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(HANSARD)

**Tuesday, June 10, 2003**



THE HONOURABLE DAN HAYS  
SPEAKER

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## THE SENATE

Tuesday, June 10, 2003

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

[Translation]

Prayers.

## ROUTINE PROCEEDINGS

### SENATOR'S STATEMENT

#### AGA KHAN FOUNDATION CANADA

##### WORLD PARTNERSHIP WALK

**Hon. Mobina S. B. Jaffer:** Honourable senators, on Sunday, May 25, 2003, over 26,000 people across the country participated in the Aga Khan Foundation Canada's World Partnership Walk to raise money for humanitarian projects in the developing world.

This year, the walk raised more than \$3 million across Canada. The Canadian International Development Agency, CIDA, will match every cent raised. CIDA has done so every year since the walk's inception.

For the past 19 years, the Aga Khan Foundation, with the steadfast support of CIDA, has organized the walk so that Canadians realize what people in other parts of the world are going through and to create an awareness of being part of the global family in which every member is as valuable as any other.

The Aga Khan Foundation has now become one of the leading philanthropic organizations in the world. AKFC directs all of the money raised through Partnership Walk sponsorship to projects focused on health, education, culture and economic development, primarily in Africa and Asia. The World Bank and CIDA evaluate these projects and have concluded that the "Aga Khan Foundation Canada's stewardship and utilization of donor funds is impeccable." The Aga Khan Foundation is one of the agencies under the aegis of the Aga Khan Development Network, which includes Aga Khan Education Services, Aga Khan Trust for Culture, Aga Khan University and the Aga Khan Fund for Economic Development.

The Shia Ismaili Muslim community around the world takes enormous pride in the work of their leader, His Highness Shah Karim Aga Khan, and the AKDN, which he directs.

We, in Canada, derive much comfort and satisfaction in being able to contribute and play a small part in the global thrust to improve the lives of those most in need. It is through the hard work and dedication of the Aga Khan Foundation, its volunteers, and the unwavering support of CIDA, both monetarily and symbolically, and the generosity of the Canadian public and industry that this event has been successful and continues to grow in scope and profile every year. This is truly the Canadian way.

I hope honourable senators will join me in congratulating the Aga Khan Foundation Canada for another tremendous World Partnership Walk and for its outstanding efforts in humanitarian work around the world.

### OFFICIAL LANGUAGES

#### THIRD REPORT—NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO REQUEST GOVERNMENT RESPONSE

**Hon. Rose-Marie Losier-Cool:** Honourable senators, I give notice that tomorrow, Wednesday, June 11, 2003, I shall move:

That, in accordance with paragraph 131(2) of the *Rules*, the Government of Canada, namely the Department of Justice, provide the Senate and the Standing Senate Committee on Official Languages with a complete and detailed response to the Third Report of the Committee, adopted by the Senate this past June 5, 2003.

### HUMAN RIGHTS

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP

**Hon. Shirley Maheu:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the date for the presentation by the Standing Senate Committee on Human Rights of the final report on its study upon key legal issues affecting the subject of on-reserve matrimonial real property on the breakdown of a marriage or common law relationship and the policy context in which they are situated, which was authorized by the Senate on June 4, 2003 be extended to Wednesday, December 31, 2003.

[English]

## QUESTION PERIOD

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS—PRESS CONFERENCE ON MARITIME HELICOPTER PROJECT

**Hon. J. Michael Forrestall:** Honourable senators, last week, we attempted to shed some further public light on the whole process of acquisition of a replacement for the Sea King helicopter. Of course, that is not really surging ahead. Therefore, I thought I would ask the Leader of the Government in the Senate a question based upon a briefing held last week by the Chief of Defence Staff, General Henault; Paul Labrosse, Project Manager of the

Maritime Helicopter Project; Colonel Wally Istchenko, Deputy Project Manager; and Lieutenant-Colonel John Mitchell, Project Director for the Air Force for the Maritime Helicopter Project. Obviously, this was a damage control briefing to the press about this program. My question is to the minister: Why is it these gentlemen — the learned professionals — can talk to the press but not to parliamentarians?

• (1410)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not think there is any reason they cannot talk to parliamentarians. The honourable senator is the Deputy Chairman of the Standing Senate Committee on National Security and Defence. If he were to ask those individuals to appear before that committee, I am sure they would do so.

**Senator Forrestall:** So there!

Perhaps the minister could tell us who prompted that briefing.

For the benefit of those of us who are interested, would the minister be kind enough to obtain a transcript of the press conference, if one is available? I have a feeling it might come in handy in the remaining few days that we are here.

Can the Leader of the Government in the Senate tell us why the press conference or damage-control moderator, Lieutenant Commander Scanlon, stated that there are “clearly political dimensions to this defence procurement,” a fact that the other participants in this thinly veiled damage limitation exercise later denied?

**Senator Carstairs:** Obviously, the honourable senator thinks this is damage control. I would prefer to see it as an example of the Department of National Defence being forthcoming about a project of interest to all Canadians.

## CITIZENSHIP AND IMMIGRATION

### IMMIGRATION AND REFUGEE BOARD— ALLEGATIONS OF BRIBERY

**Hon. David Tkachuk:** Honourable senators, an RCMP search warrant unsealed last week reveals that people associated with criminal organizations in Ottawa and Montreal have been pressuring immigrants to pay bribes to Immigration and Refugee Board judges in exchange for favourable outcomes at their hearings.

The immigrants are told that they will lose their case if they do not each pay a bribe of \$10,000 to \$12,000. Two judges are under investigation for allegedly accepting these bribes, and a total of 14 immigration cases are under investigation for being tainted by illegal activity.

Will all of the cases heard by the Immigration and Refugee Board involving these two judges be reviewed for possible illegal interference?

[ Senator Forrestall ]

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, this investigation is being conducted by the RCMP. I think it is in excellent hands and I intend to leave it in their hands.

**Senator Lynch-Staunton:** Like the Airbus investigation! That was a great success, too.

**Senator Kinsella:** How much did that cost?

**Senator Tkachuk:** Honourable senators, Immigration and Refugee Board judges are appointed by the federal government and candidates for these positions are not required to have prior legal training. One of the accused judges had been convicted in 1988 on charges of breach of trust. Both judges under investigation were political appointees having ties to one former and one current Liberal cabinet minister. Could the Leader of the Government tell us if this scandal will prompt the federal government to change the process by which appointments are made to the Immigration and Refugee Board?

**Senator Carstairs:** I think the honourable senator should have a bit of respect for the rule of law. There is an investigation going on here. No charges have been laid. There is no reason for change of policy until we know if, in fact, people have committed criminal activities.

## JUSTICE

### LEGAL DEFINITION OF MARRIAGE

**Hon. Gerry St. Germain:** Honourable senators, my question is also to the Leader of the Government in the Senate. It concerns a decision released today by the Ontario Court of Appeal, which upheld a lower court decision that determined that same-sex marriages should be legal under the Canadian Charter of Rights and Freedoms and called upon Parliament to change the definition of marriage accordingly.

As endorsed by Parliament in June 1999, the legal definition of marriage should remain the union of a man and a woman, as recognized by the state. This issue is one of social policy and, in the view of many of us, it should remain in the hands of Parliament.

The House of Commons Justice Committee is drafting a report on the issue of same-sex marriage, following its cross-country hearings. This is an integral part of the parliamentary decision-making process and many of us believe it should not be allowed to be pre-empted by the courts.

The government appears to be allowing a constitutional amendment via a backdoor process. Why is the government not getting ahead of this issue instead of waiting, as it is?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, the government established a legitimate process. It was to review, in a discussion with Canadians from coast to coast to coast, their reaction to definitions of marriage. That report, as the honourable senator indicated, is expected shortly. I suspect it will be available later this week.

Surely the honourable senator is not proposing that when the courts make decisions, the Government of Canada should pay no attention whatsoever to those decisions, in particular if a case goes all the way to the Supreme Court of Canada and that court rules?

**Senator St. Germain:** Honourable senators, I do not believe I inferred that we should ignore the courts. All I am saying is that Parliament has a responsibility. If judges are to get involved in writing law, which some interpret that they are doing, then they should be elected just as the members in the House of Commons are elected, as far as I am concerned. This is a concern of many.

I know that we differ on this issue, minister, but many of us believe the government is allowing the erosion of spiritual values in this manner. I am not speaking of strictly Christian values but also of spiritual values of several denominations. I think it is important that this issue be raised in the manner that I am trying to present it because there are two sides to this argument. There is the secular side and there is the other side.

**Senator Carstairs:** The honourable senator is quite right. I totally disagree with him on the issue of the election of judges. I believe that judges should not be concerned about facing the electorate when they are interpreting laws — because they do not make laws — that will clearly have an impact on all Canadians.

The erosion of spiritual values of which the honourable senator speaks, I suspect, depends on one's interpretation of a spiritual value. There are those of us who would have contrary spiritual values to those of the honourable senator, and those values would still be spiritual, not secular. We would not necessarily come down on the same position on this issue.

**Senator St. Germain:** Honourable senators, for clarification, I believe, as do many Canadians, that judges are, in fact, writing laws by virtue of their decisions as opposed to interpreting them. I agree with the minister: If the judges strictly interpret, that is one thing, but if they go a step further, I believe they should be elected.

**Senator Carstairs:** Honourable senators, I cannot let that go without a comment. The role of the judiciary is to interpret law. They do it, I think, extremely well. It is up to parliamentarians to make laws, and I think we generally do that pretty well, too.

## CITIZENSHIP AND IMMIGRATION

### UNITED STATES—SMART BORDER PLAN— SAFE THIRD COUNTRY AGREEMENT

**Hon. Donald H. Oliver:** Honourable senators, an RCMP intelligence report is warning that Canada may soon see a rise in incidents of illegal migrants and people-smuggling as a result of a refugee pact between Canada and the United States. The Safe Third Country Agreement is part of a larger deal known as the Smart Border Plan, which recognizes each country as a safe haven

for refugees, therefore requiring them to ask for protection in the first country in which they land. The RCMP report states that Canada may have to deal with an increase in the number of Chinese migrants returning to Canada after trying to enter the United States and that immigrants may also turn, in desperation, to people-smuggling operations in order to enter the country.

Did the federal government raise these concerns with the U.S. government during the negotiations for this deal, and does the Safe Third Country Agreement address this problem at all?

• (1420)

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, generally speaking, there has been a concern, both by Canada and the United States, as to the illegal trafficking of people from place to place. There is both illegal trafficking of people into the United States and illegal trafficking of people into Canada.

Clearly, the purpose behind the Safe Third Country Agreement was to ensure that the country where an individual entered was the country with which a refugee or a person who was, perhaps, acting in an illegal way would have to deal. That is a good agreement.

As the honourable senator knows, a great number of our claimants come from the United States because they have used the United States as a landing point to then enter Canada. The purpose of this agreement is to ensure that the United States will deal with those individuals, as we will deal with the individuals who landed here first.

If the honourable senator is asking if this is a matter of discussion, I can only assume so because both countries have been on the record as indicating their concerns about illegal migrations and trafficking.

### INVOLVEMENT OF ORGANIZED CRIME IN IMMIGRATION PROCESS

**Hon. Donald H. Oliver:** Honourable senators, the RCMP affidavit revealed last week, in relation to the police investigation at the Immigration and Refugee Board of Canada, states that criminal organizations that targeted refugees for bribery schemes are also involved in smuggling illegal immigrants into Canada. This means that criminals involved with people-smuggling may have had a relationship with the two judges who were sworn to protect refugees. What is the government doing to crack down on people-smuggling operations run by organized crime?

**Hon. Sharon Carstairs (Leader of the Government):** As the honourable senator knows, the very fact that there is an RCMP investigation underway on these potential abuses, and I say "potential" or "alleged abuses," is proof positive that the government wants to ensure that there is nothing illegal with the processes and that each refugee or immigrant who comes to this country does so lawfully and in good faith.

## HEALTH

### WEST NILE VIRUS—INCEPTION OF SCREENING TEST

**Hon. Wilbert J. Keon:** Honourable senators, my question is for the Leader of the Government in the Senate. Canada Blood Services has set July 1 as the date to put in place a test to screen blood donors for the West Nile virus. Could the Leader of the Government in the Senate tell us if Health Canada still expects the test to be available as of July 1?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I thank the honourable senator for his question. As far as I know from the information available before me, they do expect to have the test in place by July 1. However, there is also a contingency plan in place to protect the Canadian blood system, should the screening test be unavailable.

### WEST NILE VIRUS—STOCKPILING OF BLOOD— SCREENING TEST

**Hon. Wilbert J. Keon:** Honourable senators, Canada Blood Services is currently conducting a national drive to stockpile blood products in the event that human cases of West Nile disease are found early. Will the stockpile also be screened for the West Nile virus once the test is in place?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know. As the honourable senator knows, Canadian Blood Services is stockpiling ahead of time on the supposition that that blood would be free of West Nile virus. I will have to take as notice the part of the question about whether they will then do a screening test. I will get back to the honourable senator.

### WEST NILE VIRUS—SUSPECTED CASE IN WALPOLE, ONTARIO—BLOOD DONATIONS IN REGION

**Hon. Wilbert J. Keon:** Honourable senators, a young boy on Walpole Island, Ontario, was suspected last week of having the West Nile virus and since, thankfully, has tested negative. Could the Leader of the Government in the Senate tell us if blood donations were accepted in this region while the boy's test results were being determined?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not know the specifics of that case, but I will seek the information for the honourable senator.

