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Tuesday, April 27, 2004

THE HONOURABLE LUCIE PÉPIN
SPEAKER *PRO TEMPORE*

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THE SENATE

Tuesday, April 27, 2004

The Senate met at 2 p.m., the Hon. the Speaker *pro tempore* in the Chair.

Prayers.

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

Hon. Anne C. Cools: Honourable senators, pursuant to rule 43(7) of the *Rules of the Senate*, I give oral notice that I will rise later this day to raise a question of privilege in respect of events and actions during Senate proceedings on Thursday, April 22, 2004. Earlier today, in accordance with rule 43(3), I gave written notice of the same to the Clerk of the Senate.

Honourable senators, I would be asking the Speaker of the Senate to make a finding of prima facie privilege. If Her Honour so finds, I am prepared to move the necessary motion.

THE LATE BEATRICE WATTS

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, Labrador today mourns the passing of Beatrice Watts. Born to Joe and Rosie Ford of Nain, she grew up in that community speaking both Inuktitut and English. She was an apt student who became a widely respected teacher. From being principal of Yale Elementary School in North West River, she moved on to become curriculum coordinator for the Labrador East School Board. It was from this position that she designed and engineered a return to the speaking of Inuktitut in northern Labrador schools — a policy that helped immeasurably in the preservation of the Inuit culture in Labrador. She was also active as a leader among Inuit women in her home community of North West River and across the country. Recently, the Labrador Inuit Association honoured her for her role in education. Before that, she had received a National Citizenship Award from the Governor General and an Honorary Doctor of Laws degree from Memorial University. Up to the time cancer struck her, she was an active leader in the Labrador Inuit land claims team.

She would have made an excellent judge for she was not only bright and alert but also eminently fair and reasonable in all her dealings. Generous and compassionate, she nevertheless could assess and weigh both the good and the bad in people and events. We shall not easily find her like again. Labrador has lost an outstanding leader; North West River has lost a prominent citizen; Ron and his children have lost a dear wife and mother; and I have lost a good friend.

ONTARIO EXPERT PANEL ON SARS AND INFECTIOUS DISEASE CONTROL

Hon. Wilbert J. Keon: Honourable senators, I rise to speak briefly to the final report of the Ontario Expert Panel on SARS and Infectious Disease Control that was released last Wednesday, April 21, 2004. In my view, it is an excellent report. I should like to congratulate all members of the panel, in particular, the Chair, Dr. David Walker, Dean of the Faculty of Health Sciences and Director of the School of Medicine at Queen's University, as well as Ms. Gail Peach, Assistant Deputy Minister, Ministry of Health and Long-Term Care, and her staff who drafted the report. It was a great pleasure to work with these people over the last year.

This final report of the Ontario Expert Panel on SARS and Infectious Disease Control fleshed out recommendations initially outlined in the interim report in December and adds 50 recommendations to the 53 outlined in that report.

In this final report, the panel presents a series of core steps that are considered foundational to the overall public health renewal process. The steps include an approach to the development of an Ontario health protection and promotion agency and strengthened infrastructure at the provincial level, as well as a series of phased, practical steps required at the local and regional levels. These latter steps are required to enhance local capacity and preparedness to strengthen the protection of patients, health care providers and the public on a day-to-day basis. In essence, the panel envisions the creation of a new Ontario health protection and promotion agency as only one element of a much larger renewal effort that must be supported by broader changes at the local, regional, provincial, national and international levels.

In addition to being the key focus of our initial report, this conviction has also been reflected in the work of Dr. Naylor and the National Advisory Committee on SARS and Public Health, the work of our Standing Senate Committee on Social Affairs, Science and Technology and in the earlier work of the Walkerton Inquiry. All these reports emphasize the importance of addressing the weakness in the foundations of public health systems in Canada and infection control capacity. They do not simply redirect existing resources and functions into a new central structure. In the panel's view, if the provincial and federal governments were to create new public health agencies and simply redirect existing resources into these agencies, we would have built some of the structure but we would not have built the foundations.

It is gratifying to see the consistency of the various reports and the spirit of local, regional, provincial, national and international cooperation that is unfolding as we move forward.

• (1410)

PROTECTING FREEDOMS IN A DEMOCRATIC SOCIETY

Hon. W. David Angus: Honourable senators, I would like to draw your attention to the following statement from the noted U.S. philosopher, linguist and civil libertarian Noam Chomsky:

> If we don't believe in freedom of expression for people we despise, we don't believe in it at all.

Protecting freedoms in a democratic society does not mean defending only the voices that are pleasing and acceptable to us; protecting freedoms begins with the defence of those voices most despised and despicable. It is upon this principle that our free and democratic society is based and it is upon this principle that we, I submit, must govern.

The trouble with fighting for human rights and freedoms is that it begins with the difficult task of opposing the oppressive laws that are first aimed at silencing those who hold opinions with which we disagree. We, as legislators — I again respectfully submit — must keep in mind these principles when considering legislation and make our decisions accordingly. Sometimes the path that seems to be the easiest and the most correct by limiting hateful speech will ultimately limit speech for all.

As former British Lord Chief Justice Hailsham, late member of the House of Lords asserted:

> The only freedom which counts is the freedom to do what some other people think to be wrong. There is no point in demanding freedom to do that which all will applaud. All the so-called liberties or rights are things which have to be asserted against others, who claim that if such things are to be allowed their own rights are infringed or their own liberties threatened. This is always true, even when we speak of the freedom to worship, of the right of free speech or association, or of public assembly. If we are to allow freedoms at all there will constantly be complaints that either the liberty itself or the way in which it is exercised is being abused, and, if it is a genuine freedom, these complaints will often be justified. There is no way of having a free society in which there is not abuse. Abuse is the very hallmark of liberty.

Honourable senators, I would encourage us all to keep these principles in mind today and tomorrow when we go through our orders of business. In this regard, I simply would remind senators of the following words in section 2 of the Canadian Human Rights Act, 1977. Section 2 says, in part:

> ...all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted.

The fundamental question is, honourable senators, do we prefer to live in a society that is so rigid and law-based that there is no room for diversity or flexibility, where no person can speak their mind and exercise their democratic freedoms? Or, would we rather live in a society that fosters diversity of opinion, allows freedom and liberty, but also leaves room for anticipated abuse as stated by Lord Hailsham?

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

THE SENATE

EFFECT OF MOTION TO DISPOSE OF BILL C-250

Hon. David Tkachuk: Honourable senators, last Wednesday, a senator introduced in this chamber an extraordinary motion. It was coupled with the motion on the previous question by another senator, a motion of closure that is even more draconian than the closure motion normally introduced by the government in this chamber, which limits the time of debate.

In the government motion, there is a period of time to debate the time limitation, namely two and a half hours, then there is a provision, if it passes, for another six hours of debate before the question is put.

The motion, which is on the Order Paper today, is probably the result of frustration felt by the senator and on behalf of others that a bill, which they vociferously support, has not yet been put to a vote. Those of us who are perceived as holding up the vote on this bill represent a minority in this chamber, but I dare say close to a majority, if not a majority, in this country if the facts were known.

There is fear that an election will be called and that this bill will die on the Order Paper. I have no influence over that. Since none of us here can call this election, none of us has the power to make that decision, although there are those here who may be more influential. I only know, as a senator, that rules protect the minority. The last time I looked, the good senator who introduced this instrument was also a member of a minority group whose major instrument and friend in this place for him to state his case, outside of his own learned ability, are the rules that he has so transfigured by the introduction of this instrument. While they may be helpful to him in his cause now, he has taken upon himself to initiate a rule over which the government in the past has exercised a monopoly, because there is no doubt in this place that his view of this bill is the majority view, with the voters of this country having no recourse to his privileged position. After all, the government minister is indirectly responsible and, therefore, there is some accountability for their actions.

Senator St. Germain: Hear, hear!

Senator Tkachuk: He has reduced this place to mob rule, where major opinion will now have the sledgehammer effect of crushing minority opinion, without any recourse by the public.

Senator St. Germain: Shame.

Senator Tkachuk: This form of elitism will do extreme damage to this institution if it is ever contemplated. The problem for the proponents of this bill is not that we have, by amendment, forced the debate to continue a little longer, rather, they are concerned about an election call effectively killing this bill for the time being. God forbid that we might have to debate this issue in the body politic. This action on the bill, imposed on the Senate for a period of seven whole days, can hardly be called a filibuster.

ROUTINE PROCEEDINGS

NATIONAL SECURITY POLICY

TABLED

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, two copies of a document entitled "Securing an Open Society: Canada's National Security Policy."

NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

> That the Standing Senate Committee on National Security and Defence have power to sit at 5 p.m. on Monday next, May 3, 2004, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

QUESTION PERIOD

CITIZENSHIP AND IMMIGRATION

APPOINTMENT PROCESS TO IMMIGRATION AND REFUGEE BOARD

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. It relates to a question I asked last month in this chamber of the government leader.

Honourable senators, on March 16, Citizenship and Immigration Minister Judy Sgro announced that a new appointments process would be introduced in the Immigration and Refugee Board, supposedly doing away with the political role in the current system. That system has been the subject of much controversy over the years, especially with the recent bribery scandal involving a judge.

• (1420)

In the past few weeks, however, one judge has been appointed and three judges have been reappointed by the minister under the existing system and not the new system. Once again, it seems that the Liberals are trying to appear as though they are making changes when, in fact, the opposite is true.

I have two questions for the Leader of the Government in the Senate: Why were these judges appointed under the old system? When will the new system be put in place?

Hon. Jack Austin (Leader of the Government): Honourable senators, Senator Oliver goes part way in answering his own question. The new system is not yet in place. The announcement made was that we would be working to create a new system.

In the meantime, the business of government must go on. These appointments are required to ensure that the business of government does go on. However, the government is working assiduously to put a new system in place with respect to the whole question of citizenship and immigration.

Senator Oliver: Could the Leader of the Government in the Senate tell us if the minister will refrain from making any more appointments or reappointments to the Immigration and Refugee Board until the selection process has been changed?

Senator Austin: Honourable senators, until the process is changed by the government or Parliament, as the case may require, we will have to continue to make appointments.

Senator Oliver may note that they are relatively short-term appointments.

HEALTH

CHINA—SEVERE ACUTE RESPIRATORY SYNDROME—SCREENING OF AIR PASSENGERS TO CANADA

Hon. Marjory LeBreton: Honourable senators, last week we saw the re-emergence of severe acute respiratory syndrome in China, as eight new cases have been reported to date. Health officials in that country have reported two confirmed cases of SARS and six suspected cases. One person has died and hundreds have been quarantined.

Health Canada has reportedly asked quarantine officials at eight Canadian airports to be more vigilant in screening passengers arriving from China for possible respiratory problems. Could the Leader of the Government in the Senate tell us if air passengers in Beijing and Hunan Province, China, are currently being screened before they board flights to Canada?

Hon. Jack Austin (Leader of the Government): Honourable senators, this is, of course, a situation that creates an enormous alert in the entire system. As Senator LeBreton knows, we have quarantine officers working at major airports. They are working with the customs officers and personnel to watch arriving passengers who may exhibit symptoms.

We also have monitors in China who are closely surveying the situation and working with the World Health Organization as well as with Chinese authorities.

Senator LeBreton will know there is no confirmed case of human transmission with respect to this episode of SARS. For the time being, we do not have officers at ports of debarkation.

One of the practical problems, as Senator LeBreton will know, is the multiplicity of such ports. It would take an enormous number of well-trained officers and it would require the permission of the host countries and their administrative systems. If sources are defined, I have no doubt that we might want to make a request, as would many other countries. There would have to be some arrangement by which passengers intending to travel could be screened.

It is my further information that Chinese authorities have personnel at airports to deal with international passengers.

IMPLEMENTATION OF REPORT
OF NATIONAL ADVISORY COMMITTEE
ON SARS AND PUBLIC HEALTH

Hon. Marjory LeBreton: Honourable senators, the recurrence in China of SARS should remind us of the necessity of ensuring that Canada is better prepared in the future to deal with a similar health emergency.

A report last fall from the federally sponsored National Advisory Committee on SARS and Public Health led by Dr. David Naylor made 75 recommendations, most of which have not been acted upon. Indeed, senators on the Standing Senate Committee on Social Affairs, Science and Technology appreciated Dr. Naylor's testimony before our committee on this very subject.

Many of these proposals had already been made in a federal report commissioned in 1994. My question, therefore, is: When does this government intend to implement the Naylor report recommendations?

Hon. Jack Austin (Leader of the Government): Honourable senators, with respect to the subject matter of Senator LeBreton's first question, a number of steps recommended by Dr. Naylor have been implemented.

With respect to the establishment of a public health agency, I can assure Senator LeBreton that the subject is under extremely active discussion at this time. I expect decisions shortly.

TREASURY BOARD

PERFORMANCE BONUSES
OF SENIOR CIVIL SERVANTS

Hon. Gerald J. Comeau: Honourable senators, in the 2002-03 fiscal year, despite a string of management scandals, the government spent $43 million on performance bonuses for its most senior civil servants. Some 93 per cent of all executives in Crown corporations received the bonus.

Could the Leader of the Government in the Senate advise as to why the government continues to pretend that these bonuses are performance pay when practically everyone gets one?

Hon. Jack Austin (Leader of the Government): Honourable senators, I thought I might be asked a question on this subject.

I have been advised that it is the practice to set aside a portion of the salary of a senior public servant, a deputy minister or an associate deputy minister and designate it as "at risk." That portion is paid with respect to the assessment of the performance of the officer. In other words, let us say that the salary is $150,000. Some $25,000 of it is set aside as "at risk," subject to the assessment of the performance of the senior public servant.

In the time frame mentioned, it was the opinion of those who make these judgments that 93 per cent of those who were subject to this program were entitled to receive the at-risk portion of their payment. This is not a grossing-up system based on some ad hoc determination, but part of a regular system of pay management.

Senator Comeau: Honourable senators, given the figure of 93 per cent, one would have had to have messed up so as not to receive the supplement. As to the 7 per cent who were so incompetent that they did not receive their supplements, could the Leader of the Government in the Senate advise how many were let go?

Senator Tkachuk: They were promoted.

Senator Austin: Honourable senators, it is not fair to judge those who did not receive their at-risk pay as incompetent.

The system is such that they are given support services, consultation, programs and training to improve their performance and to assist them in developing their careers. We do not just do "chop-chop" the first time around.

Of course, if the non-performance is sustained, I imagine that the individual might be at risk not only as to pay, but also as to position.

I do not have a number for the honourable senator, and I am not sure I will be able to provide it.

Senator Comeau: Mr. Alcock, President of the Treasury Board, was very critical of this at-risk system. He argued that handing out performance bonuses to just about every federal executive can perpetuate mediocrity — those are his words, not mine — and can become an incentive to keep quiet about problems and to not rock the boat.

• (1430)

Is the government planning to reform the pay structure or does Mr. Alcock now prefer incentives that would encourage public servants, in his own words, to keep quiet about problems?

Senator Austin: Honourable senators, it is a different day today. I can advise Senator Comeau that the question of pay is under review, with no pre-set biases as to its outcome.

PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

NATIONAL SECURITY POLICY—
TIMELINE FOR IMPLEMENTATION

Hon. Michael A. Meighen: Honourable senators, this morning in the other place, the government tabled, at long last, its new national security policy. Indeed, Canadians have been crying out for a security policy ever since the terrorist attacks of September 11, 2001, which is now over two and a half years ago.

In the foreword to this document, the Prime Minister identifies those attacks as one of the key motivators for the development of such a policy. I am tempted to ask the Leader of the Government in the Senate the obvious question: What took you so long? However, I will not, for the moment, do that. I would point out, though, that the policy that has been announced is very long on generalities and, once again, very short on specifics.

One of the few specific measures that is mentioned is the establishment of a new integrated threat assessment centre to be housed at CSIS. In making the case for this new centre, the authors of the policy note that similar centres have already been established in the United States, the United Kingdom and Australia.

Why did it take the government so long to establish that a centre was needed? How long will it take to actually bring it into existence? How long will it take to implement the concrete measures needed to deal with threats such as SARS and terrorist attacks? Is there a timeline for putting these things in place? If so, what is it?

Hon. Jack Austin (Leader of the Government): Honourable senators, this government took office on December 12, 2003. This is 140-odd days later. I think the government should be commended for the dispatch with which it has brought forward this policy on national security. It is a major piece of work and it has the highest priority in this government's area of responsibility. Senator Meighen should be standing in praise of the work that has been tabled today. As he studies the report, I believe he will find it an impressive contribution to national security policy.

I would answer the question on the timeline by asking Senator Meighen how quickly his party will be in a position to study and accept this policy and give it bipartisan support.

Senator Meighen: Honourable senators, I expect that that question will arise when we form the government. This government seems to be so hell-bent on calling an election that there will not be time to study the policy.

I would point out, honourable senators, that ''this government,'' to which the Leader of the Government refers, has been in office considerably longer than he indicates. The party has been in government for a number of years now. There was a change of leadership of the party, but that was all. I do not think the Leader of the Government can escape responsibility for inaction by putting it on the shoulders of a change of leader, however helpful the leader has been to my honourable friend.

NATIONAL SECURITY POLICY— ADVANCE DISCLOSURE TO SENATORS

Hon. Michael A. Meighen: Honourable senators, I have a supplementary question. Why did the Leader of the Government refuse last week in the chamber to supply us with information on the new national security policy before it was officially announced? I suppose I know the reason, but then I was surprised to see in the newspaper that Mr. Goodale shared just such information last weekend with his U.S. counterpart, Treasury Secretary John Snow. That is the information I received. It seems to me that the level of detail Mr. Goodale provided to Mr. Snow was such that the U.S. Treasury Secretary was able to conclude that the plan sounded very much like what the United States is doing.

Can the Leader of the Government explain why, prior to tabling in the other place, Mr. Goodale was able to share information on the national security plan with his counterpart in the United States, when the Leader of the Government in the Senate could not share the information with his colleagues in the Senate?

Hon. Jack Austin (Leader of the Government): Honourable senators, it is an interesting question, particularly in the way it is presented. I have been accused before — not by Senator Meighen, but by one or two of his colleagues — of providing deep background or Political Science 101 lectures. I do not want to do that today, because I know it is not appreciated.

I can say to Senator Meighen that the government's announcement must precede any explanation I would be able to give on behalf of the government in this chamber.

As to the other part of his question, when it comes to matters that are of a cross-border, multilateral nature, it is entirely within standard practice for governments to confer with one another on such issues. I notice that Senator Meighen is an advocate of closer cooperation between Canada and the United States, first with respect to border security, and then with respect to security against terrorism.

I note that the question was a bit facetious, and I hope I have not gone on too long with my answer.

TREASURY BOARD

INCREASE IN CONTRACTING PROFESSIONAL AND SPECIAL SERVICES

Hon. Terry Stratton: Honourable senators, advertising management is not the only thing contracted out by the federal government. Could the Leader of the Government advise the Senate as to why, given the 1993 Red Book promise to cut spending on professional and special services by $620 million, the annual cost of contracting out professional and special services has jumped by one third, from $4.2 billion in 1993 to $6.2 billion this year?

Could he also explain why this year's $6.6 billion bill for professional and special services is up 10 per cent, some $600 million, over last year's spending?

Hon. Jack Austin (Leader of the Government): Honourable senators, I will seek a specific answer to Senator Stratton's questions.

Senator Stratton: Honourable senators, I would hope to have an explanation for the 10 per cent jump of $600 million on professional and special services. That amount is quite staggering.

The President of Treasury Board tells us that the government's information systems can no longer tell him how many public servants are employed by the government. Would it be correct to say that the government also has no idea how many people it has working for it on various consulting contracts through what some have called the shadow public service?

Senator Austin: Honourable senators, the answer is the same as to the previous question. I will do my best to obtain the information for Senator Stratton, as I know he is a student of government operations.

Senator Stratton: Honourable senators, I appreciate the answer. I hope it will get to us by the end of the week. I do not need an answer to that comment.

I should like to point out two great successes that the Martin government has had in such a short term in power, since the Leader of the Government was alluding to the fact that he felt we on this side should be applauding its success in other areas.

The Martin government has succeeded in uniting the right into a new Conservative Party, and it has also rebuilt the Bloc Québécois, which had virtually disappeared, and is now likely to win 50 seats.

Senator Austin: Honourable senators, that could be the beginning of an interesting dialogue. I know that Senator Stratton is eager for that dialogue to begin, but I doubt it would have any great value to either of our parties in this chamber. It may have some interest to the Canadian public in that forum at a later time.

• (1440)

DELAYED ANSWERS TO ORAL QUESTIONS

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I have the honour of presenting two delayed answers to oral questions posed in the Senate. The first response is to an oral question raised in the Senate on March 26, 2004, by Senator Murray, regarding the presence of RCMP constables in dress uniform at a Liberal nominating meeting; the second is a response to Senator Oliver's question in the Senate on March 22, 2004, regarding Royal Canadian Mounted Police investigations into allegations of bribery.

SOLICITOR GENERAL

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

(Response to question raised by Hon. Lowell Murray on March 26, 2004)

The RCMP is a world-renowned organization and a living symbol of Canada. As such, this organization receives a considerable number of requests for the presence of members wearing the Red Serge at special events. Such events include community, national and international occasions as well as those for which members volunteer outside their normal work schedule such as concerts, festivals, sporting events, or dances etc... Each request is assessed to ensure that such participation will uphold the RCMP's image and reputation and meet established RCMP policies and procedures governing such attendance. Given the size of the RCMP, such requests are handled locally and fall under the purview of the Commanding Officer or delegate.

In this particular instance, the two members in Red Serge participated on a cost-recovery basis. A review of our participation at this function has revealed that the RCMP should have declined this request.

The RCMP has taken the necessary steps to ensure that all requests of this nature comply with RCMP policies and regulations.

CITIZENSHIP AND IMMIGRATION

ROYAL CANADIAN MOUNTED POLICE INVESTIGATIONS INTO ALLEGATIONS OF BRIBERY

(Response to question raised by Hon. Donald H. Oliver on March 22, 2004)

According to the RCMP's news release, "the investigation revealed that between 50 and 60 individuals facing IRB hearings had been contacted and offered positive judgements in their upcoming Immigration and Refugee Board (IRB) appeal hearings in exchange for cash bribes."

As the investigation is ongoing, the RCMP has provided little information regarding the 50-60 cases that are mentioned in their news release.

The *Immigration and Refugee Protection Act* provides for the Immigration Appeal Division (IAD) of the IRB to reopen an appeal if the principles of natural justice were not followed. There are three ways to do this:

- CIC/CBSA can file a motion to reopen

- Unsuccessful appellants can file a motion to reopen

- IRB can decide on its own to reopen a file

The IAD is presently reviewing files to identify any evidence of wrongdoing. If it uncovers any evidence of wrongdoing, the IRB will take all measures necessary to ensure that the principles of natural justice are upheld in these cases. The IAD will evaluate the evidence on each motion to reopen, consider the individual circumstances and make a decision according to the law. The final decision to reopen rests with the IRB.

In addition to the IAD review, CIC officials, now part of the Canadian Border Services Agency (CBSA), have reviewed a number of files of criminals who were ordered deported and whose appeal allowed them to remain in Canada.

A small number of these cases have been identified by CIC\CBSA for further investigations which are ongoing. Where evidence of continued criminal activity emerges, officials will take the appropriate steps which may include a new deportation order or a request to the IRB to reopen the appeal.

[*Translation*]

THE SENATE

TRIBUTE TO DEPARTING PAGES

The Hon. the Speaker *pro tempore***:** Honourable senators, I have the honour of presenting three pages who will be leaving the Senate this year. Adel Gonczi, who comes from Moncton, New Brunswick, has appreciated her experience in the Senate very much. She is certain that the lessons she has learned here will stay with her all her life. She is eager to complete her degree in international politics in December 2004 and hopes to continue her studies and achieve her dream of working in Canada's diplomatic service.

