DEFENCE

REASONS FOR ACQUISITION OF UPHOLDER CLASS SUBMARINES—LOBBYISTS INVOLVED IN ACQUISITION—REQUEST FOR PARTICULARS

(Response to question raised by Hon. Marcel Prud'homme on May 11, 1995)

The proposal to acquire four Upholder class diesel-electric submarines from the United Kingdom in support of Canada's defence policy is currently being considered by the Government. It will take a decision on the merits of this proposal and in conjunction with the other defence-related proposals that it is currently assessing. It has communicated this position to the British government and will complete any negotiations that may be necessary if it decides to proceed with this project.

BILL CONCERNING KARLA HOMOLKA

POINT OF ORDER—SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, I am prepared to give my ruling on the admissibility of Bill S-11, concerning Karla Homolka.

On Thursday, October 19, when the order for second reading of Bill S-11, an act concerning one Karla Homolka, was called, Senator Kinsella rose on a point of order. The purpose of his point of order was to object to proceeding with the bill because, in his view, the bill is not one that falls within the traditions, customs and rules of this house.

[*Translation*]

In stating his case, the senator explained that there are only two kinds of bills considered in our Parliament: these are either public or private bills. Assessing the nature and scope of Bill S-11, Senator Kinsella concluded that the bill is in the nature of a bill of attainder falling into a special category of public bill for which our practices do not provide.

[*English*]

To substantiate his position, Senator Kinsella referred to a ruling made by the Speaker of our House of Commons in May 1984 on a bill that had sought the execution of a specific criminal. The Speaker determined that the bill was unacceptable. Consequently, it is Senator Kinsella's opinion that:

> ...the matter contained in this bill is out of order and not properly before this chamber.

Speaking on behalf of the bill, Senator Cools pointed out that the bill is not, in fact, a bill of attainder but, rather, one of pains and penalties, and that our Parliament has the power to enact such bills. After describing the objective of such a bill to redress an injustice and impose a suitable penalty to a terrible crime when the courts have failed to exact one, Senator Cools went on to explain that Parliament and its individual houses have the power of judicature.

[*Translation*]

Senator Stewart then intervened to suggest that the procedural issue for the Speaker to resolve was whether there might be "any prohibition, as a matter of order, against this house, dealing with a bill which is, in effect, retroactive in a criminal matter."

[*English*]

• (1450)

I wish to express my appreciation to the honourable senators who participated in the discussion on this point of order. I have read the arguments that were made on October 19 and I have reviewed the authorities cited, as well as the precedent of 1984 that took place in the House of Commons. Before proceeding with my ruling, I wish to make it clear that I am not commenting in any way on the substance of the bill itself. My task is to answer the point of order raised about the procedure on the proceedings of the bill, not its content.

First, let me begin by saying that I agree with Senator Cools that Bill S-11 is of the nature of a bill of pains and penalties and not a bill of attainder. The distinction between the two, as I understand it, is that the penalty provided in the bill of attainder is execution, whereas a bill of pains and penalties inflicts a lesser punishment. Nonetheless, the special procedures that are traditionally used in the consideration of either a bill of attainder or a bill of pains and penalties are the same, and so the point of order raised by Senator Kinsella is not affected by this distinction.

The real issue to be decided is the objection of Senator Kinsella that Bill S-11 is a species of public bill that is not known to our practice. Aside from the precedent of 1984, when a member of the House of Commons sought to introduce a bill to secure the execution of Clifford Olson, I am not aware of any other similar bill of attainder or of pains and penalties presented to our Parliament for consideration. As Senator Kinsella pointed out, in 1984 the Speaker of the House of Commons ruled the bill out of order. In his decision, the Speaker noted that the procedure regarding bills of attainder or bills of pains and penalties had been obsolete in Britain for many years, and that "it has never existed in Canada."

In the absence of any precedents or of substantial evidence to the contrary, I feel bound to take note of the provisions of rule 1 of the *Rules of the Senate*, which stipulates:

> In all cases not provided for in these rules, the customs, usages, forms and proceedings of either House of the Parliament of Canada shall...be followed...