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**OFFICIAL REPORT**
**(HANSARD)**

## Thursday, April 22, 2004

**THE HONOURABLE LUCIE PÉPIN**
**SPEAKER** *PRO TEMPORE*

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# THE SENATE

**Thursday, April 22, 2004**

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

Prayers.

[*Translation*]

## ROYAL ASSENT

**The Hon. the Speaker** *pro tempore* informed the Senate that the following communication had been received:

RIDEAU HALL

April 22, 2004

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, signified Royal Assent by written declaration to the bills listed in the Schedule to this letter on the 22nd day of April, 2004, at 9:52 a.m.

Yours sincerely,

Barbara Uteck
*Secretary to the Governor General*

The Honourable
The Speaker of the Senate
Ottawa

Bills Assented to Thursday, April 22, 2004

An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence (*Bill C-8, Chapter 11, 2004*)

An Act to amend the Criminal Code and other Acts (*Bill C-14, Chapter 12, 2004*)

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# SENATORS' STATEMENTS

## REGIONAL COUNCIL OF ITALIAN-CANADIAN SENIORS

THIRTIETH ANNIVERSARY

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, this Saturday, April 24, the Regional Council of Italian-Canadian Seniors will be celebrating the thirtieth anniversary of its founding in Montreal, with a mass celebrated by the Apostolic Nuncio to Canada. This will be followed by a grand gala and dinner presided over by Quebec Lieutenant Governor Lise Thibault.

[*English*]

The regional council comprises 77 senior citizens' clubs with a membership of 14,000 who benefit from services and activities tailored to their needs. The success of the council over the years is due in large part to hundreds of volunteers, not the least is the one who founded it and deserves every accolade that she will receive on Saturday. I speak, obviously, of our distinguished colleague, the Honourable Marisa Ferretti Barth, who deserves warmest congratulations for her initiative and constant devotion to her community.

## EXPLORASIAN 2004 FESTIVAL PERFORMANCES AND GALA AWARDS PRESENTATIONS

**Hon. Vivienne Poy:** Honourable senators, last week, I had the pleasure, along with my colleague and leader, Senator Jack Austin, and the Honourable Dr. Rey Pagtakhan of attending the explorAsian 2004 gala performances and awards presentations in Vancouver, hosted by the Vancouver Asian Heritage Month Society.

Over 1,000 people gathered at the beautiful Centre for the Performing Arts to enjoy the performances of an outstanding group of pan-Asian artists. This event launched the largest Asian Heritage Month festival in Canada, dubbed "explorAsian 2004."

Last year, over 120 separate events were held during the month of May in Vancouver, attracting more than 30,000 people. I suspect that, given its promising beginning on April 15, this year's festival will be bigger and better than ever.

Along with the fantastic performances, last week's events celebrated the achievements of Canadians of Asian descent who might otherwise go unrecognized. One of the most impressive award winners was Alex Wong, who won the Excellence in Youth Award. Alex, whose solo performance we all had the pleasure of watching, is the first Canadian ever to win the Prix de Lausanne, which is considered to be the Olympics of ballet. Alex is 17, and I note that, while he appeared on the cover of four major newspapers in Switzerland where the award was presented, no similar adulation greeted his success in Canada.

Honourable senators, it is time that changed. It is time we celebrated individuals such as Alex, because they represent our growing diversity, and they serve as an inspiration to other young Canadians.

In addition to publicly congratulating Alex Wong, I should like also to congratulate all the winners of the explorAsian awards who have contributed so much to the development of arts and culture in Vancouver.

The event I attended and, indeed, all the events that are held every May to mark Asian Heritage Month, are volunteer initiatives that add so much to our communities. Since this is National Volunteer Week, I should like to give special recognition to the contributions of all volunteers. In particular, in Vancouver, two individuals stand out: Beverly Nann and Don Montgomery, president and coordinator, respectively, of the Asian Heritage Month Society.

I would encourage all honourable senators to enjoy Asian Heritage Month in your communities across Canada by turning out in support of local events.

## TAXATION OF SCHOLARSHIPS

**Hon. Norman K. Atkins:** Honourable senators, I draw to your attention a subject that I have been addressing in this chamber for many years. The issue is the taxation of scholarships.

Yesterday, in *The Globe and Mail*, an article appeared highlighting the financial plight of a young student at Appleby College. This is of particular interest to me because, as a young man, I was also a student at Appleby College, an independent school located in Oakville, Ontario.

• (1340)

This young lady, a hockey star with the potential to play for Canada in the Olympics, received a scholarship from Appleby College that enabled her to attend the school. Her parents work four jobs between them to pay for part of her monthly tuition over and above her scholarship, yet she is faced with a huge tax bill on the scholarship part, which she is unable to pay.

Furthermore, it appears that no one advised the family of the looming tax bill. This is a direct result of the tax system in Canada, which penalizes excellence in education and encourages what we all know as "brain drain." If this young lady from Sarnia, Ontario, had accepted one of the numerous scholarship awards offered to her south of the border, she would not face this tax burden because her scholarship would not have an income tax slip issued. However, her parents preferred she go to a school closer to home.

This issue is made worse by the fact that she is attending high school; therefore, there is no deduction for tuition, as there is for post-secondary education. The government has chosen to tax, as income, a $35,000 break on tuition at a high school that allowed the student to attend when it otherwise would not have been possible.

Obviously, if this young lady were from an affluent family, this would not be such an issue because they could afford to pay the tax bill created. However, she is from a blue-collar family with five children and a major financial obligation.

Educational institutions such as Appleby have set up programs to provide the opportunity for some students to overcome financial barriers. This should not then become a tax burden for either the student or the parents.

Scholarship dollars are donated by people who are interested in providing educational institution funds for worthy students. The government then taxes that income when a student receives it as a scholarship. I think this is unconscionable and unnecessary. We should be rewarding excellence, not penalizing it.

This is an example of why our tax system must be reviewed and modified. The money for scholarships and bursaries must be put directly in the hands of students. Otherwise, it distorts the purpose of the scholarship and in some instances creates extreme financial difficulties.

I ask: Why can the government not come to some resolution on this issue? The truth of the matter is that, regardless of the number of exemptions, we are not dealing with a whole lot of money.

## NATIONAL ORGAN AND TISSUE DONOR AWARENESS WEEK

**Hon. Catherine S. Callbeck:** Honourable senators, I rise to speak on an important opportunity to enhance the health or even save the lives of thousands of Canadians. This is National Organ and Tissue Donor Awareness Week. Although almost 2,000 Canadians were fortunate to receive an organ donation last year, twice as many others are still waiting. Tragically, for some, the wait is too long. Last year, an average of five Canadians a week died while waiting for a donated organ, up from an average of three a week in the year 2000.

During the past decade, the number of Canadians waiting for donated organs has almost doubled to nearly 4,000 last year. As our population ages and as new advances in medical technology increase the scope and the success rates of transplant operations, the need can only increase.

The past decade has seen strong growth in the number of living donors, with numbers more than doubling since 1994. The number of Canadians donating their organs at the time of death has been relatively unchanged for the past decade.

It is essential that all Canadians be aware of the need for and the vital importance of organ and tissue donation. A full donation by one person holds the potential to save up to eight lives through donations of vital organs, and to contribute to the health and quality of life of another 50 people through donations of tissues such as skin, bones and heart valves. No matter what the donor's age, as long as his or her organs and tissue are healthy, they can save a life or make it better. In so doing, that donor also makes an enormous contribution to reducing the long-term pressures on our health care system.

A recent poll suggested that many Canadians are already aware of these needs and benefits. Earlier this week, it was reported that almost three quarters of Canadians plan to donate at least one organ upon dying. Over half of these had already taken action to make their wishes known.

I thank those Canadians and urge them to take any further action needed to fulfil their compassion and goodwill by making certain that their families are informed. I also urge those Canadians who are open to donating an organ to learn more about the requirements in their province and to make the necessary arrangements should that day come when, in death, they can give the gift of life to others.

## IMPORTANCE OF SPORT TO NATIONAL PRIDE

**Hon. Francis William Mahovlich:** Honourable senators, I would like to speak to you about the importance of sport to our national pride. Nothing unites Canadians more than our collective celebration of success on the world athletic stage. When we hear the names of Catriona LeMay Doan, Donovan Bailey or Jamie Salé and David Pelletier, we recall the pride felt while witnessing their world-class performances.

Society receives a tremendous benefit from sport and physical activity. Participation helps maintain a healthy population, enhances the social fabric of our communities and creates positive role models for our youth.

The recent federal budget injected an additional $10 million into the Canadian sports system, bringing total Sport Canada funding to $100 million a year. This investment will help ensure that more Canadians have the opportunity to participate and excel in sport.

In February, the Minister of State for Sport created an all-party sport caucus to stimulate discussion on sport-related issues. Many constituents across our country care deeply about our sports, and all parliamentarians, regardless of their party affiliation, have positive contributions to make. I consider this to be a very important development and I congratulate the minister for this initiative.

The minister stated:

> We are serious about ensuring that all of our athletes have an opportunity to achieve excellence — from across the country and from playground to podium, they will continue to benefit from the important sport programs and services funded by the Government of Canada.

In addition, the Minister of Finance announced that $310 million has already been committed to infrastructure required to host the Olympic Winter Games.

Today, I would like to speak up for Canada's athletes. Currently, Sport Canada spends approximately $16 million of its budget on the Athlete Assistance Program. Did honourable senators know that the Athlete Assistance Program pays an Olympic-calibre athlete between $500 and $1,100 a month to live on? Many athletes, with their intense study and training schedules, find it difficult to make ends meet, especially when living in our major cities. The recent increase in funding will definitely help the situation. However, I feel that individual athletes, in particular, require more support.

In 2000, the Australians won a record 58 medals in the Sydney Olympic Games. In the years building up to the event, the Australian government substantially increased funding to its sports organizations and athletes. It appears this investment significantly improved Australia's medal count at the games.

Honourable senators, in six years, the eyes of the world will be on the Vancouver/Whistler games, providing a golden opportunity to capture the hearts of all Canadians.

**The Hon. the Speaker** *pro tempore***:** I regret to inform the honourable senator that his time has expired.

[*Translation*]

## EARTH DAY

**Hon. Joseph A. Day:** Honourable senators, I have the honour to remind you that today is Earth Day.

[*English*]

Honourable senators, today marks the longest and most celebrated environmental event in the world: Earth Day. More than 6 million Canadians will join 500 million people in over 180 countries in staging events and projects to address local environmental issues. Nearly every school child in Canada takes part in some Earth Day activity.

Environmental crises abound as our daily actions pollute and degrade the fragile environment upon which humans and our wildlife depend to survive. What can we do?

• (1350)

Earth Day provides the opportunity for reflection and a renewed commitment to positive actions and results. First launched as an environmental awareness event in the United States in 1970, Earth Day is celebrated as the birth of the environmental movement. Earth Day has proven to be a powerful catalyst for change.

In Canada, Earth Day has grown into Earth Week, and even into Earth Month, to accommodate the profusion of events and projects. They range from large public events such as Victoria's Earth Walk, Edmonton's Earth Day Festival and Saint John, New Brunswick's Marsh Creek Sweep, to the thousands of smaller private events staged by schools, employee groups and community groups throughout the country.

By helping to raise awareness of our environment, Earth Day activities have contributed to dramatic improvements in our environment, including the quality of air that Canadians breathe. A recent study revealed that between 1974 and 2001, levels of sulphur dioxide in our air have decreased by 73 per cent, levels of particulate matter decreased by 54 per cent and lead levels fell by 94 per cent. These statistics are even more impressive given the fact that there has been a 30 per cent increase in the total number of motor vehicles registered in the same time frame.

Honourable senators will appreciate that there are still many challenges ahead for us as Canadians committed to protecting the environment. Honourable senators will, I am sure, want to honour today those individuals and organizations whose efforts have contributed to the success of the environmental movement thus far. Each of us will want to resolve to do more to protect this land in which we live, this planet on which we live, the Earth.

# ROUTINE PROCEEDINGS

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### SEVENTH REPORT OF COMMITTEE TABLED

**Hon. Lise Bacon:** Honourable senators, I have the honour to table, in both official languages, the seventh report of the Standing Committee on Internal Economy, Budgets and Administration, regarding security.

## STUDY ON PRESENT STATE AND FUTURE OF AGRICULTURE AND FORESTRY

### REPORT OF AGRICULTURE AND FORESTRY COMMITTEE ON BOVINE SPONGIFORM ENCEPHALOPATHY TABLED

**Hon. Joyce Fairbairn:** Honourable senators, I have the honour to inform the Senate that, pursuant to orders adopted on February 6 and April 1, 2004, the Standing Senate Committee on Agriculture and Forestry deposited with the Clerk of the Senate on April 15, 2004, the fourth report, interim, of the said committee, entitled "The BSE Crisis — Lessons for the Future."

Pursuant to rule 97(3), I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

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

Motion agreed to and report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## CUSTOMS TARIFF

### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. David Tkachuk,** Deputy Chair of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, April 22, 2004

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

FOURTH REPORT

Your Committee, to which was referred Bill C-21, to amend the Customs Tariff has, in obedience to the Order of Reference of Thursday, April 1, 2004, examined the said bill and now reports the same without amendment.

Respectfully submitted,

DAVID TKACHUK
*Deputy Chair*

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

On motion of Senator Tkachuk, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

## PUBLIC SERVICE COMMISSION

### NOTICE OF MOTION TO APPROVE APPOINTMENT OF MARIA BARRADOS AS PRESIDENT

**Hon. Bill Rompkey (Deputy Leader of the Government):** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That in accordance with subsection 3(5) of the *Act respecting employment in the Public Service of Canada*, chapter P-33 of the Revised Statutes of Canada, 1985, the Senate approve the appointment of Maria Barrados, of Ottawa, Ontario, as President of the Public Service Commission for a term of seven years.

## CRIMINAL CODE

### BILL C-250—PRESENTATION OF PETITION

**Hon. Gerry St. Germain:** Honourable senators, today again I rise to table thousands of petitions — some 6,275 plus. These residents of Canada, who join the 5,000 petitioners of yesterday's tabling, also wish to draw the attention of the Senate to the following, and I will only quote a brief excerpt from their petition statement:

Bill C-250 is opposed for a number of reasons, particularly that the Charter rights of freedom of speech and freedom of religion will be significantly eroded once this bill becomes law.

With adequate legal protections for all Canadians already in place, it is unnecessary and dangerous to pass the bill into law as its only aim is to inject fear into the public, thereby shutting out all discussions on sexual orientation not favoured by a special interest group(s) or activist(s).

Therefore, honourable senators, these petitioners pray that the Senate amend Bill C-250, to ensure that the freedom of speech rights of each Canadian are fully and equally protected, and, failing this, to defeat Bill C-250.

[*Translation*]

## OFFICIAL LANGUAGES

### BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITIONS

**Hon. Yves Morin:** Honourable senators, pursuant to rule 4(h), I have the honour to table petitions signed by 29 people asking that Ottawa, the capital of Canada, be declared a bilingual city and the reflection of the country's linguistic duality.

The petitioners pray and request that Parliament consider the following:

> That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;
>
> That section 16 of the Constitution Act, 1867, designates the city of Ottawa as the seat of government of Canada;
>
> That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;
>
> That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.
>
> Therefore, your petitioners call upon Parliament to affirm in the Constitution of Canada that Ottawa, the capital of Canada be declared officially bilingual, under section 16 of the Constitution Acts from 1867 to 1982.

• (1400)

[*English*]

**Hon. Marilyn Trenholme Counsell:** Honourable senators, pursuant to rule 4(h) I have the honour to table petitions signed by another 24 people asking that Ottawa, the capital of Canada, be declared a bilingual city and the reflection of the country's linguistic duality.

The petitioners pray and request that Parliament consider the following:

> That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;
>
> That section 16 of the Constitution Act, 1867, designates the city of Ottawa as the seat of government of Canada;
>
> That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;
>
> That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.
>
> Therefore, your petitioners call upon Parliament to affirm in the Constitution of Canada that Ottawa, the capital of Canada — the only one mentioned in the Constitution — be declared officially bilingual, under section 16 of the Constitutional Acts from 1867 to 1982.

[*Translation*]

**Hon. Pierrette Ringuette:** Honourable senators, pursuant to rule 4(h), I have the honour to table petitions signed by 22 people asking that Ottawa, the capital of Canada, be declared a bilingual city and the reflection of the country's linguistic duality.

The petitioners pray and request that Parliament consider the following:

> That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;
>
> That section 16 of the Constitution Act, 1867, designates the city of Ottawa as the seat of government of Canada;
>
> That citizens have the right in the national capital to have access to the services provided by all institutions of the government of Canada in the official language of their choice, namely English or French;
>
> That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.
>
> Therefore, your petitioners call upon Parliament to affirm in the Constitution of Canada that Ottawa, the capital of Canada be declared officially bilingual, under section 16 of the Constitution Acts from 1867 to 1982.

[*English*]

**Hon. Mac Harb:** Honourable senators, I also have the honour of presenting a petition signed by many constituents in the Ottawa area asking that we declare the city of Ottawa officially bilingual.

# QUESTION PERIOD

## HEALTH

### WEST NILE VIRUS—RISK OF INFECTION THROUGH BLOOD TRANSFUSIONS

**Hon. Wilbert J. Keon:** Honourable senators, I have a question for the Leader of the Government in the Senate about West Nile virus. Last week, it was reported that an elderly man in Ohio tested positive for the disease — which may be the earliest that a West Nile infection has occurred in North America, and probably is.

