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RULINGS OF THE SPEAKER OF THE SENATE

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Introduction

The Speaker of the Senate is named by the Governor General on the advice of the Prime Minister. The Speaker presides over proceedings; rules on procedural matters such as points of order, the initial merits of questions of privilege and requests for emergency debate; and generally maintains order and decorum during sittings. The Speaker cannot, however, act independently of the institution. Almost all of the Speaker's decisions are subject to appeal and can be overturned by a majority vote.

The 41st Parliament was a period of transition for the Senate and for the Canadian polity. After two successive minority governments covering three Parliaments, the general election returned a majority in the House of Commons, and, for the first time since 2006, government supporters were a majority both in the appointed Senate and in the elected House of Commons. Within the Senate, the long service of Speaker Noël A. Kinsella, P.C., named to that post in 2006, drew to a close with his resignation in late 2014. His successor, the Honourable Pierre Claude Nolin, had served as Speaker *pro tempore* since November 20, 2013. This, coupled with his long years of work in the Senate, placed him in a strong position to build on his predecessor's contribution to the work of the institution. He was, however, stricken by a grievous illness and passed away within months of taking the chair. The Honourable Leo Housakos was then named as Speaker, and served in that role for the rest of the Parliament.

At the start of the second session of this Parliament, the Speaker was frequently called upon to deal with procedural matters during the contentious debate on motions to suspend a number of senators. This allowed the chair to examine issues relating to the disciplinary powers of the Senate, the rights of individual members, and the balance between Government Business and work not initiated by the government. Procedural issues continued to arise throughout the Parliament, and the rulings by the three Speakers contained in this collection illustrate their contribution to assist with the conduct of the Senate's business and to balancing the multiple factors at play in the parliamentary environment.

Charles Robert
Clerk of the Senate and Clerk of the Parliaments

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October 5, 2011 *Journals*, p. 222

I wish to thank all honourable senators for their contribution to this point of order raised by the Honourable Senator Banks. I, too, spent part of the break between 6 p.m and 8 p.m. in anticipation, but not with any sense of prophecy. I had the opportunity to examine the contemporary procedural literature. First of all, I want to state that I am prepared to rule now because I am comfortable with what I will say.

However, I respect the will of the house. It is the honourable senators who regulate this house. The Speaker's job is to follow the rules that the house has established and to try and interpret those rules in an equitable, thoughtful and just manner. Should the Speaker fail at any time in doing that, he or she will be corrected by the will of the majority of the house, which I think is a superior system to that in the other place. For me, the will of the house is the *lumina pedibus meus*—the light at the feet of any Speaker.

The question that has been raised basically is whether or not the motion by the Honourable Senator Mockler, seconded by the Honourable Senator Wallace, for the previous question to be put is in order or not. My reading of rule 48 — and I will not repeat it, it is there for all to read — is that it is very explicit and clear, as adopted by the house.

It is, as many have indicated, rarely used. Some of the points that Senator Cools has made, speak to why that particular procedure is rarely used, but that does not mean it is not used or never used. It is up to the members of the chamber to determine whether or not a member is going to use that rule and bring forward a motion that the previous question be put.

It is my ruling that the motion is in order, in that it deals with a matter for which full notice was given. There were opportunities for discussions during the notice period. There are still opportunities for a full debate on the motion.

It is the ruling of the chair that the motion is in order. If there is no further debate, I will put the question.

Form of Motions in Amendment
November 16, 2011 *Journals*, p. 409

Honourable senators, it is the view of the chair that the standard way of making an amendment to a motion is to use the language, "That the motion not now be adopted but," and accordingly the finding is that there is no point of order.

We now proceed to debate on the motion as amended.

Pre-Study
November 22, 2011 *Journals*, p. 647

Honourable senators, an important point of order was raised by the Honourable Senator Moore that I am prepared to rule on.

As honourable senators know, it is related to Order No. 18 on the Orders of the Day. As to the matter raised by Senator Moore — rule 74 is clear and the matter has been before the Senate for some time.m I want to refer honourable senators to page 76 of the *Rules of the Senate* and rule 74(1).

The subject-matter of any bill which has been introduced in the House of Commons, but not read the first time in the Senate, may be referred to a standing committee for study.

This is the essence of the authority that we have to do a pre-study of a bill that has been introduced in the House of Commons and is not yet before the Senate. This practice is not unusual. The matter before us is not out of order.

What does cause me a little bit of concern on the orderliness of our proceedings is that when the table called Order No. 18, I was listening while signing some papers. I did not hear the question being put. The house has no idea, although the order has been called, what is the will of the house as to whether to put the question or have it stand. Order No. 18 has been called, and we need to hear from the house the disposition.

Pre-Study
November 22, 2011 *Journals*, pp. 647-648

Honourable senators, it is not necessary for me to hear any more arguments on that because rule 74 provides explicitly that a notice can be given and a motion be brought to the house to propose a pre-study on a bill that is yet to be received in this house. In fact, *mutatis mutandis* is what pre-study means. The house is not impeded from proceeding on this motion on this basis.

Question of Privilege — Introduction of a Bill
December 8, 2011 *Journals*, pp. 719-720

I would like to thank all the honourable senators who participated in the discussion on this question of privilege. This is a very important question because it deals with the rights and powers of Parliament and more specifically, the Senate, with regard to the review of legislation as an independent element in our democratic system of government.

The concerns raised by the Leader of the Opposition deal with the rule of the law, a foundational principle in our society, to which both government and individuals are subject. I have had the opportunity to reflect upon the arguments and review the issue, together with procedural literature. I am now prepared to rule.

As I understand it, the basic argument to sustain the question of privilege is that the Senate is now examining a bill, C-18, that was presented to Parliament in violation of the requirements of the existing *Canadian Wheat Board Act*. This argument would lead to the conclusion that the Senate's study of Bill C-18 should be limited or constrained in some way. Particular importance is attached to a decision given yesterday by the Federal Court relating to requirements imposed under section 47.1 of the current *Canadian Wheat Board Act*. I will refrain from commenting on all aspects of the court decision in detail, which honourable senators are free to review as they wish. I will, however, note that the declaratory judgment states that "the validity of Bill C-18, and the validity and effects of any legislation which might become law as a result of Bill C-18 are not

an issue in the present Application". The court demonstrated respect for institutional comity and for Parliament's independent capacity to legislate.

The Parliament of Canada consists of the Queen, the Senate and the House of Commons. The two chambers follow their respective Rules and Standing Orders in their deliberations, as is their duty.

Let us briefly review what happened with Bill C-18. The bill was introduced in the other place, and it was passed on November 28. The next day, the Senate received a message from the House of Commons and, in accordance with the Rules of the Senate, the bill was placed on the Orders of the Day for second reading after the usual time period. The bill was then read a second time on December 1, and sent to the Agriculture and Forestry Committee. Meanwhile, on November 30, the Senate adopted a special order to determine the process to follow with regard to the committee's work on the bill.

Proceedings in the Senate on Bill C-18 have been in accordance with our Rules and have been in order. The court decision has no bearing on our parliamentary proceedings, as was recognized. Moreover, as Senator Segal noted, there would be a risk that accepting a question of privilege of this nature could have the serious, and unintended, consequence of impeding the undoubted privilege of Parliament and parliamentarians to deliberate and to legislate freely.

As previously indicated, the putative question of privilege pertains to the introduction of Bill C-18. Basically, this question involves the interpretation of law. Thus, it does not fall under the Speaker's authority. The chair refers to the fundamental principle that the Speaker can rule only on procedural matters and not on questions of law. Page 636 of the second edition of *House of Commons Procedure and Practice* says that constitutional questions or questions of law cannot be addressed to the Speaker. Other Canadian works on parliamentary procedure and other decisions rendered in this chamber have emphasized this point. For example, page 180 of the fourth edition of Bourinot and citation 324 in the sixth edition of Beauchesne were mentioned.

As already noted, proceedings on Bill C-18 in the Senate have respected our Rules and practices. While there has been a court decision respecting the current *Canadian Wheat Board Act*, if anything was at issue with respect to section 47.1, it did not involve Parliament. The issue is, in essence, a matter of interpretation of the law, not of parliamentary procedure or privilege. As such, it does not meet with the requirements of rule 43(1)(b), and there is no basis for determining that a prima facie question of privilege has been established.

Estimates and Supply Bills
December 16, 2011 *Journals*, pp. 794-796

On Thursday, December 8, at the end of debate on second reading of Bill C-29, a supply bill, Senator Comeau raised a point of order. He requested a ruling to provide clarification on the process in the Senate for studying the Estimates and the adoption of the related supply bill, and the relationship between them.

Senator Comeau's point of order followed other second reading speeches on Bill C-29. Senator Gerstein had moved adoption of the bill, and Senator Day had then explained the differences in how the Senate and the House of Commons deal with supply.

Under its Standing Orders the House of Commons adopts the Estimates before the introduction of the supply bill. This reflects the fundamental role of the House of Commons in relation to

financial measures. The Senate deals with supply in a different way. Here, there are two related but separate processes at play: the review of the Estimates and the adoption of the supply bill. The steps are related since the supply bill seeks approval of expenditures outlined in the Estimates, but they are separate since the introduction and the passage of the supply bill is, in the Senate, not contingent upon any action on the Estimates.

As Senator Day explained, the typical approach in the Senate is to deal with a report of the National Finance Committee on a set of Estimates before final disposition of the related supply bill. Senator Day characterized this as a convention. He acknowledged, however, that there have been divergences from this approach in the past.

In the Senate, the Estimates are tabled by the government. The National Finance Committee is then authorized to study most expenditures contained in the Estimates, although authorization may be given to other committees to study some expenditures. However, the Estimates themselves are never referred to the committee for any formal approval. This is an important distinction. Because the Estimates themselves are not referred to the committee, it does not approve them or recommend approval, and, indeed, it does not have authority to do so. The committee only studies and reports on the expenditures as set out in the Estimates.

The committee's report contains an analysis of various issues related to expenditures in the Estimates, and is provided for the Senate's information. As such, it would be more in keeping with rule 97(3) for the report to be tabled in the Senate, although it is often presented. By tabling a report, the National Finance Committee fulfills its duty to examine and report on the Estimates. No further action is actually required, but, in accordance with established practice, a procedural motion is usually moved under rule 97(3) to consider the report at a subsequent sitting, which allows senators to debate and discuss the contents. If adopted by the Senate, this report becomes a Senate report, rather than just a committee report.

A supply bill comes to the Senate through a separate process, completely different from the National Finance Committee's report to the Senate on the Estimates. The supply bill is received from the House of Commons by message, like any other bill originating in that house. By the time the Senate receives the supply bill it has an existence quite separate from the Estimates. Depending on proceedings in the House of Commons, the amounts in the supply bill could actually be lower than those indicated in the Estimates. After coming here, the Senate deals with the bill through the usual legislative process, with the notable exception that supply bills are very rarely referred to committee, although nothing in the Rules prevents a supply bill being referred to committee after second reading.

Some may find it helpful to draw a certain parallel between the Senate's work on Estimates and supply bills and the process for pre-study of a bill. A committee may be authorized to pre-study a bill that is in the House of Commons, but its work does not, indeed cannot, delay or hold up the progress of the bill itself when the Senate receives it. Likewise, the National Finance Committee studies the Estimates, but that work, important as it is, does not affect the progress on the supply bill when it reaches the Senate.

In practice, the Senate often receives a report from the National Finance Committee on Estimates before dealing with a supply bill providing for the expenditures set out in those Estimates. The work of the National Finance Committee is important to the Senate as it informs senators about issues arising from the Estimates and so contributes to an understanding of government programs. As such, this sequence of proceedings is beneficial, and perhaps even desirable.

To repeat, the *Rules of the Senate* do not require that a report on the Estimates be received or adopted before the Senate approves supply bills. There have been a number of instances when a supply bill has been passed without adopting a report from the National Finance Committee on the Estimates. So, while the approach of a report followed by the Senate's decision on a supply bill, which Senator Day termed a convention, is usually followed, this is not always the case.

On this point, useful guidance can be found from a debate in the Senate on December 9, 2002. A point of order was raised in which a senator maintained that the Senate cannot proceed with the study of the supply bill until it has adopted the National Finance Committee's report on the Estimates. It was asserted that the committee's report is in effect a proposal to adopt the Estimates and that the Senate cannot proceed with the supply bill until it has adopted the committee report. The contrary view was that while it is certainly a useful practice in the Senate to debate the report of the committee on the Estimates, it is by no means a necessary step before the introduction and study of the supply bill. The premise of the counter argument was that neither the committee nor the Senate concurs in the Estimates. In his ruling, the Speaker stated that the National Finance Committee's report does not constitute concurrence in the Estimates. Instead, the report is a review of the Estimates with observations. He added that the Senate is only asked to adopt the supply bill which seeks approval of funds for the expenditures outlined in the Estimates.

To conclude, while it may be helpful to consider or adopt the report of the National Finance Committee related to the Estimates, neither our Rules nor our practice make it essential that the report be received or adopted before the Senate proceeds with a supply bill providing for the related expenditures. Indeed, the Senate can adopt the supply bill without any report. For a particular series of proceedings to be obligatory, it would, as Senator Comeau noted, be necessary to amend the *Rules of the Senate* to clearly reflect such a requirement.

Language During Debate

December 16, 2011 — *Journals*, pp. 798-799

On December 14, 2011, after Question Period, a point of order was raised respecting a senator's statement earlier in the day. The statement at issue had commented on a ruling by the Speaker of the other place. A similar issue arose the day before, when a point of order was raised regarding the use of the word "mendacity" during debate.

Honourable senators, normal parliamentary practice holds that "[d]isrespectful reflections on Parliament as a whole, or on the House [of Commons] and the Senate individually are not permitted." This is found at page 614 of the second edition of *House of Commons Procedure and Practice*, and Erskine May also makes similar points. The need for care when referring to the House of Commons is manifested by the widespread — although neither universal nor obligatory — practice of referring to that house as "the other place."

More precisely, Beauchesne, in the sixth edition, at citation 71(1), is quite specific in saying that "[t]he Speaker should be protected against reflections on his or her actions." Likewise, *House of Commons Procedure and Practice*, at page 615, states that "[r]eflections must not be cast in debate on the conduct of the Speaker or other Presiding Officers."

More generally, rule 51 prohibits "personal, sharp or taxing" language as unparliamentary. There is no definitive list of such words or expressions in the Senate. Determination of what constitutes unparliamentary language is left primarily to the judgment of the Speaker and the sense of the

Senate. The circumstances and tone of the debate in question play important roles in this determination. In *House of Commons Procedure and Practice*, at page 619, it is, however, noted that "[e]xpressions which are considered unparliamentary when applied to an individual Member have not always been considered so when applied `in a generic sense' or to a party."

All honourable senators are encouraged to be mindful of these restrictions, and to avoid making reflections on the houses of Parliament and their proceedings or deliberations.

Article in a Newspaper (Ruling given by the Speaker *pro tempore*)
March 7, 2012 *Journals*, p. 940

I will now deal with the point of order raised by the Honourable Senator Mitchell after Question Period yesterday. The point of order dealt with an article published in this week's edition of *The Hill Times*, containing certain comments by the Chair of the Standing Senate Committee on National Security and Defence.

A point of order is typically a complaint or question raised by a senator who believes that the rules, practices, or procedures of the Senate have been incorrectly applied or overlooked during the proceedings, either in the chamber or in committee. I would refer honourable senators to page 632 of the second edition of *House of Commons Procedure and Practice*, as well as citation 317 of the sixth edition of Beauchesne. While Senator Mitchell may take issue with the comments, they do not involve a departure from our Rules or practices. As such, there is no point of order.

Article in a Newspaper (Ruling given by the Speaker *pro tempore*)
March 8, 2012 *Journals*, p. 947

Yesterday, a point of order was raised by the Honourable Senator Kenny. His objection related to remarks made in the chamber earlier in the week. Among other things, it was alleged that these remarks touched on proceedings of an in camera committee meeting held several months ago in a previous session. Little was said during discussion of the point of order to assist the chair in identifying what might have actually happened. It is not the role of the chair to delve into what may or may not have been said in a meeting held so long ago. Nonetheless, I do wish to take this opportunity to remind honourable senators that they should be careful to avoid referring to proceedings or documents from in camera meetings. This limitation must be kept in mind. I consider the matter closed.

Not Seeing the Clock (Statement by the Acting Speaker)
April 4, 2012 *Debates*, pp. 1610-1611

Honourable senators, I would like to revisit something from yesterday's debate. After the conclusion of the debate at third reading of Bill C-19, before 8 p.m. but after the debate concluded, Senator Carignan asked whether it would be appropriate to seek permission to not see the clock.

My interpretation yesterday was that it was unnecessary, because the *Rules of the Senate* already provided that we did not see the clock. I later re-examined the rules to determine whether Senator Carignan was right, and I must admit that he was right to ask the question.

Now, if anyone is wondering whether anything that was decided between the end of the debate and 8 p.m. is valid, the answer is yes, because, in order to ensure that yesterday's session was valid, I asked your permission to not see the clock and you granted it.

I thought it was important to set the record straight.

Committee Report Proposing Revised *Rules of the Senate*
April 25, 2012 *Journals*, pp. 1179-1183

Honourable Senators, on March 27, 2012, the Senate resumed debate on the motion for the adoption of the first report of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented to the Senate on November 16, 2011. That report recommended that the *Rules of the Senate* be replaced with revised rules. The Honourable Senator Cools raised a point of order and Senators Carignan and Fraser provided further comments for the consideration of the chair.

