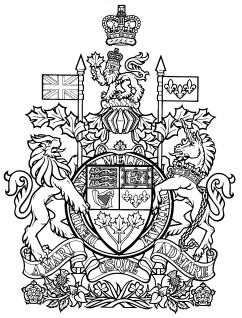

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OFFICIAL REPORT
(HANSARD)

Tuesday, July 19, 2005

THE HONOURABLE DANIEL HAYS
SPEAKER

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THE SENATE

Tuesday, July 19, 2005

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

THE LATE LILLIAN TO

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to speak of Lillian To, a Vancouverite and one of the 25 most influential Canadians in British Columbia, who passed away on July 2. Canada has become the great nation that it is because of the contributions of millions of immigrants who became Canadians and made Canada their home. Arriving in Vancouver in 1973, Lillian put her Christian faith into action for the next 32 years, serving others with a passion and a vision that were limitless and building a legacy of acceptance, respect and tolerance amongst all British Columbians.

Although small in stature, Lillian could only dream and work on a grand Canadian scale. Always at the forefront of emerging social issues, she would identify and respond to grassroots community challenges that often proved to be national in scope. She was persistent as a champion of others and as a developer of innovative services for those most in need. She was compassionate and understanding of everyone, giving equal consideration and care whether she was meeting with the Prime Minister or with the most recent arriving immigrant or refugee. In 1988, Lillian became the Executive Director of the United Chinese Community Enrichment Services Society, SUCCESS. It is a non-profit charitable organization mandated to assist newcomers to overcome language and cultural barriers. Lillian transformed SUCCESS from a small storefront office in Chinatown to one of the largest social services agencies in B.C. Under her leadership, SUCCESS grew to a staff of 350 with 9,000 registered volunteers who serve more than 760,000 people annually throughout its 12 offices and various outreach programs across British Columbia.

A tireless community worker and organizer, Lillian typically worked an average 14-hour day seven days per week during her 37-year career. In standard working weeks, her career would be the equivalent of 74 years of service. Like many true leaders, Lillian gave generously of herself and placed service to others first. Always humble, she would consistently credit others for her many accomplishments, setting an example of selfless service that touched and inspired hundreds of thousands of Canadians to be better citizens.

Lillian leaves behind a loving husband, two devoted sons and a daughter-in-law, as well as a community and country that have been enriched by her presence, strengthened by her achievements and indebted to her for her tireless service to others. Honourable senators, Lillian To, my friend of many years, will be missed by all communities in Vancouver and across British Columbia.

THE LATE FRANK MOORES

Hon. Ethel Cochrane: Honourable senators, last Thursday I was in St. John's to join the people of my province in mourning the loss of former Premier Frank Moores. Mr. Moores died last week following a lengthy battle with cancer at the age of 72. He was known for his powerful charisma, quick mind and genuine way of relating to people. These were key factors in his many political successes over the years. He was first elected a Member of Parliament in 1968. Later, he became President of the Progressive Conservative Party of Canada. In 1972, after returning to his home province, Mr. Moores led the party to its first victory since Newfoundland joined Confederation in 1949. Of that historic win, Premier Danny Williams said: "He toppled Goliath, a legend, a man considered invincible... And he did it with his talent, his genius, his wit, his charm and his political savvy."

During his tenure in office from 1972 to 1979, he orchestrated deep, lasting change. Brian Peckford, who succeeded him as premier, said that Mr. Moores will be remembered as "The premier who significantly changed the nature of governance in the Government of Newfoundland and Labrador."

Honourable senators, he did this by strengthening measures that we simply take for granted today. Prior to 1972, for example, Newfoundland and Labrador did not have a strong public tendering act. He ensured that a qualified company that was bidding on government work and was the lowest bidder won the contract. It marked a new way of doing things in the province; one which emphasized accountability and transparency.

He also ushered in an era of new-found respect for the roles and rights of the Members of the House of Assembly. The Honourable John Crosbie, who served in the Moores cabinet for five years, said that Mr. Moores, "was responsible for the restoration of democracy in the sense that everybody could feel free to express their opinions without fearing there was going to be any action taken against you by somebody who controlled the government."

As the democratic process requires, this respect was extended beyond the government members. When Moores came to power, opposition members had nothing, not even offices in which to perform their duties. One of his first tasks as premier was to appoint a deputy minister to find office space for the members. To Mr. Moores it was critically important that all MHAs be treated equally and with respect. Following his career in provincial politics, Mr. Moores helped to organize Mr. Mulroney's successful leadership campaign in 1983 and later established a high-profile lobbying group, Government Consultants International.

Honourable senators, it was with great sadness that Newfoundland and Labrador said good-bye to this truly exceptional man. We are the better for having known him and we are grateful that his legacy will remain with us forever. I extend my deepest sympathies to his wife, Beth, his children and his entire family.

PRINCE EDWARD ISLAND

2005 MARATHON OF HOPE

Hon. Catherine S. Callbeck: Honourable senators, on April 20, 1980, a young man set off on what would become one of Canada's most inspiring journeys. Terry Fox called his run the Marathon of Hope, and his story, his bravery and his determination touched Canadians everywhere.

Terry Fox's legacy continues today. Every year, Terry Fox runs are held in Canada and in more than 50 countries around the world. The runs attract more than 3 million participants. These people gather to honour Terry Fox and his dream, and to help raise funds for cancer research.

In Canada each September, Canadians across the country come together to take part in the runs in their communities. This year, which marks the twenty-fifth anniversary of the Marathon of Hope, a special run will be held on September 18 in Prince Edward Island. That morning, the 13-kilometre Confederation Bridge between Prince Edward Island and New Brunswick will be closed to vehicle traffic and participants will walk or run across the bridge that spans the Northumberland Strait.

• (1410)

Honourable senators, great strides have been made in cancer research and treatment since Terry Fox began his Marathon of Hope. We must continue that progress in the years to come.

I encourage all Canadians to travel to Prince Edward Island to participate in this unique event in memory of Terry Fox. As Terry himself said a quarter century ago:

> If you have given a dollar, you are part of the Marathon of Hope.

ROUTINE PROCEEDINGS

SAME-SEX MARRIAGE

PRESENTATION OF PETITION

Hon. Consiglio Di Nino: Honourable senators, on behalf of some 2,321 concerned Canadians from the Greater Toronto region, I present a petition to support the existing one man, one woman traditional marriage definition. The petition is in the form of an accompanying letter, which I will read:

Bill C-38 has passed the House, and is now in the hands of the Senate. To those who believe in the sanctity of marriage — the silent majority, the passage of C-38 is a black mark in the history of this great country.

By invoking the Charter of Rights and Freedoms, Bill C-38 has been proposed supposedly to rectify an injustice of inequality. Invoking equal rights in this case is a smokescreen. Discrimination against same-sex unions would indeed have existed if same-sex unions and traditional marriage were like-things that were treated unequally. But the Senate can wake up Parliament to the reality that these are in fact not like-things — they are fundamentally very different realities. By applying a simple test to differentiate between the two, it is evident to anyone that society can rely on traditional marriage to bring forth future generations to perpetuate itself, whereas same-sex unions simply cannot produce progeny. Since they are not like-things, they should not both be considered as marriage. Bill C-38 is in fact a misapplication of equal rights to non-equal phenomena.

Even though Bill C-38 is now with the Senate, we realize that it is nearly impossible even for the Senate to reverse it. But the Senate has the power to modify it in order to mitigate its deleterious impact on society. May we therefore request through you that the Senate

(1) If possible, promote a different name for same-sex "marriage" to indicate that in essence it is different from traditional marriage.

(2) Tighten or bolster up the language of the amendments, or incorporate new amendments to the Bill, so that they really have teeth in protecting religious groups in exercising their freedoms of religion, of belief, of conscience, and of speech. Above all, please direct the Senate's special concern to:

(a) the rights of marriage commissioners to refuse to perform same-sex "marriages,"

(b) the rights of church organizations to control the use of their properties. and

(c) the rights of parents and school teachers to address what is taught in family life programs

We are confident that the Senate can find some way to eliminate as much as possible the black mark left by the current version of Bill C-38. Please convey our sentiments to all other members of the Senate.

The undersigned are the 2,321 Canadians on whose behalf I present the petition.

QUESTION PERIOD

CANADA-UNITED STATES RELATIONS

NORTH DAKOTA—DEVILS LAKE DIVERSION

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, my question is addressed to the Leader of the Government in the Senate.

Honourable senators, during the recent G8 summit in Scotland, Prime Minister Paul Martin yet again lobbied U.S. President George W. Bush for help in resolving the impasse over Devils Lake. This marks the fifth time in the last 16 months that Mr. Martin has discussed this issue with the American President.

Based on Mr. Martin's lobbying efforts, could the Leader of the Government in the Senate provide us with any evidence that a resolution to this dispute will be reached that will be agreeable to Canada's position? In other words, can we be optimistic that the Prime Minister is having any influence in moving this issue toward a satisfactory conclusion?

Hon. Jack Austin (Leader of the Government): Honourable senators, regrettably I have nothing to add to the responses I made to the question of Senator Johnson on the Devils Lake issue late last month.

Senator Stratton is correct that the Prime Minister has been assiduous in dealing directly with President Bush. Premier Doer also has been highly active, as have members in the other place, including the Honourable Reg Alcock and members of the other parties there.

This is not a partisan issue. This is an issue in which Canada has a legitimate concern; and we have pressed that legitimate concern on the United States, at the level of the President, at the level of the Secretary of State and at the level of the Governor of North Dakota. I sincerely wish I had something positive that I could add to the developments, but I regret I do not.

Senator Stratton: I would agree with the Leader that this is a non-political issue. All parties have a vested interest in resolving this matter.

Currently, the Friends of the Earth Canada and the Gimli municipality, where Senator Johnson resides, had a legal opinion prepared by a top environmental lawyer, David Estrin, regarding the possible pursuit of two separate court actions should the Devils Lake diversion proceed. One would take place in the Federal Court of Canada and the other in Manitoba's Court of Queen's Bench.

In terms of any potential legal avenues that the federal government might consider, and in the event that the diversion proceeds on or about August 1, does the federal government have an opinion as to whether this development, in other words, those two potential court cases, is helpful to its overall strategy?

Senator Austin: Honourable senators, I have no information on the position of the Department of Justice, and I was not aware of Mr. Estrin's opinions.

I have said here that while there may be actions that could be taken in the Canadian courts, the most significant action ought to be pressed in the U.S. courts. While Canada's efforts to persuade governors of affected states — because North Dakota is not the only state involved; there are other states that are involved — to take action in the judicial process in the United States would be helpful, so far no such action has been taken. There have been letters sent to the President and the Secretary of State by the Governor of Ohio, as was mentioned here previously, and by the Governor of Minnesota, I believe.

Senator Stratton: Thank you.

FISHERIES AND OCEANS

FUNDING CUTS TO INDEPENDENT RESEARCHER STUDYING NORTHERN COD STOCKS

Hon. Gerald J. Comeau: Honourable senators, my question is also for the Leader of the Government in the Senate. We learned two weeks ago that Dr. George Rose, one of the most highly respected and well known fisheries research scientists in Newfoundland and Labrador — most Atlantic Canadians who are familiar with the fishery will be familiar with Dr. Rose's work — announced that the Department of Fisheries and Oceans had cut funding for his research.

Dr. Rose has conducted annual surveys of the northern cod stocks for the last 15 years. He is one of the only independent researchers in the province, and his findings provide much-needed information on the state of the northern cod stocks.

This news has upset many people, including the Premier of Newfoundland, Danny Williams, the provincial fisheries minister and even the federal Minister of Natural Resources, John Efford, who has said that this cut in funding was a mistake.

• (1420)

Could the Leader of the Government in the Senate tell us if the Department of Fisheries and Oceans, through the government, will reverse its decision and restore the funding for Dr. Rose's extremely valuable work on northern cod stocks?

Hon. Jack Austin (Leader of the Government): Honourable senators, I have to take this question as notice as I am unaware of the facts.

In the meantime, questions were asked of me previously with respect to aquaculture in New Brunswick. I hope that honourable senators have noted that the Government of Canada has undertaken to invest an additional $20 million in aquaculture in the province of New Brunswick. In addition, Senator Comeau spoke to me about crab fishers. As he is probably now aware, the Minister of Fisheries and Oceans, the Honourable Geoff Regan, will meet with representatives of the crab fishing industry.

Senator Comeau: Honourable senators, I thank the minister for that response.

To assist him in his investigation of the cuts in the funding of Dr. Rose, the excuse given for the cuts was apparently that the money is being redirected from northern cod to more valuable species such as crab and others. However, the only reason those species are more valuable now is that the northern cod fishery is in such a difficult and precarious position, which means that we should spend that money on northern cod to find out what happened 15 or 20 years ago. Funding for independent researchers such as Dr. Rose, who is widely respected and well known, should be restored.

Would the minister use his great powers of persuasion at the cabinet table, as I know he did regarding the aquaculture situation in New Brunswick and the crab situation in Nova Scotia, to have funding restored to Dr. Rose so that we can find out what happened to the northern cod stocks and try to restore that extremely valuable resource to Newfoundland and Labrador?

Senator Austin: Honourable senators, I will be happy to take Senator Comeau's representation to Minister Regan along with my inquiries on the situation.

NATIONAL DEFENCE

SEA KING HELICOPTERS— REFITTING FOR ASSIGNMENT IN AFGHANISTAN

Hon. J. Michael Forrestall: Honourable senators, I have two questions for the Leader of the Government in the Senate, and I will ask whether he has a response to the question I asked yesterday about benefits accruing to former Joint Task Force Two soldiers.

My first question has to do with the Sea King Helicopters. Frankly, my worst nightmare has now come true. Can the Leader of the Government confirm that a number of Sea Kings — I believe eight — are being reconfigured at Industrial Marine Products in Halifax for use in Afghanistan?

Hon. Jack Austin (Leader of the Government): Honourable senators, in terms of the question regarding claims for benefits by JTF2 personnel due to injury, I have made inquiries and the story that appeared in the *Ottawa Citizen* yesterday was drawn to my attention. I will pursue those inquiries as aggressively as time permits.

With respect to the Sea Kings, as usual Senator Forrestall is ahead of my briefing material. However, I will again make inquiries with respect to the basis on which he has asked his question. The idea that the Sea Kings would operate in high altitudes in Afghanistan is rather striking.

SEA KING HELICOPTERS— PURCHASE OF USED EQUIPMENT

Hon. J. Michael Forrestall: Honourable senators, I appreciate the leader's concern, particularly about the Joint Task Force Two matter. I look forward to a response on that.

Yesterday, I received a delayed answer to a question about whether the government is considering the purchase of surplus G222s for fixed-wing search-and-rescue purposes. The response was a bit equivocal. I asked specifically whether we would be given assurance that we would not use these very old aircraft, invoking the Sea King.

I have been told that the Department of National Defence is now making inquiries about the purchase from the United States, Great Britain and Egypt, I believe, of some of their slightly used Sea Kings. I do not know how old they are as I have not had a chance to investigate that.

The Canadian Forces must be entitled to safe, good and reliable equipment. God knows, they deserve that at the least.

Could the Leader of the Government give me some indication, if he knows — and if he does not, could he find out — whether we are considering the purchase of used equipment from the United States? If so, before the government enters into any agreements, can the service record of the equipment that we intend to buy be made clear to Canadians so that there will be a chance for people to react?

Hon. Jack Austin (Leader of the Government): Honourable senators, that is a fair question. I do not know the basis for it, because I have not been briefed about the contemplation of any such purchase. However, the assurance that these aircraft are operable within the terms of their safety requirements should certainly be accepted without question.

Senator Forrestall: Honourable senators, I am due to leave here in a couple of years. If the Leader of the Government is still around and wants good staff to get him up to date with what is going on in defence, Dr. Joe Varner and I are available.

Senator Austin: Thank you.

FINANCE

CHANGES TO BUDGET 2005— USE OF SUPPLEMENTARY ESTIMATES TO INCORPORATE STATUTORY ITEMS FROM PREVIOUS FISCAL YEAR

Hon. Donald H. Oliver: Honourable senators, my question is directed to the Leader of the Government in the Senate and deals with the timing and content of estimates and supplementary estimates.

During our committee study of Bill C-48, Mr. Peter Devries of the Department of Finance assured the Senate that Parliament would be able to review the spending in Bill C-48 a few months after the fact when it was reported as a statutory item in "first Supplementary Estimates of 2006-07 which would be tabled in around November as per tradition."

Even if he is correct on this, Parliament still would be in the position of not having details of spending before it occurs, which is a key concern of the opposition. However, I question Mr. Devries' suggestion that we would be in a position to question this spending after the fact through supplementary

estimates, as these historically have only dealt with the current fiscal year. By their nature, they do not provide updated figures on statutory items from a previous year. As the Leader of the Government in the Senate knows, in Bill C-48 they pertain to payments in the previous fiscal year.

Could the leader advise the Senate whether there will be a change in the presentation of supplementary estimates to incorporate statutory items that were booked in previous fiscal years?

Hon. Jack Austin (Leader of the Government): Honourable senators, I regret that I cannot go beyond the evidence of Mr. Devries to the Standing Senate Committee on National Finance.

Senator Oliver: Honourable senators, is there a change in policy suddenly to include numbers for previous years, which has never before been the case in supplementary estimates?

Senator Austin: Honourable senators, I will have to enquire.

SOCIAL DEVELOPMENT

EARLY LEARNING AND CHILD CARE PROGRAM—AVAILABILITY

Hon. Ethel Cochrane: Honourable senators, my question is directed to the Leader of the Government in the Senate as well, and it deals with comments recently made by the Minister of Social Development, Ken Dryden, on the federal government's proposed child care program.

• (1430)

The minister gave an interview to CBC Newsworld on July 8 in which he stated that the early learning and child care program would be available "to anyone and everyone." Seconds later, he said that the services provided under the program "won't be available in every centre."

Could the Leader of the Government in the Senate explain to us what the minister meant by these comments? How can this program be available to everyone but not be available in every centre?

Hon. Jack Austin (Leader of the Government): Honourable senators, I am not familiar with the specific comments of Minister Dryden as referred to by Senator Cochrane. As honourable senators will know, the government is intent on delivering on its $5 billion commitment over five years for a national system of early learning and child care.

Honourable senators will also know that the implementation of the program is the subject of federal-provincial agreements, and the administration of the program will be administered by provinces and territories. Beyond that, at this moment I cannot advise Senator Cochrane. However, I am intrigued by her question and I will make efforts to understand what Minister Dryden is suggesting.

Senator Cochrane: Honourable senators, on June 16, Minister Dryden said similar words to *The Globe and Mail* when he said that this plan would never be truly universal in scope. Yet, the government continues to claim that it will be accessible to everyone.

Could the Leader of the Government in the Senate tell us how the federal government can continue to justify this program to rural Canadian families who will have to subsidize child care services that are available only in urban centres; services that they have no hope of accessing?

Some Hon. Senators: Oh, oh.

Senator Austin: Honourable senators, there is much argument in the presentation of Senator Cochrane. I believe that the premise of her question is quite debatable.

While we are referring to *The Globe and Mail*, as Senator Comeau knows, I would direct the attention of honourable senators to the front-page article of Monday, July 18, with respect to the position of Canadians relative to Bill C-38. However, we will pass over that.

Senator St. Germain: How much did that advertisement cost you?

Senator Austin: In answer to Senator Cochrane, it is the intention of the federal government to make child care available through the provinces and their administration to Canadians who use child care facilities specifically, but it is not the intention of the government to make funding available for child care in private homes by parents, if that is what she was suggesting should be done.

Hon. A. Raynell Andreychuk: Honourable senators, I understand that the money in this new day care package is for registered day cares and understandable day care concepts, and that the money can be used to increase the number of spaces or it can be used to increase the very low wages of day care workers or it can be used to increase the quality of the space. Many day cares are in basements and so forth.

The dilemma is that in order to do all three there is not enough money in the next five-year tranche as contemplated. There is not enough money to do one. When we were travelling, as a committee, we were told that this will be the dilemma facing provinces. There is an expectation that there would be day care in day care centres. However, there is not enough money. Perhaps in 20 or 50 years there will be, but in the next five years sufficient money has not been allocated.

Senator Mercer: You have to start somewhere.

Senator Andreychuk: Why has the government put this suggestion out there as if it were a completed plan? They have raised the hopes of millions of Canadians that will not be fulfilled. Would it not have been better to indicate that this was the first step and, therefore, it would have been more logical and acceptable to Canadians?

Senator Austin: Honourable senators, this is the old problem of the glass being half empty or half full. There is a crying demand for the improvement of day care across this country, as has been demonstrated by the agreement signed by a number of provinces with respect to this program. A figure of $5 billion over a five-year period is not an insignificant amount of money.

I cannot help but agree with Senator Andreychuk that there will never be enough money. The demands are enormous and important. However, Minister Dryden has made clear that this is not a one-time-only program.

The Government of Canada is quite prepared to move forward with further negotiations with the provinces, depending on Canada's fiscal capacity to continue to contribute. Notwithstanding all of that, this program must be considered a positive advance on the current situation.

AGRICULTURE AND AGRI-FOOD

REPORT ENTITLED *EMPOWERING CANADIAN FARMERS IN THE MARKET PLACE*

Hon. Leonard J. Gustafson: My question is to the Leader of the Government in the Senate. First, I wish to offer a compliment on behalf of all farmers for the recently opened border. I say this because I believe it was a joint effort. Especially in respect of the Senate Agriculture Committee, the minister has always carried our questions to cabinet. We now see that the border is open. We need to see more of that kind of thing happening in government.

Honourable senators, the long-awaited report on farm income prices from the parliamentary secretary, Wayne Easter, has been released. That report says that farmers, mainly from the grain industry, are going broke. Those who are covered by the marketing boards are doing quite well.

With respect to the recommendations and the findings contained in the report, what can we expect of the government by way of a renewed focus on the challenges that face Canadian agriculture?

Hon. Jack Austin (Leader of the Government): I thank the honourable senator for his comments with respect to the opening of the border for Canadian cattle. We spoke about that issue in the chamber yesterday. In particular, I tried to make clear that the actions taken before the Ninth Circuit Court in the United States to set aside the temporary injunction were based on science and the aggressive advocacy of the United States Department of Agriculture, supported by the Canadian Department of Agriculture. I thank him for that.

Senator St. Germain: Do not forget the intervenors!

Senator Austin: We will see about the intervenors. That will be dealt with on July 27. We will see how good the amicus crowd is in assisting in that regard.

• (1440)

With respect to the question regarding the just-released report of the Honourable Wayne Easter, member of Parliament for Malpeque and Parliamentary Secretary to the Minister of Agriculture and Agri-Food, as the honourable senator says, with the title *Empowering Canadian Farmers in the Marketplace*, the report outlines a number of recommendations that will have an impact on primary producers. However, the real issue, as Mr. Easter says, is the lack of balance and the lack of market power of agriculture, both nationally and internationally. He does note, as has Senator Gustafson, that supply management has proven to balance market power for those commodities within Canada, but for export-oriented commodities, supply management is not an option.

If honourable senators would allow me a moment, I would like to share some information with respect to the report. The question posed by Mr. Easter is as follows: Why have farm gate prices been falling while prices at the retail level are rising significantly, and in some cases dramatically? Why are the costs of farm inputs rising relentlessly while the market income of farmers has been so radically reduced? Why is the squeeze on farmers' incomes occurring not only in Canada but internationally as well?

Mr. Easter finds that:

> Food retailers averaged a return of 12 per cent between 1990 and 1998. Agriculture and Agri-Food Canada (AAFC) reported that, "The profitability in the food retailing sector was realized despite the fact that the price of food rose more slowly than prices in general since 1990.

On the other hand:

> Canadian realized net farm income has declined from over $3 billion annually in 1989 to below $0 in 2003.

I could provide additional information, but Senator Tkachuk does not want to hear any more about the agricultural situation in Canada. However, I am completely in accord with Senator Gustafson's concerns, as I have indicated many times previously.

AGRICULTURAL INCOME STABILIZATION PROGRAM—INEQUITIES

Hon. Leonard J. Gustafson: Honourable senators, the Canadian Agriculture Income Stabilization program has not addressed the problem of the production margin of farmers. I will explain it this way. A farmer may have had good crops; his margin is high over the average and he gets a good return from the CAIS program. However, other farmers may have had three years of drought and are not getting a return. As far as I know, this issue has not been addressed. It is vital that this concern be addressed before the next crop year. In September, they will be filing their report for 2004. Does the minister have anything to tell us about whether the review committee has dealt with this problem?

Hon. Jack Austin (Leader of the Government): Honourable senators, as I previously reported in answer to a question by Senator Gustafson, the Ministers of Agriculture met this month. I do not have the date available to me. The question of CAIS and how the program works was on their agenda.

I know whereof Senator Gustafson speaks. It has not worked in a way that allows income support to many vulnerable farm producers.

HEALTH

CROSS-BORDER SALE OF PRESCRIPTION DRUGS

Hon. Marjory LeBreton: Honourable senators, my question is for the Leader of the Government in the Senate and concerns the recent announcement from the Minister of Health on the cross-border sale of prescription drugs. The minister says he intends to ban the bulk export of prescription drugs from our country. However, beyond that, he has been vague on other initiatives he says he intends to take. For example, a Health Canada press release dated June 29 states that the minister will strengthen the federal regulations related to the doctor-patient relationship and that a drug supply network will be established. No details were given on how he intends to do either of these things.

Beyond the upcoming ban on bulk exports, could the Leader of the Government in the Senate tell us the specifics of the minister's plan and when they will be presented to Parliament and to the Canadian public?

Hon. Jack Austin (Leader of the Government): Honourable senators, I will make inquiries.

Senator LeBreton: Honourable senators, the minister says that the ban on bulk exports would not be permanent and would only kick in if there was a shortage in our supply. This means that there would have to be an identifiable problem with the drug supply for Canadians before bulk exports would be stopped, which would seem to defeat the purpose of this prohibition. Could the government leader tell us how this would work?

Senator Austin: Honourable senators, I will add that question to my inquiry.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I would like to call government bills in the following order: first, Bill C-2, followed by Bill C-23, Bill C-22, Bill C-38 and Bill C-48.

CRIMINAL CODE
CANADA EVIDENCE ACT

BILL TO AMEND—THIRD READING

Hon. Landon Pearson moved third reading of Bill C-2, to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act.

[Senator Austin]

The Hon. the Speaker: Before I recognize senators wishing to speak, I point out that there is a longer time period for the first and second speakers, who are normally from the government and then the opposition. However, Senator Andreychuk wishes to speak first.

Hon. A. Raynell Andreychuk: I assure honourable senators that I will not be long. Senator Nolin, who was the opposition critic, supported the observations and the passage of this bill, which I simply wanted to place on the record.

I also wish to point out that contrary to what the *Ottawa Citizen* said about it being unusual to append observations, we often do so. In fact, the practice has become routine, certainly in the 12 years I have been here. When I was appointed, it was unusual to see observations appended to a report, but they are now a good, functioning process that we often use. Some senators might believe it to be a unique and undesirable practice, but I think observations are a way to signal concerns about a bill.

Honourable senators, there are difficulties with Bill C-2, which we have noted. Some of them may in fact be constitutional shortcomings. However, this is not the first time this issue has been before Parliament. Parliament has struggled with it in the past. I believe that if this bill errs, it does so on the side of protecting children; therefore, artistic freedom may be in jeopardy. However, the committee has noted that shortcoming. The committee has a keen sense of urgency in following this matter through, and I wish to support what it has stated.

One witness noted that we should not be lulled into feeling that we have now protected children from pornography and that this bill is only one way of doing it. The government often reaches for legislation as an answer to ills, particularly the ills of children. We should know that this is a very pervasive, difficult issue, particularly with regard to new technologies, and I would trust that the government would continue to find ways and means to help children who find themselves with predators. We should be preoccupied with the protection of children and not simply believe that one piece of legislation will achieve it.

I am very pleased that the bill answers the political will of the people to do something in this area and to attempt again to change the law. I laud the committee for the struggle it went through to come to this decision, and I support it.

• (1450)

Hon. Senators: Hear, hear!

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

DEPARTMENT OF HUMAN RESOURCES AND SKILLS DEVELOPMENT BILL

THIRD READING—DEBATE ADJOURNED

Hon. Bill Rompkey (Deputy Leader of the Government) moved third reading of Bill C-23, to establish the Department of Human Resources and Skills Development and to amend and repeal certain related Acts.

On motion of Senator Stratton, debate adjourned.

DEPARTMENT OF SOCIAL DEVELOPMENT BILL

THIRD READING—DEBATE ADJOURNED

Hon. Bill Rompkey (Deputy Leader of the Government) moved third reading of Bill C-22, to establish the Department of Social Development and to amend and repeal certain related Acts.

On motion of Senator Stratton, debate adjourned.

CIVIL MARRIAGE BILL

THIRD READING—DEBATE SUSPENDED

Hon. Serge Joyal moved third reading of Bill C-38, respecting certain aspects of legal capacity for marriage for civil purposes.

He said: Honourable senators, the meetings last week of the Standing Senate Committee on Legal and Constitutional Affairs, to which this chamber entrusted the study of Bill C-38, were an incredible experience. I know that some honourable senators who did not attend the meetings enjoyed the nice weather in the countryside or somewhere else with their families. I have to tell you that each and every member of the committee from both sides of the chamber, as well as those who are independent — and Senator Prud'homme attended all of the meetings — had an incredible experience. We are grateful to this chamber that entrusted us with the mandate to review the different aspects of Bill C-38.

I have to praise the commitment of all honourable senators, especially for the courtesy, attention, care and professionalism that the members on the opposition side, as well as on the government side, showed all through the process. There was a concern expressed by the Deputy Leader of the Opposition, the Honourable Senator Stratton, that the work of the committee had to be thorough, balanced and fair.

Honourable senators, we heard from 33 witnesses. They came from the highest levels of academe, from McGill University, Osgoode Hall, Calgary, Winnipeg and the University of Quebec. From the various churches we heard high-profile testimony through their representatives who, in all truth and frankness, expressed their deep conviction in relation to their respective faiths. As well, we heard from the spokespeople of the various groups that have been involved in this issue for so many years.

It is with a deep sense of gratitude that I remind honourable senators that some of our meetings were broadcast on CPAC, thanks to the request of Senator St. Germain that Canadians be able to watch the Senate at work.

Honourable senators, it was a privilege to be a member of the committee and to attend its meetings last week. I wish to express my sincere thanks to our colleague Senator Bacon, who chaired the committee with professional expertise. It was as a result of her background and experience that dates back many years to the time when she presided over the cabinet of the Quebec government that she was so capable in doing her work. I thank her for that. We all appreciate her commitment to the committee.

Hon. Senators: Hear, hear!

Senator Joyal: Honourable senators, I would like to review three issues with you this afternoon. First, as Senator Di Nino read in the presentation of his petition, should we not opt for a civil union concept instead of extending or recognizing the legal capacity of couples of the same sex to be bound in marriage, according to the definition of marriage? That is one of the first issues that each and every witness debated in the committee.