## NATIONAL DEFENCE

### CONGO—DEPLOYMENT OF PEACEKEEPING TROOPS— RULES OF ENGAGEMENT

**Hon. Michael A. Meighen:** Honourable senators, last week, the European Union decided, in cooperation with the United Nations, to send a peacekeeping force of some 1,400 troops to the Democratic Republic of the Congo. It has been reported that

the Liberal government will make a contribution to that force, consisting of three Hercules aircraft which will spend their time serving both the Congo operation and the reconstruction effort in Iraq.

The report in the *National Post* today states:

...a group of 60 Canadian soldiers arrived in Uganda yesterday....Some of the Canadians then immediately departed for Bunia, a town in the DRC's Ituri region, which has been at the centre of the fighting.

Honourable senators, the conflict in the Congo has already cost the lives of 3 million people in four and one-half years and the killing is ongoing. There is fear that a Rwanda-type genocide is about to take place.

In Rwanda, General Roméo Dallaire warned the United Nations of the likelihood of a massive slaughter, but as honourable senators will recall, no one listened. As a result, General Dallaire stood helplessly by as the genocide took place, and he has been traumatized ever since.

Can the Leader of the Government in the Senate please share with this chamber the rules of engagement for the peacekeeping force in the Congo and whether Canada has had any say in determining those rules, along with the size of the force and its mandate? Can she also assure us that the peacekeeping force that we are planning on contributing to has the strength and mandate to prevent a Rwanda-like slaughter? Finally, can she assure us that our contribution will not detract from our contribution to Afghanistan?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I will begin with the last question first. The reason that we are sending such limited numbers of troops to the Congo is because of our commitment to Afghanistan. Given the number of very difficult situations in the world and the size of our forces, it is clear that it is not possible to have them in every theatre of this kind of activity.

The French are leading the group that are in the Democratic Republic of the Congo. They specifically asked for our Hercules aircraft and they asked for the troops necessary to maintain those aircraft to be used to provide the supply services required.

That is, unfortunately, our only contribution to the Congo at the present time. It is definitely very modest, but it is clear that that is the extent of what we were able to lend to this mission.

**Senator Meighen:** Honourable senators, the leader will not be surprised that I am not surprised that we cannot contribute more, given the reduced size of our Armed Forces under this government.

**Senator Kinsella:** Who reduced them?

**Senator Meighen:** Could she tell us, as I asked initially, the rules of engagement? Are these limited number of troops handcuffed, in the same fashion as General Dallaire was handcuffed a few years ago?

**Senator Carstairs:** Honourable senators, frankly, they are doing a different function, as I understand it, than General Dallaire did in his service in Rwanda. He was the lead person for the United Nations in that engagement. We are there helping the French-led interim emergency force in that republic. My understanding is that we are merged with them for the purposes of providing the modest contribution that we can.

**Senator Meighen:** Honourable senators, surely it behooves us to know exactly the rules of engagement governing the French force of which we are told that we are a part. What are the rules of engagement governing the French force? Can we take any comfort that we will not be faced with a situation similar to that faced by General Dallaire?

**Senator Carstairs:** Honourable senators, I can seek to obtain any details on the rules of engagement for the honourable senator. Clearly, our role is very different in the Democratic Republic of the Congo than it was in Rwanda. We did not accept the United Nations mission that was accepted in the case of Rwanda. All too regrettably, the United Nations did not respond to General Dallaire when he put the requests forward. If there are any details on the rules of engagement that I can obtain for the honourable senator, I would be pleased to do so.

**Senator Meighen:** I would suggest to the honourable leader that anyone bent on slaughter will not make the same fine distinctions as we can make in this chamber.

• (1430)

## FOREIGN AFFAIRS

### CONGO—PROVISION OF HUMANITARIAN AID

**Hon. Douglas Roche:** Honourable senators, my question also concerns the Congo. However, I will skip the preamble, which has been well articulated by Senator Meighen, and turn to the humanitarian side of this crisis. Experts on the ground are saying that, even though a UN-mandated military force will attempt to stop the civil war and restore order, a huge death toll is expected as a result of lack of food and water, and all the customary issues of underdevelopment.

I ask the government leader if Canada will support or even take the lead in mounting a huge humanitarian effort in the Congo that could be run by experts on the ground, such as Doctors Without Borders, who have the capacity to alleviate the human suffering that is being compounded by the killing which we hope will now stop.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators will be interested in the fact that Canada has tripled its assistance to the DRC over the last three full fiscal years, from nearly \$8 million in 1998-99 to nearly \$25 million in 2001-02. Of this amount, bilateral aid represents approximately \$11 million, with the rest going to humanitarian aid. That means that, in the past four years, Canada has provided \$32 million in humanitarian food aid to the Democratic Republic of Congo.

We have not lost sight of our ongoing commitment to the Congolese people. We will continue to support them but we cannot do it alone. There are a number of hot spots in this world of ours. Canada has reached out, as you know, to the people of Afghanistan. It is now reaching out to the people in Iraq. The

government is continuing to fund its humanitarian commitments to the Congo but others must pick up the torch as well.

**Senator Roche:** Honourable senators, I take the government leader's point that no one country can solve problems alone. However, can we not make a special effort now? I appreciate the figures that were given about our bilateral aid to the Congo over the past few years, but this is a crisis of gargantuan proportions. More than 3 million people have been killed already, and who knows how many more will perish? Is the situation not such that there should be a special effort made by Canada at this moment?

**Senator Carstairs:** Honourable senators, I think special efforts have been made. Our special envoy helped create the conditions for a hopeful return to peace in the DRC. He is working with the United Nations and our international partners, as well as with all Congolese parties involved. At the UN's request, we are participating in an international committee for the support of the transition in the DRC. That group has already met several times.

Our work in the Congo is ongoing. Is the world responding enough to what may well be 3 million deaths to date? I think both of us share a deep concern about that.

## HEALTH

### SEVERE ACUTE RESPIRATORY SYNDROME— AID TO HEALTH CARE WORKERS

**Hon. Jeremiah S. Grafstein:** Honourable senators, the health workers of the greater Toronto area — the GTA — doctors, nurses, hospital workers — have, for many weeks now, provided heroic service in the front lines of the battle to contain the SARS outbreak. Indeed, I have been told that, based on recent statistics, approximately 50 per cent of the SARS cases have been health workers. Indeed, a few have died from this disease acquired in the line of duty.

Could the Leader of the Government in the Senate advise the Senate what, if any, immediate plans the Government of Canada has to assuage the economic needs of these heroic health workers who serve selflessly to protect the public health of our society?

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I am not sure what the economic needs are of these health care workers at the present time. It is clear that many are suffering from overwork, from exhaustion, from conditions where there are inadequate numbers of staff. I was informed this morning, for example, that a call has gone out for 60 additional health care workers with specific specialties. The federal government is working with the medical community to send those specialists to Toronto.

The provincial government, I understand, has made an announcement about increased benefits for staff within the SARS-affected areas. You are quite right: Those who have been working on this epidemic — which was thought to be one cluster but has now moved to two, and possibly to three — deserve the grateful thanks of a grateful nation.

**Senator Grafstein:** Honourable senators will be aware that doctors, for example, have suffered severe economic loss. Their offices have been closed. Surgeons have not been able to operate. Specialists have not been able to perform their duties, and nurses have found themselves serving countless periods of overtime.

It is not satisfactory to simply say that we should thank them and congratulate them; that is obvious. These are unique and special circumstances. There is no question that this crisis affects the public health of our entire society. It strikes me that, based on the number of tools that the Government of Canada has to deal with emergency situations, the government might reach into that toolbox and help assuage the current needs of these health workers.

I say that because this is a pressing need. Anyone who attends at any public health facility in Toronto immediately realizes what this involves, whether it is a doctor's office, a clinic or a hospital. These nurses are working overtime to protect our public health. They are soldiers, and, as such, they should be entitled to some economic treatment, a message of economic help, to say, "Listen, we hear you and we will help you."

**Senator Carstairs:** Honourable senators, as I indicated, the nurses are working extraordinary numbers of overtime hours. That is leading, in some cases, to exhaustion. It is also leading in some cases, quite frankly, to nurses' resignations. They are no longer able to continue with their duties.

The problem concerning doctors' offices is clear. Honourable senators may have read, as I did, about one Toronto doctor whose two partners have fallen victim to SARS. He is trying to look after the practice for all three physicians. I am sure that is putting him under enormous stress.

Federal and provincial governments are working together to identify the economic costs within the health care system, let alone the costs in all other areas. They are trying to come up with some figures to indicate the economic impact within the health care system.

**Senator Grafstein:** Honourable senators, perhaps the leader can assure us that the government will take a fresh look at this system. The economic pressure increases hourly and daily. If that front line breaks, society will suffer. It lies in our collective interest and in the public good to ensure that that front line of workers does not break. The best way to do that is to send an economic message that help is on its way.

**Senator Carstairs:** I thank the honourable senator for his question. I assure him that I will take that message directly to the Minister of Health.

[Translation]

#### DELAYED ANSWER TO ORAL QUESTION

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I have the honour to table a delayed response to an oral question raised in the Senate by Senator

Oliver on April 29, 2003, concerning new immigration selection rules, retroactive assessment criteria and class action lawsuits.

#### CITIZENSHIP AND IMMIGRATION

##### NEW IMMIGRATION SELECTION RULES—RETROACTIVE ASSESSMENT CRITERIA—CLASS ACTION LAWSUITS

(Response to question raised by Hon. Donald H. Oliver on April 29, 2003.)

The Government made a legitimate policy choice to begin applying the new criteria to all cases even those who applied under the *Immigration Act*, as of April 1, 2003.

The skilled worker transitional provisions were designated to strike a balance between fairness to applicants and the interests of Canada. Persons who applied before January 1, 2002 and were not processed before April 1, 2003 are subject to the relaxed selection criteria: a 70 point score. Only persons who applied after January 1, 2002 and whose applications were not processed prior to the implementation of the *Immigration and Refugee Protection Act* (IRPA) on June 28, 2002 have to satisfy the 75 point score, as required by the new legislation. Furthermore, cases that had not reached the preliminary processing stage, known as paper screening, were eligible to have their case closed with a full refund of the processing fee. Out of approximately 60,000 candidates eligible for the refund, only 413 have availed themselves of this option.

The Senator makes reference to a recent Federal Court decision involving 102 applicants for permanent residence, which directed that they be assessed under the selection criteria contained in the previous immigration legislation.

The Federal Court in Dragan clearly decided that the transitional regulations were valid. This means that CIC officials will continue to apply the regulations as written.

The selection criteria apply to all applicants. While in absolute numbers, we might receive more applications to come to Canada from one geographic area over another; everyone is assessed on the same basis. I would like to add further that this government is committed to immigration on a non-discriminatory basis. I must emphasize again: New applicants, whether they are from Asia or from anywhere else in the world, are subject to the same requirements.

• (1440)

[English]

## ORDERS OF THE DAY

### CRIMINAL CODE

#### BILL TO AMEND—MESSAGE FROM COMMONS—REFERRED TO COMMITTEE

The Senate proceeded to consideration of the Message from the House of Commons concerning Bill C-10B, to amend the Criminal Code (cruelty to animals).

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I move, seconded by the Honourable Senator Robichaud:

That the Senate concur in the amendment made by the House of Commons to its amendment 4 to the Bill C-10B, An Act to amend the Criminal Code (cruelty to animals);

That the Senate do not insist on its amendments 2 and 3 to which the House of Commons has disagreed; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

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

**Senator Carstairs:** Honourable senators, we are again discussing Bill C-10B, to amend the Criminal Code in respect to animal cruelty. As honourable senators recall, we had this bill before us a few weeks ago. After several months of comprehensive study, the Standing Senate Committee on Legal and Constitutional Affairs reported the bill back with five suggested amendments, which this chamber adopted. The other place considered these amendments, and today we are debating the motion passed in the other place in respect to the amendments which we so moved.

Let me remind senators what the amendments were. One amendment was a small technical change to a word in the French text, and I think that one clearly received approval on the other side. The other four, however, were more substantive changes.

One amended the definition of “animal” to remove the phrase “or any other animal that has the capacity to feel pain.” Another added the defences of legal justification, excuse —

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise on a point of order. So that everyone is singing from the same hymn book, the item before us is the message. We are debating the message. Senator Carstairs rose to speak on the message, and she moved an amendment before we began to debate the message. I take it she is now speaking to her amendment as opposed to the message. If that is the case, it would be helpful for us to have a copy of the amendment, just to understand where we are.

**The Hon. the Speaker:** Did you wish to intervene on the point of order, Senator Cools?

**Hon. Anne C. Cools:** I was about to raise a similar point of order myself because it seems to me that any motion to take an action should be subsequent to some discussion on the message itself, I would have thought. I also heard Senator Carstairs to say, not that we were debating the message; I heard her say that we were debating the motion adopted in the House of Commons. I do not understand how we can be debating a House of Commons motion. To the extent that we will get copies of what is actually before us, that might clarify my dilemma. I distinctly heard Senator Carstairs say that we were debating a House of Commons motion.

**The Hon. the Speaker:** To be helpful, honourable senators, yesterday the Chair read the message and distributed the text of the message. Senator Carstairs has today moved a motion, which will be distributed to the honourable senators’ desks. It is in the process of being distributed now. It is a motion to concur in the amendment, essentially. I will not repeat the rest of the motion.

I do not see anything out of order, honourable senators, in proceeding this way.

**Senator Carstairs:** Honourable senators, thank you. Let me continue.

One amendment, and I am talking now about what we had suggested to the other place, amended the definition of “animal” to remove the phrase “or any other animal that has the capacity to feel pain.” Another added the defences of legal justification, excuse or colour of right. A third one replaced the offence of “kills without lawful excuse” with the offence of “causes unnecessary death.” The last amendment added a defence for traditional Aboriginal practices.