As a result of this early infection, can the Leader of the Government in the Senate tell us if Health Canada and its partners are changing their approach to fighting the spread of West Nile virus this year?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, while I am aware that a great deal of attention is being paid to West Nile virus by Health Canada, I am not sure what change of approach Senator Keon would like to have me represent. Can he ask me a supplementary question?

**Senator Keon:** I agree that the supplementary will be helpful; I should have included it. The U.S. Centers for Disease Control and Prevention reported that six people became infected with West Nile virus last year in the United States through blood transfusions, and possibly donated organs, despite the fact that blood is screened for the virus. While the blood-screening system used in Quebec, and by Canada Blood Services has proven to be successful, this development in the U.S. does raise some serious questions.

Could the Leader of the Government in the Senate make inquiries and report — since I am sure he cannot give us an answer today — to this chamber as to whether the test used to screen donated blood against this virus has been evaluated or changed in the year since it has been introduced? What is the risk of infection here through transfusions if the tissue of donor organs is being screened, as in the past?

**Senator Austin:** I thank Senator Keon for his question. I shall pursue the matter.

### NEW NATIONAL STRATEGY—LONG-TERM FUNDING—DISCUSSIONS WITH PROVINCES

**Hon. Marjory LeBreton:** My question is for the Leader of the Government in the Senate. The Prime Minister gave a speech last week on his plans for health care reform. While the speech was short on specifics, the Prime Minister, once again, stated that a deal on long-term funding from the federal government is contingent on provincial agreement to various reforms, such as reducing waiting lists and addressing the shortage of physicians. In response to the speech, the provinces have warned that, while they recognize the need for reforms and more accountability, the federal government should not unilaterally dictate what those reforms should be.

What happens if a deal cannot be reached with the provinces this summer? Is the government's plan an all-or-nothing approach?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, as Honourable Senator LeBreton knows, because she has had great experience in federal-provincial relations in her various previous emanations, these dialogues and discussions take place on two levels — one in public and one quite privately. As honourable senators may be aware, a meeting is underway between Ontario and Quebec to discuss their strategies vis-à-vis the federal government's proposals and the Prime Minister's outline of a new health strategy. Western premiers are doing the same. No doubt, a great deal of toing and froing will take place prior to the conclusion of the discussions.

However, the signs are very good at the provincial and federal levels for a constructive approach to a national health care strategy. The government is looking forward to a demonstration of the ability of both levels of government to serve the Canadian people effectively.

**Senator LeBreton:** Honourable senators, last week *The Globe and Mail* reported that the federal health care plan would increase funding permanently by more than $2 billion annually. A recent Conference Board of Canada study stated that an additional $5 billion is needed just to maintain existing services. *The Globe and Mail* also reported that, if a deal with the provinces could not be reached, the federal government would bring in legislation to establish national standards for health care, thereby forcing the provinces to comply.

Is the government concerned that the tone of the meetings may become as confrontational as prior meetings if the federal government appears to be intruding on provincial jurisdiction while not offering enough in return?

**Senator Austin:** Nothing is more historic in the Canadian confederation than differences of view between the federal and provincial governments about funding, tax points, and generally the control over the revenues provided by the taxpayers of Canada. It is the fault line on which much government policy is made.

Beyond that, I can only tell the honourable senator that, in spite of what one might read, the engagement among the provinces with the federal government at the moment is moving in a very positive direction.

[*Translation*]

## SPORT

### SUMMER OLYMPICS 2004— PARTICIPATION OF DOMINIQUE VALLÉE

**Hon. Madeleine Plamondon:** Honourable senators, could the Leader of the Government in the Senate tell us whether Canada will be represented in the windsurfing discipline at the Athens 2004 Olympic Games? Let me explain. Because of an injury, Dominique Vallée was unable to take part in the last round of qualifications before the Games. Nonetheless, she would be ready to join the Olympic team when the time comes. Why is Canada denying itself a representative of her calibre? Will Canada's spot be empty in this discipline at the Athens Games?

• (1410)

I know that in amateur sport, any athlete who has a problem can resort to alternative dispute resolution to file a complaint. I also know that agreements have been reached between the Canadian Olympic Committee and the sports federations regardless of the sport. However, by making the criteria that Canadian athletes must meet stricter than the requirements of other countries, are we not preventing a windsurfer of the calibre of Dominique Vallée from representing Canada? Worse yet, are we not forcing our athletes to represent other countries in order to get to the Olympics?

My question is twofold: What is the status of Dominique Vallée's case, and will Canada's spot remain empty in this discipline at the Athens 2004 Games? The spirit of the Olympics must prevail over procedures.

[*English*]

**Hon. Jack Austin (Leader of the Government):** Honourable senators, the Government of Canada does not set the criteria, nor does it choose the eligible candidates to represent Canada at an Olympic event. That decision is made under the authority of the Canadian Olympic Committee, which is a member committee of the international Olympic Movement. I am sure that most honourable senators would prefer the system to work just as I have described it, and not have the Government of Canada or any political body make decisions about athletes.

A much more difficult problem to try to solve is what kind of weather any city should have on any particular day. I do not have an answer for the honourable senator, specifically because it does not come under the purview of the Canadian government.

[*Translation*]

**Senator Plamondon:** The question was asked in the House of Commons and the answer was that the complaint had to go to alternative dispute resolution. However, in the case of Dominique Vallée, consideration should certainly be given to the fact that she could have qualified had she not hurt her ankle. As a result, she is unable to complete the final step of qualifying. Athletes from other countries will participate with less stringent criteria.

She will be well enough to compete in the Olympics, but because physically she will have missed the qualifying meet, she will lose her turn. It is unfortunate that an athlete has to represent another country because the Canadian system currently lacks flexibility.

[*English*]

**Senator Austin:** I am sure the honourable senator will send the representation she has made in the Senate today to the Canadian Olympic Committee.

## FINANCE

### EQUALIZATION FORMULA— TREATMENT OF RESOURCE REVENUES

**Hon. David Tkachuk:** Honourable senators, my question arises from the meeting that the Saskatchewan Premier, Lorne Calvert, had with the Prime Minister on Saturday. Mr. Calvert said that he raised two equalization issues with the Prime Minister. The first concerned possible retroactive redress for the way the equalization formula treats mining revenue in our province. Second, he asked that Saskatchewan get the same deal for its oil resource revenue as has been made available to Atlantic Canada.

On Monday, the *Star Phoenix* reported Premier Calvert as saying:

> I am pleased to report that the prime minister will be speaking to Ralph Goodale, the minister of finance, and asking him to sit down with our officials and Harry Van Mulligen to look again at these two questions.

In the latest changes in the last budget, it was simply noted that the examination of resource revenues would be a priority the next time the program is renewed, which is five years from now, in 2009. Has the Government of Canada changed that policy as stated in the last budget?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, I have no information on which I could base an answer to Senator Tkachuk.

**Senator Tkachuk:** Saskatchewan is not the only province that wants changes in the way the equalization formula treats resources. Is the government prepared to reopen the resource tax issue now, not only for Saskatchewan but also for all the other provinces?

**Senator Austin:** Honourable senators, I will endeavour to provide Senator Tkachuk with a definitive answer shortly.

## PUBLIC WORKS AND GOVERNMENT SERVICES

### AUDITOR GENERAL'S REPORT— SPONSORSHIP PROGRAM—LAYING OF CHARGES

**Hon. Gerry St. Germain:** Honourable senators, in one of today's leading newspapers, Jean Lapierre, the Prime Minister's Quebec political lieutenant, is reported as having said that he wants to see the RCMP lay charges soon against wrongdoers in the sponsorship scandal. Mr. Lapierre says it would provide "...relief, because I think people want to see people found guilty."

**Some Hon. Senators:** Oh, oh.

**Senator St. Germain:** Those are his words. I am just saying what he said.

**Hon. Bill Rompkey:** No, the honourable senator is saying what the paper said he said.

**Senator St. Germain:** Has a newspaper ever been wrong? Have reporters ever been incorrect? Is the honourable senator questioning the integrity of our media? That is shameful.

**Senator Rompkey:** Who would ever do that?

**Senator St. Germain:** The question is: Is this to expedite the process of justice to satisfy Mr. Lapierre's and the Prime Minister's political agenda? Is that what it is all about? Can the Leader of the Government in the Senate assure us that the RCMP is not taking direction from the PMO again?

**Some Hon. Senators:** Oh, oh.

**Hon. Jack Austin (Leader of the Government):** The answer to the question is that I can give such an assurance. We saw Commissioner Zaccardelli being asked that question in the committee in the other place yesterday, and he indicated most aggressively that he takes no political direction, nor has any been suggested to him.

With respect to the individual who is referred to by Senator St. Germain, of course Senator St. Germain knows he is a private citizen and, like any private citizen, he is entitled to express his views.

**Senator St. Germain:** I have a supplementary question, honourable senators. The leader has said that Mr. Lapierre is merely a private citizen, and that is correct. However, he has, according to the public record, taken up a role with the Liberal Party of Canada as the lead individual in the province of Quebec. I stand to be corrected, because as you Liberals have so adeptly pointed out, maybe we cannot rely 100 per cent on the media. However, can the Leader of the Government in the Senate tell us if Mr. Lapierre's comments reflect the view of the Prime Minister and his cabinet? The Leader of the Government in the Senate is part of the cabinet. Is this how the government plans to get to the bottom of the advertisement scandal, that is, lay a few charges and then shut down the investigation?

I hate to remind honourable senators of this, but it was done in connection with Stevie Cameron and Allan Rock against Prime Minister Brian Mulroney.

**Some Hon. Senators:** Shame.

**Senator St. Germain:** Will you continue this disgraceful misuse and abuse of power?

**Senator Austin:** The Honourable Senator St. Germain is, on the one hand, solicitous of the integrity of the RCMP and, on the other hand, in his supplementary question he attacks the integrity of that police force. The honourable senator cannot have it both ways. I am sure that he really means to say that he has no doubt that the integrity of the RCMP is unchallengeable.

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

**Senator Austin:** With respect to the question relating to Mr. Lapierre, he speaks for himself. As a citizen of Canada, he has every right to do so, whether he is right or whether he is wrong.

**Senator St. Germain:** As a short supplementary question, is the Leader of the Government in the Senate saying that we will not see Mr. Lapierre as part of the Liberal machine in Quebec in the next federal election?

**Senator Austin:** I am saying that any attempt on the part of Senator St. Germain to have this government take responsibility for the words of a private citizen is not likely to be successful.

• (1420)

## PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

### NATIONAL SECURITY—ALLOCATION OF FUNDS

**Hon. J. Michael Forrestall:** Honourable senators, my question for the Leader of the Government in the Senate deals with rumblings in the press over the last day or so about an additional $500 million in spending for national security purposes. The government would not spend that sum on an election, would it?

I think there are some grounds to understand that the new money will be used to address the concerns outlined in the recent report of the Auditor General. Can the minister confirm this so that we might have an understanding of the general thrust with respect to security?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, the question of national security is a significant one. In yesterday's Question Period we began an important reference to the topic.

The government has underway the preparation of a comprehensive national security policy that I hope will be announced shortly. Until it is announced, I am not in a position to provide the Honourable Senator Forrestall with any further information.

**Senator Forrestall:** Can the minister indicate whether there will be a statement addressing this question of security within the next week and whether it will involve the expenditure of additional funds for security purposes?

**Senator Austin:** Honourable senators, I can only tell Senator Forrestall that the government intends, quite shortly, to make a major statement on national security. I will welcome questions from Senator Forrestall and other senators when that policy statement is tabled.

**Senator Forrestall:** Minister McLellan and other authorities in the government have addressed the question of an oversight of parliamentary input. I ask my questions from the point of view of that input. For example, it would be helpful for parliamentarians to know if this money will be used for identification, for passport control, the so-called fingerprint program, or for additional personnel at our borders. Is it no longer a desire of the government to have input based on some knowledge of what the government is concerned about? In the final analysis, as far as questions regarding our security are concerned, I am sure that the concerns of Canadians, and private citizens generally, are not that far removed from those of the government and, in particular, the advisers to government with respect to these matters.

**Senator Austin:** Honourable senators, there is probably no more senior responsibility of any government than the security of its citizens. In that light, and in response to questions yesterday, I outlined what the federal government has done since September 11, 2001, including an expenditure of approximately $8 billion on the security of Canadians.

Shortly, the government will release a comprehensive statement on a variety of national security issues. I know that Senator Forrestall takes great interest in these questions, and I welcome the opportunity to exchange views with him when that statement is made.

**Senator Forrestall:** The Real Time Identification Program, or RTID, is a matter of some concern. As the minister will be aware, the Auditor General identified in her report that the RCMP's LiveScan fingerprint program has been virtually useless, since the accompanying technology needed to process the fingerprint information generated by LiveScan was not purchased for that use. As a result, the processing continues to be done on a manual basis, which is very time consuming.

Can the Leader of the Government in the Senate assure us that with this new spending he will use his good offices — because this is something we can do almost immediately — to help the RCMP and security people out with the purchase of this additional equipment so that the scanning can be done in real time and not by next Christmas?

**Senator Austin:** Honourable senators, I really enjoy the probing nature of Senator Forrestall's questions. His statement based on the Auditor General's report is, of course, an accurate statement of fact and has been, in my view, recognized and taken into account. That is about as far as I can go at the moment.

While I am on my feet, I would like to answer a question asked by Senator Andreychuk yesterday. There are no plans to introduce a national identity card based on biometric identification.

## SOLICITOR GENERAL

### ROYAL CANADIAN MOUNTED POLICE— PRESENCE OF CONSTABLES IN DRESS UNIFORM AT LIBERAL NOMINATING MEETING

**Hon. Lowell Murray:** Honourable senators, what became of the question I asked many weeks ago about the RCMP's practice of renting out red-coated constables as mannequins to decorate various political, cultural and social events? I would like to have an answer to my question in case I want to make an election issue of it.

**Hon. Jack Austin (Leader of the Government):** Honourable senators, Senator Murray's real question is what became of the answer to his question. I will have another search for it.

## HEALTH

### LOCATION OF CENTRE FOR DISEASE CONTROL— SCORING CRITERIA IN SELECTION PROCESS

**Hon. Terry Stratton:** Honourable senators, my question is for the Leader of the Government in the Senate. A couple of days ago, we were discussing the location of the proposed disease control centre. Senator Austin bragged about his area of the world as being the best location for such a centre. I tried to do the same thing for Manitoba.

As a part of the answer to the question, the minister mentioned the scoring and the number of points allotted to each location. Were Manitoba and B.C. the only two locations, or was Ottawa included in the scoring? If so, what was the score? Are the scores available? Are they on a Web site? As well, is the matrix for the criteria that established the questions to develop the scoring available?

**Hon. Jack Austin (Leader of the Government):** Honourable senators, as I said yesterday, the report in question was written by a scientific peer group headed by Dr. David Naylor. The question they were asked to answer was: What is needed to establish a comprehensive centre for disease control in Canada? A matrix of 20 points was developed. They then compared the American Centers for Disease Control in Atlanta to the points that they had established. I believe — and this is from memory — that they gave Atlanta 14 points. They gave Vancouver 12 points and Winnipeg 4. No other centre received any greater number than Winnipeg.

As I said the other day in Question Period, the federal Level 4 lab is situated in Winnipeg. To my information, there are only two such labs in North America, the other one being in Atlanta.

• (1430)

It is a very important facility in the consideration of a Canadian network to deal with disease control. The reality is that there are assets for various functions in many parts of Canada, including Toronto, Guelph, Hamilton, Halifax and Saskatoon.

The purpose of the study was to identify what is required for a comprehensive disease control system. One of the bases of the study is: How capable is the electronic linkage system to make this virtually one centre?

I believe that the report is public, but if it is not, I am now telling you a good deal about it. Senator Keon tells me that the report is public.

If I may continue, the report is an important part of an overall analysis of public health requirements in Canada. Part of the current policy discussion relates to the location of a designated public health officer and the designation of a chief science officer for health standards in Canada. I do not have the exact title before me.

I am trying to be neutral. Inevitably, once the political leaders in various communities discovered that we had a science report with various conclusions that are science-based — not based on political views, regional interests or economic spin-offs — the Premier of British Columbia, the Premier of Manitoba and other premiers, and other federal and provincial political leaders started a campaign to acquire as much of the new developments as possible. This is not, in the Canadian federation, ever easy.

I should not fail to mention a major research centre in Quebec, which has to be, in some form, part of national disease control.

As the question asked by Senator Keon a few minutes ago indicated, there are imminent threats to Canadian health based on both chronic and infectious diseases. There is now an attempt to bring about a comprehensive response.

I cannot tell Senator Stratton how the pieces are falling at the political level, but the science community is quite clear about what should be done.

## DELAYED ANSWER TO ORAL QUESTION

**Hon. Bill Rompkey (Deputy leader of the Government):** Honourable senators, I have the honour to table the answer to a question by Senator Tkachuk, asked on February 17, regarding the Business Development Bank and the Quebec court ruling exonerating the former president.