[*English*]

Sarah Johnson, from Peterborough, Ontario, has thoroughly enjoyed her experience as a Senate page over the last two years. She has completed her third year in the Honours English Literature Program at the University of Ottawa and, upon completion of her degree next year, plans to pursue post-graduate studies in literature.

After two fantastic years as a Senate page, Megan Reid, from Leamington, Ontario, will be undertaking a new set of challenges this fall as a first-year law student at the University of Ottawa. She plans to continue to do volunteer work in non-profit organizations dedicated to social justice.

Hon. Senators: Hear, hear!

ORDERS OF THE DAY

CUSTOMS TARIFF

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Hon. Pierre De Bané moved the third reading of Bill C-21, to amend the Customs Tariff.

He said: Honourable senators, the reasons that justify the introduction of the GPT and LDCT decades ago still remain. The GPT is the general preferential tariff, and the LDCT, the least developed country tariff. The purpose of this bill is to further for 10 years, until June 30, 2014, the provisions that we have for the least developed countries and the poor countries of the world.

There are still many countries of the world with low per capita income levels. We were reminded again of this fact in a recent report by the United Nations Commission on the Private Sector and Development, co-chaired by Prime Minister Paul Martin. In the report, it was highlighted that despite great progress over the last 50 years, 4 billion people live today on less than U.S. $5 a day in the developing world, of which 1.2 billion people live on less than U.S. $1 a day. Hence, the premise that originally led to the establishment of preferential tariff programs, namely, that they would encourage an increase in exports that stimulate economic growth and help reduce poverty in the developing world, still holds today.

While many studies have pointed out that preferential tariff programs have supported economic growth in many poorer countries, they still see preferential access to the markets of the developed world as an important instrument to help them improve their development prospects. Therefore, extending the GPT and LDCT for another 10 years reaffirms the government's commitment to promoting the export capability and economic growth of developing and least developed countries. Continuing these two long-standing preferential tariff programs will send a positive message to beneficiary countries that Canada continues to see these programs as an important tool for economic growth in developing and least developed countries.

Finally, by extending the GPT and LDCT Canada will be joining other developed countries in their efforts to assist poorer nations. In this regard, all major developed countries provide preferential access for the developing world and some of them, including the United States, Japan, and members of the European Union, have recently extended their programs.

[*Translation*]

It is important to note that the advantages associated with the GPT and LDCT are not important only to the developing and least developed countries. Certainly, these measures were created for these countries in particular, but we must not forget that Canadian imports under these programs, estimated at $9.7 billion, save Canadian consumers some $273 million.

Therefore, it is obvious that Canadian importers and consumers benefit directly from these tariff programs, which contribute to the economic development of beneficiary countries and also have advantages for Canada.

[*English*]

Before closing, honourable senators, I should like to quote from the eloquent speech made by Mr. Kofi Annan, the Secretary-General of the United Nations, before our Parliament on March 9. In making reference to the importance of the goals of the 2000 Millennium Declaration, a joint statement of our ambitions for humanity in the new century, he said:

> Reaching the millennium development goals will require a true global partnership in which all developed countries play their parts through increased and more effective official development aid, investment, advice, and policies that ensure a just global trading system.

He went on to add that:

> ...we must all make certain that poor countries have a chance at development and that they can benefit from globalization.... Developing countries should be given a chance to trade away their poverty...

The comments of Mr. Kofi Annan reflect the underlying principles behind the GPT and LDCT, the extension of which is the focus of Bill C-21. This bill constitutes one substantive measure Canada can take to assist the developing world in achieving the goal of poverty reduction. I strongly urge honourable senators to support this bill and reaffirm Canada's continued commitment to supporting economic growth in the developing world.

• (1450)

I remind honourable senators that Canada stands with all other major industrialized nations, including the United States, Japan and members of the European Union, in supporting the developing world through preferential tariff programs. The advantages are many.

First, Canada will continue a long-standing international practice of providing preferential tariff treatment to goods from the world's poorer nations in order to support their economic growth. Second, by doing that, we will provide certainty and predictability to traders who use them in Canada. Third, continuing these programs will complement Canada's foreign aid policies. Finally, while these programs were mostly conceived as an economic assistance measure to developing countries and least developed countries, they also benefit domestic importers of inputs and consumers of finished products.

Quite simply, a 10-year extension of the GPT and the LDCT would be consistent with past practice, provide a predictable and beneficial business environment to users of the program, and reaffirm a long-term commitment by the government to international development.

In view of all those arguments, I urge all honourable senators to support this bill to allow for the continuation of important Canadian measures that support economic growth and poverty reduction in the developing world.

On motion of Senator Lynch-Staunton, for Senator Meighen, debate adjourned.

PUBLIC SAFETY BILL 2002

THIRD READING—DEBATE SUSPENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Léger, for the third reading of Bill C-7, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. A. Raynell Andreychuk: Honourable senators, I rise today to again speak to Bill C-7. When one looks at the title, it almost leads to the conclusion that there are certain changes, most notably to the Biological and Toxin Weapons Convention that will somehow enhance public safety. However, when one looks at the bill itself, as the committee did, the Biological and Toxin Weapons Convention is but a small part of a huge and massive change in many of our basic acts of Canada.

Some of the words used to describe Bill C-7 are "complex," "intricate," "omnibus," "pervasive," "groundbreaking," "overarching" and "overreaching." It is, indeed, groundbreaking. The position of the Canadian Bar is the following:

> These are very dramatic powers and quite a departure from the normal way of doing things.

It is difficult to understand the full intent and, more important, the consequences of passing Bill C-7, both the intentional consequences and the unintentional consequences that will flow. There is a blending or, in some people's opinion, a muddling of terrorism with criminal law and immigration. This bill also deals with all forms of emergencies respecting safety as well as emergencies respecting security. This bill in no way is limited to terrorist activity. Despite the fact that it was labelled as part of the package of responses necessary for terrorist activity after 9/11 in conjunction with Bill C-36 and Bill C-44, this bill goes way beyond terrorist activity and deals with all risks to Canadian society. It envisions emergency legislation for all kinds of responses, be they natural disasters, manmade disasters, terrorism or criminal activity. It not only envisions terrorism, safety and security risks from around the world, but also pinpoints security and safety issues that could be perpetrated by Canadians against Canadians.

Mr. John A. Read, Director General, Transport of Dangerous Goods, Transport Canada, distinguished between responses to safety concerns and response to security concerns. I am sure all parliamentarians and citizens are not aware of this, as the bill is being trumpeted as enhancing security against terrorists.

Honourable senators, we are in a precarious time with respect to our laws, security, privacy and rights. My first dilemma in applying this measure to the present-day situation is that somehow the government has taken the position that if one questions the need for this legislation, one is somehow unconcerned with security and safety issues. It is quite the opposite. Those who are questioning the government with respect to the legislation are more concerned about safety and security and ensuring that the system actually works.

Mr. Ziyaad Mia, representing the Muslim Lawyers Association and the Coalition of Muslim Organizations, stated in his opening statement to the committee:

> ...the umbrella of all this since September 11, 2001 is that we are living in a culture of fear. That is not really a good way to run a society, to run yourself, to run your household or to run a government or to write law. Bill C-7 takes us away from the rule of law and responsible government and takes us to a society motivated by fear and characterized by reaction. This is evident from the government's sales pitch on Bill C-7.

Honourable senators, the approach that our government is taking is simply bad public policy. We have gone from not putting sufficient investment into our protection prior to September 11 to a very reactive response instead of a proactive stance. One only needs to go back to the Senate's own study on security and intelligence prior to 2001 where alarm about security was raised. There was minimal response. Now we have Bill C-36, Bill C-44, Bill C-7 and other significant bills that have amended the Criminal Code in response to terrorist activity. It is time to assess whether these mechanisms are correct and working. It is time to assess whether the powers and tools given to the Government of Canada have produced results. We know that Bill C-36 has led to charges recently being laid. However, we also know that a reporter, Juliet O'Neill, has been trapped under the consequences of that legislation.

We know that to date the government has not had the correct technology, finances or trained manpower to implement the various pieces of legislation. The so-called Smart Border Initiative of 20 points is yet to be delivered. The Auditor General's report of March 3, 2004, graphically illustrates the shortcomings. Our own National Security and Defence Committee has pointed out a series of major deficiencies. In the end, it will not be for the lack of tools we have given the government if security fails; rather, it will be that the government, in spite of sufficient targeted information and intelligence, has not taken the right direction.

It is instructive to note that the department and the minister are deeply sensitive about accountability because more than once Ms. McLellan in her testimony before the committee stated: "I would not want to be in a position to have to explain that to Canadians when asked."

Again, in answer to a question about the bill and a particular clause, Ms. McLellan said that the question from citizens would be: "...what in God's name are you doing in terms of the safety and security of Canadians?" Rather than having a reasoned approach, educating the public about the limits that a government can take to ensure and guarantee safety, the minister is in fact attempting to anticipate every known security and safety risk thinking that this would "stop normal critiquing of the government as to what they are doing."

• (1500)

Another interesting point was raised by Mr. Read in answer to a question on why the time frames on interim orders were as stated. He said:

> The time frames that we have are based, I guess, on the fact that we recognized during the events of September 11 that the people who are experts on the emergency are fully immersed in the emergency. I was one of those people; and one of the best things that happened to us was that the deputy said: "We did not have to answer all these questions we normally get by hand, and that was a good five day period — we were fully occupied."

He went on at another point in his testimony to say:

> If you have seen the poor fellow who is doing mad cow disease, and some of those other people who are terribly overworked, they do not have time to withdraw to write out this careful reasoning and so forth. We had to have a period of time before we had to go to the Governor in Council with all of the argumentation written down and all the proper formats....

Ms. Bloodworth further stated:

> It is clear that ministers are accountable in any event.

Honourable senators, that is the rub. Get as many tools, get as much authority, reduce the accountability, and if you are a civil servant it is easier to justify it to a minister, and if you are a minister it is easier to justify it to Parliament or the public. Therefore, it seems that Bill C-7 has less to do with ensuring our safety and security than with a modus operandi of a government who would circumvent access to information, as they have, reduce Charter of Rights scrutiny, as they have, reduce privacy, which they have, and give themselves such sweeping powers that they cannot be reasonably challenged in court. In fact, Ms. McLellan, in answer to Senator Merchant's questions about Canadian perceptions stated:

> In fact, some of the recent polling work, and that is all it is, you can take it for what it is, would indicate that a significant number of Canadians do not believe the last polling from Ekos indicating that more than one third of Canadians did not believe that we had gone far enough in protecting their security.

Contrast this with Ms. Jennifer Stoddart, our Privacy Commissioner, who stated in answer to Senator Stratton:

> At the conference hosted by Minister Denis Coderre, I participated in my then capacity as Quebec's Privacy Commissioner. We had a very interesting presentation by a public opinion polling firm that showed us exactly how public opinion does vary given the questions asked. We cannot really say. We certainly did not conclude that Canadians are ready to jettison their privacy rights just in case they have marginally more security. Canadians are far more critical than that. However, it depends on exactly what questions they are asked.

A further point to make is that while the government follows reactions to the last terrorist situation, it was ironic that the committee was meeting at the time of the Spain metro killings. We continue to deal with aeronautics, but what about the rest of the transportation system within Canada? We have been forced to look at our borders and our ports, both from critics within and without. We have as yet to get sufficient technology in place to be able to deal with stolen and lost passports as part of the analysis at the border points, to name just one issue. The bill proceeds on the road for more tools when it is clear that the ones they have are not implemented, nor financed, nor technologically sound.

There are, however, some valuable sections in the bill. For example, the adherence to the convention on biological and toxin weapons is necessary and would have been worthy of an independent act through Parliament. There are other provisions to deal with air hoaxes and to curtail the manufacture, testing, acquisition, possession, sale, storage, transportation, importation and exportation of explosives and the use of fireworks. Part 7 is certainly worthy of passage. Also sections dealing with funding for port authorities are necessary and not in dispute.

I now want to point out some of the real problems with Bill C-7, which are not insignificant. While there has been great discussion about aeronautics and the need to ensure passenger safety and to prevent further air attacks, I do not believe that the average Canadian understands that it was Bill C-44 — the one we have already passed — wherein information about international flights was authorized. Bill C-7 targets information about domestic flights and the sharing of this information with intelligence and police and then shared again through protocols, arrangements and measures with other countries which then, despite giving verbal assurances or otherwise to Canadian authorities, have the use of information about Canadians.

In light of the time constraints, I will not try to go over some excellent points made by Senator Spivak in her speech and other points raised by other senators both here in the chamber and in committee. Privacy Commissioner Jennifer Stoddart objected to the bill on two bases. She stated:

> First, the legislation is far too broad. Second, to use a word we all understand, this bill co-opts private sector organizations by pressing them into service in support of law enforcement activities. Clause 5 of this bill adds a new provision to the Aeronautics Act, section 4.81, empowering the Minister of Transport or authorized department officials to require certain passenger information from air carriers and operation of aviation reservation systems. The bill would also add a new section, section 4.82, to the Aeronautics Act authorizing the Commissioner of the RCMP and the Director of CSIS, to require air carriers and operators of aviation reservation systems to provide them with information about passengers. This information would be used and disclosed for transportation safety and national security purposes directly related to the legislation. As well, the information would be used for the enforcement of arrest warrants for offences punishable by five years or more of imprisonment, a purpose that has no direct connection to this legislation.

She further stated:

> One of the basic fair information principles is that information collected for one purpose should be used for that purpose only.

She recommended that the list of offences for which information can be disclosed to execute a warrant would be and should be significantly reduced.

Ms. Stoddart said:

> One of the things we are concerned about — and I allude to it in my prepared remarks, which has impressed the Office of the Privacy Commissioner over the years that we have been following this because this legislation, for being so necessary, has not yet passed some two and a half years later — and would like to draw to your attention is that we have come across no cogent arguments, no organized research, no brief, not any kind of coherent information or arguments in support of such broad powers being given to our surveillance and police officers.

One would expect that there would be some serious analysis, statistics or studies put forward to show why, as Commissioner Zaccardelli just said, if low-level crime leads you into terrorists, how often it leads you and why it would be absolutely necessary to monitor all kinds of things. My staff found none of this in all their very thorough research. Indeed, from the quote that the former Solicitor General made, it sounds like, "Well, while we have powers, why not tack on other things and nab other people?" That is a very dangerous way to approach law enforcement in our country. We do not at all want to minimize the importance of apprehending people for whom there may be search warrants for indictable offences and which may or may not merit imprisonment for five years. We say that this takes a well-thought-out law enforcement strategy that looks into prevention, into what happens to the victims and into the whole broader issue of that particular thing, not just nabbing people, because now we have the powers, thanks to technology, to run huge lists against all kinds of people. This is a very dangerous precedent in blurring the boundaries of the use of criminal law.

• (1510)

In other words, as Minister McLellan said, if the police, while tracking, were to come across an outstanding warrant for a serious offence, the public would want that person arrested. As Ms. Stoddart said, this further indicates that there would be an inevitable drift to use this mechanism for criminal law purposes while veering away from the essential data scanning for terrorism, which is more difficult. We would have another tool, not contemplated by criminal law, to deal with criminals. I certainly do not accept Commissioner Zaccardelli's point of view that any and all criminals could be tomorrow's terrorists; that brush is too broad. Think about who is being imprisoned today in our system: We know that Aboriginals are oversubscribed and we know that minorities are tapped. I can appreciate that law enforcement officers do not overlook any link, but, to be quite frank, when our criminal law system is overrepresented by minorities, I do not want to draw the equation that these people could be next year's terrorists. While it is legitimate to look at organized crime, gangs and money laundering, such an unwarranted sweep by the government should not be tolerated, as it would be under Bill C-7. There is a natural tendency and pressure between those who advocate rights and those who are given the responsibility to protect. That is where our fine balance of criminal law has gone. To now move the marker without data and research would be unwarranted and unnecessary to the extent that the government has proposed.

Allow me to summarize some of the concerns of the Air Transportation Association of Canada and specific carriers whose representatives came before the committee. Their chief concern with the proposed legislation lies with proposed sections 4.81 and 4.82, which would empower the Minister of Transport, the Director of CSIS and the Commissioner of the RCMP to require any operator of an aviation reservation system — our travel agents and our air carriers — to provide, within the time and manner specified, information concerning persons on board or expected to be on board the aircraft. This seems reasonable if we were looking for information. However, I remind honourable senators that this information would be required for every flight in Canada and would be shared with external sources of intelligence agencies. Mr. Everson said:

> The legislation specifies only information that is in the air carrier or operator's control, but, in fact the testimony that you have been hearing from state officials makes it clear that they plan to oblige airlines to gather much more information than we currently do. The crux of our argument lies therein. The security agencies want to go fishing for criminals in an ocean of our passenger population — that is fine. We support them doing that; that is their job. However, the net that they want to use does not actually exist right now. The wording of this legislation will mean that airlines will be compelled to build that net and do the fishing at our expense. We are asking the Senate to protect us from that situation. Domestic airline data is not like international airline data with which we have a great deal of familiarity. It is not today in a form that is likely to be very easily used by security agencies.

He continued:

> I want to make it clear that many airlines in Canada do not use electronic reservation systems. Most use manual systems and are not able to transmit passenger data to the RCMP or anyone else.

He then indicated that they would be obliged to execute a public duty, and because it is a public duty, they indicate it should be paid for by the public and not by this fragile industry that is not equipped today to do so. Security screening at the airports was taken away from the airlines and paid for publicly. This should also be so.

Honourable senators, we will be ahead of the curve if we provide this information. One can only piece the material together and indicate that this request in Bill C-7 is the result of attempting to combine the concept of Computer-Assisted Passenger Screening II in the United States. While CAPS-II is a seamless flow of information about all passengers and an overarching tracking system, it is neither technologically sound nor in place. As we speak, Congress is holding up regulations in response to the industry and to others. It is one thing to say that we will have a comprehensive system, but it is another thing to actually produce it. The United States does not have a viable working CAPS-II; yet, we will force the struggling airline industry and an unsuspecting public to provide all this material, although we will be uncertain as to how and where it will be housed after it leaves Canadian soil. For that matter, we are uncertain as to how it will be particularly housed in Canada because this subset of information, which will come to match up with the overall terrorist legislation, will not be subject to much public scrutiny; and it is not in place at present.

It is also interesting to know that Europe is not implementing this system but is looking at a pilot project. In terms of security, this is a more sensible approach in light of concerns. To be dragged into a system to try to prove that it works certainly sounds like something that happened in the matter of gun control — the gun registry. Remember, it is not just sharing information with the United States but potentially with all governments.

Honourable senators, this information is far-reaching and is just the tip of the iceberg. Once data collection begins, it tends to broaden and the information in the hands of competitors and of foreign countries becomes mind-boggling.

Honourable senators, the main thrust of my concern is directed to interim orders that circumvent normal procedures and give sweeping powers to ministers to act and circumvent normal regulatory practices. As I stated earlier, these interim orders will give broad, sweeping, unfettered powers to ministers and, in at least one case to a deputy minister, the right to make emergency orders. I remind honourable senators that these interim orders are not just for terrorist situations but also for all safety and security measures. For example, these interim orders are allowed under the Health Act, under the Hazardous Products Act and under seven other acts. The difficulty is not that there is the power to make interim orders. The difficulty is that this proposed legislation has been billed as terrorist legislation but in reality gives interim order rights on public safety issues that are totally unrelated to terrorism or criminal activity. Therefore, it will affect businesses, individuals and their livelihood in a way that has not been done in the past. Two previous bills gave powers to ministers, but these were widely publicized and were the result of negotiations, discussions and public awareness after a disaster or a spill had occurred. In this legislation, the government's only justification to date has been Minister McLellan's and Minister Valeri's positions that they have contemplated what might happen and they want all the powers to react.

What about all the things they have not contemplated? It is instructive in the interim order provisions that they are taking such broad, sweeping powers for anything in the future that may make them vulnerable. Definitions are not provided in the bill. I remind honourable senators that if a minister were to believe that immediate action were required to deal with a significant risk, direct or indirect, to health or safety, that would be the only requirement. The bill does not say that the minister would have to have reasonable belief and it does not say that the minister would have to use any criteria for this analysis.

The minister could henceforth act and would have 14 days to bring it to the Governor in Council and cabinet. No doubt the 14 days would be for the purpose of preparing an appropriate response to, or defence of, the use of the interim order. Thereafter, the government would approve it in one day and on the twenty-third day it would go to Parliament to be filed. However, as we know from the scrutiny of regulations, this would be an overwhelming task; and while eventually there would be

scrutiny, it would be after the fact. One cannot go to court — and I want to make this point since Senator Day raised it — to question the appropriateness of the order. One can conceivably go to court on a ministerial review if the precise technicalities were not followed — say, 14 days was extended to 15 days, or if there was a lack of bona fides on the part of the minister. However, no one is alleging that. The powers are so broad and so sweeping that great damage could be done to individuals and industries in Canada in a 14-day period. Should an interim order be invoked affecting Canadians, they should be able to question the validity of it on its merits.

• (1520)

In my second reading speech, I stated that the principle of fundamental justice must apply and that unfettered or unstructured discretion to a minister is not consistent with the principle of fundamental justice. In the *Parker* case, which I quoted in my second reading speech, the court questioned the absolute discretion based on a minister's opinion, and, I might add, that was a rather narrow discretion. In that particular case, where an exception is necessary for medical purposes, the pertinent phrase was not defined in the particular act.

Here we must deal with the same issues. The interim orders are permissive, that is, the minister "may." The minister has absolute discretion on undefined terms, the only restriction being that it must be contained to the regulations that are enumerated. Honourable senators, I would invite you to read those regulations to see how wide and sweeping they are.

Citizens have a right to know what action is being taken against them. Vagueness serves confusion, and people will shy away from exercising their freedoms if the consequence is facing punishment. This uncertainty and fear nurtures inhibition rather than free action; and, honourable senators, you will agree that this is not acceptable in a democratic society.

Many of these interim orders, as Mr. Read told us, would deal with safety concerns, rather than security concerns. This is not terrorism legislation; this is an overarching concentration of power in the executive with only post factum scrutiny by Parliament, if at all, if normal routines of the past apply.

In essence, what is occurring is an avoidance of regulations by the use of emergency power, or at least that possibility is real. One sensed that in hearing Mr. Read's comments, that the bureaucracy is overtaxed and overburdened, justifying the action. No doubt, BSE, avian flu, SARS and terrorism are serious issues, but is that a reason to abrogate our rights and give such sweeping powers to a minister or a deputy minister, unchecked in any real way? Indeed, their broadness raises a constitutional question as to their validity. Honourable senators, I request that the crux of this issue be dealt with fully, and that is the constitutionality of this bill.

The other points that I raised are public policy issues. This real, constitutional issue has not been addressed. While we had a panel and we did talk in general public policy terms, there was simply no time and no witnesses to deal with the constitutionality of the interim orders.

Senator Day indicated he would have appreciated hearing from the Canadian Bar Association on these orders. In fact, the Canadian Bar Association filed a long submission but we did not have time to get to it, nor did we quiz them on it because of the time element. Indeed, I was told only prior to voting that witnesses who could have answered constitutional questions before the committee were unavailable. Had I known that, I would have either asked that other witnesses be called or I would have contacted those particular witnesses who were given short notice of the hearing. I believe that was unfair.

I further suggested, since we were adjourning at that time for a two-week recess, that we could hear these witnesses on the Tuesday morning that the Senate was to resume. In fact, the bill could have been reported that afternoon. The majority denied this request. We are faced with an avoidance of a regulatory base that could be constitutionally unsound. There are experts in Canada who can comment on this, and it would be with little inconvenience to the government after so many years of this legislation to hear from those witnesses. People's lives, their livelihood and their communities lie in the wake.

