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(HANSARD)

Wednesday, February 11, 1998

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER

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(Daily index of proceedings appears at back of this issue.)

*Debates*: Victoria Building, Room 407, Tel. 996-0397

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## THE SENATE

Wednesday, February 11, 1998

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### THE SENATE

##### YESTERDAY'S ATTENDANCE

**Hon. Marie-P. Poulin:** Honourable senators, I am pleased to see some members of the press in the gallery today. As chair of the Senate Liberal caucus, as a member of the Senate and as a former broadcaster, I welcome and appreciate the interest that is being shown in our work.

As we know, there are 104 seats in the Senate of Canada. Currently, four are vacant. Out of 100 sitting senators, 75 were in the chamber yesterday while 11 were holding hearings as members of the Standing Senate Committee on Banking, Trade and Commerce. That is, 86 senators out of 100 were present, an 86 per cent attendance rate. That is not the 60 per cent rate indicated by some journalists this morning. I thought I would set the record straight.

[Translation]

#### TELECOMMUNICATIONS

##### ROGERS CABLEVISION—UNJUSTIFIED RAISE IN SERVICE CHARGES

**Hon. Jean-Robert Gauthier:** Honourable senators, I am grappling with an illness that it takes time to cure, but the time will come.

I would first like to thank all of you who through your expressions of sympathy, by letter, by telephone or in person, have helped me through these very difficult years.

This disease, which has had me in its grip for nearly two years, seems to be under control. As you can see, there have been improvements. They made it very clear that it would take me a long time to recover. I intend to work at it vigorously and unceasingly.

The point of my remarks today, honourable senators, is to make you aware of a situation I consider unjustifiable and unacceptable.

Rogers Cable is going to impose unacceptable rate hikes on all its subscribers. The trick is simple. All specialty channel subscribers will have to pay an additional two dollars a month.

This is an unjustified increase in service charges.

In order to put a better face on things, Rogers will suspend this increase for a year if the subscriber signs up for a new group of channels which the company has dubbed MeTV. This new service, on top of the specialty channels already in place, costs \$35.75. If you do the math, it will cost about \$4 to avoid paying a \$2 increase. Rogers loses absolutely nothing in the deal.

What a choice for consumers. Either they take MeTV and pay an extra \$4, or they do not take it and pay another \$2 a month.

As you know, the Rogers monopoly is currently experiencing serious financial difficulties and it hopes to overcome those difficulties by imposing an additional charge on taxpayers.

You will note as well that there will be only one French-language channel in this MeTV package, Canal famille.

I have written to Ted Rogers as well as to Françoise Bertrand, the Chairman of the CRTC, to protest this increase and to demand its immediate withdrawal. It is unacceptable and reprehensible that a monopoly like Rogers Cable can impose a surcharge after the fact.

Who is protecting the consumers?

We have recently learned that the minister responsible for this matter, Sheila Copps, has washed her hands of it. She will not interfere either. So whom can the consumer turn to for protection? Whom are we to contact?

[English]

• (1340)

### ROUTINE PROCEEDINGS

#### PRIVILEGES, STANDING RULES AND ORDERS

SENATOR ANDREW THOMPSON—SECOND REPORT  
OF COMMITTEE PRESENTED AND CONSIDERED—  
DEBATE ADJOURNED

**Hon. Shirley Maheu,** Chair of the Standing Committee on Privileges, Standing Rules and Orders, presented the following report:

Wednesday, February 11, 1998

The Standing Committee on Privileges, Standing Rules and Orders has the honour to present its

## SECOND REPORT

On December 16, 1997, the Senate ordered Senator Andrew Thompson to attend in his place when the Senate resumed sitting in February 1998 following the Christmas adjournment. A letter dated December 18, 1997, from the Clerk of the Senate, enclosing a certified true copy of this order, was personally served on Senator Thompson.

After the Christmas adjournment, the Senate resumed sitting at 2:00 p.m. on Tuesday, February 10, 1998. Senator Thompson was not in his place at that time, nor does the attendance record of the Senate indicate that he was present at any time during this sitting.

Pursuant to the terms of the December 16, 1997 Senate order, since Senator Thompson failed to attend the Senate, the matter of his continuing absence is now referred to the Standing Committee on Privileges, Standing Rules and Orders for the purposes of determining whether his absence constitutes a contempt of the Senate. The Committee is to report its findings and any possible recommendations within two weeks from the day the matter was referred to it.

The Committee met on February 10, 1997, when the Senate rose, to consider this matter.

Disobedience to an order of the Senate would appear to be, *prima facie*, contempt of Parliament. Before making a final determination regarding Senator Thompson, however, your Committee believes that he should be heard. This is based on the traditions of the Senate, and a desire that he be given every reasonable opportunity to provide an explanation or any relevant information and present reasons as to why his actions did not constitute a contempt the Senate.

As only an order of the Senate itself can require a Senator to attend a committee (Erskine May, 21st edition, p. 629), your Committee recommends, by the adoption of this report:

That the Honourable Senator Andrew Thompson be ordered to attend before the Standing Committee on Privileges, Standing Rules and Orders at its next meeting scheduled for Wednesday, February 18, 1998, at 7:00 p.m. in Room 160-S.

Respectfully submitted,

SHIRLEY MAHEU  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

**Senator Maheu:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(g), I move that the report be adopted now.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Edward M. Lawson:** Honourable senators, while listening to the CBC news this morning, I heard an interview with Senator Rompkey on the subject of this report. Senator Rompkey said that this is a constitutional and legal issue and we must move very carefully; however, he also said that Senator Thompson "will be gone." How does it come about that a senator can make a public announcement of a committee's decision and a penalty to be imposed before the committee has had the opportunity to have its hearing? The constitutional experts say that this penalty is not achievable. Is this merely Senator Rompkey pre-empting the committee, or had the committee made a decision before holding the hearing?

Second, the Clerk of the Senate is quoted as saying that, in the fall, Senator Thompson filed with the Senate a report from his doctor which indicated that for six months Senator Thompson would not be well enough to come to the Senate. Every other senator facing a serious medical problem has followed this same procedure in the past. Is the committee or the Senate now challenging Senator Thompson's doctor? Are we substituting the opinion of a reporter who saw Senator Thompson walking his dog and concluded that the senator was in good health? That was the reporter's medical opinion.

Are there any other senators on medical leave of a similar nature with medical reports from their doctors? Is the committee or the Senate challenging their medical reports, and if not, why not?

• (1350)

**Senator Maheu:** Honourable senators, no decision has been taken by the committee. Eighteen members sat last night and listened to possibilities and legal ramifications to determine whether we have that right and to find out what is contempt of the Senate. The question that we were discussing last night and the reason for our letter is not the absenteeism but the contempt of the Senate. We are dealing strictly with that one point for now, although the committee's order of reference from the Senate goes a little further.

We did not question the doctor's report. I do not think anyone on that committee would put the doctor's report in question. It was not a subject of discussion. Doctors' reports have been filed, but we did not put them into question last night. We are not challenging them at all, and as far as I know, no one else is being challenged in either the Internal Economy Committee or the Rules Committee. I do not know of another senator who falls into the same category.

The committee is merely requesting that Senator Thompson come and tell us why he has not appeared, why he will not listen to an order from the Senate, why he will not answer any mail that we have forwarded to him, even mail delivered by hand with a notary public's letter accompanying it.

Does that answer the questions?

**Senator Lawson:** Is the answer contained in the doctor's letter?

**Senator Maheu:** We do not know.

**Senator Lawson:** The doctor says that he is not able nor well enough to be here for six months, effective November.

**Senator Maheu:** That has nothing to do with contempt.

**Senator Lawson:** What is the basis of the contempt?

**Senator Maheu:** That is what we are considering.

#### MOTION IN AMENDMENT

**Hon. Ron Gitter:** Honourable senators, I wish to propose an amendment, seconded by the Honourable Senator Stratton, and many of my other colleagues on this side of the house. It is as follows:

That the report be amended by deleting all of the words following the second paragraph and substituting thereof the following:

That Senator Andrew Thompson be expelled from the Senate forthwith and that no further amounts be remitted to him for either his sessional indemnity or incidental expense allowance.

**Senator Lynch-Staunton:** That will take care of it.

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

That the report of the Rules Committee be amended by deleting all but the preamble, and that the following be substituted therefor:

That Senator Andrew Thompson be expelled from the Senate forthwith, and no further amounts be remitted to him for either his sessional indemnity or incidental expense allowance.

Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Senator Gitter:** Honourable senators, I should like to speak to the amendment, if I may. I do not take what I am suggesting lightly or without due regard for the very serious nature of this motion. In fact, I know of no other such act that has ever been taken in this chamber.

I have never met Senator Thompson, and those who know him have told me that he is a very pleasant and gracious individual.

However, the point of the matter is that he has brought this institution into disrepute, he has ignored the order of the Senate, and he has outrageously abused the privileges of this place.

Let me first explain the legal basis upon which I regard this institution as having the authority to expel a member.

Section 18 of the Constitution Act, 1867, reads as follows.

The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.

In dealing with the matter of expulsion, Beauchesne states as follows on page 16 of the 6th edition, at paragraph 47:

There is no question that the House has the right to expel a Member for such reasons as it deems fit. Such expulsion does not affect the right of a Member...

That is, a member of the House of Commons.

...to run again and be re-elected.

Then it carries on to speak of two occasions in the history of the House of Commons where there has been expulsion. Most of us know of the situation of Louis Riel, and those who are familiar with Nova Scotia will know of the expulsion that took place in the legislature in Nova Scotia.

There is no doubt in my mind that this chamber has the authority to expel a member. This is not a remedy to be used in a frivolous or a political manner. This is a very serious act which I am bringing forward. It is a remedy of last resort, in my opinion, and it is an action that should only be taken in the most grievous of circumstances. In my mind, and in my submission before you today, this is one of those situations.

Let me give you the reasons. I have before me the attendance record of the Honourable Andrew Thompson for the years 1980 to 1997. Until 1984 it seems his attendance was reasonable. I do not profess that everyone can be here all the time, nor should we be. It does not hurt to be in our communities. There is no perfect standard for attendance. However, an examination of the senator's attendance record since 1985 will show a record that can only be described as abysmal: 1985, zero attendance; 1986, 2.70 per cent attendance; 1987, zero attendance; 1988, 1.11 per cent; 1989, zero per cent; 1990, 7.47 per cent; 1991, zero per cent; 1992, zero per cent; 1993, zero per cent; 1994, 1.61 per cent; 1995, 4.16 per cent; 1996, 1.49 per cent; 1997, 2 out of 66, or 3.03 per cent. That attendance record is a shame. It ridicules the Senate and is inappropriate, and a person in this situation should certainly resign.

With regard to whether or not an individual should sit in the Senate, it is my submission today that Andrew Thompson's actions have brought the Senate into tremendous disrepute in the eyes of Canadians and have severely damaged the work and reputation of the Senate of Canada. All one needs do — and you have all read the editorials — is examine what people are saying about the Senate. That is not to say that before people were always saying favourable things about the Senate. That is not to say that this is a perfect institution with a perfect reputation. Indeed, it is not. However, what Senator Thompson has done by his actions and by thumbing his nose at the Senate — and I will come to that in a moment — has become a lightning rod that has brought this institution and its work into great and tremendous disrepute. All of us in this chamber who believe in the Senate cannot and must not sit by and do nothing while this is occurring.