## JUSTICE

BUSINESS DEVELOPMENT BANK—QUEBEC SUPERIOR COURT RULING EXONERATING FORMER PRESIDENT

*(Response to question raised by Hon. David Tkachuk on February 17, 2004)*

> On March 12, 2004, on behalf of the Government of Canada, Industry Minister Lucienne Robillard announced the termination of the appointment of Michel Vennat as Chief Executive Officer (CEO) of the Business Development Bank of Canada (BDC).
>
> The Governor in Council had concluded that Mr. Vennat's conduct in respect of the matters addressed in the Quebec Court's decision in the Beaudoin case was incompatible with his continued appointment.

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# ORDERS OF THE DAY

## CANADA ELECTIONS ACT INCOME TAX ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Mercer, seconded by the Honourable Senator Munson, for the second reading of Bill C-3, to amend the Canada Elections Act and the Income Tax Act.

**Hon. Terry Stratton:** Honourable senators, I rise to speak to Bill C-3, to amend the Canadian Elections Act. This bill is the government's response to a ruling by the Supreme Court of Canada in the case of *Figueroa v. Canada*. The court accepted the argument that the existing requirement under the Canada Elections Act that a group of 50 candidates must run in order for a group to remain a political party was too onerous.

The Communist Party of Canada failed to meet that requirement in the 1993 election and lost its registration status as a result. We must confirm what happened in committee, but I believe that Mr. Figueroa made the offer to the then Leader of the Government in the House, Don Boudria, that if the limit was lowered from 50 to 12, he would not proceed with the case. Apparently Mr. Boudria rejected that offer and said that they would abide by the court decision.

For the benefit of this chamber, I suggest that the committee should ascertain if this is a true and accurate statement of the events that transpired.

Mr. Figueroa then successfully argued that the requirement violated the Charter of Rights and Freedoms because it undermined the right of each citizen to meaningful participation in the electoral process. The court struck the requirement down but suspended the ruling for one year, which is to say until June 27, 2004, to allow Parliament to make changes to the legislation.

I am sure that Senator Murray is quite interested in this, as are other people and groups across the country, because to lower the limit from 50 to one will create a most interesting situation.

In its conclusion, the majority decision in the Supreme Court was clear on the point when it said:

> It may well be that the government will be able to advance other objectives that justify a 12-candidate threshold. But suffice it to say, the objectives advanced do not justify a threshold requirement of any sort, let alone a 50-candidate threshold.

Here we have a lowering from 50 to one. Included in the criteria described by Senator Mercer would be the lowering of the figure to one. There is a requirement for 250 members, an executive of four and a stated overall philosophy or objective. The Chief Electoral Officer would then make a determination as to whether this was a viable political party, as it were.

You can see what is likely to happen with respect to this. Many sincere groups will seek recognition as official political parties. I can visualize a swath across the country.

Earlier, I made the comment to Senator Mercer that this appears to be the first step towards proportional representation, which those on this side favour because we would break the back of the hegemony of the Liberal Party governing Canada. That is the position of the Conservative Party. I have no idea what others in this room believe.

Honourable senators, having faced that issue, Bill C-3 is a knee-jerk response. One almost wonders why there is a requirement that a party run a candidate at all. Rather than set a lower, more reasonable and defendable requirement in relation to the number of candidates, the government has followed what appears to be a somewhat safer route to ensure compliance with the decision of the Supreme Court by adopting a one-candidate, one-party rule.

• (1440)

My view is that a threshold, if you can call it that, of one candidate is simply too low and has the potential to damage the effective operation of the electoral system. Whether this is a provable proposition remains to be seen. However, it may become self-evident if all-candidate debates are rendered impractical or impossible due to the proliferation of parties and the ballot paper becomes longer than your arm. Perhaps that is what the Liberal Party wants. Is that what you want as an end result — no public debate?

It is not difficult to foresee problems arising from Bill C-3. Even with the relatively large addition of bureaucratic red tape in the requirements, including the need for a candidate and a leader, at least three officers, a chief agent, an auditor, at least 250 electors with a list being submitted to the Chief Electoral Officer at least once every three years, and various signatures and certifications — even with all that and more, the financial advantages of forming a political party are such that we may see a large number of new parties being established for future elections.

I can envision, for example, a "Save our School," or SOS, party being formed to bring attention to a pending closure of a school in an individual electoral district. The parents could get together, run a candidate with a single-issue platform of keeping a particular school open, and obtain tax benefits and a certain amount of free publicity in their campaign. Honourable senators will recall that recent changes to electoral financing will also provide continuing funding even after the election is over and even if the school that was the subject of the party's platform has been reduced to rubble.

This is not to suggest that an organized effort to draw attention to an issue is in any way wrong in principle. However, the formation of a federal political party should carry with it something more substantial and with a broader purpose for the benefit of the nation.

There is a safeguard of sorts within the bill, part of an attempt to reduce or prevent abuse. Under Bill C-3, the Chief Electoral Officer has a responsibility to make judgments about the appropriateness of a platform, the policies advanced, the nature and extent of the activities of the party and how the party uses its funds. This raises a completely different set of issues, and I am sure the Chief Electoral Officer will have concerns about the new role this proposed legislation gives him in policing such matters. I can imagine how thrilled the Chief Electoral Officer is at the prospect of having to deal with this. Rendering decisions in these areas may well call into question the impartiality of the Office of the Chief Electoral Officer, because he will have been brought deeper into the process itself, rather than having been kept above the fray as an unbiased administrator of it.

What would happen if the Chief Electoral Officer were to make a decision to not recognize a group? Would the group then go before the Supreme Court to challenge the ruling? Of course it would do that. Thus, we are on the treadmill once more over definition — again and again and again — as a result of this bill and this definition. In other words, there would be more law and more legal work; we just do not seem capable of dealing with an issue in a way that is easier than creating another law. With Bill C-3, we are creating another set of logistical hoops to jump through so that an individual can ultimately challenge it in court if his or her bid is not successful. Why are we doing this without taking the appropriate time? There is a wish to have this done before June 27, and there has been ample time to prepare or to ask the courts for a delay in the date so that this bill could be more completely studied than it has been to date.

The increased demands on political parties contained in Bill C-3 and previously adopted in the last session in Bill C-25 may be sufficient in combination to discourage the formation of single-candidate parties or of parties with very few candidates. Frankly, I would prefer to see the government and Parliament make a concrete decision imposing a reasonable threshold and then defending it, rather than apparently trying to circumvent the ruling of the Supreme Court of Canada by putting up a series of bureaucratic obstructions that effectively make it impractical to form a new political party. Think about that, the other side of the coin. The bureaucratic obstacles in this are such that it becomes more difficult to form a legitimate political party.

In conclusion, Bill C-3 is fraught with problems. It may be both necessary and sufficient as an interim measure to deal with the difficulties imposed by the narrow time frame in which we are currently operating, but I do not regard it as a satisfactory solution. I look forward to discussions in committee that will address some of the issues that have been raised here and elsewhere in respect of this bill. I would hope that a recommendation comes forward that this proposed legislation be interim only, with a limited lifespan, to be replaced by something far more effective so that legitimate political parties will have the opportunity to form in a reasonable fashion without this kind of bureaucratic involvement.

I am always impressed by how we seem to make things so much more complicated than they really need to be. In this instance, we are doing exactly that, and we should ask ourselves why.

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

**An Hon. Senator:** Question!

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

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Rompkey, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

## MARRIAGE ACT
## INTERPRETATION ACT

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

**Hon. Anne C. Cools** moved the second reading of Bill S-10, to amend the Marriage (Prohibited Degrees) Act and the Interpretation Act in order to affirm the meaning of marriage. —(*Honourable Senator Cools*).

She said: Honourable senators, I rise to speak to Bill S-10, a tiny bill whose long title, if and when passed, would be, an act respecting marriage, and the short title would be, the marriage act. For the purposes of this debate, I shall speak to the marriage act.

I am mindful that most honourable senators are aware of the current social and political situation in this country in respect of the claims of homosexual persons for inclusion in the institution of marriage.

• (1450)

My bill, under the meaning of marriage, would essentially say, as it does in clause 1.1:

> Marriage is the lawful union of one man and one woman to the exclusion of all others,
>
> (*a*) solemnized under the laws of the province in which the marriage takes place; or
>
> (*b*) valid by the law of a foreign country in which the marriage takes place if the marriage is also recognized as valid in Canada under the laws of Canada.

Honourable senators, I thought I would give a little bit of a retrospective. If honourable senators were to look at the Senate record, for example, of June 13, 2001, senators would find a full speech of mine on my then marriage bill, S-9, in which I outlined the history of the law of marriage in Canada and in the U.K. I will use a slightly different flavour today and look at some of the claims being made on the question of marriage.

I will begin, honourable senators, by citing a Supreme Court of Canada judgment in 1999, being the judgment in *M. v. H.* As honourable senators would know, the issues in *M. v. H.* were the constitutional challenges regarding the Ontario Family Law Act, section 29, in particular, the spousal support section. This challenge was obviously brought about by certain homosexual persons, couples, essentially challenging the law, claiming entitlement as common-law spouses to spousal support.

Honourable senators, that challenge had an interesting result in that it treated these couples as spouses. M and H were women. It is interesting that I am speaking about marriage because even until that time, the government — the then Minister of Justice Anne McLellan and the former Minister of Justice Allan Rock — said that none of this will apply to marriage or put it at risk. It is all very interesting in terms of that female homosexual couple. It is all very curious that that particular section of the Family Law Act of Ontario was challenged. The interesting thing about the history of that section in the Family Law Act regarding spousal support for common-law couples was that those provisions were created to protect children of common-law spouses. In other words, the provision was moved and motivated as a way of encouraging common-law couples to marry, and it was motivated by the fact that many of these common-law spouses, women, had children. Obviously it is the women who gave birth. The legislative intention has been to encourage couples, men and women, to marry, to promote marriage. This is one of the bewildering things about our community today, where every single principle has been turned on its head.

The first principle that has been turned on its head, to my mind, is that the notion of equality creates an entitlement to the institution of marriage, with which I strongly disagree.

As I go on today, I would like to deal a little bit with what I call homoerotic impulses and homoerotic inclinations, but before I do that I wish to quote *M. v. H.* Honourable senators, at that time Mr. Justice Charles Gonthier of the Supreme Court of Canada dissented very strongly with the majority judgment. The majority judgment was led by Mr. Justice Frank Iacobucci. Mr. Justice Gonthier dissented strongly because he believed that the claims submitted and held in *M. v. H.* would open the door, in a very deliberate way, to a raft of relationship claims, including polygamy and who knows what else. Many polygamy claims are now in the making. I have been reading about this in the United States of America.

In defence of what he was saying in dissent, Mr. Justice Gonthier — we all know him, having seen him many times here at receptions in the Speaker's chambers — had the following to say at paragraph 155:

> Plainly, this appeal raises elemental social and legal issues. Indeed, it is no exaggeration to observe that it represents something of a watershed. ...However, I am unable to agree with my colleagues' disposition of this appeal or their underlying reasons for so doing. I believe that the stance adopted by the majority today will have far-reaching effects beyond the present appeal. The majority contends, at para. 135, that it need not consider whether a constitutionally mandated expansion of the definition of "spouse" would open the door to a raft of other claims, because such a concern is "entirely speculative." I cannot agree. The majority's decision makes further claims not only foreseeable, but very likely.

Mr. Justice Gonthier disagreed with the position that the majority adopted that any concern for the future of the law, in this respect, was speculative in nature. It is quite interesting. Mr. Justice Gonthier's opinion is very important, and at the time I commended it and I lauded it.

He continued in another paragraph to condemn Mr. Justice Iacobucci's paragraph 135, where Mr. Justice Iacobucci said:

> Thus, arguments based on the possible extension of the definition of "spouse" beyond the circumstances of this case are entirely speculative and cannot justify the violation of the constitutional rights of same-sex couples in the case at bar.

This is very fascinating because it turns out that Mr. Justice Gonthier is absolutely right. This was only 1999. I could show senators letters from then Minister of Justice Anne McLellan where she wrote to citizens all over the country saying essentially not to worry at all, that there is no need for the court to touch marriage, and that all the rights that homosexual couples will need, the government is providing.

What Justice Iacobucci and the majority said they need not consider and dismissed as entirely speculative, and what Justice Gonthier faced directly in declaring that the majority's decision would lead to, has unfolded exactly as he said.

In the last several days I have been reminded of the work I did in my days as a social worker. I want to share with honourable senators today the case of a gentleman, a homosexual man, named Everett George Klippert. Most of you here, I would submit, have never heard that name, but this was a man who was convicted on many counts of gross indecency. I had the advantage of reading that case because I was very interested in this subject matter and in this kind of miscarriage of justice.

• (1500)

When I was on the National Parole Board, I had the opportunity to read these case files first-hand. I will not be divulging the information from those files. What I want to do is call to the attention of senators today the Supreme Court of Canada case about Klippert. The condition and the plight of Mr. Klippert was one of the foundations for the decriminalizing of private sexual acts between consenting adults. I thought that the record would be well-served by bringing that to your attention.

On December 21, 1967, Mr. Trudeau, then Minister of Justice, in a media scrum outside the House of Commons, which was reported on CBC television news, stated:

> Take this thing on homosexuality. I think the view we take here is that there's no place for the state in the bedrooms of the nation, and I think what's done in private between adults doesn't concern the Criminal Code. When it becomes public this is a different matter...

There are different versions of these quotations, because it was a scrum. Another version had Mr. Trudeau adding:

> ...or when it relates to minors this is a different matter...

I want to put this matter into context. What we have now is a new phenomenon where we are not content to accept the principle Mr. Trudeau articulated — and I supported him with passion and zeal. We are not content to have privacy in the bedroom and to have the law changed to reflect the notion that the law should not inquire into what goes on in the bedrooms of the nation. The activists created a phenomenon, a situation in which the original notion of privacy has been overturned. What we now see is the bedrooms of the nation having a place in the state.

Honourable senators, Mr. Trudeau never intended for a moment that his beloved Charter would be used as an instrument or a tool to do this. At that time, Mr. Trudeau stood, in my mind, as the icon of justice.

Two years after Mr. Trudeau's statement and the Supreme Court judgment in *Klippert*, the Honourable John Turner, then Minister of Justice, at second reading of Bill C-150, the Criminal Law Amendment Act, 1968-69, in the House of Commons, on January 23, 1969, stated that:

> These amendments remove certain sexual conduct between consenting adults in private from the purview of the criminal law.

Adults at the time were persons aged 21 years and older. Mr. Turner and Prime Minister Trudeau's amendment was motivated in part by the sad and terrible case of Everett George Klippert and the 1967 Supreme Court decision of *Everett George Klippert v. Her Majesty the Queen*. Klippert at the time was a 39-year-old man from Pine Point in the Northwest Territories. He was a homosexual in a small community, known to the police, and frequently visited by them.

His criminal record showed 18 convictions for similar charges. Klippert pleaded guilty in August of 1965 to four charges of acts of gross indecency. We must understand that the law, as it stood, was rarely invoked. For a prosecution to take place, it meant one of the partners in those acts had to make a complaint. Klippert engaged with adults, but there was a case where, unfortunately, he was lied to by a minor, a younger person about his age. However, that is another matter.

We must understand, honourable senators, that this occurred at a time when, after so many charges, episodes and encounters with the system, an offender like this would have been declared a dangerous offender in the blink of an eye. Those provisions were cleaned up at Mr. Turner's and Mr. Trudeau's initiative.

In any event, Mr. Klippert pleaded guilty in August 1965 to four charges of committing acts of gross indecency. After his sentencing, not content that he was sentenced, the Crown made application to declare him a dangerous offender. Mr. Justice Sissons made the finding and imposed a sentence of preventive detention.

Honourable senators, preventive detention is a severe sentence. Two psychiatrists testified that Mr. Klippert had never caused any injury or pain to any individual and was unlikely to cause pain or injury to anyone in the future. Further, he would likely recommit the same offence with other consenting male adults. In short, Mr. Klippert was a homosexual man and most likely to remain one. Judge Sissons declared Klippert a dangerous offender because he was a practising homosexual.

Mr. Klippert's appeal to the Court of Appeal in the Northwest Territories was dismissed. He appealed to the Supreme Court of Canada. That court dismissed his appeal. This is the case and the judgment that spurred action on changing the criminal law.

Honourable senators, the reason I know this is that I have had the fortune of having met with the gentleman who conducted the study for Privy Council Office.

Interestingly, in this Supreme Court decision, Chief Justice J. Cartwright and Justice Emmet Hall dissented and indicated that they would have allowed the appeal. The result, honourable senators, was that the law was changed. The Criminal Code was amended on the inspiration of their dissenting judgment. Chief Justice Cartwright wrote the reasons, which founded part of the government's political decision to decriminalize homosexual sexual acts between consenting adults. In those reasons, Chief Justice Cartwright wrote that Mr. Klippert was neither violent nor harmful to anyone, and had engaged sexually only with consenting adults — remember, the issue was the declaration of a dangerous sexual offender. Chief Justice Cartwright wrote:

> I am glad to arrive at this result. It would be with reluctance and regret that I would have found myself compelled by the words used to impute to Parliament the intention of enacting that the words "dangerous sexual offender" shall include in their meaning "a sexual offender who is not dangerous"... I think it improbable that Parliament should have intended such a result.

The new statute did not spare Mr. Klippert his sentence. However, mercifully, he was released on parole two years later in 1971.

As I said before, honourable senators, when I was on the National Parole Board, I studied this case exhaustively.

