

referred to it is equally restrictive and obligatory, and that the committee may report only on a bill and amendments thereon. I do not think it necessary to quote the report of the standing committee or the reference. I think these are easily found.

● (1420)

However, I want to deal with House of Commons Standing Order 65(8) which reads as follows:

Standing committees shall be severally empowered to examine and enquire into all such matters as may be referred to them by the House, and, to report from time to time, and, except when the House otherwise orders, to send for persons, papers and records . . .

The point is that the matter of the fee in Bill S-11, according to the reference on Thursday, November 7, was not referred to the committee and is not encompassed in the reference that was made to that committee. What was referred to the committee was Bill S-11 which the committee must report with or without amendment to the House of Commons. Beauchesne's Fourth Edition, citation 304(1) at page 244 reads:

A committee can only consider those matters which have been committed to it by the House.

Citation 304(2) clearly states, and I quote:

A committee is bound by, and is not at liberty to depart from, the order of reference. In the case of a Select Committee upon a Bill, the Bill committed to it is itself the order of reference to the Committee, who must report it with or without amendment to the House.

May's eighteenth edition at page 620 makes the following point:

A select committee, like a Committee of the whole House, possesses no authority except that which it derives by delegation from the House by which it is appointed. When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference), and the deliberations or inquiries of the committee must be confined within the limits of the order of reference. But when a bill is committed, or referred, to a select committee, the bill is itself the order of reference, and the inquiries and deliberations of the committee must be confined to the bill and amendments relevant to the subject-matter thereof.

What the House might wish to do concerning the fee paid by British Columbia Telephone Company is a totally separate issue from Bill S-11. In view of the fact that Bill C-29 will apparently standardize the fees paid by companies seeking to enlarge their capitalization, the House may wish to consider bringing its Standing Order fee provisions into line with the new legislation or it may wish to order the Standing Committee on Transport and Communications or the Standing Committee on Miscellaneous Private Bills and Standing Orders to consider the question of the fee to be paid, or not paid, by British Columbia Telephone Company. Beauchesne, citation 304(3) at page 244 reads:

When it has been thought desirable to do so, the House has enlarged the order of reference by means of an instruction or in the case of a Select Committee upon a Bill by the committal to it of another Bill. Mandatory instructions have also been given to Select Committees restricting the limits of their powers or prescribing the course of their proceedings, or directing the committee to make a special report upon certain matters.

(4) Sometimes a committee may have to obtain leave from the House to make a special report when its order of reference is limited in scope.

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Means exist, therefore, under the rules of the House to allow the committee to consider, and make recommendations on, the fee to be paid in connection with Bill S-11. However, such means do not now exist under the committee's present order of reference with application to Bill S-11 and any recommendation other than reporting the bill with or without amendments is out of order.

The important thing here is the nature of the reference and the fact that in commenting on the fee payable the committee exceeded its order of reference. The normal procedure of the House of Commons is that a committee has the power to amend a bill, by which means it expresses its opinion on the bill. Such a report, including an amendment, is, in effect, a report to the House of Commons that a substantive change is necessary. But the authorities do not contemplate at any point the possibility of a committee making extraneous reports or commentaries on legislation referred to it in the form of a bill.

I think Your Honour must find, taking into consideration the arguments I have advanced, and the direction your predecessor has provided, that this report is out of order.

Mr. Elmer M. MacKay (Central Nova): As I see it, Mr. Speaker, the problem inherent in the procedural point raised regarding this report is referable to section 16 of the Financial Administration Act. While I am in considerable sympathy with the remarks made by the learned chairman of the Standing Committee on Transport and Communications, I should like to call the attention of the House to an interesting reference by a former Auditor General, Mr. Watson Sellar, in an audit office guide which he wrote for the instruction of Treasury Board officers in 1958. On page 24 of this publication, he mentioned a situation which arose in 1929 when motions to remit funds for private bills withdrawn were, for the first time, rejected by the Speaker whose explanation was:

It is essentially contrary to section 35 of the Consolidated Revenue Act (now section 16 of the Financial Administration Act) which stipulates that any fees received by the officers of the House shall be deposited at the bank, when they become the property of the Receiver General of Canada. To remit such fees would require an estimate from the Minister of Finance.

This was reported in *Hansard* of June 14, 1929, at page 3762. The Speaker's ruling was not, of course, binding on the Senate, so a degree of inconsistency existed in practice until the act was amended.

It seems obvious that the moment the funds were paid by the B.C. Telephone Company they became the property of the Receiver General of Canada and should have been, and likely were, deposited in the Consolidated Revenue Fund by the Chief Clerk of Committees.

It would therefore seem there would be little point at this time in sending a reference to the committee instructing it to deal with the question of the funds, should such action be contemplated, if only because the funds are not there any more; the only way to have them retrieved, if, in fact, it is proper to do so, would be pursuant to section 16 of the Financial Administration Act which is entirely within the discretion of the Minister of Finance. So, regardless of what may happen with regard to Bill C-29, the Canada Business Corporations Act, discretion remains