

[Translation]

By way of background, honourable senators will recall that on October 17, Senator Cools presented to the Senate Bill S-11, an Act concerning one Karla Homolka. On October 19, following the Table Officer's reading of the Order of the Day for the second reading of Bill S-11, Senator Kinsella raised a point of order to the effect that the matter contained in Bill S-11 was out of order and not properly before the Senate. Following a discussion involving a number of senators, and in which some interesting points were raised, the Speaker *pro tempore* reserved his decision. I refer honourable senators to the *Debates of the Senate* of that day at pages 2139 to 2143.

[English]

• (1450)

In her question of privilege Senator Cools stated:

...the Speaker of the Senate has no power or authority to adjudicate the substance and intention of Bill S-11 or of any other bill. He has no power to settle questions regarding the judicial result of Bill S-11 or regarding the Senate's pleasure to pass or not to pass Bill S-11 or the appropriateness or righteousness of the Senate's actions in this regard. The settlement of these questions belongs to the Senate institutionally, and the manner in which the Senate usually settles such questions is by consideration and debate of the bill.

The accepted definition of parliamentary privilege, based on Erskine May, and stated in Beauchesne, 6th edition, at citation 24 explains that:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of...Parliament, and by Members of each House individually, without which they could not discharge their functions...

Among these collective privileges, Beauchesne states, at citation 33:

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down in the *Constitution Act*, but the vast majority are resolutions of the House which may be added to, amended, or repealed at the discretion of the House.

Citation 26(1) of Beauchesne defines a point of order as a "question of order" which "concerns the interpretation to be put upon the rules of procedure..."

Since the concern expressed by Senator Cools is about how this chamber is to proceed when conducting its business, it seems

clear to the Chair that she is not questioning the fundamental right of the Senate to lay down procedural rules. Rather, she is questioning the interpretation of our rules and their application to a particular fact situation.

The essence of her question appears to be whether the point of order raised with respect to Bill S-11 is in order, and how the presiding officer should act when asked to rule on such a point of order.

[Translation]

With respect to the substance of Senator Cools' concern, there are many examples where senators have raised points of order and asked the Speaker to make a ruling as to the procedural acceptability of a bill or of amendments proposed to a bill. I refer honourable senators to the following precedents in the *Debates of the Senate*: 1977-78, at pages 464-5, concerning a motion in amendment to a bill proposed by Senator Forsey; 1986-87-88, at pages 2720-22, concerning a motion by Senator Graham with respect to Bill C-103, the Atlantic Canada Opportunities Agency Bill; and 1989-90-92, at pages 156-157, concerning two bills, S-3 and S-4, dealing with veterans allowances. In this latter example, the Speaker was asked to rule whether the bills "were in order and form suitable for the Senate to consider." The Speaker ruled that the bills infringed the financial prerogative of the Crown and ruled them out of order.

[English]

There are other precedents as well which clearly establish that a senator may ask the Speaker to rule whether a certain bill or amendment is in order according to our rules and practices. In the present case, Senator Kinsella has raised a point of order because, as he maintained, Bill S-11 should not be considered by the Senate since, in his opinion, the bill is not one which falls within the traditions, customs and rules of this chamber. To support his position, he cited a precedent from the other place. By raising a point of order, Senator Kinsella was invoking rule 18, whereby the Senate has authorized the Speaker "to enforce the rules of the Senate."

At this point, I wish to digress from my written ruling, which you have before you, and refer directly to our Senate rule book.

Rule 18(2) says:

The Speaker shall decide points of order and when so doing shall state the reasons for the decision together with references to the rule or other written authority applicable to the case.

I refer you as well to rule 4(13) which says:

"Shall" is to be construed as imperative, and "may" as permissive.