The Honourable Senator Cools reminds us that the recommended rule changes "are the single largest, in quantum and volume, amount of rule changes ever put before this house." Given this fact, I am grateful that the honourable senator has taken the time to study the procedural admissibility of the report. If it is procedurally defective, we should know now; if the objections fail, we will know that the report is procedurally solid.

In the judgment of Senator Cools, "These proposed rule changes are simply too numerous, too comprehensive and too complex for consideration in one proceeding, in one shot." This is a normative comment on the senator's part; the question for the chair is whether the point of order raised has identified a procedural objection to prevent consideration of the report. Three objections were offered.

The first objection is that the committee has exceeded its mandate as provided for in the Rules. The second objection is that the committee's report imposes closure on Senate debate by ordering a date for the coming into force of the rules. The third and last objection is that the recommended rule changes are not in the report itself but in an appendix, which the senator characterizes as a separate document alien to the report.

I will deal with these three objections in their reverse order.

Senator Cools characterizes the third objection as "the most important, profound and far-reaching breach." In the words of the senator:

> Simply put, we cannot debate the proposed rule changes because they are not part of or included in the report that the motion asks us to adopt. [Debates, p. 1495]
>
> This report, by its form of proceeding, has placed the substantive matter, the actual proposed rule changes, beyond the procedural ability of senators to consider, debate, amend and vote on the actual words, paragraph by paragraph, of the rule changes. It is therefore out of order. [Debates, p. 1495]
>
> The appendix, by its nature, is not part of the report. [Debates, p. 1501]

It is the chair's opinion that if there is an objection to using appendices to reports in order to amend our internal governance documents, the committee could be forgiven for not being aware.

On March 31, 2004, the Standing Committee on Internal Economy, Budgets and Administration tabled its sixth report on the *Senate Administrative Rules*. Appendix "A" to the document set out a draft amendment to the *Rules of the Senate*, the adoption of which would be consequential to the adoption of the *Senate Administrative Rules*. The report was adopted on May 6, 2004 and the amendment to the *Rules of the Senate* was implemented.

Just recently, on March 29, 2012, the Standing Committee of Conflict of Interest for Senators presented its third report recommending amendments to the Conflict of Interest Code for Senators. That report attached a revised copy of the Code as an appendix to the report and recommended that the revised Code come into force on October 1, 2012.

Of course, the recent use of appendices is not conclusive as to whether the practice is procedurally acceptable. To put this in familiar terms, just because it has happened doesn't mean it is right.

It seems to the chair that the relationship of an appendix to a main text is not fixed, but is a question of substance and of intention. Context and purpose inform the reader as to whether appendices are integral to a report or alien to it.

As Senator Cools pointed out to us, when members' observations are appended to a committee report below the chair's signature, the text is not considered to form part of the report in a procedural sense. On the other hand, presenting rule changes in the context in which they will serve, that is to say, inserted into the full body of rules, can assist the reader in appreciating their import. This is particularly so when the revised rules are presented with a table of concordance as is the case here. In the end, how best to present rule changes depends upon their nature and the circumstances and is a matter of judgment best exercised by the reporting body.

Finally, does the presence of the proposed rule changes in the appendix prevent debate on them or prevent motions to amend them? In debate on this point of order, an issue arose as to whether the appendix to the committee's report was even properly placed before the Senate for its consideration. The *Journals of the Senate* are the official record of the House. At page 407 of the Journals for November 16, 2011, it is recorded that the report of the committee presented to the Senate is printed as an appendix to the Journals at pages 412-615. Those pages include both the text of the report over the signature of the chair and the appendix containing the revised rules. The chair is therefore satisfied that the proposed revised rules are on the table, known to senators and available for debate and amendment.

The senator's second objection is that the committee, by recommending September 1, 2012, as the coming into force date for the new *Rules of the Senate*, has as a practical matter imposed closure on debate in the chamber. The logic of the argument is that if the new Rules are to come into force by September 1, they surely must be adopted before then. The chair does not agree. As a matter of procedure, debate on the motion to adopt the committee's report can proceed until it is adopted, until the motion falls off the Order Paper for lack of debate or until the end of the session. If debate continues past September 1, the Senate will then consider the impact on the motion of that change in circumstance, and what needs to be done about it. An amendment to the report could certainly be moved.

The chair will now address the senator's first, and what would appear to be the most important, objection, which is that the Rules, Procedures and the Rights of Parliament Committee has exceeded its mandate. The relevant portion of that mandate is set out in rule 86(1)(d)(i) of the Senate Rules, in their latest version as posted on our web site. It provides that the committee is empowered, on its own initiative, to propose from time to time amendments to the Rules for consideration by the Senate. As the senator notes, rule 86 is delegated authority and the committee, in carrying out its functions, must not exceed the authority delegated to it.

The senator seems to allow that a single report may recommend more than one rule change, but argues that a total repeal is not an amendment and that no amendment can negate the whole of that which it amends.

There is no question that this report touches on the core of the Senate's privileges. The right to organize its own internal affairs is a fundamental privilege. The *Rules of the Senate* have a history of precedents based on practice and rulings that enrich them with a considered understanding. Moreover, many of these rules are an historical legacy passed on to the Senate in various forms from the pre-Confederation Legislative Councils of Lower Canada and the Province of Canada. They are part of our parliamentary history and legislative patrimony handed down to us through generations of past members of our chamber.

The question to be resolved is whether or not the delegated authority under Rule 86 is sufficient to cover the enormity of what is proposed. Other reports from the Rules Committee have altered multiple rules or added new ones. However, never before has the Senate been asked to contemplate a report that recommends the entire repeal of our existing Rules in order to substitute new rules as a package. Indeed, in the words of the first report, the Rules Committee recommends, in part that "[T]he existing *Rules of the Senate* be replaced..."

It may be useful to review what the intentions of the committee were in presenting its first report. The committee states "The major objective of the revision was to clarify the Rules, while avoiding significant changes in content. In a few cases changes were required in the interest of clarity or to reflect current practice."

The committee also notes that "A new feature of the revised Rules is the use of constitutional and statutory references as well as lists of exceptions to any particular rule. For example, the deliberative vote of the Speaker is sanctioned by section 36 of the *Constitution Act, 1867* and this is referenced immediately after the rule. The general rule with respect to speaking times, proposed rule 6-3(1), is followed by a list of rules that stipulate any exceptions."

The report before us then is quite sweeping in both content and in form. The committee maintains there is no significant change to the substance of the rules but that may only be determined through the course of time. There are as well new practices being codified, such as the time limit for the various bells which summon senators to recorded votes. There is a complete reordering and renumbering of the rules. Many explanatory notes have been added. There is also a new appendix regarding parliamentary terminology, including terms and definitions not previously sanctioned by the Senate. Many senators may be surprised by the extent of these proposed changes and what impact there may be on the procedural case law which has been established over many years from our existing rules. They may wonder if the report is much more than a house-keeping re-write of the Rules and whether it is too far-reaching and has exceeded the committee's authority.

Honourable senators, one is mindful of the rights of senators to organize the business of the Senate, as well as the importance of not limiting the authority delegated to our committees under the Rules. By delegating to the Rules Committee a degree of autonomy to propose amendments to the Rules, we are, in effect, entrusting to them a custodial management function to ensure specific issues are clarified for the benefit of their colleagues. The chair is also mindful of the rights of senators to have a say in more comprehensive changes to how Senate business is conducted. While there is no question that senators are being asked to approve these proposed rules before they can come into force, it may well be that, for some, this is a step too late in the process.

In the case before us, a motion requesting a mandate to repeal the *Rules of the Senate* and replace them would have avoided placing senators in an awkward situation. They are faced with a profound change to the way in which they are to codify how they govern the business of the Senate. On the other hand, there is the consideration of their Senate colleagues and the Senate staff, whose hard work and personal commitment to undertaking this review must also be recognized. Such a motion would also have been consistent with the interpretation of the authority delegated to the committee as being a custodial responsibility. In this instance, where the *Rules of the Senate* are not being amended but repealed and replaced with new language and new elements, such as 30 minute bells for non-debatable motions, the chair is concerned that the Rules Committee may have exceeded the mandate provided under Rule 86.

The finding is that there could be a procedural issue involved here. The chair is reluctant, however, to set aside the excellent work of the Rules Committee based on an arguable procedural point. The suggestion is that the matter could be resolved by having the first report of the Rules Committee referred to a Committee of the Whole. The consideration of matters in Committee of the Whole is more flexible and appropriate to fully explore and debate these proposals that are before us than the restrictive nature of the formal debate in the Senate itself. This suggestion would serve the dual purpose of providing all honourable senators with an opportunity to clarify the purposes and principles behind the work of the report and express themselves on it before being asked to decide on the work itself. At the same time, it would prevent us from losing the significant body of work performed by our colleagues on the Rules Committee.

So, to be clear, the chair is making a strong recommendation that the matter be referred to a Committee of the Whole. If this recommendation is not acted upon, the matter remains on the Order Paper.

Motion to Refer a Report to a Committee of the Whole
May 17, 2012 *Journals*, pp. 1304-1306

Honourable senators, I want to thank Honourable Senator Cools for raising her point of order. Because this house was very generous to the Speaker in affording sufficient time for me to very carefully study the point of order that resulted in the Speaker's Ruling, I feel very comfortable that I am familiar with the procedural literature on the issue. Therefore I am prepared to rule on this point of order forthwith.

The question that is really before the Speaker is whether or not this motion is properly before the house: Is this motion in order? The motion is moved by the Honourable Senator Carignan, seconded by the Honourable Senator Tardif. In my opinion, it is clearly in order and I will give reasons why it is my opinion that this motion is in order.

First and foremost, the motion is in order because proper notice was given. That proper notice afforded even this member of this honourable house to have the chance to study the motion in detail. We are all familiar with what is being proposed. Clearly, this motion which has been subject to debate is open for debate, and after debate, it is open to a determination. The motion is also subject to amendment. Therefore the house is fully possessed of this proposition and it can change and modify the motion.

To the question as to whether or not matters do not appear every day on the daily Order Paper, often we have a bill or a matter that is being debated in the chamber and it is on the Order Paper of the chamber, but we do not keep things on the Order Paper when we refer them to our standing committees. Indeed, bills themselves are sent to our committees.

However, there is a practice that these matters will return to this chamber if such steps as third reading will occur in the case of bills. This cannot happen in committee. The bill must come back to the chamber. Equally, any decisions taken in committees dealing with reports are simply that.

Honourable senators, I take this opportunity to point out that our committees often have their committee reports made public and there is great discussion. The great discussion across the land is that this is the view of the Senate of Canada on whatever subject matter has been studied by a committee. Of course it is not, unless that report has been adopted by the Senate. Up to that point, it is only the opinion and recommendation of a committee. It is a committee report.

This is why, if you look our own records, senators have often raised questions of privilege concerning reports being made public before they were tabled with the Senate, giving honourable senators the opportunity to concur or to disagree or to raise cautions about the content of reports. There is no question that the final decisions are made in this chamber by all honourable senators.

Does the house have the right to instruct its committees to do things? Some honourable senators will remember, not too long ago, in 2004, we had here Bill C-250. I remember Senator Murray was dealing with the bill, which had to do with an amendment to the Criminal Code on hate propaganda. A question of privilege was made around that. The Speaker ruled, on April 28, 2004, that the instructions to the committee were quite appropriate and the intent of the motion was clear, et cetera. Then, as I reviewed some of the procedural literature as to whether this chamber can do what is proposed to be done in this motion, for example, in the privileges of the House in Beauchesne's fifth edition, at page 13, paragraph 21:

> The most fundamental privilege of the House as a whole is to establish rules of procedure for itself and to enforce them. A few rules are laid down in the British North America Act, but the vast majority are resolutions of the House which may be added to, amended, or repealed at the discretion of the House.

This is important, honourable senators:

> It follows, therefore, that the House may dispense with the application of any of these rules by unanimous consent on any occasion . . .

And we often do that.

> . . . or, by motion, may suspend their operation for a specified length of time.

This underscores the principle that this house, this chamber, is the master and this motion, which I find to be very much in order, is reflecting the exercise by this house of its privilege to operate as it proceeds and its committees to operate the way they see the committees should operate.

According to Beauchesne's fourth edition, at paragraph 10:

> Standing Orders may be suspended for a particular case without prejudice to their continued validity, for the house . . .

In the more recent publication of O'Brien and Bosc, once again makes clear that it is the exclusive right of the house to regulate its own internal affairs, there is reference to its control of its own debates, agenda and proceedings. Therefore the procedural literature is very clear and would support that this motion is in order, is subject to amendment and, at the end of the day, it will be a determination of the chamber.

Honourable senators, we had called for debate, and the motion is in order.

Committee Meetings While a Committee of the Whole Is Meeting

June 5, 2012 *Journals*, p. 1343

On May 31, 2012, the Honourable Senator Ringuette raised a question about the fact that the National Finance Committee had met at the same time as the Committee of the Whole considering Bill C-39. A similar objection was raised on March 14, 2012, when a Committee of the Whole was considering Bill C-33 at the same time a meeting of the Banking, Trade and Commerce Committee was scheduled.

This complaint involves conflicting priorities, obligations, and preferences, a feature that often confronts us as parliamentarians. In this case, for this matter to have merit, it would be necessary to establish that the sitting of the Senate, the Committee of the Whole, or the standing committee was in any way irregular.

In the normal course of events, the standing and special committees are not permitted to sit when the Senate is sitting, according to rule 95(4). Rule 4(j)(ii) clearly defines a sitting as starting after prayers and ending with adjournment, so this prohibition holds when the Senate is sitting, when a Committee of the Whole is meeting, or when the Senate is suspended for the dinner break. Exceptions to rule 95(4) occur, however, when committees are given permission to meet even though the Senate may be sitting.

With respect to the concern raised on March 14, that day was a Wednesday, and under the order adopted by the Senate on October 18, 2011, committees scheduled to meet after 4 p.m. on a Wednesday can do so, even if the Senate is sitting. The more recent incident of May 31 related to a meeting of the National Finance Committee dealing with the subject-matter of Bill C-38. The order of the Senate of May 3, specifically authorized the National Finance Committee to meet while the Senate was sitting, also suspending the application of rule 95(4).

Without the special permissions granted by these motions and authorizing a suspension of rule 95(4), Senator Ringuette's objection would be well-founded. The Senate had, however, adopted such motions, leaving it to the discretion of the committees involved as to how and when the power to sit despite rule 95(4) would be used. That is, if the committees involved preferred not to sit while the Senate is sitting — including when a Committee of the Whole is meeting — they

had the right not to sit. If, however, the committees chose to sit, they were allowed to do so. In such circumstances it is a matter for individual senators whether they wish to attend the committee or the proceedings in the Senate Chamber.

The committees in question exercised powers granted to them by the Senate.

Senators' Statements
September 25, 2012 *Journals*, pp. 1550-1551

I thank all honourable senators for their contribution to this discussion on the point of order raised by the Honourable Senator Robichaud.

I will begin by dealing with the reality of this house. It is a very special house in the Westminster system because it is regulated by the members. It is not our tradition that the Senate is ruled by the senator who happens to sit in the Speaker's chair. This is a long tradition based on the House of Lords. For years, the Lord Chancellor sat in the woolsack and never adjudicated any point of order. This practice perhaps "grew up" on this side of the Atlantic Ocean. It is my view that the Speaker of the Senate of Canada should follow as closely as possible the guidance of all honourable senators.

For those new senators who have joined us today, when they rise, it is our tradition to address "honourable senators" and not to address "Mr. Speaker." To do the latter is the tradition in the place where the carpet is green. I like to draw the distinction of the colour of the carpet in this chamber as being different from that in the other place. I am not sure whether the meadows of Runnymede have any relationship to the colour of the carpet in the other place, but this house, is the throne room.

This is where the thrones of Canada are located. This is why honourable senators operate very differently, with a different role, a different history, a different etiquette and a different set of rules.

When we find it necessary to draw guidance from the practices of another Westminster system, we do so. However, it is important that we recognize that it is our own responsibility to regulate this house. It is not the responsibility of the Speaker directly, although, as the Honourable Senator Nolin has pointed out, the Speaker has been given certain responsibilities under the Rules to do certain kinds of things. One of those responsibilities is to maintain order.

When it comes to Senators' Statements, I find it very difficult to be *a priori* in exercising judgment. It is much easier to exercise the *a posteriori* judgment, which is to hear the statement and then reflect upon it. If the Speaker were to get up and adjudicate in mid-stream upon an honourable senator's statement, he or she might have missed the point completely and be dutifully sent to the gallows, and quite properly.

It is very difficult for the Speaker to intervene until the three minutes are over. However, I would say the Speaker should be more disciplined in ensuring it is only three minutes if he or she hears things that are being said that could lead into the area of debate.

I think Senator Robichaud has explicated the rule quite correctly, and I concur with the point of order he raised.

Language During Debate
October 2, 2012 *Journals*, p. 1586

On Wednesday, June 27, Senator Tardif rose on a point of order in relation to comments made by Senator Wallin in debate on an inquiry dealing with allegations of harassment in the RCMP. Senator Tardif cited rule 51, which forbids all personal, sharp or taxing speeches. Under our revised Rules, this has become rule 6-13(1). A number of honourable senators then contributed to arguments on the point of order, including the Honourable Senators Comeau, Cowan, Downe, Duffy, Fraser, Plett and Tkachuk. Some senators suggested that the remarks at issue had been, in part, a response to an earlier speech on the inquiry by the Honourable Senator Mitchell on June 21, 2012.