The message from the other place states they agreed to three of these amendments in principle, made a change to one of them and disagreed with two. The small housekeeping amendment, a technical change to the French text of the proposed section 182.6, was agreed to. The other place also accepted the amendment to the definition of “animal.” Although the government’s initial priority when it drafted the bill was flexibility in the definition, the other place has come to accept the concerns discussed by honourable senators about the lack of clarity and certainty in the original definition. If science can one day demonstrate that animals that are not vertebrates have the capacity to feel, then Parliament can at that time consider making a change to the legislation to bring those animals under the law.

The other place also approved, in principle, the amendment that would include the defences of legal justification, excuse and colour of right. Honourable senators recall that many groups testified before our committee that they were concerned that some defences might be lost by these amendments. The government had maintained consistently that the defences listed in subsection 429(2) of the Criminal Code were not lost, even if the words were not reproduced in the new sections. Our committee heard from officials and other witnesses, including experienced criminal lawyers, that subsection 8(3) of the code,

which preserves all common law defences, includes the specific defences mentioned in 429(2), namely legal justification, excuse and colour of right.

The view of the government was that this amendment was not legally necessary. Still, the Senate committee decided there was merit to being absolutely clear that Canadians should not have to fear our law reforms and should not have to have this question hanging over their heads. The amendment adopted by honourable senators stated, "No person shall be convicted of an offence under this part where he proves that he acted with legal justification or excuse or with colour of right."

Our intent, I think, was simple and clear. It was to explicitly reassure Canadians that the defences in subsection 429(2) were still available. The amendment was a reassurance that the current law was not supposed to change. It did not provide something new, and it did not change the law. It confirmed the existing law.

The other place has accepted the merit of our intention to make clear and certain laws but did not agree with the wording of the amendment. It was pointed out that the wording contained a reverse onus in the words "where he proves." This kind of reverse onus of proof means that the accused has to prove that the defence applies. Normally, the prosecution must prove beyond a reasonable doubt that a defence raised by the accused does not apply. Clearly, the reverse onus is a disadvantage to the accused. In this post-Charter era, it may also be unconstitutional because it violates the presumption of innocence. Most amendments made to the Criminal Code after the Charter do not have this kind of reverse onus. The other place was, I believe, correct to point out that we can do better than to introduce a provision that risks violating the Charter.

The second reason the other place gave for wanting to change this amendment was that it was not clear whether the case law decided under subsection 429(2) would continue to apply.

• (1450)

I believe it was the intention of this chamber that the old case law would be applicable. There is already case law under subsection 429(2) that interprets the meaning and scope of those defences, and also important case law that suggests that the reverse onus contained in subsection 429(2) is unconstitutional, and rules it of no force or effect.

By writing the defences into the new part without referencing subsection 429 (2), there was no way to be sure that the courts would understand that the old interpretation of the defences was meant to apply.

The other place amended the amendment to deal with both of these points. The amendment now reads:

Section 182.5 — For greater certainty, the defences set out in subsection 429 (2) apply, to the extent that they are relevant, in respect of proceedings for an offence under this Part.

In my view, honourable senators, this wording makes clear that the case law decided under subsection 429(2) should continue to apply because it is the defences in subsection 429(2) that are preserved. This case law includes cases that strike down the reverse onus in that provision, so that this wording takes care of that problem as well.

These are improvements to the amendment, and I urge honourable senators to concur in this change.

The other place disagreed with two amendments. The first was an amendment that deleted the defence of "killing without lawful excuse" and added "causing unnecessary death" to the offence of causing unnecessary pain or suffering to an animal.

In the Senate committee, concern was expressed that this amendment was confusing, and that it was not clear how "unnecessary" could fit with the killing offence. "Unnecessary" is a concept that goes with pain and suffering, according to the case law, but not with killing. The other place took the view that this amendment brought greater uncertainty into the law.

The phrase "without lawful excuse" in the offence of killing is well known in the criminal law and well understood in the case law. Even the Supreme Court has said that it is a flexible term that must be looked at in the context of the offence. It is broad enough to cover commonly accepted reasons for killing animals, such as hunting and fishing, and euthanasia by veterinarians. There is no evidence that the courts have trouble understanding this term, or that its scope is too narrow.

The other place rejected this amendment because it takes two separate offences and makes them one. It has been Parliament's intention for a long time that there be two separate offences, one of causing unnecessary pain to an animal, and one of killing an animal without lawful excuse. The blameworthy character of each type of conduct is different. It is one thing to kill someone else's pet humanely but without good reason, and it is something different to torture an animal. These are two separate things and the law should recognize them as different. The other place rejected this amendment for these reasons, and I urge honourable senators to concur.

The other place did not accept the amendment that would have added a defence for Aboriginal persons who carry out traditional hunting, trapping or fishing practices in any area where Aboriginal peoples have harvesting rights under section 35 of the Constitution Act, 1982, where the pain caused is no more than is reasonably necessary in the carrying out of those traditional practices.

This amendment is not legally necessary. Aboriginal persons are not at risk of prosecution or conviction for any activities that are humane and cause no more pain than necessary. The law is sensitive to the specific issues of Aboriginal practice. The courts can already take Aboriginal practices into account in determining whether an offence has been committed. In addition, Aboriginal persons have all of the protection of section 35 of the Constitution Act.

The other side maintains also that this clause is very confusing. Many honourable senators expressed confusion and concern about the wording of this amendment, both in the committee and at the report stage. In the committee, although five members voted for this amendment, two opposed and five abstained.

Concerns were expressed that this amendment might impose a reverse onus on Aboriginal people. Others were concerned that it would be overbroad because it could allow an Aboriginal person from one region to go to any area where other Aboriginal peoples have rights, and claim the defence. Aboriginal persons from one group could claim the benefit of some traditional practice of another group, which could lead to complicated competing claims to the same resources.

There were also concerns about the difficulties police might have in figuring out what traditional practices are, and what Aboriginal rights are, when they are investigating a charge. Senators were concerned as to whether or not this provision would be enforceable.

These were the concerns of honourable senators, not just concerns in the other place. We put in this provision, and yet we were not fully certain what its effect would be. The other place has rejected this amendment based on many of our concerns. I would urge honourable senators to concur in this decision also.

In conclusion, the other place has informed us that they have agreed to two of our amendments unchanged: the French language correction and the definition of "animal," and modified a third one, dealing with the defences of subsection 429(2).

The other place disagreed with two amendments, the one that deals with unnecessary death and the one that gives a specific defence to Aboriginal persons. It has disagreed with these two amendments because they are confusing, and their legal effect is not clear. It is not good practice to pass amendments that are confusing and that lead to further uncertainty.

Therefore, I strongly urge honourable senators to concur in the motion passed in the other place, but I also believe, honourable senators, that the message we received from the other place should be referred to the Standing Senate Committee on Legal and Constitutional Affairs, because that is the committee which studied this bill originally.

#### REFERRED TO COMMITTEE

**Hon. Sharon Carstairs (Leader of the Government):** Therefore, with leave of the Senate and notwithstanding rule 58(1)(f), I move:

That the question now before the Senate be referred to the Standing Senate Committee on Legal and Constitutional Affairs; and

That the committee report no later than Thursday, June 12, 2003.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** It seems, Senator Carstairs, that some are rising for questions. Would you take questions before we deal with the motion?

**Hon. Gerry St. Germain:** My question is to the Leader of the Government in the Senate. On the question of humane practices, and I am speaking to the last amendment that dealt with Aboriginal persons, I believe that that is one of the greatest areas of concern. Now that you have moved that the bill is to return to committee, I would like the record to show that that is one of the greatest areas of concern by virtue of certain practices in which Aboriginal peoples participate. That interpretation can be so broad and so different from one end of this country to another.

Having said that, I believe, if the bill returns to the committee, I will accept the recommendation of the Leader of the Government.

[Translation]

**Hon. Gérard-A. Beaudoin:** The minister referred to several amendments. On several occasions, she mentioned the Canadian Charter of Rights and Freedoms.

I must say that the Senate Standing Committee on Legal and Constitutional Affairs has been studying this issue for many months now. If we refer it back to the committee without debate here in the Senate, I agree that we cannot give an opinion on it today, given that the amendments are all interrelated and involve the Canadian Charter of Rights and Freedoms.

I would agree with the idea of referring the whole question to the Standing Committee on Legal and Constitutional Affairs, but I would like to know if that is the purpose of the motion.

[English]

**Senator Carstairs:** Honourable senators, we received a message from the House of Commons. As an institution, we can accept that message or we can reject that message. I moved a motion that we accept that message. Further, I moved a motion that that message of the House of Commons go to our committee. Thus, in committee, honourable senators would be able to examine the recommendations that are made by the other place and that have been sent to us by way of a message.

• (1500)

**Hon. Pierre Claude Nolin:** To be clear, is the honourable senator asking us to say yes to the first motion or the second motion?

**Senator Carstairs:** I am asking honourable senators, at this point, to say yes to my second motion, which is to refer the message of the House of Commons to the Standing Senate Committee on Legal and Constitutional Affairs.

**Senator Nolin:** If we say yes to the second motion, that will close the debate today. As we are in question mode, I will ask another question.

The government is suggesting, in its wisdom, that we should accept the amendment proposed by the other place. Has the honourable senator reviewed section 429(2) of the Criminal Code to which that brilliant amendment in the House of Commons is referring? That section of the colour of right provision reads as follows:

No person shall be convicted of an offence under sections 430 to 446 where he proves that he acted with legal justification or excuse and with colour of right.

Does the minister not think that if the members of the other place would have tried to do a complete, thorough and rigorous job, they would have also amended section 429(2) to include the new sections 182.1 to 182.6? Why would that not be done? That is a good reason to send the bill back to committee — for committee members to do a good and rigorous job.

**Senator Carstairs:** The honourable senator has answered his own question. Another question that would have to be asked is: Was that section of the Criminal Code actually opened in the bill? My understanding is that it may not have been opened in the bill. Therefore, one is unable to amend a section that has not been opened.

**Senator Nolin:** That is exactly why we decided to resuscitate a new section that would use the exact wording of 429. Honourable senators are getting used to the depth of the work that we do in the Standing Senate Committee on Legal and Constitutional Affairs.

We will agree, at least on our side, to the recommendation of the minister to send the bill back to committee to review the message from the House of Commons because that message is totally incomplete. They have neither read nor discussed thoroughly what we have discussed when we were dealing with our Aboriginal colleagues' rights. Definitely, the members of the House of Commons have not done their job on amendment number 3 in regard to the colour of right defence.

**Hon. Charlie Watt:** Honourable senators, I should like to adjourn the debate under my name.

**Some Hon. Senators:** No, no.

**The Hon. the Speaker:** We have a motion to adjourn. The motion is not debatable.

It was moved by the Honourable Senator Watt, seconded by the Honourable Senator Adams, that further debate be adjourned. Is it your pleasure, honourable senators, to adopt the motion?

**Senator Carstairs:** On a point of order, this is a reference to a committee, honourable senators.

**Senator Forrestall:** We have rules!

**Senator Kinsella:** There is no debate.

**Senator Carstairs:** My understanding is that it is not a debatable motion.

**Senator Forrestall:** What are you debating it for?

**The Hon. the Speaker:** The motion to adjourn is not debatable, but the motion to refer is like any other motion. Let me take a quick look at the rules.

The motion to adjourn is in order, but I am not sure whether it is a debatable motion. Honourable senators are such sticklers and I want to be correct here. We will pause while I check the rules.

Honourable senators, the events or the sequence of events are that Senator Carstairs has spoken to her motion and has proposed a further motion for which leave is required to be put. I asked for leave and leave was granted. The motion was put.

Senator Carstairs' motion is that the question now before the Senate be referred to the Standing Senate Committee on Legal and Constitutional Affairs and that the committee report no later than Thursday, June 12, 2003.

A motion to refer a matter to committee is a debatable motion. It is also possible to move the adjournment of the motion. The questions between various senators and Senator Carstairs were, in my view, on her speech concerning her motion. We now have before us a motion to adjourn the debate moved by the Honourable Senator Watt, which I am obliged to put, and that is not a debatable motion.

It is moved by the Honourable Senator Watt, seconded by the Honourable Senator Adams, that further debate be adjourned to the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** No.

**Some Hon. Senators:** Yes.

**The Hon. the Speaker:** Those in favour of the motion to adjourn the debate will please say "yea."

**Some Hon. Senators:** Yea.

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

**Some Hon. Senators:** Nay.

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

*And two honourable senators having risen:*

**The Hon. the Speaker:** Honourable senators, it is a one-hour bell. However, as it is a government motion, the whips may propose a different time.

**Hon. Bill Rompkey:** Honourable senators, I believe we have an agreement for a 30-minute bell.

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

**Hon Senators:** Agreed.

**The Hon. the Speaker:** Call in the senators.

• (1530)

Motion negatived on the following division:

YEAS  
THE HONOURABLE SENATORS

Adams	Kelleher
Angus	Keon
Atkins	Kinsella
Bolduc	Lawson
Buchanan	Lynch-Staunton
Cochrane	Murray
Comeau	Oliver
Cools	Prud'homme
Corbin	Rivest
Doody	Rossiter
Eyton	Sibbeston
Forrestall	St. Germain
Gill	Stratton
Grafstein	Tkachuk
Gustafson	Watt—31
Joyal	

NAYS  
THE HONOURABLE SENATORS

Austin	Kolber
Bacon	Kroft
Banks	Léger
Beaudoin	Losier-Cool
Callbeck	Maheu
Carstairs	Mahovlich
Chalifoux	Merchant
Chaput	Milne
Christensen	Moore
Cook	Morin
Cordy	Nolin
Day	Pearson
De Bané	Pépin
Fairbairn	Phalen
Finnerty	Poy
Fraser	Ringuette
Furey	Robichaud
Gauthier	Roche
Graham	Rompkey
Hervieux-Payette	Smith
Jaffer	Stollery—42

ABSTENTIONS  
THE HONOURABLE SENATORS

Nil

**The Hon. the Speaker:** Is the house ready for the question?

**Hon. Senators:** Question!

• (1540)

**Senator Watt:** Honourable senators, this is a great day — or the beginning of a bad day, whichever way you look at it. Let me try to describe, as clearly as possible, why I felt that it was necessary for me to make the motion that I made.

