
Spending Proposals: When is a Royal Recommendation Needed?

by Michael Lukyniuk

In the Canadian parliamentary system of government, the Crown (i.e., the executive branch) is solely responsible for the management of public monies and only the Crown may initiate a request to the House of Commons for new or increased taxation or spending. This is known as the financial initiative of the Crown and is entrenched in section 54 of the Constitution Act 1867. The Act also states in section 53 that any legislation for the appropriation of public revenue or for the imposition of a tax must originate in the House of Commons. On the surface, it would seem a relatively straightforward matter to determine if spending or taxation is being contemplated. However, the House is often presented with many complex and creative manners in which an authorization for spending or taxation may be expressed. When a point of order is raised concerning an infringement of the financial initiative of the Crown, the Speaker must closely scrutinize the bill, or the amendment, and rule on its admissibility. This article examines about 80 rulings since 1969 which deal with spending initiatives and the need for a royal recommendation.

Over the last forty years, there has been a great deal of interest in the financial initiative of the Crown, especially as it pertains to spending. From time to time, Speakers of the House of Commons have been asked to decide whether bills, or amendments to bills, propose spending. If they do and the measure is not recommended by the Crown, its progress is arrested since the Crown alone has the constitutional authority to initiate spending.

Of course, the Speaker does not rule on constitutional matters but Standing Order 79(1) echoes the wording found in the *Constitution Act* and authorizes the Chair to ensure that “This House shall not adopt or pass any ... bill for the appropriation of any part of the public revenue ... to any purpose that has not been first recommended to the House by a message from the

Governor General...” Therefore, the Speaker of the House of Commons has a critical procedural role to play in determining whether a measure infringes on the financial initiative of the Crown.

The instrument which signals the desire of the Crown to initiate spending is called the “royal recommendation”. It is provided by the Governor General whenever a request is made by Cabinet for the introduction of a legislative measure that seeks the authorization of Parliament for spending. The royal recommendation is attached to a bill (or an amendment to a bill) and printed in the *Journals* and *Notice Paper* of the House of Commons. The royal recommendation is currently a *pro forma* text reading: “Her Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled An Act to”

It should be stressed that the royal recommendation solely applies to “spending” – the *withdrawal* of public

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funds from the Consolidated Revenue Fund (CRF)¹. It does not apply to the imposition of taxes upon the people – the manner that revenues are raised and added to the CRF (procedurally known as the ways and means process). Nor does it apply to issues relating to fiscal management – the deficit/surplus status of government finances in the CRF.²

When a request for spending is made by the Crown, the House considers the proposition and may take one of three actions: it may agree to the request, it may reduce the spending provisions, or it may reject the request outright. However, the House cannot *increase* the amount of spending that is proposed by the Crown. To do so would infringe on the financial initiative of the Crown.

Spending requests take one of two basic forms: they can be brought forward as legislative requests for “annual appropriations” or for “statutory expenditures”. A royal recommendation is required for both.³

Normally, government bills seeking an authorization for spending are accompanied with a royal recommendation on introduction. If an amendment to the bill seeks to further increase spending later at report stage, such an amendment must be accompanied by another royal recommendation. This applies to amendments proposed either by a Cabinet Minister or an opposition Member. If an amendment to a bill at report stage requires a royal recommendation and is not accompanied by one, the Speaker will not select the amendment for debate or a vote in accordance with Standing Order 79(1). (In committees, Chairs will rule such amendments inadmissible, since there is no mechanism to bring in a royal recommendation at clause-by-clause consideration of bills in committees.) Another point to bear in mind is that if an amendment to a bill seeks to restore a spending provision which a bill was attempting to remove from the parent Act, then no royal recommendation is needed since the provisions in the parent Act would be unchanged.

A special procedure has been adopted regarding private Members’ initiatives. Private Members’ bills involving spending may be introduced, debated and proceed through the legislative process without a royal recommendation until third reading.⁴ If by that time a royal recommendation is not provided, the Speaker will decline to put the question on the vote at third reading and the initiative “dies”. In this manner, the financial initiative of the Crown is respected.

Therefore, a decision taken by the Speaker on whether an initiative involves spending is absolutely critical

to its progress. To apply a consistent and objective approach to each case, the Speaker is guided by two basic principles: that the terms and conditions of the royal recommendation cannot be expanded upon, and that a new and distinct request for expenditure must be accompanied by a royal recommendation.

Terms and conditions: The royal recommendation states that an appropriation of public funds must be made “under the circumstances, in the manner and for the purposes set out” in the bill to which it is attached. The terms and conditions of the royal recommendation are a specific expression of the financial initiative of the Crown and amendments may not propose measures which go beyond these qualifications. Basically, terms and conditions relate to the mechanisms or schemes by which the authorization for spending is based. For example, the Small Business Loans Bill C-9 provided loan guarantees for certain financial institutions but not Alberta Treasury Branches; an amendment to include such institutions was judged to be beyond the terms of the royal recommendation.⁵ An amendment to Crop Insurance Bill C-48 proposed to extend compensation for crop damage caused by water fowl to coverage of crop damage by wildlife; the Speaker explained “This, of course, is not procedurally acceptable because not only does it go beyond the scope of the clause but it also infringes on the royal recommendation.”⁶ On the other hand, the Speaker found that an amendment to the National Housing Bill C-133 which added municipally-owned housing corporations to the definition of non-profit organizations was within the terms and conditions of the royal recommendation.⁷

New and distinct requests for expenditure: This refers to measures which propose spending and are not supported by any existing statute. When considering a bill or amendment, the Speaker reflects on whether some entirely new activity or function is being proposed that radically diverges from those already authorized. The simplest examples are bills which propose the establishment of new offices, agencies or departments. Speakers have consistently ruled that such measures require a royal recommendation.⁸

Since the adoption of the procedural reforms on the Supply process in the late 1960s, a significant body of parliamentary jurisprudence has developed on this subject. Rulings have been delivered by the Speaker on the need for a royal recommendation when committee amendments are contested on the floor of the House, when private Members’ bills are called into question and, prior to 1991, when rulings were delivered on report stage amendments.