Let me read for the record some of the highlights of what is being said about the Senate as a result of the actions of Senator Thompson. Early on, *The Ottawa Citizen* of October, 1997, sported the headline: "Top Senate Truant Wants to Keep His Job." Next, in November of that same year, *The Ottawa Citizen* had the headline: "Searching for Mr. Thompson":

Mr. Thompson who was appointed to the Senate in 1967, was booted out of the Liberal caucus Wednesday by Prime Minister Chrétien...

Good for Prime Minister Chrétien!

Between 1990 and this fall, he showed up a total of 12 times out of 459 sittings in the past two Parliaments — just enough times to collect his annual salary of \$64,000 plus a \$10,000 tax-free expense allowance.

Next, *The Edmonton Journal* in November: "Long Absences Bring Shame to the Senate."

• (1400)

This editorial states:

Being named to the Canadian Senate is a national honour. Senators are given a guaranteed job till age 75, with all the money and perks that national office bestows. In return, the Canadian people should at least be able to expect honourable behaviour from its senators.

And later on it states:

The great frustration with the Senate is the fact that real change — either an elected Senate or total abolition — is impossible because of our constitutional gridlock. We seem destined to be burdened with this embarrassing institution for years to come.

That gridlock, however, is no excuse for the senators themselves not to tighten their rules. By setting higher

standards, they could signal that the Senate is no longer a free ride. They might even convince Canadians the institution is worth preserving.

The *Sunday Sun*: "Senator FatCat's last laugh." This article states:

Yes, Sen. Thompson has become this year's poster boy for all that's said to be wrong with the chamber of sober second income.

*The Toronto Sun*: "Adios," it says:

As for his service to Canadians, well, only a cynic would say that Thompson's career as no-show hasn't delivered.

On the contrary, he may have succeeded where years of debate and endless rounds of constitutional talks have failed — that is, by convincing Canadians the Senate is a farce that must be overhauled or, better yet, abolished.

*The Ottawa Citizen*: "At home with Senator Thompson," is the heading, as it visits Mexico and describes the lifestyle.

A lengthy article in *The Globe and Mail*, wherein Senator Thompson is saying, "I really do not care what they are saying about me." He then speaks about the Senate, and he speaks of his disdain of the institution. That article states:

He had few kind words about the Senate —

"He" being Senator Thompson —

— which he says is desperately in need of reform. "I think it's absurd the pomposity that goes on there...There's a sadness about the place..."

"It could be so effective in helping people. It's like a morgue,"

So says Senator Thompson.

On and on it goes. Honourable senators, I am sure, have all read it. I could go on all afternoon, reading what is being said about the Senate.

However, honourable senators, it is not just what the media is saying about the Senate, not for one moment. It is what Main Street Canada is saying about the Senate. It is what we hear when we go home. It is the comments we receive from people, even our friends who jokingly say: "Why are you here? Why are you not in Mexico?" We have all heard those comments, and we all know how demeaning this situation has become, from the point of view of this institution that we very much believe in and that we serve.

What does Senator Thompson do? When this Senate, by motion, determines that they wish him to appear to explain himself, perhaps there are extenuating reasons; perhaps the man, sadly, is in ill health; perhaps there are valid reasons why he has not been in attendance here. When the Senate gives him that opportunity, and after a resolution that was passed in this chamber, he is then personally served with a document that says to him, "You shall appear by order of the Senate when it opens in February." He is served with that document personally.

Honourable senators, have we heard from Senator Thompson? Did he come yesterday? Have we seen a lawyer, a doctor, a letter, or anything? Will he plead that he has not received the document when he was personally served with it? Will he say: "I did not know when the Senate would start. I had a document, but it did not say February 10, so I do not know"? Is that credible? Of course it is not.

What has our colleague Senator Thompson done to us? I will not use the parlance of the street, but let us just say he thumbed his nose at us. He has thrown sand in our face, and he says that the Senate is a morgue for which he has no regard — not that he is here to help it any. He could not care less about this place.

Honourable senators, here we are today, talking in legal niceties about another order and serving him again. We say, "Let us be fair; let us do all these things."

I say enough is enough. I say it is time that we showed some guts in this place. We should stand up and say: "Mr. Thompson, that is enough. You are expelled. You will no longer abuse the privileges of this house and bring this house into disfavour."

**Some Hon Senators:** Hear, hear!

**The Hon. the Speaker:** Honourable senators, before I can permit any further debate, I must ask for some clarification from Honourable Senator Ghitter. If I understood him correctly, when he rose and gave the amendment he said "After the two first paragraphs..." However, the motion that he sent me in writing says, "...deleting all but the preamble." I must have clarification as to which one is correct.

**Senator Ghitter:** Confusion arose in that I did not see the material until it was just presented to me. The amendment relates to what was said by me, not what is in writing. After the first two paragraphs, everything should be deleted, and the amendment that I have described should be put in its place.

**The Hon. the Speaker:** Honourable senators, is it agreed that we will change what I have read to what Senator Ghitter wants, as he describes it "after the first two paragraphs"?

**Some Hon. Senators:** Agreed.

POINT OF ORDER

**Hon. Shirley Maheu:** Honourable senators, I rise on a point of order. The last four words in the suggested amendment by

Senator Ghitter are obsolete, since the incidental expense allowance has already been cancelled. Perhaps the Clerk could clarify that.

**The Hon. the Speaker:** Are there any other comments on the point of order raised by Senator Maheu?

Honourable senators, I believe that the Honourable Senator Maheu's point is valid. To simplify the situation, is it agreed that we delete "or incidental expense allowance"?

**Some Hon. Senators:** Agreed.

**Hon. John Lynch-Staunton (Leader of the Opposition):** I think that Senator Ghitter wanted to include the tax-free monthly allowance that senators receive. I believe that is what he intended, not the general expenses for running the office. He was referring to the \$10,100.00, which is called the tax-free allowance. I think we would all agree that those last words be deleted and replaced with the words "special indemnity and tax-free allowance."

**The Hon. the Speaker:** Honourable senators, rather than get into more points of order, can we have agreement to do that — delete "or incidental expense allowance" and replace it with the words "or tax-free allowance"? Is that agreeable?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Honourable senators, I am advised that the time allotted to the Honourable Senator Ghitter has expired. There can be no questions to him, except with leave of the Senate. Is such leave granted?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted. Please proceed.

**Hon. Paul Lucier:** Honourable senators, far be it from me to stand here in this chamber and defend Senator Thompson or his behaviour. I believe that his behaviour has been to the discredit to all of us. I do not think it was necessary. The man lives in Toronto, and he could have found his way here at least a few times over the years.

However, honourable senators, I have a problem with the way in which we are dealing with this issue. We keep referring to Senator Thompson's attendance. Senator Thompson had legal, doctor's certificates, many of them, before the Clerk of the Senate covering his days of absence. Last night our legal counsel, Mr. Audcent, made a very good presentation before the Rules Committee and pointed out very clearly that the Parliament of Canada Act, wherein is discussed Senate attendance, makes it very clear that when a senator has a doctor's certificate and is away for medical reasons, he is in attendance. He is not absent. For every day that Senator Thompson had a legal medical certificate before the Senate and the Clerk of the Senate stating that he was away because of illness, he was in attendance.

Honourable senators, I do not want to speak about the issue of contempt. I believe there may be a case for contempt. If you want to deal with Senator Thompson on the issue of contempt, do so. I will support that. However, let us be governed by our own rules. Let us follow the Parliament of Canada Act, which states very clearly that when a senator is absent — that is, he is not in the chamber or is not wherever someone might think he should be, as we think Senator Thompson should have been here yesterday — if he has a valid medical certificate, he is considered to be in attendance. That is the law. I am not making it up. It was pointed out to us last night by the Law Clerk and Parliamentary Counsel, Mr. Mark Audcent.

• (1410)

We should be very careful when issuing press releases and so on, and expelling Senator Thompson for something of which he is not guilty. If we want to deal with him on the matter of contempt, let us do that. Let us not deal with him on the issue of absence when he was not absent.

**Hon. Marcel Prud'homme:** Your Honour, earlier, you said that Senator Ghitter had exhausted the time allotted for his speech on this debate, and you asked if there was consent for a question. There was then some side discussion. I only have one question for Senator Ghitter on his speech. I thought that we had consent from the Senate to do so.

**The Hon. the Speaker:** Honourable senators, I was under the impression that the Honourable Senator Lucier was rising to ask a question. It turned out that he wanted to make a speech, which would normally mean that further questions have been precluded. However, I admit that the Senate had agreed to questioning. If it is agreed, I will hear the question. Is it agreed?

**Hon. Senators:** Agreed.

**Senator Prud'homme:** Honourable senators, if I heard Senator Ghitter properly, he said that there are precedents in the House of Commons. Could he kindly repeat that? The only precedent that I hope would not be thrown into this debate is the manner in which the Louis Riel matter was handled and the reasons for that.

Could the honourable senator give me other examples so that I may reflect further on this point? I do not want to start a debate on Louis Riel today. I am not in good shape to do that but I am more than ready to do so, should the occasion arise.

**Hon. Ron Ghitter:** I am not equating Louis Riel with Senator Thompson or the facts. It is the legal precedent of the basis of the expulsion.

There have been other cases. Beauchesne also quotes from the case of Fred Rose in 1946. Again, that one is somewhat different in fact. The House of Commons has the right to expel. Beauchesne's says, without a doubt, that the House has the right to expel a member for such reasons as it deems fit. Billy MacLean is another case, where the legislature in Nova Scotia

expelled a member. Clearly, it is the right of a legislative chamber to do so on grounds it deems fit. I am not comparing this situation to Louis Riel or to Fred Rose, but the right is there. I hope I have answered the question satisfactorily.

**Hon. Jeremiah S. Grafstein:** Honourable senators, this is an important question for all of us. Therefore, we should deal with it in transparent fairness.

The question that I have for the Honourable Senator Ghitter is this: Beauchesne's, Sixth Edition, page 17, states:

In any case where the propriety of a Member's action is brought into question, a specific charge must be made. The Speaker will not allow the Standing Committee on Elections, Privileges and Procedure to examine the actions and statements of a Member relating to the question to report generally on the matter.

As a precondition, there must be process and a specific allegation.

Second — and I have not looked at this completely — the British North America Act, section 31, states that the Place of a Senator shall become vacant for not appearing for two consecutive sessions, for aligning with a foreign power or for being adjudged bankrupt or insolvent. The pertinent one is found at paragraph (4), which states:

If he is attainted of Treason or convicted of Felony or of any infamous crime:

I think we are caught here. I understand the feelings of all senators. We are caught between trying to do the appropriate thing and the right thing. I say to the honourable senator: As a question of process, have we given a specific charge to Senator Thompson and given him an opportunity to respond to the questions of Senators Lawson and Lucier? That is my question.

**Senator Ghitter:** Honourable senators, on the reference relative to the ways senators automatically lose their seats, section 31 states:

The Place of a Senator shall become vacant in any of the following Cases:

If any of those cases occur, the seat becomes vacant. I am told by counsel — and I discussed this section this morning — that there may be an argument to the effect that that section is exhaustive and there are no other grounds. However, the better opinion of that section relates to the section that I quoted, which deals in terms of the privileges, immunities and powers held and enjoyed by this chamber and the House of Commons as passed on from the British Parliament. We have all those powers. If Parliament wants the legislation to be more specific, "A senator's seat becomes vacant in the event of," they have that power. However, our powers are broader than that.