Over the months, it has not been easy dealing with this particular bill in the Standing Senate Committee on Legal and Constitutional Affairs. There was a great deal of educating that I, together with Senator Adams and other Aboriginal groups, had to do in terms of who we are, what we are and what we do. How do we consider ourselves in this country? How should we take part and participate? Certainly not by allowing ourselves to be eroded away from this land of ours.

It is important that every race in this country respect each of the others. At times, I wonder whether we have a clear conscience, and whether we clearly understand what we are doing when we are dealing with an important piece of legislation such as this. At times, we seem to forget the fact that there is a human side to all of this. It seems that that human side is no longer of importance to all of us, when, in fact, it should be the most important issue in the forefront of our minds.

At times, I also feel that the economic side is not taken into account. We, like you, have to live. We have a right to life under the Constitution, the same as you do. That right to life also applies to the Aboriginal people.

Let me talk a little bit about economics. Aboriginal people feel strongly that their economy is affected by a piece of legislation such as the one that is before us. As Aboriginal people, we live in isolated communities in the Far North and on reserves in remote communities. We live very differently from the way in which those in the south live. A lot of that difference has to do with the fact that we do not have the same economic opportunities. Therefore, it is important to us to speak out when we feel that our right to life is being attacked by the system.

I do not believe this debate will end today; neither will it end tomorrow. The fact is that we must continue to address this issue, because justice must be somewhere. Justice has to apply to all, equally. Sometimes I feel that that is not the case. At times, we feel very small compared with where you stand. At times, we feel shy to raise issues, important issues, because we are not sure whether we will be understood.

I am not here to try to persuade you all, but if I can succeed in a small way to persuade you to have a little bit of understanding about where we are coming from, we would certainly appreciate that.

Let me get back to Bill C-10B, and why it is an important piece of legislation. It is important to all of us to have fair and just legislation — not only on this one day, to deal with it and bring it back to this assembly where we can determine whether we should send it back again to the House of Commons, amending this Bill C-10B. No, one day is not enough. One day is not satisfactory, because with this bill we are dealing not only with the question of Aboriginal rights, but also with the rights of other people, such as farmers, hunters and those who have religious beliefs. Such groups conduct their business in certain ways, and they utilize the animal in certain ways, according to their religious beliefs.

Therefore, honourable senators, we need more than one day for this debate. Two days might not even be enough. However, I am prepared to settle for two days and have this matter dealt with thoroughly and expeditiously by those on the Standing Senate Committee on Legal and Constitutional Affairs.

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

**Hon. Anne C. Cools:** Honourable senators, I would like to follow on the remarks of Senator Watt by saying that I had been a great believer that this message should be referred back to the committee. I had sincerely believed that the subject-matter should be "recommitted," as they say.

Honourable senators, I am a little disturbed and troubled that Senator Watt's wish was not granted. His action was a surprise to me, but I sincerely believe that he has a profound point when he says that one or two days in a committee on such a major initiative is insufficient. It seems to me that sending the message to the committee should be a sufficient and fulsome act, not a pro forma one.

Honourable senators, I am somewhat concerned because what we are dealing with here, from what I can see, is a superseding motion. I do not have that second motion in front of me, but it seems to be a superseding motion rather than an amendment to the main motion. It is a very interesting phenomenon, I think, that we have a reference to a committee, but the main motion has already stated a position. The main motion is an attempt to have the Senate concur in the amendment made by the House of Commons to amendment numbered 4 to Bill C-10B and to have the Senate not insist on its amendments numbered 2 and 3, to which the House of Commons has disagreed, and obviously, to have the Senate send a message to the House of Commons to acquaint that house accordingly.

• (1550)

We have an interesting phenomenon in that the message is being referred to the committee for its judgment and for its opinion, but within a very restricted and rigid set of boundaries based on the fact that the Senate should not insist on its amendments numbered 2 and 3. I may have a small problem with that because it is not in the nature of an instruction to a committee but it is certainly in the nature of a preconceived conclusion.

Perhaps it truly does not matter. Who knows, at the end of the day? Honourable senators, I do want the committee, in its consideration of the amendments, to look at an important matter that has just arisen with little time for preparation. I cannot help but observe that the new wording proposed for amendment numbered 4 is the wording that was previously considered by the committee. An official from the Department of Justice, Mr. Richard Mosley, suggested the wording. On Friday, June 6, the motion in respect of this message was adopted in the House of Commons.

Honourable senators, we must be mindful that the person speaking to and leading the debate in the other place was not the Minister of Justice but, rather, Mr. Paul Macklin, Parliamentary Secretary, and the motion was moved by Mr. Don Boudria,

Leader of the Government in the House of Commons. Amendments have been made, and we simply have not had the opportunity to talk to the minister about them. The minister has been noticeably absent. Mr. Mosley suggested the amendments. I have problems with that, honourable senators.

I would like to return to the day when amendments, the substance of amendments and the wording of amendments were discussed and debated with ministers, rather than with staff. I have nothing against the staff; they are wonderful, intelligent and brilliant people. Wording that the committee has already considered has reappeared, wording that the committee chose not to adopt because it deemed, in its wisdom, that its own wording was superior. Yet, this wording has come back to us. This is a good lesson in process, but that is not my real point.

My real point is the following: The House continues, in their vernacular, to send the bill back or to send the bill over. Messages are the means of communication between the two Houses. What is before this house now is only a message and not the bill. The bill is no longer open. There is simply the message from the House of Commons to the Senate.

What I want the Senate committee to consider is that the House of Commons has sent, in the form of a message, an entirely new amendment and not an amendment to our message or to our proposal. I was always under the impression that one chamber or the other could accept, reject or amend, but that it could not send completely new propositions. I may be wrong about that; there may be some precedent.

I would like to put the words of the message on the record so that they might resonate in the minds of honourable senators, to help them understand why I have concerns. Paragraph 4 of the message from the House of Commons states:

Agrees with the principle set out in amendment numbered 4, namely, the desire to reassure Canadians that no defences are lost, but, because the wording of the amendment would codify a reverse onus by requiring an accused person to prove his or her innocence on a balance of probabilities, would propose the following amendment:

Amendment numbered 4 be amended to read as follows:

Page 4, clause 2: Replace lines 22 to 24 with the following:

"182.5 For greater certainty, the defences set out in subsection 429(2) apply, to the extent that they are relevant, in respect of proceedings for an offence under this Part."

This is not so much an amendment to the work of this place but, rather, a brand new clause that is being suggested to this bill. The Commons message states that they "would propose the following:" and given that the message was sent to the Senate, then they must be proposing it to the Senate. Thus, a dual procedural process is being used in this place.

[ Senator Watt ]

It may seem quite arcane to some, but it is important because the entire message, honourable senators, is simply the means of communication between the Houses. The chambers communicate by message just as the House communicates with the Governor General or with Her Majesty, by address. These are ancient words that we use.

The message states that the House, “would propose the following amendment:” Honourable senators, Bill C-10B, Bill C-10A, Bill C-15B, and the original Bill C-15 have presented unusual procedural practices. I think of the word “bizarre” when I try to describe the procedure of movement of this bill through the two Houses. I remain concerned that the Bills C-10A and C-10B have not had three readings in either House — the Senate or the House of Commons. I have been saying that since last October.

Honourable senators, I draw your attention to the wording of the message: That the House of Commons would propose an amendment to the Senate in respect of amendment numbered 4. It would be of interest for the Standing Senate Committee on Legal and Constitutional Affairs to determine whether the amendment has been made in the House of Commons or whether the amendment is being made in the Senate. It is an interesting proposition.

One of the great problems today, in our system of governance, is that the law of Parliament is suffering from under study and under use. This may not seem an important point to many but the institutional relationship that should pertain between the two Houses of Parliament, and between the two Houses and Her Majesty, and their relationship to ministers, is of supreme importance.

Honourable senators, I believe that Senator Watt wished to have a few more days to study the bill in committee. The reference date to return the order is June 12. My position on this bill is well known and well documented. The intention of the Senate committee, in making its amendments, was to protect Canadians from potential vexatious, malicious or mischievous prosecutions, as was suggested by the numerous witnesses — agriculturists, farmers, butchers, hunters, Aborigines, et cetera — who presented before the committee.

• (1600)

Since Bill C-10B represents such a sea change in the law and a total restructuring not only of the law but even of the Criminal Code to accommodate a new species of being, I think that we must approach some of these issues in what I would describe as, in the old classic words, fear, trembling and awe.

The committee was concerned about the protection of Canadians, native peoples, the researchers in the scientific community, the husbandry practices of some individuals, and so on, from having their work become the subject of prosecution because, I believe, the committee wanted to see a balance. Yes, very few of us would tolerate cruelty to animals, but when we speak of cruelty to animals, we forget that there are a host of people in this country who view hunting as cruelty to animals, and who view ordinary, old, traditional, common law hunting rights that way.

Honourable senators, I know that Senator Watt and Senator Adams have always raised the historical hunting rights of the Aboriginal people. I want to tell honourable senators that hunting is an ancient right of most people. If one looks back into the old literature, one will find all manner of references of the right of human beings to enjoy the bounty of nature by fishing, hunting and so on.

The committee, in carrying out its work — and the case that comes to mind is *R v. Menard* — in its wisdom, tried to bring out the balance and the proper relationship between human beings and animals. I believe the committee was making its amendments in that vein.

I wish the committee well, and I thank honourable senators for their attention. I especially thank our Aboriginal senators, Senator Watt and Senator Adams. Not wanting to be overly positive, these two gentlemen feel deeply and passionately about this particular issue. They have been able to touch me and cause me to look at some of these issues because Aboriginal issues are not something that I have studied a great deal and know a lot about. I thank them and I thank all honourable senators. My hope is that the committee will do a good job of reviewing this message as a real study and not just as a pro forma or a lip service.

**Hon. Jeremiah S. Grafstein:** Honourable senators, I have not participated in the committee on this subject matter. I have listened carefully to what Senator Watt has said. Having just been apprised of the nature of the amendment, I felt it was appropriate to give more adequate time for all of us to consider it.

The normal tradition of this house has been to give a senator, in this case a senator whose concerns are first and foremost with Aboriginal rights, an opportunity for further consideration and reflection and to bring back those concerns to this chamber so we might opine on them. We have not been given that opportunity. I suggest that on a fast reading of this bill and the report from the other place, they do not touch on the parameters of this bill. I think all senators who are prepared to move this matter forward should understand that we are touching on Aboriginal rights at their deepest and most profound sense as they apply to the traditional Aboriginal lifestyle, which is protected under the Constitution. It also impinges directly on freedom of worship in terms of traditional faith practices in dealing with their way of life without fear of prosecution.

I am not satisfied, on first glance, that either the Aboriginal rights or traditional faith practices are safeguarded. Therefore, the onus is not upon the practitioner but is upon the state to deal with these issues. We are dealing with fundamental issues of minority rights, which I thought was the paramount rationale for this chamber. Another day or two in the lifelong role of any Parliament is not that important, but it is important to ensure that, as a chamber of second sober thought, we look at these issues carefully and satisfy ourselves, beyond a peradventure of doubt, that those who wish to exercise their traditional Aboriginal practices, their Aboriginal rights, safeguarded by the Constitution, as well as the freedom of worship that includes the right to deal with their culinary matters

in a particular way, should be safeguarded. If they are not, and if the minister cannot satisfy us beyond all peradventure of doubt that there is no question of a vexatious proceeding, or no question of any impingement on these rights, I believe all of us in this chamber have a serious problem.

I commend Senator Watt for bringing this matter to our attention, which has allowed me to look at it only briefly. However, I can assure him that in the next day or so I will give it much deeper thought. I hope all honourable senators who have urged this matter forward to committee will allow the committee adequate time to consider these issues yet again.

I agree with Senator Cools: The parliamentary practices here are beyond description. I also believe we are here as a chamber of sober second thought, to ensure that parliamentary practices are carefully and properly protected.

I will be looking at this matter, and I am unhappy that Senator Watt's plea for an extra day or two to allow all of us to consider it more fully in the chamber has not been allowed. So be it. This is the will of the chamber and I respect the will of the chamber, and I respect the will of the government. However, having said that, I must also respect our own role as individual senators to ensure that the rights of these groups are properly exempted from any concern or any fear that their rights will somehow, in some way, be impinged. I look forward to a careful and quiet deliberation in committee to ensure that those protections are safeguarded.

[Translation]

**Senator Nolin:** Honourable senators, I would like to reassure Senator Watt that he should not interpret my vote as a vote against the intent of the amendment.

I think that members of the Standing Committee on Legal and Constitutional Affairs argued *ad nauseam* about the content for several months. They did not only argue about the rights of Aboriginal Canadians, but also about those of other persons for whom hunting or killing certain animals is a legitimate and perfectly reasonable activity.