Freedom of speech is a fundamental right necessary for the performance of our duties as parliamentarians. This right, as described in the second edition of *House of Commons Procedure and Practice*, at pages 89-90, permits members "...to speak in the House without inhibition, to refer to any matter or express any opinion as they see fit, to say what they feel needs to be said in the furtherance of the national interest...". However, this right is not absolute. It is "[s]ubject to the rules of order in debate...", as indicated at page 222 of the 24th edition of Erskine May.

There is no definitive list of words or expressions that are "personal, sharp or taxing". Indeed, as explained in a ruling of December 16, 2011, "[t]he circumstances and tone of the debate in question play important roles in this determination".

By and large, this limitation on the freedom of speech is observed in the Senate without incident. The Senate is a largely self-regulating chamber and each of us assumes responsibility for maintaining order and decorum in this place. In close to 30 years, only eight rulings have addressed inappropriate language. This is because the respectful exchange of ideas and information is a basic characteristic of the Senate.

In the past, I have asked senators to show care in how they frame their remarks. This caution includes whether senators are speaking extemporaneously or from prepared remarks. It is possible to express a position firmly and with conviction, indeed to attack a contrary view, while avoiding giving offence. We should always strive to show respect for each other, for the right to hold and express our divergent opinions is the basis of free speech.

Question of Privilege — Proceedings in Committee
October 30, 2012 *Journals*, pp. 1670-1671

On October 25, Senator Marshall raised a question of privilege without notice, pursuant to rule 13-5(a). The issue dealt with a meeting of the Standing Senate Committee on National Finance held earlier that day. Since the events giving rise to the question of privilege took place less than three hours before the Senate sat, the normal written notice could not be provided.

Senator Marshall explained that, after hearing the scheduled witness on Bill C-46, she had intended to move a motion for the committee to proceed to clause-by-clause consideration of the bill. Before she could move the motion, the chair declared the meeting adjourned. This prevented her from proposing a motion for decision by the committee. Following this intervention, other senators participated in consideration of the question of privilege, including the Honourable Senators Carignan, Chaput, Cools, Hervieux-Payette, Mercer, Mitchell, Moore, Nolin, Stratton

and Tardif. Senator Day, the chair of the committee, then indicated that efforts were being made to facilitate consideration of the bill. He noted that, after hearing from the scheduled witness, he had outlined the committee's agenda for its next meeting and, since there was no further anticipated business, had declared the meeting adjourned.

In terms of the general process, rule 13-5 allows flexibility in raising a question of privilege when the matter arises after the time for giving written notice. The rule seeks to accommodate unusual or urgent circumstances and, as such, correct processes were followed by Senator Marshall.

The fundamental issue of the question of privilege is whether the chair of a committee has the power simply to end a meeting. Here in the Senate, adjournment always occurs following the adoption of a motion or by the operation of the Rules. The Speaker does not act unilaterally. Even in a case of grave disorder, rule 2-6(2) puts limits on how long the Speaker can suspend the sitting.

Rule 12-20(4) states that "[n]o Senate committee shall adopt procedures inconsistent with the Rules or practices of the Senate," so the limitations on the Speaker's power would, with modifications required by the circumstances, apply to committees. This conclusion is supported by reference to page 1087 of the second edition of *House of Commons Procedure and Practice*, which notes that "[t]he committee Chair cannot adjourn the meeting without the consent of a majority of the members, unless the Chair decides that a case of disorder or misconduct is so serious as to prevent the committee from continuing its work."

In practice, however, the consent of the committee to adjourn is usually given implicitly, rather than explicitly. To again cite page 1087 of *House of Commons Procedure and Practice*, "most meetings are adjourned ... informally, when the Chair receives the implied consent of members to adjourn". This also holds in Senate committees, and may have contributed to misunderstanding in the situation at issue. To avoid such incidents, and to assist the orderly flow of proceedings, it would be desirable for the chair, in the absence of a formal motion to adjourn, to verify whether any senator has business to bring forward at the end of a meeting. Similarly, committee members who wish to raise matters should clearly signal this to the chair. This should help the committee to function better and also help to prevent any premature adjournment in the future.

To return to the fundamental issue of whether there was a breach of privilege in this case, parliamentary privilege is the sum of rights, beyond those existing under the general law, that are necessary for the houses of Parliament and their members to accomplish their work. The Speaker's role when dealing with a question of privilege is to assess whether a prima facie case has been made out. In making this assessment the Speaker is assisted by the provisions of rule 13-3(1), which outlines four criteria to be used in determining whether priority should be given to a question of privilege. The question of privilege must meet all the criteria.

While the question of privilege before the Senate certainly fulfills some of the criteria, it is not clear that the requirement of rule 13-3(1)(d) is met. That provision states that the question of privilege must "be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available." In this case, the action of the committee chair in adjourning the meeting without verifying if there was other business is really one of order, and, as such, there is another reasonable parliamentary process available. The matter could be raised as a point of order in committee, where it can be dealt with more effectively. This may help avoid such situations in the future.

This is not to deny the serious nature of this incident raised by Senator Marshall. Upon consideration, however, it would seem that there is another mechanism to deal with this problem. The matter can more appropriately be taken up as an issue of order in the committee itself.

Use of Exhibits
November 6, 2012 *Journals*, pp. 1696-1697

On November 1, a point of order was raised about the use of a document by the Honourable Senator Maltais during debate on Bill S-210, which deals with the commercial seal hunt. The senator requested and received leave that the document be tabled and distributed to all senators in the chamber. Later in the sitting, some honourable senators argued that the one-page photograph of a seal consuming a fish constituted an exhibit used to support the senator's position. Under normal practice the use of an exhibit is out of order. Subsequently, when it was clarified that leave had indeed been sought and granted, the focus of discussion shifted to what the proper practices are.

General parliamentary usage does not permit exhibits. At page 612 of the second edition of *House of Commons Procedure and Practice*, it is noted that "Speakers have consistently ruled out of order displays or demonstrations of any kind used by Members to illustrate their remarks or emphasize their positions. Similarly, props of any kind, used as a way of making a silent comment on issues, have always been found unacceptable in the Chamber." This prohibition is generally followed in the Senate. Debate by definition involves the spoken word. Reference materials such as notes on paper or tablets, or books, may be used by senators to assist them when speaking, as long as they are not disruptive and do not produce sound. Notes may be necessary for prepared interventions, but are generally not appropriate for remarks that should be extemporaneous, such as supplementary questions. Other physical objects that are employed with the goal of reinforcing a point, or that are unduly distracting, are to be avoided. Their use would, as in the case that gave rise to the point of order, require leave.

A second issue related to this point of order has to do with the general distribution of documents in the chamber. Distributing such materials to all senators during the sitting can be disruptive. Materials are only given out to all senators in a limited range of cases, including most notably when the Senate gives leave to take a bill or committee report into consideration later in the same sitting. Any other documents would only be distributed to all senators in the chamber if there is leave to do so, as happened with Senator Maltais. I would remind honourable senators that committee reports that are not for consideration later during the same sitting are not handed out as a matter of course, but can be requested from the pages. Prior to the sitting, only official publications are put on all senators' desks. Departures from these general practices are upon direction from the Speaker.

Since leave was granted to table the document there is no point of order as to it forming part of our record and proceedings, and I hope the additional clarification provided will help the Senate in the future.

Senators' Statements
February 5, 2013 *Journals*, pp. 1881-1882

Last December 14, 2012, Senator Tardif rose on a point of order after Question Period to complain about a Senator's Statement made earlier in the sitting by Senator Duffy. In that statement, Senator Duffy claimed that certain remarks made during the previous day's debate on Bill C-300 had been against him personally and had violated the prohibition against "personal, sharp or taxing speeches" contained in rule 6-13(1). In her objection, Senator Tardif denied that any rule had been broken. Further discussion on the point of order was largely focussed on what had happened during proceedings on Bill C-300, both in committee and in the Senate, rather than on Senator Duffy's use of a statement to raise a point of order.

In order to assist the Senate, I intend to limit myself to the issue of the proper use of Senators' Statements and Rules 4-2(5) and 4-2(6), which spell out certain limitations with respect to them. First, statements are for matters that senators believe should be brought to the immediate attention of the Senate. Second, a statement should not relate to an order of the day and should relate to a matter that cannot otherwise be brought to the immediate attention of the Senate. Finally, and certainly relevant to this case, matters raised during statements are not subject to debate.

The Senator's Statement subsequently challenged by the point of order of Senator Tardif asserted that the *Rules of the Senate* prohibiting certain behaviour had been breached. Regardless of any merits to the claim, it would have been more appropriate to raise the alleged breach as a proper point of order and not through a Senator's Statement. Had this been done, which is our established practice, it would have allowed for a review of the claim through exchanges among senators. This in turn would have led to a ruling as to whether a breach of order had actually occurred. This is how alleged points of order are routinely raised and resolved in the Senate.

Of course, it is also the case that points of order involving speeches are most usefully raised when the alleged offending remarks are made, so that the breach, if real, can be limited. When this is not done and the complaint is raised as a point of order after the event, it is more difficult to take corrective action since the remarks are already part of the record. In either case, raising the complaint as a point of order allows for a review by the Senate of the alleged breach of its rules or practices. A Senator's Statement does not allow for this, since it cannot be the object of debate. Instead, it is an assertion of an offence without any possibility of an evaluation since debate is not possible under Senators' Statements. This is not a proper use of the Senators' Statements.

I trust that this will help guide the Senate as to how such issues should be dealt with in the future.

Senators' Statements
February 14, 2013 *Journals*, p. 1922

Honourable senators, I thank the Honourable Senator Patterson for his intervention. I had not followed the statement he was making last week as closely as I should have. He was making reference to Bill C-45, which was well off the Order Paper and had become part of the statutes. It was not on the Order Paper, but I thought it was, so I cut him off. I have apologized to him.

Senator Tardif raises an important point for any honourable senator who is in the chair. As in the example that I have given, it is hard to follow all the detail of the statements being made. Although the scroll is examined before coming into the chamber to try to prepare for the sitting, I

do not always remember all that is on the Order Paper. It is easy to err when trying to use that part of the Rules.

All honourable senators should reflect on this because Senators' Statements will occur again prior to me giving the ruling requested. Senators' Statements are an important part of the proceedings for all senators; so much so that sometimes my watch is not as accurate as it ought to be. All honourable senators generally indicate that they are happy to have had the opportunity to get their statement in. Ninety-nine per cent of those statements are not subject to these kinds of questions. It is important for senators to recognize that there is a menu of opportunities to raise issues. Inquiries present the best one because 15 minutes are available, and sometimes that time can be extended.

If it is helpful, I will invite the procedural team to suggest guidelines so that all honourable senators will have some guidance. Under the *Rules of the Senate*, a point of order can be raised during Senators' Statements. However, senators should want to avoid raising points of order during that time because the house could end up with no statements once one senator rises on a point of order. Senators' Statements could be spent on the point of order debate.

Balance and perspicacity will be the order of the day. I would be happy to be of help to the chamber.

Question of Privilege — Parliamentary Budget Officer
February 28, 2013 *Journals*, pp. 1960-1962

I am ready to rule on the question of privilege raised by Senator Cools on February 26. The basic concern relates to actions of the Parliamentary Budget Officer, an officer of the Library of Parliament, that may have brought disrepute on Parliament and undermined the control of the houses over the administration of parliamentary affairs. In particular, the Parliamentary Budget Officer has applied to the Federal Court asking it to define his mandate as part of an on-going disagreement with the executive that he has recently raised at an international conference. The importance of this issue is reflected by the fact that consideration of the question of privilege was, exceptionally, spread over two days, with Senators Carignan, Comeau, Fraser, Mitchell and Tardif all taking part, along with Senator Cools.

Before dealing with the specifics of the issue, it would be helpful to review how the process for dealing with questions of privilege works. The Speaker's role at this initial stage is limited to determining whether there is a prima facie case of privilege, that is to say whether a reasonable person could conclude that there may have been a violation of privilege. This ruling does not deal with the substance of the case. If a prima facie case of privilege is established, the senator who raised the matter can, under rule 13-7(1), move a motion, which is subject to debate and can be amended.

In conducting the initial review the Speaker is guided by the four criteria set out in rule 13-3(1), all of which must be met for a prima facie case of privilege to be established. I shall now review each of the criteria to see how they relate to this question of privilege.

The first criterion is that the question be raised at the earliest opportunity. The international meeting at which the Parliamentary Budget Officer apparently made remarks that are the subject of this question of privilege was only reported last week in the *Ottawa Citizen*, and Tuesday, February 26 was the first day the Senate sat after that press coverage. Senator Cools therefore

raised her question at the earliest opportunity. I also accept Senator Cools' position that when matters escalate, it is necessary and legitimate to look back at the whole picture. As such, I am satisfied that the first criterion has been met.

The second and third criteria can be considered together. They are that the matter "...directly concerns the privileges of the Senate, any of its committees or any Senator" and that it "be raised to correct a grave and serious breach."

The Parliamentary Budget Officer serves in the Library of Parliament, which is under the direct control of the Parliamentary Librarian, reporting to the two Speakers, who are assisted by the Standing Joint Committee on the Library of Parliament. As such, the Parliamentary Budget Officer operates under the authority of the two houses and must act within the framework of this organizational structure. In fact, the Senate already took this position on June 16, 2009, when it adopted a report of the joint committee dealing with the mandate of the Parliamentary Budget Officer. Among other things, the report recommended that the officer should "...respect the provisions of the [*Parliament of Canada Act*] establishing his position within the Library of Parliament...."

By asking the courts to decide the question of his mandate, the Parliamentary Budget Officer has disregarded the established authority and organizational structure of which he is a part. The question of his mandate is solely for Parliament to determine. The officer's actions run contrary to the constitutional separation of powers between the branches of government. As a consequence, both the second and third criteria have been fulfilled.

The final criterion is that a question of privilege "be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available." Senator Cools has indicated that she is ready to move a motion. This criterion has, therefore, also been met.

Before concluding, one other point, identified by Senator Fraser, should be addressed. The senator was concerned about dealing with a matter that is before the court, in effect raising the *sub judice* convention. As noted at pages 627 and 628 of the second edition of *House of Commons Procedure and Practice*, "The *sub judice* convention is first and foremost a voluntary exercise of restraint on the part of the House to protect an accused person, or other party to a court action or judicial inquiry, from any prejudicial effect of public discussion of the issue. Secondly, the convention also exists ... 'to maintain a separation and mutual respect between legislative and judicial branches of government'. Thus, the constitutional independence of the judiciary is recognized." Quite importantly, the text then goes on to note that "...the *sub judice* convention has never stood in the way of the House considering a *prima facie* matter of privilege vital to the public interest or to the effective operation of the House and its Members." The *sub judice* convention does not, therefore, prevent the Senate from dealing with this matter.

A prima facie case of privilege has been established. The role of the Speaker, as identified at citation 117(2) of the sixth edition of Beauchesne, "... is limited to deciding the formal question, whether the case conforms with the conditions which alone entitle it to take precedence ... and does not extend to deciding the question of substance — whether a breach of privilege has in fact been committed — a question which can only be decided by the House itself."

Under rule 13-7(1), Senator Cools now has the opportunity to move a motion either calling on the Senate to take some action or referring the case of privilege 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 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. This debate can be adjourned, and when it concludes the Senate will decide on the motion. The final decision is for the Senate to make.

The ruling is that a prima facie case of privilege has been established.

Senators' Statements
March 20, 2013 *Journals*, p. 2022

On Thursday, February 14, Senator Tardif rose on a point of order to object to the statement made earlier in the sitting by Senator Boisvenu. According to the Deputy Leader of the Opposition, the statement made by Senator Boisvenu was inappropriate under the terms of rule 4-2(6) which explains "that matters raised during Senators' Statements shall not be subject to debate". Senator Tardif sought guidance on the proper content and use of statements.

In the exchanges that followed involving Senator Carignan and Senator Cowan, it is clear that there are at least two alternative views about the nature and character of statements. According to Senator Carignan, the purpose of rule 4-2(6) is to prohibit any debate arising from a statement whether or not there is agreement about the point of view expressed in the statement. From Senator Cowan's perspective, however, the nature of the subject matter should have a role in determining whether it is appropriate as a statement or whether it should be presented in the form of an inquiry or motion.

I want to thank honourable senators for raising this matter. I have considered the possibility of guidelines as Senator Tardif and others requested. There have been a number of rulings in recent years which suggests that there is some confusion with the current operation of the rules.

In reality, the practice of having Senators' Statements has been a feature of the daily sitting since 1991. The rules governing statements have remained fundamentally the same even with the recent revision of the *Rules of the Senate*. The criteria used to determine the subject matter of a statement are not particularly restrictive. The only clear limitation is that the subject of a statement should not relate to an order of the day. This is explained in rule 4-2(5)(b). This rule and 4-2(5)(a) also propose that statements should relate to matters of public interest that a senator believes should be brought to the immediate attention of the Senate. What "immediate attention" means is somewhat difficult to determine precisely. A qualification is raised in Rule 4-2(5)(b) when it suggests that no alternative means be available for bringing the matter to the attention of the Senate. As Senator Cowan pointed out the subject matter of a statement could be presented in the form of a motion or an inquiry. While this would certainly open the matter up to debate, it would also require notice of either one or two days. If the matter is urgent and immediate, this delay might be unacceptable.