The following cases, organized by theme, illustrate

some further complexities when dealing with the requirement for a royal recommendation:

Appropriating provisions

Ultimate authority: The royal recommendation provides the ultimate authority to make an appropriation. Nothing further should be required to authorize spending, otherwise the constitutional authority of the Crown would be compromised or Parliament would be delegating its powers to some other body. Amendments to Unemployment Insurance Bill C-124 were ruled inadmissible because they would have subjected spending provisions to an additional resolution of the House. In the Ukrainian Canadian Restitution Bill C-331, a provision called on the government to enter into negotiations with a community to set appropriate levels of restitution. A royal recommendation is not required for the unknown outcome of future negotiations. The Speaker explained that "... it cannot be said that this bill upon enactment would effect an appropriation of public funds. At the very least, a bill effecting an appropriation of public funds ... does so immediately upon enactment. Once Parliament approves a bill that requires a royal recommendation, there should be nothing further required to make the appropriation. To subject an appropriation to a subsequent action beyond the control of Parliament is in effect for Parliament to delegate its powers and responsibilities in respect of supply to someone else. This Parliament cannot do."⁹

Eluding requirement: In an attempt to elude the requirement for a royal recommendation, bills have contained wording to the effect that nothing in the bill should be interpreted as involving spending. The Speaker has ruled that such provisions are not an acceptable manner of eluding the requirement for a royal recommendation. A legislative initiative must be examined on the basis of what it actually does.¹⁰

A clear expression: An authorization for spending must express the intention to withdraw monies from the CRF in a clear and precise manner. When a bill does not provide specific details on the measures which must be enacted to implement the initiative, a royal recommendation is not required. There may be an obligation – political or otherwise – on the government to take some action at a future date. If spending is contemplated, it is at this future date that a royal recommendation would be required.

Bills like the Kyoto Protocol Implementation Bill C-288 and the Kelowna Accord Bill C-292 called on the government to implement agreements. Since the bills did not include any details on the specific measures to be implemented, no royal recommendation was needed. The Speaker explained "The measures simply are not described. In the absence of such a description, it is impossible for the Chair to say that the bill

requires a royal recommendation.... it is not clear whether the accord could be implemented through an appropriation act, through amendments to existing acts, or through the establishment of new acts."

The Secure, Adequate, Accessible and Affordable Housing Bill C-304 called on the government to develop a national housing strategy and that this strategy should provide financial assistance for those who are unable to afford rental housing. As no details were provided on the assistance, the Speaker ruled that the bill did not require a royal recommendation and explained "If Parliament decides to approve this bill and a national housing strategy is developed, it will be up to the government to determine the financial resources required to implement the strategy and to set about getting Parliament to approve such resources. This might involve an appropriation bill or another bill proposing specific spending, either of which would require a royal recommendation."¹¹

Appropriation Act, items that legislate

Appropriation Acts are the culmination of a process which involves the introduction, examination and adoption of the Estimates. (The Estimates are the *annual* requests from the government to withdraw funds from the CRF for its general operations and services. These annual spending requests are broken down by department and further detailed in items known as "Votes".)

Items in the Estimates which amend Acts (other than previous *Appropriation Acts*) are said to be "legislating" – making *permanent* amendments to a statute – which is not the purpose of the *annual* Estimates. When brought to the attention of the Speaker on a point of order, such items may be deleted from the Estimates. The proper course of action should be for the government to introduce these items in a separate statute-amending bill.

In addition, items in the Estimates should not anticipate the adoption of some piece of legislation by Parliament. They must be supported by an existing Act. To do otherwise would be to approve funding for non-existing programs.

The following illustrate some of these issues:

- In 1974, a point of order was raised concerning an item in the Estimates for the Food Prices Review Board. As the FPRB was set up under the *Inquiries Act*, legislative authority already existed, so it was proper to include a funding item in the Estimates.
- In 1981, a point of order was raised concerning an item in the Estimates which authorized the cancellation of debts. It was determined that this should have been proposed as an amendment to section 18(1) of the *Financial Administration Act*. As no legislative authority existed for the appropriation, the item was ordered to be deleted from the Estimates.
- In 1983, a point of order was raised concerning

items in the Estimates which (1) increased borrowing limits – an initiative which should have been made as an amendment to the *Freshwater Fish Marketing Act*; and (2) included the provision of a small business investment grant when the enabling legislation had not yet been adopted by Parliament. Both items were deleted from the Estimates.

- In 1984, a point of order was raised concerning an item in the Estimates for program expenditures when the enabling legislation had not yet been adopted by Parliament. The item was deleted from the Estimates.
- In 1991, a point of order was raised concerning items in the Estimates and Supplementary Estimates to authorize per diem allowances for Senators. The Speaker ruled that there was no existing statutory authority under which the allowances could be paid. Both items were deleted from the Estimates.¹²

Coming-into-force Provisions

Bills come into force upon royal assent unless there are provisions within the bill which specify a date or which give the Governor-in-Council the power to decide the enforcement date through proclamation. Although the timing will set into motion the spending of public monies, the coming-into-force provisions of a bill should not be seen as part of the terms and conditions of the royal recommendation but rather as part of the law-making process. The Immigration and Refugee Protection Bill C-280 proposed that the coming-into-force of an already adopted government bill be changed from proclamation by Governor-in-Council to the date of royal assent. In replying to a point of order from the government, the Speaker explained “Our rules and practices hold that coming into force clauses of bills have always been open to amendment and a vote. If we were to accept the argument that an alteration to the coming into force provision would somehow infringe upon the royal recommendation, then it should not be admissible for a committee or the House to negotiate or amend such a clause unilaterally. Such is clearly not the case.” Consequently, no royal recommendation was required.¹³