I voted knowing that the committee would be meeting tomorrow afternoon and Thursday morning. I believe that the two meetings will be enough to examine the message from the House of Commons, which concerns three of the five amendments that were proposed. I also have concerns about the fourth amendment and I have indicated my reasons to Senator Carstairs.

Once again, I think that the two committee meetings will be enough to study the question, review it if necessary, and reaffirm the amendments that we proposed here in the Senate.

[English]

**Senator St. Germain:** Honourable senators, I rose along with Senator Watt and asked for a standing vote not to be obstructionist. It is a question of this Aboriginal issue. I think the Leader of the Government in the Senate and the leadership on the government side understand that this is a sensitive area; an

area that has been spoken of on numerous occasions. The thing that caused my consternation was the fact that the Leader of the Government recommended that we send the question back to committee.

The committee did excellent work. I do not belong to that committee officially, but many senators who are not members of that committee attended these hearings on a consistent basis. That was because of the excellent work done by the leadership, the chairman, Senator Furey, and the deputy chairman, and all the members of the committee who worked diligently and sincerely in trying to deal with the issues before the committee that were reflected in the bill. Senator Baker did an excellent job as well.

• (1610)

We have been debating the motion, debating the message and debating the amendment. I certainly do not profess to be a procedural expert, but the fact remains that the government is thinking of accepting the amendments as they came from the House of Commons. As so adeptly pointed out by Senator Nolin, section 429(2) does not cover these particular sections, yet they make reference to them in regard to amendments to this piece of legislation.

Something is adrift in the system. I would urge the Leader of the Government in the Senate, who I believe is sincere, as the government is, to consider that we have a litany of legislation before us now that deals with Aboriginal issues. We have Bill C-6, Bill C-7, and Bill C-19 is coming.

Our poor native people are being inundated by legislation. I think that some of them believe that the confusion/illusion is about to be imposed on them as opposed to dealing with their needs and issues in a sincere manner. Perhaps we can get through this in the next couple of days.

Honourable senators, I do not believe this proposed legislation is so important that we have to ram it through in spite of the fact that the government would like to see it through. I do not hear any great hue and cry about this legislation. I hear a hue and cry about SARS and BSE, but not about cruelty to animals. I have not been reading such in our media.

Obviously, there is a need in the eyes of the government. Let us try to fulfill this need but not run rough shod over our Aboriginal people in the onslaught. I urge honourable senators to understand that Senator Watt and I are not being obstructionist, but are asking for time to think this thing through and do what is right for our Aboriginal people and other peoples that might be affected by this legislation.

**The Hon. the Speaker:** The next speaker who has the floor will be Senator Sibbeston. If Senator Cools has a question to Senator St. Germain, it should be put now.

**Senator Cools:** Honourable senators, the motion says June 12. Do we have any idea of how much committee time that really entails? Will it be one hour committee sittings or two hours? I was wondering if Senator St. Germain knew that.

[ Senator Grafstein ]

The motion is silent on that aspect. The motion says that the committee shall report by June 12. Senator Watt's concerns may be greater than we think. Perhaps, before we have a final vote, we should ascertain how much committee time will be spent on studying the message.

It might be useful, perhaps, some time in the future, that we specify some amount of time that should be spent on these matters lest we discover that June 12 may mean a one-hour committee meeting.

**Senator St. Germain:** I cannot give the honourable senator that answer, but I would certainly be of the belief, from the nodding and the body language in this chamber, that if the committee is to meet, it may take five or ten hours.

Whatever it takes, with the makeup of that particular committee and the leadership, the proper time will be allocated.

**Hon. George J. Furey:** Honourable senators, in response to the question by Senator Cools, we have two sitting days for the committee between now and Thursday. Wednesday afternoon is a regular sitting time, as is Thursday morning.

As I am sure the honourable senator is aware, it is not unusual for committees that are engrossed in work to go beyond the normally scheduled hours. I feel certain, given the amount of time we have already spent on this particular bill and the narrowness of the issues from the other place, that we can report to this chamber by Thursday.

**Senator Cools:** I have no doubt that the committee will report to this chamber by Thursday. My doubts are not in that direction. My concern, and perhaps I should have raised it earlier —

**Hon. Senators:** Order.

**The Hon. the Speaker:** Senator Cools, I have a number of senators who wish to speak on this point.

**Senator Carstairs:** She has spoken already.

**The Hon. the Speaker:** Are you putting a question, Senator Cools?

**Senator Cools:** Yes, I am putting a question to Senator Furey.

**The Hon. the Speaker:** I will hear the question, and then Senator Furey will answer.

**Senator Cools:** I was wondering if Senator Furey will indicate roughly the number of hours he expects the committee to sit tomorrow and Thursday.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise on a point of order. No senator has a right in debate to question a speaker who has not spoken in debate whether he or she be the chairman or deputy chairman.

**The Hon. the Speaker:** I regarded Senator Furey's comments as an intervention. I will let Senator Furey answer the question by

Senator Cools. I will then see Senator Sibbeston and then Senator Chalifoux.

**Senator Furey:** Honourable senators, as Senator Cools is well aware, we sit at a certain time on Wednesdays. It is not unusual to take extra time when we need it on Wednesdays. We sit at a specific time on Thursdays. Unfortunately, we are restricted on Thursdays as to when we can sit because once the chamber begins to sit, we must end committee meetings.

Senator Cools is well aware of that. How do you get a number of hours out of that? I cannot give that figure to the honourable senator. I do know this, if the matter takes extra time on Wednesday, we will give it extra time.

**Hon. Nick G. Sibbeston:** Honourable senators, I appreciate that the motion is a technical one to refer the issue to committee and have it report in a number of days. I will take this chance to say a few words about the Criminal Code and also the government's response that we have before us.

Criminal law is made to apply equally to everyone in our country, and laws are made usually from a southern and urban setting. I have always found it interesting, coming from a rural area in the North and with my experience dealing with Aboriginal people, how difficult it is to deal with laws that are made in the South. As a lawyer, practising criminal law in particular, I found it really challenging because the consequences for offences in the Criminal Code are usually quite serious.

I have found that, in the North, people frequently commit offences under the influence of alcohol. We try to use the Criminal Code to deal with those situations, when really it is a social situation. People, for the most part, are not criminals. They get intoxicated and do things.

Consequently, the effect of southern laws is that we do have a lot of people in jail, particularly Aboriginal people, who are not really criminals in the same sense as they are in the south. They are people who have social problems. The phenomenon is Aboriginal people moving from the bush to little communities and to larger centres. When people have been living in the bush or out on the tundra up in the Arctic, it is a big life change to go from that way of life to a more organized town life. Various social problems arise. Criminal laws are often used to apply and deal with situations like that, and that has not worked very well.

• (1620)

I see the amendment that has been made here as an attempt to recognize the unique situation of Aboriginal people, particularly when it comes to hunting. I am so disappointed with the minister's reaction to a clause that seems reasonable and clear to me. He disagrees with the amendment "because it is unclear and creates confusion about whether the intent is to create a different test for liability of aboriginal persons..." It is not confusing. It is very clear. The intention is to have a provision in the Criminal Code that applies specifically to Aboriginal people. There is nothing unclear about that. I am disappointed that the minister would say it is unclear and would create confusion.

The other aspect is that he says “there is no clarity as to what ‘traditional practices’ are...” As usual, let the courts decide. The fact that it may not be clear to a minister sitting in the other House does not mean that it could not ultimately be dealt with by the courts in a local situation, and the court could define it. I am disappointed.

I hope that the matter gets dealt with and is sent back to the House of Commons in its present form. I would agree with my colleagues that it is a serious matter. For the very first time, we are trying to do something in the Criminal Code which would apply to a rural setting in our country, which is so different from the south here, and we are stopped and criticized, and said to be confusing, and so forth. I hope we will have sufficient time to deal with this matter and that we will take whatever time is required to deal with it. For that reason, I hope that the Senate will give it sufficient time and good consideration. We are on the right course, and we must stick to our guns.

**Hon. Thelma J. Chalifoux:** Honourable senators, I would like to thank and applaud Senator Watt for bringing this matter forward, because it has created an excellent scenario for debate in this chamber. I told Senator Watt that I voted against his motion because I think it is vitally important that we get it before the Legal and Constitutional Affairs Committee. I have great faith in that committee, knowing the senators who sit on it and the depth of investigation they put into everything they study. We need a really good recommendation from the Legal Committee so that it is a stronger resolution when we refer it back to the other place. That is very important.

I am voting in favour of the motion to have the matter turned over to the Standing Senate Committee on Legal and Constitutional Affairs. I do not think it will take six months, or maybe even six days. As Senator Sibbeston has said, it is very clear. As I said in my remarks the other day, our people who live in the northern parts of the provinces are between 50 and 75 years behind those of us who live in the south. That aspect must be taken into consideration.

I come from those areas where the traditional ways are practised. If the government is not sure what traditional practices are, they can visit those communities. We will show them traditional practices, and how the people live.

It is important that this amendment is put forward again in order to save our people in the North from starving and from having a very desolate way of life, because whether we like it or not, industry is there, but our people are 90 per cent unemployed. The amendment is very important, and I know that a recommendation from our Legal Committee will give it a lot of strength.

**Hon. Tommy Banks:** Honourable senators, I too take great comfort from the fact that the Legal Committee, chaired by Senator Furey, will examine this issue. Part of that comfort comes from the fact that I know the committee has already spent a great deal of time on this question and what the implications are of this bill upon the Aboriginal peoples. They will be looking at how we should respond to the message from the Commons.

I hope that all senators will bear in mind a few things, and Senator Sibbeston has referred to this: The response of the government seems to be saying that the amendment that was put forward would cause confusion because it would suggest that there is a sort of exemption going on there. That is precisely the point. The rhetorical question that I have finally addressed is: Are we saying that Aboriginal peoples, in regard to this question, have rights that the rest of us do not have? The answer is: Yes, they do. I repeat: Yes, they do.

**Senator St. Germain:** Yes, they do.

**Senator Banks:** The explanation that I think I heard the leader give today is that the government believes that the bill, with the amendment they propose, makes sure that no unnecessary pain would be caused to an animal. Let me say that there is unnecessary pain caused by guys who look like me, but that is not the question. That is not what the proposed amendment said. The amendment did not say that they could cause unnecessary pain. The purpose of the amendment was to say that the way in which Aboriginal peoples have been killing animals and fish, and dealing with them since long before any of us got here is all right. That was the point of the amendment. There is nothing the least bit confusing about it. Do they have rights that the rest of us do not have? Yes. There is nothing confusing in the amendment about that. I hope we will all remember this when the report comes back from the committee.

**Hon. George Baker:** Honourable senators, I congratulate senators for their input on this bill. It is remarkable, fellow senators, to see this kind of spirit and this kind of input and this kind of result. I spent 28 and one half years in the other place as an MP, and frankly, honourable senators, although I served as a backbencher, parliamentary secretary and cabinet minister, I did not have the effect that perhaps some of you think I had on changing any legislation at all, even a word.

Honourable senators, I will be brief. We have here one clause of a bill that was of great concern to many organizations in Canada. The Canadian Jewish Congress opposed this bill. Why? Why would the Canadian Jewish Congress come to the Senate with its lawyers — famous lawyers, great lawyers — but also presenting a brief to the Senate jointly with the Islamic community? They were also opposed to the bill, and other organizations opposed the bill.

I do not know, honourable senators, if we have satisfied their concerns in the four amendments that we suggested. One of the amendments we suggested perhaps addresses their concerns partially, and that is colour of right. However, you will notice that the other place has now changed that.

We heard from Clayton Ruby — and most people know of Clayton Ruby — on one side of the question. We heard from another famous lawyer in Canada, just as famous as Clayton Ruby, a chap by the name of Michael Code. Some of you are interested in the *Askov* argument, which is about the courts taking too long, especially in our northern communities, to have cases heard. That was Michael Code's case. He was the lawyer for Mr. Askov.

We took the definition of colour of right from section 429 of the Criminal Code, the actual words, and placed them in the bill.

• (1630)

What did the other place do? They turned around and said that we could not do that. It wanted clause 429(2) with its wording in the bill, and then include the words “to the extent that they are relevant.” In other words, you do not take the defence of colour of right; that is, if somebody honestly believed in a set of facts, which, if true, would provide them with a defence for their actions. However, the other place says the defence under clause 429(2) shall apply “to the extent that they are relevant.”

Honourable senators, we heard from some of the best lawyers in this country who said the reason colour of right should not apply in the case of animals is that animals are not property. When you insert the words, “to the extent that they are relevant” someone could argue it is not relevant because animals are not property. Have we satisfied the demands and the honest concerns of the Canadian Jewish Congress, the Islamic community, and all of the other organizations that appeared with their lawyers? We need to examine that.

The other question concerns Senators Watt, Adams, Sibbeston and several others in this place. That is a serious matter because the Criminal Code will now have a section that deals with the killing of seals. We already have a law on the killing of seals, under the Fisheries Act called the marine mammals regulation. It exempts in certain cases, in certain actions, what are called beneficiaries, in Canada. Beneficiaries are defined as those people under the James Bay Agreement, and the Nunavut agreement, and I forget the precise long wording — Senator Nolin knows it quite well — of those agreements. It says, those are beneficiaries, and, therefore, certain sections of those regulations are exempt beneficiaries. In other words they cannot be charged. Well, if you are a hunter, if you were charged, it would be a summary conviction.