That is the argument. If I am wrong, then I invite Senator Thompson to deal with the matter through the courts. I do not know. I cannot specifically say that I am right. I will only say that the better opinion that I have received is that we have the power.

**Senator Grafstein:** The honourable senator has answered the second part of my question, but the first part concerns the question of the specific charge. Assuming that his conduct is egregious, there is still a question of due process and giving a senator an opportunity to respond to a specific charge. I do not want to prejudice my vote on this matter, but I do not think the world will come to an end if we give Senator Thompson a specific charge and a specific time to respond to that charge.

I assume that the committee has done that. They have given him a short period of time to respond. Having done that, as far as I am concerned, we have not done the right thing for the wrong reason. We want to do the right thing for the right reason. Deal with the process question for me now.

**Senator Ghitter:** The process question can be established by this chamber in any manner it wishes. If this chamber determines that it wants to give notice and it wants to go through a process, then this chamber can do so. This is a House of the Parliament of Canada. If this House of the Parliament of Canada determines that it has had enough of this person and feels strongly, as some of us do, with respect to his actions, then we can take this action.

If Senator Grafstein wishes to be more gracious and sympathetic to this gentleman, he can say, "I want to give him notice again." However, Senator Thompson has already thumbed his nose at us. He has already received the order of this place to appear. I was here yesterday. I do not know where his seat is, but he was not there. That is enough for me. Others may have a different view, but the chamber can do as it wishes in that regard.

**Hon. P. Derek Lewis:** Honourable senators, I notice in the honourable senator's amendment he suggests that Senator Thompson be expelled. What do you mean by "expelled"? Do you equate that with vacating his seat? You may have answered that question a few minutes ago, but there may be quite a difference in the interpretation of that word.

**Senator Ghitter:** I use the term "expelled" based on what I have read of the authorities, limited as they are. It means that you are gone. You are out. That is it. It is over. In the House of Commons, you can run again. That is fine. I think Mr. MacLean ran again in Nova Scotia. Nevertheless, in this place, "expelled" means that you are gone. The Prime Minister can reappoint him if he chooses to, but by that time he would be 75.

**Senator Lewis:** What you are saying is that the seat be vacated?

**Senator Ghitter:** Yes.

**Senator Lewis:** There might be some legal implications there.

**The Hon. the Speaker:** Honourable senators, does that exhaust the questions? Are we ready to proceed with the debate?

• (1420)

**Senator Grafstein:** I am sorry to belabour this point, but it is important. I cannot equate the power of this chamber to expel with the law of the Constitution which says "vacate." There is no difference in my mind between "expulsion" and "vacation." That appears to be the remedy that the honourable senator is suggesting for this chamber. Essentially, he is saying that this chamber should decide what the definition of vacation is. I think there is an alternative that reaches the same result, but that is for another time and another place.

I am not sure from reading this statute, namely the British North America Act, 1867, whether we have the power to expel when the statute says that we can only vacate under certain preconditions. Are we taking the Constitution into our hands? I think the Constitution is above us. This chamber has to do its work under the Constitution.

I am not here to defend Senator Thompson. He is an old friend of mine, but I am not here to defend his egregious conduct. In my heart and in my mind, I want us in this chamber to do, and to appear to do, the right thing. I am not sure that this is the right thing.

**Hon. Philippe Deane Gigantès:** Is Senator Ghitter basing himself on that section of the state papers of 1867 which say that the rules of the House of Commons in Britain should apply to the Canadian House of Commons and the Canadian Senate; and, further, on descriptions of those powers in Britain, which are also our powers, which say that we shall make our own rules on how to discipline people, and for what reasons?

**Senator Ghitter:** Yes. I read section 18 of the act. That is what I understood it to say, and I have been advised that that is what it says.

**Hon. Sharon Carstairs (Deputy Leader of the Government):** Honourable senators, I do not think that in this chamber there is a great deal of sympathy for, or empathy with, Andrew Thompson. I think Senator Thompson has, in many ways, reflected the things which Senator Ghitter has expressed so eloquently this afternoon. It did not give me any comfort when I read my morning paper to learn of interviews with Senator Thompson, or visits by reporters to Senator Thompson in La Paz, Mexico. Nor did it, on the other hand, make me feel diminished as a member of this chamber. I do my work. You do your work. There is no reason for any of us in this chamber to feel diminished. There is, however, a reason for us to feel diminished if we do not act with respect to our own rules.

We passed an order in this chamber on December 16. We informed Senator Thompson, by an order which was followed by a letter, that we wanted him to appear, and that if he did not appear the Standing Committee on Privileges, Standing Rules and Orders would deal with the issue of whether he should or should not be held in contempt of this chamber.

The Rules Committee met last evening for a considerable length of time. I understand that 18 of our members attended that meeting. I also understand that they formulated a unanimous report. That unanimous report says that we want to ensure that due process is respected; we want to order Senator Thompson to appear before us next Wednesday evening; we want to put to him questions on whether he should or should not be held in contempt.

The committee, in its wisdom — or perhaps lack of wisdom — made a decision. I respect that decision. I was not present at that committee meeting. I did not participate in the debate. I therefore must conclude that they did the very best job that they could do in coming to the conclusion that they did.

Having come to that conclusion, they have asked this chamber to pass a resolution on an order, an order which I will support because of my respect for this chamber, and because it is not Andy Thompson who diminishes me; it would be the work of the entire chamber and, as I respect the committee, I respect the chamber.

**Hon. Terry Stratton:** Honourable senators, I am not a lawyer, and I do not pretend to be. I do not think that what we are debating here is unimportant. It is critically important. I appreciate the position that the committee took with regard to this issue. However, the fact is that the Canadian public is absolutely disgusted with how this man is treating the Canadian people, aside from his treatment of this place. He is thumbing his nose at them, in essence. He is saying, “You can’t catch me.” Canadians are fed up to the eyeballs with this kind of behaviour. He demeans not only this place but Parliament as a whole, and the country as a whole.

We all know that he has a medical certificate. However, the law that we are debating is held in contempt by the Canadian people. They are saying, “Get it done. For God’s sake, get it done now. Don’t wait. Get it done. Let him come after us. Let him sue and say that we do not have the right to do this.” That is what Canadians want, and that is what we should put on record. Let him come to us. Why should we be polite and go to him when he has treated this place, and this country, with utter and total contempt? Let us put the onus on him to come back to us and defend his position, that he deserves to get paid for being absent for this length of time. That is absolute and total nonsense, as you know.

We have discussed the appropriate thing and the right thing. I believe that I have spelled out to you the right and appropriate thing to do today. If by next Wednesday he does not appear, what will you do then? Will we have another debate like this? Get it done now.

**Senator Gigantès:** Honourable senators, I am terribly anxious to get Andy Thompson out of here. I feel the way you do. However, let us suppose that he turns up, or that he does not turn up, and we find out that he really is ill.

• (1430)

Is it not worth one more week to give him the chance to come and explain himself before us? I would prefer to throw him out today.

**Senator Stratton:** You need only look down the way to Senator Gauthier. Look at what he is going through in order to come here.

**Senator Gigantès:** Of course. Jean-Robert Gauthier is an example to all of us. He is a particularly fine senator and he was a particularly fine MP and we are proud of him. Not one of us in here is proud of Andy Thompson, but we are proud of the Senate. Senator Carstairs was right — I must say that against all my gut instincts — when she said we must respect the procedures and rules of our institution.

The rules of the British House of Commons say we can determine what to do with a member whom we want to discipline. We can determine his offence and what punishment we shall mete out for that offence; that is clear. We cannot do that leaving some ambiguity. Some members in the committee pointed out that we did not specify which day in February.

I know it is splitting hairs, but those people who were splitting those hairs are good lawyers and they know what they are saying from the legal point of view. Do we want to set a bad example regarding the respect for the other rules we have. A rule in the Constitution says that if you do not appear for two sessions, you are out, your seat is vacated. There is a rule that says that if you declare you are sick you must produce a medical certificate. He has produced medical certificates from many doctors.

We may suspect that these are not reliable medical certificates. We may suspect that he exaggerates to his doctor. I can fool any doctor and convince the doctor that I am suffering from everything if I so choose. I can walk in like a poor little old 75-year-old senator, trembling a little on my feet, and say that I have back aches, which cannot be disputed. They are terrible back aches, one of my nerves is being pinched. I have sciatica. There is no way to disprove that contention with x-rays.

Maybe the doctors took his word, maybe he lied to the doctors, but we would be better off from the point of view of our reputation for respecting our own rules. It is our rule that he must send medical certificates. He has sent them. We have some doubts and we say, come and explain yourself. We have said that once, but we said it without specifying a date. The lawyers on the committee, who are as anxious as the honourable senator to throw him out, said it was not a specific date. The Clerk said we did not send to him, in La Paz, a particular communication saying be here February 10. What we must weigh is what we consider intolerable behaviour on his part and respect for our own rules and institutions.

Much as it hurts me, much as it twists my stomach and makes me want to vomit, I am afraid I will vote the way my deputy leader says I should.

**Hon. J. Michael Forrestall:** The senator raises an interesting point. We have, as now suggested, set a date certain that can be communicated to our colleague. What position is this chamber in should a lawyer or someone on his behalf produce a certificate saying he is not able to attend this chamber, nor his agents or his representatives, for a period of six months or two years? What happens then?

**Senator Lewis:** That will be for the Senate to decide.

**Senator Gigantès:** What happens then? What happens if we throw him out today and he comes tomorrow with that particular certificate? Whether today or a week from now, we must take that decision. If we take it in a week, after having given him notice to appear by a specific date and at a specific time, at least we will have set aside the possibility of being told we did not give him fair warning. That is all.

**Hon. A. Raynell Andreychuk:** I have a question for Senator Gigantès. I am having the same problem of trying to come to the right conclusion here. You have pointed out the rights of Senator Thompson. You have said that we should do the right thing. Perhaps the honourable senator should look at it as I am beginning to look at it, as Senator Thompson's responsibility. He has a responsibility to be here.

**Hon. Senators:** Hear, hear!

**Senator Andreychuk:** He has a responsibility to know what is going on here. He has a responsibility to do his duties correctly. He got a notice. He had a responsibility to come here. We have a responsibility to the people of Canada.

Do I weigh Senator Thompson's rights as more important than bringing this house, the justice system and the whole parliamentary system into disrepute, because that is what I am doing if I bend to the rights of Senator Thompson?

**Senator Gigantès:** Senator Andreychuk and I are on the same side. You talk about not bringing the system under disrepute. That is what worries me; this little lingering fear that if we do it today rather than a week from now, some lawyers may turn up and argue in law journals that we did not follow the procedure to the letter. It has no implications for me, I retire soon, but it is too serious a matter for us to disregard.

**Senator Andreychuk:** Do you not agree that we should worry about the broad principles for which we are responsible. It is not the responsibility of the Privileges, Standing Rules and Orders Committee, it is our responsibility, as each senator here must, to the best of his or her personal capacity, weigh what we think is appropriate for the whole system. If we err, if we do anything wrong to Senator Thompson, he can come here and we can, as a body, take that into account and reverse ourselves. We have given the benefit of the doubt to Senator Thompson for too many years. Perhaps we should give now some credence to the entire principles of this institution and to the whole concept of justice.

**Senator Gigantès:** Senator Andreychuk, on the last point you raise, if we voted him out today for contempt, his seat would be vacant. If he came and convinced us to the contrary and we reversed ourselves, could we give him back his seat?