Compensation Provisions

When a bill or an amendment to a bill proposes to provide compensation to individuals, this involves the withdrawal of public funds from the CRF and a royal recommendation is required. Regarding the Crop Insurance Bill C-48, the Speaker explained that an amendment “... seeks to extend compensation for crop damage caused by water fowl to coverage of crop damage caused by wildlife.... An amendment infringes on the financial initiatives of the Crown not only if it increases the amount but also extends the objects and purposes set out in the communication by which the Crown has recommended a charge.” An

amendment to Criminal Code Bill C-17 proposed to compensate firearm owners in regard to prohibited weapons, creating a new and distinct authorization for spending. An amendment to the Nuclear Liability of Compensation Bill C-5 sought to delete a clause which would have established time limits for filing claims for compensation. The Speaker explained that removing time limits did not infringe on the financial initiative of the Crown.¹⁴

The Consolidated Revenue Fund (CRF)

The CRF was established for the management of public monies by the Crown. In recent years, cases have arisen concerning the creation of accounts outside the CRF as well as monies outside the control of the Crown.

Employment Insurance Bill C-280 proposed to transfer monies from the Employment Insurance Fund within the CRF to a separate account outside the CRF. The Speaker explained that this required a royal recommendation because it “effects an appropriation by ... authorizing the spending of public funds by transfer of the funds ... with the result that these monies are no longer available for other appropriations Parliament may make.”¹⁵

Employment Insurance (removal of waiting period) Bill C-241 proposed to eliminate the employment insurance waiting period and to have the benefits paid from the new *Employment Insurance Financing Board Act* – an account separate from the CRF. The Speaker explained that “The specific purpose of the separate account in question is to make it possible to reduce premiums. There is no provision for using the account to pay for additional outlays that could result from eliminating the waiting period for the payment of benefits.... Therefore, it is clear that despite the creation of a new Canada Employment Insurance Financing Board, the payment of benefits to eligible workers continues to be made from the consolidated revenue fund through the EI account.” Consequently, a royal recommendation was needed.¹⁶

Canada Mortgage and Housing Bills C-363 and C-285 sought to transfer monies from the reserve fund of a crown corporation. As these monies were technically outside the CRF and the control of the Crown, no royal recommendation was required.¹⁷

Functions, Mandates and Duties

When a legislative proposal envisages a new role or function for an existing organization or program, a royal recommendation is required because the terms and conditions of the original royal recommendation which created that organization or program are being altered. However, when a legislative proposal simply envisages a greater workload falling within the existing role or function of an organization or program, the terms and conditions of the original

royal recommendation are unchanged and any additional spending of an operational nature would be sought through an annual *Appropriation Act*. Admittedly, this is one of the more complex matters for a Speaker to adjudicate on.

In the first situation, the terms and conditions that established an organization or program are being altered so that a new and distinct authorization for spending is being *permanently* created. This initiative must be accompanied by a royal recommendation.

In the second situation, further spending of an operational nature may be required to perform activities which are not new and have already been authorized in an existing statute which had a royal recommendation. An authorization for such operational spending would be made on an *annual* basis in an *Appropriation Act*.

Cases where a new function was envisaged: Employment Insurance Bill C-280 proposed that the Employment Insurance Commission should engage in investing funds – a new function for the Commission requiring a royal recommendation. The Speaker explained "... clause 2 significantly alters the duties of the EI Commission to enable new or different spending of public funds by the commission for a new purpose namely, the investment of public funds."

The Witness Protection Bill C-286, proposed to expand the Witness Protection Program to include persons whose life was in danger because of acts committed against them by their spouses. As this would create an entirely new function for the program which involved spending, a royal recommendation was necessary. The Speaker explained that the bill proposed "a protection that does not currently exist under the Witness Protection Program. In doing so, the bill proposes to carry out an entirely new function. As a new function, such an activity is not covered by the terms of any existing appropriation.... New functions or activities must be accompanied by a new royal recommendation."

The DNA Identification Bill C-279, proposed to add a new function, the creation of an index for missing persons. Such an index represented a new purpose for the Act which required a royal recommendation.

The National Sustainable Development Bill C-474, proposed a new mandate for the Environment and Sustainable Development Commission – to develop a national performance monitoring system with new goals – which required a royal recommendation.¹⁸

Cases where no new function was envisaged: The Pension Benefits Standards and the Superintendent of Financial Institutions Bill S-3 proposed to increase the number of pension plans under the authority of the Superintendent of Financial Institutions. Despite the increase in the

number of pension plans, the duties of the office remained exactly the same. Therefore, if there was an increase in the workload of the office and more operational spending was required, it would be sought through an *Appropriation Act*.

The Canadian Labour Code Bills C-257 and C-295 proposed to have the minister designate investigators in the Labour Department to verify whether replacement workers were being illegally hired. Since a similar function was already being performed by inspectors in the Department, it was determined that no royal recommendation was required. The Speaker explained "The key question is whether the designation of these investigators constitutes an authorization for new spending for a distinct purpose.... Having heard arguments and reviewed the provisions of the parent act that describe the duties of inspectors, the Chair is prepared to conclude that the provisions in Bill C-257 which relate to the designation of investigators by the minister do not constitute an authorization for new spending for a distinct purpose. The functions which are already being performed by inspectors would appear to be reasonably similar to the functions envisaged by Bill C-257."

Amendments to the Kyoto Protocol Implementation Bill C-288 were adopted in committee and contested in the House on the grounds that they proposed a new and distinct purpose for the National Round Table on the Environment and the Economy. The Speaker found that the amendments fell within the terms of the ongoing mandate of the National Round Table. The Speaker explained "In the present case, section 4 of the Act calls on the national round table to perform activities relating to an analysis of sustainable development issues and to advising the minister on environmental and economic considerations. The terms of the amendment to Bill C-288 appear to me to fall precisely within its ongoing mandate: that is, to analyse the climatic change plan and to advise the Minister. Now it might be argued that this would increase the workload of the national round table, but even if this were so, an increase to its budget would be sought through existing appropriation arrangements."