It is not good enough for the government to respond by saying that, if they have concerns, they can test them in the courts. Minister Cotler fairly recently pointed out he was shocked at the number of cases citizens had laid against the government. Surely, in a democracy, the soundness of legislation is paramount; and that is the precise responsibility of the Senate. If a question is raised, it should be addressed. In this case, it has not and it can be easily done.

Honourable senators, by utilization of the interim orders, we are exempting the application of sections 3, 5 and 11 of the Statutory Instruments Act. This does not allow for the matching of interim orders to Charter implications, which is done in the case of regulations. Canada is a country that prides itself on its Charter of Rights and Freedoms, and particularly this government. Therefore, when it takes away the scrutiny of the Charter of Rights and Freedoms before regulation, and if this interim order can be used as a substitute for regulation, surely we should determine its constitutionality.

Mr. Potter, representing the Canadian Bar Association, stated:

> Our view is that it is very hard to see that it is necessary to pass these new, quite dramatic emergency powers. I know of no situation in which Canada has had some kind of obstacle in putting together an emergency response in a legal way.

I believe the government's own policy statement today deals with a framework of implementation and not further legality.

I would remind honourable senators that the Muslim Lawyers Association and the Coalition of Muslim Organizations appeared before the Senate hearing and stated:

> Many of the problems experienced by Muslim-Canadians, from minor inconvenience or embarrassment to outright torture, were facilitated or exacerbated by faulty intelligence, lack of oversight and the complete absence of accountability. Take, for example, the thousands of "friendly" interviews that many were subjected to in the aftermath of September 11, 2001. In many cases, otherwise law-abiding citizens were subjected to humiliating interrogations about their personal lives, religious devotion and practice, personal beliefs and political beliefs. The threshold to trigger such interrogation was simply so low that many Muslim Canadians felt that being Muslim alone was sufficient to warrant the scrutiny of the state and all that it entails.

Therefore, honourable senators, if the government still persists on proceeding, we should at least be reasonably assured that the interim orders are constitutionally valid.

MOTION IN AMENDMENT

Hon. A. Raynell Andreychuk: Therefore, honourable senators, I move, seconded by Senator Stratton:

> That the Senate not now proceed to third reading, but that the Senate refer Bill C-7 to the Standing Senate Committee on Legal and Constitutional Affairs for analysis on the constitutionality of Bill C-7.

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

Hon. Anne C. Cools: Honourable senators, I listened to Senator Andreychuk with great interest. I happened to serve on a committee with her, and I am always impressed by her clear-mindedness.

• (1530)

I have two questions, one of which is a follow-up question on something Senator Andreychuk said. I think the honourable senator said something to the effect that large numbers of our inmate population are members of minority groups. The honourable senator described a few other categories.

Does the honourable senator happen to know what percentage of these people are, say, from the labouring classes — the blue-collar workers or the working classes of this land? Does the honourable senator have any idea of that?

Senator Andreychuk: Honourable senators, I do not have up-to-date statistics. As Senator Cools well knows, in the Standing Senate Committee on Legal and Constitutional Affairs, we continually struggle to get Statistics Canada to come forward with such information.

The point I clearly wanted to make is that not everyone who commits a crime in Canada is a terrorist.

I used a couple of examples. I could have mentioned blue-collar workers or anyone else. The threshold is imprisonment for five years or more. There is public mischief in there. There are all kinds of things unrelated to terrorism.

I tried to draw the line that the police are absolutely correct to say that crimes involving gangs or money laundering can be components of terrorism. However, surely, our entire criminal system is not geared to saying that everyone who enters the criminal system comes out a terrorist. That was the point I was trying to make.

I appreciate that I may have stated this concept too narrowly. If I did, I should not have done so.

Senator Cools: That is one of the problems with the scripting of this so-called terrorist legislation, and it leads me to my next question.

With the onset of the need for all of this new legislation, there were many opinions as to how to approach the legal challenge of structuring and scripting the proposed new law. I have never understood why the drafters proceeded this way because the term "terrorist" is filled with problems. To my mind, it is riddled with problems.

Does Senator Andreychuk know anything about this? For example, there was a body of opinion on the table during the drafting of the law. Instead of trying to create new offences called "terrorist" and a new concept called "terrorist," there was a body of opinion that said go back to common law and to historical traditional law and build on concepts that were well understood for centuries. For example, in the events of September 11, vessels were attacked. One could have looked to crimes of piracy. In other words, bring the laws of piracy into the current context. For example, piracy on the sea is different from piracy on land or in the air, if honourable senators remember the difference between the pirates and the wreckers and so on. The interesting thing about the words "piracy" and "pirate" is that there is not much doubt about what those words mean, whereas there is a lot of doubt as to what words like "terrorist" mean.

The mere fact that we are being told that every criminal could be a terrorist to my mind proves Senator Andreychuk's point in very clear and poignant terms.

Does Senator Andreychuk know anything about the body of opinion that wanted the law to go in the direction of clearer, more comprehensive and more understandable words that were already known to the public, rather than this? I understand that the drafters in our country wanted to go the new, trendy route rather than the historical common law follow-the-thread-of-the-law route.

Does Senator Andreychuk know anything about that? If this bill were to go back to committee, perhaps these questions could be looked at. The word "terrorist" has many interpretations. In fact, to some people, terrorists are heroes.

Senator Andreychuk: I can only answer from the perspective of some of the other work I have been doing on anti-terrorism legislation.

Let us go back to Bill C-36. We, the United Nations or anyone else could not really define terrorist or terrorism. The closest international thinking could come was to "terrorist activity." My complaint with Bill C-36 is that we adopted the British definition more closely than any other. The British definition had historical reasons within Britain, and not here. It goes back to the IRA, et cetera.

My concern with this bill does not centre around terrorist activity. I will concede that the government needs to do certain things, but certain aspects of the bill are fine. For example, the international convention is fine.

Under the guise of a bill introduced weeks after 9/11, and in response to 9/11, a whole bunch of legislation was put together. I commend the government for that, because we did not know what the threat was. As Ms. Stoddart, the Privacy Commissioner of Canada, said, two and a half years later we have a lot of experience and we should put our resources where they can be of some benefit and success. That is to say, put them into beefing up intelligence, beefing up our borders, working in harmony and not casting our net further and further into legalities that lead to trouble.

There is a real risk of blending criminal law with terrorist law. This bill started out as a response to terrorist legislation. It has been taken off the books and then brought back a number of times.

In reading Bill C-7, one discovers that it covers everything under emergency orders, a shortcut so as not to have to bother going through regulations — that democratic process where one has to account. It is much easier not to have to account.

My problem is that the government is circumventing Parliament and proper processes that have taken years to establish, with not much benefit to our protection against terrorism. The government would be best to talk about the administrative and policy frameworks. We have waited two and a half years for that. They could talk about resources, so that the border authorities would not have to say, "Certain things will happen in July, but we do not have the money to implement what is already on the books."

We should not mislead the public by saying that Bill C-7 will make us safer. It is a minor tool at best. It invades and jeopardizes so many other things.

I am pleading that the government reduce it to terrorism only in this bill; or, alternatively, if the entire 100 pages is necessary, then please ensure that this intrusion that has taken us so long to build safeguards around is constitutionally sound.

Hon. Joseph A. Day: Honourable senators, if there are no other honourable senators who wish to ask questions of the Honourable Senator Andreychuk, I should like to speak briefly on her amendment.

I would urge honourable senators to vote against the proposed amendment. The issue it raises as to which committee the bill should be referred was dealt with at second reading. It was referred to the Standing Senate Committee on Transport and Communications and an excellent job was done.

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

Some Hon. Senators: Question!

The Hon. the Speaker *pro tempore***:** Is it your pleasure, honourable senators, to adopt the motion in amendment of the Honourable Senator Andreychuk?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore***:** Will all those honourable senators opposed to the notion 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***:** Is there agreement on the bell?

Hon. Terry Stratton: The agreement is 30 minutes.

Hon. Rose-Marie Losier-Cool: There is to be a 30-minute bell.

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

Hon. Senators: Agreed.

The Hon. the Speaker *pro tempore***:** The vote will take place at 4:10 p.m.

Call in the senators.

• (1610)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Murray
Atkins	Nolin
Cochrane	Oliver
Comeau	Prud'homme
Di Nino	Spivak
Eyton	St. Germain
LeBreton	Stratton
Lynch-Staunton	Tkachuk—16

NAYS
THE HONOURABLE SENATORS

Adams	Hervieux-Payette
Austin	Hubley
Bacon	Jaffer
Banks	Joyal
Biron	Kroft
Bryden	Lapointe
Callbeck	Lavigne
Carstairs	Léger
Chaput	Losier-Cool
Christensen	Maheu
Cook	Mercer
Corbin	Morin
Day	Munson
De Bané	Pearson
Downe	Phalen
Ferretti Barth	Ringuette
Finnerty	Robichaud
Fitzpatrick	Rompkey
Fraser	Sibbeston
Gauthier	Smith
Gill	Stollery
Graham	Watt—45
Harb	

ABSTENTIONS
THE HONOURABLE SENATORS

Cools—1

The Hon. the Speaker *pro tempore***:** Resuming debate on third reading.

Senator Stratton: Honourable senators, I should like to raise a point of order with respect to the vote. According to rule 68(1):

> A Senator shall not vote on any question unless the Senator is within the Bar of the Senate when the question is put.

I believe Senator Harb was not within the bar when the question was put, and he voted.

Hon. Mac Harb: Honourable senators, that is exactly the point. I was within the bar before the question was completed. My colleagues here could testify to that effect.

Senator Stratton: The point is that the rule states that a senator must be within the bar when the question is put — not when the question ends but when the question is put.

This is the second time Senator Harb has done this. For everyone's sake, I remind honourable senators that they are supposed to be within the bar when they vote, not passing the bar. This is not tennis, after all.

Senator Harb: Honourable senators, with all due respect, this is not the second time. The first time, even though I was within my right as a senator to vote, I decided not to vote myself. A colleague stood up in the house and indicated that I could have voted had I wanted to exercise that right.

If the rules of this house are similar to those of the other House, I would be able to vote if the entire question has not been put.

It is up to you. You can consult the rules in any event.

Senator Cools: Honourable senators, yes, something may have happened, but there is enormous uncertainty. I propose that we not treat this matter as a point of order and not ask Her Honour to rule on it. I suggest that we leave the matter to its own resolution over the next many weeks.

Senator Stratton: Honourable senators, I would agree, with one proviso, because this is the second time that Senator Harb has done this. I would ask, as I have asked other senators with respect to language in this chamber, that the honourable senator respect the protocol within this chamber and assure us that he will not do this again. If he does it again, I would ask that he please not vote.

Senator Harb: Honourable senators, I do not understand why my colleague is making a big deal out of nothing. I did not vote the last time this happened. This is not the second time. I think he owes an apology for stating something that is not a fact, which the record will show. An honourable senator on this side of the house stood up and indicated that I could have voted at that time but I chose not to do so because I was not certain of the rules. However, after consulting the rules, I came to the realization that, yes, I was within my rights.

The Hon. the Speaker *pro tempore***:** Order! I should like to remind honourable senators that rule 68(1) states:

> A Senator shall not vote on any question unless the Senator is within the Bar of the Senate when the question is put.

Resuming debate on Bill C-7.

Some Hon. Senators: Question!

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

Hon. Pierre Nolin: I move adjournment of the debate.

The Hon. the Speaker *pro tempore*: Honourable Senator Nolin, seconded by Honourable Senator Tkachuk, moves that the debate be adjourned to the next sitting of the Senate.

• (1620)

Honourable senators, is it your pleasure to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

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.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore*: Honourable senators, is there an agreement as to the bells?

Senator Stratton: If I may, it cannot be in one hour because we have a bell at 5:15 p.m. I would ask that the vote be taken at 5:30 p.m., with the rest of the votes.

Senator Losier-Cool: We are agreed that this vote be held at 5:30 p.m., following the other votes.

The Hon. the Speaker *pro tempore*: The vote will be taken at 5:30 following the other votes.

Senator Cools: I would point out to Her Honour that, when the whips rise and make a proposal, that proposal is just words they have spoken until this chamber agrees to the substance of their proposal. I have raised this matter countless times. What Senator Stratton and Senator Losier-Cool have just said is not binding on this chamber unless there is agreement of this house, usually by a short question, to cause this chamber to agree. This continues to occur, and I have been calling attention to this matter again and again.

The Hon. the Speaker *pro tempore*: I cannot hear you.

Senator Cools: I will say it again.

The Hon. the Speaker *pro tempore*: Honourable senators, is it agreed that the vote be held at 5:30 p.m., following the other votes?

Some Hon. Senators: Agreed.

Senator Cools: I was going to say "no," but I will let it go.

Debate suspended.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Donald H. Oliver: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

> That the Standing Senate Committee on Agriculture and Forestry have power to sit at 6:00 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Eymard G. Corbin: May I ask the honourable senator why he is asking leave for his committee to sit while the Senate may be sitting?

Senator Oliver: Honourable senators, the committee is to hear a witness from British Columbia tonight. If the Senate is to sit until seven, eight or nine o'clock, that would cause some difficulty. We are asking for leave to be able to hear that witness.

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

Hon. Senators: Agreed.

Motion agreed to.

FISHERIES AND OCEANS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

Hon. Gerald J. Comeau: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

> That the Standing Senate Committee on Fisheries and Oceans have the power to sit at 7:00 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Eymard G. Corbin: Honourable senators, would Senator Comeau tell us when is the regular sitting time for his committee?

[*Translation*]

Senator Comeau: Honourable senators, the Standing Senate Committee on Fisheries and Oceans is scheduled to meet at 7 p.m. I am asking for authorization in case the Senate is still sitting at that hour. Extremely important witnesses are to appear before us this evening, including the Minister of Fisheries and Oceans, the parliamentary secretary, the associate deputy minister, and the acting assistant deputy minister, fisheries and aquaculture management. We will be discussing a very important subject: "The Policy Framework for the Management of Fisheries on Canada's Atlantic Coast."

Consequently, I want to ensure that the committee will be able to sit at the designated time.

[*English*]

Hon. Anne C. Cools: Honourable senators, I was struck that Senator Comeau, in response to Senator Corbin, said that the regular meeting time of his committee is seven o'clock. What information does Senator Comeau have that I do not have that we might be sitting tonight at seven o'clock?

When I look at the Order Paper, frankly, I can see a dearth of government business. We have been told that we may be sitting well into May before the election is called. In my view, we should not be sitting at all. What information does Senator Comeau have that I do not have that we may be sitting this evening at seven o'clock, doing business, when there is no government business before us? As a matter of fact, the Senate should adjourn and wait for the Prime Minister to ask the Governor General to call the election.

I refuse to say that the Prime Minister calls the election. The election call is a prerogative act of Her Majesty.

If the honourable senator would share that information, then we would all have the same information and we would be inclusive and democratic.

Senator Comeau: Honourable senators, my motion takes advantage of the fact that we had asked permission of the Senate to revert to Notices of Motions. I am taking advantage of the timing of the motion as proposed by the Honourable Senator Oliver. Quite often on Tuesdays we do sit past six o'clock. I am simply taking advantage of the opportunity.

Senator Cools: The honourable senator was asking that the Senate suspend its rules to oblige his motion on a whim. He is saying that there is nothing concrete before him.

[*Translation*]

Hon. Jean Lapointe: Honourable senators, for your information, there will be a Canadiens game on television starting at 7 p.m. If the Senate decides to sit at that time, I expect that many senators will be absent.

[*English*]

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

Motion agreed to.

PUBLIC SERVICE COMMISSION

MOTION TO APPROVE APPOINTMENT OF MARIA BARRADOS AS PRESIDENT— REFERRED TO NATIONAL FINANCE COMMITTEE

Hon. Bill Rompkey (Deputy Leader of the Government), pursuant to notice of April 22, 2004, moved:

> 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.

He said: Honourable senators, 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, the Senate shall approve the appointment of Maria Barrados of Ottawa as President of the Public Service Commission for a term of seven years.

Honourable senators, Ms. Barrados has been acting as President of the Public Service Commission since November 20, 2003. It is important that we now proceed to confirm her in this position.

The Public Service Commission is responsible for safeguarding the values of a professional public service and a merit-based system of appointments to and within the public service through the administration of the Public Service Employment Act. The mandate of the Public Service Commission is to make appointments based on merit and to conduct related investigations and audits.

• (1630)

The President of the Public Service Commission serves as chief executive officer of the Public Service Commission and works to assure strategic partnering within the service on human resource management issues.

Ms. Barrados previously held the position of Assistant Auditor General, Audit Operations, at the Office of the Auditor General of Canada, a position that she held from December 1993 until she was appointed as Acting President of the Public Service Commission. She joined the Office of the Auditor General in 1985 and held positions of increasing responsibility prior to her appointment with that office.

Ms. Barrados has played and will continue to play a strong leadership role in implementing the government's public service modernization agenda and has demonstrated her commitment to making the Public Service Commission a true champion of the merit principle.

I ask all honourable senators to support this motion.

Hon. Anne C. Cools: Honourable senators, I am beginning to pay a little more attention to these motions in respect of approving appointments, particularly in the wake of the Radwanski matter. I remember when Mr. Bruce Phillips was appointed Privacy Commissioner. There was a fair amount of disagreement and controversy over that particular matter. These approvals deserve some true debate. The motion is worded in such a way that the conclusion is expected, so it is difficult for people to disagree other than by an adverse vote.

I am wondering if there will be a debate on this motion. If there is to be a debate, could the deputy leader give us some information about this situation? For example, I should like to know how Ms. Barrados was selected and chosen in the first place. I should like to know the criteria and the qualifications that were enumerated in the business of making the choice even to bring her name forward for appointment. I should like to have some other basic information. For example, how many other candidates were considered? I should like to know her qualifications in general. Then, I should love to know a little bit more about the criteria that would have been applied to select her over and above all of the other candidates.

Prime Minister Martin has made commitments to more openness and transparency in the selection of appointees. Therefore, could the deputy leader give us a more fulsome explanation and not be so frugal in his words in telling the Senate why we should approve this motion?

Hon. Lowell Murray: Honourable senators, I have a few comments and questions. It occurred to me that perhaps my friend would like to take them and any other comments on board and then reply.

Senator Cools: I would prefer to put my questions sequentially. I asked a few questions. I do not doubt the deputy leader's capacity of memory, but I have a suspicion that his answers might cause me to ask another question.

Senator Murray: The first question Senator Cools asked is whether we would have a debate. A motion has been put to the house and the honourable senator proposing the motion has made his speech. That would normally open the debate. My friend the Honourable Senator Cools has asked some questions. I do not have a lengthy intervention to make. A couple of items occurred to me in the course of Senator Rompkey's speech and indeed in the course of Senator Cools' questions. It is entirely up to the deputy leader whether he wants to speak now in response to Senator Cools and later in response to me and still later in response to someone else, or whether he wants to follow the normal practice of debate.

Senator Prud'homme: Normal practice.

Senator Rompkey: Honourable senators, there have been some consultations across the aisle. The agreement we came to was that matter would best be handled by the Standing Senate Committee on National Finance. It would be our proposal to move the motion to that committee. That committee would have adequate time to answer all the questions for which we do not have answers in the chamber at the present time. I believe there is agreement on that course of action, and we would hope that referral of the motion would happen today so that the committee could get to work.

Hon. Terry Stratton: There were discussions, honourable senators, with respect to this issue going to either the Standing Senate Committee on National Finance or the Committee of the Whole in the Senate. It was felt that the Standing Senate Committee on National Finance could quite adequately deal with the motion.

Given that this motion is hitting us today, we could assume that the other place had hearings. Were those hearings conducted in Committee of the Whole or was the motion sent to a particular committee? Can we have an answer to that question?

Senator Rompkey: Honourable senators, I am afraid I cannot answer all of those questions, but I would be glad to find the answers to them.

Hon. Marcel Prud'homme: Honourable senators, I am very glad to be back.

Senator St. Germain: Where were you?

Senator Prud'homme: My colleagues in the House of Commons always used the phrase "across the aisle." I was not sure which island they were talking about. I know now the spelling is not the same. One's counterpart is across the aisle, but there are also others across the aisle, in this corner and in the other extreme corner. I do not know that consultation took place with them as well.

When I was in the House of Commons, I personally was a strong supporter of Mr. Bruce Phillips, voting for him twice. I thought he was an excellent choice. As honourable senators know, I forced a vote here against Mr. Radwanski. I am still thankful to those who saw fit to vote one way or the other. I still read with great pleasure the words that some senators spoke about him. They teach me to use humility when I make a speech. I happen to have been told, and I trust those who told me, that this lady has great competency.

We have established a practice in the Senate, different from the House of Commons, of having nominees appear on the floor of the chamber, which makes for very interesting debate. We could even, by agreement, agree to televise such debates to show the seriousness of the work that the Senate does. The Senate is under attack by many political parties at the moment, including the government. They think sometimes that it is good to attack the Senate in order to make points. I do not agree with that tactic.

Before sending this motion to committee, would honourable senators consider having Ms. Barrados, who, I repeat, seems to be extremely competent, appear before Committee of the Whole? I will support the decision that is taken, but I propose that in the future such debate should be held more in the public eye. If the motion is sent to a small committee that is not televised, only a

small group of people will be knowledgeable about a person who will exercise great authority. With the changes that are taking place now in the Public Service Commission, and we have had many debates about that, I would like to know publicly how she feels about these changes and how she will administer them.

• (1640)

Senator Murray: I should like to make a couple of comments.

Senator Cools: I have a second question.

Senator Rompkey: I should first apologize to Senator Prud'homme because the discussions we had occurred this morning, and I was not sure that he was back with us. He knows, I think, that previously I have made a point of consulting with him.

Senator Prud'homme: Yes, yes.

Senator Rompkey: Having said that, I take what he said seriously about dealing with some of these in Committee of the Whole and televising the proceedings and so on. I am not sure that we can do it with all of them, but we should do it with some.

Our preference with respect to this one is that we should refer it to Standing Senate Committee on National Finance, but there is no reason we cannot arrange to have those committee proceedings televised. The public can be aware of both the questions and the answers. They will be able to see it and hear it. It will available to more members of the public than otherwise. I hope that Senator Prud'homme will agree with that course of action.

Senator Murray: Honourable senators, this is the first that I have heard that it might be referred to the National Finance Committee. If it is, we will, of course, deal with it thoroughly and expeditiously.

Ms. Barrados is known to us. I am sure she is an excellent choice. Her most recent service, if I am not mistaken, was in the Auditor General's office, and that in itself is quite a recommendation, at least from the point of view of some of us.

There are, however, questions that, frankly, I do not think Ms. Barrados will be able to answer, and it is probably not even proper to put them to her. They concern the intentions of the government with regard to this commission.

I stand to be corrected, but I think that the new public service bill that we passed provided that the existing commissioners would be terminated. It will do away with two positions. Hitherto, there had been three full-time positions, the chair and two commissioners and I believe the provisions of the legislation terminated the two commissioners. I also believe — and I am again subject to correction — that the legislation provided for an unlimited number of part-time commissioners to be appointed from around the country. I spoke to that, and I am extremely dubious about that as a matter of public policy, but there it is. It is now the law.

I should like to know the intentions of the government in that regard and how it is going about selecting these commissioners. It is an extremely important commission, as we know. It is vital that the Canadian people generally and the federal public servants particularly have every confidence in the commission.

I am sure the government is off to a good start by proposing the name of Ms. Barrados, but we need to know more about the intentions of the government with regard to the other posts in that commission. There may be other questions as well that I do not think are proper or productive to put to Ms. Barrados, assuming that what my friend and his friends in the opposition have in mind is bringing her before the committee to discuss her qualifications, her background and her approach to the job. That would not get us very far.

Senator Rompkey: I am sure it would be. The committee is the master of its own fate and can handle affairs as it sees fit. We have every confidence in the eminent chairman of that committee. I would suggest that, as questions are now piling up, they would be better answered in committee, which has the wherewithal and the time to find the answers. I do not think the committee should be limited in its scope in dealing with the question.

