CHARLOTTETOWN ACCORD—DEFINITION OF SUPPLY BILL—REFINEMENT OF DEFINITION IN SUBSEQUENT ACCORD—GOVERNMENT POSITION

Hon. Douglas D. Everett: Honourable senators, I have a question for the Leader of the Government. When I spoke on the referendum bill, I raised the possibility that, because of the wording within the Charlottetown accord, it was possible that an appropriation rider could be added to what was otherwise an ordinary bill, thereby turning it into a supply bill under the definition of the act. Of course, if that happened and that bill were defeated in the Senate, it would not go to a joint sitting. All the Senate could do is give it a 30-calendar-day hoist.

The government leader has raised the point that the language of the Charlottetown accord is clear, and that therefore that sort of process could not occur because the definition of supply bills would be confined to budgets, major borrowing bills and the appropriation bills arising out of the Main or Supplementary Estimates.

The problem I have with that explanation is that a decision as to whether or not a bill is a supply bill is made by the originator of the bill, which in most cases would be the government, and the appeal is to the Speaker of the House of Commons, who may make the final decision, and who only has to consult with the Speaker of the Senate.

I believe that the result of a legal interpretation would be that the decision of the Speaker of the House of Commons would dispose of the matter and it would not be subject to further appeal or judicial reckoning. In that light, can the government leader tell us whether there will be a subsequent accord in respect of this matter, so that the definition of supply bills will be confined to that very narrow definition that he considers to be in the accord but which under legal interpretation, I am sure, is not in the accord—that is, that supply bills will only refer to budgets, the major borrowing bill and major appropriation bills arising out of the Main and Supplementary Estimates?

Hon. Lowell Murray (Leader of the Government): Honourable senators, I do not know whether the further definition which obviously will be required here will be the subject of a federal-provincial, territorial, Aboriginal accord, and therefore be put in the Constitution, or whether it will be a matter for Parliament to decide under its own rules. However, I should like to read paragraph 13, page 6 of the Consensus Report, or at least the relevant part of the paragraph:

> Revenue and expenditure bills ("supply bills") should be defined as only those matters involving borrowing, the raising of revenue and appropriation as well as matters subordinate to these issues . . .

So far so good. Then there is this next sentence which I think is important because it gives an example of the sort of thing that the definition of supply bills should exclude:

> This definition should exclude fundamental policy changes to the tax system (such as the Goods and Services Tax and the National Energy Program).

So there would not seem to be any danger that by bringing in that kind of tax initiative, say under the heading of a budget or appropriation bill, a government could get away with having them defined as supply bills. The intent is very clear; that is, to narrow the definition of what constitutes a supply bill.

Senator Everett: I agree that it should not be the subject of a further accord between the provinces, the federal government and the Aboriginals, and that it is sufficient for the federal government to declare its intention in that regard.

However, as the government leader well knows, the definition of appropriation bills as we know them today includes a number of ordinary bills to which an appropriation rider is attached, and Royal Recommendation is received thereby. He would be right in his interpretation if there were not a further clause saying that the decision as to what is or is not a supply bill is made by the originator of the bill, with appeal for final decision only to the Speaker of the House of Commons.

I would certainly recognize that this government probably would not misuse that right, but I think it is important, so that at least we have a usage, that this government go on record as saying that the definition of "supply bill" is confined to those major matters so that it will not, in the hands of an aggressive government, be used to turn ordinary bills into supply bills, thereby changing the power of the Senate so that it could only handle what would otherwise be an ordinary bill on the basis of purely and simply a 30-calendar-day hoist.

Senator Murray: Honourable senators, I take it that the honourable senator agrees that that definition should not be part of the Constitution, but rather, that it should be for Parliament to decide. In that context I would take the honourable senator's point, and I will inquire as to what the state of the drafting on that particular item may be. If there is some further information that I can usefully and properly bring in here, I will do so.

CHARLOTTETOWN ACCORD—DEFINITIONS OF FINANCIAL BILLS—RELATION TO POWERS OF SENATE

Hon. John B. Stewart: As a follow-up question, may I ask if it would not be true that the definition of an appropriation bill—or indeed of a tax bill which would make a fundamental policy change—relates directly to the powers of the Senate? Since the powers of the Senate are a matter of constitutional law, those definitions should be included in the constitutional law, rather than as matters subject to the rules of the House of Commons or left to the discretion of the Speaker of the House of Commons.

Hon. Lowell Murray (Leader of the Government): I appreciate that point, too, which is why I ducked the earlier question of whether this further definition will be put in the Constitution or whether it will be a matter for Parliament to decide. The honourable senator knows that the role of the present Senate is defined to some extent in the Constitution Act, 1867, but also in our own rules, procedures and conventions that have grown up over years.