Broadcasting (reduction in violence in television broadcasts) Bill C-327 proposed that the Canadian Radio-television and Telecommunications Commission be responsible for regulating violence on television as well as verifying broadcasters' compliance. On a point of order, the government cited precedents and claimed that this was a new responsibility which clearly required spending. Citing sections 3(1) and 5 of the *Broadcasting Act*, the Speaker stated "... the CRTC presently has the authority to regulate programming to safeguard social values, a part of the CRTC mandate into which new regulations to reduce violence in the programming offered to the public would appear to fall. The Chair is of the view that as a

whole, Bill C-327 proposes activities which are already being performed by the CRTC within its existing mandate.... Bill C-327 may or may not result in a greater workload for the CRTC, but the activities being proposed are within its mandate. If additional staff or resources are required to perform these activities then they would be brought forward in a separate appropriation bill for Parliament's consideration."¹⁹

Grants, Redirecting

When an Act establishes a program for the provision of grants, the terms of the program cannot be amended in such a manner as to expand the groups eligible to receive those grants or to redirect how it can be used unless a new royal recommendation is provided.

Employment Support Bill C-262 (a government bill) provided grants to manufacturing industries affected by foreign import surtaxes. An amendment sought to extend these grants to farmers and fishermen. This required a royal recommendation.

Regional Incentives Development Bill C-220 proposed that incentive grants ought to be redistributed to crown corporations as opposed to private corporations. The Speaker explained "...it is not only the amount approved or recommended by the royal recommendation that cannot be changed but there is also a prohibition against a redirection of the amount that is approved or recommended to the House in the royal recommendation."

Canada Student Financial Assistance Bill C-284 proposed to make grants available to students not only for the first year of post-secondary studies but for all years. An expansion of the program in such a fashion would alter the terms of the royal recommendation that established the Act. The Speaker explained that "In enlarging the program in this way, the bill extends the program's scope beyond that originally envisaged. Such an extension is not covered by the terms of any existing appropriation. Funds may only be appropriated by Parliament for purposes authorized by a royal recommendation.... The royal recommendation did not cover a program of four years, as proposed in the hon. member's bill."²⁰

Legal Expenses Reimbursed

A legislative proposal obliging the government to reimburse legal expenses would require a royal recommendation as it creates a new and distinct authorization for spending. In Canada Corporation Bill C-4, an amendment to reimburse legal expenses required a royal recommendation. The Speaker explained "It seems to me, if the proposal were accepted and became operative, that it would create a financial charge. I find it

difficult to escape this conclusion."

Regarding the Trade Compensation Bill C-364, it was argued that the payment of legal expenses was already authorized by the Minister. The Speaker explained that "while funding may have been made available for a specific purpose by the Minister of International Trade, Bill C-364 is proposing an expenditure of public funds for a general purpose that is new. Despite what provisions may appear in other acts, the Chair is of the view that such a statutory initiative as expressed in Bill C-364 would have to be accompanied by a recommendation from the Crown as it mandates a new expenditure of public funds."²¹

Loan Forgiveness

When a provision would increase the existing level of forgiveness for government loans, this would result in an increase of disbursements from the CRF and require a royal recommendation. National Housing Bill C-6 sought to increase loan forgiveness from 25% to 50% and 75%. The Speaker explained "As the legislation now in effect sets a limit to disbursements out of the Consolidated Revenue Fund with regard to these loans, the bill under consideration would abolish this limit.... I submit that the subject matter of the hon. Member's bill ... could only be brought forward by a minister of the Crown, and accompanied by a recommendation from His Excellency."²²

Loan Guarantees

A loan guarantee from the government is a commitment to back up a loan in case it defaults. By itself, the guarantee does not involve any spending. However, should the loan default, then the government would be responsible for the entire loan which would involve a new expenditure of public funds. Consequently, loan guarantees require a royal recommendation.

An amendment to the Small Business Loans Bill C-23 had the effect of eliminating a deadline in the original Act, thus permanently continuing the loan guarantee. As this would alter the terms and conditions of the original royal recommendation, a new one would be required.

The Trade Compensation Bill C-364 proposed that the Minister of Finance provide loan guarantees whenever a deposit is posted by an exporter resulting from a trade dispute. The Speaker explained that "if such a loan defaulted, the Crown would be responsible for paying the debt. For this reason, the bill requires a royal recommendation as it mandates a new expenditure of public funds by imposing this liability upon the consolidated revenue fund."²³

Office-holders, Appointment Process

Office-holders are generally appointed and paid by the Governor-in-Council (GIC), although there

are exceptions. Canada Election Bill C-312 raised a number of interesting issues relating to the appointment process.

The Bill proposed to transfer the power to appoint Returning Officers from the GIC to the Chief Electoral Officer. The Speaker explained "Normally, the power to appoint includes the authority to pay. The transfer of this authority would appear to affect the manner in which spending was being authorized and so would appear to infringe on the financial initiative of the Crown. However, a closer reading of the *Canada Elections Act* seems to indicate that the authority to pay remains with the Governor-in-Council.... Therefore, it appears that the bill is solely transferring the power of appointment without transferring the authority to remunerate returning officers. If this is the case, there is no infringement on the financial initiative of the Crown."

The Bill proposed to set the appointment period for ten years instead of being at pleasure of the GIC. The Speaker explained "This is not an infringement on the financial initiative of the Crown as it does not increase the public spending but only the identity of the persons to be paid over a 10 year period, that is, there would be fewer changes, if any, in the roster of returning officers during this period but the same number of returning officers in any event."

Finally, the Bill proposed to appoint Returning Officers by way of an open competition organized by the Chief Electoral Officer. The Speaker explained "Although this will involve the spending of public monies, it appears to the Chair that this would be an operational expense of the Chief Electoral Officer that would be within the annual appropriations provided to his office."²⁴

Office-holders, Appointment Provisions

When a bill, or amendment to a bill, proposes to appoint or to increase the number of office-holders for an organization, a royal recommendation is required since the remuneration will be provided from the CRF.