Senator Murray: It would be better answered by ministers on behalf of the government, perhaps.

Senator Rompkey: Then the committee could call the appropriate minister. That is entirely in order and within the scope and ability of the committee to do.

I would hope, Your Honour, that we could pass the motion, and refer the matter to the Standing Senate Committee on National Finance.

Senator Cools: I should like to ask one other question.

Senator Prud'homme's suggestion regarding the Committee of the Whole has great appeal to me. I am sure honourable senators are well aware that I am a great supporter of more use of the Committee of the Whole.

In response to my question, Senator Rompkey did not completely answer my question, although he answered part of it. In response to my question about fuller debate and exchange, he suggested that he and somebody across the aisle had had consultations, and they had decided to refer the bill.

I would say to Senator Murray that that gives me small comfort, because I used to be a member of the Standing Senate Committee on National Finance, but I am no longer. Senator Rompkey will know that because he is the person who wrote the letter to me removing me from the membership of the committee, for reasons that I will never understand. However, that is a different matter.

Therefore, Senator Rompkey's response to my question offers me no comfort at all that the kinds of questions and concerns that I have about these appointments will be either put or answered. From what I can see, Senator Rompkey's intention is to have his motion passed as quickly as possible. I begin to wonder what all these motions are about anyway. Perhaps they should just be passed automatically.

I say to Senator Rompkey again, the best time to bring about change and doing things better is usually now, immediately. Rather than holding out a promise that one day in the future we will do things better, why do we not do it better in the present and comply with Senator Prud'homme's suggestion about having a Committee of the Whole? Committee of the Whole, after all, was the original committee structure of all Houses of Parliament.

Can Senator Rompkey respond to that?

Senator Rompkey: With regard to her earlier comments, honourable senators, I am reminded of what my mother used to tell me: Be sure your sins will find you out.

Senator Cools: Your sins will not find you out.

Senator Rompkey: With regard to the latter part of the honourable senator's proposal that we act now and not put things off, I thoroughly agree, and so I move that the motion be referred to the Standing Senate Committee on National Finance.

Senator Cools: There is no motion on the first motion.

The Hon. the Speaker *pro tempore***:** Honourable senators, are you ready for the question?

Hon. John G. Bryden: May I speak on that motion?

Honourable senators, this motion is a limited one. It is that, in accordance with subsection 3(5) of the Act Respecting Employment in the Public Service of Canada, the Senate approve the appointment of Maria Barrados, of Ottawa, Ontario, as president of the Public Service Commission for a term of seven years.

I do not know that even the Chair of the Standing Senate Committee on National Finance can expand that into a reconsideration of the bill that was passed amending the Public Service Act.

Senator Murray: No.

Senator Bryden: We have gone to the appointment of a single commissioner for the public service under this act, just as we have a single Privacy Commissioner and a single Information Commissioner.

Senator Murray: A single full-time commissioner.

Senator Bryden: A single full-time commissioner. I do not know whether it was a precedent or not, but, last fall, in approving the appointment of the Privacy Commissioner, the proceedings occurred in Committee of the Whole in the Senate chamber. If we are going to treat the appointment of these commissioners and the analysis of their qualifications with the seriousness that I believe they deserve — because they have a huge amount of impact on how Canadians are governed — perhaps we should consider doing this one also in Committee of the Whole. I do not know that we can call a minister before one of our standing committees to answer the question of whether this person should be appointed as a commissioner. The person who will answer that question, presumably, is the individual, when we conduct our examination.

• (1650)

Senator Lynch-Staunton: You can call witnesses in front of the Committee of the Whole.

Senator Bryden: The point that I am trying to make is, if we are moving in the direction of examining commissioners — and we did that last fall with the Privacy Commissioner — since we now have another one, it might be an opportunity for a dry run for us, as a Senate, for the time when we, in Committee of the Whole, get to review the qualifications of future Supreme Court judges.

An Hon. Senator: And future senators.

Senator Cools: I think Senator John Bryden made a very brilliant point.

Some Hon. Senators: Oh, oh.

Senator Cools: Again, it speaks to the point that I made. There is a time to change. I was a social worker, and I did a lot of counselling. Whether I was counselling an individual with respect to an addiction, or indeed any kind of problem, I always said that the best time to begin change is now, not next week, next month or next year; the best time is always now.

I do not understand what Senator Rompkey did just a few minutes ago. If this motion is to be referred to the National Finance Committee, how will that motion be moved? My understanding is that we would need another motion to send it to a committee, or at least an amendment to this motion.

I am not following Senator Rompkey procedurally at all, but we cannot have two questions before the chamber simultaneously unless one is superseding. The motion to refer something to committee is not a superseding motion. Perhaps Senator Rompkey could explain the maze that we seem to be working ourselves into.

Senator Rompkey: Procedurally, the house can do whatever it wants, and if the house wants to vote on that motion it can. I put the motion because it was a specific motion. I thought it reflected the agreement that we had across the aisle.

With regard to "across the aisle," this happens every day. That is what I understood our job to be, that is, to consult with each other and see if we can move legislation forward in the interests of all members of the chamber. That is how I take our responsibilities as the leadership on both sides.

In those discussions, it was agreed — and I did not know that Senator Prud'homme was back today — to move the motion to National Finance, and that is the motion I made. I would hope that the house would give leave to put that motion and would approve the motion.

Senator Cools: Honourable senators, I should like to take the adjournment of the debate, so that I can prepare a motion to send this to Committee of the Whole and to give this kind of question the seriousness and consideration it deserves.

Honourable senators, it is becoming increasingly obvious that to do our work properly is becoming an increasing difficulty and an increasing burden. Having said that, honourable senators, I move the adjournment of the debate.

Senator Stratton: Honourable senators, if I may, I think Senator Murray made the point that there are questions to be asked, other than to the lady in question, related to the technical background of this, questions that could not be asked in this chamber as the Committee of the Whole. These questions are better asked in the Standing Senate Committee on National Finance.

I would therefore move that the motion be sent to the Standing Senate Committee on National Finance today.

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Stratton —

Senator Cools: On a point of order, I had moved the adjournment motion before that. Motions must be disposed of one at a time.

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator Cools, seconded by the Honourable Senator Harb, that the debate be adjourned.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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

Some Hon. Senators: Yea.

The Hon. the Speaker *pro tempore:* Would 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.

Senator Stratton: Honourable senators, I move the motion that I previously put, seconded by Honourable Senator Rompkey.

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Stratton, seconded by the Honourable Senator Rompkey, that this question be referred to the Standing Senate Committee on National Finance.

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

Some Hon. Senators: Yes.

Senator Cools: Honourable senators, I should like to speak to this as well. This is a chamber with no debate. This is a serious matter. Honourable senators, we should take ourselves far more seriously than we are taking ourselves. These are momentous questions. These are monumental questions. Do honourable senators think they should just spring to their feet and say whatever comes to mind? These are matters that are particularly serious, particularly in light of the Radwanski matter.

Senator Prud'homme: Honourable senators, on a point of order. With all due respect to my friend, the Speaker *pro tempore* has quite rightly asked the question and she has now given the floor to the honourable senator. There is no pressuring anyone. Her Honour called for the vote, but then, since an honourable senator stood, Her Honour interrupted the wish of the majority who wanted to vote by recognizing Senator Cools. Therefore, we are listening to the honourable senator.

Senator Cools: I had said I should like to move the adjournment on this order. I should like an opportunity to give this matter the seriousness it deserves, and to look at a little bit of the history of this and to speak to it, quite frankly, with some seriousness.

Honourable senators, there is something very wrong in this place if these motions of moment are being passed swiftly and rapidly without proper consideration. Perhaps that does not bother some senators, but it bothers me a lot.

I remember years ago, in 1989, when we examined the unemployment insurance bill, we were surprised and shocked at the state of the unemployment insurance commission. Honourable senators are free to vote me down. It happens every day; I am quite used to it.

However, I should like to take the adjournment on this motion.

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator Cools, seconded — is there a seconder?

There is no seconder.

• (1700)

Senator Cools: Her Honour may call upon any senator to second a motion. She usually does that; she should follow her usual practices.

The Hon. the Speaker *pro tempore***:** Honourable senators, is there a seconder to the motion of the Honourable Senator Cools?

Senator Prud'homme: As a matter of principle — Senator Murray once told me that — I will second the motion of Senator Cools, although I will vote against Senator Stratton's motion, to terminate the debate. Her Honour may call the vote, which will be clear, and we will avoid a debate.

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Cools, seconded by the Honourable Senator Prud'homme, that further debate on the motion be adjourned until the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

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***:** Honourable senators, in my opinion, the "nays" have it.

Are honourable senators ready for the question?

Hon. Senators: Question!

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Stratton, seconded by the Honourable Senator Rompkey, that this question be referred to the Standing Senate Committee on National Finance. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Senator Cools: On division.

Motion agreed to, on division.

[*Translation*]

LOUIS RIEL BILL

SECOND READING—DEBATE SUSPENDED

On the order:

> Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Gill, for the second reading of Bill S-9, An Act to honour Louis Riel and the Metis People.—(*Honourable Senator LeBreton*).

Hon. Maria Chaput: Honourable senators, it is a pleasure for me to take part in this debate on Bill S-9 at second reading of this bill to honour Louis Riel and the Metis people.

Before her retirement in April of this year, Senator Chalifoux introduced this bill, which is in its third reincarnation. I congratulate and thank the honourable senator for this initiative, which brings us to reflect on the important role played by Louis Riel in the history of Canada.

The more we read about the life of Louis Riel, the more we want to learn about him. I am fascinated and amazed at the scope of complexity of the man, his life and death. Louis Riel has had far more written about him than most other figures in the history of this country.

A number of honourable senators have taken part in the debate already and have related events and facts from Riel's life. I have read their texts with care, and do not want my speech today to be a repetition of what my honourable colleagues have already heard from them.

After reflection, I had the following questions: Where did Louis Riel come from, and who were his ancestors? What is it that connects Riel, the Metis, and Canada? I have therefore chosen to share with you some genealogical notes and historical information from various publications by a Manitoban historical society, the Société historique de Saint-Boniface.

To put honourable senators in the proper context, the Société historique de Saint-Boniface has been engaged for the past hundred years in promoting Franco-Manitoban and Metis history, through lectures, meetings and archival material. It administers the Centre du patrimoine, a heritage centre which houses, among other things, the Louis Riel collection, comprising 646 documents, letters and original manuscripts written by Riel, letters from his sister Sara, and the archives of the Union nationale métisse Saint-Joseph du Manitoba.

The Société historique also runs Riel House. This historic site was opened to the public in 1980. Although Louis Riel never lived in the house, the historic property was, according to the archaeological evidence of previous residences, his spiritual home. It was in one of his earlier homes that Riel stayed with his mother when negotiating the founding of Manitoba. He spent time in the present house attending his sister's wedding in 1883.

It was in this house in the St. Vital quarter of southern Winnipeg, Manitoba, where the Riel family lived from 1860 to 1967, that Riel lay in state in December 1885, after his execution. This was where his wife, Marguerite, died in 1886 and where their young children were raised. The federal government acquired the house in 1969 and declared it an historic site in 1976.

According to an account by Maurice Morin, published in the spring 1995 bulletin of the Société historique de Saint-Boniface:

> History shows that between 1810 and 1870, the Metis and the Canadiens (term used to describe francophones from Lower Canada) lived in constant interaction and formed a united people called the Metis Canadien.

The events of 1869-70 in Manitoba had weakened the Metis Canadians politically and socially and, on the advice of Monsignor Taché, they were encouraged to work together with the French Canadians who had recently settled the Red River Colony. Together they called for Louis Riel's pardon, the 1869-1870 recognition of rights, and agreed on the issue of Metis land ownership.

The 1885 political crisis in Saskatchewan with the clergy and the Canadian government who condemned Riel, and the Saskatchewan Metis taking up arms, contributed to further dividing francophones and Metis.

A new vocabulary entered the francophone villages: Fort Rouge, Fort des peaux-rouges, and "coulée" to designate the areas of the francophone community that were predominantly Metis. And thus began the prejudice they had to endure, a prejudice that unfortunately still existed in Manitoba in the 1950s when I was studying at the Grey Nuns' convent. Mocking the Metis traditions and accent was commonplace.

More than 75 per cent of the Metis population left Manitoba to build a new life in the Northwest Territories. Prejudice forced the Metis into exile.

Now, honourable senators, allow me to say a few words about Louis Riel's family history and the great influence his family had on his quest for social justice for the Metis Canadiens.

According to France Russell, in a book called *The Canadian Crucible*:

[*English*]

> Louis Riel was born October 22, 1844. All his ancestors were French Canadian save his paternal great-grandmother who was a Franco-Ojibway Metisse.
>
> The young Louis worshipped his father and learned from him to take pride in his race and religion. As a boy, Riel was closest to and even more influenced by his deeply religious mother, the first white woman in the North West.
>
> Louis began his formal education at age seven, initially attending the girls' school run by the Grey Nuns. He was an excellent student and in 1858, he was sent east to attend le Collège de Montréal. By his third year and for the remainder of the term, he led the class or was close to the top.
>
> His father's death changed everything. The young Louis went into a deep depression and four months before the end of his course of studies, Louis and the college came to a mutually agreed parting. Louis remained a year in Montreal and became interested in politics and involved himself in the rising fervour in Quebec over the talk of Confederation.
>
> Riel then left Montreal, traveling first to Chicago and gradually worked his way west, arriving in Red River in 1868.
>
> Confederation the year before had brought major changes to Red River. To its traditional linguistic, racial and religious factors had now been added political ones.
>
> Soon, with Riel's arrival, the colony learned that the Prime Minister Sir John A. Macdonald was negotiating with the Hudson's Bay Company for the transfer of Rupert's Land to Canada. The Canadian government had also decided to build a road from Upper Fort Garry to Lake of the Woods. The construction of the road was bad enough. But making matters worse as far as the Metis were concerned were the "workers" who considered Aboriginal people "inferior in the human hierarchy." In 1869, Canada and the Hudson's Bay Company reached an agreement and no one in the Canadian government thought it necessary to inform, let alone consult, the Metis people.
>
> As the tension mounted, the Metis began to look for a leader. A survey of the settlement had been ordered. In late August, Riel declared the survey a menace from the steps of Saint-Boniface Cathedral and on October 11th, he and a group of about 18 Metis stopped the survey party in its tracks by standing on the surveyor's chain. (A replica of this chain is in a small community museum in the parish where I live.) This made Riel a hero. It was the first act of resistance to Canada's acquisition of the North West. Riel did not consider himself to be acting solely in the interests of the Metis. He quickly appreciated that he needed the support of as many members of the colony as possible to legitimize his demand for negotiations with Canada. And on November 23, Riel proposed the formation of a provisional government.

• (1710)

Then came Thomas Scott's fate. Riel was now running for his life and fled to the United States. We all know the rest of this sad story.

During my research, I found an article written in the *Winnipeg Free Press*, on March 17, 1998, entitled "Father of Controversy — More than 112 years after his death, Louis Riel still provocative." The article states:

> Some say Louis Riel is a Father of Confederation. Others call him a murderer and a madman. Few personalities in Canadian history have engendered as much controversy both in their own times and after their death than the man responsible for Manitoba's entry into Confederation.

[*Translation*]

In her book entitled *The Canadian Crucible*, Frances Russell writes the following on page 14:

[*English*]

> Once the Canadian Confederation was founded, the new provinces served in the same direction of nation building. Each side of the linguistic divide devoted itself to building its reflective province. Enter Louis Riel and Red River colonists who wanted to join the newly minted Canadian

Confederation. On the Prairies, in the shadow of St. Boniface Cathedral and around The Forks, the two linguistic groups, francophone and Metis, had been living side by side for decades, sometimes at odds, but mostly at peace. Francophones, with the majority, and their leader Louis Riel, a Metis, negotiated the creation of Manitoba. Riel was a new kind of leader, a native, educated and bilingual, he could be seen to embody this new Canada in his personal duality.

His natural wisdom, his remarkable maturity and his political flair enabled him to ensure that Manitoba was a model of tolerance, bilingualism and foresight. But this dream was not to be completely fulfilled.

In the early winter of 2001, CBC TV News carried an hour-long program on the great "What ifs" of Canadian history. What if Louis Riel had not been hung? What if Thomas Scott had not been shot?

[*Translation*]

Honourable senators, it is important to review our knowledge of the past and its transparency in today's reality. I could go on, because there is no end to this historical account. I have barely touched the surface.

This is not about redressing wrongs or correcting history. We made mistakes in the past. This is not about putting the blame on anyone. This is about building a Canada that is strong, compassionate and understanding.

I consider Louis Riel to be a Father of Confederation. He created the province of Manitoba and he tried to secure linguistic rights for his people, whom he saw as being an integral part of Canada.

Louis Riel motivated all his Metis descendants to face adversity and to remain true to themselves. History cannot be rewritten, but we should remember it.

Canada has reached its maturity and our common history is a strong, vibrant and human history, with its mistakes and battles.

What we must remember is a man who only wanted democracy for his people, in a Canada that he loved. That man was chosen as a leader by the Metis people who, at the time, formed a majority. He helped define collective objectives. He succeeded in achieving a broad consensus and in rallying virtually his whole community. This is worth mentioning.

Louis Riel played a key role. He helped Manitoba join Confederation as a province and he helped ensure that guarantees regarding religion and language would be included in the Manitoba Act.

This man played a major role in the building of Canada as we know it today.

[Senator Chaput]

Whether or not we agree with history's interpretation, there is no doubt that the life and death of Louis Riel largely contributed to the shaping of political allegiances in today's federal government.

2004 is a year when we are giving back to the Metis what was so unjustly taken from them: the recognition that they are a nation and have collective rights, and a bill that honours them.

[*English*]

Hon. Shirley Maheu: I should like to continue the debate on this issue. Are the bells about to ring?

[*Translation*]

CRIMINAL CODE

BILL TO AMEND—THIRD READING—MOTION IN SUBAMENDMENT NEGATIVED—DEBATE CONTINUED

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, An Act 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.".

On the subamendment of 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,".

The Hon. the Speaker *pro tempore***:** It is now 5:15 p.m. Pursuant to the order adopted by the Senate on April 22, 2004, I must interrupt the proceedings in order to put the question on the subamendment to Bill C-250 moved by Senator Cools.

The bells will ring for 15 minutes and the vote will be taken at 5:30 p.m.

[*English*]

I would advise honourable senators that, following the vote on the subamendment of Senator Cools, we will then proceed immediately to the vote on the motion of the Honourable Senator Joyal on the previous question that was moved regarding the motion of the Honourable Senator Murray.

If this motion carries, we will proceed to the motion of Senator Murray. Following that, we will proceed to the motion for the third reading of Bill C-7.

Call in the senators.

• (1730)

Subamendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Comeau	Lynch-Staunton
Cools	St. Germain
Di Nino	Stratton
Eyton	Tkachuk—9
Kelleher	

NAYS
THE HONOURABLE SENATORS

Adams	Hervieux-Payette
Atkins	Hubley
Austin	Jaffer
Bacon	Joyal
Banks	Kroft
Biron	Lapointe
Bryden	Lavigne
Callbeck	Léger
Carstairs	Losier-Cool
Chaput	Maheu
Christensen	Massicotte
Cook	Mercer
Corbin	Morin
Day	Munson
Downe	Murray
Fairbairn	Pearson
Ferretti Barth	Phalen
Finnerty	Ringuette
Fraser	Robichaud
Furey	Rompkey
Gauthier	Smith
Gill	Spivak
Graham	Stollery
Harb	Watt—48

ABSTENTIONS
THE HONOURABLE SENATORS

Sibbeston—1

THE SENATE

CRIMINAL CODE—
MOTION TO DISPOSE OF BILL C-250 ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Murray, P.C., seconded by the Honourable Senator Joyal, P.C.:

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.

On the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Maheu, that the original question be now put.

The Hon. the Speaker *pro tempore***:** Honourable senators, the next question is on the motion of the Honourable Senator Joyal, seconded by the Honourable Senator Maheu, that the original question be now put.

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Adams	Hervieux-Payette
Atkins	Hubley
Austin	Jaffer
Bacon	Joyal
Banks	Kroft
Biron	Lapointe
Bryden	Lavigne
Callbeck	Léger
Carstairs	Losier-Cool
Chaput	Maheu
Christensen	Massicotte
Cook	Mercer
Corbin	Morin
Day	Munson
Downe	Murray
Fairbairn	Pearson
Ferretti Barth	Phalen
Finnerty	Ringuette
Fraser	Robichaud
Furey	Rompkey
Gauthier	Smith
Gill	Spivak
Graham	Stollery
Harb	Watt—48

NAYS
THE HONOURABLE SENATORS

Cochrane	Lynch-Staunton
Comeau	Sibbeston
Cools	St. Germain
Di Nino	Stratton
Eyton	Tkachuk—11
Kelleher	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

• (1740)

The Hon. the Speaker *pro tempore*: The question is now on the motion of the Honourable Senator Murray, seconded by the Honourable Senator Joyal:

> 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, An Act 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 should 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. Anne C. Cools: Point of order. I have said it three or four or five times.

Honourable senators, I have a point of order. You cannot do this, Your Honour.

The Hon. the Speaker *pro tempore*: Is there agreement to hear the point of order now?

Some Hon. Senators: No.

Senator Cools: No agreement is needed. This is a point of order.

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Adams
Atkins
Austin
Bacon
Banks
Biron
Bryden
Callbeck
Carstairs
Chaput
Christensen
Cook
Corbin
Day
Downe
Fairbairn
Ferretti Barth
Finnerty
Fraser
Furey
Gauthier
Gill
Graham
Harb
Hervieux-Payette
Hubley
Jaffer
Joyal
Kroft
Lapointe
Lavigne
Léger
Losier-Cool
Maheu
Massicotte
Mercer
Morin
Munson
Murray
Pearson
Phalen
Ringuette
Robichaud
Rompkey
Smith
Spivak
Stollery
Watt—48

NAYS
THE HONOURABLE SENATORS

Cochrane
Comeau
Di Nino
Eyton
Kelleher
Lawson
Lynch-Staunton
Oliver
Sibbeston
St. Germain
Stratton
Tkachuk—12

ABSTENTIONS
THE HONOURABLE SENATORS

Cools—1

Senator Cools: Honourable senators, I should like to state my reason for abstaining. What was before us was two votes, by order of the Senate of a few days ago. This motion was never agreed —

Some Hon. Senators: Order.

The Hon. the Speaker *pro tempore*: When the Speaker's attention has been called to a breach of order during a division, the division will proceed and the Speaker will deal with the matter when the division is completed.

Hon. Sharon Carstairs: Honourable senators, I rise on a point of order, which is, I hope, a point of clarification. We had an incident earlier this afternoon when one of our senators was challenged and it was indicated that he would not be allowed to vote. Exactly the same situation happened a few minutes ago for Senator Oliver.

My point is this: I think we need clarity in this chamber. The clarity should be, in my view — others are free to disagree — that once the Speaker has risen and has begun to read the motion, then anyone who enters the chamber at that point is ineligible to vote.

Hon. Terry Stratton: The rule clearly states that a senator must be beyond the bar prior to the question being put. The rule is quite clear. I would agree with the senator, but the rule is quite clear.

Senator Carstairs: It is not that the rule is not clear; it is that there does not seem to be clarity in the understanding of senators as to what the rule means. In my view, the rule means that once the Speaker has risen and begins to speak, no one else can vote who then enters the chamber.

In fairness to Senator Oliver and in fairness to Senator Harb, seeing as we accepted Senator Harb's vote earlier this afternoon, we therefore must accept Senator Oliver's vote on this matter. Let us be clear in the future.

The Hon. the Speaker *pro tempore*: This is an important question and it will be taken up with the Speaker's Advisory Committee.

Hon. Mac Harb: Honourable senators, I wanted to make absolutely clear, while we are reviewing this matter, at page 71 of the *Rules of the Senate in Canada*, rule 68(1) states:

[*Translation*]

> A Senator may not vote on any question unless the Senator is within the Bar of the Senate when the question is put.