Second, I wish to review with honourable senators the right to religious freedom and conscience. This is a very serious issue. There are aspects that I would like to share with you on the basis of the testimony we heard last week.

Finally, honourable senators, as was said in the petition of Senator Di Nino, I wish to review with you the impact of this decision on Canadian society and, in particular, on the family unit.

Should we or should we not opt for a civil-union type of institution rather than marriage? One of the first arguments that was put to us at second reading was that we should reserve marriage, according to the traditional definition, exclusively to couples of the opposite sex and create something different for people of the same sex which we could term "civil union." Honourable senators, it is easy to close oneself into what Gérard Pelletier once called the "trap of words." It was put to us that, traditionally, marriage was the state of being united to a person of the opposite sex as husband or as wife, in a consensual or contractual relationship recognized by law. That was the Webster online dictionary definition up until last year.

The second element in the 2005 definition of marriage, according to the same dictionary, is the state of being united to a person of the same sex in a relationship like that of a traditional marriage.

• (1500)

Let us look at how the *Oxford Dictionary*, 2005 edition, defines marriage. It is as follows:

> The condition of being a husband or wife, the relation between persons married to each other; matrimony.
>
> The term is now sometimes used with reference to long-term relationships between partners of the same sex.

There is recognition in the dictionary that there is an evolution. It is the same in the *Encyclopaedia Britannica* that I have looked into. There is now recognition that the word "marriage" is defined in expansive terms. That is to say, in the world of lexicography, we are not prisoners of previous definitions. It is important to understand that because it is easy to state one's mind and say, "I have been told that marriage is between a man and a man, in a long-standing relationship of a contractual nature, so that marriage is all that." You just have to go through a dictionary and you will find five definitions of different meanings under one word. The word "concept" is not a frozen word or definition. Both the Webster and the Oxford dictionaries recognize that reality.

Let us come back to the question: Should we go on with a civil-union type of relationship because everyone would be happy with that? Those opposed would keep marriage for themselves and those who want to be united would be in a kind of institution that would be for them.

Honourable senators, this is a tricky approach. Let me remind you what both the *Washington Post* and the *Ottawa Citizen* told us in February of this year and in 2003, namely, "Just what the world needs: A high school for gay students." Think again: A high school for gay students. In other words, in the United States and in New York especially, the harassment of gay students is so strong — that is, the bullying, the aggression, the beating, the nickname calling — and the frustration of those students who are the object of that kind of treatment is so great that the New York Board of Education considered establishing a school that would be totally devoted to gay students. There, they would be happy. They would be together. They would have the capacity to be what they are and to express it without incurring the risk of being bullied, threatened and blackmailed. They would be in their own school.

Let me quote to you what was said about this. They said that "The way to emphasize that everyone, regardless of race, sexual orientation and gender is deserving of respect is to bring them together in the same environment and ignore their differences; not isolate them and stick labels on them and draw attention to their differences."

What would we have if we had a civil union for gays? It would mean that when you completed your passport form, there would be another category. You would be single, married or civil union. The same would apply when you went through customs, coming back from a trip. We all do that. We have a small slip distributed to us on the plane and there are categories of status. Immediately, if you are in a civil union, you would be singled out. The customs agent would know immediately that you are a civil union type of person. The customs agent would put his glasses back and would look at you a second time.

This concept of separating into two different institutions, honourable senators, is a tricky one, but it is more than that. It is wrong, conceptually, on a constitutional basis and it is wrong constitutionally in the definition of it. The courts in Canada, especially the Ontario Court of Appeal and that in B.C., have been eloquent on the nature of the possible distinction that would be implemented in dividing the institution in two. There would be a subsumption of marriage called civil union.

How did the Ontario Court of Appeal see that kind of option? Its 2003 decision, at paragraph 107, said:

> In this case, same-sex couples are excluded from a fundamental societal institution — marriage. The societal significance of marriage, and the corresponding benefits that are available only to married persons, cannot be overlooked.

Further on, they state that "Exclusion perpetuates the view that same-sex relationships are less worthy of recognition than opposite-sex relationships. In doing so, it offends the dignity of persons in same-sex relationships." That is the conceptual definition.

What about the legal aspect? On this issue, the British Columbia Court of Appeal, at paragraph 156 of the 2003 decision in *Barbeau v. British Columbia (Attorney General)*, states that:

> This court should not be asked to grant a remedy which makes same-sex couples "almost equal" or to leave it to governments to choose among less than equal solutions.

The Supreme Court of Canada, honourable senators, had to consider it, too, in the *Reference re Same-Sex Marriage* of last December. The court was quite clear on how it views the two concepts of marriage versus civil unions. The court stated quite clearly, in paragraph 33, that:

> Marriage and civil unions are two distinct ways in which couples can express their commitment and structure their legal obligations. Civil unions are a relationship short of marriage and are, therefore, provincially regulated. The authority to legislate in respect of such conjugal relationships cannot, however, extend to marriage. If we accept that provincial competence in respect of same-sex relationships include same-sex marriage, then we must also accept that provincial competence in respect of opposite-sex relationships include opposite sex marriage.

The court was quite clear. The court goes on to state that, "the province of Quebec has established a civil union regime as a means for individuals in committed conjugal relationships to assume a host of rights and responsibilities —

Then there is a note in brackets: "(see the Act instituting civil unions in establishing new rules of filiation.)"

What did the court do there? They considered that five provinces have already legislated on some kind of concept of civil union relationships. In fact, the first province to legislate on this was Nova Scotia. In 2000, Nova Scotia was the first province to establish a registered domestic partnership scheme in Canada.

Senator Mercer: That is us.

Senator Joyal: That was Nova Scotia, in 2000. That is not marriage but a domestic partnership scheme. Quebec also adopted an Act instituting civil unions and establishing new rules of filiation in 2002.

There was then Manitoba. Manitoba adopted a Common-law Partners Property and Related Amendments Act. Manitoba also adopted some kind of concept or idea that would recognize, to a point, the same-sex relationship. Alberta, the last one, had a proposal that we discussed last week with witnesses. Alberta adopted the Adult Independent Relationship Act.

• (1510)

This act is very lengthy and complete. It deals with partnerships that are short of marriage. We have learned from the Supreme Court that the way to maintain equality is to give access to two kinds of couples in the same institution; otherwise a situation is created in which one group will have access and the other group will not.

Let me give honourable senators an example. We have two languages in this Parliament: Je peux vous parler en français; I can speak to you in English. The same institution is accessible in both languages. In fact, through the good service of Senator Smith and a motion introduced by Senator Corbin, we may recognize Aboriginal languages under some conditions later on this year. What does this mean? This means that in the same institution we have exactly the same status, the same rights and the same privileges.

Schools in New York are proposing a system reserved for gays and another for heterosexuals. What is the school system in the province of our respected colleague, the Honourable Leader of the Opposition? In New Brunswick there is a school system in French and one in English, but they are not barred or closed. One can go to either system. It is open. The system is permeable. There is a choice. One is not reserved for the francophones and one for the anglophones. Then you would be caught in a situation where you would have to master the language. There has to be permeability between the two languages.

Honourable senators, that is what this bill is all about. It maintains accessibility to the same institutions for same-sex couples and opposite-sex couples. Our committee dealt with this issue at length with the support of the witnesses.

The next major issue we addressed was religious freedom. The issue of religious freedom is pervasive throughout Bill C-38. It is mentioned in five different places in the bill — three of the "Whereas" clauses and two of the substantive clauses. It is mentioned in the context of the Supreme Court ruling on the definition of religious freedom and the freedom of conscience.

The Supreme Court has extensively dealt with the meaning and implications of the rights to freedom of conscience and freedom of religion. I will read to honourable senators what the Supreme Court has said in *Reference re Same-Sex Marriage* in relation to freedom of religion in paragraph 57:

> The right to freedom of religion enshrined in s. 2(*a*) of the *Charter* encompasses the right to believe and entertain the religious beliefs of one's choice, the right to declare one's religious beliefs openly and the right to manifest religious belief by worship, teaching, dissemination and religious practice... The performance of religious rites is a fundamental aspect of religious practice.

The Supreme Court has been clear in the definition of freedom of religion or the right to freedom of religion.

In fact, the International Covenant on Civil and Political Rights is also precise and definitive on the scope of freedom of conscience and freedom of religion. There is a clear definition of the limits. Article 18, paragraph 1 of the covenant states:

> 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 18, paragraph 3, says:

> 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

I wish now to refer honourable senators to the 1993 report of the Office of the High Commissioner of Human Rights. Article 8 deals with the definition of those limitations:

> In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.

In other words, the freedom of religion that is recognized in regard to one's thoughts and beliefs is absolute. No one can be forced to adhere to a religion, or to think differently in terms of religious convictions and conscience. However, when it comes to the manifestation of religion, there are limits according to the rule of law and legislation, which are necessary to protect either public safety, order, health, morals or the fundamental rights and freedoms of others. Those are the elements included in section 1 of the Charter.

Honourable senators, the Supreme Court, in defining the extent of the freedom of religion, has protected the religious rights of those officers who celebrate marriage within a particular faith and refuse to celebrate or to preside over a marriage according to their own religious beliefs. Paragraph 58 of the Supreme Court ruling of December 2004 states:

> It therefore seems clear that state compulsion on religious officials to perform same-sex marriages contrary to their religious beliefs would violate the guarantee of freedom of religion under s. 2(*a*) of the *Charter*. It also seems apparent that, absent exceptional circumstances which we cannot at present foresee, such a violation could not be justified under s. 1 of the *Charter*.

The court, in discussing sacred places of worship, went on to say:

> The question we are asked to answer is confined to the performance of same-sex marriages by religious officials. However, concerns were raised about the compulsory use of

> sacred places for the celebration of such marriages and about being compelled to otherwise assist in the celebration of same-sex marriages. The reasoning that leads us to conclude that the guarantee of freedom of religion protects against the compulsory celebration of same-sex marriages, suggests that the same would hold for these concerns.

The court is quite clear that religious officials cannot be compelled to celebrate same-sex marriage, no more than a church or religion of whatever doctrine can be compelled to rent or allow its premises to be used in the celebration of marriage.

The Ontario government has adopted a bill that is also quite clear in that context. The bill is entitled "An Act to amend various statutes in respect of spousal relationships" and was adopted in March 2005 in the Ontario legislature. It amended 73 different statutes. I will refer to subsection 18.1(1), which reads:

> The rights under Part I to equal treatment with respect to services and facilities are not infringed where a person registered under section 20 of the *Marriage Act* refuses to solemnize a marriage, to allow a sacred place to be used for solemnizing a marriage or for an event related to the solemnization of a marriage, or to otherwise assist in the solemnization of a marriage, if to solemnize the marriage, allow the sacred place to be used or otherwise assist would be contrary to,
>
> (a) the person's religious beliefs; or
>
> (b) the doctrines, rites, usages or customs of the religious body to which the person belongs.

• (1520)

It is clear, honourable senators, that five provinces have adopted similar statutes. In fact, in the Quebec Civil Code, there is a similar provision in section 521(2) for the civil union:

> No minister of religion may be compelled to solemnize a civil union to which there is an impediment according to the minister's religion and the discipline of the religious society to which he or she belongs.

There have been cases, we have been informed, of civil commissioners who have refused to celebrate civil marriages. Honourable senators, their rights are protected by the statement made by the Supreme Court that no one should be compelled to act in a way that is contrary to his or her belief. In fact, there is long-standing jurisprudence about that aspect of the reality that is enshrined in the Charter of Rights and Freedoms at section 24 and in many of the provincial human rights codes. If a provincial civil commissioner does not want to celebrate a civil marriage because he or she holds a deep belief or conviction and this is contrary to his or her faith, he is exactly in the same position as a judge in a court who would not be part of a divorce procedure because divorce is contrary to his or her belief. That does happen. What is the solution when that happens? The solution is essentially the obligation and the duty to accommodate. What is the duty to accommodate? It is not to deny the rights to celebration, the rights to the decision on a divorce or the endorsement of the divorce by the court. It is the right, essentially, to have an officer perform the marriage or the divorce. This right has been the long-standing decision of the Supreme Court of Canada in relation to infringement of one personal right in relation to discrimination.

The Supreme Court in British Columbia Public Service Employee Relation Commission, known as the *Meiorin* case in 1999, clearly stated: "If the prima facie discriminatory standard is not reasonably necessary for the employer to accomplish its legitimate purpose or, to put it another way, if individual differences may be accommodated without imposing undue hardship on the employer, then... the employer has failed to establish a defence to the charge of discrimination."

Its application in its existing form is reasonably necessary for the employer to accomplish its legitimate purpose without experiencing undue hardship. In the conclusion, the result of the *Meiorin* decision is that human rights legislation in every jurisdiction across the country shall be interpreted to this effect. In particular, employers may not discriminate unless they can demonstrate the reasonable necessity of doing so, including that they could not have reasonably accommodated the employee.

This is essentially the system at work when the civil commissioner feels that he or she is aggrieved because he or she is requested to perform, solemnize or be witness to a same-sex marriage. What did the Minister of Justice do after the ruling of the Supreme Court? The Minister of Justice wrote to all his provincial and territorial counterparts, and drew their attention to the statement made by the Supreme Court of Canada in relation to the protection of religious freedom. The Minister of Justice took the initiative on the issue so there is a common and shared approach in relation to the respect of religious diversity.

We all know that religious diversity is a characteristic of this land. There are 31 different religions in Canada. Some churches prohibit interfaith marriages. Some religions prohibit the marriage, for instance, in the Muslim faith, of a Muslim woman to a Christian man. Some churches prohibit the marriage of divorcees. If you look into the doctrine or the prescription of many churches, their approach to marriage varies almost endlessly. They all have different approaches that have evolved through the years. They have established their rules according to their own beliefs and their own interpretation of scripture. The purpose of civil marriage is, in fact, to afford to anyone who feels that he or she cannot comply with these prescriptions the access to civil marriage. That does not prevent the person from having a religious marriage. The bill does not prohibit any of that right of any of the churches or any person in Canada. It is clearly stated in clause 3 of the bill, and I quote:

> It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.

Honourable senators, this is a federal bill, and solemnization of marriage is a provincial responsibility. The Supreme Court has been clear on that. However, I think that it is up to the Minister of Justice to show leadership and to show how to approach this issue. The federal Parliament, you as a Senate chamber and the

other place, cannot legislate on behalf of the provinces on this, but what is signalled in the bill is that to hold that marriage too is the union of one man and one woman in the context of the traditional definition is not something that, at the federal level, should incur any prohibition or any limitation. It is clause 3.1:

> For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the *Canadian Charter of Rights and Freedoms* or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.

We say in the federal legislation that as far as the federal legislation is concerned, as extensive as the federal legislation is concerned, no person shall be deprived of any of his or her rights and should not incur any sanction and should not be under any obligation to perform an act that would be contrary to the expression of his or her belief in relation to the definition of marriage.

In other words, this Parliament, as far as its constitutional responsibility is concerned, is signalling clearly what we as a Parliament feel are the rights to freedom of conscience and religion of any citizen in relation to federal competence. The fact that provinces are on the way to recognizing the same kind of protection is in the true spirit of the Charter of Rights and Freedoms, because, honourable senators, the Supreme Court of Canada, all through its decisions, has been consistent in its way of interpreting and involving itself in the doctrine of the church. The most recent case was last summer, 2004, the *Amselem* case, involved the Jewish faith and the possibility for Jewish persons to establish in the context of the prescription of the Holy Scripture of the Jewish faith. The court said, at paragraph 50, Justice Iacobucci speaking:

• (1530)

> In my view, the State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of the subjective understanding of religious requirement, "obligation", precept, "commandment", custom or ritual. Secular judicial determination of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.

In conclusion, the court should refrain from that. There is no way that one can be afraid that the rights of freedom of religion and conscience are not fully recognized in our jurisprudence in the interpretation of the Charter, in particular section 2(a). In dealing with the religious issue, the court determined that the first issue was to let the church do its own thing, to respect that and to not pronounce on the accuracy for a prescription within one's church. Essentially, the court stated that last summer in the *Amselem* case I quoted.

Honourable senators, I would like to conclude with a few words on the impact of Bill C-38 on children because the matter has been raised properly here and at committee. We should approach it in the context of what the Canadian family is today. We must realize that the Canadian family today is multiple and complex. The view that a family consists of a father, a mother and two or three children is part of the Canadian reality but it is not the dominant reality of Canada. Allow me to cite statistics from Statistics Canada: 20 per cent of families are single parent; there are 1,300,000 single-parent families out of 8,300,000 families in Canada; there are 1,200,000 families in common-law unions; and the number of recomposed families of two parents that have been divorced and reunited in one way or another almost equals the number of single-parent families.

Honourable senators, this is the reality.

At this time last year, the house adopted, almost unanimously, a bill sponsored by Senator Morin and Senator Keon. I checked the record because I wanted to identify senators' preoccupations in respect of children created under the Assisted Human Reproduction Act. Never in the record was a concern raised about filiation — the right to know the identity of the donors in the assisted human reproduction process. That matter is left to the clinics, as honourable senators will recall. During consideration of Bill C-38 at committee, two witnesses and one senator expressed concern about the identity of the filiation. Should we not give the child of parents who seek assisted reproduction the right to know his or her origin? Some provinces have legislated in that respect, which falls under civil and property rights, to not allow filiation. In respect of filiation of children born of medically assisted procreation, article 542 of the Civil Code of Quebec, adopted by the Quebec legislature two years ago, states: "Nominative information relating to medically assisted procreation is confidential."

At least one provincial government has taken a stand on this. Does this mean that we are barred from discussing the issue? Not at all, honourable senators, because in the wisdom of the Senate, we have provided for such. I quote section 70 of the Assisted Human Reproduction Act: "The administration of this Act shall, within three years after the coming into force of section 21, be reviewed by any committee of the Senate, the House of Commons..."

Honourable senators, we will have the opportunity to look comprehensively at the concern expressed by two witnesses and one senator. We will have statistics, figures and other studies to assist us in our considerations because the bill is one year old. Honourable senators know how many years we have waited for that bill. It has been looming for close to five years since it was introduced in Parliament.

There is more to Bill C-38 than the differences of family units that we observe in Canada today. We heard witnesses speak to the reality of gay children who, in the course of their education in the school system, find themselves confronted by the majority. At committee, Professor Ian Kroll, a psychiatrist from the University of Calgary, testified that gay children who recognize their sexual identity will be five to six times more likely than their heterosexual classmates to be targets of violence at school or when travelling to

and from school; that because of negative attitudes they are twice as likely to feel unsafe; that because they feel alienated, they are more likely to use high-risk drugs later in life; and that they are three times more likely to attempt suicide than other children in school. That is the reality of children today. If we are to talk about children in the context of the bill, then we have to take that reality into account.

In respect of the family, we heard important testimony at committee that I will relate in conclusion. Last June, the Canadian Psychological Association —

The Hon. the Speaker: I am sorry to interrupt but the honourable senator's time has expired.

Senator Joyal: May I ask leave?

An Hon. Senator: Five minutes.

Senator Joyal: I will do my utmost to finish in five minutes, honourable senators.

The Canadian Psychological Association needs no explanation as to the credibility of its professional members who say that homosexuality in and of itself is not a psychological problem or disorder and has not been considered so by the professional mental health community for some 30 years. Same-sex couples compare on measures of relationship quality. Lesbian and gay parents are as likely as heterosexual parents to provide supportive and healthy environments for their children. The development of sexual identity, personality and social relationship develops similarly in children of homosexual and heterosexual parents. The belief that gay and lesbian adults are not fit parents or that the psychosocial development of the children is compromised has no basis in science. Their position is based on the review representing approximately 50 empirical studies and at least another 50 articles and book chapters, and does not result from the results of any one study. These articles appeared in such journals as *Developmental Psychology, The Journal of Child Psychology and Psychiatry, American Psychologist, Marriage and Family Review, American Journal of Orthopsychiatry*, et cetera.

• (1540)

The science — inasmuch as it is a science — concludes that the greater risk for the children is the fact that although the sexual orientation of the parent does not result in psychological impairment in children, the stigma and isolation these families may experience as the result of public and systemic prejudice and discrimination may cause distress. In other words, it is the harassment, the isolation, the targeting, the labelling, the depiction that, "Oh, yes, but you are gay or you are a lesbian." This is, really, honourable senators, the stigma that this bill fights.

Let me conclude by saying that I was in Ottawa, as were many of you in the last weeks, and I invite you to visit the Canadian War Museum. I hear you ask: What does the war museum have to do with civil marriage? Let me read something to you that I read in an Ottawa guide about what to see and do in Ottawa; I have the French version:

[Senator Joyal]

[*Translation*]

> On display in this museum are thousands of military artifacts, including a number of impressive paintings. One of the most curious items on display is a machine that was nicknamed "the fruit sorter" or "fruit machine."

[*English*]

"The fruit sorters," and fruit in slang means fag, queer.

[*Translation*]

During the 1960s, the RCMP investigated more than 8,000 gay and lesbian individuals. This period of "gay hunting" was in large part inspired by U.S. Senator Joseph McCarthy's persecution campaign against communists and homosexuals, among others.

One of the ways of determining a person's homosexual tendencies was to use this so-called "fruit machine", which measured physiological reactions when the subject was exposed to supposedly homoerotic stimuli.

The federal government had contracted a researcher from Carleton University in Ottawa to design such a device, but opted instead for an American model, the one now on display in the museum. During that period, nearly 150 lesbian or gay federal public servants either resigned or were dismissed.

[*English*]

Honourable senators, this is our past.

What is the meaning of the Charter? The meaning of the Charter is remedial and purposive. It is remedial because it is there to right a wrong, as much as it is there to right the wrong done to the Aboriginal people in the residential schools. You could be an Aboriginal but you could not speak your language; you could not show your religion or dress as an Aboriginal; and if you acted as an Aboriginal, you would be punished.

This bill is about restoring the dignity of some human beings that we, as a country, as a government, have chased, humiliated, destroyed their lives and, in some cases, have pushed to suicide.

The Hon. the Speaker: I regret to say that the 45 minutes of Senator Joyal, as extended by five, have expired at the time he concluded.

Hon. Gerry St. Germain: Honourable senators, I will not go as far as Senator Joyal in regard to the proceedings of the committee. However, I concur with him that civility was the byword, and respect was maintained throughout. The hearings were thorough, balanced and fair, as was asked by the Deputy Leader of the Opposition.

There were 33 witnesses. It was time-consuming and often I wished that we had more time and could spread it out a little bit more so that we could have possibly understood better. I also compliment Senator Bacon for her patience and leadership in conducting a good committee hearing.

Honourable senators, I rise today to speak at third reading on Bill C-38, the civil marriage bill. At the outset of my remarks, I am compelled to say that on such a fundamental issue affecting our society, we have not spent sufficient time examining the ramifications of this legislation.

The government has been very clear in this place that no amendments would be accepted; pass the bill as is. I believe many will regret passing this legislation as it is.

Bill C-38, as written, redefines the institution of marriage as mankind has always known it. Bill C-38 is a political response to a government-engineered inequity in the accessibility of social and legal benefits for certain types of families and cohabitation relationships. The Law Review Commission report entitled "Beyond Conjugality" I believe aptly drove to the heart of these inequities in these social relationships.

We can take any issue and break it down into bite-sized chunks and find a way to resolve inequity and injustice, but the final analysis must include stepping back and ensuring that there is a holistic cure; and, with some matters, protecting the whole is more important than its parts.

I believe Bill C-38 is not the best cure for providing social equity and justice to homosexual couples. The Bill C-38 solution, while possible providing justice to one group of people, takes away justice from another group. I believe that marriage, the matrimonial covenant by which a man and woman establish between themselves a partnership for the whole of life is, by its nature, ordered towards the good of the spouses and the procreation and education of offspring.

It is not only those who have a religion who recognize marriage in this way. The present legal definition of marriage, as well as the dictionary definition, recognizes marriage as the relationship or legal commitment of one man and one woman to the exclusion of all others. I know Senator Joyal has put forward a different case on the dictionary, but in this definition, something more is presumed; namely, that marriage has a two-fold purpose: the good of the spouses and the procreation and education of offspring, the children.

Marriage as a natural community had existed long before the state legalized it or the dictionary defined it. The state took its part in marriage for the sake of order and to protect the good of the spouses and the children who are the fruit of this relationship. The main concern of the state is child-centred, knowing that, as the hope of the future of civil society, the child needs to grow in a stable and loving environment.

The same-sex relationship and the heterosexual relationship are not the same. They are two different realities, since they do not have the same purpose. The two relationships cannot be compared as being equal, since their purposes are not, and cannot be, the same.

It is not a matter of intolerance, because no one wants intolerance, or a lack of respect — we all want respect — or human rights or injustice. It is a matter of the truth of marriage; and to recognize that, rather than weaken the family life, there is a need to preserve and strengthen the family for the sake of society as a whole. Society cannot, in the qualities of compassion and tolerance, be deceived by compromising the truth.

Honourable senators, Canadians have heard and the Senate has heard from all sides of the debate on this bill. We have heard a wide variety of views as to how marriage and other forms of relationships should be recognized in our society. Even though some of our brightest minds have said that marriage is much more than the simple living together, as in companionship, the government has clearly decided that it wants to force this bill through, and thus its invocation of closure.

While the government is clear on the end that it wants — legally recognized same-sex marriage — and while perhaps a majority of senators favour this end, there have been qualms raised on all sides about the cost of achieving this end. Most important, there have been grave concerns raised in debate and in the hearings before committee, both here and in the other place, about the implications of the passage of Bill C-38 for religious freedom and freedom of conscience.

There are reasons, and I think strong and persuasive ones, why some senators oppose this bill in principle and feel that society should continue to recognize the traditional common law definition of marriage as the union of one man and one woman.

• (1550)

I will outline some of these reasons in a minute, but I also understand the convictions and principles of those on the other side who believe in the principle that same-sex unions should be recognized as legal marriages. However, I would urge even senators in that group to vote against this bill on the grounds that it does not provide enough protection to those who believe, in good faith and conscience, and often on religious grounds, in the other principle.

I will first explain why I believe that this bill is wrong in principle and why Canada as a society should continue to uphold the traditional definition of marriage.

As I mentioned earlier, I believe that the institution of marriage is intrinsically connected with the unique capacity of heterosexual couples for procreation and that the state's interest in marriage is in ensuring that children are raised in stable, supportive homes and families based on the relationship between a mother and father.

The words of Justice La Forest have been quoted before, but it is important to remember that these words reflected the subtle law, the basic beliefs of almost all Canadians just a few short years ago, and that they have never been gainsaid or overturned by any subsequent Supreme Court judgment. He said:

> Marriage has from time immemorial been firmly grounded in our legal tradition, one that is itself a reflection of long-standing philosophical and religious traditions. But its ultimate raison d'être transcends all of these and is firmly anchored in the biological and social realities that heterosexual couples have the unique ability to procreate, that most children are the product of these relationships, and that they are generally cared for and nurtured by those who live in that relationship. In this sense, marriage is by nature heterosexual.

The notion that marriage is by nature heterosexual and based on the capacity of a man and a woman to have and raise children is not to deny that there are other forms of families — single-parent families, extended families and so on — that also do a good job of raising and providing for their children. This is not to deny that homosexuals can be loving parents to their children, when they have children. However, the sociological evidence is clear that, generally speaking, the best situation for children is one in which they are raised by a married mother and father, and it is to maximize the number of children being raised in this situation that the state has historically supported the traditional institution of marriage.

Honourable senators, if the government's bill is accepted, the Parliament of Canada will be saying that marriage is no longer linked to the heterosexual capacity for procreation or to the sociological and psychological reality that children flourish the best when they are raised in an intact family headed by a married mother and father. We will be saying that marriage is not about providing for the future of children in society but about serving the needs of adults in close personal, emotional and sexual relationships.

The influential 2001 report of the Law Commission of Canada implied this in its choice of title and subtitle. The report is called *Beyond Conjugality: Recognizing and Supporting Close Personal Adult Relationships*. If this bill passes, we will have indeed, as a country, moved beyond conjugality.

Advocates of same-sex marriage ask what heterosexual couples will lose by adding same-sex couples to the institution. They will lose the knowledge that the government recognizes their unions as conjugal unions, unions that are, at least potentially, procreative and are supported by the state in order to provide a home environment for the raising of any children of this union. Suddenly the millions of married couples in Canada will no longer be recognized as being in conjugal, procreative, intergenerational unions, unions that are the foundation of society and the basis of its continuity. Instead, all marriages, homosexual or heterosexual, will become legally sanctioned, personal, emotional relationships that have no intrinsic purpose beyond the welfare of the two individuals involved.

Honourable senators, McGill medical and legal ethicist Dr. Margaret Somerville makes this is point eloquently in her book, *Divorcing Marriage*, when she says:

> The crucial question is: Should marriage be primarily a child-centred institution or an adult-centered one? The answer will decide who takes priority when there is irreconcilable conflict between the interests of a child and the claims of adults...
>
> Those who believe that children need and have a right to both a mother and a father, preferably their own biological parents, oppose same-sex marriage because...it would mean that marriage could not continue to institutionalize and symbolize the inherently procreative capacity between the partners; that is, it could not be primarily child-centred.
>
> Those who believe that marriage is primarily about two adults' commitment to each other support same-sex marriage. They focus on the identical nature of the commitment between partners in a same-sex marriage and an opposite-sex one, to establish discrimination in excluding same-sex partners from marriage. This argument for marriage is primarily adult-centred.
>
> In short...accepting same-sex marriage...means abolishing the norm that children...have a prima facie right to know and be reared within their own biological family by their father and mother. Carefully restricted, governed, and justified exceptions to this norm, such as adoption, are essential. But abolishing the norm would have a far-reaching impact.

The Senate must make an important and principled choice. There are those who believe in good conscience that marriage is primarily about the emotional and personal bond between two consenting adults, and it is understandable that those who feel this way will favour same-sex marriage. There are also those who feel that marriage is and should remain a sociological institution oriented toward procreation and child raising and, understandably, most people in this group will favour maintaining the traditional definition of marriage.

However, I would urge those honourable senators who believe, in good faith, in the adult-centred concept of marriage, who believe that it is fundamentally about the rights of two individuals in a close personal relationship, to reject this legislation as it currently stands, if only to send the message to government that we need to take these concerns about the implications for religious freedom and the freedom of conscience of this bill seriously.

The bill purports to provide protection to religious freedom, but many have argued passionately and persuasively that these so-called protections will not work, that the rights of religious believers and others who conscientiously oppose same-sex marriage will be at the mercy of the courts and the human rights tribunals that so far have tended to see the equality rights of same-sex couples as trumping freedom of religion or freedom of expression.

Bill C-38 includes a supposed protection for religious officials who do not wish to perform same-sex marriages, stating that they are free not to perform marriages that are not in accordance with their religious beliefs. It must first be stated that religious freedom is already in a weakened state if we have to specify this. What kind of society would we be living in if the state could force religions to perform rituals and sacraments that went against their conscientious beliefs? Furthermore, as many people have pointed out, the federal government is not in a position to give this guarantee even if it wants to.