This is a hybrid bill. What is that? You can be charged by indictment. What does that mean? Jail. It means huge fines without any protection. It has been argued that we have prosecutorial discretion. The Nova Scotia Royal Commission on the Donald Marshall affair, which was headed by Justice Hickman, former Chief Justice of the Newfoundland court, spelled it out, as other commissions have done since then, that a line must be drawn between the investigative portion of a case, and the prosecuting portion of the case. In other words, a Crown prosecutor should never get into the area of laying charges, because that is a safeguard in our system in law, according to those Royal Commissions and according to our courts today. Yet Department of Justice officials appeared before our committee saying that there will be safeguards at the prosecutorial stage. When Senator Adams and Senator Watt asked what that meant, the official said it means when you get to court, or after you get there.

Honourable senators, we have to address the problem. There are two ways that somebody can be charged for killing a seal, let us say, under the Fisheries Act or under the Criminal Code. The animal rights groups are concerned about who will lay the charge; that they will swear the information in front of the justice of the

peace under the Criminal Code of Canada, which will have no protection at all called a beneficiary, no protection at all that we presently have under the regulations for marine mammals.

What choice is left to the northern governments? We have the former premier sitting here. What choice do they have? Honourable senators, I suppose they can say, as provincial administrations have done under the Firearms Act, “We will not prosecute.” What does that mean? That means that only those persons under provincial control, handling prosecutions, namely, their own police officers or wildlife officers, can be involved in prosecution, unless they shut down the courtroom, which is owned by the province. Who then is not covered? The RCMP is not covered. Guess where they are? They are up north; they are all in the rural areas. What do we have left? We have the gun control laws that will not be prosecuted by provincial police forces in the cities, but they will be prosecuted in the north where the RCMP is.

What choice do these northern governments have? The police force laying the charges is, of course, under federal jurisdiction. We have a serious problem, and I do not believe that the Department of Justice understands.

Perhaps senators will not get everything that they want under this bill. Certainly, we can try to get the most we can. I can say, after serving 28.5 years in the House of Commons, that I really admire this institution. It is all that I thought it was and even more, because when you put your foot down, something happens.

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

**The Hon. the Speaker:** Do you have a question, Senator Grafstein?

**Senator Grafstein:** Honourable senators, I listened carefully to what Senator Baker said. He touched on, but really did not direct his attention to the constitutional question. He was a member of this committee, as Senator Furey was. Was the issue of the constitutionality of these provisions questioned? What, in fact, was the response from the witnesses about the constitutionality as it applies to restricting minority rights, or interfering with the freedom of worship?

**Senator Baker:** The response given was that everybody will be treated the same, regardless of where they live, regardless of what animal they are hunting, or killing, or harming, and that the government will not accept any exceptions. They also said, at the beginning, that no changes would be accepted to the bill. That has changed a bit. Perhaps we can go that extra step and prove to them that these changes that the Senate has asked for are completely legitimate, are not frivolous or an invention of somebody's mind, but are in response to the representations brought before the Senate committee.

**Hon. Marcel Prud'homme:** Honourable senators, I wish that I was 10 years younger and had the kind of energy that I had in the other chamber, in order to give you my view, clearly, on what this country is all about. Senator Baker is healthier. He put it very clearly to me. It is not a question of not having faith in Senator Furey, who I know is an excellent chair, and his members; it is a

question of knowing what the Senate is all about. I could name prominent senators who go around the world. I see Senator Fraser, who is on the international executive of the IPU, which is a great honour, where she replaced former Senator Finestone, who is still an activist. I will mention Senator Nolin who is involved with NATO and Senator Rompkey and Senator Hervieux-Payette as well.

• (1640)

There are so many senators who go around the world. They praise Canada. Everybody says: What a beautiful country; is there a more diverse country than Canada? How do you come to respect people as diverse as the people from the North to the people of the South?

I sat with Senator Baker in the other chamber. It was always a delight listening to him, as honourable senators can imagine, not because he is a good speaker but because he always went directly to the point. This is a diverse country. I have seen members from the northern part of our country crushed by the system. I do not have to name them. They did not fit. They spoke a language that is the majority language here, English. They did not even speak French, but that is okay. They were my First Nations, but they did not fit. They were crushed by the system. They felt that they were not understood. The more they explained, the less they were understood. Senator Baker could put names to what I am saying in regard to some of our colleagues in the other chamber.

I will even point a finger here. I see Senator Adams. Senator Adams is not a master of the English language, but he feels so strongly about matters that he listens with great care to people who express views that he would like to express as clearly because English is not his first language. Honourable senators must understand that. I am not talking now about French-English; I am talking about the First Nations.

It is especially our new colleagues to whom I wish to speak and explain what the Senate is all about. One may read on the walls of the office of the Speaker that order excludes haste and precipitation. We must not be afraid once in awhile, when we feel strongly or when we see that some of our colleagues feel strongly on an issue, to say, "Too bad, so sad, return it to the chamber of the House of Commons."

I feel that I am a new senator talking to new senators. We will have to take our distance from what we think is party discipline. I am for discipline. When I could not cope, you know what I did? I sat alone in this corner. The number of independent senators is now getting larger. However, for 50 years I was a member of the Liberal Party. I could not fit in with the discipline, so I removed myself from that.

Here in the Senate, we should take the time necessary. I have confidence that Senator Furey's Legal Committee and the members of that committee will study this matter attentively, even though it will be for a short time. I would not be surprised if they come back with a report saying: "We have studied what was sent back to us, that which was rejected by the House of Commons, and we stand with what we decided."

Honourable senators, we conducted an extensive study of the bill and made amendments. We sent them to the House of Commons, which accepted some of them. The House sent a message back to us saying that they did not agree with some of the amendments. Now the leader of the Senate has moved that the question be sent to the committee, which will look into it. I have faith in the committee members.

Honourable senators, prepare yourselves. Read about the issue. Ask your colleagues who feel strongly about it. Privately, they will tell you things that they may not say standing in this chamber. I believe that the Senate is at its best in these kinds of debates, where one may see what Canada, in its diversity, is all about. We have passed laws that have affected the North without even having set foot in the North. We do not even know where it is. We have not seen these people.

I see Senator Merchant. I regret to say that the situation for First Nations in Saskatchewan is horrible. I was there. I went to speak in Western Canada over 300 times. I went to Thompson, Manitoba. I saw the situation there. When I was in Winnipeg, I walked the streets from my hotel to a radio station. People told me, "Don't you dare walk there." It is the main street, the longest street. I said why? They said it is dangerous. I regret to say that. It is the truth. That is where Senator Carstairs invited me for lunch. All the time I was saying that she should come to the Senate" she had already been called by the Prime Minister. The night when I arrived in Ottawa she was in the Senate, so I was very happy.

Honourable senators, we should have sensitivity and patience. We are coming to the end of a session where it is starting to look like the National Assembly in Quebec. There, legislators will be bulldozed next week with a series of bills that members have not even read. Senator Baker and I saw that in the House of Commons. Senator Stollery and I saw that in the House of Commons. Senator Smith, Senator Hervieux-Payette, Senator De Bané, Senator Robichaud, Senator Joyal, Senator Maheu, Senator Pépin, Senator Corbin and Senator Roche have all sat in the House of Commons. We know what happened there all the time with these complicated bills. We just waited. We went to out our seats. I regret to say this publicly, but we would ask what the vote was on and would be told such and such. We would ask, "Where is the whip?" That was the end of the discussion.

I know that no honourable senator wants to sit in the kind of a Senate where it is an exact replica of the House of Commons. If it is to be an exact replica of what the House of Commons is all about, I do not see why we should have a Senate. The Senate is here to do exactly what took place today.

I hope that Senators Nolin and Beaudoin, members of the Legal Committee under the able chairmanship of Senator Furey, will study these amendments, as short as the study may be. I hope that they will not feel — and I know them to be strong people — as if they are under a guillotine. I hope they will not come back and say, "We will bow to the House of Commons," if they feel that what the House of Commons is asking us to do is the wrong thing to do.

**Senator Watt:** Will the honourable senator accept a question?

**Senator Prud'homme:** Of course.

**Senator Watt:** I know that the honourable senator has travelled around the North when he was a member of the House of Commons. He has also visited the reserves. I am not saying that he has seen everything he needs to see; it is pretty hard to see everything in one day or even two days. However, knowing the life of the people in the North, we are very much into hunting and fishing activities on a daily basis. That is our livelihood. We do not have anything else. We do not have any alternatives in terms of bringing the bread and butter to our families' tables. That is exactly what I believe is at stake, not immediately, but down the road, depending on how this legislation will be implemented.

I also know that Newfoundland is probably one of the closest provinces to the Aboriginal people in terms of livelihood. They fish; they hunt; that is their livelihood. That is the only way to bring bread and butter to their families. Hopefully, Aboriginal people understand that.

• (1650)

As a former member of the House of Commons, the honourable senator has seen various pieces of legislation go through that place that have impacted Aboriginal people, but not in the way that this bill would. Does he think that governments should ignore the impact of legislation on the lives of people? Does he think the government has the right to legislate to the detriment of the ability of Aboriginal people to feed their families? Does he think the government has the right to force such legislation on people who have a right to life under the Constitution the same as everyone else?

**Senator Prud'homme:** There are many bills on the Order Paper. I hope that Senator Robichaud will not call them all because I have to keep some stamina for a major event at 6:30 tonight, which cannot be missed, involving 10 senators.

I will illustrate my answer with an example. I have followed the debate on gun control. However, I do not want to debate that subject. I have listened to people from the North try to convince people from Toronto and Montreal of the consequences of storing your gun separate from your bullets. When you have to face one of the unbelievably beautiful animals in the North, you must defend yourself quickly or be eaten alive. They tried to explain gently and simply, as Senator Adams would. However, no one understood, and they would not accept the explanation.

That is not my kind of Canada. It is not the kind of Canada we talk about to the rest of the world. Tomorrow, I will read to you a poem entitled *O Canada* on the occasion of the departure of the ambassador from Morocco. That poem will make you understand what the rest of the world sees in this country of ours that we do not see ourselves. Sometimes, foreigners better understand what Canada is all about, and sometimes, foreigners better understand how the Senate can extend protection to the people of Canada.

Senator Watt most likely knew how I would answer his question before he asked it. There is, as always, a lack of sensitivity.

I did not raise a question of privilege on a matter that arose last week in the Banking Committee. In that committee, we are studying an immense bill. We were presented with the final report of the committee for discussion, a huge document, in English only. I thank the Liberal senator who said that was unacceptable, whereupon the matter was adjourned until Thursday. It was not done in bad faith; it was done through a lack of sensitivity and understanding.

I have endless examples like that from the other chamber. I am happy to be here and I hope that such things as happened so often in the other chamber will not happen here.

#### POINT OF ORDER

**Hon. John Lynch-Staunton (Leader of the Opposition):** We have two motions before us. If we are to send this message to committee, it should not be burdened by the first motion, which, as Senator Cools has pointed out, commits us to concur in the amendment. As Senator Chalifoux has pointed out, we are looking for a recommendation from the committee. Therefore, we should not burden the committee with a decision that I do not think any of us want to take.

Therefore, I would urge the mover of this motion, or the Deputy Leader of the Government in her place, to withdraw the first motion of concurrence and let the message go to committee, with instructions only to report by whatever date we have agreed to.

**The Hon. the Speaker:** The motion before us is to refer the question, which has not been dealt with by the Senate, to committee.

**Hon. Pierre Claude Nolin:** No, it is to refer the message.

**The Hon. the Speaker:** The question envisages what was in the message.

**Senator Nolin:** That is exactly the question I asked the Leader of the Government. Her motion was to refer the message to the committee and to instruct the committee to report by Thursday afternoon.

**Senator Lynch-Staunton:** That is her second motion. When she opened her remarks on the message, she asked that the Senate concur in the amendment, and I do not think that that motion should accompany the message to the committee.

**Hon. Anne C. Cools:** I previously raised this point. Currently, the two motions are wedded, so you can say that the second motion is at least guided by the first. Since the first motion is not that pertinent at this moment, because I gather the decision to "recommit" the bill was taken after the first one, perhaps the wisest thing for the time being would be to let the second motion proceed on its own. Perhaps Senator Carstairs could simply withdraw the first motion for a day or two.

**The Hon. the Speaker:** I think I can resolve this, honourable senators. My understanding of the proceeding before us is that we received a message from the House of Commons, which was distributed. It was moved that we would return to it the following day, which we did, the “following day” being today.

Senator Carstairs moved a motion, which is currently being redistributed, that the Senate concur in the amendment made by the House of Commons to its amendment numbered 4 to Bill C-10B, et cetera. In the course of speaking to this point, she decided that it was wise to refer her motion to accept the message to a committee, and she so moved.

Therefore, I do not believe we have a problem of having two motions before us. We have only one motion, that being to move the question — and the only thing that can be referred to by the words “the question” is Senator Carstairs’ motion to accept the recommendation in the message — and that is what the motion seeks to refer to committee.

**Hon. Gérard-A. Beaudoin:** Senator Nolin and I clearly said that the question now before the Senate be referred to the Senate committee, which is what I now see before us. I asked whether it was the whole question, and the Leader of the Government in the Senate replied “yes.” In my opinion, the whole question that we have discussed today is sent back to the Standing Senate Committee on Legal and Constitutional Affairs. This does not mean that we agree with the first or the last part of the question. The whole question is referred to the Standing Senate Committee on Legal and Constitutional Affairs. In my opinion, everything is before the committee if we say “yes.”

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, I was just sending a message to the Leader of the Government for clarification with respect to the answer to the Honourable Senator Nolin’s questions, that is, what, exactly, the committee should be considering. I believe we have two interpretations from the Honourable Senator Beaudoin. The Honourable Senator Nolin believes that we should not have to deal with the first motion but with the second.

• (1700)

Does Senator Beaudoin see it the same way?