[*English*]

Your Honour, I would submit that both Senator Oliver and myself were within the bar when the question was put. Therefore, both Senator Oliver and myself followed the *Rules of the Senate of Canada*.

Having said that, I was told clearly by the briefing note when I came here, as well as in other documents, that a question is put once the Speaker has clearly called the yeas and the nays. For as long as the Speaker is in the process of reading the question, the question is not yet put. Therefore, with the greatest respect, I would say that both Senator Oliver and myself, under the present rules, were within our rights to vote.

The Hon. the Speaker *pro tempore*: The question will be reviewed by the Speaker's Advisory Committee.

Senator Cools: Your Honour, a point of order was raised. There is no authority for you to refer that to any Speaker's Advisory Committee or any other committee. You are required to respond to what was said here.

• (1750)

[*Translation*]

Hon. Pierrette Ringuette: Honourable senators, I must admit how very disappointed I am at what we are hearing today and at the actions taken.

I was watching when you asked your question — I clearly saw you — and I saw Senator Oliver come in behind your seat. When a senator, who is not a newcomer, abuses the rules, the *Rules of the Senate* prevail, in my opinion. I agree with Senator Carstairs that, at some point, a decision must be made and made once and for all. In my opinion, Senator Oliver was not entitled to vote.

[*English*]

Senator Cools: Honourable senators, I just do not believe that the Speaker of the Senate has the power to make rules for the Senate. The Speaker's power in this place is extremely circumscribed.

Senator Harb put the rule on the record here in French. I would like to put it in English. Rule 68(1) states:

> A Senator shall not vote on any question unless the Senator is within the Bar of the Senate when the question is put.

That is very interesting. It does not say, "unless the senator is in his seat or her seat." It states, "when the question is put." It does not state, "when the Speaker rises to speak or to put the question."

Senator Carstairs' interpretation is almost correct. She is confusing the putting of the question with the phenomenon of the rising to put the question. In other words, the rule does not say, "unless the senator is within the Bar of the Senate when the speaker rises to put the question."

It is not up to Her Honour to clarify these rules. It is not her job to do that.

In point of fact, according to Senator Harb's interpretation — if I were he, I would be more cautious than not — the question is not put until the Speaker has completed her sentence. That is when it is put. If the rule intended it to be different, the rule would have made that clear. There are many other rules that speak to when the Speaker is on his feet, rising, sitting and so on.

I was just handed something with the headline, "Putting the Question." I do not know where this comes from. Senator Harb has just handed it to me. It may be part of some notes that are given to new senators. There is a category headed, "Votes" and within that category is a headline, "Putting the Question." The document states that, when the Senate is ready to vote, the Speaker may read the motion in its entirety, so that there is no doubt about which motion is about to be voted upon. Then the Speaker says: "Is it your pleasure, honourable senators, to adopt the motion?" This constitutes putting the question. In some cases, the text of a motion can be very long.

The document goes on and on. There is much ground for Senator Harb's interpretation. Senator Lavigne is asking a profound question: How can you vote if you do not know what the question is? Senators do it every day. Members of the House of Commons do it every day, so that it is not perplexing.

[*Translation*]

The Hon. the Speaker *pro tempore*: Honourable senators, I will discuss this matter with the Speaker's Advisory Committee. Let us move on.

Hon. Jean Lapointe: Honourable senators, if it had been a very close vote, I would understand. However, I think we are wasting an incredible amount of time every time Senator Cools rises on a point of order. I appreciate Senator's Cools competence; she knows the *Rules of the Senate* by heart. Had I been here since 1984, I would know them that well, too. However, in my opinion, all her points of order are a terrible waste of the Senate's time.

[*English*]

PUBLIC SAFETY BILL 2002

THIRD READING—DEBATE SUSPENDED

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Léger, for the third reading of Bill C-7, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

The Hon. the Speaker *pro tempore*: Honourable senators, the question is on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Tkachuk, that further debate on the motion for the third reading of Bill C-7 be adjourned until the next sitting of the Senate.

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Murray
Atkins	Nolin
Cochrane	Oliver
Comeau	Prud'homme
Di Nino	Sibbeston
Eyton	Spivak
Kelleher	St. Germain
Lawson	Stratton
LeBreton	Tkachuk—19
Lynch-Staunton	

NAYS
THE HONOURABLE SENATORS

Adams	Hubley
Austin	Jaffer
Bacon	Joyal
Banks	Lapointe
Biron	Lavigne
Bryden	Léger
Callbeck	Losier-Cool
Carstairs	Maheu
Chaput	Massicotte
Christensen	Mercer
Cook	Morin
Corbin	Munson
Day	Pearson
Downe	Phalen
Fairbairn	Ringuette
Ferretti Barth	Robichaud
Fraser	Rompkey
Harb	Smith
Hervieux-Payette	Watt—38

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

The Hon. the Speaker *pro tempore*: It is six o'clock. Would you like me to see the clock?

Hon. Bill Rompkey (Deputy Leader of the Government): Your Honour, I think that you would find consensus not to see the clock.

The Hon. the Speaker *pro tempore*: Is there an agreement not to see the clock?

Senator Cools: Your Honour, I am on my feet.

The Hon. the Speaker *pro tempore*: There is no agreement. We will return at eight o'clock.

The sitting of the Senate was suspended.

• (2000)

The sitting of the Senate resumed.

WESTBANK FIRST NATION SELF-GOVERNMENT BILL

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-11, to give effect to the Westbank First Nation Self-Government Agreement.

Bill read first time.

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

On motion of Senator Rompkey, bill placed on the Orders of the Day for second reading two days hence.

INTERNATIONAL TRANSFER OF OFFENDERS BILL

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-15, to implement treaties and administrative arrangements on the international transfer of persons found guilty of criminal offences.

Bill read first time.

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

On motion of Senator Rompkey, bill placed on the Orders of the Day for second reading two days hence.

QUESTION OF PRIVILEGE

The Hon. the Speaker *pro tempore*: Honourable senators, it being eight o'clock, pursuant to rule 43(8), the Senate shall now take up consideration of the question of privilege of Senator Cools, who gave oral notice earlier this day.

Hon. Anne C. Cools: Honourable senators, where are we on the Order Paper? I thought that when the sitting was suspended we were debating Bill S-9, to honour Louis Riel and the Metis. That was my understanding. Perhaps Her Honour could clarify.

The Hon. the Speaker *pro tempore*: Senator Chaput finished speaking to Bill S-9.

Senator Cools: Did someone take the adjournment? I was under the impression that Senator Maheu was about to put a question to Senator Chaput.

An Hon. Senator: Debate was adjourned.

Senator Cools: We adjourned debate? Very well.

The Hon. the Speaker *pro tempore*: Honourable senators, rule 43(8) of the *Rules of the Senate* states:

> Except as provided in section (9) below, the Senate shall take up consideration of whether the circumstances constitute a question of privilege at no later than 8:00 o'clock p.m., or immediately after the Senate has completed consideration of the Orders of the Day for that sitting, whichever comes first.

Senator Cools, please proceed.

Senator Cools: Honourable senators, with apologies, my earpiece is not working. I have had to change it already today but it pops in and out. I do not want to dismay honourable senators but I truly did not hear what Her Honour said.

The Hon. the Speaker *pro tempore*: If the honourable senator did not hear what I said, perhaps she could read rule 43(8) on page 47 of the *Rules of the Senate*. That is what I just read to the house.

Senator Cools: Honourable senators, I rise today on a question of privilege in respect of events and actions during Senate proceedings on Thursday, April 22, 2004. If ever there were a democratic deficit, the events in this chamber recently on Bill C-250 certainly have proven that. I speak in particular to the manner of the prosecution of Bill C-250. A marked feature of the prosecution of this bill has been its constant truncation of debate and its considerable anomalies and sometimes irregularities. In addition, this bill has been driven by government support, although it is a private member's bill.

Honourable senators, I speak to what I consider to be a pernicious exercise of power, which is inconsistent with parliamentary principles, practices and Senate rules. I refer specifically to the dual motions of Senator Murray and Senator Joyal: one being the guillotine motion and the other being the closure motion, known as the motion to put the previous question, which was the original closure motion. The other motion developed as a result of that.

Honourable senators, in a funny way, I am asking the Speaker *pro tempore* to adjudicate a question that involves her because she is currently in the Chair as I raise this question of privilege. The rule under which I raise this question of privilege calls upon Her Honour to make a finding of prima facie privilege. Honourable senators will know that a prima facie finding is not a finding or ruling of privilege. The finding of a breach of privilege rests with the entire chamber. Many senators now believe that it is the Speaker who rules on that because the prima facie ruling has come to take on a role for which it was never intended when the rules were created.

• (2010)

In fact, Her Honour's decision has to do essentially with making a declaration as to whether there is an appearance of a breach of privilege — the first blush of a breach — and then to allow a motion to be moved, which will then take precedence over the other business of the Senate. That is the sole role of the Speaker of the Senate — it seems not widely understood — to decide whether or not that motion should take precedence over anything else.

Honourable senators, I will be asserting that the Speaker *pro tempore*, in allowing Senator Murray's motion to proceed, was simultaneously disallowing any debate on that motion by recognizing Senator Joyal as the first speaker, even though the opposition leader, Senator Lynch-Staunton, and other senators, including myself, had risen before Senator Joyal. This is a breach of the privileges of the Senate. The Senate Speaker is given no power by the Senate's rules or by the Senate's constitution to do such things, particularly the compulsion of the Senate to accept a guillotine motion from a private member, a motion that can only be properly moved by a minister of the Crown, and, further, to accept this guillotine motion in combination with a closure motion, being the previous question. These two motions were moved as a duet of some kind, a diabolical combination and so improper as to be devastating.

Honourable senators, these kinds of questions, either for the previous question or for the guillotine motion, have always been considered to be most exceptional procedures. The house has always been reluctant to accept such motions, save in circumstances where it is felt to be the only means of ensuring the proper conduct of the business of the house. The proper conduct of the business of this house was never in doubt, and those mechanisms should not have been resorted to or even entertained or countenanced.

Honourable senators, I would like to put a quotation on the record by one of the great grandfathers or forefathers of liberalism in Ontario, William Lyon Mackenzie. He was the grandfather of Prime Minister William Lyon Mackenzie King and a member of the House of Assembly of Upper Canada. He made a very famous statement that has remained current, I think, in the business of politics and in the business of chambers and the

operation of houses. This quotation is found in Margaret Fairley's book entitled *The Selected Writings of William Lyon Mackenzie, 1824 to 1837*. Senators must know that I made it my business to look very clearly at the history of liberalism, particularly in Ontario, and the role of that group that was called the Reformers, who became the Clear Grits, who later became the Liberals, and the work of William Warren Baldwin, Robert Baldwin, William Lyon Mackenzie, and my great hero, of course, George Brown.

William Lyon Mackenzie said the following about the business of the exercise of power, because parliaments and systems of governance must always be attentive to the proper exercise of power. In a petition to Her Majesty, he said:

> ...for there is not now, neither has there ever been in this province, any real constitutional check upon the natural disposition of men in the possession of power to promote their own partial views and interests at the expense of the interests of the great body of the people.

Honourable senators, the exercise of power is something that should be done with great diligence and to attend to what I would consider the principles of the entire system and also to the protection of the rights of all to participate in debate and to move the debate forward in a meaningful and pure way.

Honourable senators, I would like to speak about the role of the Speaker of the Senate. The Speaker's role in respect of Senate proceedings is extremely limited and extremely circumscribed. In addition, senators should expect impartiality and fairness from their Speaker.

It is of interest that these matters have been well canvassed in the past. I remember some time ago that we had enormous difficulty and problems with a particular Speaker, and it was a very awful experience. It hurt him deeply and hurt us all deeply.

However, in point of fact, I would like to show how the constitution of the Senate treats the Speaker in a very circumscribed way and limits and circumscribes those powers of the Speaker in a very particular way. To show this, I would also like to put a couple of quotations on the record. Beauchesne's 6th edition, paragraph 171, states:

> Foremost among many responsibilities, the Speaker has the duty to maintain an orderly conduct of debate by repressing disorder when it arises, by refusing to propose the question upon motions and amendments which are irregular, and by calling the attention of the House to bills which are out of order.

This paragraph refers to the Speaker in the House of Commons, but I would submit that it stands very well in this chamber. The fact is that the Speaker has a duty not to put motions to the chamber that are irregular, and it is a role to be exercised.

I support that citation by citing a statement from Palgrave. He may not be familiar to many senators, but I quote Sir Reginald Palgrave in something called *The Chairman's Handbook*. He says the following at page 5:

> A Chairman is bound to decline to put from the Chair a Motion or Amendment which is out of Order — as being beyond the scope of the Meeting, or foreign to the purpose for which it is called together...

Very clearly, we have some strong opinions on that point.

Palgrave, again in respect of this matter, states the following at page 7:

> ...a Chairman is entitled to claim the united and prompt support of those over whom he presides. But to be so entitled, he must strictly obey the governing principle of chairmanship, namely absolute impartiality. He must bear in mind that the ordinary functions of a chairman are essentially ministerial. A Chairman, therefore, if he rises to address a meeting; he does not speak as a member of the meeting...

He goes on and on about the proper role and conduct of a chairman.

I put these matters on the record, honourable senators, because if we were to look to rule 18(1) of the *Rules of the Senate* rules, we see that when the Senate Speaker speaks or makes a ruling, he or she is supposed to rely on some authority and on precedents and to cite rules. Rule 18(2) provides that:

> The Speaker shall decide points of order and when so doing shall state the reasons for the decision together with references to the rule or other written authority applicable to the case.

For example, last Thursday in that ruling, no such thing applied. As a matter of fact, we heard something about a hypothetical situation and no citation was made as to which rules or what parliamentary authorities were being relied on, so it is a very interesting phenomenon.

I am trying to say, honourable senators, that the Speaker of the Senate is not the chamber's man or woman as is the House of Commons Speaker. The Speaker of the Senate is the Queen's person and so exists in a different relationship to members of the Senate.

Continuing in the same vein that the Speaker should protect the house from motions that are unusual or irregular, particularly questions of closure and guillotine, which are exceptional procedures, I would like to quote Lord Campion in his book, *An Introduction to the Procedures of the House of Commons*.

• (2020)

Lord Campion is a former Clerk of the U.K. House of Commons who became a member of the House of Lords, which is a rare and interesting experience. On this question, Lord Campion says, talking about the Speaker putting these kinds of motions before the chamber:

> It lies in the discretion of the Chair to "refuse the closure if in his opinion the motion is an abuse of the rules of the House or an infringement of the rights of the minority."

In other words, the Speaker has a power to decline to put closure motions if they are an abuse of the rules of the house.

I want to show honourable senators that those two motions were not only an abuse of the house but also breaches of our privileges. Lord Campion is supported, honourable senators, by Erskine May, or vice versa, depending on who died first. Erskine May, twenty-second edition, at page 407, said very clearly the following:

> That question must be put forthwith,

— meaning a previous question,

> — without amendment or debate, unless it appears to the Chair that the motion is an abuse of the rules of the House or an infringement of the rights of the minority. The discretionary power of the Chair to protect the rights of the minority by refusing the closure is frequently exercised.

Therefore, honourable senators, a fair degree of consideration has been given to this phenomenon of Speakers willy-nilly putting these kinds of motions to the chamber, but what is unthinkable and unheard of is the Speaker's active cooperation with the movers of such motions to place them before the house, and that is the question, honourable senators, that I am asking Her Honour to rule on. I contend, honourable senators, that those motions were put without impartiality, without objectivity and without proper consideration, and the result is that the Speaker countenanced those motions which, to my mind, are grossly improper and grossly dictatorial. That is the notion of closure and the guillotine motions. These motions are supposed to be used in exceptional circumstances.

In addition to that, when they are being used, the minister must always prove that there is an urgency, that there is a kind of emergency happening, that there has been prolonged obstruction or some such thing and, in addition, that the public interest demands that these bills be passed.

Of interest on this bill, honourable senators, is that there is no public support for it. The support is here on the Hill. If you look at the applications of witnesses who wanted to appear before the committee, you will see that five were in favour of the bill, 2,164 were opposed to the bill, and 190 did not declare or state their position. Let us say, for the sake of argument, that the number of those who did not state their position divided into the same ratio. You would be dealing with about 2,300 against and half a dozen or seven in favour of the passage of the bill. I think that should give us serious pause to consider the situation.

Honourable senators, I come to the point now that I think is especially critical. Senator Murray moved that motion which was countenanced by the Senate Speaker *pro tempore*. I should like to say to honourable senators that there is no power either in the *Rules of the Senate* or in the House of Commons for a private member to move a guillotine motion. It is so well articulated, because our rules, which did not exist in their present form until some years ago, demonstrate that very clearly. Senate rules 38 and 39 are clear that there is no base in the Senate rules for such an action, that it is the preserve of the Crown in dealing with such matters as the financial initiatives of the Crown, a Royal Recommendation and so on. The power of private members to move a guillotine motion or time allocation motion is just not there. That power is reserved exclusively to a minister of the Crown.

Trust me, senators, this is a very serious matter and, I would submit, a serious democratic deficit. I would submit, honourable senators, that these kinds of motions and these kinds of actions undermine public respect for the Senate. I do a lot of speaking, and I travel a lot in this country, and I constantly have to face the Senate's reputation and I constantly try to uplift it. Honourable senators, this kind of activity does not support a healthy public perception at this time, particularly when the Liberals and Mr. Martin are plummeting downwards in public support. This does not help at all, honourable senators, and I think Her Honour should bear that in mind.

Unlike the previous question, which is the original closure motion, a previous question can be moved by a private member but not a guillotine motion. I can find support, for example, in Beauchesne's sixth edition, which in paragraph 518 speaks to the closure rule in the House of Commons which says:

> The closure rule in Standing Order 57 permits a Minister to move a motion intended to bring debate on any question to an end with the House deciding that question under consideration.

It clearly states a "Minister," and if you read through the literature, there is reference to "governments" and a "Minister."

If one were then to look to Marleau and Montpetit, one would also see, for example, on page 563, under time allocation:

> ... it also allows the government to impose strict limits on the time for debate. While it has become the most used mechanism to curtail debate, time allocation remains a means of bringing parties together to negotiate an acceptable distribution of the time of the House.

It is very interesting, except this was not a battle between the opposition and the government; this was a private member's bill. I keep coming back to the principle that, if government supporters and government members and the government so wanted this bill, then the bill should have been proceeded with under the phenomenon of ministerial responsibility, with the government taking clear responsibility and answering to the public for it, because the government here has insisted that it is not a party to this. Yet, I have noticed the quarterback on the bill seems to be Senator Robichaud, the former Deputy Leader of the Government. Yes, you can go through the record. I can prove this, Senator Robichaud. I can prove it. You are crying now.

Senator Robichaud: Really.

Senator Cools: Do not cry. I will come and wipe your tears.

Senator Robichaud: I do not want you near me.

Senator Cools: That is obvious.

Senator Robichaud: Yes.

Senator Cools: I hope that shows up on the record. It is pretty obvious. I am glad Senator Robichaud said it. He does not want me near him. Ask him to repeat it. Perhaps he will have the nerve to stand up and put it on the floor of the chamber.

I was saying, honourable senators, that Marleau and Montpetit tell us that this is also supported by many of the writers on these subject matters: Campion, Redlich, May and so on.

When this was allowed to go forward and points of order were attempted to be raised, they were not allowed by Her Honour in the first place, and the record of last Thursday shows enormous confusion and it is very bewildering, to say the least. Interestingly, honourable senators, the Senate's rules 38 and 39 are crystal clear. Outside of that, there is no power within any rule of the Senate for a private member to move a guillotine motion.

• (2030)

I am very disappointed and saddened by the fact that the Speaker of the Senate countenanced such a motion and, in actual fact, lent the both of them her support.

Honourable senators, I should like to come then to what I am asking Her Honour to do. This is a most interesting phenomenon. What we have here is that a person is being a judge in a case that involves her.

The way our business on privilege has been so structured, that is unavoidable. The practices of Parliament are very clear that, at any given moment, if the Speaker has said something that is out of order, that can be raised in another point of order. I am not speaking about appeals of rulings, which are completely different, but the fact of the matter is that the Speaker is always subject to the house and not only to appeals of rulings. The notion is that the Speaker is subject to the rules of the house and is bound by the same rules.

What I am asking in this bizarre situation in which I find myself is that I feel that Her Honour breached the privileges of the Senate last Thursday, in that she allowed debate on a bill to be seriously truncated. I should also like to suggest, honourable senators, that this sort of thing has happened several times in this debate. It is not unusual. The committee hearings were truncated and cut short. The debate at second reading was cut short.

Honourable senators, I should like to cite page 329 of the *Debates of the Senate* of February 20, 2004, where, with the then Speaker sitting in the chair, my right to speak to Bill C-250 at second reading was denied. I was on my feet, trying to speak. The Speaker moved right to the question at Senator Robichaud's behest. That is a case where the question was used as a mini-form of closure. This has happened all the way through this debate, the moving of adjournments and the calling for the question to be put. In this case, on February 20, the Speaker very diligently obeyed and put the question and denied me my opportunity to speak at second reading.

The proper role of the Speaker, Your Honour, is for the Speaker to ensure that senators have an opportunity to speak. It leaves a questionable thought as to what the real function of the Senate is and whether or not it is serving the public well.

I have seen a lot in the last few days. I have been here a few years. This place will have to address the question of its own relevance to this country; we are being told again and again is that the Senate is not a place for debate, that the Senate is not a place to bring forth issues and ideas, that the Senate is not a place to question government initiatives or to uphold the grand principles of ministerial government in this country and that what we should do, basically, is vote without any kind of debate and vote as we are told to. If we do not do what we are told, then we can expect a fair amount of brutishness, brutality and cruelty.

Honourable senators, we will have to look at this and do some introspection. It is becoming increasingly hard to defend these bills that are coming through faster and faster and with very little debate. I did not come to the Senate to do that. I came here to play a full role as a parliamentarian in this country in terms of weighing and studying proposed legislation. If I err, I err on the side of earnestness.

I know many senators scorn and laugh at me because I am always talking about this principle and that principle and saying that we should do things properly and try harder.

When I was on the National Parole Board — and I tried to be a good parole board member and tried to read every single case — I remember I used to be questioned that way. Honourable senators know the whole thing about Gresham's law and the lower standard prevailing. Thank you very much, honourable senators, I choose the higher standard. I always have and I always will. I do not think that I can alter that. That is as natural to me as the colour of my skin.

Honourable senators, in closing, I should like to ask Her Honour to make a ruling on what I have raised. I am asking her to make a prima facie ruling — which is exactly where I began — that she has breached the Senate privileges in countenancing those motions and in lending support, whether it was acknowledging Senator Joyal over Senator Lynch-Staunton or other senators, who were clearly on their feet before Senator Joyal rose. I was on my feet. I saw him rise. Senator Lynch-Staunton was on his feet and others.

The practice in this place is that, when senators rise, the Speaker goes to those with precedence, being the Leader of the Government in the Senate or the Leader of the Opposition. I was not too happy when that practice was not followed.

In any event, I maintain that there is a breach of privilege here. I am not asking Her Honour to make a finding of whether or not there is a breach of privilege here. I am asking her to make a finding that there is a prima facie case which is at least worthy of the issue and the matter going forth in this chamber for a debate on the motion I shall move. The real debate should always take place on that motion, and not on the prima facie question.

Honourable senators, the practices and the rules here are constructed in such a way that that the Speaker is a judge in his or her own cause. I do not know any other way around that. It is very unfortunate that we are in this position, but I do say to honourable senators that I do not think it is good for the Senate that those motions were prosecuted in the way that they were. I think we will see the day when we deeply regret it, because I submit that what goes around comes around.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I wish to take advantage of Senator Cools' question of privilege to also deplore the fact that we have engaged here in the last few hours in a procedure that I believe we will learn to regret. That is, that one senator, for whatever reason, decided on his own to impose a closure motion. That is unheard of. I speak here of the closure motion, not a motion for time allocation, not a motion to give us an opportunity to debate a certain item within a certain time frame, but, in effect, a guillotine. That in itself was bad enough.