In its reference case to the Supreme Court of Canada, the government asked whether its draft legislation was constitutional. The court replied that, while Parliament was free to legislate as to the definition of marriage, it had no jurisdiction over who could or could not solemnize marriage, as I believe Senator Joyal

pointed out. Therefore, clause 2 of the draft bill, which is almost identical in wording to clause 3 of Bill C-38, was ruled to be ultra vires Parliament. In pith and substance, this clause relates to those who may or must perform marriages and falls within the subject matter allocated to the provinces under section 92.12. Therefore, the Supreme Court of Canada has already found clause 3 of this bill to be outside the jurisdiction of Parliament. For cosmetic, face-saving reasons, the government has insisted on keeping that in the text of the bill.

• (1600)

It is true that the Supreme Court, in its reference, later ruled that the Charter should probably provide protection to religious officials against being forced to solemnize marriages that they disagreed with. This government legislation does absolutely nothing to further this protection. We already know that, in several provinces, civil marriage commissioners have lost their licences because of their religious or conscientious objection to same-sex marriage. A marriage commissioner from Newfoundland, who appeared before us in committee, said that she was forced to resign. This bill will do nothing to help marriage commissioners.

Many of the areas in which religious freedom is most likely to be affected after the passage of Bill C-38 are under provincial jurisdiction. Some provinces have already ruled that civil marriage commissioners must agree to perform same-sex marriages or lose their licences. Provincial human rights commissions are being approached about public accommodation cases such as attempting to force a Knights of Columbus Hall to provide its facilities for a same-sex marriage in British Columbia; or an evangelical printer in Toronto, Scott Brockie, being forced to print materials for a same-sex advocacy organization; or bed and breakfast owners in Prince Edward Island shutting down their businesses rather than being forced to accept same-sex couples as guests. These incidents will likely increase after the bill is passed. At a minimum, we should wait to ensure that all provinces bring in laws to protect the rights of those who conscientiously object to same-sex marriage.

In the debate and committee hearings in the other place, the objection was frequently raised that minimum protections for religious officials, who are outside of federal jurisdiction in any event, would provide no real protection to the rights of those who conscientiously oppose same-sex marriage. In response to repeated criticism, the government finally yielded and accepted two amendments, which it states should provide greater protection to those who support the traditional definition of marriage. The first amendment, now clause 3.1, states:

> For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada... in respect of...

— their religious or conscientious beliefs in the traditional definition of marriage.

The second amendment to Bill C-38, now clause 11.1, attempts to provide similar protection, specifically to religious charities with respect to their charitable tax status.

These amendments are welcome. However, there is a problem. In both cases the amendments purport to protect people in the exercise of their freedom of expression of views favouring traditional marriage under the Canadian Charter of Rights and Freedoms. This sounds positive, but the courts have already ruled that where there is a collision of rights under the Charter, it is up to the courts to strike a balance between those rights. This bill may create a collision of rights between religious freedom and same-sex equality.

At paragraph 52 of the *Reference re Same-Sex Marriage* decision, the Supreme Court stated:

> The right to same-sex marriage conferred by the *Proposed Act* may conflict with the right to freedom of religion if the Act becomes law, as suggested by the hypothetical scenarios presented by several interveners.

It is clear that legislating in favour of same-sex marriage may create a conflict of rights with those who oppose it on religious or philosophical grounds.

The court went on to say:

> However, the jurisprudence confirms that many if not all such conflicts will be resolved within the *Charter*, by the delineation of rights prescribed by the cases relating to s. 2(*a*). Conflicts of rights do not imply conflict with the *Charter*; rather the resolution of such conflicts generally occurs within the ambit of the *Charter* itself by way of internal balancing and delineation.

This means two things, honourable senators: First, in the two clauses purporting to protect religious minorities by saying that they will not be penalized for exercising their Charter rights, the proposed legislation is adding nothing to the rights that were already there under the Charter. Second, the legislation still allows for a potential conflict of rights. In any such conflict, the rights of religious groups or others who object to same-sex marriage will have to be balanced against equality rights.

How have these rights been balanced in the past by the courts, honourable senators? In the *Trinity Western* case in 2001, the Supreme Court ruled:

> Neither freedom of religion nor the guarantee against discrimination based on sexual orientation is absolute. The proper place to draw the line is generally between belief and conduct. The freedom to hold beliefs is broader than the freedom to act on them.

It would seem that while it may be acceptable in Canada, after Bill C-38 passes, to believe that the traditional definition of marriage is best, it may be unacceptable to take any action in accordance with that belief.

One case involving religious expression that went to the Ontario Court of Appeal was the case of *R. v. Harding*. The Court of Appeal found that for the crime of promoting hatred against an identifiable group, the fact that an apparently hateful message is based on sincere religious belief is no defence.

As the trial judge ruled, in words cited by the Court of Appeal, the appellant was:

> ...entitled to his opinions on religious subjects, and he is entitled to publicly attempt to convince others of the correctness of his beliefs. His pamphlets and message do contain opinions of religious belief which he appears to sincerely hold...

However,

> Although expression of religious opinion is strongly protected, this protection cannot be extended to shield this type of communication simply because they are contained in the same message, and the one is used to bolster the other. If that were the case, religious opinion could be used with impunity as a Trojan Horse.

The appellant in this case had published admittedly extreme statements against Muslims. I have no wish to defend his statements. However, it is of concern that the courts have ruled that sincere religious belief is not a defence against hate crime prosecution.

It is of concern that the Supreme Court has said that Bill C-38 could create a conflict of rights between freedom of religion and the equality rights of same-sex couples, and that it is up to the courts to determine the correct balance of these rights. Will this mean that 5 or 10 years from now a pastor, Catholic priest or school counsellor will find themselves the target of hate crime litigation simply for making the kinds of statements about same-sex marriage and traditional marriage that have been made in the Senate or the House over the past few months by those opposed to the legislation? Will it be considered hateful to quote from the Book of Romans from the Bible, or the catechism of the Catholic Church?

Religious rights extend beyond the ceremony of marriage. What about the rights of faith practitioners to speak publicly about marriage as they know it? What about the confusion of their children on being taught one way by the church and home and told otherwise in other areas of their life?

We know that the Saskatchewan Human Rights Commission has found an advertisement that did nothing but quote Bible verses to be hateful. We know that the Roman Catholic Bishop of Calgary has already been threatened by an action before the Alberta Human Rights Commission. Where will courts and human rights submissions go in the future? We do not know, honourable senators. This legislation, unfortunately, does little to clarify the matter.

It is not good enough to provide a protective clause that simply says that people are free to exercise their Charter rights to freedom of religion and expression when the courts have already said that these rights can conflict under the Charter with equality rights and it is the courts that will perform the internal balancing act.

It is not good enough to say that this bill protects freedom of religion when the courts have already ruled that the hate crimes law does not defend speech based on sincerely held religious belief. As the Roman Catholic Primate of Canada, Cardinal Marc Ouellet of Quebec City, said before the committee last week:

> Already the appeal to conscience in any matter pertaining to homosexuality risks being dismissed as "homophobia," these attempts to intimidate persons who do not share the state's vision of marriage may well multiply after the adoption of Bill C-38. Once the state imposes a new standard affirming that homosexual sexual behaviour is a social good, those who oppose it for religious motives or motives of conscience will be considered as bigots, anti-gay and homophobes and then risk prosecution.

• (1610)

This bill should be rejected, not simply because it changes the traditional definition of marriage, which I, and I think a majority of Canadians, believe has served us well, but because it risks penalizing and even criminalizing the beliefs of those who continue to believe in the traditional definition of marriage after the bill has passed.

The government's attempts to protect religious freedoms were reluctant and are too weak. We should reject this bill, go back to the drawing board and come up with new legislation that provides a better balance between the traditional definition of marriage and the rights of other couples.

Even if we persist in legislation in favour of same-sex marriage, I would argue that we need a much more robust defence of religious freedom and guarantees that the provinces will respect religious freedom before this bill becomes law.

Furthermore, what about studies on the impact of Bill C-38 on the nuclear heterosexual family? What about the impact on children? We know nothing about these things. The experts have told us that no studies have been done in these areas.

If and when this bill becomes law, our country will go through a change never experienced before. Bill C-250 put us on a slippery slope of changing completely how we determine our moral values as a society.

Our society was built and grew to be a great country because it was based on Judeo-Christian values. Yes, we are more of a mosaic today, but people seek to bring their families and children here because of our traditional value system. Why should we jeopardize such a great nation built on these values just to carry out the political agenda of a government that has lost its moral compass?

Honourable senators, we must consider the possible negative impact this will have on the whole of our society.

The minister made a number of comments at the committee that need to be clarified to Parliament and the public. He said that the bill does not threaten religious freedom. He went on to say — and I am paraphrasing — that the opposite-sex definition is inconsistent with the fundamental guarantees of equality in the Charter; that freedom of religion is not the weaker sister to equality, and that whenever courts and tribunals are faced with a clash between equality rights and religious rights, equality rights will not trump religious rights.

He went on to say that the freedom of religion is the "firstness" of our freedoms, and that it must be given an expansive interpretation. Please tell me what that means and we will all be enlightened, as Senator LeBreton says. They are just words.

The minister went on to say that specific protections in terms of civic services would have to be provided in law by the provinces, and that Bill C-38 was specifically written and amended to provide added assurance that the federal government will uphold the guarantees of the Charter.

As reported in *The Globe and Mail* this morning regarding marriage commissioner Orville Nichols in Saskatchewan, the minister has again promised that religious rights will not be trumped by the equality provisions of the Charter that have made same-sex marriage a legal reality. However, the truth of the matter is that marriage commissioners are being persecuted because they are standing up for their religious beliefs. The minister says that solemnization is provincial jurisdiction and that he cannot interfere; he has appealed to his provincial counterparts to make provisions for civic officials. The article states:

> If there is a conflict between religion and equality rights, he said "there is a principle of reasonable accommodation..."

That is another set of words that I do not think really clarifies the situation.

According to *The Globe and Mail*, Mr. Cotler said:

> One should be able to find a way of accommodating those who for reasons of conscience feel they don't want to perform a same-sex marriage.

That is the principle of reasonable accommodation.

The government's statements of Charter protections and the consequences of Bill C-38 are simply not meshing with what is happening on the street, out there in the real world. This often happens, and it goes to the very core of what our country stands for.

The minister clearly said at committee that no rights in the Constitution or the Charter are absolute. If this statement does not cause concern in the minds of Canadians, I do not know what will.

However, I do know this: A bill that is not yet law has caused a great deal of conflict in our society. We all know that the long-term consequences of the proposed legislation are unknown, but most certainly the legislation will affect the relationship between church and state.

I, like Senator Joyal, do not want to see anyone discriminated against. No one in this place does. We work daily and diligently in the Senate so that everyone in our society is treated fairly. We will continue to do so; but we cannot penalize one group while seeking justice for another. We cannot legislate wrongs into rights, but we can make progress if we go at it intelligently.

MOTION IN AMENDMENT

Hon. Gerry St. Germain: Therefore, honourable senators, I move, seconded by the Honourable Senator Tkachuk:

> That Bill C-38 be not now read a third time, but that it be read a third time this day six months hence.

The Hon. the Speaker: I see honourable senators rising for questions. Senator St. Germain has time, if he will take a question, but I must first put his motion.

It is moved by the Honourable Senator St. Germain, seconded by the Honourable Senator Tkachuk:

> That Bill C-38 be not now read a third time, but that it be read a third time this day six months hence.

Does the honourable senator wish to speak further? I know some honourable senators have questions.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, it is clear from the motion that there is the intention to delay debate on this question. Of course, that is something I cannot accept. We did not accept it at second reading; we cannot accept it now. Our clear preference is to have an agreement on a specific number of days of debate. It is very clear from this motion — I think that we do not need any clearer indication — that there is no possibility of that, so I must make clear my intention to introduce a motion of time allocation at the earliest opportunity.

I want to emphasize that there has been already a great deal of debate on Bill C-38. It was referred to the Standing Senate Committee on Legal and Constitutional Affairs, which conducted comprehensive hearings. We have heard about those today, from Senator Joyal and, indeed, from Senator St. Germain, who complimented the chair. The committee heard from 28 witnesses, who represented a very balanced view of those for and against the bill. Over the course of those four days the committee met for over 24 hours. That is the equivalent of several weeks of hearings when the committee follows its usual schedule.

I want to join with other senators in thanking the chair and the committee for the work they have done on this bill, but it is time now to move forward and to bring this debate to an orderly conclusion, I think not only have honourable senators made up their minds, but also the Canadian people have made up their minds. We have seen from recent polls that six out of 10 Canadians have accepted this decision as a fait accompli and want to move on to other matters.

We, honourable senators, are leaders. It is clear, if we are leaders, where we should be leading. The Canadian people have reached a conclusion. They have spoken to those of us who would listen, and it is time now to move on.

I will be moving time allocation at the first available opportunity, and I urge all honourable senators to oppose Senator St. Germain's motion when it comes to a vote.

Some Hon. Senators: Question!

The Hon. the Speaker: I take it that Senator Rompkey is not giving notice at this time, but that he is making a comment on Senator St. Germain's speech. He has a few minutes left, although I did not ask him if he was prepared to hear a comment or take a question. I should confirm with Senator St. Germain that, while he has time, he could speak further or accept questions. Senator Rompkey indicates that he has made a comment.

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, I have a comment and question for Senator St. Germain, who participated in the work of the Standing Senate Committee on Legal and Constitutional Affairs that studied Bill C-38 last week. All honourable senators know that Appendix I to the *Rules of the Senate of Canada* provides that when a matter is before the Senate that affects the provinces:

• (1620)

> *(Extract from the Second Report of the Standing Committee on Standing Rules and Orders of Tuesday, May 28, 1985. The report was adopted by the Senate on May 30, 1985.)*
>
> The Standing Committee on Standing Rules and Orders recommends that the following be observed by committees of the Senate as general practice:
>
> > That, whenever a bill or the subject-matter of a bill is being considered by a committee of the Senate in which, in the opinion of the committee, a province or territory has a special interest, alone or with other provinces or territories, then, as a general policy, the government of that province or territory or such other provinces or territories should, where practicable, be invited by the committee to make written or verbal representations to the committee, and any province or territory that replies in the affirmative should be given reasonable opportunity to do so.

In his presentation the honourable senator, as well as Senator Joyal in his remarks, made reference to the fact that in the advisory opinion of the Supreme Court, section 3 is ultra vires to Parliament. However, the Minister of Justice, if I have understood correctly, sees this as being of at least declaratory value.

Reference has also been made in the debate thus far to things that fall within the purview of provincial human rights statutes. Indeed, reference has been made to a couple of cases before human rights commissions in several provinces.

Senator St. Germain, as well as Senator Joyal, seemed to have joined the issue of the relationship of provincial statutes to this proposed statute. Therefore I ask the question: Did your committee invite the provinces to make submissions on this bill?

Senator St. Germain: Honourable senators, to my knowledge, no request was made of the provinces to appear before the committee, either by our side or by the other side. Senator Kinsella has made an astute observation as to hearing from the provinces.

Honourable senators, this is serious business. There are marriage commissioners in the country whose lives are being torn apart. For example, Orville Nichols of Saskatchewan has been at this for 25 years. He now faces dismissal by virtue of the action of the province. Lord knows what these provinces will do. They all have different agendas. They all see this particular situation from a different perspective.

We should hear from the provinces as to how they will harmonize their legislation so that people are treated evenly across the board. When Minister Cotler appeared before us, he seemed concerned by the fact that there was disunity among the provinces as to how the human rights tribunals in different provinces were treating marriage commissioners.

I do not believe that delaying this bill for a short period of time will make any significant difference in the country. The fact is that we could study it more. Several issues have been brought up, such as the issue of the provinces and the impact on children. Witnesses requested that the bill be delayed.

I believe that Senator Rompkey has said that the country has spoken. Let the country speak at the next federal election. Let us not pass this legislation now. Let us wait. Let us make the next election a referendum on this bill.

Hon. Jack Austin (Leader of the Government): Honourable senators, could His Honour make it clear where we are in the proceedings? Is Senator Kinsella using time to ask a question of Senator St. Germain, although Senator St. Germain has proposed a motion that is debatable? Have we entered into the debate yet on Senator St. Germain's motion? I am a bit uncertain as to where we are in the process.

The Hon. the Speaker: Senator St. Germain has about five minutes left of his allotted speaking time, which is 45 minutes. He is the second speaker on the motion for third reading. He has proposed a hoist motion, which is in order. I put the motion. He chose to put his motion when he did so that he could have additional time. He has just about finished that time now. Senator Kinsella asked a question of the honourable senator, and he answered the question.

Are there any other questions or comments?

Senator Austin: Is Senator St. Germain's time now lapsed, or are we still on Senator St. Germain's time?

The Hon. the Speaker: My understanding of the rules is that a speaker has 45 minutes if he is the first or second speaker at third reading stage. A speaker might choose to propose an amendment at the beginning of his or her speech and speak to it. They may choose, as Senator St. Germain has done, to put it during the course of their remarks and continue to speak; or they may take their seat, as Senator St. Germain did, and then Senator Kinsella rose to ask him a question, which he took.

If there are no further questions, we will go to the next speaker.

Senator St. Germain: I have said all I really wanted to say anyway, honourable senators.

Senator Austin: Honourable senators, I would like to speak to the hoist motion that Senator St. Germain has now brought before the chamber. It is a debatable motion.

I begin the debate by saying that no public purpose could possibly be served by accepting this motion at this time.

This issue that is contained in Bill C-38 has been before the country for over 20 years. Honourable senators may recall that in the Special Joint Committee of the Senate and House of Commons on the Constitution of 1980-81, which Senator Joyal chaired as a member of the other place, the then Minister of Justice Jean Chrétien appeared several times as a witness and, on the question of the definition of equality rights, made clear that those rights were intended to be open-ended and that, as time evolved, other rights could become a part of section 15 of the Charter.

Honourable senators, this debate has continued, as Senator Joyal noted in his speech on July 4, with what was a bipartisan process through the 1980s. When the Mulroney government was in office, that government established a House of Commons committee chaired by Progressive Conservative MP Patrick Boyer, which held hearings across the country and then unanimously recommended that the Charter include protection from discrimination on the grounds of sexual orientation. We saw the evolution then of a bipartisan policy with respect to which we are now at the final destination.

In 1986, the Progressive Conservative Minister of Justice in the Mulroney government, John Crosbie, accepted the Boyer committee recommendation and promised that government would take whatever measures were necessary to "ensure that sexual orientation is a prohibited ground of discrimination in all areas of federal jurisdiction."

• (1630)

In implementing this policy decision, the Mulroney government declined to challenge in the courts the inclusion of sexual orientation in section 15 of the Charter.

Senator Joyal also reminded us on July 4, in his opening address at second reading, of the important role that Senator Kinsella played in pursuing the inclusion of sexual orientation as an equality right in the Canadian Human Rights Act. This followed a decision in the Ontario Court of Appeal that added sexual orientation into the plain intent of that legislation.

In 1995, the Chrétien government amended the Canadian Human Rights Act to specifically include sexual orientation. Senator Joyal also reminded us that, in 1995, the Supreme Court of Canada ruled that the Charter of Rights and Freedoms must be read as including "sexual orientation" among the prohibited grounds of discrimination set out in section 15, the equality rights section of the Charter.

It was the Chrétien government that asked the Supreme Court of Canada for its advisory opinion on equality rights and entitlement to same-sex marriage. Most senators here will easily recall the impassioned leadership of Prime Minister Chrétien's Minister of Justice, Martin Cauchon, who initiated the legislative process that has placed Bill C-38 before us today. Both former Prime Minister Chrétien and former Minister Cauchon deserve great credit for their leadership on this issue, which, in Mr. Chrétien's case, goes back some 25 years.

Honourable senators, the principles of this legislation were hotly contested in the federal election. Who does not remember the arguments about the justification for a Supreme Court reference or the issue of asking a fourth question, as put to the court by Justice Minister Irwin Cotler?

As I said, the principles of Bill C-38 have been before Parliament for over 20 years and the issues of Bill C-38 have been closely and effectively debated in Parliament before and since the June 2004 election.

As Senator Joyal has noted, a House of Commons committee travelled across Canada interviewing more than 400 witnesses on this bill. Canadians have been effectively consulted by both the House of Commons committee and also by our Standing Senate Committee on Legal and Constitutional Affairs, which last week heard from key and representative witnesses in a comprehensive review of the issues of concern.

As my colleague Senator Rompkey has said, Canadians have decided to accept Bill C-38 and want the question of equality rights and marriage for same-sex couples to be settled. He mentioned *The Globe and Mail* poll of Monday, July 18, 2005, which was commissioned by *The Globe and Mail* and by CTV and reported that 55 per cent of Canadians surveyed said that the next government should let the same-sex legislation stand. Those who wanted its repeal or amendment represented 39 per cent of those polled.

Honourable senators, it is interesting that when we look at the poll from a political point of view, while it shows that Conservative supporters are likely to support a repeal of this legislation, or an attempt to prevent it from taking place, potential Conservative voters are more likely to prefer the current legislative position of the government. The polling firm Strategic Council said that public opinion on gay and lesbian marriage moved to approval after a lengthy debate. In public opinion, they said, "It is a done deal now."

Honourable senators, while I am on my feet, I wish to join Senator Joyal and Senator St. Germain in congratulating Senator Bacon and the Standing Senate Committee on Legal and Constitutional Affairs for a highly competent, thorough and civilized analysis of the legislation that is before us. Senator Bacon acted in a professional and effective way in chairing the committee hearings. I want to acknowledge also that senators on both sides acted with courtesy and professionalism, as behooves the conduct of senators in this chamber.

Honourable senators, as I said, there is no point in further postponement. There are no new issues to be argued; there are no new positions to be taken. I think everyone in this chamber understands that we, along with the Canadian people, have come to our own conclusions. I urge honourable senators, whether you support this bill, whether you do not support this bill or whether you abstain, to reject this hoist motion so that the debate can continue and that we can conclude.

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, I rise to speak in favour of the hoist motion. Before I do so, I should like to thank Senator Bacon for the discipline with which she ran the hearings of the Standing Senate Committee on Legal and Constitutional Affairs. It was very well done, with a high level of professionalism.

As Senator St. Germain has stated, 33 witnesses were heard. What we heard at that debate was examination of the bill alone. It did not have anything to do with what is transpiring elsewhere. We looked at what is taking place in Canada with the passage of legislation or the decisions of lower courts, particularly in eight of the 10 provinces and two out of the three territories. We did not examine, for example, Belgium, the Netherlands and Spain. These three countries have passed same-sex legislation. However, Belgium and the Netherlands have restrictions over adoption. One would have thought that we should have studied why those two countries have limitations, but we did not.

Denmark has registered partnerships that are for same-sex couples only. It does not permit adoption unless the child belongs to one of the spouses. We did not examine that aspect or ask that question. We did not examine why that country did what it did. I think a discussion of their experience is tragically missing from our debate.

Germany has a Life Partnerships Act that provides some but not all of the rights and responsibilities of marriage. Why? That question should have been asked, but it was not.

France has the Civil Solidarity Pact Act that also provides some, but not all, of the rights and responsibilities of marriage. Why? We should have examined that matter. This is what we do and we do it very well.

New Zealand has found that the opposite-sex definition of marriage is constitutional. It offers civil unions with some, but not all, of the rights and responsibilities of marriage. Again, why? Again, we did not examine that issue.

The State of California has a system of domestic partnerships that offer some state-level benefits but no federal-level benefits.

Lastly, the federal government of Australia has banned same-sex marriage altogether while allowing for civil unions at the state and territorial level. Currently, civil unions are available in all but two provinces.

Sober second thought is really the essence of this chamber. This is what we really do well, and I am an advocate of that kind of work. We should take the time now to examine those other countries to determine what they did, are doing and why.

I would like to couple, along with the definition of marriage and the limitations as to adoptions and why, the notion that we should also examine the definition of family in today's world, at committee.

• (1640)

In today's world, the definition of family has changed dramatically. We have brothers living together for economic reasons. They do not get the benefits that same-sex marriage would give to those couples. We have veterans living together as family for the same economic reasons. They do not get the benefits. There is a huge inequality there. When we talk about equal rights, a big one is left out, right there.

We need to examine that aspect, and this chamber does that superbly well. We should hoist this bill for six months to allow the proper examination in those other countries, as well as the redefinition of family.

Hon. Senators: Question!

The Hon. the Speaker: I see no senator rising to speak on Senator St. Germain's amendment. I ask honourable senators, are you ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Those honourable senators in favour of the motion in amendment, please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those honourable senators opposed to the motion in amendment, please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. Is there an agreement on time? Otherwise, it is a one-hour bell.

Senator LeBreton: A half-hour bell.

The Hon. the Speaker: The bells will ring for 30 minutes, bringing us back for the vote at 5:10.

Call in the senators.

• (1710)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Angus	Kinsella
Buchanan	LeBreton
Cochrane	Meighen
Comeau	Oliver
Cools	Plamondon
Di Nino	Prud'homme
Eyton	St. Germain
Forrestall	Stratton
Gustafson	Tkachuk—19
Kelleher	

NAYS
THE HONOURABLE SENATORS

Atkins	Lapointe
Austin	Losier-Cool
Bacon	Maheu
Baker	Mahovlich
Banks	Massicotte
Biron	Mercer
Bryden	Merchant
Callbeck	Milne
Chaput	Mitchell
Christensen	Moore
Cook	Munson
Cordy	Pearson
Dallaire	Pépin
Downe	Petersen
Dyck	Phalen
Eggleton	Poulin
Fairbairn	Poy
Fitzpatrick	Ringuette
Furey	Robichaud
Gill	Rompkey
Grafstein	Sibbeston
Harb	Smith
Hubley	Spivak
Jaffer	Tardif
Joyal	Trenholme Counsell
Kenny	Watt—52

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

Senator Kinsella: Honourable senators, as we are continuing debate at third reading on Bill C-38, let me begin by observing that we all recognize that this subject has generated a great deal of controversy among Canadians, and that this controversy continued to manifest itself during the hearings held last week by the Standing Senate Committee on Legal and Constitutional Affairs. The possible impact of this bill on a number of areas, including freedom of religion and conscience, continues to cause anxiety, at least according to witnesses who appeared before the committee and others across the country.

Honourable senators, as I mentioned during the second reading debate, I believe that with a modest adjustment to this bill we could make it whole and serve to heal many of the divisions in the country resulting from the current approach taken to this issue by the bill.

My proposal, honourable senators, is not to delete anything that is in the bill, to accept every word and comma that is in the bill, but to add a few extra words. My proposal is that a new clause 2 be added to the bill that would state the historical fact that Parliament has recognized for a long period of time the traditional marriage of one man and one woman, and continues to do so. I would then add the words, "notwithstanding this new section 2," before the word "marriage" in the current section 2, which would be renumbered as section 3, and the other sections renumbered accordingly. It is as simple and clear as that, and it would resolve and perhaps go a long way in satisfying Canadians who have expressed legitimate concerns, while at the same time protecting all the equality rights of which we speak.

It is this aspect of what I consider to be an easy remedy to deficiencies in the bill, and I will make a few comments on those. The amendment will not detract from the current Bill C-38 but will help to heal the divisions which the bill presently causes among Canadians. The continued recognition of the traditional marriage of one man and one woman by Parliament is widely regarded as being essential, and such a union is, of course, also included within the class of relationships defined in the bill as marriage for civil purposes. In other words, the current clause 2 says that marriage for civil purposes is the union of any two persons to the exclusion of others. The classes of persons covered by that clause clearly are men and women.

Honourable senators, as I noted during the debate on Bill C-38 at second reading, by containing a qualified definition of marriage for civil purposes and not containing any reference whatsoever to any other definition of marriage, and in particular to traditional marriage, that does create not only a sense but a reality of an omission that has upset Canadians. The bill can readily accommodate a definition of marriage that reflects the realities of both same-sex couples and heterosexual couples, something which unfortunately the government has resisted doing at every stage.

In my view, harmony can be found in this divisive topic. It has been used as a political wedge, or an attempt to be a political wedge, to create a dichotomy where none should exist, both legislatively and pragmatically. It was not necessary to exclude or reject the traditional definition of marriage in the desire to ensure equal rights for all.

• (1720)

Some have argued that my proposed amendment will somehow create a separate but equal regime or would relegate same-sex marriage to a secondary status. This view relies erroneously both on the fallacy of argument by analogy and on the fallacy of *reductio ad absurdum*.

The origins, as honourable senators know, of the separate but equal doctrine relate to the attempt to segregate black children from white children, which was rejected in the United States by the United States Supreme Court in the case of *Brown v. Board of Education*. The American argument of that era was that if the educational services provided were of equal quality, then, for all intents and purposes, the groups would receive equal treatment. The court in *Brown v. Board of Education*, as any student of human rights knows, did not rule that separate regimes were, by their nature, unequal, but simply stated that segregation was not providing actual quality. The decision hinged on the question of equality, not separate treatments.

However, Senator Joyal quite rightly drew our attention to Canadian law and the fulsome example that we have in our own Canadian law. We do not have to rely on inaccurate, non-analogous examples from the United States. As Senator Joyal has indicated, no better home-grown example exists to depict the concept of equality through parallel yet distinct recognition than section 16 of the Canadian Charter of Rights and Freedoms. This section enshrines and protects parallel institutions without degrading either, while still acknowledging their inherent differences. Let me quote from section 16.1(1) of the Charter, which was an amendment made to the Charter that we dealt with when we dealt with that resolution that affects the province of New Brunswick, and so it was using the bilateral formula to amend the Constitution.

It related to the fact, the reality, that in my province of New Brunswick we have two linguistic communities that have equal benefit of the law. I will quote from the section:

> 16.1. (1) The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

Honourable senators, the proper vernacular for this discussion is thus, "parallel yet distinct," not "separate but equal."

I have suggested that Bill C-38 ought to include recognition of the historical fact of traditional marriage. Let me be clear on this point: I have not suggested that a separate institution of the civil-union type be instituted and reserved for same-sex couples. There is nothing in my proposed wording or in my previous comments that would suggest that I intend to relegate anyone's definition of marriage to a secondary position or a lesser status. In fact, those familiar with section 16 of our Charter will appreciate that it is a Canadian constitutional principle that parallel and distinct institutions can coexist in full equality and in harmony.

Bill C-38, as it presently stands, ignores any definition other than that of marriage for civil purposes. The amendment that I intend to make will acknowledge the fact of traditional marriage as it has existed for hundreds of years and, quite frankly, as it will continue to exist for millions of Canadians regardless of what Parliament decides, while acknowledging and respecting the expansion of the legal definition to reflect modern realities. It is clear that this Canadian legislative solution is very different from the situation faced by the court in deciding *Brown v. Board of Education* in the United States.

