously ordered, any item under "Other Business", "Inquiries" and "Motions" that has not been proceeded with during fifteen sittings shall be dropped from the Order Paper.

The motion currently before the Senate thus has nothing to do with this rule. The motion moved by Senator Comeau, seconded by Senator Tkachuk, is in order. It deals with adjourning debate to the next sitting of the Senate.

This motion is in order. However, I would like to emphasize the point Senator Dallaire made. This is and will continue to be part of the rules of the Senate until the Senate decides otherwise.

The motion before us is in order.

Bill — Financial Initiative of the Crown
May 13, 2008 *Journals*, pp. 1063-1064

On Tuesday, April 29, 2008, Senator Di Nino rose on a point of order respecting Bill C-253, An Act to amend the Income Tax Act (deductibility of RESP contributions). In his remarks he recognized that the Bill violates neither the *Constitution Act, 1867* nor the *Rules of the Senate*. He did, however, argue that the Bill does not respect constitutional convention surrounding the financial initiative of the Crown and has also failed to respect normal parliamentary procedure.

After Senator Di Nino's intervention, the Senate agreed to hold further consideration of the matter over to the next day. When the item was called again, Senators Fraser, Carstairs, Moore, and Cools all expressed the view that there was no proper point of order. In particular, they argued that the Bill does not violate either constitutional provisions or Senate procedure, and that it is improper for the Senate to concern itself with the practices of the other place.

I have reviewed all these interventions, and I thank Honourable Senators for them.

On the issue of violating constitutional conventions relating to the financial initiative of the Crown, the Speaker must be extremely cautious. The responsibilities of Speaker are largely confined to the proceedings of the Senate itself. While the principle of the financial initiative of the Crown finds concrete expression in certain sections of the Constitution and the Senate's Rules, all participants in discussion on the point of order accepted that these provisions were respected. Accordingly, this issue does not need to be further addressed.

The second major issue in Senator Di Nino's point of order was that the Bill has not respected normal parliamentary processes relating to financial legislation. This point particularly relates to the specific procedures for financial legislation that exist in the House of Commons.

As Honourable Senators know, each House is master of its own procedure, within the bounds of the Constitution and the law. Just as Honourable Senators would object to the other place examining Senate procedures, it is inappropriate for the Senate to question those of the Commons. As noted in *Beauchesne's*, sixth edition, at citation four, one of the most important

privileges is the right for each Chamber "to regulate [its own] internal proceedings..., or more specifically, to establish binding rules of procedure." This point has been made at different times in Speaker's rulings here in this place. In fact, reference was made to some of these rulings in debate on the point of order.

In this case, the Senate received a duly attested Message from the Commons indicating that it had passed Bill C-253 and requested the Senate's concurrence. It is not for the Senate to question how the Commons adopted the Bill. All that matters is that it was properly sent to us.

Many of the concerns raised by Senator Di Nino deal with the substance of the Bill, and are more properly matters for debate. The point of order has not been established, and debate can continue.

Question Period — Authority of the Speaker to Maintain Order

May 14, 2008 *Journals*, p. 1070

I thank the Honourable Senator for raising this point of order, as well as the manner in which he has raised it.

This was indeed the very first time the Speaker ever intervened, to my recollection, during Question Period; however, because of recent rulings around the Question Period process, the Chair has become quite familiar with the procedural jurisprudence and literature. The intervention was made today because it was clear to the Speaker that his duty, pursuant to rule 18, required the Speaker to preserve order and decorum. The Chair heard the question about committee business addressed to the Leader of the Government which is not within her purview. It was specific to a committee as the Chair heard the question, and that is why the Chair intervened to say that the question should have been asked of the chair of the committee.

I would hasten to add, Honourable Senators, that the *conditio sine qua non* of Honourable Senators being able to ask committee chairs questions is the presence of the committee chair in the Chamber during Question Period, as obviously the import of the presence of the Leader of the Government or a Minister who is also a Senator during Question Period.

On the point of order, the ruling is there was no breach of the rule during Question Period, and the explication is the Speaker was relying on the authority and the duty imposed by rule 18.

Bill — Requirement for Royal Recommendation

May 27, 2008 *Journals*, pp. 1086-1088

Honourable Senators, on May 8, 2008, Senator Comeau rose on a point of order concerning Bill S-234, An Act to establish an assembly of the aboriginal peoples of Canada and an executive council. He asserted that the Bill infringes the financial prerogatives of the Crown, as embodied in provisions of the *Constitution Act, 1867*, and in Senate Rule 81. In support of this argument, Senator Comeau cited various clauses of the Bill dealing with specific details of the proposed aboriginal peoples' assembly and the executive council. He particularly quoted clause 25, which would appropriate funds to pay the salaries of members. During his intervention Senator Comeau made reference to *Beauchesne's*, *Bourinot*, *Erskine May*, and a Senate Speaker's Ruling of October 23, 1991.