As currently written, the Rules do not provide the Speaker with guidance to determine whether the subject matter of a statement is of such a nature that only through a statement can it be brought to the immediate attention of the Senate. Nor do I believe the Senate would want the Speaker to exercise such authority. This is better left to the judgment of individual senators and to the Senate as a whole. If there is need to refine the rules with respect to Senators' Statements, this is best left to the Standing Committee on Rules, Procedures and the Rights of Parliament. The committee can recommend through a report to the Senate any changes that could better clarify the criteria for determining any further limitations on the subject matter of statements. It would then

be up to the Senate to decide whether to accept any recommendations to the rules respecting Senators' Statements.

Motion to Refer Motion to Committee
April 16, 2013 *Journals*, pp. 2075-2076

On March 19, 2013, as the debate resumed on the motion, as amended, of Senator Cools, seconded by Senator Comeau, concerning the question of privilege relating to the actions of the former Parliamentary Budget Officer, clarification was sought by Senator Cools as to whether or not there were now two questions rather one question before the house.

The Order Paper, at motion 144 under Other Business, reads as follows:

> Resuming debate on the motion, as amended, of the Honourable Senator Cools, seconded by the Honourable Senator Comeau:
>
> That this case of privilege, relating to the actions of the Parliamentary Budget Officer, be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament for consideration, in particular with respect to the consequences for the Senate, for the Senate Speaker, for the Parliament of Canada and for the country's international relations;
>
> And on the motion of the Honourable Senator Tardif, seconded by the Honourable Senator Cowan, that the question be referred to a Committee of the Whole for consideration.

Initially, upon the request for clarification, the Speaker sought to explain that order number 144 now contains, in the third paragraph, a proposal that has characteristics of a superseding motion. This proposal was introduced during debate on March 7, 2013, by Senator Tardif, who stated that "...pursuant to rules 5-7(b) and 6-8(b) I move: that this motion be not now adopted but that it be referred to a Committee of the Whole for consideration".

Senator Cools rose on a formal point of order and introduced a number of important considerations from the *Rules of the Senate* and the parliamentary procedural literature, all of which are reported in the published Senate Debates for March 19, 2013. Senators Tardif and Carignan each contributed to discussion on the point of order. Senator Carignan stated that: "...it seems fairly clear to me that Senator Tardif's intention was to propose an amendment...". At this point Senator Cools stated that "...if this is an amendment, it is a different matter". In light of this Senator Cools stated that she "would like to withdraw" the point of order.

The Speaker has been asked to evaluate the current status of motion 144. At the outset, it may be noted that Senator Tardif's proposal — to refer the entire motion relating to the case of privilege, not the actual case of privilege itself, to a Committee of the Whole — is unusual. When speaking to the point of order, the Deputy Leader of the Opposition indicated that "There may be no precedent for such a motion ...." This does not mean that the motion is necessarily out of order, but it does make the uncertainty, indeed the concern, voiced by Senator Cools understandable. The point of order was therefore a legitimate effort to ensure that the Senate is following proper procedure. To assess this, I will turn to the *Rules of the Senate.*

The Rules do, in general, allow a motion of the type moved by Senator Tardif. Rule 5-7(b) provides that notice is not required for a motion "to refer a question under debate to a

committee". Rule 6-8(b) then states that during debate on a question, a proposal to "refer the motion to a committee" is one of the limited class of motions allowed. In neither case do these rules identify exceptions relating to a motion on a case of privilege. It should also be noted that rule 5-8(1)(f) states that a motion to refer a question to committee, if it does not relate to a bill, is debatable. Motions to refer the question under consideration to committee are not common, but they do arise on occasion. When such a motion is before the Senate, debate is on the motion to refer the question to committee, although in point of fact this debate may be far-reaching. If the motion is adopted, the matter goes to that committee for study. If the motion is defeated, debate on the original motion resumes.

It is certainly true, as Senator Cools pointed out, that rule 13-7 establishes a number of parameters that govern debate on a motion moved on a case of privilege. Of particular relevance to the present issue, rule 13-7(4) limits debate to three hours; rule 13-7(3) limits all senators to only one speech of fifteen minutes, effectively removing the right of reply; and rule 13-7(1) makes clear that the motion can only be moved after the ruling on the question of privilege, even though debate may not begin until later that day. Other provisions of rule 13-7 generally apply only on the first day of debate.

In situations in which the analysis may be ambiguous, it is helpful to refer to the principle, expressed by several Speakers, that matters should generally be presumed to be in order unless the opposite is clearly demonstrated. As stated in a ruling of February 24, 2009, "In situations where the analysis is ambiguous, several Senate Speakers have expressed a preference for presuming a matter to be in order, unless and until the contrary position is established. This bias in favour of allowing debate, except where a matter is clearly out of order, is fundamental to maintaining the Senate's role as a chamber of discussion and reflection." Senator Tardif has outlined how her motion can be seen as fitting into the general framework of the Rules. As such, there is a reasonable basis to allow debate to continue, so that the Senate itself can decide how best to proceed.

Before concluding, there are two final issues to address. First, as already noted, there is a limit of three hours for debate on Senator Cools' motion. Any time taken in debate on Senator Tardif's motion counts towards that three hour period. Second, the restriction on a senator speaking once, contained in rule 13-7(3), only applies to the main motion. If there is an amendment or some other type of debatable motion moved during the three hours of debate, a senator who has already spoken to the main motion could speak again.

Trusting that this analysis has been helpful to the chamber, debate can continue.

Question of Privilege – Debate
April 24, 2013 *Journals*, p. 2163

On March 5, Senator Chaput rose on a question of privilege, after giving the necessary written and oral notices. Her question of privilege concerns certain remarks in the Senate on February 13, 2013, during debate on Bill S-211. She argued that these comments had attacked her abilities as chair of the Standing Senate Committee on Official Languages, breaching both her privileges and those of the committee. She outlined how she believed her question of privilege met the four criteria under the special process set out in Chapter 13 of the Rules. The Standing Senate Committee on Official Languages has held four meetings since this question of privilege was raised, and on each of these occasions, Senator Chaput has served as its chair.

As honourable senators know, a question of privilege must meet all four criteria set out in rule 13-3(1) to benefit from the special procedures in Chapter 13 of the Rules. The first of these criteria is that the matter be raised at the earliest opportunity. As Senator Chaput herself acknowledged, the Senate sat a number of times between February 13 and March 5. To meet the first criterion it would have been necessary to raise the matter on February 14, or to present a compelling case as to why that was not possible. Since this did not happen in this instance, the question of privilege does not meet the initial requirement to allow a prima facie question of privilege. Given this, it is not really necessary to evaluate it in terms of the others. In such a situation, the senator raising the matter still has, under rule 13-3(2), the option of proceeding by means of a substantive motion after notice. In the current case, however, the criteria of rule 13-3(1) have not been met, and there is no prima facie finding of a question of privilege.

Question of Privilege — Witness

May 8, 2013 *Journals*, pp. 2235-2237

Yesterday, Senator Cowan raised a question of privilege about media reports suggesting that a witness invited to appear before the Standing Senate Committee on National Security and Defence during its study of Bill C-42 had not done so because of pressures exerted on him by his employer. The bill had been reported earlier in the sitting, without amendment but with observations. As the Leader of the Opposition explained, Corporal Roland Beaulieu, a member of the RCMP currently on medical leave, had been invited to appear before the committee on Monday, May 6. Senator Cowan indicated that last week Corporal Beaulieu had been informed that if he came to Ottawa to testify his medical leave would be terminated. As a result he did not attend. A number of other honourable senators then participated in consideration of the question of privilege. After these interventions, the chair committed to ruling today.

Before dealing with the substance of the question of privilege — the allegation of deliberate witness intimidation — it should be made clear that the proceedings of the committee at its Monday meeting have not been questioned. The committee heard witnesses, including representatives of the Mounted Police Professional Association of Canada, to which Corporal Beaulieu belongs, and reviewed the bill clause-by-clause. Bill C-42 was then reported back to the Senate. The bill is now on the Order Paper and open to debate at third reading.

As already noted, the fundamental issue is the protection of witnesses. Privilege is the sum of the rights enjoyed by this house and its members that are necessary for us to conduct our work. We must be mindful that this protection of privilege is not limited to parliamentarians alone. More importantly, with respect to the current situation, witnesses also enjoy a range of protection. As stated at page 267 of the 24th edition of Erskine May, "Any conduct calculated to deter prospective witnesses from giving evidence before either House or a committee is a contempt." Erskine May then continues to explain "It is also a contempt to molest any person attending either House as witnesses, during their attendance in such House or committee," as are threats against those who have previously appeared. These points are repeated at page 840. Similar statements are made at pages 114 and 115 of the second edition of *House of Commons Procedure and Practice*, which explains that witnesses are protected from threat or intimidation.

On April 13, 2000, the Standing Committee on Privileges, Standing Rules and Orders — now the Standing Committee on Rules, Procedures and the Rights of Parliament — presented its fifth report, dealing with allegations about reprisals against a witness. The report stated in part as follows:

> The Senate, and all Senators, view with great seriousness any allegations of possible intimidation or harassment of a witness or potential witness before a Senate committee. In order for the Senate to discharge its functions and duties properly, it must be able to call and hear from witnesses without their being threatened or fearing any repercussions. Any interference with a person who has given evidence before a Senate committee, or who is planning to, is an interference with the Senate itself, and cannot be tolerated.

The essential issue is not whether representatives of the association appeared before the committee. They did. The issue is whether there was a deliberate attempt to impede the appearance of an invited witness, agreed to by the Steering Committee. Witnesses or potential witnesses who fear retaliation, directly or indirectly, arising from their testimony, whether because of implied or direct threats or because previous witnesses or potential witnesses have suffered due to the fact that they appeared or considered appearing, will either be unwilling to appear or, if they do, will not be forthcoming in their evidence. Since this impedes parliamentarians on the committee in the full exercise of their duties, it would represent a breach of privilege.

Based on the information available, the witness had agreed to travel to Ottawa and come before the committee. He cancelled because an RCMP medical officer informed him that, if he did testify, he would be considered able to return to work and his medical leave would be terminated. Furthermore, on the last working day before the committee meeting, it would seem that a new policy was issued by the RCMP, requiring that a member on medical leave seek approval before undertaking certain types of travel. All this could be coincidental, but the chronology of events and the allegations are such as to raise concern.

I will now turn to the four criteria of rule 13-3(1), all of which must be met for a prima facie case of privilege to be established. Senator Cowan clearly raised this issue at the first opportunity, thereby meeting this first criterion.

In terms of the second criterion, that the matter must "directly concern[] the privileges of the Senate, any of its committees or any Senator," the references to the procedural works already given make clear that this matter does involve the privileges of the Senate and its committees. Unlike many other parliamentary bodies, questions of privilege relating to the work of a committee can be raised in the Senate itself, without requiring a report of the committee.

If there were intent to intimidate the witness, it is clearly a grave and serious breach, therefore meeting the third criterion.

The final criterion is that a question of privilege must seek a remedy the Senate can "provide and for which no other parliamentary process is reasonably available." In this case, the issue is not whether the committee did its work properly. As far as can be ascertained, it did. Instead, the fundamental issue is whether there was a deliberate attempt to prevent a witness from appearing. Were this to be so, it would constitute contempt. The accepted remedy is to treat such issues as cases of privilege. As such, the final criterion has also been fulfilled. This ruling, to be clear, does not establish that there was a deliberate intent to intimidate, which would be a decision for the Senate to eventually make, but rather that there is reason for concern.

The ruling is, therefore, that there is a prima facie case of privilege. Senator Cowan can now move a motion either calling on the Senate to take some action or referring the case of privilege to the Rules Committee. The motion must be moved now, but will only be considered at the end

of Orders of the Day or 8 p.m., whichever comes first. If the Senate adjourns earlier, the motion will be taken up at the next sitting. Debate on the motion can last a maximum of three hours, with each senator limited to speaking once, and for no more than 15 minutes. This debate can be adjourned. When debate ends, the Senate will decide on the motion.

Subamendment
May 21, 2013 *Journals*, p. 2536

I am prepared to rule on the point of order that has been raised by Senator Carignan, but I do so in the firm conviction that the institution of the Senate is a critical and foundational part of our bicameral Parliament. All honourable senators in this chamber operate with goodwill for the betterment of the institution as they serve the people of Canada.

From a strictly procedural point of view, the parliamentary practice is that a sub-amendment is not able to enlarge the amendment that is before the house. In providing some support for a clear practice from the literature, *Beauchesne's Parliamentary Rules and Forms*, at paragraph 580, states:

> (1) The purpose of sub-amendment (an amendment to an amendment) is to alter the amendment. It should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment.

Honourable senators, in order to be helpful to the house, if the motion of Senator Carignan is adopted and this matter is referred back to the Standing Committee on Internal Economy, Budgets, and Administration, nothing would obviate the committee coming to the conclusion much along the lines as the Honourable Senator Nolin has indicated.

From a purely technical point of view, the subamendment having been challenged is not in order.

Question of Privilege — Committee Report (Internal Economy, 24th report)
May 23, 2013 *Journals*, pp. 2549-2551

On May 21, the Honourable Senator Harb raised a question of privilege concerning the twenty-fourth report of the Standing Committee on Internal Economy, Budgets and Administration, presented on May 9. Senator Harb argued that the content of the committee report harmed his reputation and undermined his ability to fulfil his duties, and damaged the Senate itself. He took issue with the process followed in the review of living allowances, arguing that it amounted to a violation of basic principles of natural justice. He also challenged the conclusions reached by the committee. In presenting his position, Senator Harb outlined how, in his view, the question of privilege fulfilled the four criteria of rule 13-3(1).

A number of honourable senators made interventions on the question of privilege. Senator Carignan noted that Senator Harb himself recognized that he had been able to participate throughout the process that led to the twenty-fourth report. He emphasized that the report's recommendations would only take effect if adopted by the Senate, so the Senate itself would make the final decision. Senator Harb himself could take part in the debate. This being the case, Senator Carignan argued there was no prima facie question of privilege.

Senator Furey then posed questions to Senator Harb about the pattern of travel reviewed in the report. Afterward, Senator Nolin cited the second edition of *House of Commons Procedure and Practice* and Erskine May in arguing that Senator Harb had not raised a proper question of privilege. Senator Fraser generally endorsed Senator Nolin's comments, identifying the complaint as one involving a reassessment of living expenses, which falls within the mandate of the Internal Economy Committee and the authority of the Senate. She noted "nowhere does it cast aspersions on Senator Harb's character or anything else. It does not say that he made the claims in bad faith ... It simply says that the claims should not have been made."

As honourable senators know, a question of privilege is "An allegation that the privileges of the Senate or its members have been infringed." Privilege is made up of "The rights, powers and immunities enjoyed by each house collectively, and by members of each house individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals." These definitions are from Appendix I of our Rules.

There are a range of privileges and rights enjoyed by this house and by its members. One of these rights is to regulate internal affairs. In exercising this right, the Senate can implement measures intended to safeguard its public reputation, even if it appears to be detrimental to the interest of individual members. This is confirmed at page 88 of the second edition of *House of Commons Procedure and Practice*, where it is stated that "...individual Member's rights are subordinate to those of the House as a whole in order to protect the collectivity against any abuses by individual Members." That is to say that the privileges and rights exercised by the Senate itself take precedence over those of individual senators.

The report by the Internal Economy Committee involves a proposal to the Senate on the use of Senate resources and the application of Senate policies with respect to these resources. The committee has a clear mandate to do this. Rule 12-7(1)(a) allows it "to consider, on its own initiative, all financial and administrative matters concerning the Senate's internal administration." The report is an exercise of this mandate. Of course, the report will only take effect if it is adopted by the Senate.

Senator Harb raised his question of privilege at the earliest opportunity. However, it does not meet the three other criteria of rule 13-3(1). The complaint raised by Senator Harb does not directly concern the privileges of the Senate, a committee or a senator. No grave or serious breach has been identified. There is nothing prima facie to substantiate a claim that Senator Harb's ability to function as a parliamentarian has been damaged.

The report falls within the Senate's legitimate control over its internal administration. The question of privilege does not meet the second and third criteria. Concerns about the fairness of the process for developing the report and its conclusions can be explored during debate, and any senator can propose that the report be referred back to the committee for further study. Indeed, this is what has happened with respect to the twenty-second report. The report could also be amended or rejected. There are a range of reasonable parliamentary processes available to address the issues raised by Senator Harb. Consequently, the condition of the fourth criteria has not been met.

The ruling is that a prima facie case of privilege has not been established.

Question of Privilege — Committee Report (Internal Economy, 22nd report)
May 28, 2013 *Journals*, pp. 2559-2561

On May 21, the Honourable Senator Cowan, the Leader of the Opposition, raised a question of privilege. His allegation was that privilege had been violated by the events leading to the presentation of the twenty-second report of the Standing Committee on Internal Economy, Budgets and Administration on May 9. Based on subsequent information from the media and other sources, Senator Cowan argued that the report was incomplete and biased. The effect, he argued, was to undermine the credibility of the Senate and public confidence in the institution. Senator Cowan argued that it was essential that action be taken to deal with this situation by thoroughly investigating all aspects of the allegations.

Senator Carignan, the Deputy Leader of the Government, responded by urging senators to focus on established facts, not allegations. He noted that other processes are available to deal with the concerns that are circulating. This includes recourse to the *Conflict of Interest Code for Senators*. Later Senator Nolin took up this idea by noting that another alternative was to refer the report back to the Internal Economy Committee. Senator Andreychuk drew our attention to the parliamentary authorities, which note that a disagreement as to fact does not constitute a question of privilege.

