



Speaker's Ruling



The Use of Royal Recommendation

Speaker Gildas L. Molgat,
The Senate, February 4, 1997.

Background: On February 4, 1997, when the Senate resumed sitting following the Christmas adjournment, Speaker Molgat delivered an important ruling on a point of order respecting Bill S-12, an *Act for providing self-government by the First Nations of Canada*. The point of order challenged the propriety of proceeding with the bill because the bill did not have a royal recommendation and it was alleged that it required one.

In the end, the Speaker did not accept the arguments for the point of order. Relying on the 1918 *Ross Report* and the 1990 report of the National Finance Committee on royal recommendations, the Speaker concluded that there was

insufficient evidence to rule the bill out of order. The ruling was significant because it involved fundamental issues relating to "money bills" and in particular the procedures for bills appropriating money. The ruling also served to highlight the difficult and sometimes confusing use of the modern royal recommendation which no longer identifies the appropriating clauses of bills or the possible amounts involved. Citing the conditions that had to be met in assessing the need for a royal recommendation, the Speaker reviewed specific provisions of the bill in order to determine whether the royal recommendation was in fact needed in this particular case.

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

the Senate in particular, with regard to financial legislation.

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

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

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

and should therefore be ruled in order.

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

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

ized by Parliament...The bill only recognizes the power and moves it from the *Indian Act* to Bill S-12."

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

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

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

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

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

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

public revenue or of any tax or impost.

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

In addition, the Senate's National Finance Committee has expressed some doubts about the use of the current form of the royal recommendation. As the Committee Report of 1990 explained, prior to 1968, each bill or clause in a bill which sought or authorized an appropriation was preceded by passage in the House of Commons of a financial resolution which defined the amount and purpose of the appropriation. This resolution was recommended to the Commons by the Governor General and formed the basis of the subsequent bill. In 1968, the Standing Orders of the House of Commons were amended so that the royal recommendation would be given to the Commons in the form of a printed notice, rather than

a proposed resolution. For several years after the change, the notice of the royal recommendation still provided sufficient detail to explain the amount and purpose of the appropriation. However, since 1976, the royal recommendation has taken on a standard form, and the purpose and amount of any appropriation is no longer evident. Indeed, testimony before the National Finance Committee indicated that the royal recommendation is sometimes attached to bills in which there is no apparent appropriation. As a consequence, the Committee recognized that members of both Houses, including the Speakers, are now left without a clear statement from the Crown as to what appropriations are being sought by a recommendation. Seven years after the report was adopted, the problem still exists.

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

mendation should be attached to the bill.

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

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

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