**Senator Beaudoin:** I am relying on a legal text. It is before the Senate.

[English]

That the question now before the Senate be referred.

**The Hon. the Speaker:** This is a point of order. I will go through my list, listen to all senators and rule. I do not want debate back and forth because that will take us a long time and it is not in accordance with our rules. I will hear from Senator Nolin.

[Translation]

**Senator Nolin:** The question before us is quite simple. Senator Carstairs has moved a motion and has spoken on this motion. At the end of her speech, she added a second motion about referring the question to committee. The word “question” is not used correctly in it.

The proper wording would be to refer the message that was sent to us by the House of Commons to the Committee on Legal and Constitutional Affairs for consideration. I asked Senator Carstairs to confirm whether her main proposal was the second motion and she said yes.

I will read from the text before me:

With leave of the Senate and notwithstanding rule 58(1) (f), I move:

That the question now before the Senate be referred to the Standing Senate Committee on Legal and Constitutional Affairs...

It is the word “question” that gives me a problem. In fact, it is the message received from the House of Commons that is being referred to committee. It is Senator Carstairs’ motion and not something else. It is certainly not a message coloured by the first motion she moved, because she would not have replied to me as she did.

It is very clear and it is as Senator Robichaud understands it. The text before us is not an exact reflection of the motion as it was given orally by Senator Carstairs. This motion should be redrafted.

[English]

**Senator Cools:** Honourable senators, I tend to think that there has arisen a considerable amount of confusion. This is why I always ask for copies of these motions, so that we can have before us precisely what it is we are being asked to consider.

I think Senator Nolin is correct. The issue before us as listed on the Orders of the Day is consideration of the message from the House of Commons concerning Bill C-10B, to amend the Criminal Code (cruelty to animals). When we began, I said that we should begin consideration before we leapt to a conclusion. Senator Carstairs’ first motion, about concurring with the House of Commons and not the Senate, is a conclusion that she is asking the Senate to reach, hopefully as a concluding part of considering the message. During her speech, under the consideration of the message and on her first motion, she asked for leave and said:

With leave of the Senate and notwithstanding rule 58(1) (f), I move:

That the question now before the Senate be referred to the Standing Senate Committee on Legal and Constitutional Affairs; and

That the committee report no later than Thursday, June 12, 2003.

There is definitely confusion, if not in Senator Carstairs' mind at least now in everyone else's mind, and there is a need for clarification. When I first raised the issue, I understood from the responses that there were two separate motions and that the first one was not influencing the second one. Now, reading as it does based on what the Speaker has just said, it looks as if the message and Senator Carstairs' first motion and second motion are all being referred to the committee.

It was my understanding from the latter part of the debate, which was a different understanding from the initial part of the debate, that what is being referred to the committee is the message. I raised the question very early on as to how we can refer a message to the committee for study of the message when the first part of the motion is telling the committee the conclusion it should reach.

The real nub of the matter is the meaning in Senator Carstairs' second motion, the one for which she requested leave of the Senate, notwithstanding rule 58(1)(f). Is the question now before the Senate her first motion, or is the question the consideration of the message? There must be some clarification because it is confusing.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I hope that I understand because I have been en route from other places.

In order to send anything to the committee, there had to be a motion. The motion that I moved was that we not insist on our amendments. I then asked for that motion to be referred to committee.

Obviously, in committee, the decision will have to be made as to whether we agree with my motion, disagree, half agree or half disagree. However, there is no attempt in my motion to limit the discussions on the message of the House of Commons that take place in that committee.

However, in order to get the message to the committee, I had to move a motion. The motion says that we not insist on our amendments. That motion will go to committee; the committee decides whether that is what it will report back or whether it will report something else back.

**Senator Prud'homme:** A point of order.

**The Hon. the Speaker:** There are a lot of senators rising, and it is getting late, honourable senators. The last senator I will hear from is Senator Lynch-Staunton.

**Senator Lynch-Staunton:** I would like to see this message go to the Standing Senate Committee on Legal and Constitutional Affairs for report no later than Thursday, June 12, unburdened by any conclusion that the first motion has in it.

The first motion says that we concur in the amendment. If we vote the two motions and send the message with those two motions, the Standing Senate Committee on Legal and Constitutional Affairs will be faced with a conclusion of the Senate as a whole. It will be like an instruction to the committee.

Whether that is our feeling or not, if we want a recommendation unburdened by a conclusion, implied or direct, then I would suggest strongly to the Leader of the Government to withdraw her first motion, which does not stop her from moving the second one — again if need be — because it simply says that the question be sent to the committee. You do not need the first motion for the second one to be effective.

**Senator Nolin:** That was the answer to my question.

**The Hon. the Speaker:** As a question has been put to the Leader of the Government in the Senate, I will hear her if she wants to be heard. Otherwise, I will rule.

**Senator Carstairs:** In terms of Senator Lynch-Staunton's comment, there has to be a message.

**Senator Lynch-Staunton:** There is one.

**Senator Carstairs:** A motion has been put forward, but we are not voting on the first motion.

**Senator Lynch-Staunton:** Yes, we are. It is before us.

**Senator Carstairs:** No. I moved a motion. We are now referring that motion to the committee. We are not voting on the motion; we are voting on the referral to the committee.

**Senator Lynch-Staunton:** No, we are not. We have to vote on two motions.

**Senator Carstairs:** I moved a motion on the floor, and then I moved the motion to a committee. We are, in fact, voting on whether to refer the motion to the committee.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Refer what to committee? Your first motion?

**Senator Carstairs:** Yes, the motion has been referred, but the vote is not —

• (1710)

**Senator Kinsella:** We want the message referred.

**Senator Carstairs:** Honourable senators —

**The Hon. the Speaker:** Honourable senators, I have enough material to make a ruling, but I require about 10 minutes to prepare it. I would ask that the Speaker *pro tempore* take the Chair.

Point of order, Senator Prud'homme?

**Senator Prud'homme:** Honourable Senator Carstairs, could we not ask —

**The Hon. the Speaker:** We are debating the same issues that I have already heard. Do you have a new point of order, Senator Cools?

**Senator Cools:** Yes. Honourable senators, I was trying to say that two different motions were raised —

**The Hon. the Speaker:** Honourable senators, that pertains to the same point of order. The procedures of the house are such that we bring an end to these matters and I will make the decision when I have heard enough. I have heard all that I need for me to make a ruling, and I would like 10 minutes to write it. I would ask that the Speaker *pro tempore* take the Chair.

[Translation]

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted to suspend the sitting of the Senate for 10 minutes in the absence of the Speaker?

**Hon. Senators:** Agreed.

**The Hon. the Speaker *pro tempore*:** The bells will ring at 5:25 p.m.

The sitting of the Senate was suspended.

• (1720)

[English]

The sitting of the Senate was resumed.

#### SPEAKER'S RULING

**The Hon. the Speaker:** Honourable senators, I have had an opportunity to consider the point of order that was raised by Senator Lynch-Staunton and commented on by a number of senators, and I thank all senators for their interventions.

I will start by quoting from our rule 62(1) which states:

Except as provided elsewhere in these rules, the following motions are debatable:

(i) for the reference of a question other than a bill to a standing or special committee;

As I have perhaps commented already, but will repeat, we have before us under our proceedings, Government Business, Bills, No. 1: "Consideration of the Message from the House of Commons concerning Bill C-10B, to amend the Criminal Code (cruelty to animals)," to which Senator Carstairs spoke. At the beginning of her comments, she moved a motion that has been distributed to honourable senators, in effect asking the Senate to concur in the amendments set out in the message from the other place.

• (1730)

In the course of her comments, without having brought this matter to a vote, she made a second motion which is the subject matter of the point of order. Relevant to that is rule 62(1)(i), which I read, to the effect that a question before the Senate can be referred to a committee and is debatable.

The issue raised by Senator Lynch-Staunton was that the matter could not be dealt with, as I understood it, until the first question had been resolved. In the course of comments there was concern expressed about the way in which the first motion was proposed from the government side to the effect that the message be concurred in.

The issue is this: Is there anything not in order with the motion proposed by Senator Carstairs, with leave, that the question first proposed, which I believe includes all matters referred to in the motion she made first, be referred to the Standing Senate Committee on Legal and Constitutional Affairs?

I have discussed this matter and looked at the precedents and rules, and I can find no impediment, no problem with the Senate voting on the motion currently before the Senate. I so rule.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Which one? There were two motions.

**Some Hon. Senators:** Question!

**The Hon. the Speaker:** I am now at the point of the question. I do not want to repeat my ruling because I will make things more confused than they need to be. I have ruled that the question before us is in order, and there is only one question before us — not two. That is, to refer the question to committee, which is the identification of the motion that was put by Senator Carstairs in starting the debate. Are we ready for the question?

**Some Hon. Senators:** Question!

**The Hon. the Speaker:** It was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud, with leave of the Senate and notwithstanding rule 58(1)(f), that the question now before the Senate be referred to the Senate Committee on Legal and Constitutional Affairs, and that the committee report no later than Thursday, June 12, 2003.

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

**Some Hon. Senators:** Agreed.

**An Hon. Senator:** On division.

Motion agreed to, on division.

**Senator Lynch-Staunton:** What happened to Senator Carstairs's first motion?

**The Hon. the Speaker:** The first motion has now been referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**Senator Lynch-Staunton:** Could I ask why we were not allowed to vote on that first motion?

[English]

**The Hon. the Speaker:** We could have voted, but it was not moved.

[Translation]

## ENERGY, ENVIRONMENT AND NATURAL RESOURCES

### COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move that the Standing Senate Committee on Energy, the Environment and Natural Resources have power to sit while the Senate is sitting today, and that rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

[English]

**Senator Prud'homme:** Senator Robichaud, do you remember what happened in the past? Do you have other requests of people sitting? No.

Motion agreed to.

## PUBLIC SERVICE MODERNIZATION BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

**The Hon. the Speaker:** Honourable senators, I am not sure of the disposition of the resumption of the debate on Bill C-25. Do any honourable senators wish to speak?

[Translation]

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, Item No. 2, second reading of Bill C-25, is government business. Only the Leader of the Government or the Deputy Leader may decide to stand this order. I am not prepared to stand this order at this time. An adjournment motion is required to stand this bill until the next sitting of the Senate.

On motion of Senator Ringuette, debate adjourned.

## NATIONAL ANTHEM ACT

### BILL TO AMEND—SECOND READING— DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Banks, for the second reading of Bill S-3, to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Cools*).

**Hon. Vivienne Poy:** Honourable senators, I would ask Senator Cools when she intends to speak to this matter.

**Hon. Anne C. Cools:** Very shortly.

**Some Hon. Senators:** Question!

**The Hon. the Speaker:** There is no unanimous consent for the matter to stand, Senator Cools. Do you wish to speak now?

**Senator Cools:** I was under the impression that senators have had a very lengthy and exhaustive debate and that senators are trying to get out of here. That was my understanding. I may be wrong.

**Hon. Fernand Robichaud (Deputy Leader of the Government):** There is no such understanding, Your Honour.

**The Hon. the Speaker:** The Deputy Leader of the Government indicated that there was no such understanding. I have no unanimous consent to stand the matter, so I must put it to the chamber: Are we ready for the question, or does an honourable senator wish to speak to the matter?

**Senator Cools:** I have indicated that I wish to speak, and I am existing within the rules. It seems to me that if any senator wants to alter the rules, they must stand and give an indication as to why the rules should be strayed from. If we look at the number of the debate, I am perfectly in order.

There are other senators who wish to speak to this matter. Senator Sparrow indicated to me that he wishes to speak; Senator Adams indicated to me that he wishes to speak. As far as I am concerned, it is quite in order to stand the matter at this time.

I was under the impression that I have spoken enough. I have spoken three or four times today, and I thought I could give my voice and everyone a rest for today. Tomorrow is a different day.

**The Hon. the Speaker:** Do you wish to put your question again, senator?

**Senator Poy:** Yes, I would. It had been —

**Senator Cools:** It is not debatable.

**The Hon. the Speaker:** It is not, if there is a motion to adjourn. Are you making a motion to adjourn, Senator Cools?

**Senator Cools:** I did not think it was necessary. I will make a motion to adjourn. However, it is my understanding that all that was needed here was to stand the order. However, if Your Honour wants a motion to adjourn, I will make such a motion.

**The Hon. the Speaker:** In order for the order to stand, unanimous consent is required. I do not have that consent. However, the honourable senator is entitled to move the adjournment of the debate. Do you wish to do so?

**Senator Cools:** You could say that, but there is nothing to adjourn because there has been no speech. The matter has not been spoken to. "Stand" is usually the expression that is used. Further, neither unanimity nor consent is required to stand an order. Stand is just the word to overcome that. A different action would have to be taken, particularly with respect to a motion.

• (1740)

**The Hon. the Speaker:** Honourable senators, this is a matter that, from time to time, has concerned me. I have a reference for honourable senators, which I believe to be the correct version of our rules and procedures with respect to these matters. I refer to a ruling that I believe to be in effect. The ruling dates to July 10, 1973, by the then-Speaker Muriel McQueen Fergusson and can be found at page 838 of the Senate Hansard for that time. I quote the then-Speaker, in part, on this particular issue:

Honourable senators, I should like to say that I have given considerable time and study to this point of order raised by Senator Flynn. I would refer honourable senators to a ruling made by the then Speaker, the Honourable Senator King, on April 11, 1946, which is reported at page 135 of the *Debates of Senate* of that year. The order was for the resumption of the debate on the motion for the second reading of a bill. The senator who had adjourned the debate said "Stand" when the order was called. One senator expressed his opposition to the adjournment, and the Speaker ruled follows:

Honourable members, the order in question is: "Resuming the adjourned debate on the motion for the second reading of Bill G, an Act to amend the Dairy Industry Act." It will be recalled that yesterday the honourable leader to my left (Hon. Mr. Haig) adjourned the debate. Today he has asked that the order stand. That is tantamount to a motion for the further adjournment of the debate. The matter is now in the hands of the house.