Honourable senators, I would like to provide some insight into the intellectual background of the Criminal Code changes. Mr. Martin refers to the democratic deficit. Well, I could also say there is a "justice deficit" or a "moral deficit." I shall now give a concrete example of the thinking that formed the basis for the actions to decriminalize homosexual sexual acts between consenting adults. I shall now give part of what I would consider the intellectual or conceptual framework for re-examining the criminal law.

• (1510)

Honourable senators, Mr. Turner as well as Mr. Trudeau, as were most people at the time, were very mindful of a report that came out of England. That 1957 report was called, "Report of the Committee on Homosexuality Offenses and Prostitution." Sir John Wolfenden chaired that committee. That report bears his name to this day. It is excellent must-reading and is known as the Wolfenden report.

Minister of Justice John Turner, when he introduced the amendment to the Criminal Code on January 23, 1969, cited this report in his second reading speech on Bill C-150. Mr. Turner quoted directly from the Wolfenden report. Of course, my style, my technique, is to quote from the original source, because honourable senators would be amazed at how many mistakes are made daily. Mr. Turner said as follows, and the Wolfenden report read as follows:

> Unless a deliberate attempt is to be made by society, acting through the agency of the law, to equate the sphere of crime with that of sin, there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business. To say this is not to condone or encourage private immorality. On the contrary, to emphasise the personal and private nature of moral or immoral conduct is to emphasise the personal and private responsibility of the individual for his own actions, and that is a responsibility which a mature agent can properly be expected to carry for himself without the threat of punishment from the law.

Honourable senators, this is very important because we have seen the practical, intellectual and legal foundations for bringing about that change in 1969. As honourable senators know, we have so many debates here and so little of this information is ever put on the record. I, being antiquarian by nature, love to unearth this material, especially since I have spent so much of my life reading and studying it.

Honourable senators, I do not understand how the law and the current social situation has leaped from the notion that the law should not inquire into people's private sexual lives, either to condemn or to censure. If the principle is that the law should not inquire, I do not understand how we have moved from a position that the law should not inquire or condemn and the Criminal Code should not intrude to the current position that the law must inquire and not only not condemn but approve. That is what we are dealing with in this whole phenomenon of marriage and the claims of some homoerotic persons that to not be allowed to marry is somehow a violation of their dignity.

Honourable senators, marriage is not now and has never been a right. Marriage has always been a grand privilege at the hand of Her Majesty's Royal Prerogative. That is the funny thing about marriage and divorce. Two people cannot marry nor divorce themselves. It is an interesting thing. The other party in both is Her Majesty. Her Majesty is a party to every single marriage and every single divorce. The thing about a marriage is that, once that marriage bond has been formed and pronounced upon, usually by ministers of a church, there is no voluntary act that the two parties can take to end their marriage in and of their own voluntary wishes. It involves a decree of Her Majesty. Marriage is a unique and a very important social institution.

Honourable senators, I want to move from here to hearing some poets on the question of their homosexuality. I have often found it helpful, when understanding fails in an intellectual way, to look to the muses, to the poets, to the playwrights, because they have ways of crystallizing words in profound and poignant ways.

The first one I should like to cite is Jean Genet. For those of you who no longer remember him, he was a great French novelist and playwright in what is known as the French Theatre of the Absurd, which was post-World War II.

Jean Genet had a hard, hard life. He was an orphan and a thief. He spent much of his youth in prison. He was discovered by John Paul Sartre and became one of France's Men of Letters. It is interesting, because his play that captured North America's attention greatly was the play called *The Blacks — Les Negres*. It was well reputed and well known at the time.

There is a homosexual writer by the name of Edmund White, who, in 1993, wrote and published a biography of Jean Genet entitled, *Genet: A Biography*. In this book, he wrote of a 1964 interview between Madeleine Gobeil and Jean Genet. White quoted Genet as follows:

> Pederasty was imposed on me like the colour of my eyes, the number of my feet. Even when I was still a kid I was aware of being attracted by other boys, I have never known an attraction for women. It's only after I became conscious of this attraction that I 'decided', 'chose' freely my pederasty, in the Sartrean sense of the world. In other words, and more simply, I had to accommodate myself to it even though I knew that it was condemned by society.

Honourable senators, later in White's book, his biography of Genet, he records an undated letter from Jean Genet to Jean Paul Sartre.

• (1520)

In this letter, Genet writes about his homosexuality because he and Jean Paul Sartre had an intellectual exchange about this phenomenon. It is very troubling and well articulated, but it tells of the torment in which Jean Genet lived. Genet stated, as quoted by White in this biography:

> In any event the significance of homosexuality is this: A refusal to continue the world. Then, to alter sexuality. The child or the adolescent who refuses the world and turns toward his own sex, knowing that he himself is a man, in struggling against this useless manliness is going to try to dissolve it, alter it; there's only one way, which is to pervert it through pseudo-feminine behavior. That's the meaning of drag queens' feminine gestures and intonations. It's not, as people think, nostalgia about the idea of the woman one might have been which feminizes, rather it's the bitter need to mock virility....
>
> Significance of pederastic love: it's the possession of an object (the beloved) who will have no other fate than the fate of the lover. The beloved becomes the object ordained to 'represent' *death* (the lover) in life. That's why I want him to be handsome. He has the *visible* attributes when I will be dead. I commission him to live in my stead, my heir apparent. The beloved doesn't love me, he 'reproduces' me. But in this way I sterilize him, I cut him off from his own destiny.
>
> You see it's not so much in terms of sexuality that I explain the faggot, but in direct terms of death....
>
> As for the appearance, at certain moments, of pederasty in the life of a normal man, it's provoked by the sudden (or slow) collapse of the life force. A fatigue, a fear to live: a *sudden refusal of the responsibility* to live.

Honourable senators, Genet contradicts the notion of the homosexual lifestyle as gay. He says it is a death style, in very poignant words. I was very informed of Genet; he was a great icon, but today many have forgotten who Genet was, and some of the younger generation do not seem to know him, but in his day he was at the top of the playwrights.

There is another playwright. I was once in a Tennessee Williams phase and read *A Streetcar Named Desire, The Milk Train Doesn't Stop Here Anymore* and so forth. I want to cite Tennessee Williams from his 1970 play entitled *Confessional*. This play deals with homosexuality. The characters are a young man, a boy and so on. They do not seem to have names, per se. About certain homosexual practices, this is what Tennessee Williams wrote in his play. Young Man said:

> There's a coarseness, a deadening coarseness, in the experience of most homosexuals. The experiences are quick, and hard, and brutal, and the pattern of them is practically unchanging. Their act of love is like the jabbing of a hypodermic needle to which they're addicted but which is more and more empty of real interest and surprise.

Honourable senators, there was a period in my life when many of my friends were in the theatre. I knew many playwrights and authors. We should look at these insights and try to understand what they mean. It is important to spend some time in life inquiring into what things mean. I have counted among my dearest friends numerous homosexual people. There is one to whom I would almost like to pay tribute. He died of AIDS, but he was one of my strongest supporters when I ran in Rosedale, and his death was a great loss.

Honourable senators, today I am letting homosexual persons speak. I shall now turn to the debate in this country among homosexual people themselves on the question of marriage and the court challenges that are moving ahead. Interestingly, no information has been put before us in this regard. We have never had a debate on this. Nothing has ever been put before us about the needs or the wants of homosexual persons in this country in respect of marriage. We know what the activists say, but we do not know what the ordinary people out there say. I want to tell honourable senators that most of these people go about their lives on a daily basis in very ordinary ways without much concern for some of these issues, and we forget that quite often.

I thought I would record some of the debate in the country on this question. I would first like to quote an article from *Xtra West,* the western version of a major homosexual newspaper, which sometimes claims to be the voice of the homosexual community.

In the September 16, 2001 issue of *Xtra West*, in an article entitled "No, no, no to marriage rights," Managing Editor Gareth Kirby wrote:

> I hope they lose the legal fight for marriage equality rights.

There! I said it, and I'm glad I got it off my chest.

I hope, I profoundly hope, that gays and lesbians are never allowed to marry in Canada in the same way that straights can marry. I don't want to have even the option of doing that in my life. I don't want you to have the option of doing it in your life. And I don't want those couples who are taking the issue to the Supreme Court of Canada to win their case and have that option.

Not that they aren't good people. Not that I don't admire their spunk, their willingness to stand up for what they believe in. But I think their argument is wrong, contrary to what our movement has always been about, and will cause permanent damage to gay culture.

In the last year, this paper has repeatedly brought you arguments on both sides of the issue of queer marriage. In the last couple of issues, local queers — including lesbian icon and author Jane Rule — have spoken up clearly in opposition to a legal fight for queer marriage....

And that, dearest readers, is the main reason why I hope Egale and the queer litigants lose the court case: it boils down to culture.

In our culture, we haven't created the same hierarchy as has heterosexual culture. We know that love has many faces, and names, ages, places to..., positions to... and so on.

We know that a 30-year relationship is no better, no better, than a nine-week, or nine-minute, fling — it's different, but not better. Both have value. We know that the instant intimacy involved in that perfect 20-minute blowjob in Stanley Park can be a profoundly beautiful thing. We know a two-year relationship where people live apart is as beautiful, absolutely as beautiful, as a 30-year relationship where people live together. We know that the people involved in an open relationship can love each other as deeply as the people in a closed relationship.

We know that sometimes it's best for a relationship to end, that it's a terrible shame to throw away the love we invested in that lover, and that ex-lovers can make the best "sisters." We know that you can become closer to your best friend than your 30-year lover, telling that friend things you'd never tell your life partner.

All these things are part of the spectrum of love. And love, in gay culture, is a spectrum, not a hierarchy. That's our culture.

In much of straight culture, love is stuck in a hierarchy. The ceremony, the piece of paper, the government recognition, the tax benefits, the high cost of exit — all these are intended to create an aura around marriage that suggests it's better than the alternatives.

Marriage belongs to heterosexual culture and we should respect that. It's a ceremony tying a woman and a man together (though I would argue that marriage inherently puts the woman in a subservient position).

Not that marriage works, of course. It is a morally bankrupt institution...

Valuing honesty and honouring lust, we almost always open up our relationships to sex with other people after a few years. A recent federally funded health study of Vancouver gay men found that only two percent were in long-term relationships.

• (1530)

That is the number that is used quite often — 2 per cent or 1 per cent in long-term relationships.

A similar study of straights would, no doubt, have found some 80 percent or more were in long-term relationships....

Queers form loving relationships, that's for sure. But they're not the same as the marriage relationships that so many straights form. We should celebrate that instead of trying to pretend that we're just like them.

Instead of demanding that the courts and government lock us into the same straight-jacket that so many straights are in, we would do better to notice that so very many straights are learning from our culture, are rejecting and leaving marriage....

The lawyers and politicians in our community have run amuck on this one. They need reigning in. I, for one, will not donate a single penny to any fight for marriage recognition. The provincial NDP government's support of gay marriage won't play a role in helping me to decide who to vote for in the upcoming election. And I plead with the nation's politicians and justices to turn away from these people. They don't represent the reality of what our relationships are about. And they're out of touch with what our movement is about at its heart — freedom, not equality. Building a better world, not settling for equal treatment in the same world. Loving relationships, not hierarchy.

Honourable senators, that was the managing editor, Mr. Gareth Kirby, speaking.

On April 5, 2001, in the newspaper *Xtra*, Tom Yeung wrote an article about Jane Rule. Jane Rule is another icon in Canada. The article was called "Lawlessness as lifestyle: Icon Jane Rule refuses to apply for survivor benefits." Tom Yeung wrote about her article in the spring edition of *BC Bookworld*, headlined "The heterosexual cage of coupledom." He quoted Jane Rule describing the pursuit of marriage and common-law rights as "the heterosexual cage of coupledom." Yeung quoted Jane Rule saying:

> Over the years when we have been left to live lawless, a great many of us have learned to take responsibility for ourselves and each other, for richer or poorer, in sickness and health, not bound by the marriage service or model but singularities and groupings of our own invention....
>
> To be forced back into the heterosexual cage of coupledom is not a step forward but a step back into state-imposed definitions of relationship. With all that we have learned, we should be helping our heterosexual brothers and sisters out of their state-defined prisons, not volunteering to join them there.

Yeung continued:

> Rule's column also criticized activists — like Egale Canada and British Columbia MP Svend Robinson — for championing the marriage fight.

Yeung quoted Rule again saying that:

> "I really think when organizations and public people like Svend get into it they're seen as leaders and I think they're influential," says Rule. "If they say it's important, I think people who are uncertain, or haven't thought a lot about it, or haven't lived long enough to know, pay more attention than they should."

Jane Rule is the author of *Desert of the Heart*, which was made into a Hollywood movie, and *The Young in One Another's Arms* and *Against the Season*, and was a groundbreaking writer on lesbian issues back in the 1960s and 1970s.

Finally, in this round of my speech, honourable senators, I want to cite another article, from the September 6, 2001, edition of the newspaper *Xtra*.

**The Hon. the Speaker** *pro tempore***:** I am sorry, Honourable Senator Cools, but your time has expired.

**Senator Cools:** May I have leave to complete that thought, honourable senators?

**The Hon. the Speaker** *pro tempore***:** Is leave granted?

**An Hon. Senator:** No.

**Senator Cools:** That is okay with me. I was expecting it, and I always see Senator Robichaud ready and so eager just to —

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

[*Translation*]

**Hon. Fernand Robichaud:** Honourable senators, I call a point of order. It contravenes the practices of this house to allude to another senator, particularly now, and impute false motives to him. I therefore ask the Honourable Senator Cools to withdraw her remarks.

[*English*]

**Senator Cools:** There is nothing false here, honourable senators. You can examine the record and frequently find Senator Robichaud doing things to me. As a matter of fact, I examined the record just last night and I found four instances in the last few weeks.

No, listen; I was raised by a Methodist mother. I apologize.

On motion of Senator Banks, debate adjourned.

## CRIMINAL CODE

### BILL TO AMEND—THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

> Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator LaPierre, for the third reading of Bill C-250, to amend the Criminal Code (hate propaganda),
>
> And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Stratton, that the bill be not now read a third time but that it be amended, on page 1, in clause 1, by replacing lines 8 and 9 with the following:
>
> "by colour, race, religion, ethnic origin or sex.".

**Hon. Anne C. Cools:** Honourable senators, I rise today to speak to Senator St. Germain's amendment.

Honourable senators, today in my remarks on Bill C-250, I thought I would take a different approach and share with senators some interesting statements from the record of the Senate committee proceedings on Bill C-250. I would like to begin by citing one witness who appeared before the committee. Her name is Dawn Stefanowicz. I will let the record speak for itself. She said:

> Thank you for giving me this opportunity to speak. My name is Dawn Stefanowicz. I am married, with two children. I grew up in Toronto during the 1960s and 1970s with a homosexual father whom I deeply loved. My father and many of his partners have passed away from AIDS.

Honourable senators, I am reading from the proceedings of the Standing Senate Committee on Legal and Constitutional Affairs, Issue No. 4, page 4:45, for anyone who wants to look up the record. She continued:

> I lived with my homosexual father in a highly sexualized environment. My mother and my two brothers and myself lived in this state. I was exposed to sexually inappropriate experiences from a young age, including pornography, drugs, alcohol and indecent sexual acts. I was exposed to under-age male recruitment, voyeurism, exhibitionism, sadomasochism, fetishism and group sex — for example,

> my father with 12 men. I was exposed to sexually explicit language. When I was eight, two of my father's sexual partners committed suicide after my father betrayed them.

Honourable senators, I must tell you that this woman is a very gentle, nice and a pleasant person. This is rare testimony because she talks about her childhood and her life in this household. She is deeply sensitive.

Honourable senators must remember that in my lifetime I have counselled a lot of people. I have done a lot of work with families, patching up problems and so on.

Dawn Stefanowicz continued on page 4:46:

> My life was typical of children in the GLBT subcultures. Such environments are not good for children. These experiences affected me deeply and robbed me of my innocence, my conscience, and the ability to exercise my voice. I could not express any opposition toward my homosexual father's lifestyle. None of us could.
>
> I lived firsthand the secrecy, neglect, abandonment, manipulation, abuse and stress of growing up with a homosexual father whose sexual obsessions and imperative compulsions left my brothers and me unprotected.

• (1540)

> Chairman and senators, stop Bill C-250. Bill C-250 will remove my right as a child who grew up in this situation to the freedom of speech and freedom of expression to state opposition to particular forms of sexual behaviours, sexual diversity and family diversity.
>
> My concern is for this and future generations of children who are and will be exposed to GLBT sexual diversity and family diversity. All human beings are created equal, but not all sexual behaviours are equal. These kinds of sexual behaviours and lifestyles do not create healthy, safe and secure home environments for children. Should Bill C-250 pass, I would not be able to oppose the many dangerous, risky and unhealthy homosexual sexual practices like sodomy, oral-anal sex and sadomasochism and others, and their social consequences for society.
>
> Should Bill C-250 pass, I fear I could be prosecuted for speaking about the damaging repercussions and severe ramifications of homosexual sexual practices. Therefore, I am opposed to Bill C-250.

Honourable senators she goes on and says, for example:

> Bill C-250 will rule out any moral objections, bias and prejudice on the basis of sexual orientation. Under the guise of the undefined term "sexual orientation," this bill will protect persons who practise pansexuality from private and public criticism.

[ Senator Cools ]

That is interesting. She is saying that Bill C-250 will inhibit the expression of moral opinion on these matters. In other words, she is referring to any opinion which considers certain homosexual practices sinful or any opinion which says it is immoral or any opinion which says sometimes those behaviours, such as sodomy or rimming, are dangerous and unhealthy.