What followed after that senator's intervention was the motion of Senator Joyal to move the previous question. We never had the opportunity to debate Senator Murray's motion. I feel that my privilege has been affected by that, as one responsible for debating, arguing and for getting information on whatever issue.

First, there was a limitation on debate, then an inability to debate the motion. That is unprecedented. My privileges and those of all colleagues, however they feel about the bill that led to Senator Murray's motion — regardless of our feelings, the point is not the bill; the point is what we have accepted in two votes before six o'clock.

I would ask Her Honour, in assessing Senator Cools' question of privilege and my intervention, which I am hopeful is shared by others, to at least rule that there is a privilege here that has been challenged, questioned and should be respected more than it is. Otherwise it would mean, if Senator Murray's and Senator Joyal's tactics are accepted, that we can just limit debate on any item, at any time, on anything, whenever two individuals feel like it.

• (2040)

I would hope that Her Honour would take that into consideration. I will stop there.

Hon. Gerry St. Germain: Honourable senators, I, too, have a concern. My concern is that, when sitting in the position I occupy in the Senate chamber, I saw both Senator Lynch-Staunton and Senator Tkachuk rise before Senator Joyal.

Whether the Speaker *pro tempore* sought advice from the Table or whether something else took place, I do not know, but I clearly saw that, and that to me is a concern if the tradition in this place is that the Leader of the Opposition should have been recognized, or the first person to stand should have been recognized. These two people did rise before Senator Joyal.

Honourable senators, I am also concerned about the fact that there was no opportunity to debate Senator Murray's motion. If two members can just rise and call for closure on a motion, that could have a serious impact on this place and how we operate. I noted that concern on the night of the debate.

Closure has always been, from the time I was in the other place until I came here, something that was used in a rare circumstance. It is a use of power over the minority, and minority rights have always been respected in our parliamentary system. If we fail to recognize that and fail to respect it, I do not know what will happen to an institution like this, or how we can carry on our business in the future, because this sets a precedent.

Honourable senators, I know that the job of the Speaker *pro tempore* is challenging. It is an onerous job, but when she is considering this point of privilege, I hope she will give serious consideration, which I am sure she will, to what we are trying to point out here this evening.

Hon. Consiglio Di Nino: Honourable senators, I, too, would like to add a few words in support of Senator Lynch-Staunton's position on this.

Over the last few years, more and more people have been questioning the validity, the importance and the value of this institution. What we have here is, in effect, an abuse of the rules that exist. I do not think that the rules to allow for time allocation were ever meant to deal with a private member's bill. As offensive as most honourable senators find it whenever it is used on either side — whichever government happens to be in power — one can at least justify its use under the notion that the opposition is holding up government legislation. It is an issue that the government has decided to stake its reputation on by producing a public document, a bill, which will be debated in Parliament, and then the electorate, the citizens, will make a pronouncement on whether that is acceptable or not.

We have raised a most serious question here by allowing this procedure on a private member's bill, of whatever value, on whatever side of the issue one might be. I believe it is a mistake and we should not have allowed it. I hope that Her Honour and her advisers will take that seriously because I feel it will impact on a permanent basis on this institution, and we could be held to ransom by a small group of people who wish to push a particular agenda, which is not a government agenda, which is not an item on which an election can be fought where, in effect, you must go to the electorate and ask whether it is right or wrong. This does not happen with respect to a private member's bill.

Honourable senators, I think we made a mistake. If we can correct it, we should try to do that.

Hon. Serge Joyal: Honourable senators, let me say that I challenge the statement made by Senator St. Germain that I was up on my feet after Senator Lynch-Staunton and after Senator Cools. That is not the case. I challenge the honourable senator on this because I was listening attentively to Senator Murray's statement for an obvious reason. I had a vested interest, directly, in what he was saying. I stood here, behind my seat, and I got the attention of the Speaker and the Speaker recognized me.

Once I had been recognized, then Senator Cools started to try to get the attention of the Speaker and then Senator Lynch-Staunton. That is how it happened.

Senator St. Germain: For clarification —

Senator Joyal: I am sorry, senator — I would point out to Her Honour that I listened to the honourable senator.

Senator St. Germain: Senator Joyal challenged me and I never mentioned Senator Cools. I mentioned Senator Tkachuk. Perhaps he should get his points straight.

Senator Joyal: I was ready to listen to any other senator. I can give my version of the events. The honourable senator gave his version of the situation and I am allowed to give mine because I am being challenged directly.

Honourable senators, there is no provision in the rules that a motion, as introduced by Senator Murray, has to be put forward by a minister of the Crown, as stated by Senator Cools. If that were the case, we would be able to find one simple paragraph or one simple line to that effect. That does not exist in our rules. Therefore, I cannot concur with the first point made by Senator Cools.

On the second point that the integrity of the Speaker is being questioned because Her Honour would be the judge and a party in her own case, it is up to any senator who is not happy with a decision of the Speaker to challenge and call upon the Speaker's decision and have it submitted to a vote. It has happened before. I have seen it. I do not want to identify any senator here, but I have seen it happen We voted and we made the decision to either uphold or to reverse the decision of the Speaker. Honourable senators, we must maintain the integrity of the position of the Speaker. That is a fundamental factor in how debates should be conducted in this chamber.

On the next point, when the previous question is called or is put forward, there is a specific rule in the Senate, 48(2), which provides for how that should happen and what should be done. What has been followed by the Speakers is what is stated in rule 48(2). If a senator is unhappy — as is our right, not to be happy with what happened — and the rules require to be changed, then there are ways to change the rules other than to raise a question of privilege. That would be trying to do what Senator Carstairs did some weeks ago. She wanted to change the rules and she moved a motion to change the rules, but not through the door of a question of privilege.

If honourable senators are unhappy with how we debate a private member's bill we can make changes. I am of the opinion that a private member's bill, either originating from this side or from the other side, should, by rights, be able to be put to a vote at a point of time and not only be the object of delaying tactics. If we believe that our rules do not provide for that, there is a way to address this issue, which is through a motion to refer the issue to the Standing Committee on Rules, Procedures and the Rights of Parliament, which study the issue and report back to this chamber.

Senator Stratton: You refused that.

Senator Joyal: I would be the first one to be open to discuss this, but not through the cloak or the title of question of privilege. I do not think it should be done that way, and I do not think that there is any question of privilege in relation to what Senator Cools has said.

• (2050)

Senator St. Germain: Honourable senators, for clarification, I never mentioned Senator Cools' name. I want you to get that straight. Do you want to challenge me? Challenge me any time. Make sure you have got it straight. I said Senator Tkachuk and Senator Lynch-Staunton, not Senator Cools. Is that understood?

Senator Joyal: I want to be understood by honourable senators.

In her previous statement, Senator Cools mentioned that she rose before I did, and that I had been recognized unfairly by the Speaker. If you did not mention it, Senator St. Germain, I apologize and I withdraw. I contend that you have maintained that Senator Lynch-Staunton as well as Senator Tkachuk were on their feet. I totally agree with that. Thus, I bend to you on that.

Senator St. Germain: Accepted.

Senator Lynch-Staunton: I do not think the argument about who got up first, who got up at the same time, or who got up last has anything to do with it, except that there was a time when, if a number of people got up at the same time, the Leader of the Opposition or the Leader of the Government would be recognized first. In this case, that was not respected. However, that is not a rule. It is a convention, or it used to be.

I have not challenged the propriety of Senator Murray's motion. Obviously, it was in order. What I do challenge, in order or not — and this is where my privilege was breached — was the refusal to even be allowed to debate it. That is where my privilege was challenged.

As soon as Senator Murray was finished, Senator Joyal was recognized to move the previous question. That was the end of the debate. It was an unprecedented motion on which no debate was allowed. I feel my privilege was seriously affected as a result.

Privilege has nothing to do with changing the rules; it has to do with being impeded in debate. That is what we are talking about now. We were refused debate on an important motion. If this is allowed to stand, it means that we are setting a precedent for similar action to be taken.

Honourable senators, I will not be around when it happens too often, but this Senate and the whole of Parliament will be negatively affected by it. God forbid that it should happen.

Hon. Jack Austin (Leader of the Government): Honourable senators, I rise in an endeavour to be of assistance to the Speaker in this matter, and not to take any partisan view with regard to Bill C-250. It is not a government bill and the government has played no role in using the rules here in any way, shape or form. However, a question of privilege has been put before the chamber and it is the obligation of senators to assist the Speaker when they feel they have some point to draw.

First, as a member of this chamber, I have a concern with respect to a closure motion on a private member's bill. I believe the practice has to be given further inquiry, and I would hope that —

Senator Lynch-Staunton: You voted for it.

Senator Austin: — the Standing Committee on Rules, Procedures and the Rights of Parliament would examine the four corners of the issue. It is a case that has more than a simple line of argument that should be addressed to it because there is the point that, at some time, Parliament should decide whatever business is before it. The other point is that Parliament and members of the Senate should be given the opportunity to have a fulsome debate. I shall not address the issue of whether there has been an opportunity to give a fulsome debate on Bill C-250; I shall leave that question to others.

However, we have a doctrine in parliamentary practice that argues that there is no question of privilege where there is an opportunity to deal with the decision of the Speaker. I would draw the attention of honourable senators to rules 33(1) and 33(2), which read as follows:

> (1) When two or more Senators rise to speak at the same time, the Speaker shall call upon the Senator who, in the Speaker's opinion, first rose.
>
> (2) In the circumstances provided in section (1) above, before the Senator recognized by the Speaker has begun to speak, a third Senator may rise on a point of order and propose a motion naming another Senator who had risen and proposing that this other Senator "be now heard" or "do now speak," and the question on such a motion shall be put forthwith without debate or amendment.

I recall Senator Sparrow very recently attempting to use that rule. However, there was not a reversal of the decision of the Speaker in that particular case.

Thus, there was an opportunity, honourable senators, as I understand the proceedings that took place last Thursday, for some honourable senator to rise and have the view of this chamber under rule 33 as to which senator should be given the opportunity to speak. As that opportunity was not taken, I do not see how a question of privilege can arise now with respect to the decision of the Speaker with regard to which senator should be recognized.

Senator Cools: Honourable senators, I should like to respond to a couple of the issues raised.

I shall begin with Senator Austin. First, Senator Austin is treating this matter as a question of order while I have been raising a question of privilege.

Senator Austin also insists that it was open last Thursday for members to rise on a point of order and move that another senator be now heard, according to the rule he just cited.

Obviously, Senator Austin should look carefully at the record. If he were to do so, he would see Senator Stratton trying to raise a point of order, as well as myself trying to raise a point of order, and the Speaker was not hearing any of us.

I shall come back to the question of points of order and the questions of privilege. I had the option to raise this as a point of order. This is not a point of order. This is a question of the violation of every single member's privileges. I intend to come back to that in a moment.

If honourable senators look to page 894 of the *Debates of the Senate* for April 22, 2004, they will see that not only is the Speaker recognizing Senator Joyal over Senator Lynch-Staunton but that the Speaker is continuing through the process to be defending Senator Joyal and declining to take points of order. The custom here is that a leader is always called first by any Speaker. Senator Stratton was saying, "Point of order," as was I. That happened a lot even today. I was on my feet several times saying, "Point of order." Therefore, to my mind, there is no real argument that can possibly be treated as valid in this context that one could have done this when, in point of fact, any attempt to raise points of order was being met by blind eyes and deaf ears.

The other question that I should like to come to is Senator Austin's point on private member's bills. It is not good enough to say that the rules should be changed to allow X and Y in the future. The fact of the matter is that the practice, the custom and the usages of this place have preserved guillotine motions and these kinds of motions for government bills. Private member's bills have not had access to these kinds of procedures. It is pointless to say that it may be changed in the future. I am speaking about what has transpired now.

Honourable senators, I have been here for a lot of years. I know that the government gets what it wants, what it wishes, and when it does not want something, that something usually does not see the light of day in this place, except under rare circumstances.

I should like to dispute and challenge most of what Senator Austin had to say. The fact that a rule may go in a certain direction in the future does not impair the fact that it should be used as the rule here today.

I should like to move on now to deal with the whole question of what Senator Joyal said about who rose first.

• (2100)

Read the record; it is very clear. The record is crystal clear, complete with the confusion of the mixing of the motions.

Senator Joyal has talked about the integrity of the Speaker. I put a quotation on the record a little while ago in respect to the earnest need of the Speaker to act in an appropriate way in certain circumstances, and that action is what usually commands respect from the rest of the chamber. It is incumbent upon the Speaker to exercise impartiality.

I come now to Senator Joyal's assertion about two things. One is the *Rules of the Senate*, but first he talks about the rule where he says senators are free to overrule, to appeal a Speaker's ruling. Honourable senators, that is on a point of order. This is not a point of order. Senator Joyal is confusing a point of order with a question of privilege. As a matter of fact, I have raised this question of privilege in accordance with rule 43, which states very clearly, "the earliest opportunity" afterwards; and this is the earliest opportunity afterwards. This does not in any way excuse or justify anything whatsoever for Senator Joyal to say, "Oh, well, senators could have appealed the ruling," because I am not questioning the Speaker's ruling in respect of the point of order, with which I disagree very strongly; I did not see fit to question it but I did see fit to raise a question of privilege.

I would like to come to one other point in respect of what Senator Joyal says could have been done. I will give him a suggestion of what I think could have been done by him Thursday. Thursday, I challenged Her Honour. I said:

> Your Honour, you are required to follow the rules of the place. I wanted to speak to Senator Murray's motion.

I am reading from the Debates at page 895. I continued:

> 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 you chose, 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 scandalized.

[Senator Cools]

Honourable senators, Senator Joyal and Senator Austin are articulating what could have been done Thursday. If Senator Joyal was questioning my version of the events, he could have done that Thursday because right now the record stands as it does and the record shows very clearly that I said Thursday that I was on my feet and I saw Senator Joyal rise. I do not think that my recollection is inaccurate. According to Senator Joyal's reasoning, he should have questioned that yesterday, not today, when I chose to raise all of these events as a breach of privilege.

Honourable senators, I want to come now to Senator Joyal's interpretation of these rules. We have allowed a grand, great law of Parliament to languish in this country, and this jurisdiction in Canada is one of the most lacking. For example, we do not have a book on the procedure of the Senate as, for example, the Australians have. Senator Joyal's perception of this matter is that unless something strictly forbids something else, it is not forbidden. I would invite Senator Joyal to read the great masters of the law of Parliament. I am speaking of people like Gladstone and Lord Brougham and some of the great giants of this field. If honourable senators were to read them clearly, especially Gladstone, there would be no doubt that the guillotine motion and these closure motions came about as a tool in the hands of governments only, not private members but governments. Conditions had to be met that justified the invocation of that siege-like state of dictatorship, which is what these motions throw the house into.

I would challenge Senator Joyal because it is a very mechanical view of the grand law of Parliament to say that if there is not a rule saying exactly "it," "it" does not exist.

Well, I have news for honourable senators. Most of the grand laws of Parliament and most of the grand processes by which we operate have never made their way into the Senate rules. For example, there is not a Senate rule that says that a bill must have three readings; yet it is one of the oldest elements of the law of Parliament. It can be traced to the 1300s. The material is there.

It does not comfort me at all and it does not even affect me at all when one says that somehow this grand tradition of Parliament and ministerial responsibility is being reduced to nothing other than whether there is a rule or there is not a rule.

I invite honourable senators to examine this grand tradition of Parliament that was received into Canada in 1867. It is a grand tradition. I would tell honourable senators that the exercise of those two motions in the last two days is a huge, enormous, massive smear on the grand tradition of Parliament.

I would also add, honourable senators, that it is a grand smear on the liberal tradition of Parliament. If we want to talk about liberalism one day we should discover what it is. No one knows what it is any more. If I asked most people to articulate the first six principles of liberalism, I would get "tolerance" and "compassion." That is absolute rubbish. There were grand principles that were well articulated and I invite senators to look at them.

Honourable senators, the fact of the matter is that something very bad and very wrong happened in this place. It is more than a question of order and more than appealing a ruling. It is a breach of the privileges of this place because it impairs the ability of senators to do their job as members of Parliament. That is what I am saying.

It is unfortunate, in a way, that Her Honour is in the Chair today and that she was in the Chair this day, but our rules, quite frankly, assume that we would not be in this situation. Obviously, that is proven to be an incorrect and poor assumption, but Her Honour was in the Chair that day. She participated in these events as though she were in her own seat. She could have done all that. There is nothing wrong with that at all. The rules allow her to go to her seat and participate as any member, to rise and speak for or against the bill. However, when she is in the Chair, it is a different matter.

I would submit to honourable senators that the Speaker *pro tempore* is in the Chair today and was in the Chair when these events happened, as Senator MacEachen used to say, under her watch; and since she is now the person who will make this ruling, I do not know where else to go. It seems to me that what Senator Joyal is really saying is that the alternative is to do nothing and to say nothing. I have a few difficulties with that point of view.

The Hon. the Speaker *pro tempore***:** Honourable senators, I have been listening very carefully to the discussion on the question. I want to thank you for all your presentations. I will take the matter under advisement, and we will now resume debate.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Pierre Claude Nolin: We have not concluded government business. We are still at Item No. 2.

• (2110)

[*English*]

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, it was my understanding that we would resume debate on Bill S-9 with Senator Maheu because she was interrupted when the sitting was suspended earlier. The advice I received was that we had to do that because that was where we left off. My intention, once Senator Maheu has finished, would be to ask for leave to revert to Bill C-7. I understood that Senator Stratton and I had a discussion along those lines.

Senator Stratton: No, no.

[*Translation*]

Senator Nolin: It was refused, so I presume I am being asked to speak. I am prepared to speak under government business.

[*English*]

Hon. Terry Stratton: Honourable senators, to make it abundantly clear, it was agreed that when the sitting was resumed we would go to Bill C-7 and then to Bill C-250. That was the agreement we had worked out. It had nothing to do with Bill S-9. I was informed that Senator Maheu wanted to speak to Bill S-9, but I was not told that it would be first up or even on tonight. We had agreed to go to Bill C-7.

Senator Andreychuk: Let us adjourn until tomorrow.

Senator Rompkey: We are in the hands of the Speaker. If the Speaker decides that we should go to Bill C-7, we are happy to do so.

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

Hon. Shirley Maheu: I was standing to speak when the time came to ring the bells. I assumed that I had the floor.

Hon. Anne C. Cools: Honourable senators, I had inquired because I found it odd. I do not think I was dreaming, but when debate was suspended for the vote, I was under the impression that Senator Chaput was not finished in respect of Bill S-9 and that she had yet to field questions.

Senator Rompkey: Senator Chaput had finished speaking.

Senator Cools: I said that I wanted to ask questions. I raised that about half an hour ago, when I inquired whether debate had been adjourned. I thought the house should return to Bill S-9 so that Senator Chaput could field questions. I clearly understood that debate was adjourned, and I might even have said that. I then agreed to proceed with my question of privilege.

Honourable senators, it is not my style or my way to bump other senators; I have never done that.

Look at the contempt towards me.

Senator Rompkey: Could honourable senators agree to hear Senators Maheu and Nolin, and then proceed to Bill C-250? Is that agreeable? I simply want to follow the order that we are enjoined to follow by the Table. My understanding was that Senator Maheu had not finished and would have the floor when the sitting was resumed because she had the floor when the sitting was suspended.

Therefore, it is my suggestion that honourable senators hear from Senator Maheu on Bill S-9, then move to Bill C-7 to hear from Senator Nolin, and then move to Bill C-250. That is my suggestion.

Senator Stratton: That is not the issue. The previous speaker to Bill S-9 was cut off when the sitting was suspended for the vote. The house then conveniently moved immediately to someone else to speak. That is the problem. I would suggest to the house that, for the convenience of all honourable senators in this chamber tonight, we go to Bill C-7 and then to Bill C-250. Tomorrow, the honourable senator may speak to Bill S-9. What is the problem with that? Why not tomorrow? Why tonight? Why not deal with Bill C-7 and Bill C-250 in the way that we had agreed? Surely to goodness the senator could speak to Bill S-9 tomorrow. Otherwise, we need to go back.

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

Senator Rompkey: If Senator Maheu is prepared to stand Bill S-9 until tomorrow, we could agree to move to Bill C-7 and then to Bill C-250.

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

Senator Maheu: I understand that we will vote at three o'clock tomorrow. If I can be the first to speak after the vote, it will be fine with me.

Hon. John Lynch-Staunton (Leader of the Opposition): No, we will follow the order — no privileges.

Senator Rompkey: Tomorrow, the Orders of the Day will be followed, and as the item comes up, it will be called.

[*Translation*]

PUBLIC SAFETY BILL 2002

THIRD READING—MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Léger, for the third reading of Bill 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.

Hon. Pierre Claude Nolin: Honourable senators, I will be very brief. We are not held to perfection, but that is what we aim for. Honourable senators, if some parliamentarians still believe that Parliament's decisions are supreme, then they need to come back down to Earth. Since 1982, the Supreme Court and Parliament have been engaging in a sort of dialogue — we through our legislation and the Supreme Court through its rulings. There exists a certain dialogue between the two.

If we do not aim for perfection, in the form of good legislation, legislation that respects the Constitution, the Charter, constitutional conventions and basic human rights, then in a few years the Supreme Court of Canada will say to the Parliament of Canada: "You have not done your job. We will suspend the legislation, as we have done in the past. Do your work and in six months or a year, our ruling will take effect."

I am not saying this is a common occurrence, but it has been known to happen. And when it does, we hear voices of protest in the other place and here saying that the Supreme Court is usurping the so-called ultimate authority of Parliament.

Honourable senators, this is without a doubt a very controversial bill that requires us to pose some questions on the extremely delicate balance between rights, the right to protect the safety of Canadians and, at the same time, protect the fundamental privacy rights of those same Canadians. It is our responsibility to find this balance.

I listened with great interest to the speeches at second and third reading by Senator Day and Senator Andreychuk. I think they are both right. To assess this consent, it depends on the spirit in which these senators spoke.

Senator Day believes that public governance can help maintain this delicate balance. If I can summarize the 45 minutes during which he spoke very eloquently, I might add, he basically said that public governance, with the existing government power structure, will be able to ensure this balance.

Senator Andreychuk has a different perspective and says that this is a delicate balance and explained why we should perhaps continue to consider the control mechanisms in the bill.

I will give you an example. For nearly two years, a special committee of this chamber considered Canada's past and present public policies on illegal drugs. We even discovered legislation that, under the guise of repressing or prohibiting drugs, gave police and government powers that it dared not assume to repress or prohibit other offences.

That is why the Controlled Drugs and Substances Act and its predecessor, the Opium Act, were not included in the Criminal Code.

• (2120)

This was a distinct law, one giving the police a series of powers that were contrary to the fundamental rights established by case law and the courts. In some cases, it has taken close to 80 years to restore the balance.

Take the example of the reversed burden of proof. If an offence were introduced into the Criminal Code today requiring the accused to assume the burden of proving that the police were wrong to arrest him, would we vote in favour of such a law? I think not. Yet in 1911, the Parliament of Canada did enact just such a law. Only in 1985 did Parliament decide that maybe this had been a mistake.

In closing, I will suggest that we pass a bill that is definitely useful. It would appear that the government majority is going to bring pressure to bear to get the bill passed. Why not retain the possibility of revisiting this bill after a few years, in light of what the courts have had to say about Bill C-36? We have barely touched on the power of the judiciary power. The judiciary has only just begun to examine the anti-terrorism legislation.