We cannot fill a vacancy, the Prime Minister must do that. Why should he? He does not want him anywhere near. If the Prime Minister could send him to Antipodes he would do so, in a coffin.

**Hon. Peter A. Stollery:** Honourable senators, I was at the Rules Committee meeting last night. I must say that I opposed coming to the Senate today with the text of the letter that we are sending to Senator Thompson. I opposed it because of what I thought would happen, and it has happened. I have been spending some time explaining to some of my French-speaking colleagues the definition of a Mexican stand-off. I thought, first, that it was unnecessary, and second, that we would end up in a Mexican stand-off. For the edification of those who do not know what that means, it means that the person is in the middle, and everyone else forms a circle to shoot the person in the middle and, of course, they all shoot each other — and we have done that, in an almost masterful way.

• (1440)

I think most of us have the same goal, which is to deal with the problem of Senator Thompson. I do not think that at the meeting of the committee last night there was any disagreement that we should deal with the Thompson problem.

I say this: I am not joining any crowd that wants to jump up and down on Senator Thompson. That is not the issue. The issue is that he has not shown up for years, he has abused the system, and that situation must be dealt with.

I understood that the motion that the Senate passed, to which he did not conform, put him in contempt. I am not a lawyer, but I have been in Parliament for 25 or 26 years, and I know that Parliament generally makes its own rules. We are a court. That is the problem with lawyers in Parliament. They do not understand that there is a difference between parliamentarians and lawyers. I understand that there is a difference, but I also understand the concept of natural justice.

It seemed to me at the committee meeting last night that we were in the process of dealing with this issue in a fairly effective way, and I think most of us from both sides agreed. We did not have an argument. We would give Senator Thompson an opportunity to answer soon. We know that we are dealing with some place in Mexico. We could certainly send the notice to wherever his address is in Ontario; we all understand that. However, in the spirit of natural justice, we decided that we would allow time enough for a message to be sent to him, requesting his presence at our committee to explain himself — I think we were intending to deal with this on Tuesday of next week, and it became Wednesday. This was done in the spirit of natural justice.

I do not believe that anyone at the meeting last night had the idea that we would come in here today to this chamber and expel him. It is not a question of our being sued. We will not be sued. You cannot sue Parliament. What are you talking about? The plain fact of the matter is that the man has certain rights. I believe it was generally understood by the committee last evening that those rights included having a message delivered from the committee, a request to appear before that committee.

Somehow — and certainly against my wishes — that turned into another appeal to the chamber as a whole to approve this letter. That has taken place, and I certainly would argue that we should approve the letter now that we have gone this far. If he does not obey that letter, I suppose that would be another contempt of the Senate. That has led into what I thought it would lead us into: a Mexican stand-off.

Some people here are friends of Senator Thompson, so naturally they might be defensive about this action. That is reasonable. You can expect that in a large group of people, some of whom have been here for many years and have shared political moments with Senator Thompson. You must accept that that will be the case. That is natural. We must accept human nature.

In any event, we brought the matter here, and time has gone by on something that, in my opinion, should not have been here in the first place, because we do not have to command him to come. We could have just requested him to come. We are offering him natural justice. We are offering him the opportunity to appear. He may or may not do so. We do not know.

On the excessively legalistic issue of what we do next, I know that he has not actually broken any rules. He has supplied a medical certificate. We have been into all of this background. There is a history to this situation. This is not something that has just arrived here today, or in the recent past.

Senator Thompson is entitled to a full pension. If he cannot attend, he should take his pension, in my opinion. I hope this letter goes out following this unnecessary procedure, which has led us into this debate that we did not need to have. We can send the letter. If he attends, that is another story, but if he does not attend, then I certainly would support the concept that, for this session, he does not get paid. I think that is reasonable. He can decide that he does not want to get paid for the next year or two — sessions now can last much longer than they used to — or he can take his pension. That seems to me to be a very reasonable resolution to the problem.

In my opinion, we should not spend any more time here this afternoon firing away at each other, trying to be holier than holy, trying to make extra hay out of a very bad situation that we would all like to see cleared up because, of course, it reflects on us all. None of us like the situation. Most of us are hard-working parliamentarians. We do not go in for this kind of thing. Let us just get on with it, deal with it, get him to stay in Mexico with his pension, and end this problem.

[*Translation*]

**Hon. Pierre Claude Nolin:** Honourable senators, a number of distinctions need to be made to help clarify the debate.

First, in December, when this house unanimously approved the order to show up at the next sitting of the Senate at the resumption of the session, there was no need to specify a date. I heard someone say a moment ago — I think it was Senator Gigantès — that the date was uncertain. I am sorry but the date was certain.

**Senator Gigantès:** I did not say that. I said the date had not been specified.

**Senator Nolin:** It was a definite date: the day this House resumed sitting. That is not a valid argument.

Second, we deliberately gave him an order. We do not give orders very often. Very seldom in fact. He had every latitude to act after December 16, the day this order was issued or, to be more precise, the day he was served with it. Legalities aside, I am sure Senator Thompson reads Canadian newspapers every morning. By the morning of December 17, he knew that he had been ordered to take his seat in this house when it reconvened. He could have sent a letter explaining why he could not make it or asked a lawyer to do so on his behalf. He could have asked again his physicians to let us or the Clerk know that he could not attend the reopening of this house for health reasons. He chose to do none of this.

Last night, we found out he had contacted the Office of the Clerk to tell them he might be back in February. That's it!

He is therefore in contempt. Nothing else matters. Medical certificates no longer matter. All this stuff does not mean anything any more. Today, all we have to decide is this: Is this senator in contempt, yes or no? I respectfully submit that he is indeed in contempt.

Yesterday, we heard the two experts who told us that he was in contempt. It is very simple. For example, when a court order is issued, if the person does not show up to testify, that person is automatically held in contempt. Whether the person is ill, cannot make it or did not get his transportation costs paid for is irrelevant. If he does not show up, he is in contempt. The judge then has the power to impose a penalty. In Quebec, it may be up to one year in prison or a fine. The judge has total discretion in this regard.

Today, we are dealing with a similar situation. We have various options, including a forced departure under section 18. Do not confuse it with other sections of the Constitution dealing with forced departures. I am referring to a section of the Constitution that gives us privileges which existed in the British House of Commons in 1867. We have these privileges and one of them is the power to expel Senator Thompson, who should be in his seat. This is the option we have. Natural justice had until yesterday, at 2 p.m., to prevail.

Senator Thompson did not show up, and he was fully aware of the circumstances. Do not come and tell me that a senator who has been here for 31 years does not know when the Senate reconvenes, or how to find out the precise date when we resume sitting. He was instructed to be here at 2 p.m. yesterday. He did not come. He is in contempt of this institution.

Now, will we have the courage to go through with our decisions? When we decided to issue an order to Senator Thompson, we knew that if he did not comply, we would have to find him guilty of contempt. It is up to us to do so, and we will do it today.

[English]

• (1450)

**Senator Grafstein:** Honourable senators, again I find myself in the same difficult position as every senator does here. It is very difficult for any senator to defend Senator Thompson's conduct in the absence of a clear explanation. It is almost impossible to do so. If it were one session or two sessions, that might be understandable, but a lengthy, systemic absence is tantamount to abrogating his responsibilities. I think that was the point that the Honourable Senator Andreychuk was attempting to make. Perhaps the Honourable Senator Ghitter was attempting to make the same point in his argument, although not in his conclusion, that systemically we have a failure to exercise responsibility. Perhaps one session, two sessions or three sessions are all understandable because of illness, but if it goes on for a long period of time, where do we draw the line?

On the facts, the conclusion seems to be almost inexorable. I say "almost inexorable" because we have yet to hear from Senator Thompson.

Having said that, Senator Ghitter's proposition is very appealing. Let's get it over; let's get it done; let's satisfy this outrage in the public and the outrage in the media. I would love to do that. Why not? Then we can get on with our business; we can clear our clogged veins.

Unfortunately, honourable senators, it is not as easy as that. Let us take Senator Ghitter's interesting, attractive and appealing — even alluring — suggestion to its logical conclusion: We expel Senator Thompson. Is the seat vacated? What happens? What happens to Ontario? Do we have one seat less? Many people in the media, many people in the west, and many people outside of this chamber would love to see this chamber destroyed. They would love to pick away at it. They would love to see the chamber vacated, seat by seat like this one, and then they will have another reason to see this institution go down. There is a larger agenda outside. I disagree with that, but I hear it.

Having said that, the invidious position in which we find ourselves is that if we agree to this most appealing and instantaneous solution, we find ourselves in a horrendous constitutional situation, which is expulsion without a vacant seat.

I have concluded that we cannot carry out this action unless we can conform with the British North America Act. The Prime Minister said the other day that he would like to kick Senator Thompson out, but cannot. He would like his colleagues on this side of the Senate to kick him out, but we do not believe we can do so without due process — and then there are questions.

I say to Senator Beaudoin, a man whose entire life is built on the rule of law, and I say to Senator Jessiman, a great lawyer, and I say to senators on the other side who are respectable and honourable people as well as senators, let us think about this situation, not only to satisfy ourselves, not only to satisfy the public, but to satisfy the rule of law.

I do not believe at this moment, unless I hear a compelling reason from the other side, that we can support this most appealing, most attractive and most spontaneous solution to the demands of our innermost conscience. My conscience says, yes, let us follow the committee's advice. Senator Thompson should do the right and honourable thing by either appearing or offering an explanation. I think the onus to explain is upon him beyond a reasonable doubt. That should satisfy the conscience of the members of this chamber, and it should satisfy the Constitution.

Honourable senators, I believe in the Constitution, and I want to live under it. I do not want this chamber to be criticized for abusing the Constitution. I have argued and agreed with Senator Beaudoin, time and time again, that this Senate is responsible for upholding the Constitution. Having said that, how can we fly in the face of it and then impose a standard on others outside of this chamber? I cannot; perhaps you can.

**Senator Nolin:** Perhaps the Honourable Senator Grafstein could tell me which section of the Constitution we are breaching? Which one?

**Senator Grafstein:** I refer Senator Nolin to section 31 of the British North America Act, 1867, which, as amended, is really the Constitution Act of 1982. We are clear on that now?

**Senator Nolin:** Would the honourable senator explain it to us?

**Senator Grafstein:** Section 31 reads as follows:

31. The Place of a Senator shall become vacant in any of the following Cases:

(1) If for Two consecutive Sessions of Parliament he fails to give his Attendance to the Senate:

That is the factual question yet to be determined by the committee. On the face of it, *prima facie*, he has not attended, but there is conflicting evidence about that. We have heard that from other senators. That is proposition number 1.

(2) If he takes an Oath...to a Foreign Power...

That is not the case.

(3) If he is adjudged Bankrupt or Insolvent...

That is not the case.

(4) If he is attainted of Treason or convicted of Felony or of any infamous Crime:

(5) If he ceases to be qualified in respect of Property or of Residence...

Those appear to be the provisions under the act. As I say, I would like to follow this act.

**Senator Nolin:** What if I told you to read section 18 of the same Constitution? Under that specific section, we have been told that the doctrine is very clear. As a chamber, we have the power to expel someone. That power was there in the U.K. in 1867, and we have had that power since. That is what we were told last night, namely, we have the power to expel. Forget section 31. It is not in question here. Section 18 is the basis of our right today.

• (1500)

**Senator Grafstein:** This is an important question. I have not had the opportunity of counsel and I have not read the opinions that were available to the committee. I am doing the worst thing that a lawyer can do: Give himself advice.