She continued:

> Proponents of Bill C-250 will not define the term "sexual orientation," claiming that it has been used undefined for years in Canadian law, which it has. By not defining it, we open it to include any and all sexual orientations. Sexual orientation is fluid, evolving, a slippery slope, and includes diverse legal or illegal pansexual practices exercised privately and publicly. On the other hands, we are legitimizing harmful and dangerous sexual behaviours. Social recognition for GLBT is not a good enough reason to add sexual orientation to the genocide sections of the Criminal Code. This will not reduce hate crimes.

Interestingly, honourable senators, later on in the question and answer period, she said, at page 4:62:

> I have absolutely no hatred of any gay, lesbian, bisexual, transgendered or transsexual person. I was raised to be very open-minded, to be very accepting and tolerant...

She continued to talk about her father. In another paragraph, she stated:

> We will hear one perspective. It is a political perspective. It is a small group that will come together and organize. They are not speaking on behalf of the children and they are not speaking on behalf of all gays, lesbians and bisexual people.

This is subject matter that I have read very closely. Honourable senators will remember that I have done a lot of work with many homosexual people and that I have many dear friends who are homosexual.

I found the evidence of Dawn Stefanowicz very moving, to hear about how children grew up in those circumstances.

Honourable senators, I would now like to move an amendment. The amendment I wish to propose comes from my history of social work and my understanding of the damage that is done to human beings emotionally and psychologically and, quite often, the mistreatment that mental incompetence has invoked.

MOTION IN AMENDMENT

**Hon. Anne C. Cools:** Honourable senators, I should like to move, seconded by Senator St. Germain:

> That the motion in amendment be amended by adding, before the words "ethnic origin", the words "mental or physical disability,".

Honourable senators, I have always been concerned with the condition of the disabled and the mentally ill. I understood, for example, that during World War II there were many attempts in Hitler's Germany to extinguish people who were seen to be either physically defective or mentally defective, even unto Hitler's plan to breed spectacular Germanic women to produce the perfect or superior race.

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

**Hon. Lowell Murray:** As honourable senators know, I have a motion on the Order Paper related in a procedural way to this bill. I will speak to that motion when it is called. The subamendment just moved by our friend Senator Cools, however, gives me an opportunity to intervene in the debate on the bill itself.

We have before us an amendment moved by Senator St. Germain some time ago, an amendment moved by an honourable senator who has been quite forthright in his view that he is opposed to the principle of the bill and would oppose it in any case.

That amendment has been followed by three subamendments in succession, all of them, I think it is fair to say, moved by honourable senators who have made clear their principled opposition to this bill. In each case, debate has ensued and a standing vote has been called. With the cooperation of the chief opposition whip, the standing vote has been deferred until the next day.

It must be clear to honourable senators where we are and where we are heading with this bill.

• (1550)

This process can go on for a very long time, and it would have the effect — I have no doubt the intended effect — of ensuring that the bill itself would not come back to the Senate for a final disposition in any reasonable time frame. When I speak of reasonable time frame, I allude, of course, to the possibility, perhaps even the likelihood, of a fairly early dissolution of this Parliament.

That, it seems to me, is the strategy with which we are faced. I will say more about that and about the remedy that I am proposing when the time comes for me to speak to my motion.

However, it needs to be said — and I here address myself to my former colleagues in the former and now extinct Progressive Conservative Party — that the strategy to which I refer can only work with their cooperation. In particular, the strategy requires that our friend, the chief opposition whip, defer votes from day to day as each subamendment is presented.

Senator Stratton has his own views of the bill. We all know that. He has made that clear. I respect him and his views. However, on a matter of this kind, which is a private member's bill, or, indeed, in any kind of bill, the whip is not an autonomous actor in the parliamentary process. He is part of the opposition leadership. He is one of two people in this Senate who are authorized to defer votes. I simply say to my friends that they will have to take full responsibility for the disposition or otherwise of this proposed legislation.

As to the substance of the bill, I am the first to acknowledge that there are principled arguments that have been and can be made against hate propaganda legislation of any kind. Most of those arguments were thoroughly canvassed in the 1960s before the present provisions of the Criminal Code were brought into being. Those principled objections turn often on the question of freedom of speech and whether it is not better to put up with speech, no matter how hurtful or erroneous or bizarre, rather than abridge in any way our freedom of speech.

The principled argument against hate propaganda legislation also turned on the issue of whether the existing provisions of the Criminal Code were not adequate in themselves without a need for these, as they were then, new provisions.

As I say, these principled objections were canvassed pretty thoroughly in the 1960s, and I have some recollection of them. Parliament, in its wisdom, decided in 1970 that, on balance, there ought to be provision in the Criminal Code forbidding the preaching of genocide or of violence or of hatred against people on the basis of their colour, their race, their religion or their ethnic origin. The principled arguments have been settled. We have provisions in the Criminal Code that prohibit hate propaganda against the groups I have mentioned.

The question that is before us is whether there is any valid reason for not including sexual orientation in that same law. There is no valid reason for not including it. We are talking about homosexuals. We are not talking about the crimes of pedophilia or polygamy or bestiality or whatever. We are talking about homosexuals. We know who we are talking about. Homosexuals were subjected to the most vicious persecution for centuries.

I thought one of the more telling moments in the debate on second reading of this bill was when two of our colleagues, who have a more personal and direct connection with the memory of the horrors of the Holocaust, rose to support this bill, one of them recalling to our minds that homosexuals had been singled out by the Nazis for extermination.

The question that occurs to me is not whether we should include protection for people on the basis of sexual orientation in this law; the question that occurs to me is why we have taken so long to get around to it.

Honourable senators, when the time comes, I will place on the record some of the legislative history of this bill, but I want to take up something that Senator Cools said before she moved her subamendment when she was reading into the record some of the comments of one of the witnesses before the committee who alleged that no longer would she be able to speak out as to the immorality of certain sexual practices.

Let me say, as one who has received, as I am sure you all have, numerous communications on the subject of this bill, that I find it very sad and very troubling to have received e-mails, one in particular that I can think of, an identical e-mail sent to me by literally thousands of people, alleging that if this bill were passed, the Bible would be banned; mothers and fathers would be thrown in jail for counselling their children that homosexual acts were immoral or unhealthy or dangerous.

Honourable senators, it is sad that these good people — believers, as many of us are; practising Christians, as many of us try to be — have been misled and been led to believe this stuff. You have only to read and look at the record of these laws in the Criminal Code, since they have been there for 35 years, to get answers. Even the more measured statements of some of the religious leaders, and I include the Roman Catholic bishops, strike me as being quite without justification. They express concerns about freedom of religion.

Honourable senators, there is nothing in this bill, there is nothing in the law that it amends, and there is nothing in the case law or in the jurisprudence of 35 years on this law that substantiates, much less justifies, those apprehensions. They are simply unjustified.

You can read former Chief Justice Brian Dickson on the question of the standard of proof that will be required for a successful prosecution, the high and very rigorous standard of proof as to intent, as to what it means to promote, to foment hatred, and then the definition that he uses of hatred. This is a very high standard of proof, and it is little wonder that only four or six prosecutions have been launched under this law in all those years, and that only one or two of them were successful.

• (1600)

Then there are the defences that are written into the bill, that people have mentioned, including the defence of preaching your religious convictions on these matters and the fact that, for some of these prosecutions, the fiat of the Attorney General is required. There is no justification, no substantiation for the kinds of concerns that have been expressed in the e-mails that we have received and in the kind of alarmist statements that have been made, but made nevertheless by the witness quoted by Senator Cools in her speech.

We will have to make a choice about this bill. I say this to the members of the official opposition. I know where Mr. Harper, the leader of their party, stands. He is against it.

**Hon. Gerry St. Germain:** How do you know?

**Senator Murray:** He led every one of his members into the House of Commons to vote against it at third reading. That is where he stands.

**Senator St. Germain:** Senator Murray is misrepresenting the facts, and he has done this before.

**Senator Murray:** I beg your pardon. At third reading of this bill in the House of Commons, Mr. Harper led, I believe, every member of his party who was present in there to vote against it. He may have been joined by some Liberals, for all I know, and some Progressive Conservatives. The Leader of the Opposition voted against the bill. I am anticipating my next motion. The point is that they got to vote. That is all I am asking for here. I hope we will have an opportunity to vote, too, on this bill.

A choice has to be made. The party of which I speak has been quite consistent. In the 10 years that party has been in the House of Commons, they have never supported a single human rights initiative or a single initiative for minority rights.

I say to my friends that they can don that mantle if they want or they can follow the examples of previous leaders: Diefenbaker, Stanfield, Clark and Mulroney.

**Senator Tkachuk:** My leaders!

**Senator Murray:** Not one of them was ever found wanting when a human rights issue was before the House. With respect to this bill, senators can don the mantle of the Reform/Alliance, or they can be consistent with the position taken by Progressive Conservative leaders over the years. It is with some confidence that I leave that decision to you.

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

**The Hon. the Speaker** *pro tempore*: I regret to inform honourable senators that the time for Senator Murray's speech has expired.

**Senator Cools:** On a point of order, I should like to challenge what Senator Murray said about previous Progressive Conservative leaders.

**Some Hon. Senators:** Order!

**Senator Cools:** In my reading of the development of this —

**Hon. Serge Joyal:** Senator Murray's time has expired. If a question is to be put to Senator Murray, he must stand and seek leave from the house.

**Senator St. Germain:** Senator Cools is on a point of order.

**Senator Cools:** I rise on a point of order. Senator Murray invoked the name of John Diefenbaker. My understanding is that, back in the 1960s and early 1970s when these sections of the Criminal Code were created, the Right Honourable John Diefenbaker opposed them.

**Some Hon. Senators:** Oh, oh!

**Senator Cools:** Oh, stop hissing!

**The Hon. the Speaker** *pro tempore*: Are senators ready for the question?

**Some Hon. Senators:** Question!

**The Hon. the Speaker** *pro tempore*: It is moved by the Honourable Senator Cools, seconded by the Honourable Senator Tkachuk:

> That the motion in amendment be amended by adding before the words "ethnic origin" the words "mental or physical disability."

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

**Some Hon. Senators:** Yea.

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore*: Those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

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

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore*: In my opinion, the nays have it.

*And two honourable senators having risen:*

**The Hon. the Speaker** *pro tempore*: Honourable senators, how long shall the bells ring?

**Hon. Terry Stratton:** Honourable senators, according to rules 67(1), (2) and (3), in this particular instance I should like to defer the vote to the next sitting of the Senate.

**Hon. Rose-Marie Losier-Cool:** According to rule 67(3), when the next sitting of the Senate is a Friday, we defer the vote to the next sitting day, which would be next week.

**The Hon. the Speaker** *pro tempore*: The vote is deferred to the next sitting after Friday.

## NATIONAL SECURITY AND DEFENCE

### MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF NEED FOR NATIONAL SECURITY POLICY—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Kenny, seconded by the Honourable Senator Fairbairn, P.C.:
>
> That, notwithstanding the Order of the Senate adopted on February 13, 2004, the date for the final report by the Standing Senate Committee on National Security and Defence on the need for a national security policy for Canada be extended from June 30, 2004, to September 30, 2005.—(*Honourable Senator Lynch-Staunton*).

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have spoken with Senator Kenny. My remarks on Order No. 73 will also apply to Senator Day's motion of yesterday. I know Senator Chaput has a similar motion. Committees are finding it difficult to set schedules because of the uncertainty of the election. It is as simple as that.

Since September and since we have been back, we have been working under the threat of an election and being given deadlines to meet because of the possibility of prorogation or dissolution that, so far, has not taken place. We came back after Easter and the rumour mill started again to the effect that an election will not be called until the fall. As soon as we relaxed, the rumour mill started again. An election may be called in the next two weeks. We are all being conditioned by the possibility of an election date being called at any time, and it is affecting the work of all of us as parliamentarians. This is absolutely wrong. If nothing else, it argues in favour of fixed terms. That was my only point.

There is another argument that, if we had fixed terms, if we knew the length of the mandate and that it could not be tampered with, then we could fix our schedules accordingly. I do hope that the next government, whoever it may be, will learn from this and introduce a motion or a bill to that effect so that we can debate the issue thoroughly.

I did not have any objections. I wanted to find out the purpose for this motion and to try to plead again for a more rational approach to our work. To do our best work, we should know the length of the mandate of any government.

[*Translation*]

**Hon. Fernand Robichaud:** Honourable senators, I want to comment on what the Honourable Senator Lynch-Staunton said.

I have difficulty understanding that an extension to September 30, 2005, could lead to more permanence. An extension to September 30, 2005, would mean exceeding the year for which the Standing Committee on Internal Economy, Budgets and Administration normally allocates budgets.

If the date of March 31, 2005, had been upheld, I would have undoubtedly been more willing to grant this extension. The Leader of the Opposition normally has serious questions about such things. However, unless I can be convinced that there is no cause for concern, should this motion not be amended to read instead "to March 31, 2005"? This would take us to the end of the year for which the Standing Committee on Internal Economy, Budgets and Administration normally allocates budgets.

Does the honourable senator wish to comment on my proposal?

• (1610)

**Senator Lynch-Staunton:** There is no need for me to amend the motion. It is not mine. All I want to do is to raise the issue. I agree that it is completely ridiculous to ask for an extension until the end of September, but I accept the reasoning that led to this request. Unfortunately, the author of the motion is not here; perhaps we could suspend the motion and, when he returns, ask him if he would agree to a deadline of the end of the fiscal year.

On motion of Senator Robichaud, debate adjourned until the next sitting of the Senate.

[*English*]

SUBCOMMITTEE ON VETERANS AFFAIRS AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF VETERANS' SERVICES AND BENEFITS, COMMEMORATIVE ACTIVITIES AND CHARTER

On the Order:

> Resuming debate on the motion of the Honourable Senator Meighen, seconded by the Honourable Senator Biron:
>
> That, notwithstanding the Order of the Senate adopted on February 26, 2004, the date for the final report by the Standing Senate Committee on National Security and Defence on Veterans' Services and Benefits, Commemorative Activities and Charter be extended from June 30, 2004, to September 30, 2005.—(*Honourable Senator Lynch-Staunton*).

**Hon. Joseph A. Day:** Honourable senators, on behalf of the Chair of the Subcommittee on Veterans Affairs of the Standing Senate Committee on National Security and Defence, I am prepared to accept the date of March 30, 2005, as suggested by the Honourable Senator Robichaud.

With regard to the item that we have just adjourned, I notice that Senator Forrestall, who is Deputy Chairman of that committee, is here and may be able to give consent also so that we can get this done.

**Hon. J. Michael Forrestall:** Honourable senators, the comments and observations of Senator Robichaud are very appropriate. The chair of the committee has been called away suddenly to meet with Minister McLellan on closely related issues. He asked me to accommodate as nearly as I could the wishes of the chamber in this regard. If there is general agreement, we would be pleased to accept the date that has been suggested by Senator Robichaud.

**Senator Day:** I believe that Senator Forrestall is asking that we revert to Order No. 73, debate on which has just been adjourned. Could we deal with Order No. 75 and then revert to Order No. 73?

**The Hon. the Speaker** *pro tempore***:** Is it agreed that Order No. 75, as amended, be adopted?

**Hon. Senators:** Agreed

Motion as amended agreed to.

[*Translation*]

COMMITTEE AUTHORIZED TO EXTEND DATE OF FINAL REPORT ON STUDY OF NEED FOR NATIONAL SECURITY POLICY

Leave having been given to revert to Motion No. 73 on the Order Paper:

On the Order:

> Resuming debate on the motion of the Honourable Senator Kenny, seconded by the Honourable Senator Fairbairn P.C.,
>
> That, notwithstanding the Order of the Senate adopted on February 13, 2004, the date for the final report by the Standing Senate Committee on National Security and Defence on the need for a national security policy for Canada be extended from June 30, 2004, to September 30, 2005. —(*Honourable Senator Lynch-Staunton*).

**Hon. Fernand Robichaud:** Honourable senators, I give my consent. I had asked for adjournment of the motion so that we could revert to Motion No. 73, but in view of Senator Forrestall's comments about the date I had mentioned, I have no further objection to the question being put.

[*English*]

**The Hon. the Speaker** *pro tempore***:** Is it agreed that Order No. 73, as amended, be adopted?

**Hon. Senators:** Agreed.

Motion in amendment agreed to.

## THE SENATE

CRIMINAL CODE—MOTION TO DISPOSE OF BILL C-250—DEBATE ADJOURNED

**Hon. Lowell Murray,** pursuant to notice of April 21, 2004, moved:

> That it be an Order of the Senate that on the first sitting day following the adoption of this motion, at 3:00 p.m., the Speaker shall interrupt any proceedings then underway; and all questions necessary to dispose of third reading of Bill C-250, to amend the Criminal Code (hate propaganda), shall be put forthwith without further adjournment, debate or amendment; and that any vote to dispose of Bill C-250 shall not be deferred; and
>
> That, if a standing vote is requested, the bells to call in the Senators be sounded for fifteen minutes, after which the Senate shall proceed to take each vote successively as required without the further ringing of the bells.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise on a point of order on the propriety of dealing with this motion at this stage because it is in conflict with the house order just passed stating that we agreed to hold the vote on the subamendment to Bill C-250 on Tuesday at 5:30 p.m. This motion calls for a similar vote to take place "the first sitting day following the adoption of this motion, at 3:00 p.m." There is a possibility the motion could be adopted today, tomorrow or Monday. If it were, we would have two orders of the Senate to have a vote on the same item.