Senator Fraser, however, shared the concerns of the Opposition Leader. She underscored the importance of parliamentary bodies remaining free from obstruction, interference and intimidation. She argued that the allegations raise serious concern about inappropriate interference with a committee that plays a central role in the operation of the Senate.

Let me begin by making reference to a statement made more than thirty years ago, by the then-Speaker of the House of Commons, the Right Honourable Jeanne Sauvé. On March 18, 1982, after a serious breakdown in the business of the other place, she stated:

> What ensued from our failure to bring our rules up to date earned us shrugs and even sneers from our fellow citizens. We may even have strengthened an unfortunately widespread tendency to be sceptical of the actions of Parliament ...

She went on to state that "The authority of the Chair is no greater than the House wants it to be." The Speaker is the servant of the house, assisting it in conducting its business in an orderly manner that balances, as far as possible, many divergent interests.

In the Senate, given the limited authority of the chair, this is even more evident. Honourable senators are themselves responsible for how business is conducted, and retain final control of proceedings through the right to appeal decisions of the Speaker.

I raise this situation from many years ago because of the current circumstances, characterized by many as a crisis, in which the Senate now finds itself. There has been a swirl of accusations, many of them disturbing, and this has affected how the public perceives this body. The Senate is an important part of our parliamentary system, which has served our country well for more than 145 years. Honourable senators work for the public good in positions of trust, and must act responsibly. It is for honourable senators to take control of the situation and restore trust that may have been damaged.

When the Auditor General of Canada first identified concerns about inadequate documentation for some reimbursable claims, the Senate took this seriously. Through the Internal Economy

Committee we worked to review travel expenses. This eventually led to the audit of certain senators' expenses. To date the Senate has received three reports on specific cases. Other proposals to enhance expenditure controls have been made.

Senator Cowan has outlined his understanding of how events relating to the twenty-second report unfolded. Because of these concerns, the Senate decided to refer the report back to the Internal Economy Committee for further consideration on the same day the question of privilege was raised.

I do not underestimate the serious challenge of this situation for the Senate. For the good of the institution, and for the good of Parliament, the Internal Economy Committee needs to consider carefully how it will undertake a thorough and careful review of all aspects of the situation. The *Rules of the Senate* and parliamentary practice afford this committee the authority it needs to hear witnesses and to send for papers. The committee knows that honourable senators, and Canadians, will watch its work with great attention.

It is in this context that we must consider the question of privilege raised by the Leader of the Opposition. At this preliminary stage, the Speaker provides the Senate with an analysis of whether a prima facie case of privilege has been established. The four criteria of rule 13-3(1), all of which must be met, guide this analysis.

Given the arguments during consideration of the question of privilege and subsequent events, it is most helpful to start with the fourth criterion — that no alternate parliamentary process is reasonably available to deal with the matter. Senator Carignan noted that some aspects of the situation can be dealt with under the *Conflict of Interest Code for Senators*. Of immediate relevance, the very fact that the report in question was sent back to the committee shows that an alternate process was available. The Senate has implemented it, thereby pre-empting to some degree this decision, as is its undoubted right.

The committee is now responsible for reviewing the expenses and a range of related issues. It would be best to wait for the results of that work to see if clarity can be brought to this grave situation, rather than starting a second, parallel process. That would risk further confusion.

The Speaker must be satisfied that all four criteria are met in order to find that a prima facie case of privilege exists. The fact that this question of privilege does not meet one criterion means that, under the Rules, it cannot succeed. Given this, there is no need to directly address the other criteria. Debate in the Senate and other actions point to the seriousness of the events. After the Internal Economy Committee presents an updated report, senators will be able to assess it, to see if the concerns have been addressed properly and effectively.

The ruling is that there is no prima facie case of privilege. The Senate already is taking action on the concerns that gave rise to Senator Cowan's question of privilege. Senators must now have the chance to work to resolve this problem.

Distribution of Committee Report in Senate

May 29, 2013 *Journals*, pp. 2573-2574

I am prepared to rule on the point of order raised by the Honourable Senator Moore on Thursday, May 9. His point of order related to the availability of the twenty-fifth report presented that day by the Standing Committee on Internal Economy, Budgets and Administration, the final of four

reports presented by the committee that day. The three other reports presented earlier were distributed to all senators in the chamber while they were being read out in full by a clerk at the table. The twenty-fifth report, however, was initially distributed only on request. The object of Senator Moore's point of order had to do with the difference in the way these reports were made available to the senators.

In a ruling on November 6, 2012, it was noted "that committee reports that are not for consideration later during the same sitting are not handed out as a matter of course, but can be requested from the pages." The events of May 9 were generally in keeping with current practice. The table was guided by indications given about anticipated proceedings following the presentation of each report. In the end, however, events unfolded differently. This created the confusion. Once it became clear that senators wanted to have copies of the final report distributed, this was done.

The events of May 9 were in line with current practices. If senators do wish to change current practice, they certainly can be adapted. The issue could be taken up by the Rules Committee or by consultation through the usual channels. I wish to thank the Honourable Senator Moore for raising the point of order, because there was a bit of confusion on that day.

Question of Privilege — Review of Living Expenses

June 4, 2013 *Journals*, pp. 2594-2595

On May 28, the Honourable Senator Harb raised a question of privilege about alleged outside interference in the internal affairs of the Senate. This question touched, in particular, on the work of the Standing Committee on Internal Economy, Budgets and Administration, which has been reviewing certain senators' living expenses. Senator Harb argued that the effect of the outside influence has been to taint the process leading to the three reports on expenses made by the committee thus far. He claimed that this has had an impact on the reputation of the Senate and constitutes a breach of privilege. Since the question of privilege was raised, the last of the three reports has been adopted, and Senator Harb did speak to the twenty-fourth report, which dealt with his expenses.

A number of other senators spoke to the question of privilege. Senator Carignan noted that Senator Harb raised arguments similar to ones addressed in previous questions of privilege that had already been resolved. The Deputy Leader of the Government also indicated that other parliamentary processes would be available to address these concerns. Senator Carignan also made reference to the processes available through the different public officials dealing with ethics matters.

Senator Nolin went on to encourage Senator Harb to intervene in debate, which he later did, while Senator Cools called for the Senate to be cautious in how it proceeds. Finally, Senator Andreychuk clarified the role of the ethics officers.

As stated in a ruling of May 28, the gravity of the situation the Senate has been confronting should not be underestimated. Public trust in the institution is at stake. There is little doubt that senators are examining these matters carefully, as demonstrated by the proceedings on the reports of the Internal Economy Committee. While the Senate has a range of options open to it in considering its business, the Speaker is constrained by the Rules when considering a question of privilege, and must evaluate it in light of the four criteria of rule 13-3(1), all of which must be met.

Senator Harb stated that the first criterion has been met as his question of privilege followed from new information. While not denying this reality, senators should be cautious about using each new event as an opportunity to raise a question of privilege repeating previous arguments. This caution holds particularly in the current case, where this is the third ruling.

When considering the second and third criteria — that the question must relate to privilege and that there must be a grave or serious breach — one must remember that the Senate has the exclusive right to manage its internal affairs, including its debates, agenda and proceedings. As noted in a previous ruling, the process whereby the Senate considered the reports of the Internal Economy Committee was an exercise of this authority. The final outcome of the reports was decisions by the Senate after the public debate allowed by our Rules and our practice. Senator Harb took part in the debate. The right of the Senate to control its own affairs has been respected. Neither the second criterion nor the third have been met.

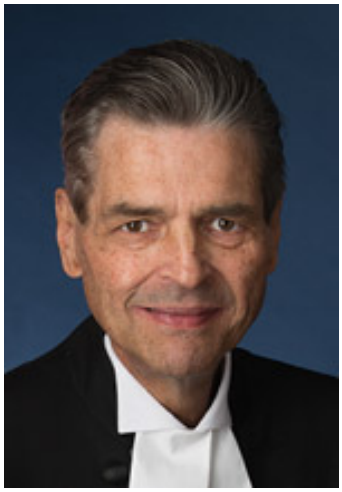
The final criteria of rule 13-3(1) is that a question of privilege must "be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available." The Senate received various reports on the review of senators' living expenses. The one dealing with Senator Brazeau was adopted before this question of privilege. Another, dealing with Senator Duffy, was sent back to committee, where it was amended. The amended report was then adopted by the Senate. The report dealing with Senator Harb was still under consideration when the question of privilege was raised. A motion to refer it to committee had been moved, but was subsequently rejected and the report adopted.

The various actions adopted by the Senate in relation to the reports make clear that a range of parliamentary processes could be used to bring forward the concerns raised in the question of privilege. All senators had the chance to speak to the reports, and Senator Harb availed himself of that right. The Senate has now made a decision on all the reports, and Senator Harb's question of privilege does not meet the fourth criterion.

Since the question of privilege does not meet the criteria of rule 13-3(1), a prima facie case of privilege cannot be found to exist.

Second Session, Forty-First Parliament
October 16, 2013 – August 2, 2015

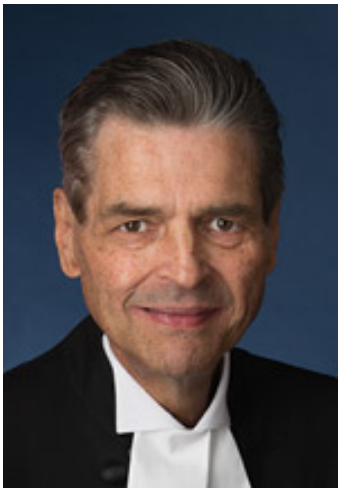
Speaker: The Honourable Noël A. Kinsella
October 16, 2013 – November 26, 2014



Speaker: The Honourable Pierre Claude Nolin
November 27, 2014 – April 23, 2015

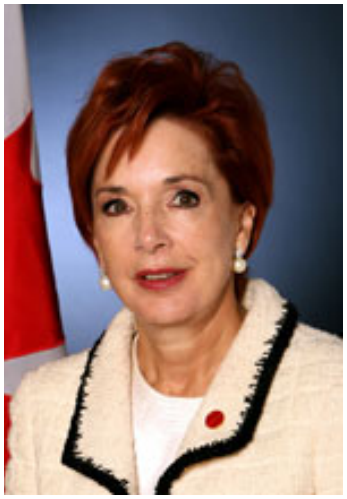
Speaker: The Honourable Leo Housakos
May 4, 2015 – August 2, 2015

Speaker *pro tempore*: The Honourable Donald H. Oliver
October 16, 2013 – November 16, 2013



Speaker *pro tempore*: The Honourable Pierre Claude Nolin
November 20, 2013 – November 26, 2014

Speaker *pro tempore*: The Honourable Leo Housakos
December 4, 2014 – May 4, 2015



Speaker *pro tempore*: The Honourable Nicole Eaton
May 28, 2015 – August 2, 2015

Content of Motion
October 24, 2013 *Journals*, p. 64

During yesterday's sitting a point of order was raised as to whether the motion to suspend Senator Brazeau is final, or if the reference to rule 5-5(i) provides some mechanism to appeal or overturn the suspension. Our Rules define a point of order as "A complaint or question raised by a Senator who believes that the rules, practices or procedures of the Senate have been incorrectly applied or overlooked during the proceedings, either in the chamber or in committee." Upon review of yesterday's *Debates*, it appears that the issue is not a matter of order, but more appropriately one of debate. Consequently there is no point of order, and debate can proceed when the item is called.

Motion to Suspend a Senator
October 24, 2013 *Journals*, pp. 64-65

At the start of debate on the motion proposing to suspend Senator Wallin, Senator Segal raised a point of order questioning the propriety of the proposal before the Senate. Senator Segal likened the motion to the ancient procedures for bills of attainder. He characterized the motion as arbitrary, and a violation of basic rights guaranteed under the *Canadian Charter of Rights and Freedoms*. He was also troubled by the fact that the Senate did not have the chance to consider the report of the Internal Economy Committee, presented in August before the prorogation of the previous session. In addition, the senator was concerned that the adoption of the motion could influence a police investigation. In summary, Senator Segal felt that the motion undermines due process and the presumption of innocence, basic Canadian principles; therefore the motion should not be considered by the Senate.

Honourable senators, the Leader of the Government, Senator Carignan, disagreed with Senator Segal. In his view, the Senate has the power, at its discretion, to suspend a member. This authority comes from section 18 of the *Constitution Act, 1867*, and has been implemented through the *Parliament of Canada Act*. He argued that the reproach of gross negligence mentioned in the motion is entirely different from any criminal proceeding. Instead, it would reflect, if the motion is adopted, the opinion of the Senate about negligent actions amounting to wilful disregard that has harmed the Senate itself.

After these interventions, both Senators Fraser and Comeau spoke. Senator Fraser recognized that the Senate can, after due consideration, suspend a member, but felt that the lack of an evidentiary basis makes it difficult to consider this motion properly. The prorogation of the last session prevented the Senate from considering the report of Internal Economy on the expenses of Senator Wallin, deposited with the Clerk of the Senate on August 13. Senator Comeau, however, emphasized that the report has been available to senators since it was made public. He also noted that the Internal Economy Committee, unlike other committees of the Senate, operates on an ongoing basis, and is unaffected by prorogation.

Honourable senators, when considering this issue we must be clear that one of the privileges and powers of the Senate is to suspend a member. Rule 15-2(1) states that "The Senate may order a leave of absence for or the suspension of a Senator where, in its judgment, there is sufficient cause." But this provision is not the source of this power, it is merely a recognition of its existence. It is an inherent power of a parliamentary body to regulate its own affairs and to discipline its members, which includes suspension. Bourinot, at page 64 of the fourth edition, states that "The right of a legislative body to suspend or expel a member for what is sufficient

cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body."

In Canada, section 18 of the *Constitution Act, 1867*, allows Parliament to define the privileges, immunities and powers of the two federal houses, provided that they do not exceed those of the United Kingdom House of Commons. Under section 4 of the *Parliament of Canada Act*, the Senate has the powers of the United Kingdom Commons as of 1867, plus such additional powers as are defined by law.

The United Kingdom House of Commons has long had the power to suspend members, exercising it as far back as 1641. Section 4 of the *Parliament of Canada Act* thus provides the Senate with the same power to suspend a member. This power is entirely independent of and separate from any criminal measures undertaken by the relevant authorities.

Suspension of a member is, without a doubt, a serious issue. It is not done lightly, and the Senate has only done it once, when Senator Thompson was suspended on February 19, 1998. His sessional allowance was also affected under regulations that are still in force and still have effect.

A decision by the Senate to exercise this power is, of course, a serious matter, to be dealt with during debate. It is through this process that honourable senators seek to convince each other whether a proposal should be accepted or not. In the end, the desirability of a proposal to suspend a senator will be decided by the Senate itself.

In a similar way, it is through debate that honourable senators set out the reasons, arguments and facts that favour the adoption or rejection of a suspension motion. If detailed consideration or evidence is required, the option of referring a question to committee — a proposal already made in the case of the motion relating to Senator Brazeau — is available.

It is not the role of the chair to comment on the substance or desirability of the motion that has been proposed to the Senate. The chair's authority is limited to determining whether the motion is in order in terms of procedure. The finding is that it is. Proceedings thus far have been in keeping with the Senate's authority, rules and practices. Debate on the question, when called, can proceed.

Government Motion Proposing to Dispose of Motions Under Other Business

October 30, 2013 *Journals*, pp. 102-105

Yesterday, after Senator Martin moved Government motion 4, Senator Fraser rose on a point of order. She questioned the propriety of this motion.

Government motion 4 is what can be called a "disposition motion." These are motions establishing specific procedures to determine how the Senate will deal with a particular item or items of business. Such motions are uncommon, but a ruling of April 28, 2004, indicated that they are generally in order. That ruling stated that a motion of this type is not a violation of our Rules and practices. As the ruling noted, "Since the Senate has complete control over the disposition of the motion, it maintain[s] its fundamental privilege to determine its own proceedings."

This particular disposition motion proposes to establish a process to deal with motions 2, 3 and 4 under Other Business. These motions propose to suspend Senators Brazeau, Wallin and Duffy. They were brought forward at the initiative of Senator Carignan. He moved the suspension

motions as his own proposals, not as initiatives of the Government. He has been quite clear on this, and proceedings in the Senate have gone forward on that basis.

Any suspension motion is difficult, honourable senators. No senator would deny that. These motions require that the Senate, as a body, consider disciplinary actions. This is part of how we can maintain the reputation of this chamber and public confidence and trust in one of the basic institutions of our system of governance.

Debate on the motions to date has been vigorous and productive. Many senators have participated, and they have done so in a respectful and serious manner. I wish to thank honourable senators. The process has been dynamic, informative and instructive, not repetitive. The debate has captured the attention of the Canadian public. It has provided information that was previously unknown or not well understood, helping us to better appreciate the work that remains to be done to improve our internal administrative operations.

As I noted in a ruling last week, suspension is a mechanism available to the Senate. Our debate has referenced the use of suspension in other Westminster Parliaments, where it has been exercised with caution, so as not to prejudice external proceedings.

In a court of law there are detailed rules and processes to govern proceedings. In considering the matter of suspension, the Senate is following its longstanding parliamentary Rules and procedures. In a parliamentary body like the Senate, with the very word Parliament coming from *parler*, to speak, we use debate to reach the best possible result. Debate is at the heart of what we do, and it has been the means to explore and evaluate the suspension motions.