In the Canadian Solar Energy Institute Bill C-210, the Speaker explained that "...the Bill provides for the appointment by the Governor in Council of five persons who, together with others who may become members, shall constitute the Canadian Solar Energy Institute. The *Interpretation Act* makes it clear that the power to appoint includes the power to pay; therefore, because the Governor in Council could choose to pay a salary to these members, the Bill clearly involves an appropriation of a part of the public revenue."

An amendment to the Investment Canada Bill C-15 proposed that a board of directors be created and that the salary of the president should be shared amongst all members, thus creating no new expenditure. The Speaker said "I must congratulate the Hon. Member on such an original

approach. That a president would be willing to share his salary with his board of directors, thereby leading to no charge on the Consolidated Revenue Fund, is quite novel. However, the Bill does not provide for the establishment of any board of directors."

The National Sustainable Development Bill C-474 proposed to have 25 representatives appointed to an advisory council and did not provide any details about payment. The Speaker explained that the power to appoint includes the power to pay, therefore a royal recommendation would be required.²⁵

Operational Expenditures

When an Act is proclaimed, there may be some operational expenditure required to implement the measure even if the Act does not directly contemplate spending. For instance, in order to implement new guidelines or penalties in an Act, more personnel may have to be hired and office space rented. These sorts of operational expenses – which may vary from year to year – are authorized through the annual *Appropriation Acts*.

The Heritage Lighthouse Bill S-14 contained a provision which required that heritage lighthouses be reasonably maintained. An objection was made that this would entail greater government expenditures, however the Speaker explained "I would characterize those expenditures as falling within departmental operational costs, for which an appropriation would have been obtained in the usual manner. From year to year, such expenditures would vary depending on the condition and number of heritage lighthouse structures and on the effects of weather. Such operational expenditures are covered through the annual *Appropriation Act* that Parliament considers and approves."

It was claimed the Kyoto Protocol Implementation Bill C-288 would result in a greater workload for the National Round Table on the Environment and the Economy which would entail more expenditures and thus require a royal recommendation. The Speaker explained "Now it might be argued that this would increase the workload of the national round table, but even if this were so, an increase to its budget would be sought through existing appropriation arrangements."²⁶

Regulation-making Provisions

Regulations may be described as delegated legislation. In other words, Parliament delegates the power to make laws to some subordinate body by way of an Act. An Act establishing regulation-making powers may also include an authorization to spend public monies from the CRF if the legislation is accompanied by a royal recommendation.

The Canadian Student Financial Assistance Bill C-284 sought to transfer the Canada Access

Grants Program established by a regulation and to place it under the authority of an Act. The Speaker explained "I remind hon. members that a regulation cannot impose a charge on the public revenue without express authority having been provided in the enabling legislation. The government cannot expend funds pursuant to a regulation unless the legislation on which that regulation is based was accompanied by a royal recommendation. In this case, then, the Canada access grants program, established by authority granted to the minister by the *Canada Student Assistance Act* is covered by the royal recommendation which accompanied that act. Accordingly, the Chair is satisfied that moving the program out of the regulations into the act does not violate the royal recommendation."²⁷

Social Assistance Payments

Age qualification: When an Act provides social assistance to individuals and establishes an age requirement, a bill or an amendment to a bill which proposes to reduce the age qualification requires a royal recommendation since it is altering the terms of the original royal recommendation by enlarging the group entitled to the assistance.²⁸

Benefits extended to new class of claimants: When an Act provides social assistance to a specific group or class of individuals, a bill or an amendment to a bill which proposes to provide benefits to a different group of individuals would require a royal recommendation because the terms of the original royal recommendation are being extended.

Unemployment Insurance (maternity benefits) Bill C-205 sought to provide benefits to expectant mothers who were not covered in the parent Act. The Speaker explained "When a Private Members' bill provides for an extension in the benefit period, for an enlargement of the class of possible claimants, or for an increase in the benefits payable under the Act, the charge on the Consolidated Revenue Fund would consequently be increased. Therefore, in my view, any such bill would be a "money bill" which must be introduced by a Minister of the Crown and accompanied by the recommendation of the Governor General."

Unemployment Insurance (jury duty) Bill C-216 sought to provide unemployment benefits to individuals serving on juries. The Government announced that it would provide a royal recommendation for this initiative.²⁹

Benefits increased: When an Act provides a specific amount of benefits for social assistance, a bill or an amendment to a bill which proposes to increase those benefits would require a royal recommendation because it is increasing spending.

Employment Insurance Bill C-278 sought – among other things – to increase benefits. The Speaker explained "The improvements to the employment

insurance program envisioned by this bill include ... increasing those benefits. It is clear that such changes to the employment insurance program would have the effect of authorizing increased expenditures of public revenue."

Employment Insurance (amounts not included in earnings) Bill C-279 proposed to exclude pension benefits, vacation pay and severance payments from earnings for the purpose of calculating employment insurance payments. The Speaker explained that "... the proposal put forward by Bill C-279 is such that more individuals would be eligible to receive EI benefits and those currently eligible would receive increased benefits."³⁰

Benefit-receiving period lengthened: When an Act establishes a specific period for an individual to receive social assistance, a bill or an amendment to a bill which proposes to extend that period would have a clear financial impact and would require a royal recommendation.

An amendment to Family Income Security Bill C-170 was ruled inadmissible because it "... would have the effect of initiating payments in certain cases four months prior to the date which is provided for in the bill and in the recommendation. To my mind, this represents a clear financial implication which could not be undertaken without a recommendation."

Old Age Security (monthly guaranteed income supplement) Bill C-301 sought to make benefits payable retroactively upon entitlement (and not upon application). The Speaker explained "Clauses 2, 3 and 4 remove the requirement that the recipient must make an application before they can receive a payment. Henceforth, payments would be based simply on entitlement. This changes the conditions of the compensation process and creates new or additional spending. Arguably, it could also affect the minister's discretionary authority; however, this is not entirely clear. Clause 6 awards full retroactivity. Currently, retroactivity is limited by the date upon which the application was made. Late applicants may only be eligible for the period dating from the application. It would appear then that this modification authorizes increased spending which would require a royal recommendation."