Having said that, when I read section 18 about the privilege and immunities and powers held and enjoyed by the Senate, I thought that the process that we had undertaken here, collectively, was to move towards a remedy that would be consistent with the Charter and our powers. The remedy that I thought we were moving towards was the suspension of the senators rights and privileges because he has been held in contempt.

First, we must make a finding of contempt. We then suspend his rights and privileges and then let him decide how he wants to get himself back in good standing or do whatever else he chooses. I thought that was the course that the committee was moving towards. I am not comfortable with moving to section 31 to vacate or expel, which is tantamount to vacating the seat. I think that is a material distinction.

**Senator Nolin:** The honourable senator is a lawyer, and he knows the difference. The result is the same; the process is not. You have to agree on that.

**Senator Ghitter:** Honourable senators, Senator Grafstein has appropriately pointed to Senator Beaudoin as the guru in this chamber relative to our powers. I should like Senator Beaudoin to give us his opinion.

I should like to ask Senator Beaudoin: Do we in this chamber have the power to expel a member? That is the question.

MOTION IN SUBAMENDMENT

**Hon. Edward M. Lawson:** Honourable senators, notwithstanding the point that Senator Ghitter has made, sufficient doubt has been raised by the presentation given by Senator Grafstein as it applies to the British North America Act; and by Senator Lucier, so that no layman or non-lawyer such as myself is prepared to make a decision without His Honour making a ruling on proper legal advice from the Senate lawyers. I do not mean legal advice from Senator Beaudoin or others, but from legal counsel for the Senate. They should make a decision and report to us about whether or not we have the legal right to proceed to expel, or to cause the seat to be vacated. I am asking for that advice now.

**The Hon. the Speaker:** Honourable senators, the Speaker cannot become involved in legal decisions. I cannot get involved in that matter. However, if it is the wish of the Senate, someone can put forward an amendment that we hear from counsel. That is for the Senate to decide, not the Speaker.

**Senator Lawson:** Therefore, I move:

That we seek the Senate legal counsel to advise us whether we have the legal right to proceed in the manner being proposed.

**Hon. Sharon Carstairs (Deputy Leader of the Government):** Honourable senators, that is exactly what the committee was doing.

**Hon. Herbert O. Sparrow:** Honourable senators, I have a question for Senator Ghitter.

**The Hon. the Speaker:** Honourable senators, is there a seconder? This is a subamendment. We already have a motion in amendment but there is still the possibility of a subamendment, which would be the last.

Please give me the motion in writing. We must be very precise.

**Hon. Marcel Prud'homme:** Your Honour, I have a point of order.

**The Hon. the Speaker:** I can hear a point of order on the subamendment, although it is not before us at the moment.

**Senator Prud'homme:** Honourable senators, what I have read for 35 years about the Senate chamber is that order excludes haste and precipitation.

Today, we are faced with a resolution with amendments and subamendments. We are even challenging each other, in a very unfair way, to put Senator Beaudoin on the spot by saying, "Here is our guru. Why do you not get up and tell us what you think." The matter demands reflection.

I suggest to the Senate that we take 24 hours to reflect and make a decision on the entire matter tomorrow. That would be more appropriate for senators.

I am impressed with what Senator Grafstein and Senator Lewis have said. If you have read Mr. Crosbie's memories, you will know that he referred to Senator Lewis as a quiet but great legal mind. All of that put together makes me believe that 24 hours will not harm anyone.

I understand the press. There is a major preoccupation with this issue, but we must deal with it. There is total confusion now. Everyone is throwing out suggestions and challenging those with legal minds to stand up and speak. I wish to take my responsibility now — although it may be unpopular with the press and with public opinion — and move the adjournment of the debate. If I am not here tomorrow — that is, if I am not healthy — you may proceed without me.

I am sure that all senators would like to reflect on this serious matter. That is what the Senate is all about. I am sure that all Canadians will understand that 24 hours, in an orderly debate, would not be unreasonable to deal with this matter, namely, the absence of Senator Thompson.

**Hon. Peter A. Stollery:** Point of order!

**The Hon. the Speaker:** A point of order was already raised by the Honourable Senator Prud'homme.

I have listened carefully and cannot hear in the honourable senator's comments a challenge to the rules, so I cannot consider what he has said a point of order. However, he has made a suggestion. If honourable senators wish to follow that suggestion, the Senate is free to do so. However, I do not see a point of order in the honourable senator's comments.

**Senator Stollery:** Honourable senators, on a point of order, what I do not understand in the procedure is the fact that we are dealing here with a unanimous report of the committee, supported by the Conservatives. I do not quite understand what has happened. Has the other side withdrawn the unanimous support that it gave last night?

**The Hon. the Speaker:** Honourable senators, I do not see a valid point of order in the comments of Senator Stollery. They may be valid comments in the debate but they are not a point of order insofar as a challenge of the rules.

The Honourable Senator Lawson has his subamendment ready now. We will hear that first.

**Senator Lawson:** Honourable senators, I move, seconded by Senator Lucier:

That the Senate obtain from legal counsel available to the Senate whether the Senate has the legal right to deal with the motion before us to expel Senator Thompson from the Senate.

**The Hon. the Speaker:** That is not a valid subamendment in its present form.

**Senator Lawson:** We will change the form, then!

**The Hon. the Speaker:** We would have to amend the amendment by adding "thereto" and then see if it fits.

**Senator Lawson:** With the same seconder, then, I move:

That the debate on the motion in amendment be adjourned until the Senate Law Clerk has rendered an opinion on its legality; and

That the Law Clerk report his opinion to the Senate by tomorrow.

**The Hon. the Speaker:** It is moved by the Honourable Senator Lawson, seconded by the Honourable Senator Lucier:

That the motion in amendment be amended by adding thereto:

That the debate on the motion in amendment be adjourned until the Senate Law Clerk has rendered an opinion on its legality; and

That the Law Clerk report his opinion to the Senate by tomorrow.

[*Translation*]

**Hon. Gérald-A. Beaudoin:** Honourable senators, I have no objection to waiting for twenty-four hours. We are dealing here with a fundamental legal problem.

[*English*]

• (1510)

I have no doubt that a legislative assembly may expel a member. This is what we call, in constitutional law, an inherent right. However, the jurisprudence is only about the House of Commons in London and the House of Commons in Canada, and some historical cases such as that of Louis Riel.

To my knowledge, this is the first time that the Senate has had a debate such as this. In the British North America Act, there are sections dealing with the vacation of a seat. The idea of having an expression of opinion in 24 hours from someone not of this house would be quite acceptable to me, although I think that if we look clearly at the facts of the case before this chamber, we are probably waiting for nothing at all. The situation has remained the same for many years. If a person is prepared to go to Mexico, why not to Ottawa?

In that sense, perhaps we are discussing this matter for nothing. However, as a jurist, I would like to have an independent opinion. Nevertheless, I still think that, in extraordinary cases — and I believe that everyone in Canada agrees that is the case here — a legislative house, within its sphere, has the inherent right to expel a member.

That is my conclusion. I may be wrong, but I am inclined to think that way. I should like to look at some precedents in the House of Lords, or some other second chambers in the world. In that sense, it might be good to have 24 hours in which to think more about the matter. However, for the moment, that is my opinion.

**Senator Prud'homme:** Honourable senators, I sat in the House of Commons for 30 years. We have expelled members from the House of Commons, but we have not vacated their seats. We must be very precise. Senator Lewis, strongly supported by the Honourable Senator Grafstein, drew our attention to the fact that “expel” and “vacate” may mean different things.

Before we vote, we will need to read the motion very carefully. “Expel” could mean “expelling” or it could mean “no pay,” which may be a good proposal. Senator Thompson could not receive his pension because he has not resigned, but also he could not be paid because he does not show up. That is a decision which has previously been made for staff. We would be punishing him by saying that he is a nobody. If he wants to receive money, he will need to resign and then he will get his pension.

I have a question for Senator Beaudoin.

[*Translation*]

Honourable senators, there is not a lot of difference between “expel” and the term used by Senator Lewis, with his very precise legal mind, “vacate.”

[*English*]

Haste and precipitancy may be useful for public opinion, but we are supposed to be very serious people, and I think we are. The action that we take should be that upon which we all agree. There are many other alternatives. The press has reason to say that the man never shows up and therefore does not deserve to be paid. We started to punish him. Perhaps we did not punish him well enough, and should go all the way. Perhaps we should say that if he does not show up there will be no pay, for the indicated reasons. Or we could say that if wants to receive money, he need only resign in order to receive his pension.

I believe that this debate needs to be conducted in an orderly manner. Haste, in this case, is not leading to good order. We are not answering to the mob. We want to do what is best in the interests of Canada, and surely 24 hours of reflection will hurt no one. We may come up with a clearer solution.

**Hon. Noël A. Kinsella (Acting Deputy Leader of the Opposition):** Honourable senators, if the subamendment were to be adopted, I would hope that senators would agree that we resolve ourselves into a Committee of the Whole and have the Law Clerk appear before us in order that we might have an opportunity for exchange with legal counsel.

As they say in the House of Lords, if there is content for the subamendment, I would ask my colleague opposite whether she

would agree that we would receive that opinion in Committee of the Whole. If we cannot have agreement and a motion is necessary, I would seek the opportunity to move such a motion.

**Senator Lawson:** The 24 hours is not cast in stone. I have no problem with changing that aspect.

[*Translation*]

**Hon. Michel Cogger:** Senator Beaudoin, I have listened to your speech and I have more questions. Lacking a clear distinction between the power to expel and to declare vacant, do we not run the risk of ending up in a situation where the power of the Prime Minister to be the only one to select and appoint senators would be frustrated? For example, let us think of a situation where, after a change of government, the majority in this House were to represent a different party than that of the Prime Minister, the government party in the House of Commons. What if the Prime Minister decided to appoint someone to the Senate and the majority in the Senate then decided to expel that person by majority vote? What would there be to prevent such a thing? Is there not an inherent contradiction in this motion, which would, when it came down to it, mean that we would have the right, by majority vote, to declare a vacancy? I am no longer referring to expulsion for various lengths of time.

**Senator Beaudoin:** Honourable senators, the only precedent I can think of is an expulsion that took place in Nova Scotia. That is a house of members, and a house of members may expel a member.

Obviously, if there is a by-election — I think this was what happened in Nova Scotia — the individual who was expelled ran again. If memory serves, he was re-elected. So that sorted out the problem.

We are getting into comparative law: This is not the House of Commons, but the Senate. Senators are not elected, and appointments are made by the Governor General on the advice of the Prime Minister. Once a senator is expelled, does the seat necessarily become vacant? I would like to hear an opinion on this as well. But if it is not challenged, and the Prime Minister appoints a replacement, that solves the problem. But obviously it can be challenged later.

I will not take this any further. What bothers me is this: I think that a legislative chamber, and that is what we are, may expel a member for truly extraordinary reasons. Obviously, this will set a precedent and cause an uproar. If I were asked if a legislative chamber may take this action, I am inclined to think it has the inherent right to do so.

However, the opposite argument is that the Constitution already has sections 18 and 31, which set out the privileges enjoyed by the Senate and contain provisions regarding Senate vacancies. Is this exhaustive? Does this prevent the exercise of an inherent right?

My first reaction — I am cautious — is to say no. We would have the right to expel. I will not take it further for now.