Honourable senators, Senator Fraser recognized that disposition motions, although unusual, are available under the practices and procedures of the Senate. She noted the 2004 case to which reference has already been made. Her concern was not about the motion, but the fact that it was brought forward as a Government proposal targeting non- Government business. As such, she asserted, it violates the basic distinction in our Rules between Government Business and Other Business. She characterized this distinction as one of the most important to be found in our Rules. As she explained, a motion can be either a Government motion or a non-Government motion, but it cannot fall into both categories. Senator Fraser argued that, with disposition motion number 4, the Government is seeking to do indirectly what it cannot do directly. She felt this is a dangerous precedent, and must be ruled out of order.

Honourable senators, later, Senator Cowan spoke to support Senator Fraser. He emphasized the importance of respecting Rules and normal processes. He called for caution if the Senate is to lay aside its Rules, practices and precedents. In this vein, he argued, our Rules make a clear distinction between Government and Other Business, giving the Government certain tools to advance its business. The Leader of the Opposition said these provisions should be respected.

For her part, Senator McCoy expressed dislike for the regularity with which the Senate is asked to set aside its Rules and its practices, especially when the effect is to truncate debate artificially. After all, she noted, debate is what we do. Instead, she asked the Speaker to give his guidance as to how the Senate might proceed, and encouraged us to take the necessary time to consider what we are doing.

A number of other senators also questioned whether the time taken in debate thus far is really so extraordinary, given the importance of the issues under discussion.

Senator Martin argued that while the suspension motions are under Other Business, she did not accept that this prevents the Government from proposing a timeline. The Senate can amend, accept or reject the timeline the Government has proposed. Both Senator Martin and, later, Senator Carignan argued that unlimited debate is not always desirable. In particular, Senator Carignan was concerned that while the questions of suspension are pending, the business of the Senate, and particularly Government Business, is being hampered. He suggested that there will be continual questions about the participation of the three senators. For this reason, he argued that a level of certainty is required, to help bring the debate to an end within a reasonable timeframe.

At the very outset, let us be clear that disposition motions are part of our practice. The core issue here is that the proposal by Senator Martin dealing with disposition has been brought forward as a Government motion, though it would determine the course of proceedings on the three suspension motions, which are Other Business.

If the disposition motion is accepted as an item in the category of Government Business, time allocation could be applied to the motion. If the Senate agrees to this, the Government would then be able to limit debate on items in the category of Other Business using specific powers that are now clearly reserved only for Government Business.

Since 1991 the Senate has made a distinction between the categories of Government Business and Other Business.

Honourable senators, Appendix I of the Rules defines Government Business as:

> A bill, motion, report or inquiry initiated by the Government. Government business, including items on notice, is contained in a separate category on the Order Paper, and the Leader of the Government or the Deputy Leader may vary the order in which these items are called.

Other Business, on the other hand, is:

> Items of non-Government business on the *Order Paper and Notice Paper*. These may include bills, motions, reports or inquiries. Unless the Senate otherwise orders, items of Other Business are called in the order in which they are printed, which is determined by the Rules.

Honourable senators, rule 4-13(1) establishes that Government Business shall have priority over all other business before the Senate. Furthermore, rule 4-13(3) allows the Leader and Deputy Leader of the Government to vary the order of Government Business from that published in the *Order Paper and Notice Paper*.

Other Business, however, is called in its published order, unless the Senate decides otherwise. There are numerous other references in our Rules to the different provisions that apply to Government Business and Other Business. For example, items of Government Business remain on the Order Paper until they are disposed of, but items of non- Government business are dropped if they are called for fifteen consecutive sitting days without being proceeded with. Should motions 2, 3 and 4 not be addressed for 15 consecutive sittings, they too would drop.

In addition, it is significant to note that under Chapter 7 of our Rules, the Government has, as already mentioned, the option of initiating the time allocation processes in relation to items in the category of Government Business.

Honourable senators, there is a coherence in our Rules. Government Business has priority, and there are mechanisms to facilitate its dispatch. As to Other Business, the Senate follows more traditional practices, so that debate is more difficult to curtail. The disposition motion currently before the Senate appears to cross the boundaries between these two categories.

A proposal of this type could, in the long term, distort the basic structure of Senate business, allowing the Government's time allocation powers to, in effect, be applied to items of Other Business. To avoid the long term risks to the integrity of the basic structure of our business, it would be preferable to find a solution to this particular case that avoids establishing such a far-reaching precedent.

Given the Government's important role, it has specific means, already discussed, to secure the dispatch of its business. But even under Other Business, there are ways to seek to curb or limit debate and to come to a decision. The most obvious is by moving the "previous question," which forestalls further amendments, but is only available on the main motion.

Honourable senators, my concern as Speaker in this case goes beyond the specifics of this particular point of order. All senators have an obligation to the long term interests of the Senate, to maintain the integrity of its traditions and practices, especially open debate within a clear structure, that have been hallmarks of the Senate since its very beginning. The changes that have been made over the years to modernize our practices, and to establish mechanisms to facilitate the dispatch of Government Business, were made after consideration and reflection. This approach should not change. At the same time, I am aware that the Speaker's preoccupations cannot trump the judgment of the Senate itself, which always remains the final arbiter of any point of order or question of privilege.

Given my concerns, I would strongly urge the Leaders of the Government and Opposition to work out a timeline that would find a solution to the current challenges facing the Senate, without fundamentally distorting the integrity of the basic structure of our business. As chair, I am more than willing to offer any assistance I can.

Honourable senators, this ruling is based on a thorough examination of the matter, including a full review of the Rules, precedents and procedural literature. I have also considered advice from senior advisors, over several meetings in a short period of time. The issues raised are complex, important and sensitive, and could have profound effects on how the Senate works in the future.

All senators must consider the appropriate way to respond to the challenges posed in this point of order, since the Senate is a largely self-regulating chamber. Thus far we have conducted ourselves in a manner that does credit to the upper house of Canada's bicameral Parliament, applying the basic approach we have at our disposal, namely debate, thoughtfully and carefully.

Honourable senators, through a disposition motion or other means it is possible to propose a way to end debate. The suspension proposals have been moved as non-Government initiatives. To allow a process that could result in the application of the Government's time allocation powers to non-Government business is not in keeping with the current Rules and practices.

Whatever the final outcome on this specific point, the chair remains available to assist the Senate in finding a solution. The ruling is that Senator Martin's motion is out of order and is to be discharged.

(*Accordingly, the Order of the Day for resuming debate on motion No. 4 under "Government Business", was discharged.*)

Speaker's Statement — Complicated Questions
November 4, 2013 *Journals*, p. 126

Honourable senators, what the rules and the procedural literature say about this, and I agree with Senator Fraser, is that it is seldom that the Speaker is asked to divide a question, but from time to time it has been done.

So the Speaker does not take the initiative to divide a question, but a member of the assembly may ask the Speaker, when it comes to the point of putting the question, "Please divide the question," and it is at the discretion of the Speaker whether to do it or not.

I thank the Honourable Senator Fraser for raising the matter as a question of order, but the point right now is debate. We are not ready for the question. When we are at that point, I ask the house, "Are you ready for the question?" and the house says "Yes." I then ask the question, and I, or any Speaker have to be satisfied that the question being put to the house is fully understood. That is why sometimes, if there is a complicated motion, Speakers have — indeed, as recently as a few weeks ago in the House of Commons — divided a question. It would be at that point, when the question is put to the house. Obviously, I listened to the debate here as well. As long as we are satisfied that we know what we are voting on, and I think everybody is, there is no need to divide even the most complicated of questions. But if there is confusion, sometimes it is helpful. It is more a technique to be helpful to the chamber when making a decision.

Speaker's Statement — Complicated Questions
November 5, 2013 *Journals*, pp. 139-140

During yesterday's sitting an honourable senator made a formal request that I exercise the authority of the Speaker to split the vote on Government motion five.

Senator Fraser questioned this process. As I indicated at that time, there is a practice in parliamentary procedure allowing the separation of a complicated question for the purposes of a vote on different elements of the motion. This is done to better capture the sense of the house when taking a decision, but can only be done if the motion contains two or more distinct propositions that would, if decided separately, be coherent.

I have considered the request carefully in light of the seriousness of the issue on which the Senate will now vote. Dividing a vote, honourable senators, is a rare practice. In the Senate, we do not have any known cases of using this parliamentary practice. It is appropriate, under rule 1-1(2), to look to the procedures in other parliamentary chambers, in particular the Canadian House of Commons.

In that place, on October 17, 2013, the Speaker gave a ruling specifically touching on this point. That ruling referenced pages 562 and 563 of the second edition of *House of Commons Procedure and Practice*. A number of past cases were also mentioned. Based on those precedents, the Speaker of the Commons noted that "the Chair must always be mindful to approach each new case with a fresh eye, taking into account the particular circumstances of the situation at hand. Often, there is little in the way of guidance for the speaker and a strict compliance with precedent is not always appropriate."

Honourable senators, in my consideration of Government motion five, I note that it deals with a single broad topic — the suspension of three senators — but also that it has been drafted in such a way that it can be split for the purposes of voting. It thus meets the basic criterion.

I have also considered, as I listened very carefully, the extensive debates in the Senate on this motion and on other proposals to suspend the senators. This leads me to conclude that, in this case, it is appropriate to split the motion for the purposes of voting. This will give honourable senators the opportunity to decide upon the distinct proposals contained in the motion.

In light of the request that has been made, I am directing that votes on the different elements of Government motion five be held separately as follows:

There will be four separate votes on the main motion. The first vote will deal with the suspension of Senator Brazeau. The second vote will then deal with the suspension of Senator Duffy. The third vote will deal with the suspension of Senator Wallin. The fourth and final vote will deal with the introductory provisions of the motion, confirming certain powers of the Internal Economy Committee.

Accordingly, I will now begin with the first of the four questions.

Statement by the Speaker *pro tempore* — Motion
December 4, 2013 *Journals*, p. 254

During yesterday's sitting concerns were expressed about the circumstances surrounding the introduction of Motion 41. Senator Fraser sought to clarify the situation, using the term "question of privilege" when she did so. In fact, this incident did not involve an infringement of the privileges of the Senate or its members. The matter was really more one of debate, and, as such, should be considered closed.

Question of Privilege — Interference in Committee Work
December 10, 2013 *Journals*, pp. 282-284

On December 5, Senator Cowan, the Leader of the Opposition, raised a question of privilege relating to alleged interference in the audit of Senator Duffy's expenses commissioned by the Standing Committee on Internal Economy, Budgets and Administration. He argued that the various kinds of interference that have been reported may have compromised the effective operation of the Senate and its members.

The senator's question of privilege is largely based on information provided in a sworn affidavit from the RCMP that was released on November 20. The contents of the affidavit, which have not been tested in court, have attracted considerable public attention. The alleged information it outlines is of concern to all senators and has been discussed both in the Senate and in the Internal Economy Committee. Senator Cowan argued that the events surrounding the audit, as set out in the RCMP document, amounted to interference in the work of the Internal Economy Committee and with the evidence that the auditing firm Deloitte was to provide.

In making his case, the Leader of the Opposition addressed the four criteria that must be met to establish a prima facie question of privilege under rule 13-3(1). In particular, he noted how he had

sought to exhaust all reasonably available alternative processes before raising the matter as one of privilege. He felt his last alternative had been exhausted when the Senate rejected a proposal to direct the Internal Economy Committee to hear from the Deloitte partner mentioned in the RCMP document. Despite resulting delays, Senator Cowan argued that he fulfilled all the criteria of rule 13-3(1).

Senator Cowan's argument was later supported by Senator Fraser. She indicated that the events, as presented by the RCMP, suggest that there had been interference with a proceeding in Parliament. Like Senator Cowan, she believed that the requirements for finding a prima facie question of privilege have been met.

Senator Carignan, the Leader of the Government, did not agree that there was a question of privilege. He did not accept that the events outlined in the RCMP document constituted interference in the Senate's work.

Communications between the members of each house in the same caucus is a normal feature of political life in any bicameral Westminster-type institution. Such conversations should not be construed as interference in the parliamentary context.

In addition, Senator Carignan specifically addressed the phone call from a managing partner of Deloitte to the audit group. He underscored the fact that the Deloitte forensic audit group has denied providing information, beyond direction to publicly available material. The Leader of the Government concluded that there was no interference in the audit process and that potential witnesses were not blocked.

Senator Cools, for her part, was uncomfortable with the remedy — referral to the Standing Committee on Rules, Procedures and the Rights of Parliament — that Senator Cowan would propose if a prima facie question of privilege were established. She feared this would amount to one committee sitting in judgment on the work of another. Senator Cools pointed out that the Internal Economy Committee has decided how to deal with the issue. She urged the committee's decision be respected.

Honourable senators, the issue of interference is central to this question of privilege, which leads one to consider what kind of interference may have actually occurred. While a definite answer on this point may not be required at this moment, it has become apparent that the legal and parliamentary meanings of the term are not necessarily the same.

Irrespective of the specifics of a particular question of privilege, the Speaker is responsible for assisting the Senate by conducting an initial evaluation, and the Speaker is obliged to follow the criteria in rule 13-3(1). All the criteria must be met to determine that a prima facie question of privilege exists. The criteria are that the question must:

> (a) be raised at the earliest opportunity;
> (b) be a matter that directly concerns the privileges of the Senate, any of its committees, or any Senator;
> (c) be raised to correct a grave and serious breach; and
> (d) be raised to seek a genuine remedy that the Senate has the power to provide and for which no other parliamentary process is reasonably available.

In presenting his argument, the Leader of the Opposition suggested that there is an option to exhaust all reasonable alternatives — helping ensure that the criterion of paragraph (d) is met —

before the criterion of paragraph (a) comes into play. The implication would be that one criterion can have priority over the others.

This does not reflect the Senate's practice. All four criteria must be met, and all must be met simultaneously, rather than over a period of time or sequentially. The initial assessment of whether all criteria have been met is done by the Speaker, and the chair's decision can be appealed to the Senate.

Honourable senators, rule 13-1 provides a general declaration about privilege, framing how the process relating to questions of privilege is to be understood. The rule states that:

> A violation of the privileges of any one Senator affects all Senators and the ability of the Senate to carry out its functions. The preservation of the privileges of the Senate is the duty of every Senator and has priority over every other matter before the Senate.

This makes clear that senators should raise any concerns they may have about privilege expeditiously, without protracted delay. Within the structure of our Rules and practices, issues of privilege are considered with some urgency.

In light of this, and consistent with past practice, rule 13-3(1)(a) means that a question of privilege must be raised at the earliest opportunity. Our precedents establish that even a delay of a few days can result in a question of privilege failing to meet this criterion. Attempting to exhaust alternative remedies before giving notice of a question of privilege does not exempt it from the need to meet the first criterion.

Since this question of privilege involves events in committee, it is appropriate to note that senators can raise issues of privilege arising from committee proceedings directly on the floor of the Senate. A report of the committee is not essential. The fact that the committee could make a report on the issue has never been understood as bringing the issue of a reasonable alternative process — the fourth criterion — into play.

The RCMP affidavit became public on November 20, and the issues contained in it have been extensively discussed in the Senate. It was more than two weeks after the release of the document that the question of privilege was raised. In light of this lapse of time, the first criterion — that the issue be raised at the earliest opportunity — has not been met. As such, a prima facie question of privilege cannot be established, and there is no need therefore to consider the other three criteria.

Speaker's Statement — Recognized Party in the Senate

January 29, 2014 *Journals*, p. 341

Honourable senators, it was clearly important under this unusual circumstance that, prior to calling for Senators' Statements, we should have engaged in discussion on this matter so we could bring some clarity.

There are a couple of issues I will note, as a member of the chamber but also as Speaker. I took note of the fact that a carbon copy of this letter was sent to my colleague the distinguished Speaker of the House of Commons. I can't understand why because we are a separate house. Honourable senators, it is important for the purpose of getting on with our business to note that the *Rules of the Senate*, as has been indicated by several honourable senators, do provide, a

definition of a recognized party, which is "A caucus consisting of at least five senators who are members of the same political party. The party must have initially been registered under the *Canada Elections Act* to qualify for this status and have never fallen subsequently below five senators. Each recognized party has a leader in the Senate."

I think all the conditions of that provision have been met. We've heard from our honourable colleagues who have stated that they are a member of a party that has been duly registered under the *Canada Elections Act*.

As to the position of the Leader of the Opposition, it is defined in our Rules as "The Senator recognized as the head of the party, other than the Government party with the most Senators. The full title of the Opposition Leader is `Leader of the Opposition in the Senate'."

As has been indicated by Senator Cowan, he has been elected by his colleagues and, therefore, meets the definition of the Leader of the Opposition in the Senate.

Motion Calling Upon the House of Commons to Undertake Actions and Comity Between the Houses

March 25, 2014 *Journals*, pp. 542-544

On Tuesday, March 4, Senator Tkachuk raised a point of order respecting motion 55. The motion, moved by Senator Downe, proposes that the Senate call upon the members of the other place to invite the Auditor General to conduct a comprehensive audit of their expenses, along the lines of the audit currently underway in the Senate. After preliminary consideration of the point of order, the Speaker *pro tempore* indicated that he would hear further arguments at a future sitting, and this occurred on March 6.

Senator Tkachuk's essential objection was that the motion is an instruction to the House of Commons. This would not respect the autonomy of the houses in a bicameral Parliament. Senator Andreychuk also emphasized the independence of the two houses, within the bounds of the Constitution and the law, and the right of each to regulate internal proceedings and to establish binding rules. Senator Martin shared these concerns, offering a historical perspective by noting that the independence of the houses has been recognized as fundamental since Confederation.