Honourable senators, I encourage you to reject the notion that there is only one single, solitary option, that there is only one acceptable wording, and that traditional marriage should be cast aside by Parliament. Equality can be achieved without throwing the baby out with the bath water. Equality can be achieved without throwing away the current and historical concept of marriage in which most Canadians participate. We can do it without giving up anything. There can be a harmony of definitions. We can heal the deep wounds this false dichotomy has created.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella (Leader of the Opposition): With that in mind, honourable senators, I move:

> That Bill C-38 be not now read a third time but that it be amended, on page 2,
>
> (*a*) by replacing line 39 with the following.
>
> "**2.** Parliament has recognized and continues to recognize the traditional marriage of a man and woman.
>
> **3.** Notwithstanding section 2, marriage, for civil purposes, is the lawful"; and
>
> (*b*) by renumbering clauses 3 to 15 as clauses 4 to 18, and all cross references accordingly.

Honourable senators, I submitted a copy of this motion to the table earlier this afternoon, so that copies could be made and circulated forthwith.

The Hon. the Speaker: It is moved by the Honourable Senator Kinsella, seconded by the Honourable Senator Stratton:

> That Bill C-38 be not now read a third time but that it be amended on page 2,
>
> (*a*) by replacing line 39 with the following.
>
> "**2.** Parliament has recognized and continues to recognize the traditional marriage of a man and woman.
>
> **3.** Notwithstanding section 2, marriage, for civil purposes, is the lawful"; and
>
> (*b*) by renumbering clauses 3 to 15 as clauses 4 to 18, and all cross references accordingly.

Honourable senators, the text in French and English is being distributed. I will take my seat. If there are other speakers, they will rise. If not, I will see if you are ready for the question.

I will follow a list, alternating between the opposition side and the government side. I will now go to the government side and recognize Senator Bacon. When amendments are moved, it is difficult to follow a precise list because senators who have spoken have the right to speak again on the amendment. My intention is to proceed as follows: Senator Bacon, Senator Forrestall, Senator Pépin, Senator Gustafson, Senator Cordy, Senator Cools, Senator Smith, Senator Di Nino, Senator Grafstein, Senator Stratton, Senator Hervieux-Payette and Senator Banks. Senator Joyal, do you wish to be on the list?

Hon. Jack Austin (Leader of the Government): I wonder if it would be agreeable to hear from the sponsor of the bill in response to the proposed amendment?

The Hon. the Speaker: I will put Senator Joyal in place of Senator Bacon. We will hear from him next. I have put the motion in amendment, and we are now speaking to the motion in amendment.

POINT OF ORDER

Hon. Marcel Prud'homme: On a point of order, and I am sure this is a point of order: His Honour knows how highly I esteem him, but on this side, in this corner, we are getting a little bit — not annoyed, but surprised — when we say we will alternate between the government and the opposition. May I say I do not intend to speak on this, at least not at this time. His Honour said he will be fair, and he is fair, in going from government to opposition to government to opposition. However, I wonder if it is at all possible that he use another kind of phraseology. There are 11 of us who are non-aligned. We do not belong to government — thank God, sometimes. We do not belong to the opposition, thank God for the government. We 11 senators are non-aligned. I do not like to be referred to as "we" and "they." I do not speak for all 11, but there are five Progressive Conservatives, five independents and one NDP. No one speaks for us. If one of us wishes to speak, he or she will do so. I appreciate the patience of the house on this point of order.

• (1730)

The Hon. the Speaker: That is a good point, Senator Prud'homme, and I will be sensitive to it. On the point of order, I see Senator Corbin.

[*Translation*]

Hon. Eymard G. Corbin: Honourable senators, we are beginning to tolerate a practice that is not in keeping with the *Rules of the Senate*. I do not intend to raise a major point of order but clearly, rule 32 provides, and I quote:

> A Senator desiring to speak in the Senate shall rise in the place where that Senator normally sits and address the rest of the Senators.

Rule 33(1) reads as follows:

> When two or more Senators rise to speak at the same time, the Speaker shall call upon the Senator who, in the Speaker's opinion, first rose.

Of late, I have noted that the chair is using lists. I do not know who prepares the lists, but I do not believe that it is a prerogative of the chair to prepare lists of speakers. The rule is clear. A senator wishing to speak must rise in the place the senator sits, and the first senator to rise is called upon to speak.

I have no wish to be difficult; I am not trying to delay the debate. I am simply pointing out that what has been occurring for some time is beginning to concern me. If the authorized party spokespersons tell me they have agreed among themselves to establish this list, that is another matter. However, the chair must indicate that this is the case.

Nevertheless, to return indirectly to the question raised by Senator Prud'homme, nothing prevents a senator not on the so-called list from rising before anyone else and being called upon to speak. I question the lists practice and would like someone to explain to me the origin of this procedure, which I, at least, consider contrary to the *Rules of the Senate*.

[*English*]

The Hon. the Speaker: Do other honourable senators wish to intervene on the point of order?

Hon. Anne C. Cools: Honourable senators, I would like to speak in support of the point of order. Senator Corbin's comments are extremely valid and speak to another one of those creeping practices in this place that have the effect of eroding the individual rights of senators. I am not prepared for this issue, and I am aware that the subject of marriage is heavy on our minds, but I would love to know more about how these practices are created, who creates them and what authority exists for creating them.

If honourable senators will recall, several years ago the Speaker would rise and tell the house that the leaders had agreed on the matter, and that was the end of it. At the time, I pressed hard for the Speaker to seek the agreement of the whole house on the matter of the leaders' agreement. A private agreement between the two leaders is not binding on this house. It might seem to many honourable senators that Senator Corbin is making a picky point, but that is not so. It is important, and perhaps as we go forward we should address the question of the authority for these kinds of actions.

Each senator holds his or her powers, privileges and immunities under section 18 of the BNA Act, privately and individually. As well, we have the collective Senate privileges, powers and immunities. This important point can be addressed properly, and I have always found it quite easy to do things properly.

The Hon. the Speaker: Are there other interventions? If not, I thank Senator Prud'homme for his point of order and other honourable senators for their comments.

I need not interfere with today's proceedings on this legislation but I should take the matter under consideration in terms of the practice in this place, how it has come to this, and what has caused me, at times, to read lists of senators' names in the order in which I intend to recognize them, even though, as Senator Corbin has said, they have not stood in their place at the moment of

wishing to speak; and sometimes more than two rise at one time. I will bring back a determination of whether my suggestion is out of order. Perhaps that will give me an opportunity to comment on the practice.

In the meantime, I intend to proceed to recognize senators. I will see Senator Joyal next. The suggestion has been made that as the sponsor of the bill on the government side, he should be given the next opportunity to speak following a senator from the opposition side. In terms of the independent senators, I will watch carefully for them and try to ensure that they are given a full and fair opportunity to participate.

Hon. Serge Joyal: Honourable senators, I will be brief. There are three reasons why the amendments of the Honourable Leader of the Opposition are not acceptable.

First, the definition as stated in clause 2 is an inclusive definition of marriage. It includes à la fois couple of the opposite sex as it includes a couple of the same sex. The definition is absolutely inclusive of the two definitions of marriage that we have been discussing.

Second, it would bring doubt to the decision of the eight provincial courts and the Supreme Court of Canada, where 30 judges decided quite clearly in their ruling. The Ontario Court of Appeal said that the common law definition of marriage is the voluntary union for life of two persons to the exclusion of all others. That is quite clear and is consistent in provincial, territorial and federal jurisdictions.

Third, the reference to "notwithstanding" makes one realize that something in the bill might not be as clear as a formal, simple statement of the definition. There is an implication of hierarchy of importance in the definition, which is against the objective of the bill to establish equal access to the civil institution of marriage.

I would ask honourable senators to vote against this amendment.

• (1740)

Senator Cools: Honourable senators, I would like to speak in support of Senator Kinsella's amendment to Bill C-38. I disagree strongly with what Senator Joyal has said on Senator Kinsella's amendment. I would even go further; I am prepared to say that Senator Joyal is wrong on that matter.

Honourable senators, I support Senator Kinsella's amendment because it reduces the radicalism in the bill as it is. I do oppose the bill and I must remind all honourable senators of that fact.

I would like to support Senator Kinsella's amendment in the name of a part of the Constitution that has not been mentioned at all in this entire debate. I am sure honourable senators know very well that I am on the record as saying that the government, in treating the question of marriage as a Charter rights question, has falsely framed the issue. I believe that the weight of the law of marriage in Canada since 1759, and certainly since 1867, has been to protect marriage as the hallowing of the sexual union between a man and a woman in which the public good, the public interest, was the procreation of children.

[The Hon. the Speaker]

I support that position very strongly. My position is that if Senator Joyal and the Government of Canada were so committed to equal rights for homosexual persons, they could have taken the proper legal course, which would have been to bring an amendment to the Constitution Act, 1867 altering or amending section 91.26, marriage and divorce, and section 92.12, the solemnization of marriage in the province, to bring about this alteration or redefinition of marriage.

I have contended for a long time that there is nothing in the Charter of Rights that abrogates or displaces the BNA Act. I sincerely believe that the Charter is a complement. We keep talking about exclusion and inclusion; the Charter is a part of the whole Constitution.

The interest I would like to bring forth today is the public interest or public good. The person in our country who embodies the public good and the public interest is Her Majesty the Queen, the source of executive power.

Honourable senators, we have taken much for granted in this debate. There has been little discussion on the actual legal substantive issues and much on who feels what and who does not feel what and who chooses what and who does not. We have all forgotten that no two people by any act of their own volition can marry themselves, or divorce themselves. The third party in every marriage and divorce is Her Majesty the Queen.

I would like to speak to Her Majesty's role in the law of marriage. The Queen embodies the public character and is a party to every single marriage because it is under the *lex prerogativa*, the law of the Royal Prerogative that marriages in Canada are performed. Under the Royal Prerogative, Her Majesty grants licences to clergymen and commissions to judges, justices of the peace and marriage commissioners to perform marriages. The Royal Prerogative vests legal and civil authority in all of these officers to perform marriages, to pronounce persons married and to confer on married persons that peculiar civil status. The grants of licences and commissions are acts of the Royal Prerogative and, therefore, Her Majesty has a serious interest in this matter.

For the record, honourable senators, I have before me a copy of a licence to a person, an ordained minister, who is authorized to solemnize marriages. In Canada, two licences are required from Her Majesty. As soon as one hears the word "licence," it means Her Majesty's Royal Prerogative. The first is the licence to the clergyman or the commissioner, and the second is the licence that is also given to the couple to allow the authorized solemnizer to perform the marriage.

For the sake of this debate, I would like to put a few matters on the record. I begin by citing no other than the mighty authority, and one of the Constitution drafters and framers, Sir John A. Macdonald. This is recorded in sessional papers number 89, 1877. Dated November 1869, it is Prime Minister John A. Macdonald's legal opinion to his British superiors in respect of the powers over marriage in respect of granting licences. Remember that Sir John A. Macdonald was also the Attorney General of Canada, and this was the Attorney General of Canada's legal opinion. He said:

> The power given to the local Legislatures to legislate on the solemnization of marriage was, it is understood, inserted in the Act at the instance of the representatives of Lower Canada who, as Roman Catholics, desired to guard against the passage of an Act legalizing civil marriages.... without the intervention of a clergyman and the performance of the religious rite. They therefore desired that the legislature of each province should deal with this portion of the law of marriage.

Honourable senators, what Sir John A. Macdonald is referring to is the division of marriage into sections 91.26 and 92.12 of the BNA Act, 1867.

I would like to move to the powers over the actual performance of marriage by licensed persons. I do not believe that anyone here has wrapped their mind around whether section 15 of the Charter concerning equal rights can be applied to Her Majesty's Royal Prerogative in respect of performing marriages. To do this, I would like to go to 1763 — this is following the battles between the King of France and the King of England on the Plains of Abraham. After the settlement, I believe they called the King of France His Most Christian Majesty and they called the King of England His Britannic Majesty. That is quite amusing to some, but this is the state of the law; and that is one of the current problems today — that the law has become irrelevant.

Honourable senators will recall that after the conquest and its settlement a state of peculiar political status existed in Quebec. The Governor General, whose name was James Murray, was given both civil and military powers, which was a unique constitutional situation. The interesting thing, which very few people seem to know, was that on December 7, 1763, Governor General Murray, the Governor-in-Chief of the Province of Quebec, was given the powers over granting marriage licences. Interestingly enough, these powers that were given to him had been the powers of the Lord Bishop of London, because the Lord Bishop of London had exclusive powers over the colonies in the exercise of eclesiastical matters of which marriage licences were to the delegated Governor-in-Chief.

What many people do not understand is that the Governor-in-Chief was given those powers over marriage as the Governor-in-Chief and the Ordinary of the Church of England in the expectation that the Governor General would become the Ordinary, and was the Ordinary of the Church. Let us understand that the powers over marriage moved from the Pope to the Archbishop of Canterbury, to the Lord Bishop of London and then to Canada's Governor-in-Chief. I would like to quote from the instructions to Governor Murray when his office was commissioned by His Majesty the King.

• (1750)

Section 35 of the instructions to the Governor-in-Chief, James Murray, reads:

> You are not to prefer any Protestant Minister to any Ecclesiastical Benefice in the Province under your Government, without a Certificate from the Right Reverend Father in God the Lord Bishop of London, of his being conformable to the Doctrine and Discipline of the Church of England, and of good Life and Conversation;

"Conversation" has a particular meaning.

I am reading from the instructions to the Governor-in-Chief, James Murray, of December 1763. Section 37 reads:

> And to the End that the Ecclesiastical Jurisdiction of the Lord Bishop of London may take place in Our Province under your Government, as far as conveniently may be, We do think fit, that You give all Countenance and Encouragement to the Exercise of the same, accepting only the collating to Benefices, granting Licences for Marriage, and Probates of Wills, which We have reserved to You, Our Governor...

That is very important. This was the practice that was found through the British colonies, at least in the New World. I do not know so much about Australia and others, but through the New World, Barbados, for example.

If we were to examine the Governors General letters patent, we would find these powers repeated. The law of marriage, as it is in the Constitution today, was a part of the Canadian bargain between French and English Canada. Sir John A. Macdonald also authored 44 of the 72 resolutions that became the BNA Act. We must understand clearly that marriage, as it exists in Canada, was part of the authority given to Governor-in-Chief James Murray.

The Confederation debates are replete with this. Hector Langevin, Taché and Sir John A. Macdonald all speak about the phenomenon of protecting marriage. Perhaps we should debate how and why marriage got constitutional protection.

In 1867, the framers of the Constitution were intent on maintaining the status quo. Remember that the French Canadians, as they entered into Confederation, were concerned about the phenomenon of English Protestants creating civil marriages without clergymen. I say that all marriages are civil marriages, because Her Majesty, the civil and religious authority, did both, drawing on the canon law and the civil law. However, the current government's thinking with Bill C-38 was precisely what the French Canadians were objecting to as they came into Confederation. What has this government done in creating this artificial concept of civil marriage? It has lopped civil marriage off from marriage. However, all Canadian marriages are civil, because the civil law and canon law developed and entered the common law. Blackstone tells us this, as do any of the great authorities on the common law.

I would like to read the part of the Confederation compact in respect of marriage that deals with handing these powers to the Governor General. I would like to put on the record a statement from the commission of July 1, 1867, appointing Viscount Monck as the first Governor General of Canada.

Article VII reads:

> And We do so by these Presents Authorize and Empower you within Our said Dominion, to Exercise all such Powers as We may be entitled to exercise therein in respect of Granting Licences for Marriages, Letters of Administration and Probates of Wills, and with respect to the Custody and Management of Idiots and Lunatics, and their Estates; and to Present any Person or Persons to any Churches, Chapels

or other Ecclesiastical Benefices within Our said Provinces of Nova Scotia and New Brunswick, to which we shall from time to time be entitled to Present.

Honourable senators, I have surveyed these questions with some thoroughness and have been thoroughly disappointed that at every stage of this process the government has chosen to proceed, not by law but by personal wishes and personal whims. Honourable senators, the tragedy of this debate is that it casts people who disagree on the questions of the law as homophobes. That is very unfortunate. I am almost reminded of Honoré de Balzac's great story *Passion in the Desert,* which ends by saying that the greatest relationships have often come to an end based on nothing other than misunderstanding.

Honourable senators, I have searched the judgments; I have searched to understand how the Attorney General could switch from one position to the other on the issue. How could the previous Minister of Justice, Anne McLellan, be so wrong and Minister Cauchon be so right? I have searched for the evidence and the arguments that have been brought forth to show that this bill is based on law. I am not a lawyer, but I am a member of the high court of Parliament and I am a parliamentarian. I have a duty to know the law and to trace the thread of it from the time it was previously settled to the time it is being reopened.

Some say that Parliament never legislated much on marriage. Parliament legislated very little on marriage because of constitutional comity between statutory law and common law and the canon law. Until very recently, most political people in Canada viewed the canon law as sacrosanct. They let it be because they wanted harmony and balance in the Constitution.

It would be more difficult than finding a needle in a haystack to find how this government was able to follow the thread of the law of marriage and arrive at this conclusion. That is why I can confidently say that the issue of homosexual marriage has been falsely framed. It is interesting to note that the position I have adopted was adopted in the very first marriage judgment, that of Mr. Justice Pitfield in British Columbia.

I still believe that we have done homosexual people in this country a terrible disservice because, at every stage of the process for the past many years, the legal situation has been obfuscated, manipulated, distorted and turned upside down. The principles have been reversed and, frankly, homosexual people deserve better. I do not believe that you can create the brotherhood of humanity or love by bills that are so shoddily drafted, so hastily put together and so ill-conceived. I believe that if you owe human beings dignity and respect, you treat the law with respect as well, because at the end of the day all that we have to protect us is the law. That may sound sentimental to many, but every time we ignore the law we drive a bargain with the devil, and at the end of the process, the devil will come back, because we will have ignored every law.

• (1800)

Honourable senators, I defend Her Majesty and her interests in marriage. I really wish that the government could have put a bill before us, which they had the capacity to have done, which would have engaged everyone's generosity and understanding of the law.

Debate suspended.

[Senator Cools]

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it is six o'clock; is it your wish that I not see the clock?

Hon. Bill Rompkey (Deputy Leader of the Government): Your Honour, I wonder if you would seek a consensus on all sides of the chamber not to see the clock.

The Hon. the Speaker: Honourable senators, I am looking in particular at the independents but, as well, the opposition and government side. Is it agreed, honourable senators, that we not see the clock?

Hon. Marcel Prud'homme: Honourable senators, unless we are being consulted piecemeal around here, it is very kind, but I do not think that is the way we should proceed with the non-aligned senators. More and more in the future we will seek more information than that.

I note that one honourable senator was not consulted. I was asked; another one was not asked. We respect the duty of the deputy leader to give us a firm commitment. I cannot speak for all of us, but I know that one of us was not consulted.

We will agree not to see the clock, but we would like Senator Rompkey — whom I sat with for many years in the House of Commons — to make a commitment now to tell us that is all that will be discussed today so that we can make an agenda.

Some people seem to know more than others. If we are told that after we dispose of this item, if we do not see the clock, we will put over the remaining items on the Orders of the Day for tomorrow.

Honourable senators, excuse me, please. If some honourable senators are impatient, they may leave. I have been told that there is a dinner being offered at the moment, but that is another matter. If some are impatient, they can go and take fresh air outside.

Senator Rompkey is a man of honour. If he says that after we dispose of this item — that is all he can do — the rest of the Orders of the Day will be postponed until tomorrow, then I expect that we would not see the clock.

May I ask Senator Rompkey to comment?

Senator Rompkey: Honourable senators, it is my intention to propose that after we finish with Bill C-38 and Bill C-48, we stand all other items on the Order Paper until tomorrow. We must finish Government Business and then we would postpone the other items until tomorrow.

The Hon. the Speaker: Honourable senators, I seek the will of the house. Is it agreed that we not see the clock?

Hon. Senators: Agreed.

CIVIL MARRIAGE BILL

THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Joyal, seconded by the Honourable Senator Callbeck, for the third reading of Bill C-38, an Act respecting certain aspects of legal capacity for marriage for civil purposes.

Hon. Anne C. Cools: Honourable senators, I was trying to make the point that we are members of Parliament and the law is supposed to be our finest tool. We should use the law, not our sentiments, not our wishes or our wills.

It occurred to me that I may be creating a slight misunderstanding. Soon after Confederation, Oliver Mowat and the provincial powers supporters started to challenge the federal powers.

The Hon. the Speaker: Honourable senators, I am having trouble hearing Senator Cools. If you must have conversations, I would ask you to carry them on outside the chamber.

Senator Cools: As a matter of fact, that phase of our history, I think Lord Haldane called it the contest between Sir John A. Macdonald and Lord Watson as the Constitution of Canada was changed by the Judicial Committee of the Privy Council, the JCPC, from whatever the framers had intended it to be into something else. I do not want to create any misunderstanding, because the Governor General's power in granting marriage licences thereafter was exercised by the provincial Lieutenant-Governors. However, it is still Her Majesty's power. In 1759, when this all began, marriage was an important issue and it meant much to both French and English subjects as the capitulation settlements were worked out.

The Roman Catholic members of the assembly fought hard and won. Sir John A. Macdonald and the framers went to the London Conference. The entire marriage area was split into marriage and divorce, section 91(26), and the solemnization of marriage section, 92(12) of the BNA Act 1867.

If you doubt me, honourable senators, go and read the first and second draft. Begin by reading the 72 resolutions of which Sir John A. Macdonald wrote 44. Then look at the first, second and the subsequent drafts. I believe there were eight in all; I do not remember.

In any event, honourable senators, it has been a great disappointment to me that this government could not rely on law. If support is so great for homosexual marriage, then put the position and go to the country with a constitutional amendment, amending section 91(26) and section 92(12) to redefine marriage as homosexual inclusive. If support is as great as the government says it is, I am sure it would have been welcomed. I ask myself, politically, why it was easier to dance with certain courts rather than to dance with the public. I believe we all know the answers to that.

There is another matter I would like to clarify. Some people may not know what the Ordinary of the Church was. The church was divided into ecclesiastical provinces. The Ordinary of the Church had important control in many matters over a province.

Honourable senators, I dug this quotation up and my lawyer, when he appeared before the Supreme Court last October used this particular quotation in our arguments. Sir William Blackstone, in his *Commentaries on the Laws of England*, Vol. I, 1765 to 1769, spoke about the relationship that should pertain between the courts and the rest of the system. Our constitutional system presupposes constitutional balance and comity. Sir William Blackstone said:

> In this distinct and separate existence of the judicial power, in a peculiar body of men, nominated indeed but not removable at pleasure by the crown, consists one main preservative of the public liberty which cannot subsist long in any state unless the administration of common Justice be in some degree separated both from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty and property of the subject would be in the hands of arbitrary judges whose decisions would be then regulated only by their own opinions and not by any fundamental principle of law...

Thank you, honourable senators. These matters mean a lot to me. It breaks my heart that we must proceed in this way. Whether it is incompetence at the PCO or laziness, I do not know. I can tell you, at the end of the day, the institutions are important because they must outlive us and so must the law. We should pay careful attention to the thread of the law and to how we settle the law at this point.

• (1810)

I have great respect for Senator Joyal. Senator Joyal knows that. I have worked with him on many issues. However, on this particular issue, if I can use the lexicon of young people, Senator Joyal has called it wrong. He has called the law wrong. The law belongs to all of us. It is not good to bring a division between homosexual people and heterosexual people. It is a terrible thing.

Senator Joyal, I thank you for all your work. I know how hard you work. For that, I respect you.

I would like to thank Senator Bacon for her patience with the committee, because we found ourselves in a situation where we were trying to cram so much into the time available. I would also like to say that, in addition to everything else, Senator Bacon is a very nice woman.

[*Translation*]

Hon. Lise Bacon: Honourable senators, in all serenity, I wish to express my thanks to all those who made a contribution to the work of the Standing Committee on Legal and Constitutional Affairs in our examination of Bill C-38 on civil marriage for same-sex couples.

The circumstances surrounding Bill C-38 were exceptional, lasting well into the summer and with a time limit. The very nature of the matter at hand, and the deep individual moral

convictions and values involved, imposed strict discipline upon us all, which we maintained at every stage of the process. My team and I set out a series of guidelines that shaped the committee's decisions and proceedings, both at the preparatory stage and during the hearings.

The first of those principles was recognition of the constant need for balance between those in favour of the bill and those opposed to it. The final result is clear evidence of this: we heard presentations by 14 groups opposed and 12 in favour, with a total of 33 witnesses. Each time one dropped out or was rejected, the appropriate steps had to be taken to maintain parity. We also wanted to ensure that speaking time was fairly and rigorously divided between witnesses and senators.

Generally, my concern has been to allow maximum speaking time to witnesses who have travelled in order to appear, and to senators attempting to understand issues that are often complex. In the case of Bill C-38, I appealed to my colleagues' sense of discipline and cooperation. As this was such an emotionally charged issue, the work entailed fairly sizeable hearings. I therefore opted to allow a specific amount of time to each, while keeping in mind the witnesses' need to have time to deliver their message properly and for senators to obtain clarifications before having to reach a decision. I have greatly appreciated the participation and the serious approach taken by my colleagues throughout the hearings, despite real fatigue. Professionalism was always first and foremost.

Our choices also took into consideration the criteria of linguistic and regional representation. After consultation, we drew up several witness lists. Considerable effort was required to get the academics involved, when we were well into July and there were no classes.

Efforts were made to find representatives of the Maritimes and the West to ensure equitable representation from each part of Canada.

Clearly, we faced an important challenge with regard to broadcasting our deliberations on television. It is highly unusual for the Senate to sit during the summer. Furthermore, another committee was also sitting at the same time. Under such circumstances, it was extremely difficult to mobilize indispensable and adequate resources while respecting deadlines and standards of quality. However, it was made possible as of Wednesday morning. Some senators insisted that the hearings be televised. I must admit that this was made possible through persistence and quick action. I understand the interest this holds for some senators.

In closing, I want to thank all the staff who made it possible for us to hold hearings: the committee clerk and his staff, and the researchers at the Library of Parliament. I also want to again thank all the staff: Installations Services, the interpreters, the stenographers and the television team that did so well under such demanding circumstances. I also want to thank the pages who were here with us this week. I thank, in particular, the witnesses and the senators for their extraordinary discipline during such long hours.

Right from the start, by encouraging a pre-study, we wanted the Senate to undertake as complete and in-depth a consideration as possible of the bill. In my opinion, we can say "mission accomplished."

I must say that the committee debates were characterized by openness and dialogue. The issue under consideration was extremely important and undeniably complex. Religious beliefs, personal values and moral and legal principles weighed heavily in the balance. Ultimately, the debates demonstrated respect and understanding of others. This was a valuable experience and I want to thank you all for it.

[*English*]

Hon. J. Michael Forrestall: Honourable senators, I join with those who have expressed their appreciation for the work that Senator Bacon has done. I want to express my appreciation again to Senator St. Germain, and to Senator Joyal in particular. When I look down at the end of the hall, there is only one who has been around here longer than I have, and then only by a few months, so we are pretty well equal in that sense.

I have to thank both of these gentlemen. As I say, I thank Senator Joyal for major debate after major debate, serious question after serious question, in helping me to understand the process. As much as Senator Cools belabours the law, the process is equally important.

It has been my habit, and that of many others, to go to the other place to hear particular parliamentarians speak. It is the same here. When I know that several of you will speak — not at the same time, I trust — and from time to time make interventions on matters of consequence to people, I like to listen as closely as I can. I get old, and my memory fails me frequently, but not with regard to impressions.

A lasting impression I have, honourable senators, is that I have never known a serious negative consequence to arise from taking our time and doing the right thing. It takes us a long time to grasp complex matters. I am sure it takes a longer time for the general public.

I am a Roman Catholic. I have, I hope, a relatively open mind with respect to human affairs, human discourse, in a variety of ways. I want to say something briefly about the importance of my declaring what I am. That is not important. However, the attention I pay to my marriage is a blessing that one day I hope I will be judged upon by appropriate authorities. That is what is important, not the marriage ceremony itself. Those are just civil functions. They have been around forever. The method of handling it happened almost accidentally, as Senator Cools would indicate. It left the important part of the marriage to the individual and the religion or process of their choice.

• (1820)

Honourable senators, this is complex and very complicated but nothing has ever gone seriously wrong by taking our time. Senator Kinsella has bridged a very deep concern that I have with respect to this piece of legislation. I have no hesitation here. I am one of those, together with Senator Prud'homme — and there may be others; Senator Fairbairn certainly sat up and looked

down on us in the other place for many years — who dealt with the abolition of capital punishment. I think I voted eight times on that. It does not mean very much but, if you think about it and relive those years, you will recall the way in which it was handled masterfully — not all at once, but step by step. We progressed as a society and we matured. We understood where we were going and we did not mind being led.

There were the debates with respect to abortion and a variety of issues. However, where the legislation survived, and continues to survive without too much criticism, is where we went slowly, where we took it step by step. With capital punishment, it was spread over two or three Parliaments. It took a long time to decide, finally, that there would be an absolute position.

The amendment that Senator Kinsella has brought before us is worthy of care and some attention. He has chosen a very cautious, careful and well-worded vehicle to bridge this gap to resolve some of my problem. I ask you to read it. It is on the desk in front of you. Ask yourself: How does this change the bill, and in what significant way? What dire consequence would flow from acceptance of this amendment as it relates to the bill?

Honourable senators, I have thought about this for a month or six weeks, perhaps. In the hospital, I had time to think about things. It does not put me in a position of having to comment or to be judgmental or to be unfair with respect to the rights of others. Senator Kinsella says:

> That Bill C-38 be not now read a third time but that it be amended, on page 2,
>
> (*a*) by replacing line 39 with the following:
>
> "**2.** Parliament has recognized and continues to recognize the traditional marriage of a man and a woman.
>
> **3.** Notwithstanding section 2, marriage, for civil purposes, is the lawful"; and ...

As we know, the rights of all people are important. I do not see how, in a peripheral way, we dealt with how this amendment might have carried — either the intent or the wording of the government bill. I want to urge you to think about it but keep in the back of your mind that it does not matter whether this bill passes tonight, tomorrow, in October, or a year from now. It is a condition of society that it will progress and it will evolve, and that these matters will come to pass. Far better that they come to pass in peace, understanding and in awareness than in controversy and in division. A week, a month, two months, cannot make much difference in the millenniums ahead of us. The word "infinity" is powerful.

I urge you to consider the amendment. I know that Prime Minister Martin and others have said that they would accept no amendments, but my dear colleagues, I think we would be doing the right thing if we adopted this amendment and sent the bill back to the other place. The matter could then come back to us or not. I am not one of those who believe that, once dealt with, finally, we can and will change it. We can improve it. We can improve it right now. It might be a useful boost to the due process if we were to consider, in a positive vein, Senator Kinsella's very thoughtful amendment.

Some Hon. Senators: Hear, hear!

[*Translation*]

Hon. Lucie Pépin: Honourable senators, I am very pleased to take part in today's debate at third reading of Bill C-38.

Beyond officially broadening the definition of civil marriage to include same-sex unions, passing this bill will be a great breakthrough for us as a society.

This issue has dominated political and legal arenas in Canada for many years. I cannot think of another issue in the recent past that has prompted such careful consideration or broad discussion.