Employment Insurance Bill C-278 sought to increase employment insurance sickness benefits from 15 to 50 weeks. The Speaker explained "...the bill would require the expenditure of additional funds in a manner and for a purpose not currently authorized. Although contributions to the employment insurance program are indeed made by employers and employees, appropriations for the program are taken from the consolidated revenue fund and any increase in such spending would require a royal recommendation."

Employment Insurance (removal of waiting period) Bill C-241 proposed to remove the two-

week waiting period for receiving benefits. The payment of these benefits would be made from the CRF and would constitute a new and distinct charge on the treasury.

Canadian Forces Superannuation Bill C-201 proposed to continue bridge benefits for retirees after age 65 when CPP benefits began. The continuation of these benefits would constitute new expenditures for which a royal recommendation would be required.³¹

Qualification period reduced: When an Act establishes a specific qualification period for an individual to receive social assistance, a bill or an amendment to a bill which proposes to shorten that period would require a royal recommendation because it would be altering the terms of the original royal recommendation and increasing payments from the CRF.

Employment Insurance Bills C-265 and C-280 sought to reduce the qualification period. The Speaker explained "... the changes to the employment insurance program envisaged by this bill include lowering the threshold for becoming a major attachment claimant to 360 hours ... and removing the distinctions made to the qualifying period on the basis of the regional unemployment rate. It is abundantly clear to the Chair that such changes to the employment insurance program, notwithstanding the fact that workers and employers contribute to it, would have the effect of authorizing increased expenditure from the consolidated revenue fund in a manner and for purposes not currently authorized."³²

Tax Credit Provisions

A bill which *imposes* taxation does not require a royal recommendation as it does not involve the withdrawal of public monies from the CRF. (Such a bill would have to be preceded by the adoption of a Ways and Means Motion which only a Minister may introduce.)

In the same vein, a bill which *relieves* taxation – for example, by reducing a tax rate – would not require either a Ways and Means Motion or a royal recommendation since it does not involve the imposition of a tax or the withdrawal of monies from the CRF. Such a bill could result in a situation where revenues in the CRF would be substantially reduced, however this fiscal imbalance does not directly relate to the prerogative of the Crown to *initiate* increases in taxation and spending.

Where matters become more complex is in relation to tax credits. Generally, tax credits can take one of two different forms:

- a non-refundable tax credit may reduce taxable income so that less tax would be owed (and hence the financial initiative of the Crown to impose a tax or to initiate spending would not be affected);
- a refundable tax credit may result in a payment regardless of taxable income (and so it may be

similar to a compensation program insofar as new payments are being made from the CRF).

Budget Implementation 2007 Bill C-52 proposed to create a non-refundable dividend tax credit and an amendment was proposed to change this into a refundable tax credit. The Speaker explained "The amendment ... appears to effect "a refund or credit against taxes otherwise payable". Is this the alleviation of taxation or is it an authorization for a new and distinct program of spending? If it is the former, no ways and means motion is required. If it is the latter, a royal recommendation would need to accompany the amendment. In reviewing the evidence of the Standing Committee on Finance, I am inclined to agree with the conclusion of the chair, that is, that the amendment proposes to create a new initiative, in this case, it is called a refundable tax credit, which results in the appropriation of moneys from the consolidated revenue fund for a distinct purpose."³³

The preceding cases illustrate some of the issues involved in determining whether a bill or an amendment to a bill requires a royal recommendation. While it's helpful to have a list of the parliamentary jurisprudence, the reader should be wary of making generalizations. Each case must be closely examined on its own. What at first may seem to correspond to a precedent may upon further research reveal significant differences.

There are a number of other issues relating to the financial initiative of the Crown as it relates to spending.

Of course, a great deal of pressure is placed on the Speaker of the House of Commons to rule in a consistent fashion regarding these cases. The complexity and breadth of statutory law as well as the occasional need to arrive at a decision quickly makes this an unenviable task. It is not always clear where the spending provision may be found in a bill or how a complicated formula for spending operates. When Members raise a point of order, the Speaker encourages them to be clear, to make references to specific provisions in bills and Acts, and to cite precedents when warranted. Matters are also made difficult by the role that the Speaker plays as defender of the rights of the House of Commons. To some on the opposition benches, it may appear that the Chair is overly protective of the Crown when a ruling finds that a private Members' bill or an amendment to a government bill infringes on the financial initiative of the Crown. On the other hand, the government benches may feel that the Chair is not respecting the authority of the Crown when a ruling rejects the government's assertion that a bill or amendment will result in increased spending. Because of this predicament, the Chair has the responsibility to be very consistent when

ruling and to explain the reasoning for the decision in a clear and complete fashion.

The Crown also has the responsibility to decide which of its bills truly need to be accompanied by a royal recommendation. On occasion, opposition Members have objected to government bills which did not appear to need a royal recommendation.³⁴ They argued that applied too loosely, this unnecessary inclusion of a royal recommendation might unduly restrict opportunities for amendment. While there is cause for concern, this should not restrict the amending process. An amendment is always judged on its own merits – if the amendment infringes on the financial initiative of the Crown, it would be inadmissible whether or not a royal recommendation was attached to a bill. If anything, the unnecessary inclusion of a royal recommendation could become a procedural hindrance to the speedy progress of a government bill when points of order are raised and proceedings are delayed until a ruling is prepared and delivered. For constitutional reasons alone, the government is very careful not to include a royal recommendation “just in case” there is a suspicion of spending.

Over the last forty years, close to half of the rulings on the royal recommendation have occurred since 2004 and almost all of those cases involved private Members’ bills. Three factors have contributed to this exponential growth in rulings:

- The rules of the House of Commons were changed in 1994 to permit bills to proceed to third reading before a royal recommendation was needed to be provided (if necessary);
- The rules of the House of Commons were changed in 2003 to make almost all private Members’ bills votable – previously these bills were usually debated for a couple of hours and then dropped from the *Order Paper*; and
- Minority government situations since 2004 have given private Members a stronger opportunity to win votes for their legislative proposals, a task which is more difficult in majority government situations.