Following that, His Honour, the Speaker called the Contents and Non-Contents, and the vote was taken.

Honourable senators, I fully concur in that decision, and I would be ready to follow that practice and precedent should I be called to make a ruling in similar circumstances.

I find myself in the same position as the then-Speaker Muriel McQueen Fergusson in that if there is not unanimous consent for the matter to stand, it is tantamount to a motion to adjourn. I would think the way to handle that is through a formal motion to adjourn, and then the Senate will dispose of it as it wishes.

Do you wish to move the adjournment, Senator Cools?

**Senator Cools:** I move the adjournment of the debate.

**Senator Prud'homme:** Oh, come on.

**The Hon. the Speaker:** It is moved by the Honourable Senator Cools, seconded by the Honourable Senator Prud'homme, that further debate be adjourned to the next sitting of the Senate.

**Senator Prud'homme:** Why me?

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

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Those in favour of the motion to adjourn the debate will please say "yea."

**Some Hon. Senators:** Yea.

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

**Some Hon. Senators:** Nay.

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

**Senator Cools:** Honourable senators, I will speak. I must apologize for burdening senators to hear me yet again today.

Honourable senators, I would like to begin by expressing what I would consider to be strong opposition to this bill. Essentially, national anthems are solemn hymns of patriotism that are adopted after years of usage and are supposed to rest unchanged because they have become such a part of the national fabric of our lives.

Senator Poy says that she wishes to change the anthem because the words "in all thy sons command" are somehow or the other oppressive to women or exclusive of women. I do not believe that the national anthem, *O Canada!*, is in any way oppressive or hurtful of women, nor do I think it offends any nationality or any group or any ethnic set of people. I have said before that there are many people in the country who could take exception and say it is not their native land.

Looking at Senator Poy's speech of February 21, 2002, she tells us that she is asking for a little change because in actual fact it is nothing at all. She says these are the original lyrics. I will read exactly from Senator Poy's words. She says, at page 2286 of our Debates:

I agree that the 1908 version of *O Canada!* should never have been changed. According to the original text, which was first brought to my attention by Nancy MacLeod of Toronto, the lyrics of the 1908 version read as follows:

O Canada!  
Our home, our native land  
True patriot love thou dost in us command.

A few lines later, Senator Poy continues:

As you can see, if we return to the original lyrics of *O Canada!*, our tradition as Canadians, even in 1908, was one of inclusiveness. Ironically, the original version of 1908 was a better reflection of our times than the anthem we sing today.

Honourable senators, I have made it my business to look into this whole question of the original words of 1908, and I do not think we have to repeat the history of Judge Weir's words and his marrying them with Calixa Lavallée's music. I was in touch with the grandson of the Honourable R. Stanley Weir, whose name is Stephen William Weir Simpson. He wrote to me February 27, 2002, saying the following:

Dear Senator Cools:

I'm delighted you're on board opposing the proposed move to alter the words to *O Canada*; in the family's estimation, Parliament has done enough damage already. I attach a copy of Judge Weir's original 1908 version in his own hand. Also, I append his revision of the lyrics in 1921, introduced, I believe in an address to the Canadian Clubs, which we have always sung, certainly in Quebec, and I believe most of Eastern Canada.

Honourable senators, this is different from what we have been hearing, and obviously one or the other is mistaken, maybe both, or maybe both are correct. The copy that Mr. Stephen William Weir Simpson sent me, which he says is a copy of Judge Weir's original 1908 version in his own hand, says the following words.

O Canada!  
Our home and native land  
True patriot love in all thy sons command —

— and it carries on.

• (1750)

Obviously, this is a matter that could be clarified. Some would say it is a very small matter and some would say it is a larger matter. I am hoping that in her speech to close second reading debate perhaps Senator Poy can clarify the origin of those words, since they are the words that are in dispute. If Senator Poy's argument is buttressed by her assertion that those words were his words originally, then I think we should have some clarification because Mr. Stephen William Weir Simpson says something different.

I should like to read another statement from Mr. Stephen William Weir Simpson. This is from a speech that he made at Weir Memorial Park on May 24, 1999. He spoke about his grandfather, Judge R. Stanley Weir, and the loss of his grandfather's two sons, one in World War I and one in World War II. He said the following:

It was only during the blood bath of WW1 that a sense of unity and Canadian nationhood was brutally driven home. For as the Canadian Corps dug in upon Flanders Fields, the song beyond all others that gave meaning to their identity as Canadians was the song with the underlying refrain: "O Canada, we stand on guard for thee." The song thus became endeared to thousands to whom it was formerly but one of many; it received indeed a solemn consecration during those four unspeakable years which could not but make it secure in the affections of all Canadians. From this point on, "O Canada" had earned its place as the only truly national song.

Honourable senators, I just wanted to put that on the record. It is very beautiful and touching, and it is of interest.

In closing, honourable senators, I should like to say that we hear much about radical feminism, and we hear much about the rights of women, and about exclusion and inclusion. I should like to say that we sometimes forget that the majority of men, the patriarchal society, are quite ordinary lads. The majority of them are quite loveable.

One of the reasons that I have problems with radical feminism is its elitist basis, because it forgets that most men are labourers, loggers, miners, welders, truckers, plumbers and fishermen; very few are senators, lawyers or doctors.

Honourable senators, 700 to 1,000 of these men are killed every year in industrial accidents. We had a beautiful moment in this chamber some years ago when Senator MacEachen rose and spoke of growing up on Cape Breton Island, where his father was a miner who went down into the coal mines for, I believe it, was 46 years. I would like to invite honourable senators to consider the possibility that men and women are equally capable of doing good, and equally capable of doing bad, and that, at the time when that particular piece of music was written, the term "in all thy sons command" included everyone. It was meant to apply to all the people of Canada, all the people in all their faces and all their compositions.

Having said that, honourable senators, in a previous speech I had spoken more about the so-called Persons Case of many years ago, and Lord Sankey's remarks. I will leave that for another day because I have been on my feet often today, and I am growing tired.

Honourable senators, I oppose Senator Poy's initiative because it is divisive and, most of all, it is not helpful to national unity, nor is it necessary. For one who is perhaps a little sentimental, conservative or patriotic, I should like to say that Canada is what Canada is.

The interesting thing about Canada is that it began its existence partly as conquered territory and partly as settled territory. A major part of the conquest and the settling of the law — and I can see Senator Nolin looking at me because he knows a significant amount about this subject — was the coming to terms with allegiance, as they used to say, to the British Crown.

Perhaps I am sentimental, but I can tell you, having visited many of the battlefields and the grave sites of Belgium and Europe where so many young men — boys, really — perished, I would like to appeal to senators out of sentiment, if nothing other, to at least maintain a piece of music that connects those boys to us. It is important, I believe, to maintain symbols and anthems, because that is what an anthem is: It connects us to history.

I believe in John McCrae's famous poem, *In Flanders Fields*, he has a beautiful passage about carrying or handing on the torch. I encourage honourable senators to believe that Canadian history is worth preserving. Where there are some warts, they are still part of our history. We come with our history. I say "ours" because I feel very committed to this country; so committed that when I came here as a young immigrant, in 1957, I sincerely believed that I was not changing countries; I believed I was moving from one part of the British Empire to another.

I have tried to inquire as to how often the American national anthem has been changed. I believe the American national anthem was only adopted around 1931. I have not been able to find any instances of where that anthem has been changed.

I would submit to honourable senators that once a piece of music is adopted as a national anthem, it then leaves the possession of the formal adopting process as having left this Parliament, in 1968, as Senator Prud'homme knows, and then it becomes the true property of all Canadians. It is not ours to repossess occasionally, to put our occasional stamp or our occasional opinion on it. A thousand bills could grow up in this chamber to change the national anthem according to anything that anybody else wants.

As a woman who feels strongly about the independence of women; who not only feels strongly, but who tries to live it, I should like to say, honourable senators, that this piece of music, these words, these lyrics embody men fighting for their families. If we know anything about men, it is that everything they ever have they give to their wives and to their children. If anybody knows anything about men dying in conflict, they will learn — and I see that Senator Forrestall is watching — that many of those men died on those battlefields holding on to pocket-sized photographs of their wives and their children, their loved ones.

Honourable senators, I move the adjournment of the debate in the name of Senator Sparrow.

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

**Some Hon. Senators:** Yes.

[ Senator Cools ]

**Some Hon. Senators:** No.

**The Hon. the Speaker:** All those in favour of the motion to adjourn, please say "yea."

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** All those opposed to the motion, please say "nay."

**Some Hon. Senators:** Nay.

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

**Senator Cools:** The yeas have it.

**The Hon. the Speaker:** It is for me to call. I believe the "nays" have it. The motion is lost.

Do you wish to speak, Senator Poy? If Senator Poy speaks, her speech will have the effect of closing the debate on this matter.

**Hon. Marcel Prud'homme:** I do not wish to speak. I am duty bound as a gentleman, having given my word to Senator Adams a long time ago. He said, "After Senator Cools speaks, if I am not there to adjourn the debate under my name, please do that for me." That was Senator Adams. I am a gentleman to him. I report to the Senate that he asked me to do that favour. Senator Cools has spoken; she cannot speak further.

Senator Poy, the senior member of the Senate, Senator Sparrow, has expressed his desire to speak to this debate. After Senator Sparrow, Senator Adams has expressed a desire to speak.

I am in the hands of the Senate.

**The Hon. the Speaker:** I advise honourable senators that we have just defeated in the chamber a motion to adjourn. For another motion to adjourn to be put, there must be an intervening event. Were you speaking, Senator Prud'homme?

**Senator Prud'homme:** Yes.

**The Hon. the Speaker:** Then that is your speech on the subject.

Honourable senators, it being six o'clock, I must now leave the Chair. We will have to deal with this matter later in the evening.

The sitting of the Senate was suspended until 8 p.m.

• (2000)

[Translation]

The sitting of the Senate was resumed at 8 p.m.

## FISHERIES AND OCEANS

COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Fernand Robichaud (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move that the Standing Senate Committee on Fisheries and Oceans have power to sit while the Senate is sitting today, and that rule 95(4) be suspended in relation thereto.

[English]

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

Motion agreed to.

## NATIONAL ANTHEM ACT

## BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Banks, for the second reading of Bill S-3, to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Cools*).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I believe the stage we are at in dealing with this order is that there was a motion by Senator Prud'homme, for Senator Adams, that the matter be adjourned in the name of Senator Adams. Therefore, we have before us the question on that motion to adjourn.

**The Hon. the Speaker:** The motion to adjourn is not a debatable motion.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will all those in favour of the motion to adjourn please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will all those opposed to the motion to adjourn please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it. The motion is defeated.

We will resume debate on Bill S-3.

Is the house ready for the question?

**Hon. Senators:** Question!

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

**Some Hon. Senators:** Agreed.

**Senator Forrestall:** On division.

Motion agreed to and bill read second time, on division.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Poy, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

## THE SENATE

WORLD HEALTH ORGANIZATION—  
MOTION REQUESTING GOVERNMENT SUPPORT  
FOR TAIWAN'S REQUEST FOR OBSERVER STATUS—  
ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Di Nino, seconded by the Honourable Senator Atkins:

That the Senate call on the Government of Canada to support the request of the Government of Taiwan to obtain observer status at the World Health Organization (WHO).—(*Honourable Senator Prud'homme, P.C.*).

**Hon. Yves Morin:** Honourable senators, this is an issue similar to one we encountered earlier today. It is an important issue that should be solved quickly. At the last sitting of the Senate, Senator Prud'homme took the adjournment in his name, saying that on Monday evening he would be back here with a statement. He wondered whether cabinet members in the other place had voted for or against this motion.

I saw him after that and said that there is no point in delaying this motion further because there is a SARS epidemic in Taiwan and, because the World Health Organization is not in that country, the reporting of cases is not done in an adequate fashion. This affects the people in Taiwan of course, but it also affects Canadians because people do travel from there to here.

• (2010)

I would like this matter to follow the same procedure as Senator Kinsella followed and bring this matter to a head, if possible.

**Hon. Sharon Carstairs (Leader of the Government):** Honourable senators, I do not wish to speak to the matter, other than to say that I did speak with Senator Prud'homme today. It was his intention to speak to this item today. He did consult with a number of people. He is not feeling particularly well, and I think that is the reason he is not here now.

I would hope that we would afford him the opportunity to speak tomorrow, if we get to this item, which hopefully we will. I would be reluctant that he not be given the opportunity to speak on this matter. I would like to adjourn debate in the name of Senator Prud'homme.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable Senators, I wish to concur with the Leader of the Government in the Senate and everything she has just said.

**Hon. Joseph A. Day:** Honourable senators, I understand as well that Senator Prud'homme did intend to speak today. He did indicate last week when he took the adjournment that if he did not speak on Monday, we should proceed with the vote. Therefore, I am hopeful that we will have the opportunity to

deal with this motion tomorrow. It is a matter of some concern. Assuming Senator Prud'homme is here, I wonder if we might have agreement when we do adjourn debate to put it at the top of the list so that it can be dealt with tomorrow.

**The Hon. the Speaker:** It will stay in its place, honourable senators. My interpretation of the wish of this house is that the matter stands today.

**Hon. Senators:** Agreed.

Order stands.

The Senate adjourned until Wednesday, June 11, 2003, at 1:30 p.m.

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