As mentioned earlier, over the past number of months, eight provincial courts, one territorial court, the Supreme Court of Canada, the House of Commons, a special legislative committee and the Standing Senate Committee on Legal and Constitutional Affairs have each voted in favour of a more inclusive definition of the concept of marriage.

This debate was held not only by our institutions, but also by the public and the media throughout the country. The wealth of discussions gave us the opportunity to hear every possible opinion and option imaginable on the issue. The discussions and reactions provoked by this issue remind me of those prompted by the lengthy debate on the right to abortion in Canada. I was directly involved in that fight and it shaped my political career.

• (1830)

In the 1960s, we opened the first family planning clinics in the country and worked to have them accessible and publicly funded. In reality, besides fighting for access to these services, we fought for women to have the right to control their own bodies.

Despite the obviousness of the cause we were fighting for, we ran up against the moral and religious values of many of our fellow citizens. They called our fight immoral, and, worse, a threat to society. A number of years later, we can all see that these forecasts have proven unfounded.

In 1991, the Senate rightly blocked the recriminalization of abortion, thus preventing a major reversal for the rights of women. Today, once again, in 2005, the Senate has the means to defend the rights of a group of Canadians.

I am moved by the spirit that moved me in 1991, when we called on senators to accord Canadian women freedom over their body and afford them recognition as full citizens. I believe that voting for Bill C-38 is a means of defending another principle set out in the Canadian Charter of Rights and Freedoms, that of equality.

The rights of homosexuals have been recognized gradually in Canada. The importance of section 15 of the Charter of Rights and Freedoms is undeniable. It provides that:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination ...

These few words have played a key role in the decisions of the courts on the matter of the marriage of partners of the same sex.

In Canada, we recognize that we are all equal and must all be treated equally, men and women, whether we are Christian, Jewish, Muslim or atheist, and regardless of our ethnic origins, our gender or our sexual orientation. The Charter is described as a living document, which evolves over time and along with society. Its provisions cannot be used to exclude members of Canadian society, but must empower everyone to develop fully as a citizen.

We may rightly be proud of being part of a country that has chosen to protect the rights of minorities and that recognizes the need for our laws to do the same.

For several years now, in light of these constitutional obligations, the Government of Canada has extended the same benefits to heterosexual and homosexual couples, and subjected these couples to the same obligations. The state has no right to discriminate against two consenting adults in a sexual relationship, be they homosexual or heterosexual. So, the government must not only treat these couples the same way, but it must also extend the same recognition to them. I insist on the word "recognize." It is a matter of equality.

We are relieved that Bill C-38 does not change the institution of religious marriage in Canada. I believe that my full support for Bill C-38 would not be the same were it a case of robbing Peter to pay Paul. The distinction between civil marriage and religious marriage, between the contract and the sacrament, has been made clear.

We are also convinced, since it is set out in the legislation, that religious authorities will be able to continue to define and celebrate marriage in accordance with the teachings in their holy books. They will not be required to celebrate unions contrary to their beliefs. Religious freedom is clearly protected in Bill C-38, just as it is in the Canadian Charter of Rights and Freedoms, from which it draws its inspiration.

Furthermore, extending civil marriage to same sex partners takes absolutely nothing away from heterosexual couples who are already married or who want to marry. Many couples will continue to seek formal recognition of their relationship, with all its associated benefits and obligations.

Honourable senators, I am proud of the message we are sending to our homosexual constituents who have suffered from discrimination and stigmatization. We are telling them that, when they choose a life partner or when they meet the love of their life, their relationship is equal to a heterosexual relationship. As long as that couple stays together, they will receive the same recognition and, should they separate, they will receive the same protection. Legally, their partner will never again be considered a stranger, but rather their legitimate spouse.

With Bill C-38, we are also telling young homosexuals that they have no reason to be ashamed of who they are. Their difference is not a defect. Young gays and lesbians can also aspire to meeting someone whom they can marry and share their lives with, and even have children with. These young people will not experience their homosexuality as a life sentence of marginalization.

Bill C-38 is a reminder that the decision to get married or not is indeed a lifestyle choice. Sexual orientation is neither a choice nor a lifestyle.

Honourable senators, in the next few hours we will be voting on this important bill. It is my wish for us to join our voices with those of the courts, the tribunals, the House of Commons and Canadians who, in a poll this week, have asked us to move forward.

When I vote in favour of Bill C-38, it will be a great moment in my mandate as senator, since I will be joining my colleagues in building a fairer Canadian society. For many of our fellow citizens, this will be the last step in a lengthy fight for equality.

I cannot close without commending those who worked behind the scenes, directly or indirectly, to help Bill C-38 see the light of day and become law. I am thinking of Michael Hendricks, René Leboeuf, Michael Leshner and Michael Stark, Canadian representatives of Equal Marriage, Égale Canada, and the Coalition québécoise pour le mariage civil des conjoints de même sexe, to name a few. I know the effort it takes to move rights forward. This fight is fair and this cause is noble. Bravo!

[*English*]

Hon. Leonard J. Gustafson: Honourable senators, I am privileged to be able to say a few words tonight, and they will be very few. I want to state on the record that I am opposed to Bill C-38.

Senator St. Germain: Hear, hear!

Senator Gustafson: The situation here reminds me of when we voted in the House of Commons on the Constitution and civil rights. This is a very solemn occasion. Each one of us must examine our conscience and how we see a bill like this impacting the future of a country like Canada.

I feel that we are neglecting our children in this bill. I heard a statistic last week that startled me: Suicide is the number one killer of young people from the ages of 16 to 26. The children and young people of today are searching for answers in life. It is most important that we have an environment where they can be strengthened and where they can grow up to be strong men and women.

I am very concerned about this bill because I do not think we really understood exactly what it involved. I am concerned from the point of view of the general public, and I am sure many honourable senators are finding the same thing as I am. You walk down the street and someone asks you about this bill. That is all I have heard. I have not run into people who are supporting this bill, so I wonder where these polls are coming from. I do not think they are a true poll of what is really happening out there with the general public. That happens to be the way I read the situation.

I just phoned the Saskatchewan legislature, and the woman I spoke with told me that she did a poll of her own. She just sent out an inquiry. I asked, "What did you get?" She said, "99 per cent." Now, that is Saskatchewan, and I do not think the sentiment is any different in Alberta or Manitoba.

• (1840)

My concern is for the public that has not been heard. Why has this bill been rushed through so quickly?

I want to read into the record some of the communications that have crossed my desk and have likely crossed the desks of all honourable senators. The first one is from the Evangelical Fellowship of Canada, which represents 75 churches and 140 organizations and denominations in about 11 per cent of the Canadian population. Their message reads:

> We strongly urge you to take seriously your responsibilities to act as the Chamber of sober second thought and carefully consider the concerns expressed by so many Canadians about the implications that the passage of this bill would have on marriage, on religious freedom, and ultimately on Canadian society.

The second one I will read is from Campaign Life Coalition Manitoba, whose message is:

> Marriage between a man and a woman is the only natural union that has the ability to procreate and sustain society.

The third one is from the Canadian Conference of Catholic Bishops. Their message reads:

> The issues at stake are not only the basis and definition of marriage as established and celebrated since time immemorial by all religions and cultures and as inscribed in nature. What is also at risk is the future of marriage as a fundamental social institution, together with the importance that society accords the irreplaceable role of a husband and wife in conceiving and raising children. Their partnership ensures a stable context of family life, continuing with past and future generations, and gender models involving both mother and father.

Their message is extensive. They indicate how they feel about the situation and about this bill being forced upon Canadians.

The fourth one that I will read is from Dr. Mohan Rageer, physician and former professor in the Faculty of Health Science at McMaster University. His message reads:

> A basic Hindu belief is that creation requires the union of two principles of God: one female, the other male.

The fifth one, from Rabbi Dr. David Novak, Professor of Jewish Studies at the University of Toronto, reads:

> Same-sex marriage has no basis whatsoever in the normative Jewish tradition; indeed, it contradicts our tradition from its very beginnings in Biblical revelation.

The sixth one expresses the Sikh viewpoint as expressed by Nirmal Singh Dhillon, Producer/Director of Insight into Sikh Television. His message reads:

> These are times of political correctness and self-image. Today, the social debates are not ruled by right or wrong...rather what is politically correct and what will portray one in a light that would make them more popular. In times like these, often the "right" takes a back seat. According to Sikhism "marriage" is a union between "husband" and "wife."

The seventh message that I will read was sent by Dr. Mobarak Ali, Imam of the Etobicoke Muslim Community Organization. It reads:

> In Islam, marriage is a sacred institution, not simply a custom or tradition. By definition, a properly constituted marriage is between a male and female only.

The eighth one was sent by Reverend David Mainse, founder of Crossroads Television, 100 Huntley Street. His message reads:

> A true believer in Jesus Christ follows "His" instructions and views on pro-traditional marriage. Marriage predates government. It is a religious covenant. Marriage is a union of "one man and one woman".

Honourable senators, there are many more letters on my desk that are opposed to the proposed legislation we are debating this evening. I will read one more into the record:

> As a Senator, you are being asked to exercise sober second thought. In the name of our forbearers and all who have fought, suffered and died to uphold the timeless ideals that are at the core of our nation, please do not give your consent to the same-sex marriage legislation as presently presented to you by the House.

Honourable senators, this has been a friendly experience for me. I sat for 14 years in the House of Commons and have been in the Senate for 12 years now. I appreciate the Senate and the work that senators do, but we have great responsibilities. This is one of those moments when we truly need to search our souls. As we vote on this bill, I would urge all honourable senators to consider the many people who are writing to us because they are concerned about these issues. My hope is that the Senate does the right thing in respect of Bill C-38.

Hon. Jane Cordy: I wish to thank the honourable senators who have participated in the debate on Bill C-38. While passionate views have been expressed about the definition of marriage, I agree with others who have stated that the debate should be fair and balanced; and I believe it has been.

I would also agree that very few are on either extreme of the debate. In fact, it is important for all honourable senators to recognize that whether they vote for or against Bill C-38, those who spoke share many commonalities in this debate. This should be remembered at the end of the day.

Honourable senators, most of us grew up believing that marriage was between a man and a woman. That is the way it was. Most families in my neighbourhood had kids. but some did not and that was okay too. Their family consisted of a husband and a wife. As kids, never in our wildest dreams did we think of marriage as being between a man and a man or a woman and a woman. I am sure we can all remember the whispers and hurtful comments about and to someone who was suspected of being gay or lesbian. Is it any wonder they often hid their sexuality and pretended to be something they were not? A friend recently said to me, "Gays and lesbians have been getting married for years, just not to one another." Their attempt to fit in and be part of the so-called "norm" by marrying often hurt not only themselves but also their spouses and their children.

When I started teaching school in 1970, I had a class of 38 students. They all had a mother and a father. They all were children in traditional families. Was this a good thing? Well, for most it was but for some it was not.

In my last year of teaching in 2000, there were students in my school being raised by single mothers and single fathers. There were stepmothers and stepfathers. There were kids being raised by grandparents and kids being raised by foster parents. There were kids who had not met a biological parent.

• (1850)

Honourable senators, no matter how much we might wish it, the picture of the traditional family, with a mother, a father, two kids and a dog, is not the reality. It has been my experience as an elementary school teacher for 30 years that children thrive in a loving, caring, supportive home. The gender of the parents is not important. What is important is a family sharing mutual love, respect, responsibility and faithfulness.

Change is not easy. Looking at issues from a different perspective can be a challenge, particularly when the issue is marriage and we are looking at it in a way that is so dramatically different from what we grew up to know. It can make us feel uncomfortable and say, "Let us leave things as they are." Honourable senators, I do not believe we can do that. We cannot exclude people from proclaiming their love publicly by exchanging marriage vows because they are gay or lesbian.

I am a Catholic, and I think it is extremely important to look at the question of religious freedom. Bill C-38 respects the religious freedom guarantees of the Charter. Religious groups are ensured, as they should be, to refuse to solemnize same-sex marriages. Not only is the principle of religious freedom included in five separate places in the bill but the Supreme Court has consistently indicated that freedom of religion must be fully respected.

Allowing same-sex couples to marry will not diminish the marriage of an opposite-sex couple. Gay and lesbian couples can now live together. I suggest we do the right thing and allow them to marry.

Honourable senators, I agree with Senator LeBreton's comments on July 6. Let us decide on this issue and move on to dealing with major issues facing us, such as medical waiting times, mental health, children living in poverty and safety and security for Canadians.

Senator Bryden once quoted me as saying in a magazine article that when you make a decision, you have to be able to look at yourself in the mirror and know that you have done the right thing. Honourable senators, for me, voting in favour of Bill C-38 is the right thing to do.

As I stated earlier, change is not always easy, but change is inevitable. In this case, we should not only risk the change but embrace the change — a change that demonstrates tolerance, acceptance and respect.

Some Hon. Senators: Hear, hear!

Hon. Consiglio Di Nino: Honourable senators, before I start reading the notes that I have prepared, I would like to challenge my friend Senator Cordy, a lady whom I respect greatly, and tell her that she is insulting me. Not only is she insulting me, she is insulting everybody who is voting against this bill for the right reasons.

The last time that I stood up, I said that it is disingenuous; it degenerates the debate to a level that I think is harmful to all sides when we suggest that someone has an exclusivity on love and respect and the proclamation to live together in a wonderful relationship. If that is what Senator Cordy and others are insinuating, that they only have the right to recognize, to understand what that means, and that some of us are suggesting that two people cannot live together in love, then they are wrong, and they are doing an injustice to this debate. I am insulted by that. I have never said that. If you read my comments, I have suggested that that is not what this debate is all about.

This afternoon I wanted to ask Senator Joyal some questions. Unfortunately, because of time limitations, I was unable to do that. Frankly, if I understood him correctly — and I have not read his words because I was trying to follow what the honourable senator was saying — I want to congratulate him because I got from his words something I had not got from the debate thus far. That is that he wants to change the definition of marriage. That is what I understood from his comments. I think that is at least an honest description of what this debate is all about, because it really is dishonest to talk about love and respect and all the good things that make the union of two people a meaningful one or a fulfilling one. I think that is the right way to go about it, and I agree with Senator Joyal in that sense.

I want to make a couple of points on which I intended to ask questions, dealing with religious freedom. He said that no one can be forced to perform marriage ceremonies if it is against their religious beliefs. Some 30-odd people have had to leave their jobs — and I will speak more about that later when I read my notes — in Newfoundland, Saskatchewan and I cannot remember the other province, but I have it in my notes.

That is not religious freedom. I think it was Senator Joyal, if not someone else, who mentioned that the Knights of Columbus refused to rent their hall for the celebration of a same-sex marriage. They are being chastised and I think their decision is being challenged; they are being called bigots and things of this nature. That is not religious freedom.

I think Senator Joyal said, and I agree with him and I support him on this, that it is about restoring the dignity of some human beings. I have always supported that and I will continue to do that, but we should not do that at the cost of destroying the dignity of some others. I think that is what this bill would likely end up doing.

The debate on Bill C-38 has helped create a state of intolerance and divisiveness, as we have seen even in this chamber, particularly at the extremes, widening the gulf between all sides of the issue. This will make it more difficult to reconcile the difference created; and reconcile them we must if we are to continue to live in harmony as an understanding and tolerant society.

I put the blame squarely on the shoulders of Mr. Martin. He has shown he lacks the leadership qualities necessary to stickhandle an issue of conscience such as this. For me, the frustration is that I truly believe that the acrimony and conflict could have been avoided; and many Canadians, both heterosexual and homosexual, agree with me.

There are those who confuse the dialogue with talks of rights and privileges, as well as those who speak of love and respect as if some group or other could lay exclusive claim to these qualities. These are false arguments and do not do justice to the seriousness of this debate.

The vast majority of Canadians have supported, and continue to support, full and equal rights and privileges for all Canadians; and yes, with some struggle, the extension of full rights and benefits to same-sex couples is now a reality most Canadians accept and agree with. What is this debate all about? For me, it is simple; it is about an eight-letter word — marriage. Those of you who were not present when Senator Banks spoke on this issue would do well to read his comments.

• (1900)

This debate is not about love and respect, as some would have us believe, nor is it about same-sex couples joining in a lifelong relationship of support, comfort, responsibility and, yes, love. Our communities have mostly accepted this and it is now, or soon will be, a reality across our country, as it should be.

For me, and I believe the majority of Canadians, it is the word "marriage" that defines — and has defined for centuries, at least — the union of a man and a woman. This is something that most members of the other place believed not so long ago. I was disappointed to see that a number of our colleagues in the other place, on their way to cabinet or parliamentary secretarial posts, changed their minds and their hearts on this issue.

I honestly believe that we could have avoided most of the acrimony and divisiveness by inviting the stakeholders to find a solution, which I am convinced exists. When an honourable settlement to a difficult issue is reached, both sides leave the table somewhat unhappy because they have both left something on the table. In an honourable settlement there can be no absolute winner or loser, as this Liberal government is forcing us to accept on this issue. We are a legislature. We make laws, and, in harmony with the stakeholders, we can create laws or change laws to honourably accommodate both sides of this issue. However, I guess that will not happen. I can count.

Another concern that some of us have is the impact that this discordant debate will have on religious organizations and conscientious objectors. I was struck by letters to the editor in Saturday's *Globe and Mail* in response to Cardinal Ouellet's recent comments on the risks the church will face of being branded homophobic if the church refuses to marry same-sex couples.

I will quote from two of those letters to the editor. One reads:

> The good cardinal need not worry. It's not a question of what you call it: The law allows churches to be homophobic if they are asked to marry a gay couple, just as they can be non-inclusive about who can receive sacraments and picky about whose children can be baptized. It's their club and they run it their own way.

Another letter states:

> I'm not sure which is more offensive — his assumption that bigotry and homophobia are somehow entitled to protection because of their religious origins, or the chutzpah involved in talking to the media about how you feel you can't express yourself.

I understand there have been many more, and you can bet that many of them would be unprintable.

As well, a story in today's *Globe and Mail* tells of a man who is caught in the middle of this divisive conflict. A Mr. Orville Nichols, a marriage counsellor in Regina, faces losing his job because of his refusal to marry same-sex couples, which he states is against his religious and personal beliefs. So much for religious freedom, and the law is not even passed yet.

The story also reveals the following:

> In Newfoundland, at least one in 10 marriage commissioners resigned after the province said they must perform the ceremonies. In Manitoba, where a similar edict is in effect, at least 12 commissioners have resigned. And in Saskatchewan, at least eight of the commissioners have quit, but Mr. Nichols refused to join them.

I would like to extend my congratulations to Mr. Nichols for standing his ground and fighting on behalf of those who are caught in the middle of what should have been an avoidable conflict. These divisions, this acrimony, these risks of potential

future consequences, need not have existed if the Martin government had had the courage to confront this issue on behalf of all Canadians and had encouraged both sides to reach an honourable and fair compromise. However, Mr. Martin, a dithering and ineffective Prime Minister, chose his way because, perhaps like some others, he speaks to God and only he has the answers.

I must admit that some years ago I was prepared to give Mr. Martin the benefit of the doubt. I had hoped that he would make a good prime minister, particularly after the performance of his predecessor. How wrong I was. The way he has handled this debate has proven beyond doubt, at least to me, that he will go down in history as one of the worst examples of political leadership in this country. Even worse, I fear that the reaction of many Canadians who feel marginalized by this issue will create a very difficult wound to heal. I hope that we can soon find the leadership that is missing in the Martin government in order to begin to heal the rifts that now exist in Canadian communities — rifts that have been seriously inflamed by the debates on this issue.

Honourable senators, I fear that this debate is far from over. If we in this chamber have a real role to play in the development of public policy, we must confront such issues on behalf of all Canadians and all stakeholders of all regions of our country with openness, fairness and empathy, without taking sides, for no one has exclusiveness on right or wrong, on wisdom, or on goodness or evil. Let us pray we find the wisdom to recognize this.

Hon. Senators: Hear, hear!

Hon. Noël A. Kinsella (Leader of the Opposition): In addition to commissioners of marriage, clerks of the Federal Court have the authority to witness marriages. Has Senator Di Nino heard whether the Department of Justice, under the authority of the Minister of Justice, obviously, is conducting an inquiry to determine which Federal Court clerks will and will not perform same-sex marriages, should the bill pass?

Senator Di Nino: Although I have not heard this officially, I have heard rumours that this is happening, not only with regard to clerks, but also with regard to other government officials who must deal with this issue. I believe that their roles in this matter will be raised quite soon.

My fear is that, as is happening in the provinces, they will either be forced to perform the ceremonies against their religious beliefs or they will quit their jobs. I hope I am wrong. I have only heard rumours and nothing official. Perhaps Senator Kinsella has more information than I have.

Senator Kinsella: Senator Joyal directed our attention to the principle of reasonable accommodation, but I hasten to add that the principle of reasonable accommodation under human rights statutory law in Canada operates on the basis of the *de minimis* principle. The jurisprudence has established that it is a minimal requirement to reasonably accommodate.

To the question of Federal Court clerks being asked by the Department of Justice whether they would conduct such marriages, and that if they would not they would have to indicate that it is for religious reasons, does Senator Di Nino have any sense of what impact that declaration by a Federal Court clerk would have on that clerk's career progression?

Senator Di Nino: I thank Senator Kinsella for that question. My guess would be that the process of advancement would be cut off. I suspect that they would probably suffer the consequences of their actions.

• (1910)

We are just beginning to see the effect this legislation — if it is finally passed by this body — will have on a number of areas across this country, including attacks on the church by extreme, homophobic folks on one side of the issue or attacks on other organizations, whether they be Christian, Jewish, Muslim or Hindu.

I agree with Senator Kinsella that this issue has raised its ugly head and will probably impact negatively on those who, because of religious beliefs, will not follow the laws of the country as they are written now.

Hon. David P. Smith: Honourable senators, I rise to speak in support of Bill C-38. It is important to me that my views be on the record. I hope that as I go on, it will be clear why I feel strongly about this.

I am and have always been a strong supporter of the Charter and, in particular, those concepts that relate to the issue of minority rights. Like Senator Joyal and Senator Gustafson, I was a member of Parliament in 1981 when the Charter was adopted. Certain episodes are among my fondest memories of public life.

I recall the events surrounding people with disabilities. In 1980, Prime Minister Trudeau appointed me as the chair of a special committee to review the issue of disabled persons, both physical and mental. The United Nations declared 1981 to be the International Year of Disabled Persons. We went across the country and had over 600 deputations. We brought in a report in February of 1981. A few months later, when the first draft of the Charter came out, there was no reference in section 15 to physical or mental disabilities. I was upset beyond belief. I got up in caucus. Some of those caucus sessions were like primal scream therapy sessions. I remember one cause that Senator Prud'homme championed, not successfully, but he had a point.

I spoke about five times to say why it was important that there be a reference to people with physical and mental disabilities. I was getting discouraged and some people would say privately, "We don't know what it means; we don't know what the courts will say. It might mean costly decisions." I said, "You have to believe that the courts will interpret this practically." After the fifth time, I was walking back to Centre Block and former Senator MacEachen put his arm around me and said, "Don't give up; you're doing the right thing."

I will never forget that next week in caucus. When I got up and I started to speak, Mr. Trudeau stood up and said, "David, we do not have to listen to that speech again; we are putting it in because it is the right thing to do."

Some Hon. Senators: Hear, hear!

Senator Smith: Honourable senators, I can read section 15. It is good sometimes to get back to basics:

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Honourable senators are familiar with how the courts have interpreted the relevance of the word "sex" in the Charter. I readily admit that when we were debating the Charter, the issue of same-sex marriage was not remotely on anyone's horizon. I agree with the direction in which the courts have gone.

I should point out by way of disclosure — not by way of conflict — as some of you are aware, my wife is the Chief Justice of the Superior Court of Ontario. She chaired the panel when the matter went to the divisional court. That panel unanimously agreed that the issue did offend the Charter; they said that this was a fundamental issue that they thought should be determined by Parliament and they gave Parliament two years to deal with it. I agreed with that. Parliamentarians should grapple with these issues head-on.

When this matter went to the Court of Appeal, the Court of Appeal said, "We are implementing it immediately." It has been more than two years, so it does not matter now. Senator Joyal has given a thorough overview of the law, and I do not wish to repeat those legal arguments.

I wish to come at this discussion from one particular perspective. I know that some Canadians believe that Bill C-38 interferes with the freedom of conscience of religion found in section 2 of the Charter. I am particularly sensitive to this viewpoint because, my very good friend — and we will always be friends — Senator Gustafson, and I both come from evangelical backgrounds. I am very close to the evangelical community. I have a great affinity and understand the perspectives of this community. I know that this body has been at the forefront of the opposition to this proposed legislation.

My late father, my grandfather, both of my brothers, an uncle, a nephew and three first cousins were or are all ordained ministers, and they are all evangelical. Most representatives from that community have spoken out and reacted negatively. While I respect their point of view and have an affinity with the community, I do not really react that way at all.

I regard myself as a Christian. To me, Christianity means many things. It means love, understanding, compassion, respect for fellow human beings, tolerance and equality of rights. I believe that this issue deals with equality, the Charter and minority rights. I do not accept that it really is an issue that is a religious or faith issue.

Section 2 remains in the Charter. Section 2 says:

> Everyone has the following fundamental freedoms:
>
> *a*) freedom of conscience and religion...

Clause 3 remains in the bill and clause 3.1 has been added, which says: "For greater certainty..." What could be clearer than that? Clause 3.1 is a lengthy reinforcement of clause 3.

Regardless of what my particular religious beliefs are, or anyone's beliefs or non-beliefs, if they are agnostic, atheist or whatever, I am a firm believer in the separation of church and state. I do not want my laws of the country that I live in to be determined by preachers, mullahs, rabbis, cardinals or priests. I want laws to be determined by bodies, primarily in the elected chamber, but also in this chamber in Canada that represents everyone.

I know that there have been suggestions and fears that some priests, rabbis, mullahs and evangelical preachers will be forced to perform marriages against their beliefs. I do not buy that. I do not think the law could be clearer the way it is written. There is nothing new about this.

Honourable senators are familiar with the view of priests regarding marrying divorced persons. Some orthodox rabbis would not perform a marriage if one person of the couple was from a conservative or reform group. Some Hassidic sects would not perform marriages if one person of the couple was from another Hassidic sect. I can tell you about some of the eccentricities of various evangelical preachers, which you almost have to smile at. The point is that there is nothing new about this dynamic. Have you ever heard of a court forcing any of them to perform those kinds of marriages? Can you cite me a case?

Senator St. Germain: Saskatchewan did it.

• (1920)

Senator Smith: It is a different matter where it is a paid employee of the provincial government.

An Hon. Senator: What is the difference?

Senator Smith: I regret that there has been some fear-mongering that has crept into the debate, perhaps not here in this chamber so much — I think this has been a good debate — but out in the public. I do not think there are any suggestions that hold any water whatsoever that that perspective has any basis.

I want to close on another perspective, which may not affect anyone's thinking other than mine. It may not be politically correct. You may not think it is relevant to anything. I will mention it, for what it is worth.

I have known some people who were very hostile to anyone from the gay community. I can think of three particular families I have known. Much of the hostility had to do with religious beliefs. All of a sudden, they found out that someone in their family was gay. It affected their thinking. It affected their thinking because this was someone they knew and loved and that they thought should have rights.

I have many gay friends who have talked frankly and candidly to me about what it was like to grow up having a gay orientation. In several instances, I asked, "When did you first feel that way?" Without exception, they all said that they had always felt that way.

I know a young man who had known this all his life. He came from a broken family. He was raised by his grandparents. They took him to a camp where we had a place. He was the same age as my twin daughters. The families were very good friends. From the time he was three, I thought he would be gay, and he was. My daughters go every year to the Gay Pride parade in Toronto to show support for their friend. They think he deserves equal rights. I am proud of them for doing that.

Last week I was in England, where I saw an article in the *Times* of London about a book that has just been published. The article is entitled "Born gay or made gay: which camp are you in? Sexual orientation is fixed at birth, a challenging new book claims." The name of the book is *Born Gay: The Psychobiology of Sex Orientation*. I am not a scientist. I cannot say anything about the validity of the science in the book, but it confirms my instincts over the years. Some of you may think that this is not relevant to anything, but it reinforces my view.

My friends on the other side, I love you; I respect our faiths. We will continue to be friends and have fellowship together. I just have a different perspective. I want to reach out to this community and give them the minority rights that the Charter promises them.

Senator Cools: Honourable senators —

The Hon. the Speaker *pro tempore*: Senator Cools, there are senators who have not spoken at all. You have spoken once.

Hon. Terry Stratton (Deputy Leader of the Opposition): I have a point of order. Senator Cools spoke to the amendment. She now wants to speak to the bill itself. I think that is wholly appropriate.

Honourable senators, are we on the amendment or are we on the bill? Senators have spoken to the bill itself and others have spoken to the amendment.

The Hon. the Speaker *pro tempore*: We are on the amendment.

Senator Stratton: When will you tell us that we are on the bill itself? Senators on both sides are assuming that we are speaking to the bill. There has been no clear understanding in this chamber whatsoever of what we are speaking to.

The Hon. the Speaker *pro tempore*: Are we ready for the question on the amendment?

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I would tend to agree with Senator Stratton's analysis that senators have been speaking on both the amendment and the bill. The chair has quite rightly recognized senators as they have stood, and they have spoken either to the amendment or to the bill. There was clearly an understanding, certainly among the senators on our side, that they could speak to either the amendment or the bill.

We would be quite content to hear senators on the amendment or on the bill.

The Hon. the Speaker *pro tempore*: May I ask a question for edification? Will senators be allowed to speak twice, prior to someone who has never spoken? I want to know what the agreement was.

Hon. Marcel Prud'homme: I have a point of order. I have raised it privately and I will do it publicly. We are at this time, agreement or not, on an amendment. If there was to be a multiplicity of amendments, which I do not think would be the case, any senator, regardless if whether there was agreement or not, would be able to speak on any amendment as long as they spoke once on any amendment. We must first dispose of the amendment and then go to the final reading and final vote.

If some senators have chosen to speak to both the amendment and the main bill, so be it. I think that is quite fair. They will not repeat their own speech. We will listen to them.

I do not intend to participate in the debate on the amendment, but I intend to participate on third reading. I want this to be clear. This is the rule; this is correct, and this is the way to go. Senator Cools can get up now and ask questions, but she has already spoken to the amendment. She is a good friend, which I will not deny, but if she wants to do so, she can speak later on. Now she can ask questions, if time has not expired, but she has spoken to the amendment, technically speaking, according to the Rules of the Senate. There may have been agreement, but in this corner we are unaware of any agreement where everyone would speak to both together and then we will have a final vote.

The vote will take place when the debate on the amendment is finished, at which time we will go to third reading. There may not be any speech on third reading, but I will be speaking on third reading.

The Hon. the Speaker: For clarification, this is Senator Prud'homme's point of order.

Just so that I can clarify, Senator Cools, is the point of order as to whether or not the speeches given are relevant to the amendment, or is it whether or not, as you have correctly recited the *Rules of the Senate*, one can speak once to an amendment and one can speak once to the main motion?