Senator Fraser expressed the contrary opinion. She emphasized that almost any legislative measure will involve some expenditure of public money. She suggested that, if "the principal purpose of that bill is to achieve a matter of public policy and the expenditure of public money is ancillary to that, it is in order for the Senate to study such a bill." Senator Ringuette made a similar point, also noting that many initiatives can have financial consequences.

Finally, Senator Baker remarked upon the considerable recent changes in financial procedures in Parliament. He focused on clause 52(2) of Bill S-234, to which Senator Comeau had also made reference. This clause establishes that no part of the Bill, except one clause that does not involve direct expenditures, can be brought into force "unless the appropriation of moneys for the purposes of this Act has been recommended by the Governor General and such moneys have been appropriated by Parliament." This clause was linked, by both Senators Baker and Comeau, to citation 611 of the sixth edition of *Beauchesne's*. That citation states that "A bill from the Senate, certain clauses of which would necessitate some public expenditure, is in order if it is provided by a clause of the said bill that no such expenditure shall be made unless previously sanctioned by Parliament."

I thank all Honourable Senators for their helpful interventions on this complex and challenging matter.

Let me begin by remarking that Bill S-234 is a wide-ranging measure. If it continues before the Senate, numerous issues may have to be examined in detail. These could include points such as its potential effects on the fiduciary relationship between Her Majesty and the aboriginal peoples of Canada; on Parliament's power, under section 91 of the *Constitution Act, 1867*, to legislate on matters relating to aboriginal peoples and the lands reserved for their use; on the way Canadians are represented in Parliament; and on how citizens have input into the legislative and policy-making processes. The clauses of the Bill cover specific matters such as the role of the aboriginal peoples' assembly and the executive council, suffrage, committees, privilege, gender balance, First Ministers' conferences, conflict of interest, and languages. These are all very important issues.

The current point of order is focussed on the narrow, but critical, matter of whether Bill S-234 infringes the financial prerogative of the Crown. As noted at page 709 of *Marleau and Montpetit*, the financial prerogative means that "Under the Canadian system of government, the Crown alone initiates all public expenditure and Parliament may only authorize spending which has been recommended by the Governor General." An examination of Bill S-234 could indeed suggest that it does involve spending. Salaries, benefits, officers, the appropriation of funds, staffing, and the preparation of Estimates are all covered in the Bill. Any of these matters could, individually, make it fall into the class of bills covered by the citation from *Marleau and Montpetit*.

The key to this issue is, of course, clause 52(2). Under this clause, most of the Bill cannot come into force until funds have been recommended by the Governor General and appropriated by Parliament for the purposes of the Bill. No expenditure whatsoever would thus be incurred by the mere passage of Bill S-234, other than the drafting of the legislation required in clause 51, which should be viewed as a part of the normal operations of government. In particular, this means that clauses such as clause 25 can have no effect until the requisite funding to set up the assembly has been separately appropriated.

In considering the issue of the financial initiative of the Crown as applied in the Senate, Rule 81 is of central importance. This Rule prohibits consideration of "a bill appropriating public money

that has not within the knowledge of the Senate been recommended by the Queen's representative." This Recommendation can only be given in the House of Commons.

When the term "appropriation" is used, it is often used quite loosely. It does, however, have a narrower meaning. An appropriation is a sum of money allocated by Parliament for a specific purpose. As seen with supply bills, appropriations quite often fund entities whose legal framework has been separately established.

One must, therefore, consider whether Bill S-234 actually "appropriates" money within this meaning. As already discussed, funds for the purposes of Bill S-234 will have to be separately appropriated or voted by Parliament, on the Governor General's recommendation, before the Bill can enter into force.

What Bill S-234 would actually do is set up a legal framework for subsequent action. Nothing can begin to happen to make this framework effective without a subsequent Royal Recommendation and appropriation by Parliament. The Bill, itself, does not actually authorize the appropriation of any funds. While the passage of the Bill would express a will on the part of Parliament to establish an aboriginal peoples' assembly and an executive council, the Crown would not actually be obliged to give the necessary Recommendation, so its initiative would not be impaired. If the Governor General did recommend the necessary funds, and Parliament appropriated them, that would have the known effect of allowing the Bill to be brought into force, with the resulting consequences.

Bill S-234 thus appears to respect fully the financial initiative of the Crown, since no funds are being or must be appropriated. As such, this Bill differs from Bill S-5, considered during the third Session of the thirty-fourth Parliament, which was ruled out of order in 1991 and to which reference was made in debate on this point of order. Bill S-5 sought to "redress the imbalance...in terms of the benefits accorded by law to Canada's war-time merchant seamen compared with those provided by law to the veterans of Canada's armed forces." That Bill, contrary to Bill S-234, would have entered into force upon receiving Royal Assent. As a consequence, it would have probably immediately required new appropriations to fund the expanded access to a benefit that it created. Because of these differences, the Ruling of October 23, 1991, is not entirely relevant to the present case.