**Hon. Philippe Deane Gigantès:** If there is no appeal, the Prime Minister could appoint someone else. Appeal where? Before what court? That is the first question. The courts traditionally do not meddle in the internal affairs of Parliament. Second, is Senator Beaudouin aware of the fact that we had two legal opinions yesterday at the meeting of the Committee on Privileges, Standing Rules and Orders to the effect that we can expel a senator. The Senate's legal advisor said that historical documents from 1867 indicate the rules of the British House of Commons apply to the Canadian House of Commons and Senate.

**Senator Beaudoin:** On the first point, it is true that the courts do not meddle in the legislative process. However, the courts have the right to give an opinion on the application of the Constitution. In this regard, if Senator Thompson says no, the Senate's action is *ultra vires*, he can of course appeal to the courts. The court would decide. If he does not, and the seat is filled, the matter is resolved. That is all I am saying.

**Senator Gigantès:** Whether we decide today or next week, what we are saying at the moment is relevant, and I hope that we will not have to debate it again next week. If the senator appeals our decision, the court will be obliged to find that the action taken by this chamber to discipline one of its members was not correct. British law that applies to the British House of Commons and to the Canadian House of Commons and Senate makes no provision for intervention by the courts with respect to a legislative chamber that says: "You have not done your job well."

I am not talking about the interpretation of a section of the Constitution on the reasons for expelling a senator. I am speaking of the inherent right you refer to. And with this inherent right, would the courts dare intervene?

**Senator Beaudoin:** According to Canada's Constitution, a Canadian court has the right to decide whether a legislative assembly has the inherent right to expel a member. It will not express an opinion in a specific instance, but it will on the right of the legislative chamber to expel a member. It can say yes or no, but it will not get involved. It can confirm the existence of such power.

The Fathers of Confederation provided a special system for the Senate that differs from that of the House of Commons. House of Commons precedents may apply here but only so long as they are consistent with the Constitution of the Senate. I think that, in a truly extraordinary case, the right to expel is inherent. Now, should we exercise that right? That is another matter. Do the lawyers agree that the right is inherent? If they said so yesterday, that confirms what I am saying today.

[English]

**Hon. Jeremiah S. Grafstein:** I have a question for Senator Beaudoin. As always, he makes a compelling analysis of a situation which forces us to again think through our original proposition.

I have looked briefly at an opinion which was available to the committee last night. I was not at the committee, but one of my

colleagues gave me an opportunity to look at Dawson's view on this. I hope I am not taking his view out of context, but Dawson essentially says that we are pretty well stuck to section 31.

There are many things we can do, but we do not have the same powers as the other place, for good and appropriate constitutional reasons. While we can compare ourselves to the House of Lords in England, I think it is more appropriate to compare ourselves to the situation here in Canada. I do not think we have the same inherent powers or remedies.

I am intrigued by Senator Beaudoin's inherent rights notion, but Dawson, who is a compelling authority, as far as I am concerned, makes no reference to this. He wrestles with this problem, as other senators at other times have wrestled with this issue, and all have come to the conclusion that they were caught by the Constitution and those provisions.

The nice question that arose from that discussion dealt with the definition of infamous crime. Is it systematic abrogation of responsibilities for a senator to not attend? It is a nice question. I leave it for other finer minds to chew over in the foreseeable future.

For me, the course of conduct made available to us by the committee, which, I am delighted to say, was unanimous, is a safe course of conduct for all of us.

**Senator Beaudoin:** I am impressed by the opposite argument that there is no such thing as an inherent right. However, the fact remains that the Constitution refers to many rights which the Senate has. We have the same rights as the House of Commons except the vote of non-confidence, money bills, and the Constitutional amendment, on which we have only a six-month veto. Otherwise, we have the same powers. We are a legislative house, as is the House of Commons.

History shows that the House of Commons has expelled people. I am inclined to think that we also have such a right. I respect an opinion to the contrary, of course, because it is a difficult point. It is not only a problem of constitutional law; it is a problem of parliamentary law. You have two very difficult problems at the same time. It is interesting, mind you, but it is difficult.

• (1530)

**Senator Carstairs:** Honourable senators, I wish to address the subamendment proposed by Senator Lawson and seconded by Senator Lucier.

This subamendment presupposes to some degree the work that the committee was going to do. It is my understanding that the report presented by the Rules Committee today demands the appearance of Senator Thompson. They wanted an order of this house to have him appear. If he chose to appear, he would give reasons why he should not be held in contempt. If they decided, with or without his appearance, he was in contempt, they would then debate the particular penalties that would apply; whether it

would be expulsion or whether it would be suspension for the remainder of the session of this Parliament, which would more or less coincide with his retirement because he will have reached the age of 75, thereby giving him the option to retire early if he chose to do so.

The committee heard last night from the clerk. They also heard from other constitutional opinions. It was on that basis they prepared the report for today. They want to deal further with constitutional opinion on penalties.

Therefore, it would appear to me that the most appropriate thing for us today would be to not support this amendment, as much as we may wish at some time in the future to sit in Committee of the Whole and hear the Law Clerk, after the committee has made a recommendation on penalty. Now is not the appropriate time to do it.

We should send the order today to demand that Senator Thompson appear, allow the committee to sit, allow them to deliberate on penalty, and allow them to bring those deliberations to the chamber. Then we can have a debate in this chamber as to the appropriate votes we should be taking, including deliberations in Committee of the Whole, if that is the will of this chamber at that point in time.

With regret, Senator Lawson, I support the thrust of what you are doing, but I cannot support that subamendment at this time.

**Some Hon. Senators:** Question!

**Hon. P. Michael Pitfield:** Honourable senators, I wish I could speak with the natural dignity and the eloquence of so many of our colleagues. Let me simply put a few thoughts. One of the main purposes of this house is to do justice, to protect against tyranny; the tyranny, amongst other things, of the majority.

This is a chamber of sober, second thought. We are concerned with protecting the citizen as an individual, and we also are very concerned to protect the individual senator, to protect one another, so that we can be sure that each is bringing his or her best judgment to the questions before us.

I wish to speak for a moment simply of the procedure that we are following. I make no remarks with regard to the particular case. It seems to me that we are engaged in a rush to judgment. I get nervous when I hear some of our colleagues saying, "We have the power." There is no doubt that we have the power, but we must use it very responsibly, all the more so. I have heard, "We must do it now." Why now? Shakespeare points out that the sweetness of justice is not disturbed by the passage of time in its consideration.

There have been some very serious doubts raised in this matter. We have heard doubts of facts that have been raised by Senator Lawson. We have heard doubts of equity that have been raised by Senator Grafstein. We have heard doubts about the conflict of the supreme constitutional law with the parliamentary practices of the house.

Honourable senators, I suspect that we are acting as the sharpest and strongest amongst our critics would wish us to act. We are giving and we are asking for off-the-cuff legal opinions. I urge that we proceed calmly, deliberately, fairly. I assure you that if we do not, this matter will be in the courts for years. There is the substance here for problems and questions that will keep lawyers writing articles for time immemorial.

Let us not fulfill the worries of Senator Stollery about a Mexican stand-off; dragging this thing out, spreading the uncertainty, making ourselves a laughing-stock of the country, Canada's response to President Clinton. We wish to deal with this matter. We must deal with this matter, but let us do it in a manner that stands as an example of how legislators should proceed, not as a standard to be referred to in the future of how things should not have been done.

It is coming to the close of a long afternoon. I wonder — it may not be possible — if sometime during the evening, our leaders could have a word with one another to consider how this house, with its manifold and sensible concerns, can draw together and deal with this question in the deliberate manner in the morrow.

**The Hon. the Speaker:** Does any other honourable senator wish to speak?

**Hon. Lowell Murray:** Honourable senators, I presume nobody will take up the suggestion that Senator Pitfield has just made and try to move the adjournment of the debate? I see no takers. Then, honourable senators, if this is going to come to a vote, I think I had better explain myself, not least to my friends and colleagues on this side of the house.

• (1540)

Before I do that, I note that it is 3:40 and we are still at Presentation of Reports from Standing or Special Committees, and that we may be heading for a recorded vote. That being the case, in my capacity as chairman of the Standing Senate Committee on Social Affairs, Science and Technology, I want to advise colleagues that I am taking it upon myself to postpone until next week the meeting scheduled for this afternoon. I apologize in particular to Senator Haidasz whose Bill S-8 would have been considered this afternoon with him as principal witness. I trust that colleagues and staff within the sound of my voice will take note that I am taking it upon myself to postpone that committee meeting until next week.

Honourable senators, what we have before us is a report from a standing committee, a report which we are led to believe was passed unanimously by that committee last night. When the report was brought in this afternoon by the chairman, she sought leave to debate the report at once.

I pause for a moment to say that our first mistake today was in granting leave. What has transpired since we granted leave only goes to prove the wisdom of the rule that it is a good idea to leave committee reports on the table for 24 hours before attempting to deal with them. Perhaps we will know better next

time. However, leave was granted, whereupon our friend Senator Ghitter proposed a motion in amendment — but to do what? To do something that the Senate, in its 130-year history, has never done, to do something for which our authority is not clear.

I might, at some point, be willing — quite willing — to vote in favour of the expulsion of Senator Thompson, but, not having heard any of the legal or constitutional opinions adduced to the committee last night, and being, as I am, quite unclear as to our authority in this matter, I would certainly not vote in favour of such a motion this afternoon.

With regard to part of our friend Senator Lawson's amendment, I do not know that I would be ready to vote for it in 24 hours' time. This is an unprecedented step we are taking, and if it is to be taken, then I think we should, as Senator Pitfield has said, proceed deliberately and cautiously. We should know fully what it is we are doing and with what authority we are doing it.

There is potentially another problem here. I put this to our friend Senator Ghitter. If we are satisfied with the authorities, and satisfied that it is the right thing to do, I am not sure, and if his amendment comes to a vote and is defeated today, we could return in due course and take that step, which is a step we might want to take.

For all those reasons, and for the reasons of process and constitutionality that have been invoked by other honourable senators in the debate, I could not vote for those amendments to this report.

I simply say that by way of explanation. If the matter is forced to a vote now, I will have to vote against it. I think a more desirable course for all of us is the one suggested by Senator Pitfield, that there be an opportunity for some discussion among the leaders to agree, if not on what action we should take ultimately, then at least on what the process is that we should follow, because it is fairly clear to me that there was an agreement at the committee meeting last night as to the process that was to be followed, and the various amendments that have been presented today rather derail the process that was contemplated.

**Some Hon. Senators:** Hear, hear!

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a few brief remarks. As Senator Murray says, the Senate has not been faced with such an issue in 130 years, so we are navigating uncharted waters, to use a well-worn cliché. All of us feel uncomfortable with the situation before us, although I think we are unanimous in the intent that is expressed in Senator Ghitter's amendment. It is a question not only of how we get there but of how we get there properly and expeditiously.

We have had the situation with us now for many years. All of us have been conscious of the fact that Senator Thompson has not been with us, except on those occasions when the law

required. When asked, we were told that there was a medical certificate. We accepted that, as we should. We accept the word of our colleagues. Never would I challenge a medical certificate of one of our colleagues. However, when a colleague cannot present himself for a decade, we have a right to ask what contribution he is making to this place. Since we cannot encourage him, despite many pressures, to leave voluntarily, then I think we have an obligation to see that his place is taken by someone who can contribute a little more objectively and constructively than he appears to have been able to do.