Senator Cools: Thank you, honourable senators. Let me say quickly that I am always concerned when we proceed in this way. It should always be clear, on every point in the process and the proceedings, what the question is before us.

I was under the impression that we were on the main motion, so let me be crystal clear. I earlier exercised my right to speak to the amendment. Now I am exercising my right to speak to the main motion, which is the motion for third reading, correct?

The Hon. the Speaker: When we are on the main motion, you can speak. We are now on the amendment. Is that understood?

Senator Cools: Are we on Senator Kinsella's motion in amendment or are we on the main motion?

The Hon. the Speaker: Honourable senators, perhaps I can clarify. My understanding of where we are is as follows: We are debating Bill C-38 at third reading stage. We had, I believe, Senator Joyal, Senator St. Germain, Senator Austin and Senator Stratton speak to the main motion at third reading stage.

• (1930)

Senator St. Germain proposed a "hoist" amendment, which we voted on. It was defeated.

Then we resumed debate, and Senator Kinsella moved an amendment. We are on that amendment at the present time. When we have disposed of debate on the amendment, we will then dispose of the amendment. When we have done that, we will be back on the main motion.

Senator Cools spoke to the amendment, but she has not spoken on the main motion, to my knowledge. I will double-check with the table. She will be entitled to do so when we reach that point in the proceedings.

Senator Cools: I will comply with that, but I was clearly under the impression that the last several speakers on the other side were speaking to the main motion because I did not hear them express any opinion for or against Senator Kinsella's amendment. I therefore inferred that we had moved on.

The Hon. the Speaker: I can understand how that happens because, as is our practice sometimes, we are very liberal in our interpretation of what is relevant to an amendment or to the main motion. That sometimes happens. It is an interesting matter in terms of our practice, but there is nothing new about it. No one has objected to it, that I have heard.

It is now in order for us to continue debate at third reading stage on the amendment of Senator Kinsella.

Senator Rompkey: Honourable senators, perhaps we could have an understanding that the speeches up to now have been on the amendment, that they are now concluded, and that speakers from now on will be on the main motion so that at the end of the day we could have our votes and conclude it in that way. I think it would be preferable to have all the votes together at the end of the day. If we can agree that speeches up to now have been on the amendment, speeches from now on will be on the main motion and then we can have our votes.

Senator Stratton: This side would concur with that. There has been confusion, obviously, but we would agree that the speeches to date have been on the amendment. From here on, they will be on the main motion itself. We will then deal with the votes right at the end, both with respect to the amendment and to the bill itself.

The Hon. the Speaker: It might be helpful to remind honourable senators that we have had a practice in the past, particularly when we have more than one amendment, of allowing senators to address either the amendment or the main motion in their remarks. On a de facto basis, that is what we have been doing.

It is difficult to proceed as suggested in that the words you use preclude a speech on the amendment. I do not know that that would be in accordance with our proceedings. However, if we simply clarified that these speeches may be addressing the amendment or the main motion, as has, in my opinion, been the case since Senator Kinsella's amendment was moved, then that understanding would hopefully clarify for everyone that it is in order to speak. If you address your comments to touch on the amendment, that is fine. If you address comments on the main motion, that is also fine. Unless we get another amendment, that should work well. If we get another amendment, we have a precedent for that, and that is what we call "stacking" amendments. However, we should not deal with that unless we encounter that problem.

With your permission, I would suggest we resume the debate.

Hon. Senators: Agreed.

The Hon. the Speaker: Senator Smith, were you finished?

Senator Smith: Yes, I am finished.

The Hon. the Speaker: I was about to turn to Senator Stratton. Do you want to comment, Senator Cools?

Senator Cools: Senator Stratton, my leader, had pointed to me and told me to go, so I went. I thought I was being very compliant.

The Hon. the Speaker: I did not deal with that. Senator Cools and Senator Prud'homme are both rising on that.

The second speeches should, I think, be given at the appropriate time, which is when we have disposed of the amendment. We could dispose of the amendment now, if you wish.

Some Hon. Senators: No.

The Hon. the Speaker: Or we could do it later, but if we do not do that, then we will have a little bit of trouble keeping track of who has spoken twice and who has spoken once. I would propose to see Senator Cools when we have disposed of the amendment.

Senator Cools: I think, Your Honour, that the leaders have got together and seem to have agreed that this is the way to proceed, based on what they just said. In other words, perhaps the way they are asking us to proceed is that when you rise, you say if you are speaking to the amendment or to the main motion. Is that my understanding, Senator Rompkey?

The Hon. the Speaker: Honourable senators, could we just proceed by way of leave? Senator Cools will now give her speech on the main motion. Is it agreed?

Hon. Senators: Agreed.

Senator Prud'homme: I am sorry, but I will not give leave. The Senate has to show an example. Everything has been going fine so far and has proceeded in an orderly fashion. It is the same subject. Some members may have spoken as though they were on third reading. I have no objection to that, because that means they will not repeat their speech. Now we should dispose of the amendment intelligently and call for a vote on it. That could be very rapid, depending on the whips. Then we fall back on the main motion.

For some, the vote may be different, and not only the vote may be different but the arguments could be different. I do not think we should mix the two. You have been proceeding in an orderly fashion, leaving a lot of leeway in the debate, but I think now we are on the amendment.

With all due respect to my friend and hardworking colleague Senator Cools, she has spoken to the amendment. Let us dispose of it. Are there any other senators who wish to speak to the amendment? If not, call the vote. Unless there is a new amendment, which I do not think will happen, then we fall back on third reading.

On third reading, those who have already spoken to the amendment and at third reading will most likely not repeat themselves. Very few people may see fit to speak on third reading only and not the amendment. For me, at this late time, it would seem logical to proceed that way, and it would be according to the rules.

There may have been an agreement between some that we mix the two together. The danger, when you do not follow the rules and mix the two together, is that some think we are talking on third reading, and they make their speech on that. Others are under the impression that we are talking about the amendment, and they make their speech on that. That is my impression.

I see a ruling from His Honour that is already clear. He will say, "Do any other honourable senators wish to speak to the amendment? If not, we will dispose of the amendment." Then we will be on third reading and can have an intelligent debate so that everyone can understand what is going on.

Hon. Jack Austin (Leader of the Government): Honourable senators, I think the only way to deal with this matter is in the orderly way that we normally follow. I would propose, then, that we call the question on the amendment, unless there are other speakers who wish to speak on the amendment. We can have the vote on the amendment and then proceed to third reading, as Senator Prud'homme has suggested.

The Hon. the Speaker: That is a good idea. There is only this to add: Senator Banks would like to make a subamendment to the amendment; is that correct?

Senator Banks: Yes.

The Hon. the Speaker: For him to be able to do that, we have to stay on the amendment. I propose now to see Senator Banks and then follow the suggestion made by Senator Austin and deal with the amendment and the subamendment, assuming the subamendment is in order.

Hon. Tommy Banks: Honourable senators, I first want to say that I wish that all of the people who are critical of the way this bill is being handled in Parliament had been here to see the debate at second reading, had seen the proceedings of the committee over the last week and were here today, because it would remove and give the lie to any suggestion of anything that is colloquially referred to as "ramming through." It is very clear that that is not happening. This bill is being dealt with carefully and thoroughly on all sides, and I am grateful for the opportunity to make a contribution.

When Senator Carstairs spoke at second reading, she made a heartfelt and emotional — not to say dramatic — point at the end of her speech. It has been referred to today to the effect that if one of her children came to her and said, "I would like you to meet my new life partner," and it was a person of the same gender, she would not want anything to fail to be done in law that would ensure that her child should enjoy all of the benefits that she has enjoyed from her many years of happy marriage. I do not think anyone in this chamber or any rational person would want to preclude any Canadian from experiencing the joys, comfort, pleasures and benefits, both economic and social, that flow from marriage. I would hope that no one would ever suggest such a thing.

• (1940)

The question is this: How can we ensure that those rights exist and are accessible to every Canadian? How can that be done? There is no question about the thoroughness of the debate on this bill and the debate that will follow. The argument that causes me concern is that this bill is the only way to ensure that all Canadians have those rights that flow from marriage by removing distinctions that may exist as between one kind of marriage and another kind of marriage. The argument is that by merely allowing such a distinction to be made, the rights of Canadians will be infringed upon. That, in my view, is where the argument comes apart or is the point at which I become so dense that I can no longer follow the argument that has led to the conclusion that this bill is the only way.

Honourable senators, we already have two orders of marriage in Canada. Two kinds of marriage in Canada are recognized by and operate under the laws of Canada each day. On the one hand, we have traditional marriage, as it is universally understood and referred to by some, and on the other hand, we have common-law marriage. It is referred to and operates as common-law marriage. As we heard today, 1,200,000 Canadians are in that institution of marriage. It is still marriage but it is defined. It has a modifier before the operative word. It is different, distinct and is described differently. Both kinds of marriage legally exist, Both are legally recognized and are common in our country, yet they are acknowledged as being distinct and are referred to by different names in law because they are not the same thing. They are not referred to separately, I believe, on customs entry slips or on passport applications. They simply reflect reality.

Does that distinction between two kinds of marriage, two kinds of relationships, two orders of marriage result in the infringement of anyone's rights? No, it does not because the Supreme Court of

Canada said that it does not infringe on rights. In its decision in the matter of the *Nova Scotia (Attorney General) v. Walsh* delivered on December 20, 2002, the Supreme Court of Canada said:

> The exclusion...of unmarried cohabiting persons of the opposite sex is not discriminatory within the meaning of s. 15(1) of the *Charter*. The distinction does not affect the dignity of these persons and does not deny them access to a benefit or advantage available to married persons.

In the same ruling, commenting on the existence of marriage and common law marriage, the court stated:

> ...the distinction reflects and corresponds to the differences between those relationships and as it respects the fundamental personal autonomy and dignity of the individual. In this context, the dignity of common law spouses cannot be said to be affected adversely.

Therefore, an order of marriage that is different from "marriage" as it is universally understood and which is described differently to reflect that difference is not, simply and only because it is described by a different term, discriminatory. The distinction does not affect the dignity of the persons described.

Therefore, a third order of marriage, such as the one proposed by Senator Kinsella in his amendment, as between persons of the same gender, would not be discriminatory. It would not affect the dignity of the individuals, provided care is taken that within the establishment of such a third order that the rights, benefits and obligations to be enjoyed by those persons are identical to those of marriage.

Honourable senators, the preamble to Bill C-38 contains a "Whereas" stating that Parliament's constitutional jurisdiction does not extend to creating an institution other than marriage for same-sex couples, or for anyone else; and that is absolutely correct. However, there is nothing in the Constitution that says Parliament cannot create or permit, as it has created or permitted the order of marriage called "common law," a third such order described in terms that are not in any way pejorative or mean or lacking in dignity. Section 91 of the Charter lists those things that are the exclusive purview of Parliament. Subsection 26 gives Parliament the exclusive legislative authority over matters having to do with marriage and divorce. Therefore, Parliament can, and in my view should, make such a distinction. In doing so, we must take care to ensure that such an order of marriage would be entirely consistent with the intention of and in conformity with the Charter and that, in the words of the court, "...reflects and corresponds to the differences between those relationships and...respects the fundamental personal autonomy and dignity of the individual."

Honourable senators, it was pointed out earlier that the Supreme Court declined to answer the fourth question on whether a definition of marriage as that of a woman and a man would contravene the Constitution. I suspect that if Parliament had defined in law the thing which it put in the 1999 resolution of the House of Commons, then the Supreme Court might have answered the rest of the reference questions differently. The court said that in the present law, as it reads, there is no possible rational exclusion of same-sex couples from marriage. If there had been such a definition, then there might have been a different answer.

We have had a full debate on this bill, honourable senators. In terms of making the distinction, Senator Kinsella has approached it in the right way.

• (1950)

I apologize for having the temerity to do this, but I wish to move a subamendment to Senator Kinsella's amendment. I accept the argument that was made in respect of that amendment by Senator Joyal, which is that by the placement of the notwithstanding paragraph that Senator Kinsella proposes as paragraph 2 in the act — that is section 2 in the act, immediately after the title — and then the wording describing the intent of the act now as the second banana, if you like, in the bill, that that places the intent in a secondary position. I think that can be improved.

MOTION IN SUBAMENDMENT

Hon. Tommy Banks: I therefore move, seconded by Senator Corbin:

> That the motion in amendment be amended by:
>
> (*a*) deleting the new clause 2 in the proposed amendment and,
>
> (*b*) deleting the new clause 3 in the proposed amendment and substituting therefor:
>
> "**3.** Notwithstanding section 2, Parliament has recognized and continues to recognize the traditional marriage of a woman and a man; and
>
> (*c*) by renumbering clauses 3 to 15 as clauses 4 to 16 and all cross-references accordingly

The Hon. the Speaker: It is moved by the Honourable Senator Banks, seconded by the Honourable Senator Corbin:

> That the motion in amendment be amended by:
>
> (*a*) deleting the new clause 2 in the proposed amendment and,
>
> (*b*) deleting the new clause 3 in the proposed amendment and substituting therefor:
>
> "**3.** Notwithstanding section 2, Parliament has recognized and continues to recognize the traditional marriage of a woman and a man; and,
>
> (*c*) by renumbering clauses 3 to 15 as clauses 4 to 16, and all cross-references accordingly

How much time does Senator Banks have? Two minutes? I am not sure whether he wishes to speak further or whether he would take two minutes' worth of questions.

Hon. Marcel Prud'homme: With patience we will get to the end of the day, but in my humble submission to you, this is not a subamendment. I wish you to consider it right on the spot. To me, this is a new amendment. We should dispose of the actual amendment and then that would be a new amendment.

I am of the opinion that this is more than a subamendment to an amendment to a bill. I submit that for reflection. We do not need to adjourn the Senate for that. I think this is an amendment that should be put to us once we have disposed of the amendment of Senator Kinsella. I am open, of course, for your explanation.

The Hon. the Speaker: Honourable senators, I have had the benefit of the time that it took Senator Banks to speak to review the amendment that he eventually moved, and to discuss with the table the orderliness of that amendment, which Senator Banks had taken the steps earlier of discussing with the table and consulting the text and rules. I am concluding, based on my understanding of that procedure — and I admit to certain assistance — that the subamendment is in order.

Accordingly, we are now on the subamendment. Senator Banks is out of time, but we need to dispose of that before we get on to the amendment, and then dispose of that before we get on to the main motion.

Hon. Jack Austin (Leader of the Government): Honourable senators, speaking to the subamendment, first I want to say that it is well known in the chamber that Senator Banks has not supported Bill C-38. He spoke in opposition to that bill on second reading, as honourable senators will recall. Second, Senator Banks advised me after this debate had commenced this evening that he was proposing this particular subamendment.

I want to say as plainly as I possibly can that there is only one definition that we can see under the Charter for the word "marriage" — for the concept of marriage as is the constitutional responsibility of the federal government — and that is the marriage of one eligible person to another eligible person. Anything else is categorization; anything else is intended for its purpose to undermine the simple definition which points at equality.

I understand Senator Banks' goodwill, and that of Senator Kinsella as well. However, these are amendments that are not in the policy and principle of this bill. I urge honourable senators to understand that, and to proceed to deal with the subamendment and the amendment at this time.

Some Hon. Senators: Question!

Hon. Jerahmiel S. Grafstein: Honourable senators, I intend to speak on third reading and I will be very brief on both the amendment and subamendment.

[The Hon. the Speaker]

To my mind, while it is very alluring, it is contrary to my reading of the Charter because the difference between the common law and traditional marriage as defined by Senator Banks, and now this other category as provided by Senator Kinsella, forgets one thing, and that is individual choice — individual freedom and individual choice. There is no individual choice for someone of the same sex to make a decision based on categorization. That is why it says clearly in the bill "guarantees every individual is equal before and under the law"; and the third, "whereas everyone has the freedom of conscience of religion." What is absent here is individual rights and individual choice.

Some Hon. Senators: Question!

[*Translation*]

Hon. Céline Hervieux-Payette: Honourable senators, it seems to me that we are discussing the subamendment, the amendment, and the bill. I will, if I may, address all three in my speech.

Honourable senators, it is with great humility that I approach consideration at third reading stage of Bill C-38. For the past two years, I have been trying to grasp the essence of this bill and its significance for future generations. This is why I want to share with you, and with all interested Canadians, the results of my research into the meaning of the institution of marriage and its effects on future generations of children.

A proper understanding of the reasons behind Bill C-38 requires reference to the British North America Act which was enacted by the Fathers of Confederation, and gave jurisdiction over marriage to the federal government under section 91. Since the rights arising out of marriage were in large part civil in nature, and thus under provincial jurisdiction, they ought to have been in section 92. In order to achieve constitutional consensus for religious reasons — Quebec refusing to recognize divorce in 1867, and for more than 100 years — "for better or for worse," the legislative authority over marriage has ended up with the Parliament of Canada.

We must not forget that not so long ago the Senate had to adopt private bills in order to grant divorces in Quebec marriages. Today, we are being asked to extend the definition of marriage to couples of the same sex, when the original legal definition of marriage was the union of a man and a woman; the only definition recognized in civil law — excluding what Senator Banks referred to, common-law marriage, which does not exist in Quebec.

I sponsored a lexicological study from the time dictionaries were first published, the sixteenth century. It was carried out by Natalia Teplova, James McGill Research Chair doctoral student in the Department of French Language and Literature, under the guidance of Professor Marc Angenot. I tabled this study with the Senate Standing Committee on Legal and Constitutional Affairs. I would simply like to give you an overview of the definitions right up to the most recent one in the *Petit Larousse 2006*, which my colleague Senator Joyal omitted. I refer briefly to the study.

Initially, in 1694, marriage was the union of a man and a woman in a conjugal relationship.

• (2000)

Later, in the 19th century:

> The lawful union of a man and a woman, marriage is a sacrament that sanctifies the lawful association a man and woman enter into together to have children and to raise them as Christians. Once this association is established between Christians, it can only be dissolved by the death of both spouses.

This definition is from the *Nouveau dictionnaire universel illustré*, published by Paul Guérin and G. Bovier-Lapierre.

In the 20th century, Émile Littré's *Dictionnaire de langue française* provides the following definition:

> The union of a man and a woman consecrated either by an ecclesiastical authority, a civil authority, or both.

Finally, the *Larousse* 2006, which will be published in September, says it is:

> The formal act of joining together a man and a woman, the conditions, the effects and the dissolution of which are governed by the legal provisions in effect in their country, by their religious laws or by their customs.

I relied on various versions that have been published in order to comprehend the meaning of the institution we are preparing to change quite significantly.

Contrary to remarks made by a witness in committee, who denied the scientific aspect of dictionary writing, I think these linguistic guides allow us, legally speaking, to arrive at an understanding of a concept or a word by accepting lexicological definitions. If we did not use these dictionaries to govern our discussions, then we as legislators would have a difficult time carrying out our mandate.

I agree with Senator Banks that it is not the role of legislators to replace lexicographers. I conclude that marriage is the union of a man and a woman, and almost always for the purpose of procreation.

However, senators must ensure that our legislation complies with the Charter of Rights and Freedoms.

I had the privilege of taking part in the adoption of the constitutional amendments of 1982 and, in particular, of fighting alongside the few women who sat in Parliament back then, in support of section 15 of the Charter, which extended equality rights to women as well as men.

A significant number of Canadian laws had to be amended after the Charter was adopted. These amendments were made over the next five years. As far as I can recall, setting out Special rights for gays and lesbians was never an issue because the charter protected their rights. Section 15 recognized the right to equality, but did not change the fundamental nature of individuals. No one was creating a third type of individual. The right to equality was not a denial of the right to be different.

In order to better understand the concept of equal marriage, I want to quote a few statements made by one of the major advocates of minority rights, Mr. Julius Grey, which were published in an article in *Policy Options* magazine, volume 24, number 9:

[*English*]

"Equality rights versus the right to marriage — toward the path of Canadian compromise":

[*Translation*]

Since this is an extremely long article, I will summarize Mr. Grey's opinion on this subject.

[*English*]

Monogamous marriage between man and woman can fairly be said to be the most important institution of the West. Other institutions — social, economic and political — floundered and disappeared but marriage has, so far, survived even the most drastic changes....

> While it is indeed possible to defend restricting the word "marriage" to heterosexuals without bad faith or bigotry, it is also true that marriage has undergone such radical change in the last half century....
>
> It is clear that all rights of married persons, for instance with respect to pensions, immigration sponsorship, successions, adoptions and tax benefits, must apply to homosexuals....
>
> However, a civil union may fulfill those requirements as easily as marriage, and the decision on whether or not to use the word "marriage" depends on factors other than the Charter.

[*Translation*]

I want to conclude with the first sentence in his article, which states:

> The decision on whether or not to use the word "marriage" depends on factors other than the Charter.

I subscribe fully to this opinion.

There is respect for dignity, which is recognized in our legislation, since homosexuals want to be recognized as different. We have the Gay Games, gay pride parades, gay literature and gay families, and the common denominator of these activities is the pride felt by those who support them.

On one hand, there are very important celebrations of this difference, and on the other, there is the desire to share an institution that, since time immemorial, has been the prerogative of heterosexuals.

Like Mr. Grey, I maintain that this bill is more a political action than a legal exercise confirming the equality rights of same sex couples.

Personally, I have always called for the right to equality, not similarity. I am proud of my psychological and physiological differences and I invite my honourable colleagues to reflect on this concept of equality and difference.

The effects of Bill C-38 on the family unit are immense. I will quote some excerpts from what McGill University ethics specialist Dr. Margaret Somerville had to say when she appeared before the committee:

> When limited to the union of a man and a woman, marriage establishes, as the norm, children's right to an identified biological mother and father, and to be reared by them... Same-sex marriage, in disconnecting marriage from procreation, compromises this right for all children, not just those brought into same-sex marriages. The new law, Bill C-38, implements that change by redefining parenthood from natural parenthood to legal parenthood — from an institution defined by biology, to one defined solely by law.
>
> This is the effect of Bill C-38. New reproductive techniques can also change the biological bases of the parental condition and raise the problem of children's rights with respect to the backgrounds of their biological parents.

She went on to say:

> Legislation establishing the right of adopted children to know the identity of their biological parents is becoming common in Canada...

We must acknowledge that this issue is undergoing rapid change. This new phenomenon had not been studied when we were amending our legislation on assisted reproduction.

Dr. Somerville added:

> These rights should include: (1) The right to be conceived with a natural biological heritage — that is, to have unmodified biological origins — in particular, to be conceived from a natural sperm from one identified man and a natural ovum from one identified woman; and (2) the right to know the identity of one's biological parents.

Knowing our biological parentage and our relationship to that parentage is essential to establishing our identity, and it helps us in our relationships with others and in finding a meaning for our lives.

Children and their descendants who do not know their genetic history cannot feel part of a network of people in the past, present and future, through whom they can trace their genealogy from past generations to themselves and then onward.

Although I am no expert on the matter, I have to say that I pay attention to these words. When we go to the doctor, he certainly asks us questions about our parents' biological and genetic history in order to decide on treatment. This is the case, to some extent, with breast cancer: the family's biological history is vital, from the standpoint not only of treatment but of prevention as well.

I believe these matters have not been examined in depth. Even when Canadian legislation attempted to provide a framework for methods of assisted reproduction, it did not go beyond the issue of knowing one's parents' genetic history.

In this spirit, I consulted the experts who worked for more than a year on a serious study, which should convince you that it is not appropriate to yield to pressure to expedite adoption of Bill C-38.

• (2010)

I commissioned a study by Nicole Tremblay, a professor at the psychology department at the Universitié du Québec à Montréal, who was assisted by Émilie D'Amico, a PhD student in that department; Émilie Jodoin, another PhD student; and Danielle Julien, a professor and scholar in the psychology department.

Their study was a review of empirical studies on cognitive and psychosocial development and on the quality of the family environment of children conceived with the help of assisted reproductive technology.

You might wonder what this has to do with the issue at hand. The researchers refer to it in their review and mention every study published in the past ten years or more. Only two studies were conducted. In those studies, two comparisons showed diminished behavioural adaptation in children from same-sex-parent families, while one comparison showed the opposite. There were two studies: one is positive and the other is negative. The researchers found it difficult to draw clear conclusions from these results.

I will read you the summary of this study that is available and was submitted to the committee, in which the authors also found that:

> Other studies will be needed to identify the various individual and contextual aspects likely to play a role in the adaptation of families that used assisted reproductive technology and of their children, and to clarify the direct effects of ART... studies of samples of Canadian children conceived through ART would also be beneficial.

In other words, we are currently working with the unknown. We are accepting a concept without really knowing exactly what effect it will have on other generations.

In science, there is a principle called the precautionary principle. For the philosopher Jonas, in *La lettre EMERIT* in September 2000, this principle of responsibility is an ethical one, which brings me back to the studies that should be done.

Jonas says:

> The power we wield today as a result of science and technology has led to a new and unexpected responsibility: "leaving future generations with a planet that humans can inhabit, and not altering the biological conditions of the human race."

He pleads, therefore, for a new concept of responsibility. He tells us that:

> ... this form of scientific knowledge is often tainted by great uncertainty.

He also says:

> There is, therefore, "a moral obligation" to consider the worst-case scenario with regard to any decision that may have irreversible and unknown consequences.

I think that, as responsible individuals who want to consider all aspects of a new phenomenon, a new concept and a new scientific approach — and I am talking about children here — it is important to look further ahead and to think of children who will be born to same-sex couples through assisted reproductive technologies.

Marriage, the union of one man and one woman for the purposes of procreating, was certainly not invented by Hollywood, even if the great films of yesteryear all ended with "and they lived happily ever after and had many children". This institution is not solely the confirmation of a love between two individuals, because prearranged marriage, where many couples never meet before the ceremony, exists in many cultures.

The Hon. the Speaker: Honourable senators, I regret to inform Senator Hervieux-Payette that her time has expired.

Senator Hervieux-Payette: Honourable senators, may I have two additional minutes in which to conclude my remarks?

Hon. Senators: Agreed.

Senator Hervieux-Payette: Finally, honourable senators, by adopting the term "marriage" for an institution that does not reflect the reality of the majority of Canadians, we are not ensuring the equality that Bill C-38 promises. In fact, under the BNA Act, each province recognizes the civil rights of spouses, rights that differ from one province to the next.

The Hon. the Speaker: I note a great deal of noise, and would ask that you limit your conversations or continue them outside this chamber.

Senator Hervieux-Payette: Honourable senators, I share the opinion of eminent civil jurist Julius H. Grey that civil union is the appropriate institution for recognition of a union of two persons of the same sex and that the term "marriage" is not a Charter issue per se.

I do, however, realize that the gay lobby has managed to cloud the issue to such an extent that we have been forced to go into it in greater depth and to wonder what lies behind forcing the use of a word while changing its meaning. There is no major opposition to recognizing the same rights for same-sex couples, provided that institution does not infringe on the institution of marriage, which is for the purpose of procreation. It seems to me that altering the purpose of such a fundamental institution requires us to reflect.

I have made an honest and methodical attempt to fully explore this issue, by asking recognized academic authorities on lexicology and anthropology to conduct research. In light of those studies and the presentations to the committee, I cannot agree to vote in favour of Bill C-38 as it stands. It would run counter to my profound convictions on my role as a senator, which is to protect Canadian institutions and the most vulnerable of Canadians, our children. When today's discussions have come to an end, I will decide whether to support the amendment or the subamendment we have before us.

Hon. Jean Lapointe: Honourable senators, I had no intention whatsoever of taking part in this debate, for personal reasons. I am a Christian, I have a sister who is a nun, and Archbishop Turcotte is also a friend. I feel that I am in a very precarious position.

This evening, after hearing Senator Kinsella's speech, and in particular after hearing Senator Forrestall, a man I greatly admire, I think that this is a question of humanity and minority rights.

The Charter and the Constitution are all Greek to me. I am not up to studying all that. However, having heard what Senator Joyal had to say, I have reached the conclusion that I will support Bill C-38, but with some slight internal reservations.

Hon. Senators: Question!

[*English*]

The Hon. the Speaker: Are honourable senators ready for the question on Senator Banks' subamendment?

Some Hon. Senators: Question!

The Hon. the Speaker: Those honourable senators in favour of the subamendment will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the subamendment will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the nays have it.

And two honourable senators having risen:

The Hon. the Speaker: Honourable senators, is there an agreement on the bell?

Hon. Marjory LeBreton: Pursuant to rule 66(1), I would ask for a one-hour bell.

The Hon. the Speaker: Call in the senators.

• (2120)

Motion in subamendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Angus	Kelleher
Atkins	Keon
Banks	Kinsella
Buchanan	LeBreton
Cochrane	Meighen
Comeau	Oliver
Cools	Phalen
Corbin	Plamondon
Di Nino	Sibbeston
Eyton	St. Germain
Forrestall	Stratton
Gustafson	Tkachuk—24

NAYS
THE HONOURABLE SENATORS

Austin	Kenny
Bacon	Losier-Cool
Baker	Maheu
Biron	Mahovlich
Bryden	Massicotte
Callbeck	Mercer
Chaput	Milne
Christensen	Mitchell
Cook	Munson
Cordy	Nancy Ruth
Dallaire	Pearson
Downe	Pépin
Dyck	Peterson
Eggleton	Poulin
Fairbairn	Poy
Fitzpatrick	Ringuette
Furey	Robichaud
Gill	Rompkey
Grafstein	Smith
Harb	Spivak
Hubley	Tardif
Jaffer	Trenholme Counsell
Joyal	Watt—46

ABSTENTIONS
THE HONOURABLE SENATORS

Hervieux-Payette	Prud'homme—3
Moore	

The Hon. the Speaker: Are honourable senators ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: I take it you are ready for the question. I will put the question.

The question is on the amendment moved by Senator Kinsella, seconded by Senator Stratton. Do you wish a standing vote, honourable senators?

Some Hon. Senators: Yes.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Angus	Kelleher
Atkins	Keon
Buchanan	Kinsella
Cochrane	LeBreton
Comeau	Meighen
Cools	Oliver
Corbin	Phalen
Di Nino	Plamondon
Eyton	Sibbeston
Forrestall	St. Germain
Gustafson	Stratton
Hervieux-Payette	Tkachuk—24

NAYS
THE HONOURABLE SENATORS

Austin	Kenny
Bacon	Losier-Cool
Baker	Maheu
Biron	Mahovlich
Bryden	Massicotte
Callbeck	Mercer
Chaput	Milne
Christensen	Mitchell
Cook	Munson
Cordy	Nancy Ruth
Dallaire	Pearson
Downe	Pépin
Dyck	Peterson
Eggleton	Poulin
Fairbairn	Poy
Fitzpatrick	Ringuette
Furey	Robichaud
Gill	Rompkey
Grafstein	Smith
Harb	Spivak
Hubley	Tardif
Jaffer	Trenholme Counsell
Joyal	Watt—46

ABSTENTIONS
THE HONOURABLE SENATORS

Banks	Moore
Merchant	Prud'homme—4

• (2130)

The Hon. the Speaker: We are now resuming debate on the motion for third reading, and several senators have expressed a desire to speak: Senator Grafstein, Senator Cools, Senator Milne and Senator Prud'homme.

