Rulings

Relations Between the Chambers: Rulings by Speakers Guy Charbonneau and John Fraser, June 7 and July 11, 1988

Bill C-103, An Act to increase opportunity for economic development in Atlantic Canada was introduced by the Conservative Government in the Spring of 1988. It went through the normal legislative process, received third reading and was sent to the Senate. In the Upper House the Liberal majority instructed the Finance Committee to divide Bill C-103. The procedural acceptability of this move was challenged and Senate Speaker Charbonneau gave the following ruling.

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

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

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

"The issue before us is whether it is in order, within the procedures of the Senate, to move a mandatory instruction to a committee that Bill C-103, a bill passed by the House of Commons and sent to the Senate for concurrence, be divided into two separate bills."

As Senator Stewart succinctly noted on Wednesday, Senators must ask themselves what reasons could there be for prohibiting the moving of such a motion.

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

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

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

The Chair feels that searching for precedents, in this instance, is not very helpful. With respect to the motion made in the Lords on July 29, 1919, *Erskine May* states that the propriety of an Upper Chamber dividing a bill from the Lower Chamber has not been decided. The 1919 motion would have been a more useful precedent had a Speaker's ruling been given. That no such

ruling was rendered did not prove, in my opinion, that the motion was procedurally acceptable. *Erskine May* notes that:

> "in the enforcement of rules for maintaining order, the Speaker of the Lords has no more authority than any other Lord, except in so far as his own personal weight and dignity of his office may give effect to his opinions and secure the concurrence of the House. As a consequence, the responsibility for maintaining order during debate rests with the House as a Whole. The Leader of the House has a special part to play in expressing the sense of the House and in drawing attention to cases where the rules of procedure have been transgressed or abused."

The Chair has reviewed the debate in the Lords in 1919 and notes that the Civil Lord of the Admiralty (the Earl of Lytton) raised certain procedural problems which would occur if such a motion was adopted. In any event, the 1919 precedent, in my opinion, remains somewhat tenuous.

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

The Chair finds that on many grounds the motion presents no procedural difficulties. Proper notice was given of the motion. The Chair feels that, as a general principle, instructions to divide bills may be moved in the Senate when the bills originate in the Senate, as they may be moved in the House of Commons when they originate in that House. With respect to Beauchesne's citation 76(2), that "such an Instruction is in order only if the bill is drafted into two or more distinct parts or else comprising more than one subject matter ...", the Chair agrees with the Leader of the Opposition that Bill C-103 is capable, from a drafting point of view, of being easily divided.

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

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

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

The ruling of the Speaker of the Senate was appealed to the Senate, and overturned by a majority vote. The motion to split Bill C-103 was moved, proposed, debated and passed. Bill C-103 was then studied by the Senate Finance Committee, which split the Bill in two, in accordance with the Senate's instructions. The Committee reported Part I of the Bill to the Senate and the Senate sent this part back to the House. At this point the Speaker of the House of Commons made the following statement :

Speaker John Fraser: ... I must underline for the House that this procedural event is totally without precedent. I have been unable to find

any instance in our practice in which the Senate divided a Commons Bill, or in which the Commons has divided a Senate Bill. There are several cases in which the Speaker of the House of Commons has ruled certain Bills originating in the Senate out of order because they infringe the financial privileges of the House which are enshrined in the Constitution of Canada. I refer Hon. Members in this case to *Journals* of November 12, 1969, and June 12, 1973, for two such examples.

I refer Hon. Members to page 502 of the 20th edition of Erskine May. It concerns a procedural incident in the British Parliament, where there had been an attempt in the House of Lords to split a bill from the House of Commons, but this attempt failed after a motion to split the bill was rejected. This incident is reported but the author carefully refrains from indicating how the Lower House could have reacted if the motion had passed. This incident occurred in 1852 and I could find no similar incidents anywhere since then.