Again, I think we all want to see Senator Thompson leave this chamber, unless he can come to us suddenly and say, "Now I am able to work and finish my two years that are left, actively, as I should." That, however, seems to be highly unlikely. As I say, we must do this properly and as legally as the experts can tell us we should do it, although, as far as I know, there are no precedents to this situation.

I am in agreement with Senator Lawson's suggestion that we ask our legal counsel for advice. Hopefully, he can come before us tomorrow in Committee of the Whole, where we can have a full discussion, based on his opinion, and tailor our decision on a legal foundation, which, unfortunately, we now have only in part, thanks to Senator Beaudoin's expertise. However, we need something a little more neutral, from someone not involved in the decision. It is my suggestion that we support Senator Lawson's amendment, leave the issue to sit until tomorrow, when, I hope, the counsel will have his opinion, and we can dissolve into Committee of the Whole, and then resume the debate and possibly come to a final decision.

**Hon. B. Alasdair Graham (Leader of the Government):** Honourable senators, there are several questions that have to be answered, in particular, one asked by Senator Murray: With what authority are we acting? I have a question of my own: What does expulsion really mean? If we were to expel Senator Thompson from this chamber today, what would be the effect of the expulsion? Does he continue to be a senator? We are not clear on that.

• (1550)

I am not here to defend the rights of one particular senator; I am here to defend the rights of all senators, each and every one of us.

Last December we set in motion what is commonly called "due process" in respect to the case of Senator Thompson. We had the motion of Senator Kenny. We had hoped Senator Thompson would show up yesterday. He failed to do so. Hence, pursuant to the Senate order, the matter was referred to the Standing Committee on Privileges, Standing Rules and Orders. That committee met last night and brought in a unanimous report, which was presented today. Leave was given to consider the report today. The report proposed a process. If we are not satisfied with the opinions given by legal counsel last night, we can explore the legal issues further in that process.

What concerns me more than anything is the kind of precedent that we may be setting or that we could be setting here today. If we vote to expel Senator Thompson in a day, who would be next and why?

I am conscious of the honest concern of every member in the chamber, that we, individually and collectively, want to do the right thing. However, we want to make sure that when we proceed we are absolutely right and that we are being fair, not only to Senator Thompson, but to one another.

**Senator Stratton:** What about the Canadian public?

**Senator Graham:** Honourable senators, Senator Stratton asks, “What about the Canadian public?” I heard Senator Ghitter ask if we have the guts. I heard Senator Nolin ask if we have the courage. Well, I am wondering if we could better serve the institution and the Canadian public by asking if we have the guts and the courage today to follow due process and wait until next Wednesday, as recommended by the committee. The process has been set in motion. That is why we have committees. We rely on our committees; we trust in our committees; we delegate authority to our committees. The final judgment, however, is made in this place, where it should be made.

Honourable senators, I am quite conscious of the remarks made by Senator Pitfield about fairness. People have used the words “diminished” and “demeaned”, and we hear the question “What about the public?” I think that as representatives of the public, we have a responsibility to ensure that this institution, a vital and essential part of Parliament under our present Constitution, takes action, but not simply on a whim or because of what the press is saying as it influences public opinion. Rather, in our hearts, our minds and our souls, we should use common sense, reason, good judgment and fairness in reaching our conclusions.

**Hon. C. William Doody:** Honourable senators, I have two questions of clarification. I do not know if I am more scared about the road we are heading down without thinking it through properly, or if I am more disgusted with Senator Thompson’s conduct. It has been a very troubling afternoon. I am more inclined, personally, to think favourably of Senator Pitfield’s recommendation. That may not be possible.

However, I am faced with the 24-hour subamendment that has been offered to us and one which has been recommended by my leader. My questions are these: First, does 24 hours literally mean 24 hours? Do we start the Committee of the Whole tomorrow at 4:30 p.m. or 4:25 p.m., or are we talking in terms of the next sitting of the Senate? It would seem pointless to come in here, go through the process of sitting around until 4:30, and then start a Committee of the Whole. If this must be done, let it be done when we sit.

Second, will we be forced to vote on Senator Ghitter’s amendment tomorrow when this thing is finished without having heard, perhaps to the satisfaction of everyone, all of the testimony we would like to have heard?

I am a little uncomfortable with the idea of a Committee of the Whole. We have already referred this matter to a committee of the Senate. The committee has reported and given us a unanimous recommendation. We should either reject the committee report or accept the committee report. We seem to be all over the place.

Having gone that far, the recommendation I have received from our leadership is that we go along with Senator Lawson’s recommendation of a 24-hour response. Can we tidy that up as to whether it is really a 24-hour period or is it the next sitting?

How will we proceed tomorrow? Will we be required to vote on Senator Ghitter’s motion tomorrow, even if we are satisfied that we have heard the testimony and before we have had a chance to read the committee report? Could someone help me with some of these problems?

**Senator Graham:** Perhaps I can make a point by asking Senator Doody a question. Would he not agree that according to the house order that was passed — Senator Kenny’s motion in December — we still have two weeks in which to act on the particular motion and matter before us today?

**Senator Stollery:** Honourable senators, the committee was very conscious last night of the fact that we have to comply with the order of December within 14 days. That includes the problem of making sure that Senator Thompson receives the communication and that it is done in a reasonable manner. I would caution our colleagues against letting too much time go by because it would infringe on the concern addressed by the committee, that there are only 14 days in which to complete this process. It is very important to remember that.

Some senators could have said that we should have done this on Friday and that Senator Thompson be asked to appear on Friday. The consensus was that it should be Wednesday because of the possible difficulties of Senator Thompson receiving the communication. I repeat that all of these things were done unanimously.

**Senator Doody:** Honourable senators, I am obviously completely adrift. I asked two questions of the leadership relative to the procedure in dealing with this thing. He, in turn, asked me a question concerning what I thought about Senator Kenny’s motion, which is not in my area of interest at this particular time. I am interested in whether 24 hours means 4:30 tomorrow afternoon, and whether we will be required to vote on the subamendment and perhaps on the motion tomorrow. We may or may not have enough information tomorrow to satisfy us to follow that course.

• (1600)

Maybe I am remiss. Maybe the report from the committee was delivered to me earlier today. I have not seen it. I certainly have not had a chance to read it, nor have I had time to look at what they have decided. With these uncertainties in mind, I am asking for guidance from the leadership. If, somewhere down the road, they want an opinion on what I think of Senator Kenny’s motion, perhaps I might be prepared to give it then.

**Senator Carstairs:** Honourable senators, I will do my best, although I may do it with the clarity of mud.

What we have before us now is the subamendment of Senator Lawson. I have indicated that I cannot support that proposal, because I think this debate should take place in committee before it takes place on the floor of the chamber. If, however, Senator Lawson's subamendment passes in the chamber, we would then make a decision to hear from legal counsel. We would then have to make a decision as to when we would have the Committee of the Whole hear that presentation. However, it is essential for us to take the vote on the motion first, and then to set in place the procedure concerning when, exactly, the Committee of the Whole would convene. It would be tomorrow afternoon if the matter goes before Committee of the Whole, or we could ask legal counsel by some other means, although I do not know what other means we would use except Committee of the Whole. However, we would have to have the approval of Senator Lawson's subamendment first.

In my view, we should defeat Senator Lawson's subamendment — not because I do not believe we should hear from legal counsel, but because we should continue to hear from lead counsel in the Rules Committee, let that committee make its final report to us and then, if we still wish to hear from legal counsel, do so at that time.

**Senator Lynch-Staunton:** Honourable senators, what we want to know are two things that were raised by —

**The Hon. the Speaker:** Honourable senators, the Honourable Senator Lynch-Staunton has already spoken on this issue.

Is leave granted for the honourable senator to speak again?

**Hon. Senators:** Agreed.

**Senator Lynch-Staunton:** As I understand Senator Lawson's motion, it is 24 hours, which means "the next sitting." It should be amended to reflect that.

Senator Ghitter's amendment to the report has brought up two crucial facts which we must face if we are serious about seeing that Senator Thompson is recognized *de facto* as no longer a member of this chamber.

First, what authority does this chamber have to expel him, suspend him, displace him or refuse him entry? That is what we want to know. That is what Senator Ghitter's intention was, namely, to force the issue here where this final decision will have to be taken. If we cannot expel him, can we suspend him? If we cannot suspend him, can we refuse him entry as we refused him his office and the benefits attached to his office?

Second, can the Senate refuse his salary and his monthly tax-free allowance? That is what we want to know. That is what we all hope for — that is, that for non-performance there be non-payment. The point is that if we are to take this action — and I agree with all the discussion that has taken place — we should do it the right way.

The value of Senator Ghitter's amendment was to bring the decision to a head in this chamber because a decision must be taken here. That is why it is essential that the legal counsel should advise us on those two points. Hopefully, we can have that legal opinion before us tomorrow and debate it, if need be.

All the committee has brought to the Senate, with all due respect to them — and, I do not envy what they have to go through — is, "He did not show up. Let us give him another chance."

The instruction under Senator Kenny's motion was that Senator Thompson be ordered to attend when the Senate resumes sitting in February 1998. That was yesterday. He did not show up yesterday. We did not resume sitting today, we resumed yesterday. Therefore, he did not honour the order of the Senate. Why do we want to give him another week? If he does show up next week, are we suddenly going to back up and say, "Fine. You can stay. We will give you back your office, your secretary, and all those privileges we took away from you. If we get a salary increase, you will benefit from it, too." Surely our stand will be the same.

It is important that Senator Ghitter's amendment be put under the scrutiny of our expert legal counsel and that, if at all possible, he report to us tomorrow so that we can come to a decision, which I feel is long overdue.

**Hon. Richard J. Stanbury:** Honourable senators, I am amazed at what the Leader of the Opposition is suggesting. We have a process in the Senate which has been honoured for many, many years, namely, that we refer matters to a committee and the committee is given an opportunity to deal with the matter. The committee then reports to the Senate and the Senate deals with that report.

First, I wish to take issue with the Leader of the Opposition about the order that was made on December 16. The order said, "You are to appear on the resumption of the Senate," which was yesterday, "and if you do not, the matter will be referred to the Standing Committee on Privileges, Standing Rules and Orders." That is what happened.

Last night, the committee took note that the senator had not turned up and considered what its process should be from there on, so that it could report to the Senate within the two weeks that the Senate had given it to report. We were not told to report today. We were told to report in two weeks. The purpose of the interim report today is simply to obtain the authority of the Senate to order the appearance to continue to develop this process.

The committee could have invited him to attend, as Senator Stollery wanted to do last night. Members — and some of them were Conservative — said, "We do not have authority to invite him. We should get the order from the Senate. That would give us authority." The whole purpose of the order of the Senate is to begin the process — that is, to give Senator Thompson another

opportunity to come here and then to begin the committee discussions, which have to be done quickly because we only have two weeks. The committee discussions would involve receiving whatever legal advice we need to be able to come back to the Senate within two weeks and report.

I perfectly understand Senator Ghitter's motion. We are all frustrated and want to get it over with. However, if we were to pass his amendment, we would simply cut off the opportunity for the committee to do its work, the work which this chamber gave to the committee to do. We gave them two weeks in which to do it. They are only here this afternoon to ask for authority to get on with the process.

For goodness sake, let us not mess this thing up any more. Let us pass the committee report. That means an order will go out immediately to Senator Thompson. It will be done properly and served properly. If he does show up, then we have another situation to deal with but if he does not show up, then the committee must consider what it will report to the Senate.