The point of order raised special concerns about clause 24, which would authorize the preparation of Estimates for the assembly. Reference was made to *Erskine May* on this point. The measure in clause 24 seems to fall far short of the class of bills to which *Erskine May* refers. To repeat, most of Bill S-234 will not enter into force until an order to that effect is made. This cannot happen until the necessary funds have been appropriated from the Consolidated Revenue Fund, which in turn requires a Royal Recommendation. As already noted, passage of the Bill would express Parliament's desire for an aboriginal peoples' assembly and an executive council, but the Crown would not actually be obliged to give the necessary Recommendation, so its initiative would not be impaired.

Honourable Senators, citation 611 of *Beauchesne's* indicates that there are circumstances in which a Senate bill can deal with matters that might appear to have financial consequences, if the bill is carefully drafted to deal with the real restrictions that apply. Bill S-234 respects the financial initiative of the Crown, while allowing Parliament the opportunity to consider a new proposal. The Bill in no way incurs actual expenditures, it merely sets the stage for such expenditures to be incurred, if the Crown chooses to recommend them, and if Parliament chooses to appropriate these funds.

So, while recognizing the complexities of the issue, there are persuasive reasons for allowing debate on this Bill to continue. We must at all times be vigilant to ensure respect for the financial initiative of the Crown and for the role of the other place in spending and taxation. As I noted earlier, this is a challenging matter, and this point of order has been helpful in allowing a detailed consideration of these issues. In this specific case there is no obligation to appropriate new money imposed upon Her Majesty. Nothing can happen if funds are not properly appropriated following a Royal Recommendation. Preferring to err on the side of allowing Senators the largest opportunity possible to consider proposals, debate on this item can proceed.

Question of Privilege — Official Languages
May 29, 2008 *Journals*, p. 1213

Honourable Senators, I thank all who have participated in the debate on whether a *prima facie* case of privilege has been made. While the Chair is tempted to accept the invitation of Senator Baker, I will exercise discipline and not go down that avenue based on the tradition that the Speaker of the Senate does not engage in judgments of constitutional law.

However, I will give now my ruling on the question of whether a *prima facie* case of privilege has been made out. I wish to always err in allowing members of the Senate their rights to engage fully in debate in either official language of our country. It is not only the tradition of this House but it is also solidly based on the law of Canada, including parliamentary law. I arrive at the conclusion that a *prima facie* case, which is all I have to deal with, has been made out. That is my finding and I leave the disposition of the matter of privilege to the House. Senator Comeau has indicated that he will have a motion to make.

Question of Privilege — Official Languages
June 26, 2008 *Journals*, p. 1403

Honourable Senators, I am ready to deal with this matter forthwith. This question of privilege is very similar to one which Senator Comeau gave notice of on May 28, 2008. After that question of privilege was considered on May 29, it was determined that there was a *prima facie* case of privilege and the matter was referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.

The current matter is distinct and must be treated as such, based on the principle that each question of privilege must be addressed separately. The same reasoning that I gave at that time, however, applies to this case. But I wish to go a little further.

In some parliaments around the world, particularly the international fora known to many Honourable Senators, a determination must be made as to its *lingua franca*, the working language; but in the Parliament of Canada, there is no single working language. There are two languages here, French and English. The practice, which occurs in some mainly international parliaments of identifying the *lingua franca*, is not followed here. It is clear in Canada that Parliament uses both English and French equally.

One of the reasons one might advance to underscore the importance of this principle, if I may be permitted to recall certain medieval writings, is that none of us is able to deal with things that we cannot grasp through our senses. Language provides us with either a visual presentation or an oral

presentation, and the principle is — as expressed in Latin — *Nihil est in intellectu quod non prius in sensu* — nothing is in the intellect which is not first in the senses.

Therefore, Senators working in committee or elsewhere must have the documents to deal with the issue that is before Parliament or committee in both official languages. That is axiomatic. It is not discretionary, it is mandatory.

For these additional reasons, and the reasons given before, it is the ruling of the Chair that a *prima facie* case of privilege has been made out by Senator Comeau. He is now, as he has indicated he would in his notice, prepared to make a motion.

Index

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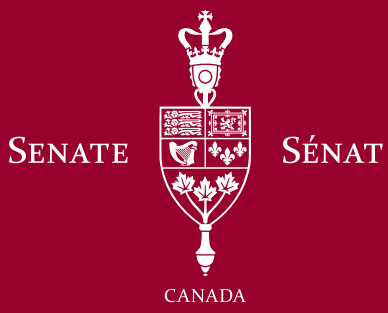
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