MOTION IN AMENDMENT

Hon. Pierre Claude Nolin: I move, seconded by Senator Lynch Staunton,

That Bill C-7 be not now read a third time but that it be amended, on page 103, by adding after line 26 the following:

"Review and Report

111.2 (1) Within three years after this Act receives royal assent, a comprehensive review of the provisions and operation of this Act shall be undertaken by such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for that purpose.

(2) The committee referred to in subsection (1) shall, within a year after a review is undertaken pursuant to that subsection or within such further time as may be authorized by the Senate, the House of Commons or both Houses of Parliament, as the case may be, submit a report on the review to Parliament, including a statement of any changes that the committee recommends.".

Hon. Marcel Prud'homme: Honourable senators, I would like to speak to you off the cuff, as Senator Carstairs did so well last week in Mexico. I will offer a tribute to her this week or next. Instead of speaking tomorrow, I will do so now, without a prepared speech, as was suggested to us at the Inter-Parliamentary Union.

Senator Carstairs chaired one of the most difficult committees I have seen in 40 years, the special committee on the Middle East. She was able to obtain a resolution that was unanimously approved by all 142 countries present.

Honourable senators, there is nothing worse than the fear of being afraid. And you will see in the months and years to come why I say such a thing. I have no intention of leaving the Senate without revealing a few of the ignominies that a number of senators, members of Parliament and public figures have had to endure.

When I arrived in the Senate, and also when I was an MP, I was always amazed, when attending various receptions in the quarters of His Honour the Speaker of the Senate, to see this inscription above the doors, "ordre exclut hâte et précipitation." It is in Latin and I shall translate it into English.

[*English*]

"Nothing is well ordered that is hasty and precipitate." The other one that I am sure Mr. Trudeau would agree with is that, "It is the duty of the nobles" — this is very bad in English so I will switch to the French version.

[*Translation*]

It is the duty of the nobles to oppose the fickleness of the multitudes.

The last sentence reads, "We must be guided by reason rather than public opinion."

We know that right now the world is consumed by a kind of paranoia about the international situation. This leads to the creation of new legislation.

Around midnight last night at the Toronto airport — by the way, you have to be a genius to find your way around this airport — I saw young people from Quebec City being treated in an almost humiliating way. Was it racism? I saw extremely happy people, returning from Jamaica, shoved around and treated like no member of this Senate would like to be treated.

I observed, I took notes and wrote down names. I was truly horrified. Why? Because people are being consumed by fear, the fear of being afraid. Out of fear of being afraid, we draft bills that appear to give us a certain security, but at what cost?

I voted for the War Measures Act in 1970. I will never forget that day. I was the last holdout.

• (2130)

[*English*]

In the Liberal Party, I was given permission to speak in return for voting for it. I stand by what I said then, in 1970. For those honourable senators who may not know, once in a while — you can see it on television, where I said to people, "Please, be calm." That is probably the only time I made television. It is in the film about Pierre Elliott Trudeau. Be calm, Canadians. Be Canadian. Do not panic. In the name of panic, we come to things like Bill C-7, and other things.

One of the reasons the Senate exists, one of the reasons why it should exist, and why I am so active in the International Parliamentary Union, is to see more and more countries in the world who are deciding to go along the road of democracy but then say, "Maybe we need two chambers." In Canada, we are currently going through a time when, for all kinds of reasons, people need a scapegoat.

It now seems that, in the next election, the Senate may be a convenient scapegoat for electoral reform. I am not of that opinion. We are here until Canadians — not scholars, not the press, only Canadians — decide, after being well informed, on the role that the Senate could play in the protection of civil liberties and in front of masses of people who may be in total panic. The Senate will have proved its worth in Canada, where we have a second chamber that can reflect and cannot be pushed around.

If honourable senators want the Senate to be respected in this country — that is, if honourable senators really want the Senate — not as it is now but, perhaps, a Senate where senators are appointed for, say, 15 years. Brian Mulroney, a classmate and friend of mine — I know he disturbed a lot of people, but I had a good relationship with all the Prime Ministers — consulted about who should be appointed, in the spirit of Meech Lake. That is why we had distinguished senators like Senators Beaudoin, Bolduc, Chaput-Rolland, Poitras and Ottenheimer, who have left.

I do not mind the idea of Senate reform. However, if Senate is really desired, we have to tell people what it will cost, what it will mean, et cetera. Our role is not to panic, not because something terrible is happening tonight. These young Americans who voluntarily joined the army in the United States are now being killed in Fallujah tonight. Can we not reflect on all these issues? Can we not reflect on where panic is pushing honourable senators tonight? Do not worry, Canadians. We have everything under control, at immense cost, instead of trying to learn what brings us all in to accept bills.

Even in my absence, my first in 11 years, I continued to send messages to my office, asking, "Send me everything, more than ever." I telephoned all my old staff, to ask them, "What is going on," because I wanted to know, minute by minute, almost, what is going on in the Senate and in Quebec and in Canada.

Honourable senators, I do not think that we are doing a good job in being pushed, in being demanded and in being pressured. We are the Senate of Canada. We are here to be calm — even though passionately. After what I have seen tonight, I am glad the proceedings of this place are not televised, because Canadians would be shocked to see our debates on the rules of this place. However, in times of a big debate, I often wish that certain debates could be televised, so that Canadians would say, "My God, I did not know the Senate was all about that."

That is why I have voted against previous incarnations of this bill, but only when it was time to be called. That is why, at the end of the day, I will probably vote for the revision of this bill.

I would have preferred Senator Nolin to say not the House of Commons or the Senate. I would prefer a joint committee, because I am a senator. Until Canadians decide what to do with us, I would prefer a joint committee. If this bill were to pass, at least there should be a sunset clause in it, so that Canadians will say that there is a last court of resort. This is the last possibility to protect what it is to be Canadian. What signal are we sending to the world? A signal of panic?

I am a tougher guy than I look. If you are wrong, if you are bad, you pay. Maybe some day, Senator St. Germain will be happy to reveal all the conversations we had when we were seatmates here. I am an ex-provost corps. "Provost" means military police. I received my military training in Shilo, Manitoba. I may smile a lot, but when it comes time to make a strong decision, I want to be absolutely sure that I am doing my duty. I am no longer a member of the House of Commons who may, at times, be pushed because of popular pressure. That is why the Senate was invented. Maybe a majority tonight will decide, either tonight or tomorrow, that I am wrong and vote in a certain way. I am a democrat. I will bow to the decision of the majority. However, before we take that ultimate decision, after having read almost everything that was written — not only on this bill but on the previous bills as well — I think honourable senators should have a long night of reflection, a long day; come what may, if there is to be an election, well, let it be.

My father delivered over 9,000 babies. I even helped him when I was 14 years old, in the country, when there was no one to assist him. He said, "When the baby wants to come out, it has to come out, whatever you do." If there is an election coming, well, let it be. Let us not let this go to our heads, and say, "There may be an election, so we must pass every piece of legislation."

With all due respect to Senator Fraser, who chaired that committee — and who, by the way, was elected to one of the highest positions for women in the IPU last week, for which I congratulate her — I would have preferred, and I said it at that time, that this bill to be referred be sent to the Standing Senate Committee on Legal and Constitutional Affairs and not to the Standing Senate Committee on Transport and Communications.

• (2140)

Hon. Tommy Banks: Honourable senators, I have listened very carefully to all of the arguments concerning Bill C-7. I subscribe heartily to the idea that Senator Nolin has put forward tonight, that balance ought to be sought, which I think everyone knows.

I will ask one final question of Senator Day. I know that he will be happy to know that it is my final question. The record will show that it is the same question, more or less, that I asked him on the day that he introduced this bill. It deals with the review, which is contained in the present amendment.

I have no doubt that Senator Prud'homme is right when he says that we must not rush into these things, but I do not think we are rushing into these things. I think all the things that are contained in this bill, all the extraordinary — and they are extraordinary — powers that are given under this bill are necessary in the present circumstances, and I do not think that anyone has rushed into that. I take great comfort from the fact that Senator Day has explained to me, and to the chamber, that this bill grants no extraordinary power to ministers that would bring about regulations which could not otherwise be brought about, and in the terms of this bill, would only be brought about in emergent circumstances. It is constrained by that.

I think that all of the measures that are granted to the administration in this bill are, in the present circumstances, necessary. They may be necessary forever. One hopes not.

However, I would ask Senator Day, because he is the sponsor of the bill, assuming that we all agree that the measures that are taken in this bill to grant those extraordinary powers are necessary and that they will be granted, in what way is the effect of that detracted from in any substantive way by a process of review, such as is proposed in the present amendment?

Hon. Joseph A. Day: I think I could handle this —

Hon. John Lynch-Staunton (Leader of the Opposition): Point of order. The question should have been addressed to Senator Prud'homme.

Senator Banks: I apologize for putting it as a question. It was my contribution to the debate.

[*Translation*]

Senator Day: Honourable senators, I would like to examine the motion in amendment proposed by the honourable senator. With leave of the Senate, I move that debate be adjourned until tomorrow.

On motion of Senator Day, debate adjourned.

[*English*]

Hon. Bill Rompkey (Deputy Leader of the Government): Your Honour, I think you would find agreement now to move to Bill C-250.

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

Hon. Senators: Agreed.

CRIMINAL CODE

BILL TO AMEND—THIRD READING—DEBATE CONTINUED

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. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I begin my remarks by — and if I am declared out of order, it does not bother me — I want to deplore again what the majority of the Senate decided just a few hours ago, not only to accept a motion to impose closure, as opposed to time allocation, on a private member's bill, but, even worse, to deny all members, except the proposer, the right to speak to it. I just cannot believe that this is what the chamber of sober second thought has agreed, and that is to have itself neutered without even a whimper.

That being said, on Bill C-250, I, for one, am greatly disturbed at how this debate has evolved, as it did last week, when we had to listen to another diatribe from Senator Murray, this time to the effect that any member of this chamber once formerly identified with the former Progressive Conservative Party of Canada, which since last December has merged into the Conservative Party of Canada, any member of that party who votes against Bill C-250 is, according to my honourable friend, to identify with those he claims "have never supported a single human rights initiative or a single initiative for minority rights." He added:

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

I decided since Mr. Diefenbaker was the only one to speak to the original bill which set out hate propaganda, to go to the debates of that day. No contemporary parliamentarian was more consistent and adamant in the pursuit of human rights and in the defence of minority rights than John Diefenbaker. As early as 1922, in Saskatchewan, he appealed on behalf of French-Canadian trustees against a conviction on the teaching of French in the schools. He was the only Progressive Conservative member of Parliament during World War II to condemn the treatment of those of Japanese descent in British Columbia. He condemned the denial of habeas corpus to those identified as spies by Igor Gouzenko in 1945. Of course, his greatest single achievement was the Bill of Rights, which became law in 1960. So it was only natural that to have a better understanding of the purpose of the act which Bill C-250 amends that I seek out Mr. Diefenbaker's appreciation of it.

On April 9, 1970, then Minister of Justice John Turner moved third reading of Bill C-3 to amend the Criminal Code. Mr. Diefenbaker spoke immediately after, and I intend to quote extensively from his comments, as his argumentation then is just as persuasive today as it was at the time. Those who want to see the complete transcript of his remarks can find them in the Hansard of the Commons, beginning at page 5679.

After praising Eldon Woolliams, who was then member for Calgary North, for outlining, as he said, "on behalf of Her Majesty's Loyal Opposition, the views of his party with clarity and distinction," Mr. Diefenbaker said:

> No piece of legislation that has been before the House has given me the same concern as this bill has. I dealt with it in Toronto when B'Nai B'rith had a dinner at which I was one of the speakers. I pointed out my opposition to this bill and outlined that opposition in general. One thing I will always treasure is the fact that while many who were present did not agree with my views, when I concluded they gave me an unanimous ovation. This indicates the attitude of Canadians as a whole as we view those sayings which from time to time require to be decided by the House.
>
> Having endeavoured throughout my life to uphold freedom and to maintain freedom both at the bar and in Parliament, I am deeply concerned that what is taking place here is another step down the slippery slope to silencing the voice of disagreement.

Later he said:

> I shall not become involved in a discussion of the meaning of the word "freedom." It means something to each of us. To me it means the right to be wrong, not the right to do wrong. It includes the right to say what others may object

> to and resent. The only freedom of speech that has any meaning at all is the one that gives me the right to say the things that run counter to the general views of people as a whole, subject of course to the limitations of libel, slander, blasphemy and sedition.

He continued:

> Are we to define freedom as meaning the right to express only such views as are acceptable to the overwhelming mass of the people. That is not a very valuable kind of freedom. The essence of citizenship is to be tolerant of strong and provocative words. Liberty confers duties and responsibilities, one of its duties being to be tolerant of those who express views which may offend. We often hear certain words credited to Voltaire, who never used them at any time. It was Daniel Webster who used the words, "Though I may disagree with everything you say, I will fight to the death for your right to say it."
>
> Mr. Justice Brandeis of the United States Supreme Court, whose nomination as a Justice was opposed because he was a Jew, uttered these words:

• (2150)

> If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more free speech, not enforced silence.

These are words that honourable senators should take to heart. I include particularly those who thought it appropriate to bring down the guillotine on this private member's bill which has, as its primary effect, a chill on freedom of speech, an irony which would not have been lost on Mr. Diefenbaker, as he continued:

> What he said represents my philosophy of life. From time to time I quote Burke, and he is quoted even by Liberals today. He said: "The true danger is when liberty is nibbled away for expedients and by parts."
>
> He also said: "The people never give up their liberties but under some delusion."

Finally, I will recite a quotation from Mr. Diefenbaker's speech in which one of the most respected civil libertarians that this country has ever known is the subject:

> I have said over and over again I have no objection to the genocide portions of the bill, although Dr. Frank Scott thinks there is no need of them at all. How many hon. members of this House have read his words? I have not always agreed with him but he was a shining, effulgent leader of the CCF, and subsequently of the NDP in the field of civil liberties. His cause had many recruits. Many have followed him. I am interested to learn when it is that that party departed from the views expressed by him.... Furthermore, I doubt whether there is a lawyer across the country affiliated to the Civil Liberties League who has not condemned this legislation.
>
> What did Professor Scott say? He said that he did not need to contend that he was as much against hate propaganda as anyone but, nevertheless, he could not subscribe to the principles inscribed in this bill. He could not consider them anything but dangerous of adoption and inclusion in our criminal law at this time. Then, he gave four reasons for his opinion. He said, first, that this bill was retrograde. It certainly is. The advances which have been made and which culminated in the Drybones case are now to be sliced away. He said, secondly, that he thought it was unnecessary; third, that it was dangerous, and fourth, using a non-legal expression, that it was old-fashioned.
>
> Sir, Dean Scott referred to the various cases in which the concept of human rights, in a series of magnificent decisions in the Supreme Court, has been increased throughout the years. There is the Boucher case, and five or six others. He concluded by saying that he thought this legislation was dangerous.

Many would point out that Mr. Diefenbaker's speech in April of 1970 was 35 years ago, and the years have shown that many of the fears expressed then have proven unfounded, that freedom of speech has not been infringed on over time, as the bill's sponsor in the other place pointed out during committee hearings when he said:

> Since 1970, there have been only five prosecutions under the hate propaganda sections of the Criminal Code.

This results from the Supreme Court, in upholding the hate propaganda provisions and setting a very high threshold for prosecution.

Does time take away from Mr. Diefenbaker's position, supported, by the way, by 32 of his Progressive Conservative colleagues out of the 39 voting, with only seven approving the bill?

Not at all. The anxieties regarding the sanctity of the freedom of speech are as valid today as they were then. The Supreme Court no doubt took note of Mr. Diefenbaker's position, and I dare say its setting the threshold for prosecutions was greatly influenced by it and others such as Frank Scott's. Put another way, dare one imagine how Bill C-3 — the bill at the time — would have been applied and could have been applied had Mr. Diefenbaker not led the opposition to it?

The sponsor of the bill before us today, the sponsor of the bill in the House of Commons, when he appeared before the Standing Senate Committee on Legal and Constitutional Affairs, made this telling statement:

> This bill is largely symbolic; I would be the first person to concede that. There will not be a lot of prosecutions under this legislation.

Here we are, in the sponsor's own words, being asked to support a bill which is largely symbolic, meaning that it will be enforced on rare occasions, if at all, with chances of success questionable at best. All Bill C-250 seems to do is raise unfounded hopes by those who support it and false fears by many who oppose it.

Is this what parliamentarians are here for, to debate legislation that by its author's own admission "is largely symbolic" and given to excessive interpretations by supporters and opponents alike? Surely there should be no place in the Criminal Code for purely symbolic laws.

What troubles me most is that Bill C-250 is pitting what I would loosely define as secularists against what are commonly known as fundamentalists, or small-L liberals versus evangelicals. The first show little tolerance towards the second, who in turn cannot accept a way of life different from their own. As a result, the division on Bill C-250 is being put forward, as Senator Murray did in no uncertain terms last week, as one being based on whether one is for or against human and minority rights.

I find that conclusion repugnant, as I do statements to the effect that the party to which I belong has abandoned all Progressive Conservative principles. The last one to go down this road, just the other day, is the same one who, as leader of the Progressive Conservative Party, gloated in Edmonton, in September 2001 over the formation of a coalition made up of elected Progressive Conservative members and nine members of the then Canadian Alliance. One of the coalition's main objectives was, according to a press release from that September:

> To include and involve members and supporters of the Progressive Conservative Party, the Canadian Alliance and others who share our goal.

One of the nine Alliance members was the member for Saskatchewan—Humboldt who, at the time, had on the Order Paper a private member's bill aimed at limiting the application of the Official Languages Act to areas where the linguistic minority represented at least 25 per cent of the population. This violation of fundamental Progressive Conservative policy did not stop the coalition leader from naming him Public Works and Government Services critic.

How revealing that the same person who welcomed the member for Saskatoon-Humboldt to the coalition, despite his opposition to the Official Languages Act, now lashes out against the leader of the Conservative Party who refused his return to the Alliance party when he was its leader.

I would urge Senator Murray and others who, seeing success where they failed, do not hesitate to condemn the Conservative Party at every opportunity, to at least read what the party stands for. They may not like the way the merger took place or what led to it, but that is no reason to typecast it as being against every fundamental value they have upheld their entire political lives.

The agreement in principle on the establishment of the Conservative Party of Canada, dated October 15, 2003, listed a number of founding principles, including "a balance between fiscal accountability, progressive social policy and individual rights and responsibilities"; "a belief in the equality of all Canadians"; "a belief that English and French have equality of status, and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada" —

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: — and "a belief that all Canadians should have reasonable access to quality health care, regardless of their ability to pay." This agreement was supported overwhelmingly by members of both merging parties, and the founding principles are at the heart of the Conservative Party policy statement.

I apologize to those who believe that these last remarks are not germane to the order before us, but Senator Murray, during debate last week, regrettably attempted to identify opponents to Bill C-250 as disinterested in human and minority rights. Do I assume he includes in this group seven former Progressive Conservative members of Parliament who voted against Bill C-250?

The bill sets out to accomplish little except to be symbolic. Experience with the hate propaganda section of the Criminal Code to be amended by Bill C-250 shows that the section can only be applied in the most extreme of extreme cases.

Calling someone "nigger" or "fag" is not hate propaganda but can be as hurtful as the most vicious of anti-Black and anti-homosexual publications. Legislation is fine by itself, but alone it is ineffective. What is needed is more tolerance, more understanding and more respect. This can largely be achieved through family example and education at a young age.

As I said at the beginning of my remarks, the negative tone of the debate by some of the supporters of Bill C-250 has proven unnecessarily divisive. It will have little, if any, impact. To engage in anti-homosexual ranting is no more helpful than to accuse of intolerance those with strong feelings against the bill.

I do not share some of the interpretations of how certain religious teachings could be affected, but I respect their views, nonetheless, because I do consider them well-intentioned and honestly felt.

Nicholas Kristof so aptly put it in last Saturday's *New York Times* when he said the following:

> It's always easy to point out the intolerance of others. What's harder is to practise inclusiveness oneself. And bigotry toward people based on their faiths is just as repugnant as bigotry toward people based on their sexuality.

Honourable senators, while I hope that the author of this bill is correct in his assertion that the bill will have little or no effect, I do not see this as a compelling reason to support the proposed legislation.

Provisions of the Criminal Code should not be inserted purely for symbolic reasons. If this provision should turn out to be other than symbolic in its operation and ends up being a significant and effective inhibiter of freedom of speech, I would look back on a vote in favour as being a vote to assist in the destruction of the principles on which this nation was founded.

On the other hand, the debate and argument surrounding Bill C-250 have been such that any who now might vote in opposition to it risk being identified with extreme views, views that I reject wholeheartedly.

The quandary in which I find myself has been exacerbated by Senator Murray's use of a closure motion combined with Senator Joyal's guillotine motion. While it is possible that I would have ended up supporting the symbolism of the bill, I can hardly do so when the primary proponents of the bill have arbitrarily decided that they have heard enough and have effectively blocked others in this chamber from expressing their views. A self-proclaimed Progressive Conservative, working in harmony with a Liberal, to prevent free speech on a bill that prevents free speech is certainly an oddity, one that will not soon be forgotten.

Mr. Diefenbaker's opposition to the sections of the Criminal Code that this bill seeks to amend by extension is a matter of record. I am not certain how he would have resolved the conflicting interests here, nor am I sure that they can be resolved.

Hon. A. Raynell Andreychuk: Honourable senators, I first wish to thank Senator Lynch-Staunton for his words, because he has been so intricately involved with the process in the Senate. His words need reflection by all of us, not only on Bill C-250, but on much of the conduct within this chamber and in the coming years.

I rise to express my concern about the debate on Bill C-250. Both opponents and supporters should reflect on how the process emerged. From both sides, the manner and attitude that has been displayed at times are such that they do not, in my opinion, further tolerance and harmony in our diverse society on this very emotional topic.

At first blush, Bill C-250 did not seem to generate the kind of emotional outpouring that one saw. However, it was against the backdrop of other legislation, the political atmosphere of these times and the uncertainty about the immediate future that I believe drove this issue.

One consequence to the Senate has been the use of closure, which honourable senators have just heard discussed with Senator Lynch-Staunton, for purposes other than normal historic reasons for closure. The Rules Committee or this Senate in total will have to deal with this matter, as I believe that there will be many unintended consequences of this action and perhaps very detrimental to this chamber.

Bill C-250 is about hate propaganda. If it can be proven that there is hate being propagated against an identifiable group, it will lead to a criminal charge. I would not have started enumerating groups, as societies change and opportunities for progress in these fields should be taken into account. Change for the negative is also a fact and new groups become targeted.

It would have been better if either the groups were identified by the government or, more properly in my opinion, no groups were identified. Hate propaganda against any group identified today, yesterday or tomorrow should not be tolerated. Why should one have to reach and claw to be added as an identifiable group?

One should have left hate propaganda as simply intolerable, and not pit one group against the other as we try to identify groups in society, particularly in such a diverse society as Canada's. Once we enumerate groups distinguished by colour, race, religion or ethnic origin, then it naturally flows that adding to the definition is possible and the only way to go, unless we are ready to change our entire approach to this issue.

It is not merely adding to the definition, if you can find an identifiable group, but the test is as to whether there is potential by past or present examples of hate propaganda against a particular group.

I believe there was ample evidence to indicate hate propaganda against groups of one "sexual orientation." Those who legitimately oppose Bill C-250 do so with good justification and their concerns cannot go unheeded.

I would encourage all honourable senators and others to read the testimony of Ms. Janet Epp Buckingham, Director, Law and Public Policy, General Legal Counsel, Evangelical Fellowship of Canada. I found her evidence to be extremely fair, cogent and germane to Bill C-250.

While there were other witnesses who gave good evidence, many strayed to define their positions on a broader issue, which is not the essence of Bill C-250.

Ms. Buckingham's testimony was the true sentiment and concern of those churches and religious believers who have a real concern about the impact of Bill C-250 on freedom of expression and freedom of religion, and the "chill factor" on both.