Since a decision has already been taken on the vote, I suggest that any attempt to change the timing of that vote certainly cannot be made by this motion. Therefore, I would ask Her Honour to rule this out of order for the time being.

**Senator Murray:** Honourable senators, we have been through this kind of exercise before, not necessarily on time allocation motions but on motions where it was argued that one might have the effect of superseding the other. That remains to be seen. I have given notice of a motion that is perfectly in order. I suppose, by the same token, an honourable senator could have risen and suggested that a motion to defer the vote on the subamendment was out of order because it would conflict with the motion I already had on the Order Paper.

This really makes no sense. I have moved a motion of which I gave notice yesterday. It is in good form and properly before the Senate. The point the honourable senator has made is largely a debating point, it seems to me, not a point of order. In my opinion, the debate should be allowed to go forward.

[*Translation*]

• (1620)

**Hon. Fernand Robichaud:** Honourable senators, I lean strongly toward Senator Murray's position; he presented the motion in accordance with the *Rules of the Senate* since, after one day's notice, the motion is before this chamber, as the rules require.

I do not see how a point of order could prevent us from debating the motion at this time.

[*English*]

**Hon. Anne C. Cools:** Honourable senators, Senator John Lynch-Staunton is absolutely correct — that is, in the previous proceeding on Bill C-250 the vote was deferred. That is now an order of the Senate. I am sure that Her Honour knows very well it is an order of the Senate, because on Tuesday, in accordance with the order, the Speaker or the Speaker *pro tempore* will rise and say that it is an order of the Senate and that the bells must ring so that a vote can go ahead.

Therefore, what Senators Murray and Robichaud are both arguing is a most interesting novelty, and a little amusing, actually, because what they are saying, somehow or other, is that an order of the Senate can simply be overcome by a particular motion. The fact of the matter is that that order is in position. Any attempt to repeal that order will have to follow the *Rules of the Senate*, which have to do with repealing and rescission by the Senate, which means it would have to be done with notice. That order cannot be repealed simply by moving on to this.

As a matter of fact, I would argue that for the Senate to move to debate on Senator Murray's motion is extremely out of order, and extremely irregular, and in point of fact undermining of the previous order. An order of the Senate is a very serious matter, and not so easily overcome. Senator Murray should know a lot better than that, because he was a leader here in this place. I am always surprised when senators do these kinds of things. The previous order is the order that the Senate is right now under command to obey. The Senate has ordered it. Therefore, that order has to be executed.

[*Translation*]

**Senator Robichaud:** Honourable senators, if we adopted the current strategy, it would mean that, when a senator properly presents a motion, in accordance with the *Rules of the Senate*, we could never hear the motion now before us.

The strategy of deferring the vote can continue as long as there is always someone to move an amendment who has not already done so on another amendment. This is one way of preventing an honourable senator from presenting a motion in the Senate.

Honourable senators, a motion presented in the Senate is not automatically adopted. The Senate must first adopt the motion. It is only then that the Senate indicates its desire to proceed in such-and-such a fashion. This does not mean that the process is automatic.

It means that there will be a debate on the motion and that the Senate will reach a decision that it will respect, while respecting other decisions that have been made. That is why I believe the debate on Senator Murray's motion should not be deferred.

[*English*]

**Hon. Terry Stratton:** Honourable senators, if I may, just briefly, on the question of not being able to speak, Senator Murray just spoke during the subamendment. There is opportunity to speak in certain instances throughout this. If we are going to speak on the debate as to Senator Murray's motion, that is one thing, but to reach a conclusion with respect to it is another entirely different item, and there is a conflict.

I should like to say something to Senator Murray regarding my position with respect to this bill. It would be interesting to note — and I am sure he would agree with me — that Prime Minister Diefenbaker and Prime Minister Mulroney would have had the intestinal fortitude to bring forward a government bill to deal with this issue. That should be the criticism of this chamber on that side. Honourable senators across should not address us as being the enemy. They are the enemy. They are the ones who lack the courage and intestinal fortitude to deal with this —

**An Hon. Senator:** Order!

**The Hon. the Speaker** *pro tempore*: I am sorry, but it is not a point of order.

**Senator St. Germain:** And you should be sitting on that side.

**Hon. Serge Joyal:** Honourable senators, I think the honourable leader has raised an important question, but I would submit an answer. I would ask honourable senators to read carefully rule 67(1), if they have it at hand. Rule 67(1) reads as follows:

> After a standing vote has been requested, pursuant to rule 65(3), on a motion which is debatable in accordance with rule 62(1), either Whip may request the standing vote be deferred as provided below.

Honourable senators, it says "may request." That is what happened. The honourable whip has requested, and the vote has been deferred. Does that mean it prevents the house, which is the master of its own proceedings, to decide differently later on? That is what is suggested as being the literal interpretation — that once the request has been granted, it is over forever, as long as the house has not disposed of the deferred vote. That is the legal nature of the request of the honourable whip of the official opposition.

My contention is that the standing order of the house gives the opportunity to either of the votes to defer, but the house is still master, later on, of its own proceedings and can decide to hold a vote differently if the house so wishes. I contend, therefore, that Senator Murray's motion is totally in order, because it offers the opportunity to this house to decide differently. Of course, if the house decides to the same effect as what has been requested by the whip, then the house acts accordingly; however, if the house decides differently, this house remains master of its own proceedings as long as the proceedings go.

Hence, Your Honour, my humble argument is that Senator Murray's motion is in order.

**Senator Lynch-Staunton:** You cannot do through the back door what should be done through the front door.

• (1630)

This house has agreed that there would be a vote on a subamendment at 5:30 p.m. on Tuesday. The government whip, Senator Losier-Cool agreed — and we supported her — that the vote would take place at 5:30 p.m. on Tuesday.

Can I have that confirmed by the Table? She said that because tomorrow is Friday, it will be Tuesday.

**The Hon. the Speaker** *pro tempore*: I said the next sitting after Friday.

**Senator Lynch-Staunton:** I am saying that Senator Losier-Cool said it would be Tuesday. It is important.

I am not discussing the content of the motion, except to point out that it asks us to vote on all questions related to Bill C-250, not just on the subamendment, but on all questions. That is a totally different vote from the one that we have agreed will take place at 5:30 p.m. on Tuesday.

I come back to the basic argument, honourable senators. We have a house order. If we feel that that should be taken at a different time and day, we have to revert to the house order, agree to debate it, and then change it to whatever we feel would be an improvement. However, that is not in front of us.

What we have in front of us is a motion from a member of this place saying, "Let us get rid of everything to do with Bill C-250, as soon as my motion is passed, at the next sitting at 3 p.m." That is in violation of a house order. It is premature to discuss it.

I am not discussing its propriety or whether this motion is in order or not. I shall do that at the appropriate time. I am saying now that it is premature, that it is in conflict with a house order and that, as such, it should be ruled out of order, for those reasons.

**Senator Cools:** Honourable senators, I should like to say that the term "master of its proceedings" does not mean that the Senate must not abide by its own rules.

It is interesting that Senator Joyal used the words "standing order," because that is precisely what it is. It is a standing order, as distinct from rules. At the turn of the century, standing orders replaced rules. What a standing order does is make orders that stand over time.

Honourable senators, what I am trying to say is that Senator Murray's motion can go ahead. My understanding is that no honourable senator is questioning whether or not it was given proper time and proper notice. What Senator Lynch-Staunton is saying is that it must wait to move ahead, for disposition and resolution, until the vote takes place on Tuesday.

I should like to draw the attention of honourable senators to rule 63(2). Perhaps we can look at that with some clarity.

Honourable senators must understand that the rules and the system of the Senate are constructed in such a way as to protect against a motion being passed or an order being created at two o'clock and another group of senators coming at four o'clock and making another order. The rules are created, in other words, on the premise that the Senate does not tolerate uncertainty or fickleness easily. Honourable senators, the entire system is constructed in such a way as to ensure that an order that has been passed cannot be changed by having a group of senators run outside and bring in another group of senators to change that order around.

Rule 63(2) speaks precisely to what the situation is, which is what Senator Lynch-Staunton has raised. Rule 63(2) states:

> An order, resolution, or other decision of the Senate may be rescinded on five days' notice if at least two-thirds of the Senators present vote in favour of its rescission.

Honourable senators, what is going on here is very strange. What is being asked by Senators Murray and Robichaud is for the Speaker — and I caution Her Honour to understand exactly what is going on here — to overcome the order that was put down just a few minutes ago.

I would submit to you, Your Honour, and to honourable senators, that if the Speaker by her ruling could overrule this order of the Senate, then she could overrule any other order of the Senate.

Based on what Senator Murray is saying, with regard to the ethics bill with which we dealt a few weeks ago, for example, all someone had to do was introduce another motion after the first question had gone down. The Senate is resistant. The nature of the common law is resistant to this kind of frivolity.

I caution that the Speaker of the Senate does not have the power to declare that the order that was passed a few minutes ago should be set aside. That is what Your Honour is being asked to do.

**The Hon. the Speaker** *pro tempore***:** If there are no further comments, honourable senators, I will leave the Chair for a few moments to discuss this matter with the Table. We shall resume at the call of the Chair.

The sitting of the Senate was suspended.

• (1650)

The sitting of the Senate was resumed.

**The Hon. the Speaker** *pro tempore***:** Honourable senators, the point of order raised by the Leader of the Opposition is that the motion of Senator Murray is in a possible conflict with the previous order of the Senate setting the vote for the subamendment on the motion in amendment respecting the third reading of Bill C-250.

This question is actually hypothetical. There is no conflict as of yet. This motion has not been adopted, nor has it been put to a vote.

I might also point out that, if there is a decision taken today on the motion of Senator Murray, it could be deferred, which would eliminate the anticipated conflict.

All of this is to say that, at the moment, there is no valid point of order.

Senator Murray will now speak to his motion.

**Senator Murray:** Honourable senators, I shall be quite brief. I do acknowledge that, in speaking without many notes, I did get ahead of myself during the debate on the subamendment and deployed some of the arguments that I might otherwise have deployed now. I will not repeat myself.

I will, however, begin by placing on the record something of the legislative history of Bill C-250, because I believe it is relevant to my motion, the purpose of which is to ensure that honourable senators will have the opportunity to vote and make a final disposition of Bill C-250.

I did not know this until quite recently, but I saw in a library document which indicated that this bill first appeared as long ago as June of 1990 as Bill C-326, a private member's bill brought forward by Mr. Svend Robinson, MP. More recently, it was introduced as Bill C-415 in the First Session of the Thirty-seventh Parliament. It was presented to the House of Commons on November 22, 2001, received second reading on May 29, 2002, and was referred to the Justice and Human Rights Committee. There it died on the Order Paper of that committee with prorogation of the First Session of the Thirty-seventh Parliament.

It came back again, this time as Bill C-250, in the Second Session of the Thirty-seventh Parliament. It was presented in the Commons on October 24, 2002, and, after second reading, went to the Justice and Human Rights Committee. That committee held, by my count, four hearings, at which a number of witnesses in support of or opposed to the bill were heard. The committee reported on May 27, 2003. That was followed by a debate at report stage and third reading, by my notes, on September 17, 2003. I have in front of me the divisions, of which there were at least two. I have the names of the members who voted pro and con, but that is only relevant to a spontaneous and unrehearsed exchange Senator St. Germain and I had earlier. I can let him have the details, if he is interested; I will not take time to place them on the record now.

Bill C-250, during the Second Session of the Thirty-seventh Parliament, came to the Senate on September 16, 2003, and the debate on second reading lasted the eight sitting days between September 24 and November 5, 2003. The bill then died on the Order Paper with prorogation of the Second Session of the Thirty-seventh Parliament.

Bill C-250 was reinstated in the present session which began on February 2, 2004. It came to the Senate and was spoken to in the debate on second reading on nine occasions between February 5 and February 20, 2004. It received second reading on that date and was referred to the Standing Senate Committee on Legal and Constitutional Affairs. That committee, by my count, held five meetings, at which a number of witnesses — whose names I will not read into the record — appeared in support of or opposed to the bill. The committee reported the bill without amendment on March 25. Debate began on March 26, and here we are.

On the one hand, there is no point imputing motives. On the other hand, there is no point being unrealistic. We have a situation in which we have serial subamendments with deferrals of votes. In my opinion, it is realistic to say that, if this continues, and it could, it is perhaps intended to prevent the bill from ever coming to a final vote here in the Senate.

Honourable senators, the purpose of this motion is to ensure that there is some finality to this. As I have indicated, various individuals and various parties voted pro and con on this bill when it was in the House of Commons. They were able to vote according to their principles, and I am simply asking, by this motion, that we guarantee, so far as we can, that honourable senators, whether they are opposed to or in support of this bill, have the same opportunity to vote according to their principles.

**Senator Joyal:** I move that the question be put.

**Senator Cools:** We cannot speak to the motion again. That is ridiculous.

**Senator Stratton:** Who is limiting debate now?

**Senator Lynch-Staunton:** You just told us we cannot have a vote.

**Senator Cools:** This is a debating chamber and some senators are on their feet.

**Senator Joyal:** I was recognized.

**The Hon. the Speaker** *pro tempore***:** Senator Joyal moved the previous question, so he has the right to speak first.

**Senator Cools:** Your Honour, we were on our feet.

**Senator Stratton:** I rise on a point of order. Her Honour read her ruling and stated quite clearly that this chamber could debate it but that it could not come to a conclusion with respect to this motion.

**Senator Cools:** That is right. That is Her Honour's ruling.

**Senator Stratton:** That was the ruling read to us.

**The Hon. the Speaker** *pro tempore***:** The motion moved by Senator Joyal is debatable.

• (1700)

It was moved by the Honourable Senator Joyal, seconded by the Honourable Senator Maheu, that the question be now put.

**Senator Cools:** Point of order.

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

**Some Hon. Senators:** Yea.

**The Hon. the Speaker** *pro tempore***:** Are senators ready for the question?

**Senator Stratton:** Is it not debatable?

**Senator Robichaud:** Yes, it is.

**Senator Stratton:** Is it also deferrable?

**The Hon. the Speaker** *pro tempore***:** It can be adjourned.

**Senator Stratton:** Can the question be deferred?

**Senator Robichaud:** Only a vote can be deferred.

**Senator Stratton:** It cannot be adjourned. Can the question being put be deferred?

**The Hon. the Speaker** *pro tempore***:** A non-debatable motion cannot be —

**An Hon. Senator:** Deferred.

**Senator Stratton:** Honourable senators, Her Honour clearly stated in her ruling that as long as there was no conclusion reached with respect to the debate — in other words, the adoption of the motion — debate could continue. That is what we have done. We have debated the motion. However, we cannot adopt the motion because adopting the motion puts us in conflict with a motion already adopted — in other words, a vote on Tuesday at 5:30 p.m.

**Senator Murray:** Honourable senators, I do not know if that was a point of order; I presume it was. The Speaker or somebody can reread the decision she made.

As I understand it, what she said was that Senator Lynch-Staunton's original point of order was hypothetical, that the debate could continue and that the vote on it could be deferred. My honourable friend interprets that to mean that we could not conclude. Someone can reread the decision, but as I heard it, it was that the vote on the motion could be deferred. I think that is probably the case with the motion that Senator Joyal has just moved that the question be now put. In other words, the motion that he has made is debatable. All senators can speak on it. I could speak on it myself again. Everyone has a chance to speak on the motion, and the vote on that can be deferred, as I understand it.

We had this argument some time ago on a motion. I was wrong at the time, but I think I am right now. I was corrected. I think that a motion for a previous question can be deferred or adjourned, for that matter.

[*Translation*]

**Senator Robichaud:** Honourable senators, the motion before us is debatable. The debate can proceed, and the *Rules of the Senate* are clear on how it may proceed. The senators have a set period of time in which to speak.

There can be no amendment, or subamendment, to the Honourable Senator Murray's motion. This matter can be debated. There will, moreover, be a vote on it. Should the vote be negative, Senator Murray's motion would be immediately struck from the Order Paper.

The procedure is clear. There can be debate, and each senator may express his or her views on the Honourable Senator Joyal's motion.

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

**Some Hon. Senators:** No.

[*English*]

**Senator Cools:** Your Honour —

**Some Hon. Senators:** Order.

**The Hon. the Speaker** *pro tempore*: It was moved by the Honourable Senator Stratton, seconded by the Honourable Senator LeBreton, that further debate on the motion 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.

**Senator Cools:** Your Honour, you are required to follow the rules of this place. I wanted to speak on Senator Murray's motion.

This is serious, folks. When you think you can win something, you know, senators, you can be magnanimous. You senators are not.

I was on my feet, ready to speak to Senator Murray's motion, which is an important motion and to which many of us want to speak, and Your Honour chose to hear Senator Joyal first. It was your duty to ask, "Are there any honourable senators wanting to speak to that motion?" You did not do that. That is the practice and the rule of this place. The Speaker of the Senate has a duty when any motion is put to look around and to ensure that those senators who wish to speak do so. You did not do that. You chose to do something that is contrary to the rules of this place and to the practices of this place. I have to tell you that I am quite scandalized.

The fact of the matter is that many of us here had a right to debate what Senator Murray had to say. I know that I was on my feet first because I saw Senator Joyal get up. You had a duty to call upon those of us who wish to speak. Your Honour, you just cannot deny senators their right to speak.