Senator Downe, on the other hand, argued that the point of order did not have a basis in the actual text of his motion. The adoption of the motion would not amount to an instruction or an order by the Senate to the House of Commons. Referring to a case from February 2008, he also noted that the House of Commons has in the past called upon the Senate to take specific actions within a certain period of time.

For her part, Senator Fraser reviewed a range of issues relevant to the point of order. She urged that the motion merely proposes a point of view on which the Senate can decide, but does not — indeed it cannot — bind the House of Commons. Senator Fraser characterized it as an opinion, a suggestion, or an invitation, and nothing more. She also emphasized that the motion refrained from reflecting upon proceedings of the House of Commons. Rather than being out of order, she argued that the motion was an exercise of Senator Downe's freedom of speech. Along this line, she drew the Senate's attention to the general pattern of allowing debate to continue unless it is clearly demonstrated that an item of business is out of order. Senator Fraser did not consider this to be the case with Senator Downe's motion.

Senator Cools also spoke to the acceptability of the motion. She was worried that the motion draws in a third party, the Auditor General, without the Senate knowing whether that officer wishes to be involved in the proposed process. She questioned whether the motion might weaken the independence of the Auditor General. She then emphasized the foundational nature of the independence of the two houses, and their right to conduct business independently. This motion, she suggested, proposes to speak directly to the Commons, bypassing the usual vehicle of a message, used in the 2008 case mentioned earlier. She concluded that the motion is out of order in both substance and form.

The issue at the heart of this point of order is the principle of comity between the two houses. This principle encompasses courtesy, civility and respectful behaviour of one body towards another. We generally think of this in relation to the restraint that Parliament and the courts both show in commenting on the actions of the other. But the idea is also useful in understanding the relationship between the two houses of Parliament. They are, and must be, independent, and free to set their own rules and procedures. But even more than this, each house, and its members, must be careful about commenting on the actions of the other place.

The parliamentary literature recognizes the importance of this mutual respect. The second edition of *House of Commons Procedure and Practice* indicates, at pages 614-615, that:

> Disrespectful reflections on Parliament as a whole, or on the House and the Senate individually are not permitted. Members of the House and the Senate are also protected by this rule. In debate, the Senate is generally referred to as "the other place" and Senators as "members of the other place". References to Senate debates and proceedings are discouraged and it is out of order to question a Senator's integrity, honesty or character. This "prevents fruitless arguments between Members of two distinct bodies who are unable to reply to each other, and guards against recrimination and offensive language in the absence of the other party".

Erskine May, at page 517 of the 24th edition, states that in the Lords "Criticism of proceedings in the House of Commons or of Speaker's rulings is out of order, but criticism of the institutional structure of Parliament or the role and function of the House of Commons may be made." Similarly, at page 440, one reads that in the Commons:

> It is considered undesirable that any Member of the House of Lords should be mentioned by name, or otherwise identified, for the purpose of criticism of a personal nature in relation to reflections on Members of either House.
>
> Members are restrained by the Speaker from commenting upon the proceedings of the House of Lords. When a Member raised the question of the handling by the Government of a bill which had been sent to the Lords, he was advised that the business of the House of Lords was their concern and not a matter for the Speaker.

As a final point, senators will also wish to refer to Standing Order 18 of the other place. It reads as follows:

> No Member shall speak disrespectfully of the Sovereign, nor of any of the Royal Family, nor of the Governor General or the person administering the Government

> of Canada; nor use offensive words against either House, or against any Member thereof. ...

The basic independence and mutual respect of each chamber must be adhered to. Comments about the actions of one house or its members ought to be framed with care, so as not to unduly stretch or violate the principle of comity. Honourable senators are generally aware of this when making speeches or formulating questions.

Just as honourable senators are expected to demonstrate respect for the Commons through the care with which they formulate remarks, so too should senators be entitled to similar consideration from members of the other place. However, any departures in this regard ought not to influence our behaviour. We should always seek to uphold the highest standards of parliamentary practice on such a basic point.

The principle of comity may sometimes seem at odds with other basic parliamentary principles, for example, that of freedom of speech. This freedom is essential. It is at the heart of our vibrant parliamentary democracy. Without it, parliamentarians would be unduly restricted in the conduct of the wide-ranging debates required in the legislative and policy processes, and in holding government to account. In practice, of course, we are able to reconcile these two basic principles. Indeed we recognize that bicameral comity raises the tone of our proceedings and strengthens Parliament.

It is these two basic principles that are at play in the point of order. The essential issue is whether Senator Downe's proposal, an exercise of his freedom of speech, respects intercameral comity. The motion calls upon the Commons to take certain actions. The term "call upon" may seem strong. If debate does continue, an honourable senator may wish to propose an amendment to moderate the language of the motion to make it less abrasive. This would help set a tone for constructive relations between the two houses in the future.

The Senate thus faces a situation in which two basic approaches structuring parliamentary business — mutual respect between the houses and freedom of speech within each house — can seem to be at odds. As noted, it may be possible to resolve this by changing the text of the motion. In such ambiguous situations, it is generally desirable for honourable senators to have the final say, allowing debate to continue unless the Senate decides otherwise. This ensures that this house maintains control of its own business, and provides a basis for how this point of order can be dealt with. The debate can thus continue, unless the Senate does not so wish.

Statement by the Speaker *pro tempore* — Mace
April 30, 2014 *Journals*, p. 798

Honourable senators, before I proceed to the adjournment motion, when we have a suspension waiting for a vote, colleagues are free to move around the chamber. The Mace that is on the table is a symbol and nobody is entitled to touch it.

Let me read to you from the *House of Commons Procedure and Practice:*

> During a sitting it is considered a breach of decorum for Members to pass between the Speaker and the Mace.

You should read "senators" for "members."

> Members have also been found in contempt of the House for touching the Mace during proceedings in the Chamber.

I am not referring to anyone specifically, but it is a good reminder to know that for the last 500 years, the Mace has been a symbol not only in Canada but also in the British Empire. We must respect that symbol.

Speaker's Statement — Vote Deferred to Time the Senate Will Not Sit
December 4, 2014 *Journals*, p. 1421

I wish to advise you that a conflict has arisen between the time for the deferred vote on the motion relating to Bill S-219 and the time for the Senate's sitting on Monday, December 8. According to rules 9-10(1) and (2) the vote would be at 5:30 p.m. on the next sitting day. But, under the order respecting Monday's sitting, the Senate will only sit at 6 p.m.

We must resolve the difference between these two times. It would also be preferable to bear in mind that deferred votes are normally not held at the start of the sitting, allowing senators to have sufficient time to come to the Senate Chamber without difficulty.

Taking into account these factors, this situation can be resolved by holding the deferred vote at the start of the Orders of the Day on Monday, that is to say after Question Period. This solution balances the different provisions of the Rules and the decisions of the Senate, while also allowing senators to be present for the vote.

The deferred vote will therefore be held on Monday at the start of the Orders of the Day.

Omnibus Bills
February 3, 2015 *Journals*, pp. 1545-1549

I now wish to deal with the point of order raised by Senator Moore on December 12, 2014, with respect to omnibus bills.

While the point of order was raised in relation to Bill C-43, a second Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures, Senator Moore challenged omnibus bills more generally. He stated that they:

> ... contain many issues that are not at all related. It is thus improper to put senators in the position of having to vote once on many unrelated issues. This is fundamentally unfair and out of order.

In outlining his concern Senator Moore addressed Canadian, provincial and international practice, as well as noting some of the literature on the matter. He summarized his position by stating that problems stemming from omnibus bills are "... getting worse. Somebody must take a stand."

Several senators supported these views. Senator Fraser distinguished between bills amending a wide range of laws, but clearly linked by a common thread, and those that bring together very disparate matters. She placed Bill C-43 into the latter category, a view shared by Senator Day. Senator Chaput explained, by reference to a concrete case, how omnibus bills may lead to insufficient study of some important parts of a bill, while Senator Ringuette felt that such

measures impair the Senate's duty to provide sober second thought. In supporting the point of order, Senator Eggleton then noted that he actually supported some parts of Bill C-43, but, because of its broad scope, it does not allow parliamentarians to express themselves properly.

Other senators challenged these arguments. Senator Martin referred to practices in the other place when explaining that omnibus bills are an accepted part of Canadian parliamentary practice. Senator Smith (*Saurel*) and Senator Lang outlined how they think Bill C-43 does have a common thread — implementing a wide-ranging budget plan to deal with a challenging international economic situation and promote prosperity for Canadians. The Leader of the Government, Senator Carignan, expressed understanding for the concerns raised by Senator Moore, but underscored that the Senate can adapt its procedures as it wishes in order to deal with such problems. This house has, for example, adjusted the pre-study process provided for in the Rules in a way that allows input from a range of committees. This may help deal with some of the concerns noted.

During the consideration of the point of order a consensus developed that the Senate's study of Bill C-43 should not be delayed. Proceedings on the bill could thus continue, and it received Royal Assent the next week. While Bill C-43 is therefore no longer an issue, the broader issue about omnibus bills remains. It is, as you know, not new. Several honourable senators have objected to large and complex bills at various times over the years, so a review of the topic is timely.

Despite the concerns about omnibus bills, there has actually been only one point of order on the issue in the Senate since 1984. In a ruling given on October 23, 2003, the Speaker stated that he was "... unaware of any requirement that [an omnibus] bill must possess a common theme ...".

The situation is quite different in the other place, where the Speaker has addressed about the question of omnibus bills on a number of occasions. As indicated in the second edition of *House of Commons Procedure and Practice*, at p. 725, "It appears to be entirely proper, in procedural terms, for a bill to amend, repeal or enact more than one Act, provided that the requisite notice is given, that it is accompanied by a royal recommendation (where necessary), and that it follows the form required." The Speaker of the Commons has sometimes been asked to divide a bill, but has declined to do so without guidance and authority from the house. As stated on June 8, 1988, "Until the House adopts specific rules relating to omnibus Bills, the Chair's role is very limited and the Speaker should remain on the sidelines as debate proceeds and the House resolves the issue."

When an omnibus bill comes to the Senate from the House of Commons, we must be mindful of the fact that we are dealing with a bill already adopted by one of the component parts of Parliament. We ought not to question how or why the other place adopted the measure, but should fulfil our legislative work by conducting our own careful and independent — or autonomous — review in the way that best meets our needs. There may be situations where procedural issues can arise in relation to a bill from the Commons — I think, for example, of the occasional cases where it is found that Royal Consent is required for a bill — but they are infrequent.

In his point of order Senator Moore said that "Somebody must take a stand" with regards to omnibus bills. To the extent senators agree that there is a problem with this type of bill, this statement may have merit. It is not, however, for the Speaker, acting unilaterally, to decide what stand to take, or when to take it. The Speaker deals with procedural issues, in light of our Rules and practices. The Senate's Rules are silent about omnibus bills, and our practices allow for them. From this perspective, such measures are a part of how the Canadian Parliament operates. In

addition, we must not lose sight of the fact that, at least in procedural terms, the question put on an omnibus bill — not the content of the bill, but the actual question — is quite simple. It is whether the bill will be read a second or third time. Bills are thus quite different from complex questions, where the Speaker may, in very rare situations, exercise some discretion by dividing a motion.

Honourable senators, it may be helpful at this point to reflect briefly upon some more general issues that are relevant to omnibus bills. As the Supreme Court stated in the 2014 decision on the *Reference re Senate Reform*, the Senate is "... one of Canada's foundational political institutions. It lies at the heart of the agreement that gave birth to the Canadian federation." As members of this house we have various duties and responsibilities, including representing our regions, legislative work, holding government to account, international work through parliamentary diplomacy, the protection of minorities, and the study and support of public policy issues. We bring our divergent backgrounds and experiences to the national Parliament as we perform these roles.

Drawing on the wealth of experience among its members, the Senate is well placed to act as a complementary chamber within Parliament. The idea of complementarity does not imply that one house is inferior to the other. Instead, the Senate and the House of Commons play different roles and interact with each other in a way that may sometimes, it is true, result in a level of tension. But this leads to an effective system of government that is greater than the sum of its parts. This interaction has been a key part of the country's constitutional architecture since its founding. Working together the houses enrich and strengthen our national Parliament. The Senate provides a different perspective from the House of Commons, even when studying similar questions, and focuses on different issues. This house can therefore provide a careful and autonomous second review of measures adopted by the elected house. Our generally less intensely partisan atmosphere, and the good working relationships we develop amongst ourselves, regardless of political affiliation, greatly assist us in performing these responsibilities.

I say this, honourable senators, because nothing should prevent us from reconsidering how we deal with omnibus bills, or any aspect of our business, if we feel that changes could help us better perform our role as parliamentarians. We must ensure that we continue to fulfil the expectations of Canadians as well as the role this house was given by those who developed our basic structures of government.

A central issue underlying Senator Moore's point of order is the way in which the Senate deals with budgetary measures and bills with financial implications. In this regard, I would remind honourable senators that almost one hundred years ago a special committee studied the rights of the Senate with respect to financial legislation. Its report — generally called the Ross Report — was tabled on May 15, 1918, and adopted on May 22. It may be timely to review this topic, so that honourable senators can consider how, in the modern context, this house can best use its powers to fulfil its duties. In any such review, attention would also have to be given to the principle, enunciated by Sir John A. Macdonald, that the Senate "... will never set itself in opposition against the deliberate and understood wishes of the people." The proper bounds for this self-imposed limitation certainly merit reflection.

As a related point, the Senate — perhaps through one of its committees — may wish to review the way in which it could better ensure government accountability, particularly in relation to public finances and expenditures. Our practices allow the National Finance Committee to develop a strong understanding of the Estimates and the workings of government. The value of this broad oversight role has been recognized by observers, but it may be desirable to ensure that other

committees develop a similar capacity. Without affecting the role of the National Finance Committee, the Senate could consider having other committees also study specific parts of the Estimates relevant to their subjects. An understanding of how other jurisdictions — both within Canada and abroad — deal with such matters would assist any evaluation of how this institution could adjust its operations.

To focus more specifically on the issue of omnibus bills, it is also possible to identify various ways in which the Senate could change its procedures, if there is a wish to do so. Here again, information on procedures for dealing with such bills in other jurisdictions would be helpful. In Saskatchewan, for example, the Rules specifically circumscribe the situations in which omnibus bills can be introduced. Only those dealing with a single broad policy or making similar amendments to existing acts are allowed.

In the Senate a practice has developed to use pre-study for budget implementation bills, and to allow different committees to provide input in relation to those parts that are relevant to their fields of expertise. A first simple change might be to include this process in the Rules, so that it becomes the norm for all omnibus bills.

Going one step further, a second option would be to make the process automatic for large or complex bills, rather than optional. With such a change, the National Finance Committee would be able to study the subject matter of budget implementation bills in collaboration with other committees, but without waiting for an order of reference from the Senate.

A third option, and a variation on this idea, would be to develop a way for different parts of an omnibus bill to be referred to different committees after second reading. This would allow the committees to study the elements of the bill relevant to their fields in detail and to actually propose their own amendments.

Even without such changes, senators have powerful tools available. Most dramatically, the Senate can defeat a bill, even one proposed by a minister, without bringing about the fall of the government. We have even done so with a budget implementation bill in the past. Senators also have the option, which they regularly exercise, of proposing amendments to bills in committee and at third reading.

The rarely-used possibility of dividing a bill is another tool available to the Senate, if there is a concern that a bill is too large or complex. Within our current practices, a committee cannot propose dividing a bill without special authority from the Senate. The Rules could, however, be amended to give a committee dealing with an omnibus bill the power to propose division on its own initiative, if it decides either that this could assist the Senate's study of the bill or that there is no common theme between the different parts of the bill. Such a course of action should, of course, only be taken after the sponsor has had ample opportunity to provide reasons against dividing the bill or to explain the common theme linking its different parts together.

These are only some ideas. There are no doubt other ways that we can deal with any concerns that may exist in relation to omnibus bills. However, within the current framework of the *Rules of the Senate* and practices such bills are acceptable and can proceed through the Senate in the same way as any other bill. Nothing should prevent the Senate, perhaps after study by the Rules Committee, from reconsidering how it deals with omnibus bills if it so wishes. Any changes are, however, for the chamber itself to decide, and not for the Speaker to impose.

Security Arrangements on Parliament Hill
February 18, 2015 *Journals*, pp. 1579-1581

Yesterday, immediately after Senator Carignan, the Leader of the Government in the Senate, moved his motion respecting security arrangements on Parliament Hill, Senator Cowan, the Leader of the Opposition in the Senate, raised a point of order. He was concerned that the motion attempts to delegate power to the Royal Canadian Mounted Police in a way that is not permissible under the *Parliament of Canada Act*. He also argued that, if the motion is adopted, certain provisions in the *Royal Canadian Mounted Police Act* could actually have the effect of subjecting security in the parliamentary precinct to the control of the Minister of Public Safety and Emergency Preparedness.

Senator Carignan suggested that these concerns could be best dealt with through debate on the motion. He underscored that the motion specifically requires that any changes be made "while respecting the privileges, immunities and powers of the respective Houses." A respect for the rights of Parliament is therefore integral to the motion. He argued that it would allow the Speakers, working with the RCMP, to decide the most appropriate way to coordinate security. This would provide essential protection to parliamentarians. Senator Carignan rejected the idea that the Senate was abdicating its responsibility in relation to security. The motion would allow the establishment of a new security arrangement, and the two Speakers would continue to have a central role. Senator Carignan stated that "[i]t will be up to the two Speakers, in their discussions with the RCMP and the new unified security force, to negotiate the different systems so that they are accountable and report to" the Speakers. Later he noted that the Standing Committee on Internal Economy, Budgets and Administration actually proposed a coordinated security system in the recent past. His arguments that the motion is in order were supported by Senator Martin when she intervened on the point of order and urged that debate be allowed to continue.