It is not clear whether the legislative empowerment of private Members and the call for decisions by the Speaker on the need for a royal recommendation will continue to grow in upcoming years, and especially under majority government situations. There does appear to be a desire to better define the territory between the Crown’s constitutional authority to initiate a request for spending and a parliamentarian’s right to make legislative proposals.

It must be acknowledged that this legislative empowerment of private Members raises a lot of

interesting issues relating to the responsibility of the Crown for the management of public monies. Granted, even if private Members cannot directly increase spending authorizations, indirectly their proposals could result in greater workloads for government departments as seen in the section “*Functions, mandates and duties*” and their proposals could also result in less monies being deposited into the CRF as seen in the section “*Tax credit provisions*”. Could it be argued that these scenarios compromise the government’s ability to manage public monies? And more intriguing, is the character of our system of government – where “the Crown proposes and Parliament disposes” – evolving slowly into something else?

For the present, the principles relating to the financial initiative of the Crown are untouched. If anything, recent cases and the rulings of Speakers have helped to clarify the fundamental principles of our system of government.

Notes

1. The Consolidated Revenue Fund is the financial account into which all government revenues and taxes are deposited and from which public monies are withdrawn.
2. For information on these financial procedures, see Chapter 18 of *House of Commons Procedure and Practice*, 2nd ed. (2009).
3. *Annual appropriations* refer to the process which authorizes the government to withdraw public funds from the CRF for its general operations and services for each fiscal year. An example would be monies required for staff to perform the mandate of a government department. This planned spending is submitted to the House of Commons and referred to its committees for detailed study in documents known as the Estimates. Once the Estimates are adopted by the House, an Appropriation Bill based on those Estimates is immediately introduced and voted on. The Appropriation Bill is then sent to the Senate for its consideration and, once adopted, the bill may proceed to enactment by royal assent.

Statutory expenditures refer to Acts of Parliament which authorize the government to withdraw public funds from the CRF without the annual approval of Parliament. An example would be the payment of pensions made under the *Canada Pension Plan Act*. The amounts to be paid out of the CRF are included in the annual Estimates for information purposes since the authority for spending has previously been approved by Parliament. If there is a desire to alter the pensions, a bill would need to be introduced to amend the *Canada Pension Plan Act*. If that bill proposes more spending (or a change in the terms and conditions governing the spending), then a royal recommendation would be required. If that bill proposes a reduction in spending, then a royal recommendation would not be required.
4. At committee stage, amendments may not propose new or additional spending to private Members’ bills even if the bills already required a royal recommendation. (See ruling on Employment Insurance Bill C-280, *Debates*, November 19, 2009, pp. 6939-40.)
5. *Debates*, January 29, 1970, pp. 2972-5.
6. *Debates*, March 14, 1990, p. 9287.
7. *Debates*, June 11, 1973, p. 4646.