I have a right to speak on that particular motion. I would like to note this is not the first time that this has happened in this particular debate. When the motion was put by the Speaker in the Chair on the day that the bill was referred to committee, I was on my feet trying to speak at second reading. I was not allowed to speak at second reading, but I was too genteel to raise a question of privilege condemning the Speaker.

The fact of the matter is, Your Honour, you cannot put those motions until you have clarified the situation. It is not good enough to say, "Well, it does not really matter whether you speak on the first motion because you can speak on the second motion." In point of fact, the first motion —

**Some Hon. Senators:** Order.

**Senator Cools:** Oh, get off.

[*Translation*]

**Senator Robichaud:** Honourable senators, it must be clearly understood that, when Her Honour recognized Senator Joyal, he moved that the original question be now put to a vote.

This is not an impediment to anyone. Once we have addressed Senator Joyal's motion, if the decision is favourable, we will then debate the motion by the Honourable Senator Murray. The debate will continue, and no amendments to Senator Murray's motion will be allowed. The debate can, however, take place once we have dealt with this matter. Honourable senators will then have an opportunity to speak on the motion before us, and then on Senator Murray's motion.

[*English*]

**Senator Cools:** It is simply not good enough that Senator Robichaud can say it does not matter what happened at this particular moment because you can speak later.

The fact of the matter, Your Honour, is you do not have the power to deprive us of the right to speak. I wanted to speak to that main motion now. You simply cannot do this. This place is malfunctioning in very, very serious ways.

She is not even listening. I was on my feet, Your Honour.

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

**The Hon. the Speaker** *pro tempore*: It was moved by the Honourable Senator Stratton, seconded by the Honourable Senator LeBreton, that further debate on the motion be adjourned to the next sitting of the Senate.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker** *pro tempore*: All those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

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

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore*: In my opinion, the "nays" have it.

*And two honourable senators having risen:*

**The Hon. the Speaker** *pro tempore*: Call in the senators. The bells will ring for one hour. Accordingly, the vote will take place at 6:10 p.m.

• (1810)

**The Hon. the Speaker** *pro tempore*: The question is on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator LeBreton, that further debate on the motion of Senator Joyal on the previous question be adjourned until the next sitting of the Senate.

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

| | |
|---|---|
| Cools | Lynch-Staunton |
| Di Nino | St. Germain |
| Forrestall | Stratton |
| Keon | Tkachuk—8 |

NAYS
THE HONOURABLE SENATORS

| | |
|---|---|
| Atkins | Gauthier |
| Biron | Joyal |
| Christensen | Léger |
| Cook | Maheu |
| Corbin | Mahovlich |
| Day | Murray |
| Fairbairn | Robichaud |
| Finnerty | Rompkey—17 |
| Furey | |

ABSTENTIONS
THE HONOURABLE SENATORS

Nil.

**Senator Robichaud:** Honourable senators, on a point of order, I wish to make a correction. When, on the point of order, I said that there would be a separate debate for the previous question and then for the main motion, this is not so. There is one debate on the motion, and if Senator Joyal's motion carries, then we go immediately to the main question.

I wanted to set the record straight because what I said was not right.

**The Hon. the Speaker** *pro tempore*: Accordingly, pursuant to rule 13, it is now after six o'clock. Do honourable senators wish that I do not see the clock?

**Some Hon. Senators:** We see the clock!

**The Hon. the Speaker** *pro tempore*: Accordingly, pursuant to rules 13(1) and (2), I shall leave the Chair until 8 p.m.

The sitting of the Senate was suspended.

• (2000)

The sitting of the Senate was resumed.

**The Hon. the Speaker** *pro tempore*: Resuming debate.

**Senator Stratton:** Honourable senators, I am pleased to rise to speak to Senator Joyal's motion that the previous question be now put.

This motion has the effect of preventing any amendments from being made to Senator Murray's singular closure motion and also prevents any other senator from speaking to that motion as the previous question forces an immediate vote on the item.

The previous question is not a motion that should be moved on a casual basis. Its use in the Senate has been infrequent, and for good reason. There have been only a few times in recent history that the previous question has been moved in the Senate. The most recent was on February 12 of this year in relation to Bill S-7, the electoral boundaries bill, which did not come to a vote because the Speaker eventually struck the bill. In 1999, the motion was defeated. Prior to that, this motion was tried in 1912, when it was defeated; and though the motion was put in 1904, there is no record of a vote being taken.

In light of these examples, it strikes me that honourable senators should be given an opportunity to reflect on the potential procedural quagmire that may now occur. Accordingly, I move that the Senate do now adjourn.

**The Hon. the Speaker** *pro tempore*: Honourable senators, it was moved by the Honourable Senator Stratton, seconded by the Honourable Senator Lynch-Staunton, that the Senate do now adjourn.

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

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

[*Translation*]

**Senator Robichaud:** Is the motion for the Senate to adjourn or the debate to adjourn?

[*English*]

**Senator Stratton:** The motion is for the Senate to adjourn.

**The Hon. the Speaker** *pro tempore*: Will those honourable senators in favour of the motion please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker** *pro tempore*: Will those honourable senators opposed to the motion please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore*: In my opinion, the "nays" have it.

*And two honourable senators having risen:*

**Senator Stratton:** A one-hour bell.

**The Hon. the Speaker** *pro tempore*: Is there an agreement as to the length of the bell?

**Senator Stratton:** Bear with me. Let me suggest a 30-minute bell.

**The Hon. the Speaker** *pro tempore*: Is it agreed to have a 30-minute bell, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker** *pro tempore*: The vote will take place at 8:35 p.m. Call in the senators.

• (2040)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

| | |
|---|---|
| Cools | St. Germain |
| Forrestall | Stratton |
| Keon | Tkachuk—7 |
| Lynch-Staunton | |

NAYS
THE HONOURABLE SENATORS

| | |
|---|---|
| Atkins | Joyal |
| Biron | Léger |
| Christensen | Maheu |
| Cook | Mahovlich |
| Corbin | Murray |
| Day | Ringuette |
| Fairbairn | Robichaud |
| Furey | Rompkey—17 |
| Gauthier | |

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

**Some Hon. Senators:** Question!

**Senator Robichaud:** Is that not the understanding?

**The Hon. the Speaker** *pro tempore*: The question is on the motion —

**Senator Lynch-Staunton:** I am sorry, honourable senators, am I missing something here? Are we putting the question tonight? What is happening here?

Senator Joyal's motion is to put the question. The question is to go to a vote. If that were accepted, then there would be no debate on the main motion, which means that the main motion comes up immediately for a vote. Is that correct or not?

For the last two days, we have been subjected to the most unusual procedural cleverness on a private member's bill that I have ever seen. I am sure that, if I were to look in the records, I would see that it has never happened before. Senator Murray has, in effect, proposed a closure motion. If the principle of this closure motion is accepted, it means that any senator, at any time, on any item on the Order Paper, can get up and move that we vote on a motion at a certain time.

**Senator Murray:** A senator must give notice of a motion and have the motion brought forward.

**Senator Lynch-Staunton:** Exactly. One who has spoken against closure and against time allocation in this chamber more than anyone else is Senator Murray.

**Some Hon. Senators:** Shame!

**Senator Lynch-Staunton:** Suddenly, for whatever reason, he moves a closure motion, which is not the same as time allocation. Our rules deal with time allocation, which at least allows debate on the time allocation motion itself and then, if that is accepted, debate on the matter which is subjected to time allocation.

Senator Murray is asking us to pass this, with no discussion. He is asking us to get rid of every item, everything pertinent to the bill, with no discussion. Senator Murray's motion is unprecedented.

We have this unprecedented closure motion on a private member's bill which, if accepted, will set a precedent that can be applied to a government bill, an inquiry, a motion or whatever; and then, even before any senator rose to speak, Senator Joyal said, "I move the previous question," thus denying debate on an unprecedented motion.

I hope quite a few of us here care about how this chamber operates.

**Senator Cools:** I do.

**Senator Lynch-Staunton:** This has nothing to do with Bill C-250. The decision on that bill will be made eventually.

Senator Murray can giggle all he wants. I have heard him malign us because he thinks because we are now Conservatives we are all branded with a brand that he dislikes. That is something which I will discuss privately with him at another time.

If the Senate accepts the principle of Senator Murray's motion, then we will be going down a very slippery slope. If we accept his motion — and again it has nothing to do with Bill C-250 as far as I am concerned — it will mean that any senator can move at any time that a debate on a bill, a motion or whatever be concluded.

Senator Joyal then tells us we cannot debate his motion. I take offence to that. I hope others share my concern.

**Senator Murray:** Honourable senators, this is debate. I appreciate the points that have been made by the Leader of the Opposition.

To begin with, of course this has everything to do with Bill C-250. That is what it is about. Let us be perfectly frank about it: What we have here is a clash of strategies, if you like. I have already described — and I do not think I have to describe it again because honourable senators have been witness to it these last few days — the strategy that was adopted by some of the opponents of Bill C-250. The strategy was very clear: By bringing in a series of subamendments to the amendment that was already on the floor, and then deferring votes on those amendments, they could prevent Bill C-250 from ever coming to a vote in any reasonable time frame.

At the risk of repeating what someone else said, let me be very clear: I know what they are doing is within the *Rules of the Senate of Canada*. Of course it is within the rules. Therefore, to that extent, it is a legitimate parliamentary strategy.

However, honourable senators, it is no more legitimate than the strategy I have adopted to try to frustrate them and to try to ensure that all honourable senators have the opportunity to vote on the final disposition of Bill C-250.

My honourable friend says this motion is absolutely unprecedented. It is true that our rules, at least since 1991 or 1992, have provisions for the allocation of time on government business. However, there is certainly nothing in our rules to prevent an honourable senator from getting up, giving 24 hours' notice of a motion and, when the motion is called, proceeding to debate and then putting it to a vote of the Senate, as to when the Senate wants to deal with the particular item of business. That has been done for many years — before Senator Cools was appointed, and even before I was appointed. It is still done. At the beginning of every session of Parliament when there is a Speech from the Throne, a motion is moved to fix the date on which the debate on the Throne Speech will take place. The same procedure is followed regarding the debate on the budget.

Of course my motion is in order. Of course it is just as legitimate as the strategy that was adopted by some of my friends who sought to prevent the bill from ever coming to a vote. There is no question about that at all.

• (2050)

Now, with regard to Senator Joyal's motion that the question be now put, the effect of that motion is to prevent my motion from being amended. Of course my friend knows that, and it was the only course open to us, because if that motion had not been made then we would be away to the races again on my motion, as we were on Bill C-250, with amendments and subamendments and all the rest of it. As for the motion itself, that the question be now put, it has a very long and honourable history in Parliament.

As a matter of fact, the motion that the question be now put made Confederation possible in the United Province of Canada when the debates were being held on the Quebec resolutions that formed the basis of the BNA Act. Sir John A. Macdonald at one point in the debate rose to move the previous question, or caused someone else to get up, and therefore not cut off debate because once the previous question is moved everyone gets a chance to speak, including those who have already spoken on the main motion. He rose to cut off amendments, telling the members of the United Province of Canada that what he had negotiated was in the form of a treaty, really, with New Brunswick and Nova Scotia, Ontario and Quebec, and that he wanted the Parliament to vote it up or down. They voted it up and that was the beginning of the legislative process that led to Confederation.

Indeed, Senator Joyal's motion has a very long and honourable history in parliamentary terms and in Canadian history. Therefore, I reject absolutely that my motion is unprecedented. It is completely within the rules. All I seek to do is to ensure that honourable senators in this place have the same opportunity that honourable members in the other chamber had, which is to cast a final vote on the disposition of Bill C-250.

**Senator Lynch-Staunton:** During the Confederation debates the question was not put immediately before the motion; it was put after the debates. Therefore, I find that the argument Senator Murray is presenting may be historically correct but not appropriate.

I will quote from a debate on February 3, 1993, found at page 2735 of the *Debates of the Senate*, where Senator Murray, then Leader of the Government, said:

> The so-called closure rule is a last resort in this place. There is a requirement under rule 39 that the two parties attempt to reach agreement on the length of time to be devoted to a bill at any stage. I believe that arriving at such an agreement on most legislation is conducive to the effective operation of this or any parliamentary assembly. I further believe that it is also conducive to the convenience of honourable senators on both sides.

I agree with him completely. I just wonder why no attempt was made, as far as I am aware, to come to an agreement with those who are adamantly opposed to this bill and are using procedural methods to maintain their position, and those who are also using procedure to paralyze this place together with the others. I do not understand why there have not been discussions with those who feel so strongly one way or the other to say let us come to some sort of understanding, otherwise we will be on this item indefinitely. What troubles me is that we are sitting here tonight and could be sitting here tomorrow and Monday and Tuesday on an issue that I believe could be resolved if there were to be a more collegial approach, which I have yet to see, the lack of which I deplore.

**Hon. Gerry St. Germain:** Honourable senators, I am quite concerned about the statement made by Senator Murray wherein he refers to manipulation. He clearly points out that the procedures that have been taken are fully within the rules and regulations of this place and have occurred on three or four occasions. This is not like the GST filibuster. He either has an awfully short memory or else he has changed his political affiliation to some other loyalty.

**Senator Murray:** Not me.

**Senator St. Germain:** Do not give me this "not me" stuff. There is no manipulation.

Honourable senators, we would not be here — listen, you have never been a Conservative, Senator Murray, and you never will be, so forget it.

**Senator Rompkey:** Welcome back!

**Senator St. Germain:** I am very concerned about this whole process.

I see Senator Furey enjoying himself over there. He intervened, but I am not prepared to release what happened in camera. There was great concern, which was brought "outside of camera" by Senator Cools, that we wanted more witnesses to appear before the committee so that the bill would get a proper hearing. Senator Murray figures that this is a real exciting topic to get into.

I have great respect for Senator Joyal, who has a position on Bill C-250, and I hope he respects my position as I do his.

I have always had a deep respect for people who will stand and argue for their beliefs regardless of whether I do not agree with them, which I think is important. This is what this place is all about. I want him to understand why he takes this position and why I take mine. If we never agree, at least we have the respect to be able to speak to each other and not denigrate each other like Senator Murray has done in trying to tear down Senator Lynch-Staunton and other colleagues on his side.

Keep me out of the equation if you like, because I did go somewhere else for a period of time, but it is people like you who drove me there.

Reasonableness is always a matter of opinion. I believe, like Senator Lynch-Staunton, that this entire situation in regard to this motion is a very dangerous precedent. I am no rules and regulations expert. I am not a lawyer. I am just a chicken farmer with a commercial pilot's licence, but I can tell honourable senators one thing.

**Senator Rompkey:** You are a high flyer.

**Senator St. Germain:** With chickens.

When I look at closure in the manner that it is being presented by way of this motion, I can see huge abuses on the horizon. I am sure the sun will come up the same way it did this morning even if the motion does proceed, but I think it poses a giant risk. Traditionally, when closure has been invoked in this place, it has been invoked by the Leader of the Government or the Deputy Leader of the Government on government legislation. I think this is key.

When we look at this piece of legislation, there is time down the road. I honestly believe that there is great danger in moving into an area where there is no debate, no room for amendments, no room for anything. This motion is final and the guillotine drops on the issue. That is what Senator Murray has proposed.

The greatest critic of closure in this place, and one of the most eloquent in his delivery, is now proposing something that would be detrimental to this institution, for senators who are here now and for future senators.

**Senator Cools:** I just wanted to answer Senator Murray because I lived through the GST and remember it very clearly. We were on opposite sides of the chamber. I remember the damage that was done to this institution for years and to Senator Murray's great respect for Senator MacEachen, and it took years to repair that relationship. Make no mistake; these kinds of processes are deadly to institutions such as ours. I would like to take issue with what the honourable senator has said on the grounds of practice and procedure.

• (2100)

Honourable senators, this motion is hideous because it combines two different kinds of motions. It is a motion for the previous question, which has historically been called "closure," and it is a motion for time allocation, which is the guillotine.

First, it is very rare that these two motions are moved together. Second, Senator Murray moved a motion for time allocation, which is called a "guillotine" motion. That is not open to him, a private member. Motions for the guillotine are open only to ministers of the Crown, and all the precedents show that, regardless of what precedent you cite, be it from Redlich, May or Campion. It is not open to any private member. Had government members wanted such a motion to be moved, they should have bitten the bullet and let the Leader of the Government in the Senate move it.

On another point, Senator Murray acted as though this was all very routine, just a little conflict of strategy. I have news for him. Anything that I have done is right and proper, and he cannot say that our actions in moving amendments was just repeated. This only went on for a few days. In the business of Parliament, that is not long enough to be viewed as an obstruction.

My point is that these are such exceptional procedures that they are supposed to be used rarely, and when they are put forward, usually at the initiative of a minister of the Crown, two factors must apply: urgency and the public interest. It is up to the minister of the Crown, when he rises, to explain carefully that he is moving such a motion because there is an urgency for the proposal and that there is a public interest in responding to that urgency.

Since Senator Murray cited some history, I will also cite some. These processes were all introduced by Prime Minister Gladstone in England. The view of these procedures, some of which were eventually included in standing orders, was that when the minister made such a declaration, it was a declaration of a siege and it threw Parliament into a state of dictatorship. The literature is replete with such examples.