Within two weeks — which is what the Senate asked for — the Senate will have the opportunity, on the basis of good, solid, evidence and opinion, to make a decision. I ask honourable senators to give the committee that opportunity and let us get out of here.

• (1610)

**Hon. Terry Stratton:** Honourable senators, I have a question for Senator Stanbury. Many of us are agonizing over this matter. The public will look at the record from 1985 to 1997 going into 1998, showing the kind of attendance that is recorded. The public now sees us, because of a perceived technicality in a committee, trying to ensure that we are fair. My concern is simply that we are being seen once again to be dithering.

What happens if the senator is called by the Senate to appear before the committee and he does not appear? Does the committee again seek legal opinion, or does it come back with a concrete recommendation to us for expulsion?

Having a record since 1985 of non-attendance, the public is saying, "That is enough evidence. Quit your dithering and get it done." I am concerned that we would find another technicality, another reason for not dealing with the issue. I believe the public thinks the evidence is quite clear.

Would the honourable senator agree that, once the committee has or has not heard from the senator, it make a firm decision regarding this matter? We cannot afford to continue on forever like this.

**Senator Stollery:** Then support the report and we can get going.

**Senator Stanbury:** I know this arises from frustration, and I am frustrated too. However, if the Senate wanted to pass the kind of motion that Senator Ghitter has put this afternoon without looking for authority or evidence or background or giving Senator Thompson a chance, it would have done so on

December 16. If you do not want anything upon which to base your decision, then you do it immediately. That is great, except that you take the consequences.

On December 16, the Senate said, "We want to follow a proper procedure in dealing with this matter. We want to set up a committee." What was the job of the committee? If Senator Thompson did not attend, the matter was referred to the committee, and the committee was given two weeks in which to reply. That has nothing to do with anything except the decision of this Senate that it wanted to follow proper procedure. The committee is following proper procedure, as is our responsibility to the public. We do not follow our responsibility to the public by not giving the senator a fair trial and hanging him. We must do the thing properly, and that is what we decided on December 16. We wanted to do it properly. We set up the committee. The committee is only asking today for power from the Senate to follow that process.

**Senator Stratton:** If I may, honourable senators, we know the history, and I would agree with the history. My concern is that if we do what is being recommended and the senator does not turn up next week, the committee will end up in another discussion, and, lo and behold, there is another technicality. Do you not think that there should be something definitive put to the committee saying that if he fails to show, you must recommend expulsion?

**Senator Stanbury:** The Senate requires that the committee report with recommendations within two weeks. Why are you jumping the gun and asking the committee not to do its job? You are the ones who asked the committee to do it, and you are the ones who set the deadline, and that deadline is in two weeks' time.

**Senator Grafstein:** Honourable senators, I do not think we should get bogged down here. The answer to each senator's question is in the draft report. Let me briefly go through them. Senator Pitfield says we should let the leaders have some time. If the report goes forward, they will have time to discuss things. Senator Lawson has a concern about the legal position, and the committee can deal with that and answer his questions within the next two weeks. If Senator Ghitter has a question with respect to the power of the Senate for expulsion, that can be dealt with by the committee as well. Senator Beaudoin has raised an interesting question with respect to the inherent right and whether or not we have the power, and that can be dealt with at committee as well. Senator Stratton has a question about concrete results, and the committee will come up with a concrete recommendation. I am confident that the chairman will come up with concrete recommendations.

Senator Lynch-Staunton has told us with great persuasion, time and time again, that we should follow the procedures that have been laid down in the rules. That procedure is that we delegate the question to the committee, allow the committee to do its work, and then it can come forward with recommendations to let the Senate do its work. That is precisely what we have done in that recommendation. Every concern raised by every senator, including the comments of Senator Pitfield, can be subsumed in that report in two weeks. Let us get on with it.

**Senator Lawson:** I am persuaded by what Senator Grafstein has said. My concern was for fairness and justice. Because of the haste with which we were proceedings, I felt like we were turning into a lynch mob. I am prepared to either amend or withdraw the subamendment, provided that Senator Ghitter is prepared to withdraw his amendment and let it go through the committee process. Senators Ghitter's proposal has had an excellent opportunity to be debated and discussed, and senators have had the opportunity to vent their frustrations, anger and concerns.

If it would assist the process, I would be prepared to withdraw my subamendment, provided that Senator Ghitter withdraws his amendment, and let the committee go with the process that Senator Grafstein outlined.

**The Hon. the Speaker:** Honourable senators, I am afraid that we are coming into a difficult situation. There are some serious technical problems in what we have before us. I know the Speaker should not interfere. May I suggest a meeting with the leadership for perhaps 15 minutes and a suspension of the session during that time?

**Senator Forrestall:** That sounds like a good idea.

**The Hon. the Speaker:** I am afraid that we might end up in a difficult situation which we will regret.

**Senator Carstairs:** Honourable senators, this side would agree with that proposal.

**Senator Lynch-Staunton:** Honourable senators, how could I turn down such a pleasant invitation?

**The Hon. the Speaker:** Do I have the agreement of both sides?

**Senator Prud'homme:** Honourable senators, I will not be difficult. When His Honour asks, "Do I have the agreement of both sides," you take me as being on this side. I am comfortable here, especially with my new seat partner. I know I will not be part of the consultation process. Do not forget that either Senator Lawson or I could have said "no". However, I will agree to the suggestion.

**The Hon. the Speaker:** Honourable senators, I thank Senator Prud'homme. I try never to overlook any honourable senators. While I am aware that the independents do not have large numbers, they do have the power of unanimous consent.

I ask that leaders on both sides meet in my chamber. The bells will ring at 4:30 to resume at 4:35. Is it agreed?

**Hon. Senators:** Agreed.

The sitting of the Senate was suspended.

• (1650)

The sitting of the Senate was resumed.

**Senator Carstairs:** Honourable senators, I move that the debate be adjourned.

Motion agreed to.

MOTION TO AUTHORIZE CLERK OF THE SENATE TO NOTIFY  
SENATOR THOMPSON TO APPEAR BEFORE  
RULES COMMITTEE—DEBATE ADJOURNED

Leave having been given to revert to Government Notices of Motion:

**Hon. Sharon Carstairs (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

That the Clerk of the Senate be instructed to send a letter to Senator Andrew Thompson ordering him to appear before the Standing Committee on Privileges, Standing Rules and Orders on Wednesday, February 18, 1998, at 7:00 p.m. in Room 160-S; and

That, when available, transcripts of today's debates be transmitted to Senator Thompson.

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

**Hon. Consiglio Di Nino:** Will this be an *in camera* meeting or a public meeting?

**Senator Carstairs:** It will be an open meeting, as was last evening's.

**Hon. Ron Ghitter:** On the adjournment, is it to a specific time? If not, how do we get it back on the Order Paper? Do we have the undertaking of the government that this matter will be dealt with the Thursday following the requested appearance?

**Senator Carstairs:** The item will appear on the Order Paper tomorrow with wording to the effect that it is by agreement that we will not debate it until we have received the report following Senator Thompson's appearance, should he appear before the committee, and any recommendation.

Remember, the Standing Committee on Privileges, Standing Rules and Orders has a limit of two weeks under the standing order of this house of December 16. They must report with all of their recommendations no later than two weeks following the referral of the matter. I can give Senator Ghitter our commitment that there will be no extensions to that.

**Senator Ghitter:** Honourable senators, I should like to propose an amendment to the effect that the matter be adjourned until the Thursday following the meeting and that my motion would come forward automatically at that time.

**The Hon. the Speaker:** The question before us at the moment is the motion of Honourable Senator Carstairs that a letter be sent to Senator Thompson. It has nothing to do with the other motions that were before us. The honourable senator is referring to the other debate, which is adjourned.

The question is on the proposal to send a letter immediately to Senator Thompson, in addition to the effective part of the rules committee report of today.

**Hon. John Lynch-Staunton (Leader of the Opposition):** As the agreement to adjourn the debate on Senator Ghitter's amendments is obviously tied in with the decision to send Senator Thompson a letter from the Clerk, it is only fair to explain that my understanding of the adjournment of the debate is that it is adjourned from day to day. If we wish to debate it tomorrow, we can debate it tomorrow. If we do not wish to debate it tomorrow, we stand it. However, it remains on the Order Paper and is up for debate day after day until we have disposed of it.

**The Hon. the Speaker:** That is my understanding of the decision taken when we met in my chambers.

**Senator Ghitter:** Thank you for the clarification. I withdraw the amendment.

**Hon. A. Raynell Andreychuk:** Honourable senators, where will this notice be sent? We have heard today about due process and fairness. We need an understanding of where this notice will be sent. My understanding is that senators are to reside in the jurisdiction or region from which they come and that notice to the address within that region should be sufficient. I wish to know, are these documents being sent to Mexico, to Ontario or to the senator's office? What will satisfy the committee as due process on that point?

**Senator Carstairs:** That is a very good question. Notice will be sent to his residence in Ontario. Notice will also be sent first by fax to his residence in Mexico, with the instruction that he sign and send it back to us, and apparently he has agreed to do that. However, the documents will also be hand-delivered to his residence in La Paz, Mexico. Senator Thompson cannot have delivery to his office because he does not have an office here. However, under those circumstances, the Clerk keeps mail for all senators so it will be here for him as well.

Motion agreed to.

• (1700)

MOTION TO FURTHER DIRECT CONSIDERATION OF RULES  
COMMITTEE—DEBATE SUSPENDED

**Hon. Sharon Carstairs (Deputy Leader of the Government):** Honourable senators, I further move:

That the Standing Committee on Privileges, Standing Rules and Orders, in their work on the order of December 16, 1997, consider all arguments and questions raised in the debates of February 11, 1998, and particularly the debate on the amendment proposed by Senator Ghitter.

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

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I think we would like to see more than a consideration of the debate. We are hoping to get, and the argument has been going on for two hours, a finding on our legal authority, if any, to follow through on Senator Ghitter's amendment or some modification thereof. We would hope that the committee not only consider the debate and hopefully get enlightenment from it but that the committee ask for legal advice and bring to us a recommendation as to how far this chamber can go in dealing with a member who — and it seems we are unanimous, at least on this issue — is not entitled to sit here. How far can we go to ensure that he is no longer a member of this chamber and, as a result, is no longer entitled to the remuneration that he is being afforded?

We should modify the motion accordingly to ensure that the committee understands the intent of this chamber.

**Senator Carstairs:** Honourable senators, I agree. If it is agreeable to the chamber, I would amend my motion to add the words:

...and to hear legal argument based on that debate.

**Senator Lynch-Staunton:** That is not enough. The committee should also report to the chamber on its authority to deal with Senator Thompson. What can we do to see that he is no longer a member of this chamber? It can be worded in better legal terms. I have simply worded it in terms of our intentions.

**The Hon. the Speaker:** Honourable senators, it will be difficult to get the wording exactly as you want it. This matter is not of the same urgency as the sending of the letter to which the Senate has agreed. Could we agree to hold this motion until tomorrow so that we can provide a proper draft?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** We will leave the motion of Senator Carstairs suspended with the understanding that tomorrow we will come back with a properly worded motion. Is that agreed?

**Hon. Senators:** Agreed.

## BUSINESS OF THE SENATE

**Hon. Sharon Carstairs (Deputy Leader of the Government):** Honourable senators, there is agreement on the other side — I am sorry I did not have time to discuss this with our independent members — that all remaining items on the Order Paper stand.

**The Hon. the Speaker:** Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

The Senate adjourned until tomorrow at 2 p.m.



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