8. See the following rulings: Patent and Trade Marks Bill C-102 (*Debates*, March 28, 1969, pp. 7264-5); Federal Transport Commission (measure to establish) Bill C-33 (*Debates*, September 18, 1973, pp. 6688-90); Family Orders Enforcement Assistance Bill C-48 (*Debates*, January 23, 1986, p. 10083); Canadian Multiculturalism Bill C-93 (*Debates*, July 11, 1988, pp. 17366-7); Victims Ombudsman Bill C-243 (*Debates*, November 22, 2004, p. 1621); Ukrainian Restitution Bill C-331 (*Debates*, December 7, 2004, p. 2410; March 21, 2005, pp. 4372-3; November 23, 2005, pp. 10062-3); Workplace Psychological Harassment Prevention Bill C-360 (*Debates*, June 2, 2005, p. 6582); Development Assistance Accountability Bill C-293 (*Debates*, September 19, 2006, p. 2999); National Sustainable Development Bill C-474 (*Debates*, February 11, 2008, pp. 2853-4); Economic Development Agency for the Region of Northern Ontario Bill C-309 (*Debates*, June 16, 2009, p. 4702).
9. Unemployment Insurance Bill C-124 (*Journals*, February 5, 1973, pp. 92-5); Ukrainian Canadian Restitution Bill C-331 (*Debates*, December 7, 2004, p. 2410; March 21, 2005, pp. 4372-3).
10. Canadian Bill of Rights for Children Bill C-204 (*Journals*, November 9, 1978, pp. 130-3).
11. Kelowna Accord Implementation Bill C-292 (*Debates*, September 25, 2006, pp. 3197-8); Kyoto Protocol Implementation Bill C-288 (*Debates*, September 27, 2006, pp. 3314-5; February 8, 2007, pp. 6548-9; February 14, 2007, pp. 6816-7); Secure, Adequate, Accessible and Affordable Housing Bill C-304 (*Debates*, September 17, 2009, pp. 5168-9).
12. Supplementary Estimates (B) 1973-74 (*Debates*, March 26, 1974, pp. 894-6); Supplementary Estimates (C) 1980-81 (*Debates*, March 25, 1981, p. 8600-1); Supplementary Estimates (C) 1982-83 (*Debates*, March 21, 1983, p. 23968); Supplementary Estimates (C) 1983-84 (*Debates*, March 21, 1984, p. 2308); Supplementary Estimates (C) 1990-91 and Main Estimates 1991-92 (*Debates*, March 20, 1991, pp. 18728-33).
13. *Debates*, May 15, 2007, pp. 9515-6.
14. Crop Insurance Bill C-48 (*Debates*, March 14, 1990, p. 9287); Criminal Code Bill C-17 (*Debates*, November 5, 1991, p. 4544); Referendum Bill C-81 (*Debates*, June 2, 1992, p. 11204); Nuclear Liability of Compensation Bill C-5 (*Debates*, May 6, 2008, pp. 5502-3).
15. *Debates*, June 13, 2005, pp. 6990-1.
16. *Debates*, April 22, 2009, pp. 2584-5.
17. Canada Mortgage and Housing Corporation Bill C-363 (*Debates*, October 3, 2005, pp. 8293-4); Canada Mortgage and Housing Corporation Bill C-285 (*Debates*, November 8, 2006, p. 4906).
18. Employment Insurance Bill C-280 (*Debates*, June 13, 2005, pp. 6990-1); Witness Protection Bill C-286 (*Debates*, October 20, 2006, p. 4039); DNA Identification Bill C-279 (*Debates*, November 8, 2006, pp. 4905-6); National Sustainable Development Bill C-474 (*Debates*, February 11, 2008, pp. 2853-4).
19. Pension Benefits Standards and the Superintendent of Financial Institutions Bill S-3 (*Debates*, February 10, 1998, pp. 3647-8); Canada Labour Code (replacement workers) Bill C-257 and C-295 (*Debates*, September 20, 2006, p. 3044); Kyoto Protocol Implementation Bill C-288 (*Debates*, February 8, 2007, pp. 6548-9); Broadcasting (reduction in violence in television broadcasts) Bill C-327 (*Debates*, February 23, 2007, p. 7261).
20. Employment Support Bill C-262 (*Debates*, September 27, 1971, pp. 8186, 8190-1); Regional Incentives Development Bill C-220 (*Debates*, June 21, 1972, pp. 3336-7); Canada Student Financial Assistance Bill C-284 (*Debates*, November 9, 2006, p. 4979).
21. Canada Corporations Bill C-4 (*Debates*, June 11, 1970, pp. 8004-5); Trade Compensation Bill C-364 (*Debates*, November 24, 2005, p. 10133).
22. *Debates*, February 6, 1973, p. 1018.
23. Small Business Loans Bill C-23 (*Debates*, March 26, 1985, p. 3353); Trade Compensation Bill C-364 (*Debates*, November 24, 2005, p. 10133).
24. *Debates*, May 9, 2005, pp. 5779-80.
25. Canadian Solar Energy Institute Bill C-210 (*Journals*, February 20, 1979, pp. 393-5); Investment Canada Bill C-15 (*Debates*, April 30, 1985, pp. 4231-2); National Sustainable Development Bill C-474 (*Debates*, February 11, 2008, pp. 2853-4). See also rulings for: Canada Post Bill C-42 (*Debates*, April 7, 1981, p. 9052); Canadian Transportation Accident Investigation and Safety Board (*Debates*, June 12, 1989, pp. 2910-3); Employment Insurance Bill C-280 (*Debates*, February 8, 2005, June 13, 2005, p. 6990); Department of Human Resources and Skills Development Bill C-23 (*Debates*, February 24, 2005, p. 3939-42); Economic Development Agency for the Region of Northern Ontario Bill C-309 (*Debates*, June 16, 2009, p. 4702).
26. Heritage Lighthouse Protection Bill S-14 (*Debates*, June 20, 2005, p. 7397); Kyoto Protocol Implementation Bill C-288 (*Debates*, February 8, 2007, pp. 6548-9). See also Heritage Lighthouse Protection Bill S-7 (*Debates*, October 29, 2003, pp. 8899-8900).
27. *Debates*, November 9, 2006, p. 4979.
28. See: Old Age Security Bill C-147 (*Debates*, March 27, 1973, pp. 2663-4); Old Age Security Bill C-202 (*Debates*, December 17, 1970, pp. 2149-50); Old Age Security Bill C-207 (*Debates*, May 16, 1972, pp. 2326-7).
29. Unemployment Insurance (maternity benefits) Bill C-205 (*Journals*, June 6, 1980, pp. 244-5); Unemployment Insurance (jury duty) Bill C-216 (*Debates*, December 6, 1994, p. 8734).
30. Old Age Security Bill C-147 (*Debates*, March 27, 1973, pp. 2663-4); Employment Insurance Bill C-278 (*Debates*, December 8, 2004, pp. 2476-7); Bankruptcy and Insolvency Bill C-281 (*Debates*, May 5, 2005, p. 5744); Employment Insurance (amounts not included in earnings) Bill C-279 (*Debates*, June 9, 2009, pp. 4405-6).
31. Family Income Security Bill C-170 (*Debates*, June 27, 1972, p. 3542); Unemployment Insurance Bill C-69 (*Debates*, December 15, 1975, pp. 10006, 10022); Employment Insurance Bill C-278 (*Debates*, December 8, 2004, pp. 2476-7); Employment Insurance Bill C-269 (*Debates*, November 6, 2006, p. 4719); Old Age Security (monthly guaranteed income supplement) Bill C-301 (*Debates*, October 24, 2005, p. 8881); Employment Insurance Bill C-278 (*Debates*, November 10, 2006, p. 5027); Employment Insurance (removal of waiting period) Bill C-241 (*Debates*, April 22, 2009, pp. 2584-5); Canadian Forces Superannuation Bill C-201 (*Debates*, May 12, 2009, p. 3426-7); Employment Insurance Bill C-308 (*Debates*, October 29, 2009, p. 6375); Employment Insurance Bill C-395 (*Debates*, November 16, 2009, pp. 6751-2).
32. Employment Insurance Bill C-265 (*Debates*, March 23, 2007, p. 7845); Employment Insurance Bill C-280 (*Debates*, June 3, 2009, pp. 4149-50). See also: Employment Insurance Bill C-278 (*Debates*, December 8, 2004, pp. 2476-7).
33. *Debates*, June 4, 2007, pp. 10101. See also: *Income Tax Act* (tax credit for loss of retirement income) Bills C-445 (*Debates*, May 2, 2008, pp. 5381-2) and C-290 (*Debates*, October 23, 2009, pp. 6127-8).
34. See, for example, the point of order raised on March 27, 1990 regarding the Government Expenditures Restraint Bill C-69 and the ruling of the Speaker on April 23, 1990 (*Debates*, pp. 10539-42).