Senator Murray simply cannot do this, because, if what he says is true, any one of us could have resorted to the same mechanism and moved such a motion. Granted, he was confident that his motion might carry because of Liberal support. It is a dangerous motion. It is frightening and troubling to me. If this is not properly dealt with, we will have a phenomenon whereby any private member can move such a motion any time.

Senator Murray relies on the trivia surrounding whether it was moved with proper notice. That is inconsequential. The fact is that such a tool is not available to a private member. I hope that, as this matter unfolds, this will be made abundantly clear. I have reviewed the literature and the two together are ungodly.

Senator Murray seems to find that amusing.

**Senator Murray:** I think "ungodly" is a bit strong.

**Senator Cools:** Sometimes when people have been here a long time they become so cynical that they forget that there are ordinary people out there barely making a living. They live from paycheque to paycheque. We should show some sensitivity and a little bit of humility. It would serve us well. It is no wonder that the Senate is held in such low regard and esteem.

**Some Hon. Senators:** Question!

**Senator Lynch-Staunton:** We will proceed to the vote. Be patient. I wish that Senator Joyal had explained why he wanted to move the question before any debate on Senator Murray's motion. It has nothing to do with what the motion targets; it has to do with how we run our affairs. Senator Murray has presented a motion we have never seen before — at least I have not. Before we could even discuss it, Senator Joyal was recognized to move the previous question, which means that any amendments that could improve or amend his motion can no longer be discussed.

I find this an insult to the Senate. I find this an insult to our ability to debate key questions. We are talking about procedure here. We are no longer talking about Bill C-250. We are talking about how we can skewer a debate by anyone rising at any time and moving a motion to, in effect, limit debate. The government is only entitled to do so after the failure of discussions with the opposition, and then only on government legislation, and then only by allowing debate on the motion for time allocation, and then only by allowing a minimum of six hours on the subject matter of the time allocation.

**Senator Murray:** This is far broader, and it can be adjourned.

**Senator Lynch-Staunton:** No, no. Of course it can be adjourned. We could adjourn it to next week, but it is not a question of timing or that we are getting tired or that it is nine o'clock. The question is: Do we want to go this route? I urge Senator Joyal to withdraw his motion to put the question and allow us to debate the motion itself and suggest amendments to it. If he does not, we will be, in effect, stuck with double closure, which, to me, is an insult to this place.

**Senator Joyal:** Honourable senators, I should like to accept the invitation of the Honourable Leader of the Opposition to respond to his question. Honourable senators know the great respect I have for the position that the honourable senator has in this chamber and the role of the opposition party in debate. There is no debate if there is no opposition. It is a long-standing principle, established in a famous case by Chief Justice Duff in 1937, and a cornerstone of our Constitution and its preamble, that a constitution similar to the one of the United Kingdom is essentially based on debate, and in debate there must be conflicting views. There are arguments and counter-arguments, rebuttal and answer. It is through such debate that finally a consensus emerges. That is the cornerstone of democracy in Parliament.

In the last months, I have been paying attention to what has been happening with regard to this bill. As Senator Murray mentioned, this is not a new bill; it is the reincarnation of a previous bill.

I listened to Senator Cools very carefully and I would beg her indulgence to allow me to make my points.

**Senator Cools:** I am listening to Senator Joyal carefully.

**Senator Joyal:** This bill is the reincarnation of a previous bill. To my recollection, 17 senators spoke on second reading debate on the previous bill. They discussed the pros and the cons. I was here all the time listening carefully to the arguments and I tried to determine whether the points they were making were sound, especially those in relation to the Charter of Rights, which is a fundamental element in a bill such as this.

I listened to all 17 interventions. Of course, the bill died because there was dissolution of the previous session. The bill was then reintroduced and I listened again to the arguments that were put on both sides of the chamber. Some were just a restatement of the previous arguments, but there were some new arguments, and I listened to them very carefully.

This bill was then referred to committee, under the chairmanship of Senator Furey. In committee, we heard more witnesses opposed to the bill than witnesses supportive of the bill. I convinced myself that the various arguments against the bill were fairly presented.

• (2110)

Senator Cools stated some of that testimony earlier this afternoon in a previous intervention. I tried to convince myself that the bill has had reasonable debate, that it was time to return the bill to this chamber because here we have a wider expression of opinion because, of course, those who are not members of the committee can stand up and state their views on the bill.

Of course, I have seen in this chamber — and I am not passing judgment on it — amendments, then subamendments, more subamendments and further subamendments and then deferral of votes. I did not scream when there was deferral of votes. It is in the rules. If it is in the rules, so be it, as long as we do not amend the rules. It was an opportunity afforded and deferral is an option on both sides of this chamber. However, at a point in time, one begins to recognize the general political environment, the possibility of an election. We all know, of course, that when an election is called, everything on the Order Paper is lost, all the hours and effort put into study and to understanding the issue.

I was under the impression that we have had an opportunity to debate the bill. However, there is a clock ticking, day after day. We could run the chips, but if an election is called next week, the bill would die.

This bill, even though it is a private member's bill, is still a bill. It has been voted in the other place. I happen to accept the content and the merit of this bill. Sometimes I am asked by the Leader of the Government if I will sponsor a bill. If I read the bill and come to the conclusion that I have some questions on its merit, I refuse. I read this bill and supported the principle and the nature of it.

I would be the last one, Senator Lynch-Staunton, to avoid debates in this chamber. As a matter of fact, if one were to search the *Journals of the Senate*, one would find that where closure has been imposed, I stood up, too, and explained my position on the closure.

I perceived that tactics were being used honestly in accordance with the rules and that we would not come to this point of having to dispose of the bill now. However, there is a general belief that the bill will die, even with all the efforts that have been made by all the senators who have spoken on this issue — and there have been more than 20. I think it is now time for the bill to come to a vote.

I agree that if we use the rules to their extreme limit, they might eventually impact the way we run our business. My honourable friend is absolutely right. It is always better to come to an agreement, to negotiate a settlement. As the victim says, a settlement is always better than any trial or judgment. I agree with that sentiment.

I was wondering whether tonight we would have been in a position to negotiate on anything if we had not come to the point where we are now. I do not want an answer. I just raise the question.

I have the greatest respect for the way Senator Lynch-Staunton exercises his position and responsibility as Leader of the Opposition. However, given the conviction that I have in relation to this bill, I think the time has come to ask for honourable senators to take a stand on it.

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

**Senator Lynch-Staunton:** I respect that position. I want to make it quite clear that I have not taken a position on the bill on purpose because, were I to do so, it might be identified as that of our caucus. Members of our caucus recognize that private member's bills are not subject to caucus discipline and that they are entitled to vote any way they wish. I will do so in due course. I deliberately stayed out of the vote on Bill C-250 so that I would not be identified as representing a view that is not shared by my colleagues.

The concern that I will share is that Senator Murray's motion and Senator Joyal's motion are brutal and unnecessary. If accepted, they would set a precedent. This place does not operate by having a senator stand up and say, "I have had enough of your debate, and the day after this motion passes, we will vote on it at three o'clock." We have never done that here except after difficult discussions and a real inability to come to agreement.

In this case, there has been no attempt to come to an agreement. That is my objection. There has been no attempt to have discussions with those who feel strongly about this bill and are engaging in procedural objections, successfully so far. There has been no attempt to hold discussions with them. Am I being naive or overly principled? That would be a better approach than the one that Senators Murray and Joyal are presenting to us tonight.

**Senator Cools:** Honourable senators, the situation that has been described by Senator Joyal does not meet my perception. For example, there was such a rush to refer the bill to committee that I was not allowed to speak at second reading debate. That bothered me very deeply. We were not allowed free debate.

• (2120)

In addition, when the bill was in committee, I was unable to call the witnesses that I wanted to hear. I found a reluctance of the committee to hear witnesses.

In addition, honourable senators, another factor that has never been canvassed on this bill is that this bill was never reintroduced in the House of Commons. It was reinstated in some kind of ad hoc way on the premise that an order of the House can set aside prorogation as well as the need for three readings. This bill has not had three readings in the House of Commons, honourable senators.

This bill is fraught with problems and irregularities, and I sincerely believe that there is a way for senators to deal with each other with some respect, that we can come to an agreement. My perception, frankly, to Senator Joyal and to Senator Furey, is that no one has wanted to discuss Bill C-250 with me.

Furthermore, this bill has always moved along as a government bill. Never has there been an episode in this place where government members have sat at this hour of the night moving a private member's bill along.

I listened carefully to Senator Joyal. He kept saying, "I thought" and "I came to the conclusion that we should move it out of the committee." I do not know when last any member rose and said that he or she was able to make decisions on the exact timing a particular bill would take. Only the government has that power. No private member can. Only a minister of the Crown can set that in motion.

I want honourable senators to know that I have found the entire process quite shoddy in places and extremely unsatisfactory and, in my mind, most unsenatorial.

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

**Some Hon. Senators:** Question!

**The Hon. the Speaker** *pro tempore***:** It was moved by Honourable Senator Joyal, seconded by the Honourable Senator Maheu, that the motion of the Honourable Senator Murray regarding Bill C-250 be now put. Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker** *pro tempore***:** Those in favour of the motion will please say "yea."

**Some Hon. Senators:** Yea.

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

**Some Hon. Senators:** Nay.

**The Hon. the Speaker** *pro tempore***:** In my opinion, the "yeas" have it.

*And two honourable senators having risen:*

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

**Senator Stratton:** I would like to take the opportunity to defer the vote to 5:30 p.m. at the next sitting of the Senate, which, I believe, as had been agreed, is Tuesday.

**Hon. Shirley Maheu:** The next sitting day after Friday would suit the government members.

**Senator Rompkey:** There is already a vote set for 5:30 p.m.

**Senator Robichaud:** They will be taken in sequence.

**Senator Stratton:** The votes will be taken in sequence, one after the other, at 5:30 p.m. on Tuesday.

**The Hon. the Speaker** *pro tempore***:** Senator Maheu has deferred the vote to the next sitting after Friday.

**Senator Lynch-Staunton:** That is what the rule allows.

**Senator Stratton:** We had an agreement. I thought that we were voting on Tuesday at 5:30 p.m. on the subamendment. Therefore, if we have agreement to vote sequentially, it would be Tuesday at 5:30 p.m. along with the subamendment.

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

**Hon. Senators:** Agreed.

## ADJOURNMENT

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

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

> That when the Senate adjourns today, it do stand adjourned until Tuesday, April 27, 2004, at 2 p.m.

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

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, April 27, 2004, at 2 p.m.

# THE SENATE OF CANADA
# PROGRESS OF LEGISLATION
## (3rd Session, 37th Parliament)
## Thursday, April 22, 2004

### GOVERNMENT BILLS
### (SENATE)

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

### GOVERNMENT BILLS
### (HOUSE OF COMMONS)

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| C-3 | An Act to amend the Canada Elections Act and the Income Tax Act | 04/04/01 | 04/04/22 | Legal and Constitutional Affairs | | | | | |
| C-4 | An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence | 04/02/11 | 04/02/26 | Rules, Procedures and the Rights of Parliament | 04/03/23 | 0 | 04/03/30 | 04/03/31 | 7/04 |
| C-5 | An Act respecting the effective date of the representation order of 2003 | 04/02/11 | 04/02/20 | Legal and Constitutional Affairs | 04/02/26 | 0 | 04/03/10 | 04/03/11 | 1/04 |
| C-6 | An Act respecting assisted human reproduction and related research | 04/02/11 | 04/02/13 | Social Affairs, Science and Technology | 04/03/09 | 0 | 04/03/11 | 04/03/29 | 2/04 |
| C-7 | An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety | 04/02/11 | 04/03/11 | Transport and Communications | 04/04/01 | 0 | | | |
| C-8 | An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence | 04/02/11 | 04/02/18 | Social Affairs, Science and Technology | 04/03/11 | 3 | 04/03/29 | 04/04/22 | 11/04 |
| C-13 | An Act to amend the Criminal Code (capital markets fraud and evidence-gathering) | 04/02/12 | 04/02/24 | Banking, Trade and Commerce | 04/03/11 | 0 | 04/03/22 | 04/03/29 | 3/04 |
| C-14 | An Act to amend the Criminal Code and other Acts | 04/02/12 | 04/02/25 | Legal and Constitutional Affairs | 04/04/01 | 0 | 04/04/21 | 04/04/22 | 12/04 |
| C-16 | An Act respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts | 04/02/12 | 04/02/19 | Legal and Constitutional Affairs | 04/03/25 | 0 | 04/04/01 | 04/04/01 | 10/04 |
| C-17 | An Act to amend certain Acts | 04/02/12 | 04/03/09 | Legal and Constitutional Affairs | | | | | |
| C-18 | An Act respecting equalization and authorizing the Minister of Finance to make certain payments related to health | 04/03/10 | 04/03/22 | National Finance | 04/03/23 | 0 | 04/03/25 | 04/03/29 | 4/04 |
| C-20 | An Act to change the names of certain electoral districts | 04/02/23 | 04/03/09 | Legal and Constitutional Affairs | | | | | |

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| C-21 | An Act to amend the Customs Tariff | 04/03/24 | 04/04/01 | Banking, Trade and Commerce | 04/04/22 | 0 | | | |
| C-22 | An Act to amend the Criminal Code (cruelty to animals) | 04/03/09 | 04/04/20 | Legal and Constitutional Affairs | | | | | |
| C-24 | An Act to amend the Parliament of Canada Act | 04/03/22 | 04/03/29 | Social Affairs, Science and Technology | | | | | |
| C-26 | An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004 | 04/03/22 | 04/03/25 | — | — | — | 04/03/26 | 04/03/31 | 5/04 |
| C-27 | An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2005 | 04/03/22 | 04/03/25 | National Finance | 04/03/30 | 0 | 04/03/30 | 04/03/31 | 8/04 |

## COMMONS PUBLIC BILLS

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| C-212 | An Act respecting user fees | 04/02/03 | 04/02/11 | National Finance | 04/02/26 | 10 | 04/03/11 | 04/03/31 | 6/04 |
| C-249 | An Act to amend the Competition Act | 04/02/03 | 04/04/01 | Banking, Trade and Commerce | | | | | |
| C-250 | An Act to amend the Criminal Code (hate propaganda) | 04/02/03 | 04/02/20 | Legal and Constitutional Affairs | 04/03/25 | 0 | | | |
| C-260 | An Act to amend the Hazardous Products Act (fire-safe cigarettes) | 04/02/03 | 04/02/23 | Energy, the Environment and Natural Resources | 04/03/10 | 0 | 04/03/30 | 04/03/31 | 9/04 |
| C-300 | An Act to change the names of certain electoral districts | 04/02/03 | | | | | | | |

## SENATE PUBLIC BILLS

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| S-2 | An Act to prevent unsolicited messages on the Internet (Sen. Oliver) | 04/02/03 | 04/03/23 | Transport and Communications | | | | | |
| S-3 | An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver) | 04/02/03 | | subject-matter 04/03/11 Legal and Constitutional Affairs | | | | | |
| S-4 | An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier) | 04/02/03 | 04/02/26 | Official Languages | 04/03/09 | 0 | 04/03/11 | | |
| S-5 | An Act to protect heritage lighthouses (Sen. Forrestall) | 04/02/03 | 04/02/05 | — | — | — | 04/02/05 | | |
| S-6 | An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe) | 04/02/04 | 04/02/11 | Legal and Constitutional Affairs | | | | | |

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| S-7 | An Act respecting the effective date of the representation order of 2003 (Sen. Kinsella) | 04/02/04 | Bill withdrawn pursuant to Speaker's Ruling 04/03/23 | | | | | | |
| S-8 | An Act concerning personal watercraft in navigable waters (Sen. Spivak) | 04/02/05 | 04/02/12 | Energy, the Environment and Natural Resources | 04/03/10 | 0 | 04/03/11 | | |
| S-9 | An Act to honour Louis Riel and the Metis People (Sen. Chalifoux) | 04/02/05 | | | | | | | |
| S-10 | An Act to amend the Marriage (Prohibited Degrees) Act and the Interpretation Act in order to affirm the meaning of marriage (Sen. Cools) | 04/02/10 | | | | | | | |
| S-11 | An Act to repeal legislation that has not been brought into force within ten years of receiving royal assent (Sen. Banks) | 04/02/11 | 04/03/09 | Legal and Constitutional Affairs | | | | | |
| S-12 | An Act to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations) (Sen. Nolin) | 04/02/12 | | | | | | | |
| S-13 | An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton) | 04/02/19 | | | | | | | |
| S-14 | An Act to amend the Agreement on Internal Trade Implementation Act (Sen. Kelleher, P.C.) | 04/03/10 | | subject-matter 04/03/22 Banking, Trade and Commerce | | | | | |
| S-16 | An Act to amend the Copyright Act (Sen. Day) | 04/03/11 | 04/03/23 | Social Affairs, Science and Technology | | | | | |
| S-17 | An Act to amend the Citizenship Act (Sen. Kinsella) | 04/03/25 | 04/04/01 | Social Affairs, Science and Technology | | | | | |

**PRIVATE BILLS**

| No. | Title | 1st | 2nd | Committee | Report | Amend | 3rd | R.A. | Chap. |
|---|---|---|---|---|---|---|---|---|---|
| S-15 | An Act to amend the Act of incorporation of Queen's Theological College (Sen. Murray, P.C.) | 04/03/10 | 04/03/11 | Legal and Constitutional Affairs | 04/03/25 | 0 | 04/03/25 | 04/04/01 | |

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