Senator Grafstein: Honourable senators, the hour is late, darkness falls, the arguments are fresh and evergreen with respect to the Civil Marriage Bill. Meanwhile, public passions are receding. Public opinion is shifting as it did after the explosive debate on capital punishment. Still, this bill is intensely debated in dining rooms, family rooms and bedrooms of the nation. Debate has been provoked in our synagogues, mosques, churches and temples, and within all non-faith-based institutions. The debate goes to the heart of the nature of the fundamental building block of our society — the family. It is said that the last refuge of a scoundrel, when one runs out of rational arguments, is to expound on the mystical and undefinable bonds of family and family values, but this argument is not fair in this case. This bill is all about the pith and substance of marriage, about each of us, about family and fairness.

This bill is not about restoring individual dignity or affirmative action to some minority. This bill is not about separate or equal treatment. This bill is about equality of rights to all citizens under the rule of law. All we have, honourable senators, between us and civic chaos is the rule of law.

May I, with the indulgence of senators, go quickly through the arguments I mobilized against the Civil Marriage Bill in my internal debate with myself and my conclusions from my own rebuttal to many of the arguments against equality of rights to same-sex marriage and the treatment of minority rights implicit in this legislation.

First and foremost is the premise of family based on procreation as a condition subsequent to marriage. Yet we all know many heterosexual marriages are not based on procreation but on love, respect and mutual interest. Our colleague, Senator Fairbairn, is a perfect example of that. There are childless families and childless marriages, and these are not scorned, discriminated against, or treated differently under our laws. Indeed, Statistics Canada, back in 2001, reported that, out of 8.3 million families in Canada, 2.4 million, or about 20 per cent, were childless.

Second, it is argued that same-sex marriage is not a social good. Yet there is no scientific evidence to suggest that same-sex marriage is any less good than heterosexual marriage nor that children brought up in same-sex marriage would be detrimentally affected if each family unit is treated with equality and respect. The Canadian Psychological Association concluded that all available scientific evidence indicates that children of gay or lesbian parents, of single-sex families, do not differ significantly from children with heterosexual parents with regard to psychological and gender development and identity. The association concluded that all children deserve to feel that society accepts and recognizes their families, and children of same-sex couples are no exception to this principle.

The third argument is that equality rights as proposed in the Civil Marriage Bill would detrimentally prejudice freedom of religion, including the right to teach the doctrinal benefits of heterosexual marriage. There are several complex issues interwoven in this argument that we must address. Protection of religious freedom framed by the Supreme Court would include the right to continue to teach that heterosexual marriage is a social good. The Supreme Court went on to state that religious officials cannot be compelled to perform same-sex marriages. It is equally clear that no religious institutions, synagogues, churches, mosques or temples could be forced to perform same-sex marriages contrary to their bona fide religious beliefs. No faith-based charity would be deprived of charitable status under the umbrella of Charter protections.

There is a triple clarity of protection for religious freedom consonant with equality — first and foremost, the Charter; secondly, the Supreme Court decision; and finally, the legislation itself, which encapsulates these principles in preamble paragraphs 1 and 6. Let me quote paragraph six again:

> WHEREAS everyone has the freedom of conscience and religion under section 2 of the *Canadian Charter of Rights and Freedoms*;

Clause 3 of the bill itself states:

> It is recognized that officials of religious groups are free to refuse to perform marriages that are not in accordance with their religious beliefs.

This is a statement directly from the Charter into the legislation. It therefore cannot be suggested that it would be held ultra vires if Parliament re-enacted those same words in its statute.

The argument that is sometimes made that equality rights under section 15 of the Charter trump freedom of conscience and religious rights under section 2 is simply not correct. Rather, there is a carefully framed, mutual protection and respect for these rights — equality rights and religious rights — based on equal premises in the Charter, in precedent and in law, and under the Constitution as well.

What of the argument about the limitation based on conjugal relationships in heterosexual marriages? What did the Supreme Court say in the *M v. H* case in 1999? Let me quote briefly from that decision, dealing with the definition of conjugal relations:

> Courts have wisely determined that the approach to determining whether a relationship is conjugal must be flexible. This must be so, for the relationships of all couples will vary widely. In these circumstances, the Court of Appeal correctly concluded that there is nothing to suggest that same-sex couples do not meet the legal definition of "conjugal".

That decision goes on later to say that thus "the distinction of relevance...must be between persons in an opposite-sex, conjugal relationship of some permanence and persons in a same-sex, conjugal individual relationship of some permanence." That is the Supreme Court of Canada on the definition of conjugal relationships.

The next argument is the metaphysical one that same-sex marriage is against natural law. Natural law, like the common law, evolves. Natural law is not static. At one time, polygamy was acceptable under natural law. I extrapolate from Senator Joyal that natural law is sometimes in the eye of the beholder. That

evolution that forms the "crooked timber of humanity," the evolution of "natural law," we conclude, is rather, as some exponents have suggested, like that appropriated to the Charter, as a growing tree doctrine. I would argue with some that the growing tree doctrine cannot be used to trump the fundamental principle of supremacy of Parliament to legislate and the Supreme Court's right to interpret. Still, natural law has indeed evolved. Yet, some beholders define their natural law in an "antique" natural law form, even though the antique natural law I refer to still vibrates in many parts of the world. Polygamy is permitted in many parts of the world. Under the antique natural law, women are not entitled to equal treatment before the law but to different treatment. In Canada, we would now all agree that natural law includes recognition of gender equality and gender differences, but these differences should not trump equality of treatment by reason of gender alone.

As a personal aside, in the 12th century in Cordova, Spain, which I visited last month, Maimonides, one of Judaism's greatest Talmudic scholars, concluded that polygamy be expunged from those of the Jewish faith. That was in the 12th century. The natural law was changed. Scorned in his time, Maimonides remains a revered source of Talmudic thought to this day. Reason and revelation, he discovered, could be reconciled.

The next argument is a complex contest about whether the rule of law as exemplified by an act of Parliament, invades the sphere of religious laws and perverts the rules of religious doctrine. Yet again, the Charter and the Supreme Court make it eminently clear that the rights of the church, the synagogue, the mosque or the temple to expand and expound the peaceful practices of their religious doctrines are entrenched and protected by the law. The state, honourable senators, has no place in the exercise of the doctrines of our respective faiths. Read the 2004 Supreme Court *Amselem* decision where the Supreme Court restrained itself from becoming an arbiter of religious doctrine. I will quote from that decision as well.

• (2140)

> The purpose of s. 2(*a*) is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being. These beliefs, in turn, govern one's conduct and practices.
>
> In my view, the State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, "obligation", precept, "commandment", custom or ritual. Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangled the court in affairs of religion.

That was a remarkable case of appropriate self-restraint by the Supreme Court of Canada.

What of today's newspaper's story about one province dismissing a marriage commissioner for refusing to perform same-sex marriage? This problem is on the way to resolution. Here, the marriage commissioner, in a non-religious, state-appointed office, refuses to contravene his religious beliefs in the exercise of his state duties. I am confident that provincial legislation and the courts will proffer protection against officials who refuse based on their exercise of conscious religious belief in full faith and bona fides. This can be accommodated as long as same-sex marriage proponents are not deprived of access to the marriage commissioner in any province. On March 15, the Ontario legislature expressly adopted such legislation under Bill 171. I have no doubt, according to section 92(8), that the provinces have the right, as senators have suggested, to solemnize marriage by civil servants or appointees who will be protected if they refuse bona fide, based on their conscious belief, to celebrate same-sex marriage, provided such provinces provide alternative, appropriate and equal means of access to same-sex marriage rights by other such civil servants.

Allow me to address an argument based on equality and mobility rights not discussed here today. As the Canadian Bar Association so thoughtfully pointed out, failure to provide a law for general application of same-sex marriages within Canada collides to prevent couples lawfully wed in a permissive province wishing to relocate to a province where their marriage is not equally recognized. This is contrary to mobility rights and is intensified by the uncertainty over equal rights and obligations as spouses in the event their marriage suffers a breakdown or one dies when resident in one such province. Such couples may be compelled to refuse job opportunities to avoid endangering the benefits they receive by virtue of a civil marriage. This situation runs counter to the letter and spirit of the Charter. The thesis of Canadian citizenship is based on equal protection under the law.

The most intriguing argument is centred around the "slippery slope" into the future. The argument made is that such a civil marriage act would lead to untold injury and destruction to the family unit and worse — to such actions as polygamy. Of course, those who made that argument could not have read the proposed legislation because it specifically restricts the definition of civil marriage to two persons to the exclusion of all others. In addition, the practice of polygamy, bigamy and incest, once acceptable under natural law in some circumstances and civilizations, but not in ours, will continue to be criminal offences and not deemed to be in contravention of the Charter.

I have another thought about the separation of Church and state. We have noticed our southern neighbour espousing their early doctrine of separation of Church and state, while religious doctrine becomes more deeply enmeshed in their current civic dialectic. Thus, it is most refreshing to remind ourselves that the Supreme Court of Canada in the 1955 case of *Chaput v. Romain*, which Senator Joyal brought to our attention, brings a compelling but different dialectic to the exercise of religious freedom and the role of the state in Canada. Allow me to quote Mr. Justice Taschereau:

> In our country, there is no state religion. All religions are on equal footing, and Catholics as well as Protestants, Jews, and other adherents to various religious denominations, enjoy the most complete liberty of thought. The conscience of each is a personal matter and of concern to nobody else. It would be distressing to think that a majority might impose its religious views upon a minority, and it would also

> be a shocking error to believe that one serves his country or his religion by denying in one Province, to a minority, the same rights which one rightly claims for oneself in another Province.

That is a 1955 ruling of the Supreme Court of Canada before the adoption of the Charter.

Hence, if there is no state religion in Canada, is the question one of the maintenance of religious doctrine by the state or that the religious doctrine interferes with or impinges on the role of the state by suppressing equality of treatment to all citizens?

Finally, what of the impact of this legislation on Canada's role in the world? What does it say about Canada in the 21st century? What does it say to our neighbours around the globe?

Honourable senators will know that in my capacity as a senior officer of the OSCE, the largest international organization in the world dedicated to democratic rights, human rights, security and cooperation, I have examined firsthand, as have other senators in this chamber, the various stages of democratic and human rights evolving in many of the 55 member states of the OSCE. I have travelled and actively participated with parliamentarians in numerous meetings across the face of Europe and Asia where human and minority groups in many member states struggle daily to climb up their individual slippery slopes to the fertile fields of equality, with which we are blessed, whether in respect of race, religion or gender. All gaze a watchful eye for sustenance for emerging rights from Canada as an exemplar for leadership and as a template of equality in the 21st century.

Honourable senators, I have convinced myself and, I hope, some members of my reluctant family, members of my faith and many of my reluctant friends, as to why I endorse this legislation.

The Hon. the Speaker: I am sorry, but your time has expired, Senator Grafstein.

Senator Grafstein: I ask for leave to continue.

Hon. Senators: Agreed.

Senator Grafstein: I will provide an observation about the Honourable Senator Joyal, who has dedicated the last 20 years to leadership. We saw it all emerge in masterfully eloquent speeches at second and third reading today and in his cogent examination and fairness in the Standing Senate Committee on Legal and Constitutional Affairs. I have read much of that transcript, which all will find quite amazing. We have been privileged to witness one of the finest examples of "honourable senator." Those two words have been given fresh life because of this debate. I believe that this debate and the work of the committee on Legal and Constitutional Affairs, and all honourable senators, will serve as an example of one of the Senate's finest hours. We are in debt to Senator Joyal. All progress is by a winding staircase; let us find the next step together.

Hon. Consiglio Di Nino: May I ask the honourable senator a question?

The Hon. the Speaker: Senator Grafstein was given time to complete his remarks. He would have to ask for additional time, and I do not think there is agreement.

Hon. Anne C. Cools: Honourable senators, I rise to speak at third reading debate of Bill C-38. It is not necessary for me to repeat yet again my strong opposition to this bill, which is based on my reading of the law of marriage for the last 250 years in Canada and my understanding of the Charter of Rights. I sincerely believe that in coming to its position on same-sex marriage, the government has engaged in an act of constitutional demolition and vandalism. It is not possible, after any serious reading on the last 250 years of the institution of marriage, for any legal mind to conclude that marriage could ever include homosexuals. I dismiss those arguments as well as the ones brought forward by Senator Grafstein and others that because some married people do not have children, somehow or other that invalidates the rest of the marriage law. That is the most illegal argument I have ever heard in my life, as if one can dismiss 800 years of the law of marriage simply by deeming it not legal because some people did not have babies. What rubbish. Adults should know better than that, especially those who claim to be lawyers. It is absolute rubbish. I have never heard such babble in my life. All this talk about what he feels and what she feels. No one here feels any differently than anyone else about their own friends and family. Everyone here cares equally about their children and their homosexual friends.

• (2150)

I will remind Senator Smith that I took a lot of heat in 1979 and 1980 when I ran in Rosedale because I was too supportive of homosexual rights and homosexual people then. A lot of this does not cut any ice. I do not think that anyone over there on the other side is any more just, fair, nicer or more loving than anyone on this side. Let us put such thoughts away.

Church and state — honourable senators, this again is nonsense. We have had separation of church and state in Canada for a long time. In fact, there was never really an established church; there were plans for an established church, but it never happened. No, Senator Grafstein, the current Liberals here do not want to separate church from state; they want to separate Canadians from their religions. There is quite a difference.

On the next point, earlier today, I was speaking about the interests of Her Majesty Queen Elizabeth II in this bill. If it were a different bill, perhaps, I would have expected Senator Joyal to be on his feet asking the Speaker to ensure that there was a royal consent attached to this bill. This bill touches the prerogatives of Her Majesty because a marriage in this country is performed and solemnized under the law of the prerogative, the *lex prerogativa.*

I will say it again: All marriages are both civil and religious at the same time. The civil construct expressed in Bill C-38 is a fraud because the interesting thing about the Constitution of Canada is that the Governor-in-Chief — the initial one and also the Governor General at the time of 1867 — was in one of the two authorities, civil and ecclesiastical. Let us not kid ourselves about that.

I just do not understand why the government could not proceed in accordance with the laws of this country on this bill. If we pride ourselves and say that this system is a jewel of British constitutionalism and a jewel of international constitutionalism, why do we not act accordingly? If you had, I would have supported you. However, I will not support you because I do something that many people do not do anymore — I read.

Honourable senators, I would like to speak now about my strong objections to the introduction and the prosecution of this bill. Her Majesty's interests have been ignored; the law of the prerogative has been ignored; and I would like to speak now about Parliament's interests in this bill. I speak as a member of Parliament, and it is a great privilege to be here.

Honourable senators, I was very distressed at the outset that the government of this land — the Attorney General under a peculiar set of powers section in the Supreme Court Act — sent a draft bill to the Supreme Court. There is no such constitutional animal as a draft bill. The use of the words "draft bill" is an attempt to mislead and to deceive.

Honourable senators, a bill, if I can quote Abraham and Hawtrey, *A Parliamentary Dictionary*:

> A bill is a draft act of Parliament presented to one or other House of Parliament by a member...

which no judge is. I would also like to support that with a quote from *An Encyclopaedia of Parliament*, Wilding and Laundy:

> A bill is a statute in draft...

There is no such thing as a bill beginning in the Supreme Court of Canada that has not first seen the light of day in one of these two Houses. Let us understand that. A bill is a draft act, so there is no such thing as a draft of a draft act.

Even the creation of those words was an attempt to cause people to think that something was what it was not. In actual fact, what a bill is really is a petition to Her Majesty to make an enactment in accordance with the terms described in the bill. That is what a bill says to Her Majesty, "Please enact this as it is written here." That is how bills began their parliamentary history, as petitions, where the king would write his response upon it. Eventually the bill more and more took the form of the final act, the statute.

In the entire debate, I have not heard a single parliamentary authority cited. We are a house of Parliament, but we never cite parliamentary authorities. We cite the Supreme Court, and we cite this judge on rights and we cite everyone else, but we cannot come up with any parliamentary authorities or any great members of Parliament in the history of Canada or the Parliament of the U.K. to cite in support of any of these arguments. Something is very wrong.

I notice, too, in the Speaker's rulings, you cannot hear from a single parliamentary authority. Erskine May and Beauchesne are not parliamentary authorities; they are reference books. Parliamentary authorities are the distinctive authorities, members of Parliament speaking and the precedents set on the floors of the chambers.

In my distress in respect of the government sending this reference to the court, I felt very strongly, and I have articulated repeatedly, that there was no place in a parliamentary proceeding for the court. Under section 18 of the Constitution Act 1867, we are accorded rights, powers and responsibilities as members of the Senate and the House of Commons. Those rights, powers and responsibilities include the right to the production, the introduction, deliberation and debate of motions and bills. This is important to the proper function of Parliament, including the actions of Her Majesty the Queen because, as I said before, bills are petitions from one House of Parliament to Her Majesty, seeking the enactment of a statute in the words of the bill.

I believe that under section 18, honourable senators, the introduction, debate and approval of bills is arguably the most primary of parliamentary proceedings, and that there is absolutely no role under the BNA Act for the Supreme Court of Canada to take part in a parliamentary proceeding, which it has done by receiving and answering questions on a draft bill — this unknown creature.

Perhaps some honourable senators have not thought about this, and maybe some have thought about it and do not care, but I would like you to know that I have thought about it and I not only care but I say that it is very wrong. The entire prosecution of Bill C-38 has been of a manner and a style that undermines the role of Parliament.

Honourable senators, the Senate is undermined when all the newspapers and the journalists over the past several days have been saying that Parliament is adjourned, but the Senate is still sitting. Our position is especially weakened because of all this.

Honourable senators, obviously you know I think very seriously — particularly after the articulations of former Liberal prime minister Pierre Elliott Trudeau on the role of the Supreme Court in the reference in 1980 — that this reference should never have been put to the court.

• (2200)

In honour of parliamentary authorities, I thought we should find some parliamentary authorities who speak to the question of the proper relationship between the courts and Parliament. I would like to remind honourable senators that if we were to look to the BNA Act 1867, we would discover that there is no judicial power. The Canadian Constitution is not like the American Constitution. There is no judicial power, because our system is not one of a separation of power. The powers are fused in responsible ministers. Part VII of the BNA Act is called "Judicature," so there is no judicial power so to speak.

In respect of articulating what should be the proper relationship between the courts and the Houses of Parliament, positions that were strongly taken in Canada, particularly during the development of responsible government, and especially in Ontario. I want to quote some of the greatest authorities of all time, who were parliamentarians and were extremely articulate.

I would like to begin with Sir Robert Peel, who had been the Prime Minister of Britain. In the House of Commons on March 15, 1843, on the proper relationship between the courts and Parliament, he said:

> ...the constitution places us as a controlling power over the courts of law. The functions which, in this respect, we may have to discharge, and have a right to discharge, must naturally attract the jealousy of the courts of law.

There is no dialogue between the courts and Parliament, honourable senators, as the government claims. This is all nonsense. The law of Parliament, the *lex parliamentari*, has always been that Parliament's powers are held jealously. We respect them; they respect us; and we stay off each other's ground. This dialogue is a novel thing. The Charter of Rights and Freedoms did not change the role of the Parliament of Canada in the affairs of this country.

I would like to move quickly to another eloquent and articulate great thinker and member of Parliament, Edmund Burke. I will read from a book called *The Government of England* by William Hearn as follows:

> "I have always understood," said Mr. Burke in the House of Commons, "that a superintendence over the doctrines as well as the proceedings of the courts of justice, was a principal object of the Constitution of this House; that you were to watch at once over the lawyer and the law...we have no foregone opinions, which from obstinacy and false point of honour we think ourselves at all events obliged to support — so that with our own minds perfectly disengaged from the exercise, we may superintend the execution of the national justice....

I do not think the Parliament of Canada has been exercising a superintendence over the execution of national justice when we have a preamble to Bill C-38 that basically subjugates Parliament to the court. We keep hearing that the courts say this; the courts say that; the courts say we must do this; and the courts say we must do that. I strongly objected to Bill C-20, the Clarity Act. I strongly objected to the title of that act, which was an act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

The Hon. the Speaker: Senator Cools, I am sorry to interrupt, but I must advise you that your time has expired. Are you requesting leave to continue?

Senator Cools: If I could have a few more minutes to put these quotes on the record.

Senator Stratton: We will agree to an extension of five minutes.

Senator Cools: Thank you, honourable senators.

I would like to read you a quotation from the biography of Edmund Burke by the Reverend Robert H. Murray. In speaking about the importance and the vitality of the House of Commons Edmund Burke said:

> The virtue, spirit, and essence of the House of Commons consists in its being the express image of the feelings of the nation. It was not instituted to be a control *upon* the people, as of late has been taught, by a doctrine of the most pernicious tendency. It was designed as a control *for* the people.

He continues:

> A vigilant and jealous eye over executory and judicial magistracy; an anxious care of public money; an openness, approaching facility, to public complaints, these seem to be the true characteristics of a House of Commons.

Honourable senators, I really believe in this system. That is perhaps due to my British colonial upbringing. I listened to all the speakers a few hours ago who asked how it feels to be gay. How does it feel to be anything and everything? Everyone has sorrow. Honourable senators, I am the first Black female senator in North America. None here have ever asked me how I felt to be the only Black person here for so long. However, that is not important to me because it is such a great privilege to serve in this place. To my mind, all other questions are lesser and subordinate.

Honourable senators, I have gone through my entire life being the only Black person here and there and there. So there it is: Human beings suffer; homosexual people suffer; left-handed people suffer; bright people suffer; pretty girls suffer; ugly girls suffer; short men suffer; tall men suffer. We must understand that there are areas in life where forgiveness must operate. At the same time, there are places in life where we must understand that there is a paucity of the human condition.

Honourable senators, I would like to close by referring to another great parliamentarian, Upper Canadian William Lyon Mackenzie. In an address to Her Majesty, as recorded in Margaret Fairley's book, *The Selected Writings of William Mackenzie 1824-1837* he stated:

> ...for there is not now, neither has there ever been in this province, any real constitutional check upon the natural disposition of men in the possession of power, to promote their own partial views and interests at the expense of the interests of the great body of the people.

William Lyon Mackenzie was the Mayor of Toronto and also a member of the assembly.

Senator Smith: A ramble against Her Majesty.

Senator Cools: That may be true, but we are dealing with what he said about the Family Compact and the role of the judges.

In closing, I wish to quote one judge who upholds —

Some Hon. Senators: Oh, oh!

Senator Cools: Many judges, honourable senators, have upheld —

An Hon. Senator: Only those that agree with you.

Senator Cools: No, I do not need anyone to agree with me.

The Hon. the Speaker: Order, please. Senator Cools has only a few seconds left.

Senator Cools: Many judges articulate again and again the nature of the proper relationship between the courts and Parliament, and I quote them from time to time. I quote anyone who upholds the rights of Parliament and the proper constitutional relationship, constitutional comity, constitutional balance, and the design of the Constitution.

• (2210)

Lord Justice Fletcher Moulton in the United Kingdom Court of Appeal's *Scott v. Scott* judgment of 1912 said:

> We claim and obtain obedience and respect for our office because we are nothing other than the appointed agents for enforcing upon each individual the performance of his obligations. That obedience and that respect must cease if, disregarding the difference between legislative and judicial functions, we attempt ourselves to create obligations and impose them on individuals who refuse to accept them and who have done nothing to render those obligations binding upon them against their will.

He continued:

> The courts are the guardians of the liberties of the public and should be the bulwark against all encroachments on those liberties from whatsoever side they may come. It is their duty therefore to be vigilant. But they must be doubly vigilant against encroachment by the courts themselves. In that case it is their own actions which they must bring into judgment and it is against themselves that they must protest the public.

The Hon. the Speaker: I am sorry to interrupt, but I must advise that your time has expired, Senator Cools.

Hon. Lorna Milne: Honourable senators, I am proud to stand here this evening to speak in favour of Bill C- 38 at third reading. Throughout my career at the Senate I have wholeheartedly supported minority rights. Indeed, that is not only part of the mandate of the Senate, it is deeply engrained in the culture here and it is a key part of what makes this chamber so special and so important in Canadian society.

Honourable senators, it was truly an eye-opener to sit in the hearings conducted by the Standing Senate Committee on Legal and Constitutional Affairs last week. I also want to note that Senator Bacon did an outstanding job in balancing the diverse interests on this issue. She held well-balanced hearings that exemplify the kind of work we do here in the Senate. She should be commended.

Some Hon. Senators: Hear, hear!

Senator Milne: Honourable senators, the week of hearings did not change my mind on this issue, and I did not expect it to. What truly surprised me was how much stronger my support for this bill is after the hearings than when they started. The positions taken by the various witnesses last week were stark and diametrically opposed to one another; there is no doubt about that.

There are 10 reasons in particular why my position strengthened as a result of the hearings. The first reason was provided by Cardinal Ouellet, the Roman Catholic Primate of Canada, who spoke about how the Catholic Church will handle baptisms after this bill is passed. He said that the church —

[*Translation*]

> We cannot accept the signatures of two fathers or two mothers as parents of an infant.

[*English*]

He certainly left us all with the strong impression that he would refuse to baptize the child of a gay married couple.

Honourable senators, I had always thought that all Christians were taught to accept children no matter what the circumstances. I most humbly suggest that Cardinal Ouellet take another look at Luke, chapter 18, verse 16, which says:

> But Jesus called them unto him, and said, Suffer little children to come unto me, and forbid them not: for of such is the Kingdom of God.

Some Hon. Senators: Hear, hear!

Senator Milne: Second, I found support for my position in the argument of former Deputy Minister of Finance and former Chief of Staff to Prime Minister Mulroney, Stanley Hartt, who believes that this whole debate is:

> ... being done for political purposes so that people can feel better about the outcome.

— as if there were no rights issues involved here at all.

The third and fourth comments that bolstered my belief in my position came from Phillip Horgan, President of the Catholic Civil Rights League. While being questioned by Senator Rivest, he stated that any Catholic who questioned the Church's beliefs on same-sex marriage was not "an authentic Catholic." He apparently believes that Catholic Canadians should not have the ability to speak for themselves.

Even more outrageous was the notion that the government should be in the business of picking winners and losers in debates over religious issues. When I asked him:

> I believe we established earlier that it is not up to the government to choose between religious groups, because that is what the Charter protects, is it not?

Mr. Horgan quickly retorted:

> I did not concede that, senator.

I am compelled to ask, honourable senators, if the government gets into the business of picking religious winners and losers, then what will become of the concept of freedom of religion?

Former Newfoundland marriage commissioner Ms. Diz Dichmont provided further reason to support minority rights in this debate. She noted:

> It makes my blood run cold and it seems that we are now beginning to regress rather than progress in many ways in this country as we change our mores and even legislation to accede to minority pressures... Are we seeking to be avant-garde, or are we, in fact, being retro-garde (sic)?

By passing this bill, we are being avant-garde. Any time we act as leaders in this place and lead Canadians to a society that is more inclusive, we are being avant-garde. Honourable senators, that warms my heart and does not make my blood run cold.

Ms. Ditchmont made another statement that I found baffling. She asserted:

> Gay activism historically started in Germany during Hitler's regime and under the umbrella of the disco scene. It has grown in intensity and even in violence throughout the years...

The ghastly issues that that quote raises are almost too many to count. I can guarantee you that anyone who believes that the gay movement that also supports this legislation is violent has never been to the Gay Pride parade in downtown Toronto. You may argue that the participants are too happy, too over the top, perhaps, too colourful; but violent? I do not think so.

Let the record be perfectly clear that the real violence against homosexuals in the 1930s and 1940s came when Hitler attempted to exterminate all homosexuals during his attempted genocide of the Jews, Gypsies and other groups. Make no mistake about it, homosexuals, by and large, are not perpetrators of violence; they have been its victims for centuries.

The seventh reason why my support for this bill was bolstered during committee came as a result of the claims of Ms. Gwendolyn Landolt, President of REAL Women Canada. In her testimony, she claimed that, first, there are increased mental health problems within the homosexual community; second, that homosexuals experience a significantly reduced life expectancy because of their lifestyle; third, that same-sex parenting influences children's sexual orientation; fourth, that sexual orientation is nothing more than a human behaviour characteristic; fifth, that Bill C-38 will cause the birth rate to drop in Canada; and, sixth, that less than 2 per cent of homosexuals are monogamous.

Honourable senators, if you replace the words "homosexual" or "sexual orientation" with the word "female" in any of these contexts, you would certainly argue that the person saying the word is a misogynist. I will let others draw the conclusions as to what I would label Ms. Landolt.

The eighth, ninth and tenth reasons are due to the bombastic and verbose — I will not say "narcissistic" — testimony by a professor from Augustine College, Dr. John Patrick. He said that by passing this legislation, we are:

> ...allowing ways of living which do gratuitous harm to others.

He later attempted to enumerate a list of physical problems associated with being homosexual.

• (2220)

Honourable senators, every major Canadian, European and American journal of medicine and psychiatry stopped believing that homosexual activity was an illness or would lead to great disease a long time ago.

Dr. Patrick remarked that the Canadian education system is deficient and that we poor senators would be unable to understand some of his statements. He also stated that Canada is currently being governed by barbarians, and he looked forward to some kind of enlightened revolution, the likes of which were started at the end of the Dark Ages.

Honourable senators, if this is a barbaric government, if the Liberal Party that built the social safety net, that balanced the budget and has produced leaders such as Laurier, Pearson, Trudeau and Chrétien, is barbarian, I have just one thing to say: Bring on the hordes!

The tenth and most important reason why I support this legislation, honourable senators, is also found in the words of Dr. Patrick. He argued that those who support Bill C-38:

> ...base their assertion of a right of homosexuals to change the meaning of the word 'marriage' on no visible intellectual foundations. They just invoked the Charter. The Charter is merely a piece of paper. Where is the argument?

A piece of paper. A mere piece of paper, honourable senators.

An Hon. Senator: Shame on him!

Senator Milne: I rise here in this chamber to defend what I believe to be one of the most important pieces of paper to have existed in Canadian history. It is the Charter that protects us, one and all, and gives us all the fundamental freedoms to live, play and worship in a free and democratic society. That is the same Charter that now protects the rights of all of our witnesses, even those with whom I disagreed, to stand up and argue their position out on the streets as well as here in the Senate. It is a Charter infused with values that Canadian and, indeed, western societies have been developing for hundreds of years.

Dr. Patrick asked: Where is the argument? I will tell him. He can find it in Locke, Hobbes, Rousseau and Voltaire. He can find it in the work of Trudeau and Chrétien, as they cobbled together that piece of paper; and, yes, he can find it among the senators here today who worked on the Charter on the special joint committee, such as Senator Joyal and Senator Austin.

Honourable senators, I am proud to state that I will stand in my place and support Bill C-38. It is a matter of human rights and dignity. Our Charter calls on us all to treat everyone equally, and that is exactly what I intend do.

Some Hon. Senators: Hear, hear!

Hon. Terry Stratton (Deputy Leader of the Opposition): Honourable senators, whenever I look at a bill, I ask myself whether or not we need it, as I said before. This is the question that I have asked myself about Bill C-38.