Senators Fraser, Ringuette, Cordy and Joyal also spoke, all questioning the propriety of the motion and supporting Senator Cowan's concern. Senator Fraser found the motion to be unclear, presenting fundamental problems, including her understanding that it would hand control of security over to the RCMP. Senator Cordy argued that the motion is disrespectful towards the Internal Economy Committee, the Senate and Parliament. Senator Joyal, for his part, refrained from saying whether the goal of the motion was desirable. He was, however, concerned about the process being followed. He questioned whether a motion, as opposed to legislative amendments, was the appropriate vehicle for such changes.

In considering this issue, a brief review of the history of security in the parliamentary precinct may be helpful. The provision of security on Parliament Hill can be divided into two broad periods. Until 1920, a contingent of the Dominion Police — one of the federal police forces — provided security for Parliament and the government buildings that are now the East and West Blocks. When the Dominion Police was united with the Royal Northwest Mounted Police to form the RCMP the task of protecting federal property was, in most cases, assumed by the new federal police force. Parliamentarians, however, decided that they no longer wished an official police presence within the buildings, resulting in the establishment of separate security services for each house. This was not done by statute. Security arrangements in and around Parliament have therefore not been static, but have shifted and evolved over the years. The motion at issue proposes further adjustments in these structures. Details, we have been given to understand, would be worked out by the two Speakers.

Senator Cowan's basic concern was that the motion would result in a delegation of authority falling outside the structure provided in the *Parliament of Canada Act*. Although the Speaker does not interpret matters of law, it would be helpful to put the relevant provisions on the record.

Section 19.3 of the act states that:

> Subject to subsection 19.1(4), the [Internal Economy] Committee may act on all financial and administrative matters respecting
>
> (*a*) the Senate, its premises, its services and its staff; and
> (*b*) the members of the Senate.

Subsection 19.1(4) clarifies that:

> In exercising its functions and powers under this Act, the Committee is subject to the rules, direction and control of the Senate.

The plain language of this provision makes clear that the Senate retains ultimate control over any powers exercised by the Internal Economy Committee. As such, the Senate itself remains master of its internal administration and its business. The Senate exercised this right in the past, by deciding to establish separate security services, and could do so again in the future if it so wished.

In terms of the strict mechanics of the motion, appropriate notice was given, and there is no obvious defect in its language or content, at least in terms of parliamentary practice as opposed to law, which is not within the Speaker's jurisdiction. The motion proposes that the Senate invite the RCMP to take a lead in operational security throughout the precinct, with details of arrangements to be worked out through careful discussions and negotiations. None of this abrogates the basic privilege of parliamentarians to have free access to their offices, to committees and to the Senate. Such arrangements could even be altered in the future if the Senate so decided. So the Senate would ultimately retain the rights and privileges required for it to function independently.

Some senators expressed concerns that the motion was unclear or incomplete. To the extent this may be the case, the correct vehicle to refine its content is to explain problems during debate and to bring forward amendments to provide greater clarity.

In terms of our Rules and procedure, there is no reason to block consideration of the motion. The ruling is therefore that the motion is in order and debate can continue.

Before continuing with the Orders of the Day, let me assure honourable senators that, if the motion passes, I will, in discussions and negotiations, take my role as custodian of the rights and privileges of the Senate and individual senators most seriously.

Speaker's Statement — Further Consideration of Point of Order
June 2, 2015 *Journals*, p. 1906

Last Thursday Senator Bellemare raised a point of order as to whether Bill C-377 must be accompanied by a Royal Recommendation. I took the matter under advisement, not because I felt there had been sufficient argument on the point of order, which is an important and complicated one, but because no other honourable senators rose to speak.

Under rule 2-5(1), it is the Speaker who decides when there has been sufficient argument on a point of order or question of privilege. In this case our understanding of the issue would be helped by resuming consideration of the point of order. I am aware that there are a number of senators who would like to speak to this matter. I therefore wish to inform honourable colleagues that I will hear further argument when this item is next called for consideration.

To be clear, we will at that time only be considering Senator Bellemare's point of order as to whether Bill C-377 requires a Royal recommendation. The Senate will not be debating third reading of the bill at that time.

Statement by the Speaker *pro tempore* – Further Consideration of Point of Order Deferred
June 9, 2015 *Journals*, p. 1970

Several days ago, the Speaker indicated that he wished to hear further arguments on Senator Bellmare's point of order. Since the Speaker is not able to be here, it would be appropriate for us to defer further consideration on the point of order.

Question of Privilege – Leaks of Auditor General's Report
June 9, 2015 *Journals*, p. 1975

Extract from the Journals:

> Pursuant to rule 13-5(1), the Senate proceeded to the consideration of the question of privilege of the Honourable Senator Hervieux-Payette, P.C., concerning leaks to the media on the contents of the Auditor General's report on Senators' expenses.
> Debate.
> The Honourable the Speaker ruled that a *prima facie* case of privilege had been established.
> The Honourable Senator Hervieux-Payette, P.C., moved, seconded by the Honourable Senator Fraser:
> That this case of privilege, relating to the leaks of the Auditor General's report on the audit of the Senate, be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament for an independent inquiry to be ordered and a report publicly released without delay.
> The question being put on the motion, it was adopted.

Bill C-377 and the Royal Recommendation
June 15, 2015 *Journals*, pp. 2010-2013

I am ready to rule on the point of order raised by the Honourable Senator Bellemare on Thursday, May 28, as to whether Bill C-377, An Act to amend the Income Tax Act (requirements for labour organizations), requires a Royal Recommendation. As you will recall, the point of order was also considered by the Senate on June 9.

Senator Bellemare's concern is that Bill C-377 cannot be considered by the Senate because it appropriates public money but was not recommended to the House of Commons by the Governor General. She argued that the bill would expand the role of the Canada Revenue Agency in a way that is not envisioned by current statute. If Bill C-377 passes, the agency would be responsible for

collecting and diffusing information unrelated to the protection of the tax base and compliance with tax obligations. Senator Bellemare also underscored the high costs of the measure. She also expressed concerns about the contradiction between these costs and the balanced budget requirements proposed in Bill C-59, which is currently before Parliament. As part of her argument Senator Bellemare drew a distinction between the activities of the Canada Revenue Agency relating to charitable organizations and the requirements under Bill C-377 relating to labour organizations. The agency does provide public information on charitable organizations, but Senator Bellemare argued that this role has nothing to do with the requirements that Bill C-377 would impose.

Senators Fraser, Tardif and Ringuette supported Senator Bellemare's arguments. They made reference to past rulings establishing that, unless expenditures required under a bill fit within an existing Royal Recommendation or are of an ancillary or administrative nature, the bill must be recommended to the House of Commons by the Governor General. As Senator Tardif explained, "legislation imposing additional functions on bodies funded by public money, if the functions are substantially different from their existing functions, requires a Royal Recommendation."

Several honourable senators challenged this position. Senator Runciman provided the Senate with information from the Canada Revenue Agency indicating that the costs of Bill C-377 would be far lower than those suggested by Senator Bellemare. Both Senator Martin and Senator Dagenais drew the Senate's attention to a decision by the Speaker of the House of Commons, from December 6, 2012, in which he addressed similar points, and determined that the bill did not require a Royal Recommendation. Senator Martin argued that "a Royal Recommendation is not required every time a bill creates a new charge, but only when the charge is new and distinct." Senator Dagenais, for his part, explained that the provisions in the bill can actually be linked to the current mandate and operations of the Canada Revenue Agency. He also noted that witnesses from the agency had drawn connections between the requirements that Bill C-377 would impose and activities that it already undertakes.

In considering this point of order, let me first remind honourable senators that sections 53 and 54 of the *Constitution Act, 1867* establish that bills to appropriate funds or to impose taxation must begin in the House of Commons and must be recommended to that house by the Governor General. This is a fundamental principle in our parliamentary system of government, generally referred to as the financial initiative of the Crown. It helps ensure a coherent fiscal structure. Decreases in taxes, on the other hand, do not require a Royal Recommendation.

We should also recognize here that the two houses do not always agree as to how this fundamental principle should be interpreted. Almost a century ago, in 1918, a Senate committee considered the issue. One of its main conclusions was that the Senate has the power to amend bills that appropriate a part of the revenue or impose a tax by reducing amounts, but it does not possess the right to increase the sums. The House of Commons has not accepted this understanding, claiming that it has exclusive rights in relation to such legislation. At times the two houses have even reached different conclusions about the need for Royal Recommendation, with the Senate sometimes determining that a bill does not require a recommendation, while the Commons determines that it does. The general pattern is for the Senate to be more flexible in interpreting these provisions, and the Commons to be more protective of its rights in relation to money bills.

Rule 10-7 specifically deals with bills appropriating public money. It states that "[t]he Senate shall not proceed with a bill appropriating public money unless the appropriation has been recommended by the Governor General." The issue of when a bill must be accompanied by a

Royal Recommendation has been dealt with in numerous rulings in the Senate. Extracts from relevant rulings and procedural works can be found in the text relating to rule 10-7 in the second edition of the *Companion to the Rules of the Senate*. One of Speaker Kinsella's rulings of February 24, 2009, is particularly significant. In it he stated as follows:

> The procedural authorities ... indicate that a number of criteria must be considered when seeking to ascertain whether a bill requires a Royal Recommendation. First a basic question is whether the bill contains a clause that directly appropriates money. Second, a provision allowing a novel expenditure not already authorized in law would typically require a Royal Recommendation. A third and similar criterion is that a bill to broaden the purpose of an expenditure already authorized will in most cases need a Royal Recommendation. Finally, a measure extending benefits or relaxing qualifying conditions to receive a benefit would usually bring the Royal Recommendation into play.
>
> On the other hand, a bill simply structuring how a department or agency will perform functions already authorized under law, without adding new duties, would most likely not require a Recommendation. In the same way, a bill that would only impose minor administrative expenses on a department or agency would probably not trigger this requirement.
>
> The list of factors enumerated here is not exhaustive, and each bill must be evaluated in light of these points and any others at play. It certainly is not the case that every bill having any monetary implication whatsoever automatically requires a Royal Recommendation. When dealing with such issues, the Speaker's role is to examine the text of the bill itself, sometimes within the context of the parent act. Of course, the Speaker, in making this assessment, seeks to avoid interpreting constitutional issues or questions of law.

In a subsequent ruling, on December 1, 2009, Speaker Kinsella clarified that a bill to add a function generally relating to an act's existing purpose and without mandating new hiring or other expenditures, does not necessarily qualify as a "new and distinct" expenditure, and so may not require a Royal Recommendation. I should also remind senators of the general principle, expressed by several Speakers, that, when the analysis is ambiguous, the Speaker should generally prefer to presume that a matter is in order, if a valid argument to that effect can be established. This allows the Senate itself to make the final decision, preserving this chamber's role as a house of discussion and reflection.

Within this context we can turn to the specific concerns raised by Senator Bellemare. As a first point, let me note that the possible interactions of Bill C-377 with Bill C-59, if they both receive Royal Assent, are of interest, but remain hypothetical. The Speaker does not deal with hypothetical issues, so this matter need not be considered further.

In terms of the potential costs for implementing Bill C-377, the Senate has been presented with divergent estimates from two credible sources — the Parliamentary Budget Officer and the Canada Revenue Agency. We have received incompatible information, and it is impossible to reach any certain conclusion on this point.

In truth, however, the central issue in this point of order is whether Bill C-377 expands the Canada Revenue Agency's current functions. Or, to put it another way, do the agency's current

responsibilities include the collection and publication of information? Senator Bellemare has argued that the agency has a mandate to protect the tax base and to ensure respect for tax obligations. The Senate has, however, been told that these are not its only duties. The Canada Revenue Agency's web site already provides extensive and detailed information about some organizations, and it may not be unreasonable to see the changes proposed under Bill C-377 as a mere adjustment to the existing activities of receiving and posting information. I also note that representatives of the Canada Revenue Agency have confirmed to senators that they are already involved in providing such information. They have also indicated that there are cases where information is disclosed for purposes not related to taxation.

As I noted earlier, the two houses respect the constitutional requirements relating to financial measures, but do not always agree on how they are to be applied. In general, the House of Commons is more demanding in interpreting these provisions, which give it pre-eminence in the financial field. It would be odd — although by no means impossible — for the Senate to find that a bill requires a Royal Recommendation when the House of Commons has determined that it does not.

Honourable senators, we are faced with varying estimates as to the costs for implementing Bill C-377. We have also been told that the provisions of the bill align with some of the work currently performed by the Canada Revenue Agency. While recognizing the importance of the concerns raised by Senator Bellemare, it does seem that these factors provide a coherent case for accepting that the bill can continue before the Senate. This conclusion is supported by, but not based on, the bill's history in the House of Commons. Mindful of the preference for allowing debate to continue when a sound argument to that effect can be made, I find the bill in order, and debate can resume.

Form of an Amendment (Decision delivered by the Speaker *pro tempore*)

June 19, 2015 *Journals*, p. 2061

I have reviewed the text of the motion in amendment of the Honourable Senator Wells and would like to address the point of order raised by the Honourable Senator Cools.

While it may not appear intuitive, the number "49.21" that appears in the text of the amendment is, in fact, correct.

This amendment proposes to enact a new section in clause 4 of the bill between Section 49.2 and 49.3 of the Parliament of Canada Act which the bill seeks to amend. This amendment does not seek to create a subsection of 49.2.

The enumeration used in federal legislative drafting standards in such a case is to use the number of the preceding section and add a "1" to the end. The standard was followed.

Therefore, Senator Cools' point of order is not founded.

Debate on the amendment may proceed.

Government Motion to Deal with an Item of Other Business
(Decision overturned by the Senate)
June 26, 2015 *Journals*, pp. 2108-2110

I am ready to rule on the point of order raised by the Honourable Senator Cowan about whether government motion 117 is in order. I was aware of the concerns that might give rise to this point, and I have been considering the issue ever since. The arguments that I heard today raised both sides of the question — the claim of the Government to be able to propose any motion as part of its business, and the competing claim that such motions cannot relate to Other Business. We also heard concerns about the duration of debate on the bill.

The issue in this case has to do with the fact that the Government disposition motion would apply to a non- government bill, Bill C-377. As has been explained to us, using a Government disposition motion to determine how non-government business will be conducted directly contradicts a ruling given by Speaker Kinsella on October 30, 2013. In that ruling the Speaker explained the clear distinction that must be drawn between Government Business and Other Business. A motion such as the one at issue here could allow the Government to use its powerful tools to limit debate on non-government items.

The tools that the Government has to facilitate the passage of its business were granted to it by the Senate in 1991. They include, for example, control over the order in which Government Business will be called and, most significantly, the power to propose time allocation. With respect to Other Business, on the other hand, the Senate has decided that these powers should not be available to the Government.

Let me quote from Speaker Kinsella's ruling, which provides a convenient synopsis that is directly applicable to the current situation:

> Honourable senators, there is a coherence in our Rules. Government Business has priority, and there are mechanisms to facilitate its dispatch. As to Other Business, the Senate follows more traditional practices, so that debate is more difficult to curtail. The disposition motion currently before the Senate appears to cross the boundaries between these two categories.
>
> A proposal of this type could, in the long term, distort the basic structure of Senate business, allowing the Government's time allocation powers to, in effect, be applied to items of Other Business. To avoid the long term risks to the integrity of the basic structure of our business, it would be preferable to find a solution to this particular case that avoids establishing such a far-reaching precedent.
>
> Given the Government's important role, it has specific means, already discussed, to secure the dispatch of its business. But even under Other Business, there are ways to seek to curb or limit debate and to come to a decision. The most obvious is by moving the "previous question," which forestalls further amendments, but is only available on the main motion.
>
> Honourable senators, my concern as Speaker in this case goes beyond the specifics of this particular point of order. All senators have an obligation to the long term interests of the Senate, to maintain the integrity of its traditions and practices, especially open debate within a clear structure, that have been

> hallmarks of the Senate since its very beginning. The changes that have been made over the years to modernize our practices, and to establish mechanisms to facilitate the dispatch of Government Business, were made after consideration and reflection. This approach should not change. At the same time, I am aware that the Speaker's preoccupations cannot trump the judgment of the Senate itself, which always remains the final arbiter of any point of order or question of privilege.

The motion before the Senate does not respect the fundamental distinction between Government Business and Other Business. If the motion only dealt with a government bill, there would probably be no procedural basis to call it into question. But, proposing to use a government motion to determine the dispatch of non-government business violates a fundamental distinction in our Rules and practices. Accepting such a proposal would subject non- government business to the powerful tools of which the Government can avail itself. This would be inconsistent with the basic principles of our Rules and practices. The ruling on this point of order is, therefore, the same as it was in October 2013. The motion is out of order and is to be discharge.

Whereupon the Speaker's Ruling was appealed.

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

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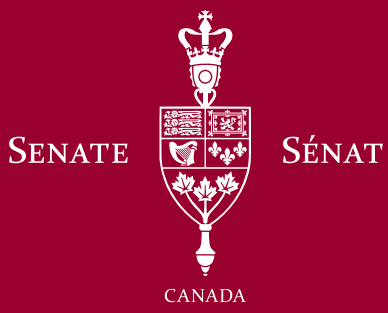
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