A Canadian precedent does exist for a consolidation of two Commons Bills into a single legislative measure by the Senate. That took place on June 11, 1941, with a message from their Honours, from the Senate, asking for the concurrence of this House. The Commons agreed with the Senate proposal, that is, a proposal to take two Bills from this place and put them into one Bill. The Commons

agreed with the Senate proposal waiving its traditional privilege, and a single Bill was eventually given Royal Assent. I underline that that was the act of this House in waiving its tradition of privilege and accepting the invitation of the Senate to put two Bills together.

It is admitted that the Senate can consolidate two Bills, why then can it not divide one Bill into two or more legislative measures? The answer is at least in part in the message. In the 1941 case just alluded to the Senate specifically sought the concurrence of the House for its action. Apparently it was the disposition of this place to accept it. In the message received last Friday relating to Bill C-103, the Senate does not seek the Commons' concurrence in the division of the Bill, it simply informs this House that it has done so, and returns half of a Bill....

The Speaker of the House of Commons by tradition does not rule on constitutional matters. It is not for me to decide whether the Senate has the constitutional power to do what it has done with Bill C-103. There is not any doubt that the Senate can amend a Bill, or it can reject it in whole or in part. There is some considerable doubt, at least in my mind, that the Senate can rewrite or redraft Bills originating in the Commons, potentially so as to change their principle as adopted by the House without again first seeking the agreement of the House. That I view as a matter of privilege and not a matter related to the Constitution.

In the case of Bill C-103, it is my opinion, and with great respect of course, that the Senate should have respected the propriety of asking the House of Commons to concur in its action of dividing Bill C-103 and in reporting only part of the Bill back as a *fait accompli* has infringed the privileges of this place.

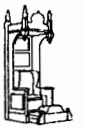
Furthermore, Bill C-103 has attached to it, pursuant to our Standing Orders and Section 54 of the Constitution, a financial recommendation of Her Excellency the Governor General. Again, for those who are watching and who uninitiated in all the terminology that we use, there is a requisite that in a Bill that is going to call upon the expenditure of funds, a financial recommendation of Her Excellency the Governor General is necessary. So this Bill is in a very real sense a financial Bill. The Senate is somewhat limited in its review of money Bills. Standing Order 87, which is still on the books after many decades, is quite clear and it states:

> All aids and supplies granted to the Sovereign by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.

Certain questions remain to be answered: by splitting the Bill does the Royal Recommendation still apply? Have the financial privileges of the Commons been breached? Will the Crown assent to two Bills when it agreed to the introduction of a single one? As Speaker of the House of Commons, I will not attempt to answer such constitutional questions, but clearly this House has always considered Standing Order 87, which I just read, as setting out the special relationship between the Commons, that is, this House of Commons, and the Sovereign.

I have ruled that the privileges of the House have been infringed. However, and it is important to understand this, I am without the power to enforce them directly. I cannot rule the Message from the Senate out of order for that would leave Bill C-103 in limbo. In other words, it would be nowhere. The cure in this case is for the House to claim its privileges or to forgo them, if it so wishes, by way of message to Their Honours, that is, to the Senate, informing them accordingly.

In conclusion, I wish to state to the House that while Bill C-103 is a Government Bill, the same situation could raise under our reformed rules for a Private Members' Bill. It is in the better interests of this place to request Their Honours in the Senate to first consult with this House before they report to us such unilateral action. As Speaker of the House of Commons of Canada I must uphold the privileges of this place at all times, and I must also advocate them privately, publicly, and with vigour. Having said that, if on an issue of substance, the House wishes to waive those rights, as usual the Speaker will not enter into substantive debate but will follow the House's directives.



Editor's Note: On July 18 the House debated a motion to acquaint the Upper House with the fact that the House disagreed with the message received from the Senate because in dividing the bill "the Senate has altered the ends, purposes, considerations, conditions, limitations and qualifications of the grants of aid and supplies set out in the bill, contrary to Standing Order 87, as recommended by Her Excellency the Governor General to this House and has therefore infringed the priviliges of this House, and asks that the Senate return Bill C-103 in an undivided form."
Following debate the motion was carried by a vote of 112 in favour and 10 opposed. The Senate subsequently agreed to study the bill as a whole.