[*Translation*]

In order to respond, I had to examine the bill and the surrounding facts carefully.

[*English*]

As we are aware, the current legal situation is that the courts in eight provinces and two territories have determined that the opposite-sex requirement for marriage is an unconstitutional breach of the equality rights section of the Charter. These court decisions cover about 90 per cent of the population in Canada, which means that same-sex marriage is already legal for 90 per cent of Canadians.

Even without Bill C-38, the situation would stay the same in those jurisdictions where the courts have made their decisions, and it seems that the remaining provinces and territories will likely soon follow suit. This is because the Supreme Court of Canada has never had the opportunity to hear an appeal in any of these cases. The federal government decided that same-sex marriage was the way we would go in Canada, and has refused to appeal the provincial court decisions.

When the Supreme Court was given an opportunity to comment on the constitutionality of same-sex marriage, it declined. It chose to defer to Parliament on this issue, recognizing the clear policy choice of the Liberal government. It held back what would likely have been its decision, that the opposite-sex definition of marriage was, in fact, constitutional. We have Stanley Hartt's clear argument on this.

Consequently, as Justice Minister Irwin Cotler told the Standing Senate Committee on Legal and Constitutional Affairs, even if we were to drop Bill C-38,

> Same-sex marriage would still be the law of the land, at least in those eight provinces and one territory, and we have heard that this will soon be extended, let us say, to the rest.

The implication is that very soon there will be no legal barriers preventing people of the same sex from marrying in Canada. This bill is not necessary in order to have same-sex marriage in Canada, because it already exists.

However, there is one other question I must ask myself about this bill, which relates to its second purpose: the protection of religious freedoms in Canada. The minister highlighted this purpose when he told the committee:

> ...this legislation will provide, for greater certainty, an additional expression of protection that is already in the Charter of Rights and Freedoms regarding section 2 (a), protection for freedom of religion and conscience.

Unfortunately, there is a problem here. The clause of the bill that relates to protecting religious freedom actually falls outside of federal jurisdiction. The Supreme Court of Canada made this clear in its *Reference on same-sex marriage*, in which it stated:

> ...only the provinces may legislate exemptions to existing solemnization requirements, as any such exemption relates to the "solemnization of marriage" under s. 92(12). Section 2 of the Proposed Act...

which, honourable senators, is equivalent to clause 3 of Bill C-38 —

> ...is therefore ultra vires Parliament.

This provision has no legal authority in Parliament because the solemnization of marriage falls under provincial jurisdiction. The Supreme Court noted that while the Charter protects religious officials, the provinces must get their laws in line to underscore this protection. As the court said in its reference:

> It would be for the Provinces, in the exercise of their power over the solemnization of marriage, to legislate in a way that protects the rights of religious officials while providing for solemnization of same-sex marriages. It should also be noted that human rights codes must be interpreted and applied in a manner that respects the broad protection granted to religious freedom under the Charter.

Bill C-38 is not needed to ensure that same-sex marriage exists in Canada, as I said, because it already exists. Nor is it needed to provide religious protection, because that supposedly comes from the Charter and the provinces.

Unfortunately, we run into another problem here. Religious freedom is not being protected by the Charter or the provinces. According to *The Globe and Mail*, July 19, 2005, as has been stated before by others, Saskatchewan marriage commissioner Orville Nichols expects to become the first person in Canada to be fired for refusing to perform marriage for a gay couple.

The Globe and Mail states that:

> ...performing same-sex marriages does not accord with his religious and personal beliefs. Saskatchewan Justice Minister Frank Quennell made it clear late last year that refusal is not an option for civic officials in his province.

Mr. Nichols' religious freedom has not been protected. He is not the first marriage commissioner to have faced problems in the provinces. Some have already resigned over this matter in Manitoba and Newfoundland, and now likely as well in Saskatchewan.

In another case, the Knights of Columbus, a Catholic men's organization, as has been mentioned before, cancelled a contract with a lesbian couple upon discovering that the couple were intending to celebrate their same-sex marriage at the hall. The couple took the Knights of Columbus to the B.C. Human Rights Commission and the case is yet to be resolved. Complaints have also been made to the Alberta Human Rights Commission regarding statements by Catholic Bishop Fred Henry against same-sex marriage.

Justice Minister Irwin Cotler acknowledged that the provinces are in charge when it comes to protecting religious freedom in the case of marriage, not the federal government.

• (2230)

As the minister told the committee:

> We cannot legislate, we as a federal government, in matters that are within provincial jurisdiction that relate to the solemnization of marriage, but legislation within provincial jurisdiction is subject to the Canadian Charter of Rights and Freedoms, which is applicable to both federal, provincial and territorial legislators.

It seems that all we can do is ask and hope that the provinces do the right thing. That is precisely what the federal Minister of Justice has done. *The Globe and Mail* says that he has:

> ...appealed to his counterparts in the provinces and territories to make provisions for civic officials who don't want to perform a same-sex marriage.

Sad to say, his appeal, such as it is, has had only limited success. One thing is clear: Bill C-38 does nothing to protect religious freedom in Canada.

[*Translation*]

We do not need Bill C-38. I would go so far as to say that this legislative instrument has had a negative effect.

[*English*]

The debate surrounding Bill C-38 has been extremely divisive. It is not at all clear that Canadians want to change the definition of marriage. They have been quick to voice opinions on this matter to my office. My office has been swamped with phone calls, faxes, emails and letters from people urging me to take a stand against the bill.

The committee meetings in the other place were extremely acrimonious and they occasionally degenerated into name calling there as well. In the face of clear opposition and calls to slow down, the government has stubbornly pushed Bill C-38 through the legislative process. Closure has been invoked four times on this bill — at the report stage and third reading in the other place, and at second reading here, and now again at third reading the government has expressed its intention to do so again. This behaviour undermines the democratic process and the legitimacy of Parliament.

I submit that Canadians and Parliament have been forced into this nasty debate for no good reason. Alternatives such as civil unions were rejected out of hand, a dismissal that was even written into the bill. As the preamble of the bill states:

> WHEREAS only equal access to marriage for civil purposes would respect the right of couples of the same sex to equality without discrimination, and civil union, as an institution other than marriage, would not offer them that equal access and would violate their human dignity, in breach of the *Canadian Charter of Rights and Freedoms*;

The fact is that the reference to the Supreme Court did not even discuss the question of instituting civil unions as a separate but equal approach. In fact, there is every likelihood that the court would find it constitutional. Stanley Hartt pointed this out in his now-famous *Macleans'* article entitled "Grits and Red Herrings":

> If Canada were to adopt a regime of civil unions for gays and lesbians, it is virtually certain that this would be found to be constitutional, and that it would be so without the need for governments to invoke the notwithstanding clause in the Charter of Rights and Freedoms.

The truth is that the same-sex marriage is recognized in only three other nations in the world — Belgium, the Netherlands and Spain. Of these three countries that recognize same-sex marriage, two of them, Belgium and the Netherlands, have restrictions over adoption. In contrast, same-sex civil unions, domestic partnerships and civil partnerships are much more common worldwide.

In an interesting twist, I want to point out that euthanasia is legal in both Belgium and the Netherlands, two of the three countries that recognize same-sex marriage.

Senator St. Germain: That is the next step. It is a slippery slope.

Senator Stratton: The question automatically comes to mind, is this the next step? It is a logical question.

Please let me continue by listing some examples of alternatives to changing the definition of marriage chosen in other countries, as I said earlier. Denmark has registered partnerships that are for same-sex couples only. It does not permit adoption unless the child belongs to one of the spouses. Germany has a Life Partnerships Act that provides some but not all of the rights and responsibilities of marriage. France has a Civil Solidarity Pact Act that also provides some but not all of the rights and responsibilities of marriage. New Zealand has found that the opposite-sex definition of marriage is constitutional. It offers civil unions with some but not all of the rights and responsibilities of marriage. The State of California has a system of domestic partnerships that offers some state-level benefits but no federal-level benefits. The federal Government of Australia has banned same-sex marriage altogether, while allowing for civil unions at the state and territorial level. Currently, civil unions are available in all but two provinces.

Honourable senators, our Liberal government is ignoring the experiences of countries like these. With a legislative and somewhat paternalistic heavy hand, it has determined that none of these options are possible for Canadians.

As recently as 2003, the very same year that it submitted the original three questions of a draft bill on same-sex marriage to the Supreme Court of Canada, this Liberal government argued in favour of a traditional definition of marriage at the Ontario Court of Appeal. For some reason, the government changed its mind, and now Paul Martin's Liberals have chosen to go the route of divisiveness.

[*Translation*]

There was no need to create these divisions, because there was no need for the bill.

Hon. Marcel Prud'homme: Honourable senators, I think I can say openly that, from the outset, I felt that this bill — and I begin where Senator Stratton left off — was not needed.

Second, I want to thank the committee chair, as others have done, for her considerable patience. Those who know Senator Bacon know that she cannot be told how to conduct herself when she is chairing. I have had the extraordinary human experience of attending 28 hours of hearings, without interruption—as she has, since she was chairing. I have to tell you that we heard everything under the sun. And this is what is upsetting when it comes to making a decision as important as this one.

I voted for the amendment put forward by Senator St. Germain earlier. Perhaps it was not for the reasons he gave. It is because I am the longest sitting parliamentarian, not necessarily the oldest. Soon, it will be 42 years. One of the greatest experiences of my life was to travel across Canada in 1971 for the renewal of the Constitution. Why would I have preferred we had locations across Canada? For reasons different from those of the people who think it is cost effective electorally.

It is because it is possible to find senators and MPs who are calm and able to listen to things they profoundly disagree with. Allowing people to say things that seem unreasonable frees the heart and mind of the nastiness that is to be found pretty much everywhere. When you hear them speaking in public, those who think like them are almost ashamed to admit, "I cannot imagine that is exactly what I was thinking." In this regard, the committee could have sat across the country, I am sure.

Senator Di Nino said, "it is very simple." I love people who see things so clearly. He said:

• (2240)

[*English*]

"It is an eight-letter bill — marriage." Immediately, that has meant immense confusion for French Canadians.

[*Translation*]

If I were to follow his example, I would point out that there are only seven letters in "mariage", the French word for marriage.

What would that prove? In my 42 years as a parliamentarian, and even before that at university, I have heard many predictions of the end of our institutions.

When campaigning with Mr. Pearson, in January 1964 — imagine, we were in a minority position — he had me promise my constituents that there would be a Canadian flag before the next election. What audacity! We were in a minority position, but I was very young, and I made that promise. I had the honour to accompany Mr. Pearson to Manitoba, a province I know well, having done military training with the Provost Corps at Shiloh.

[*English*]

Needless to say, my first choice was the navy, but they spoke only in English so I ended up in Shilo, Manitoba, thanks to history. Everyone said that this would be the end of Canada; what a change it was to be — a Canadian flag. A few years later, Mr. Marcel Lambert, former Speaker of the House of Commons, was rejoicing and handing out Canadian flags to the children. I watched him gently and smiled. He asked why I was smiling and I said that I was simply remembering the speeches he made during the Canadian flag debate in the 1960s.

Then we entered another tough debate on the national anthem. That was supposed to be a most atrocious debate, one that would end the country as we knew it. Some people still want to bilingualize it and have it played in French in British Columbia and in English in Chicoutimi. I disagree with that proposal. However, we came through the debate.

Then we arrived at the death penalty debate, a crucial time for the young member of Parliament that I was. I thought that we should make an alliance, and so I made one with Jim Fleming who became a minister from Toronto. He came to understand what I believe Canada is all about. We reached a solution when we decided that rather than have the death penalty in Canada there should be a minimum 25 years without parole. He was an English Canadian Protestant from Toronto. I was a French Canadian Catholic from Montreal. I thought we should unite our efforts and we did; and we won in favour of abolishing capital punishment.

Then we had the abortion issue, which was unbelievable. Press reports, even in *The Globe and Mail* that I read faithfully every day, continue to say that it is because of the Supreme Court that we have no abortion laws in Canada, but that is not true. It is because of the Senate; and that is easy to remember. The vote on Bill C-43 was 43 to 43. Some senators here tonight remember voting for that bill. That means Canada is one of the few countries in the western world that has no law whatsoever on abortion. I believe in life. My dilemma during that debate was as great as it is during this debate on Bill C-38. Who are we to judge others for being the Cassandra and predicting the end of time. I say, do not worry. Some witnesses who appeared before the committee last week told us how horrible things will be. One very fine lady from British Columbia, the National Vice-President of REAL Women, got the best from me. I told her that I am the youngest of 12 and that my mother was a real woman. However,

she fought for her rights. If she had waited for the Senate and others, we would never have had the vote in Quebec. It is because of people like her that eventually, after 800 years, women had the right to vote. How many hundreds of years did it take for the Blacks to be considered equal to Whites?

I know it is difficult, and I say that openly, for me to vote in favour of this bill, but I will do it. I have gone the extra mile to understand people's views on the issues. I know there is a division amongst the older generation. I called more than 100 people last week in addition to hearing from witnesses for 28 hours in committee. I have four living female ex-presidents out of eight; the four men died. I consulted with them. I spoke to their children and grandchildren in Saint-Félix-de-Valois, Joliette — older generation and younger generation. Why do we not have faith in people? Those were the first words of Pope John Paul II. What is to fear from this bill? I do not like it, but we have a bill before us and how do we dispose of it? By saying no?

Senator St. Germain: Yes, for sure.

Senator Prud'homme: Some say yes, but I will take my decision, explain it and live with it. If the committee had travelled across Canada during its consideration of the bill, we could have succeeded in explaining to people by being patient with one another. The Vice-President of REAL Women said that I might not remember but she spoke to me during the deliberations in 1971 in Vancouver. She said that I was as charming then as I am today but that I could never convince her on this bill.

Senators have the power of conviction. Senator Tkachuk and I demanded that the minister appear again before the committee, and he did so. We demanded television coverage, which was supposed to be impossible we were told, and we succeeded on the Wednesday morning in time for the appearance of the minister.

[*Translation*]

Cardinal Ouellette was there and had things to say. I was the one who questioned him, so I was the one he said them to. I was surprised. I was expecting a message of hope. Is there not enough division already in this troubled world? I asked myself that, and I asked him that. His answer was, as Senator Milne said, that he would deny baptism.

That really broke my heart and troubled my mind. I asked myself: How can anyone turn away a child? A child is a gift from God. How can anyone deny a child baptism because his parents are not what we would like them to be?

I remember the days when some children were called bastards, fatherless, without parents. We remember those days, and it was regrettable. Nowadays, would we dare call a child illegitimate or a bastard? That is no longer done. Between the ages of 7 and 15, I was the top canvasser for "la Sainte Enfance."

• (2250)

[*English*]

Only Catholics, French Canadians and Acadians would ever understand that. I never raised money for the Liberal Party of Canada, but I raised money in my youth. There was a convent in China called the Sister of the Immaculate Conception. Those nuns were the ones who opened my eyes to understanding China. They collected all the young baby girls and they baptized some, and I met some of these girls. Did the priest then ask how this child was conceived? Is he the son of sin; is he the son of illegal parents? He just baptized them. Maybe culturally that was not the thing to do but that is what they did.

I say to my colleagues, do not have fear; the institution of marriage is very strong but it is changing. I belong to a generation where there was a father, mother, grandparents and a lot of children. Today, I meet lots of children and, in many places, few children with so many parents. Are they worse off today than they were then? It is an immense change in our society.

Canada is not showing the way, because I do not like Canada to show the way that way. However, it is a fact of life that exists today. This bill will open a lot more problems. I agree with some of my colleagues. I do not want anyone to be penalized if they refuse.

My father was a medical doctor. He delivered over 9,500 babies. He taught me what life was all about.

People are in such a hurry to leave and they have no patience. If you do not want to hear when it comes to 15 minutes, I will shut up and I will tell you more later on, but be patient for now.

My father delivered these babies and more than half for free because I lived in a working class district, and I still live there today. I am sure my father was against abortion but he told me this is not the question. We should not be forced to do abortions, neither a nurse nor a doctor; but in certain circumstances, they do not even ask themselves, am I for life, am I for the baby and against the mother or for the mother and against the baby? If they were alone and had to act, they did not act philosophically. They acted medically most of the time. I am sure they always saved the mother first because she had so many other children to look after.

Today, we know that some doctors could refuse to do an abortion. I would side with them except in cases of emergencies. I would say the same thing for nurses who refuse for religious reasons to attend an abortion unless, again, it is an extreme emergency. However, I do not see any urgency to ask someone who profoundly believes it is against their moral principles or whatever, because I have seen enough in my 41 years. I have heard enough, honourable senators, in my 41 or 42 years to say that enough is enough. If it is because of the sanctity of marriage that you want to vote against the bill, these people who talk about the sanctity of marriage are not too full of sanctity in the way they behave outside their house; but they are there to preach about the sanctity of marriage.

I would love to live in a society where you have a nice equilibrium, where you have grandparents, parents and children who have girlfriends and boyfriends, but we do not live in this idyllic society. Therefore, I will say to my colleagues, with great difficulty — I would have preferred not to —

The Hon. the Speaker: Senator Prud'homme, do you wish additional time? Five minutes, Senator Prud'homme?

Senator Prud'homme: No, I will not abuse the patience of my colleagues. It is late. I would have preferred this debate to be earlier for my health. I would have been tougher and more passionate. I do not like to read a speech; perhaps it would have been better to have a good speech drafter to write a good speech. Do not bother me with that applause. Like alcohol, it might go to my head.

All I can say, honourable senators, is that I took this debate immensely seriously because I want to be fair. This is one of the first words I ever learned in English. Is it fair, is it unfair? I think to treat people differently is unfair.

My two last messages will be for the older citizens, people of my age. Show by your love to each other; show by example. Do not preach; be a walking Christian. That is what I learned when I went to listen to the Bible read by Mr. Manning. I told him that my father said, "Do not preach, act, and people will say, who is this good person, who is this good woman, who is this good man?" People will say that is a good Christian, to be a walking Christian. I can see the headlines: "Mr. Prud'homme said be a good walking Christian." You show by example.

For the young people, I have spoken to all young people who work in Parliament; I conclude with them, love each other with passion.

[*Translation*]

Take a bite of life, but be serious and honest with yourselves. The human body is like a child. It is a gift of God. We cannot abuse our body.

You see how far I could go in this speech. I want people my age to understand that, by their example, they can save this so-called institution of marriage. It is perhaps under attack by some, but it is not in danger. I do not believe so in my soul and my conscience. If I did, I would vote against the bill.

I waited, I thought, I consulted and I concluded that my conscience could sleep in peace tonight. Yes, I will vote for the bill, but I leave a message for young people. "Respect your body. Be more respectful in your relationships. If you choose traditional marriage, be faithful to each other. If you choose another path, be faithful to one another." This is how to respect the human body. Living together must be harmonious and respectful. That is what we should preach. There are people like me who would have loved to travel around Canada with Senator St. Germain and a number of other friends from the Conservative Party to listen to Canadians spew out their nastiness to us, to talk with them very wisely and patiently, with the understanding that there are people with things to say, that for years people have been wanting to tell us of their despair. It is by listening that we achieve a dialogue and comfort people by saying, "Do not be afraid, Canada is in good hands, and the institution of marriage is not in danger."

[*English*]

Hon. Ione Christensen: Honourable senators, the hour is late. I did have a presentation but most of my points have already been addressed. I do not feel that rereading them and putting them in the Debates would expand upon the debate that we have had. I will go to the last sentence of my presentation because I think it has something for us.

One of my constituents emailed me and asked me how I was going to vote on Bill C-38, and I said I would be supporting it. These are the words that this constituent said; he is in a same-sex marriage in the Yukon:

> You have no idea what a difference it makes to the human spirit to know that you are treated equally under the law.

Hon. John G. Bryden: Honourable senators, I did not realize there was not time for a comment. All I wanted to do is make a comment in relation to Senator Prud'homme's presentation.

I have been here for almost 11 years now and I have heard Senator Prud'homme do his rants sometimes and his oratorical flights. I just want to say to him that it is one of the finest speeches he has ever given. Everyone in this room probably enjoyed it thoroughly.

• (2300)

The Hon. the Speaker: Are honourable senators ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: Will those in favour of the motion for third reading of Bill C-38 please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Is there an agreement as to the length of the bell?

Senator LeBreton: Fifteen minutes.

Hon. Rose-Marie Losier-Cool: Fifteen minutes.

The Hon. the Speaker: Is that agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: There will be a 15-minute bell. The vote will take place at 11:17 p.m.

• (2320)

Motion agreed to and bill read third time and passed on the following division:

YEAS
THE HONOURABLE SENATORS

Atkins	Losier-Cool
Austin	Maheu
Bacon	Mahovlich
Baker	Massicotte
Biron	Meighen
Bryden	Mercer
Callbeck	Milne
Chaput	Mitchell
Christensen	Munson
Cook	Nancy Ruth
Cordy	Pearson
Dallaire	Pépin
Downe	Peterson
Dyck	Poulin
Eggleton	Poy
Fairbairn	Prud'homme
Fitzpatrick	Ringuette
Furey	Robichaud
Grafstein	Rompkey
Harb	Smith
Hubley	Spivak
Jaffer	Tardif
Joyal	Trenholme Counsell—47
Kenny	

NAYS
THE HONOURABLE SENATORS

Angus	Kelleher
Banks	Keon
Buchanan	Kinsella
Cochrane	Merchant
Comeau	Phalen
Cools	Plamondon
Di Nino	Sibbeston
Eyton	St. Germain
Forrestall	Stratton
Gustafson	Tkachuk—21
Hervieux-Payette	

ABSTENTIONS
THE HONOURABLE SENATORS

Corbin	Moore—3
LeBreton	

Hon. Wilfred P. Moore: Honourable senators, I wish the chamber to know that I abstained from voting pursuant to an agreement that I entered into with an absent senator. Had I participated in the vote, I would have supported the subamendment of Senator Banks, which I thought was well-founded, and I would have voted against the unamended bill.

BILL TO AUTHORIZE MINISTER OF FINANCE TO MAKE CERTAIN PAYMENTS

THIRD READING—DEBATE ADJOURNED

Hon. Art Eggleton moved third reading of Bill C-48, to authorize the Minister of Finance to make certain payments.

He said: Honourable senators, I doubt there is much enthusiasm for a lengthy, 45-minute speech on a new item.

Some Hon. Senators: Oh, oh!

Senator Eggleton: Thus, I will be mercifully short in terms of my comments. However, I do wish to respond to issues that were raised in committee. Honourable senators will note that when the report from the Finance Committee was submitted by Senator Oliver, there was an attachment of observations. I wish to point out that unlike many other observations, these were not of the committee.

The Hon. the Speaker: Honourable Senator Eggleton, I am sorry to interrupt, but I must ask for quiet in the chamber. I am having difficulty hearing you, and I am sure other senators are as well.

Senator Eggleton: Honourable senators, the observations attached to the report are not of the committee; they are of a minority of the committee. The Conservative members of the committee have filed this report. I wish to comment on some of the issues that they raised. In particular, I will speak about their concern about no details or no role for Parliament.

Senator Stratton: Especially the NDP!

Senator Eggleton: With respect to the issue of no details that they raise, I wish to refute that by using four points. First, if one looks at how spending items are generally presented in the budget, and including this year's budget, including those items that went into Bill C-43, one will find that the presentation is not very different at all. There are some items, such as those that dealt with Employment Insurance and environmental issues, where there was a significant amount of detail because of the requirement for legislation on implementation of various structures within the presentations that were made. When it comes to actual items for expenditure, there is no greater amount of information provided than has been provided in Bill C-48.

For example, in Bill C-43, it talks about $1 billion for an innovative clean fund to further stimulate cost-effective action to reduce greenhouse gas emissions in Canada. This is a good purpose, but limited in terms of detail about how a large amount of money is being spent.

Another item says $398 million over the next five years to enhance settlement, integration programs and improved client services for newcomers to Canada. This is a worthy purpose, but again about the same amount of detail as one would find in Bill C-48.

There is an investment of $171 million over five years to celebrate Canada and to help Canadian diversity find its voice in communities across the country. I could go on. There are many like this. There is not a substantial difference in terms of the level of detail that is provided in Bill C-48 in the four expenditure items that are noted that make up the $4.5 billion.

Second, one of the reasons there cannot be more detail is because of the conditions that the government has put on the bill, with respect to being able to achieve a surplus, but only to do that after the $2 billion level is reached, before any of these expenditures are made.

There are four important principles. I wish to repeat them. First, something that was said at second reading, but it is important to note that there must first be the assurance of no deficit. The Minister of Finance has made it clear that the support of this bill is on the basis of not returning to a deficit position. Second, the assurance of continued debt reduction and the $2 billion in each of the next two fiscal years — $4 billion — ensures that we continue on that path where we have already made substantial reductions in the debt, and are well on the path of reaching a level of 25 per cent of GDP, being the debt level by 2015, some 10 years from now. This is absolutely the best record of any country in the G7.

Some Hon. Senators: Hear, hear!

Senator Eggleton: The third aspect is the profiling of two particular tax measures in a separate piece of legislation: Those things that were deleted from Bill C-43 will return. There is a commitment to bring them back.

Fourth, the investment priorities are consistent with the government's own spending commitments.

That is clearly what will be done in each of these four areas, whether that is affordable housing, post-secondary education, the environment or international assistance. All these elements are in accordance with government programs that have been devised over a number of years. They build on that framework and investment that has been made.

There is not a significant amount of detail at this point, but we have not reached the $2 billion point to know whether the entire $4.5 billion will be addressed in one year, two years or whether or not it will be achieved. Obviously, more details will be fleshed out that will provide an opportunity for all honourable senators to make further representation.

It is interesting to note that one of the witnesses at the committee was the Comptroller General of Canada. This officer of the government, like the Auditor General, is very interested to ensure that money is spent wisely. When he came to the committee, he said that he liked the approach in Bill C-48. He found it to be prudent and to bring about better accountability and oversight. He is saying this because, until now, over a number of years we have had budget surpluses, and at the end of the fiscal year, budget surpluses automatically go against the debt.

Prior to the fiscal year, for a number of years, we have been booking in the fiscal framework some of that just-about-to-be surplus and putting it towards worthy measures.

• (2330)

We all know the story about the foundations for innovation, for health issues, for the Millennium Scholarship Program, and many other worthy purposes to which these monies have been put. The difference here is that the government is saying upfront, a whole year in advance of the end of this fiscal year and even more so when you get to the next fiscal year, that if we get to the surplus levels, over the $2 billion, then this is how we will spend it. We will spend it on the environment and on affordable housing, all in accordance with government programs.

The Comptroller General's comments are right on, and that is that this is an advancement over what has been done in previous years where the government just comes up towards the year-end and just books this amount of money, and there is little advance notice of where, in fact, it will be allocated. In this case, we know far in advance, and even when the allocation is made towards the end of the fiscal year there will be time for comments on the details of how it will be spent, because it will not be spent until after the close of the books, which comes quite a number of months later.

Finally, let me say with respect to the matter of details again, there is a framework for these programs. In the case of affordable housing, over the last number of years the government has allocated some $2 billion: $1 billion for affordable housing and $1 billion for the homelessness initiative. Money is going into areas of energy conservation and into retrofitting in houses. These are the kinds of programs on which this will be based.

With regard to post-secondary education, I know that Senator Kinsella particularly spent time on second reading talking about his concern on this subject. The provinces having responsibility, he said, for education. Yes, and indeed if any of the monies that are to be spent in areas for which the province has responsibility, there will be consultation. In fact, the secretary to the minister who came to the committee made it clear that consultations would go on with provincial governments in that respect.

Notwithstanding that, there have been substantial investments in post-secondary education in the last number of years. Over the last number of years, some $5 billion has been allocated by the government. It has gone into areas such as research chairs at our universities. A very substantial amount has gone into student loans. There are areas where, in fact, investments can be made that do not in any way infringe upon provincial jurisdiction. The Millennium Scholarship Program is another example. There are many areas where, in fact, there can be assistance, particularly for people of low income.

I will say something about affordable housing because it was in this chamber at second reading that Senator Tkachuk rose and talked about what he thought was only $100 million that Bill C-48 was proposing that was different from what had been budgeted. He said that the minister mentioned $1.5 billion in the House of Commons committee when talking about the matter. He quoted the minister, the Honourable Joe Fontana, as saying that originally our government committed to spending

$1.5 billion over five years, which was reiterated by Minister Goodale following the tabling of budget 2005. Senator Tkachuk said that there was $1.5 billion allocated in the budget over five years. They took that $1.5 billion, made it $1.6 billion and said that, instead of spending it over five years, they would spend it over two years. Therefore, it is $100 million accelerated over two years.

That is false, honourable senators. Senator Tkachuk should have gone on to read the comments by the minister in that same committee meeting. The minister then went on to say that about a year and half ago we had said in our platform that we would provide assisted housing with a further $1 billion to $1.5 billion over the next five years. No, it was not mentioned in the budget. It was, in fact, a matter that came up for the first time in Bill C-48, in terms of actual expenditure by the government, so it is fully $1.6 billion; not as it was presented by Senator Tkachuk.

Those are the questions of detail. I will briefly look at this question of the role of Parliament. Again, the Comptroller General said that there is better accountability here. He talked about the fact that the matter would go to the Treasury Board, and that he would have input in what goes to the Treasury Board. He talked about the same mechanisms that occur with any other budget, that they come in the supplementary estimates or in the reports on plans and priorities presentations, or even before the money is spent.

There is nothing that would stop honourable senators from calling before the committee a minister and asking how their plans are forming with respect to the expenditure of these items. Indeed, I believe there is a role for Parliament and there is a role for the Senate.

This bill, which will allocate $4.5 billion toward the priorities of Canadians, toward the priorities of our government in dealing with the issues that are of concern to Canadians, deserves your support. I hope you will give it that support at third reading.

On motion of Senator Tkachuk, debate adjourned.

NOTICE OF MOTION FOR TIME ALLOCATION

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I rise pursuant to rule 39 to inform the chamber that I have had a discussion with my counterpart with regard to the disposition of Bill C-48. It has not been possible to reach an agreement to allocate a specific number of days or hours for consideration of the third reading stage of this bill. Therefore, I give notice that tomorrow I intend to move the following time allocation motion:

> That, pursuant to Rule 39, not more than a further six hours of debate be allocated for the consideration of the third reading stage of Bill C-48, An Act to authorize the Minister of Finance to make certain payments;
>
> That when debate comes to an end or when the time provided for debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the third reading stage of the said Bill, and
>
> That any recorded vote or votes on the said question shall be taken in accordance with Rule 39(4).

The Hon. the Speaker: Senator Rompkey, you were looking for agreement to go to the adjournment motion?

Senator Rompkey: I simply gave notice of a motion, and now it is my intention to adjourn the Senate.

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): I am sorry, what I would like to propose is that we stand all items on the Order Paper in their place until the next sitting of the Senate. It has been a long day, it is late and I apologize, but I would like to make that proposal.

The Hon. the Speaker: Is it agreed, honourable senators?

Some Hon. Senators: Agreed.

The Senate adjourned until Wednesday, July 20, 2005 at 1:30 p.m.

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