Honourable senators, I shall read a portion of Ms. Buckingham's testimony before the Standing Senate Committee on Legal and Constitutional Affairs. She stated:

> Honourable senators, thank you for the opportunity to address this committee. The Evangelical Fellowship of Canada is a national association of Evangelical Christian organizations, including 39 denominations, 100 religious organizations and about 1,200 churches. Our affiliated denominations include Baptists, Mennonites, Christian Reform, Pentecostal and Salvation Army.

> Among our affiliates are several organizations that distribute Bibles, such as the Gideon's and the Bible League. Distribution of Bibles and Christian literature are an important aspect of Evangelical Christians' religious practices. I am the Director of Law and Public Policy. I am a lawyer by training and will be raising issues of concern in the legal interpretation of Bill C-250.
>
> As a background principle, I need to stress that our organization neither condones nor supports the promotion of hatred or acts of violence toward any person, nor do we condone speech that incites people to violent acts....
>
> Looking first at sacred texts, I wish to point out — and this seems obvious — that the Bible is a sacred text, as is the Koran and the Torah. Believers accept these texts as the Word of God. It is immutable, meaning that we are not at liberty to change the text. I need to state this clearly because at least one senator has stated that if the Bible has material that is negative to gays and lesbians, we ought to remove it. We cannot remove it. That is why it is called "sacred" — the meaning of the term.
>
> My understanding is that sacred texts fall under the protection of religious freedom in section 2 of the Charter. However, I urge honourable senators not to simply leave it to the courts to protect religious freedom. As legislators, senators have a role to play in protecting religious freedom.

• (2210)

I share these and other concerns about Bill C-250, even though a defence was added to the bill. While private prosecutions can only be brought with the consent of the attorney general, Bill C-250 should only be brought and used for hate propaganda as envisioned in sections 318 and 319 of the Criminal Code. Dr. Charles McVety, President of the Canada Christian College, was concerned about the right to debate the direction of society in Canada on these delicate moral issues without finding oneself before a criminal court. Ms. Buckingham, in her testimony, also stated:

> My concern is that when I hear people saying, "It is your religious views that are causing that violence," that is not Christian teaching. However, if that is the perception of the gay community, then they will be targeting religious expression. I do not think there is any link between those two.
>
> We do have laws in place against violence. We have laws specifically in place against hate crimes, including on the basis of sexual orientation. I think those laws should be enforced.

In the Standing Senate Committee on Legal and Constitutional Affairs, I questioned Ms. Buckingham on whether Bill C-250 served a purpose when someone could misconstrue the messages of particular religions and take up arms in the name of religion, thereby making it legitimate. I asked her whether there was a crossing over from peaceful teachings to the use of violence. Ms. Buckingham replied:

> My concern stems from the fact that already people have used religious texts in a way that has promoted hatred. I am thinking particularly of the *Hugh Owens* case in Saskatchewan that was brought under the Saskatchewan Human Rights Code. Unfortunately, when the court made its decision, it did not nuance things that way. The decision simply talked about Biblical texts promoting hatred against gays and lesbians. That is the precedent stating that these Biblical texts promote hatred against gays and lesbians. We then wonder what kind of protection we can have for the Bible now that such a precedent exists.

At the Standing Senate Committee on Legal and Constitutional Affairs, I further asked Ms. Buckingham if perhaps the *Owens* case explains why so much of my e-mail and so many of my letters come from Saskatchewan. Ms. Buckingham replied:

> I think so because it did have a high profile. People said afterwards that the Bible had been labelled "hate literature." I do not think that was ever the intention of the court. However, when you read the decision on its face, it looks like that was the intention. There has been more concern expressed in Saskatchewan because of that decision.

Honourable senators, I support Bill C-250 based on my Christian beliefs. While I understand there is some risk of having my freedom of expression and my freedom of religion curtailed, my Christian beliefs lead me to take that risk and to yield in favour of ensuring that no one else is injured, is harmed or endures violence due to hatred or as a result of hate propaganda.

Bills of this nature may start by private members' bills, but where is the government in all of this? To put such a bill through Parliament with the potential of even further dissension and alienation is a fault of leadership. I would expect to see tolerance built into our diverse and immense society. People on both sides have a need to know that the government would use its influence, power and administration to ensure the proper application of this bill as a criminal law mechanism and not fodder for discontent, unease and fear. No assurance of consultation with Attorneys General and a monitoring of this law was made on behalf of the government in a public way that could start the process of education, as the true intent and scope of this bill contemplates.

It is not too late, and the government must act immediately to ensure that there is no needless exacerbation of divisions within our society. While a defence for religious beliefs is in the act, a reassurance that the government would introduce further measures should the courts not follow this intent strictly might be necessary. While the *Owens* case points out that cases can be misunderstood, it is not for the general public to understand fully the difference between the Human Rights Commissions and their role and their powers as opposed to the Criminal Code, the federal government's role and the provinces' roles in this. It is incumbent on the government to begin this process of conciliation immediately.

I would thank my party for the tolerance displayed to all points of view, and I would assure all of those who have followed the proceedings on Bill C-250 that there is not one unanimous voice within my party but there is the tolerance to listen to all of these views. I believe that this augurs well for the future of the party with which I have chosen to be associated.

Hon. David Tkachuk: I have a question of the honourable senator.

If the Constitution protects freedom of speech, how is it possible that the bill would further protect it when the Constitution is the last protector of freedom of speech? How can the bill make it stronger?

Senator Andreychuk: I tried to address this in my comments. Bill C-250, if I had a choice, would not have been in the form that it is, because I believe the other hate provisions in the Criminal Code cover groups and individuals. In other words, they are so broadly based that we need not go this way. We did, however, and we did it, I believe, for historical reasons, for compassionate reasons and for educational purposes some years ago. You heard Senator Lynch-Staunton eloquently indicate that there were those who said we did not need to go down this route, but we did, therefore we cannot now pick and choose between identifiable groups.

I would hope that, when we revise the Criminal Code provisions, we will remove this section because specifying identifiable groups leads to feeling in or out, feeling more discriminated against or less discriminated against when that is not the purpose. The purpose is to live in a society free of hate, and I think both sides of this argument agreed with that.

As to the honourable senator's comment about freedom of expression, I think you all heard me, as I remember one senator once said, entirely too often on the subject of human rights.

The Hon. the Speaker *pro tempore***:** I regret to advise that the time has expired. Is the honourable senator asking for leave?

Is leave granted for Senator Andreychuk to continue?

Hon. Senators: Agreed.

Senator Andreychuk: The right to freedom of expression, freedom of religion and all the other rights are not unlimited rights.

• (2220)

Honourable senators have heard me say time and again that it is a question of proportionality, a question of balancing rights. My rights start where yours end, and vice versa. One right is balanced against another right because sometimes rights are competing rights. There is no such thing as total freedom of expression or total freedom of religion, or any of the other freedoms enumerated in the Charter.

Honourable senators also know that, if there is a compelling reason, rights can be limited under section 1 of the Charter.

Honourable senators, in conclusion, concerning Bill C-250, there is some risk to freedom of expression and freedom of religion. However, there is also a danger that a group that has been attacked as an identifiable group will be left out. I do not know whether Bill C-250 strikes the right balance.

However, honourable senators, I would ask the government not to put us in this position again. Private bills can start as private impetus. However, when they become so polarizing, surely the role of a national government in a diverse society like Canada's is to try to build some harmony and tolerance. Because there is a risk to one side of the rights or the other, the balance is not always struck in legislation. The proof of the pudding is in the eating — once we start applying it.

Therefore, I hope that whatever government is in place will look at this legislation. If it is symbolic, so be it. If it is used, I hope it is used sparingly and for the purpose for which it was intended. If it is used otherwise, it should be amended immediately.

Hon. Anne C. Cools: Honourable senators, will the Honourable Senator Andreychuk take a question?

Senator Andreychuk: Of course, honourable senators.

Senator Cools: I thank Senator Andreychuk for an extremely lucid and fair presentation. I will ask her three quick questions.

Senator Andreychuk is the first member of the Standing Senate Committee on Legal and Constitutional Affairs, which had the bill before it for a very few days over a very short period of time, to speak to this bill. First, we were told that 10 provincial attorneys general and two federal attorneys general, including the former Minister of Justice Martin Cauchon and the current one, Mr. Irwin Cotler, all support the bill, yet none appeared before the committee, which I find extremely odd. They support it but will not come and say so. Could the honourable senator comment on that?

The next question is this. The committee very dramatically cut short its hearings. It heard remarkably few witnesses. The ones they heard appeared on panels and each person had five minutes. I do not think that was particularly good.

By the way, honourable senators, it took me weeks to find out the number of witnesses who had applied to appear before the committee. Late last Thursday, I finally received a note from the clerk of the committee. She informed me in that note that some 2,164 applicants opposed to Bill C-250 asked to appear as witnesses. In favour, there were five. There were 190 with no position stated.

Does Senator Andreychuk have any comment or can she provide any insight to the chamber about the fact that over 2,000 witnesses applied to appear before the committee? That is a record number of witnesses asking to appear before a committee. Committees usually expand the number of hearings, to accommodate witnesses. Obviously, a committee cannot hear all who ask to appear, but the committee in this case could at least have heard a justifiable sample.

My third concern is this, honourable senators: This bill was rushed out of the committee with indecent haste. What really bothered me — and I raised it on the floor of the chamber just before we went into clause-by-clause consideration of the bill — was the fact that this bill was put into clause-by-clause consideration without the agreement of opposition members. The practice in this place is that committees usually move to clause-by-clause consideration of a bill with the agreement of the opposition. Could Senator Andreychuk give us some insight as to why such a hugely controversial bill was truncated in its committee study? In point of fact, the treatment of witnesses was never really properly discussed in the committee. In respect of the steering committee, it seemed a little boxed out of the picture as well.

Could Senator Andreychuk give us some insights into my questions?

Senator Andreychuk: Honourable senators, I thank the honourable senator for her questions, in particular with respect to her first question, which relates to the attorneys general.

The honourable senator correctly points to the conundrum throughout the process respecting this piece of proposed legislation. In some instances, Bill C-250 was treated like a government bill. However, when we tried to impose upon it the full process usually given a government bill, we were told, "It is a private member's bill." As a result, we really do not know what the attorneys general think. We have some indirect evidence as to what they think.

We studied this bill in a very fragmented way. The bill was around for a while; however, when we proceeded with it, it was proceeded with too expeditiously.

As to the number of witnesses, I know there were other witnesses who wished to appear before the committee. I wish that we could have heard from them. They were groups who have an unease about this bill. I wanted to be in a position to at least hear them and to reassure them that we honestly hear their concerns and are not dismissive of them.

I did not want this bill to become trapped in another dialogue — and I might as well put it frankly. I refer to the same-sex marriage issue, which seemed to cloud this bill. People seemed to want to argue that point rather than what is in the bill. That is partly symptomatic of the fact that, perhaps, the government was in the bill or not in the bill. There were perceptions, if not realities, of government involvement in the bill.

Finally, with regard to the honourable senator's last point about the bill being rushed, I think I have addressed that.

If it is the will of the majority to pass this bill immediately through the use of a closure motion, then I find that very disquieting for all the reasons Senator Lynch-Staunton pointed out. In the name of free speech, we thwart free speech. In the name of caring for these rights, we abrogate others. I think a fine balance should have been found. I am not sure that closure was the answer.

Honourable senators, because there was a will of the majority to pass this bill, there is even more of a responsibility for us to reassure those people who find this bill disquieting, as Ms. Buckingham said, that the true intent of this bill be followed and not any other agenda.

Senator Cools: In respect of that, I should like to ask one question, because I am very puzzled by the peculiar treatment of this bill in committee.

Senator Andreychuk: I was not privy to the meetings of the steering committee. As I quite forcefully put on the record in the Standing Senate Committee on Legal and Constitutional Affairs, I was forced into the position of trying to manage Bill C-7 in the Transport Committee and Bill C-250 in the Legal and Constitutional Affairs Committee. I was not just representing our side of the chamber; I was simply a member of the committee. Thus, I cannot speak to all the nuances as to how the bill was rushed, or why, or who did what.

I have to say on the record that I share some of the concerns of the honourable senator, but I cannot answer why they happened.

Senator Cools: As a lawyer, Senator Andreychuk can probably answer my next question. As she said, we were told that the provincial and federal attorneys general supported Bill C-250 but we could not get evidence from them saying that.

When we create criminal law, we have to be quite certain that we are adhering to the principles of criminal law and to what I would call the mind of Parliament or the common law mind. We must find the mind of the law to determine that the law is doing what was intended and is not capturing other offences or other wrongs that were not intended to be captured.

• (2230)

I was struck by the reluctance or the inability of the committee to hear, for example, what I would describe as some of the authorities on criminal law. I proposed that we hear from some of the great intellects on criminal law, such as Morris Manning. I even asked some of them if they would appear. These people were neither for nor against the bill. They were obviously to speak in respect of the crafting of good criminal law. We did not hear from any witnesses like that. We have not heard from any of the attorneys general. We have not heard from the Department of Justice. We did not hear from any of the authorities in the country on criminal law.

Quite frankly, the word of Mr. Svend Robinson, and Mr. Robinson alone, has propelled this bill. I have never seen anything quite like it in all my life. Being a lawyer, such as Senator Andreychuk, one always wants to be assured that one is crafting law and not crafting sentiment.

Senator Andreychuk: I share the honourable senator's concerns and I have already stated them. Obviously, we do not want to curtail the right to present private members' legislation; we want to encourage it. However, I have been in this chamber for 11 years. I have seen proposed legislation that has started as a private member's bill, but when it takes on some greater significance and compelling need or urgency, the government steps in to debate, negotiate, discuss and take over the bill so that it is within the public domain and within government business.

Many of the issues the honourable senator raised are legitimate, and I would hope the government would reflect on how it proceeds on these very volatile, emotional issues. With the diversity of our society, we cannot come to a consensus on this type of thing. That is what was so compelling about the testimony of Ms. Buckingham. Biblical texts cannot be altered. Religion cannot be altered. That is why this bill was such a strain on me. I had to weigh it. However, my Christian beliefs taught me that I should risk myself so that someone else would not be injured. I do not expect other people of faith to take the same point of view. I think we all struggle with this bill. To Senator Cools and to others who testified, I will say that I, for one, will continue to monitor this bill. If there is any intrusion on the freedom of expression and freedom of religion that is not warranted within criminal law, I will be the first to introduce another private member's bill.

Senator Cools: Hopefully, the honourable senator's private member's bill will receive the same speedy passage that this bill has, with the full support of the government members, no doubt.

Hon. Tommy Banks: Honourable senators, I had the pleasure of attending the meeting at which the witness appeared to whom Senator Andreychuk referred.

This is not a question. I am making a speech.

Senator Prud'homme: There are other questions.

An Hon. Senator: It is a school night.

Senator Banks: It was a most interesting meeting. Senator Andreychuk is right that we must be careful, in passing this bill, to ensure that it does not unduly or wrongly infringe on freedom of speech; that people who are concerned that it might are given assurances that it does not; and that great care is taken to ensure that it does not.

Many of those thousands of people from whom we have all heard have referred to the *Owens* decision, to which I paid much attention. I have a bias that I want to disclose before I talk about the *Owens* decision. I am swayed by some of the remarks Senator Lynch-Staunton made. I take comfort in the fact that there have been five prosecutions, and not all of them successful, under the present provisions of the act.

I do not think that that necessarily indicates the ineffectiveness or uselessness of the bill. If I can be a bit corny: A man was clapping. The second man said, "Why are you clapping?" The first man said, "I am clapping to keep the elephants away." The second man said, "Don't be stupid. There aren't any elephants around here." The first man said, "Right. See, it works!"

In that respect, it might be that the bill has been very effective.

I do not see this bill as an infringement on the rights of free speech, but as a reasonable and necessary limitation of those rights. I do not see this bill as an abrogation of free speech or of religious thought, but as a reasonable and necessary constraint of those rights.

I have always been guided by the perfect sentence that John Stuart Mill wrote about rights, that if all mankind minus one were of one opinion, and that one man were of a contrary opinion, mankind would be no more right in silencing that one man than would he, had he the power, be right in silencing mankind. That is absolutely correct and is a perfect distillation of what I think we all believe.

With respect to the *Owens* case, I do not know if Mr. Owens would have been charged or convicted or if his appeal would have been denied had he been charged under the provisions of section 318 or 319 of the Criminal Code. He was not. This was a matter that had to do with Saskatchewan civil rights legislation.

The inference is that the thing of which he was accused had to do with Bible quotations. That is only partly the truth. Mr. Owens was charged with manufacturing, advertising, selling and distributing bumper stickers that contained on their left-hand side Biblical quotations, and on their right-hand side the universal sign for "not allowed" — a red circle with a red slash through it — and portraying a picture of two men or two women holding hands.

The question is: Is that an unreasonable thing to say that we cannot do? How would it be if we saw such a thing with a picture of a turbaned Sikh with a red line drawn through it, or a Black man, or a Chinese person, a menorah, a Torah, a Koran, a Bible or a cross?

Senator Stratton: Bring in a bill.

Senator Banks: I do not have to. We do not allow those things. I think that Mr. Owens was brought up short for doing something that Canadians do not want to have done, as demonstrated in the Saskatchewan human rights legislation.

However, first, I agree with his having been brought up short for having done that. Second, we must be aware of what that conviction was when it is referred to by persons who question whether Bill C-250 will constrain their right to express their rightly held religious beliefs. I do not think that is what happened in the *Owens* case. I think that some of the people who complained to us were told only half the story.

Hon. Terry Stratton: Honourable senators, I rise to speak briefly to the bill. I would thank our leader, Senator Lynch-Staunton, for what I thought was one of his finest speeches in the chamber.

I should like to refer you to my speech at second reading on Bill C-250 on October 2, 2003, where I questioned the need for this bill.

I refer you specifically in that speech to section 718.2 of the bill.

> A court that imposes a sentence shall also take into consideration the following principles:
>
> (*a*) a sentence should be increased or reduced to account for any relevant aggregating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing...

Perhaps Senator Banks would care to listen to this quotation from the Criminal Code.

• (2240)

Section 718.2(a) of the Criminal Code states:

> (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour...

Does that mean Senator Oliver, Senator Cools or anyone else of colour in this chamber should bring forward a bill similar to this one? Does it mean that that is what they should do, because they have experienced hate? They have experienced hate — the same kind of hate that a homosexual experiences — over history, throughout time, the same hate that homosexuals experience. Why would not Senator Oliver introduce a similar bill for the same reasons? Where would it stop? Where would it stop? That is my question. I quote from the Criminal Code that explicitly protects beyond colour. The section continues:

> ...religion, sex, age, mental or physical disability...

Senator Angus talked about physical disability in respect of his daughter. Should he not bring a bill forward for the same reason, because the hatred was expressed there as well, to that child? Why would he not introduce a bill? The section continues:

> ...sexual orientation...

We are dealing with that now in Bill C-250.

Honourable senators, where do we stop? Now that we have opened the door, where do we stop? Where do we stop now? It behooves us in this chamber, if we are to be balanced, to look at this list, and ask where hatred is prevailing. We cannot simply stop now, with this bill, because we would be discriminatory to these other groups, as much as we are discriminatory now. That is wrong and reprehensible, which is why I was against Bill C-250 in the beginning.

Then I went to committee and listened to what the witnesses had to say. I became concerned that this bill, while not needed in a legal sense, perhaps, as Senator Lynch-Staunton said, was needed in a symbolic sense. I then read section 718 and thought that "symbolic" also applies to these other groups just as much and as importantly as the bill with which we are currently dealing. I was truly quite prepared, after listening to the arguments, to abstain, because I felt that would be the best position to take.

However, we went beyond that and decided on a closure motion and a guillotine motion. Senator Lowell Murray started to say to me, indirectly, that I, as the whip, was one of two people in this chamber who had the power to defer bills. We were doing it for what I thought was a legitimate reason, which I stated earlier.

However, we could not get a debate on his motion because of the guillotine. We then asked why Senator Murray was doing this. Then, we heard about what transpired recently with Joe Clark, and it became clear: They failed to bring the two parties together. They failed in their attempt. We begin then to think that perhaps there is a personal, rather than a legitimate, reason for this bill. That is my question, which I believe to be legitimate, whereas before I was quite prepared to abstain. The way in which this bill was handled causes me to no longer support this bill.

Hon. Joan Fraser: Honourable senators, I know the hour is late so I will be brief. I have been moved to speak to Bill C-250 by Senator Andreychuk's thoughtful and moving remarks. We have a rather greater and in some ways different responsibility in connection with this legislation than with some other bills that come before us.

Honourable senators are aware that I support this bill and will be content to vote in favour. However, it was apparent to me early on in the debate that this bill was having a divisive effect that was unhealthy for Canada. Hence, I decided early on that I would answer all the mail I received — many thousands but I have lost count. They were mostly form letters, and I drew up a form letter in response. In that form letter, I tried to set out why I support this bill and why I believe that it contains, among other things, protections for the honest expression of religious belief.

My poor staff has spent hours and hours sending out letters to those who wrote and e-mails to those who sent e-mails. An astonishing number of people have written back — hundreds, and I have read all their responses. Many begin by thanking me for responding to their form letters and ask me to think about their opinions on the bill. A few of them, understandably, continue to tell me that I may suffer torment in hell. An astonishing number said that they were glad to read the letter and understand that a reasoned and decent position can be adopted in favour of this bill, even if they still do not support it. Many said that they feel better about the process and about the intention of the bill.

Honourable senators, I suggest that if this bill passes we will have a duty to convey to all people of Canada who are expressing concern, the depth and sincerity of the debate in this chamber and the certainty that this chamber was absolutely concerned with the preservation of freedom of religion and in no way set out to diminish that freedom. This chamber was simply concerned with the parallel need to protect a group that the majority of senators believed deserved such protection. However, it is important that the people of Canada not be left to hold their Parliament in contempt or mistrust. We have a duty to explain that those emotions are inaccurate responses to this debate on Bill C-250. They may continue to disagree with us but, please, help them to understand because it is as important as passing this bill.

Senator Lynch-Staunton Honourable senators, I have a question for Senator Fraser. It will be difficult for me to explain why this chamber of sober second thought cut short the debate. Perhaps the honourable senator could help me to explain that to Canadians?

Senator Fraser: We have had a long, long debate on this issue, and it is legitimate for the Senate to collectively decide that it wishes to proceed, but that was not my point. Feel free, if any senator wishes to talk about parliamentary tactics and the devious folks on the other side; but that is different. I am talking about the fundamental intention and goal — what we are trying to achieve, whether we do it tomorrow or another day. I do not think the two are incompatible.

• (2250)

Hon. Gerry St. Germain: Honourable senators, I wish to speak very briefly.

Senator Lynch-Staunton: May I interrupt? Senator St. Germain is the proposer of the amendment, and I assume that if he speaks now, that cuts off any other speakers. I want to be sure that no other speakers want to speak to the amendment. Am I correct in that interpretation? Did he not move the amendment? Therefore, there is no right to reply on the amendment. He cannot speak again.

The Hon. the Speaker *pro tempore***:** Is leave granted for Senator St. Germain to speak?

Hon. Senators: Agreed.

Senator St. Germain: Honourable senators, this has been a very trying time for me because this has been an issue where, as Senator Fraser pointed out, we have been inundated with thousands of e-mails. My concern has been freedom of expression, and my concern is about passing a bill merely for symbolism. Freedom of expression is something that I hold as a Canadian and as someone who has served as a police officer and in the military. This is what I believe we have always fought for, namely, freedom. Many countries have peace but very few enjoy real freedom. I think that freedom of expression is at risk, a point which other senators have raised.

[Senator Fraser]

Honourable senators, regardless of the outcome of this vote, we have to continue working together as senators for the betterment of the country and each and every Canadian. I think that the inevitable will happen in the case of this bill, but I want all honourable senators to know, regardless of what side they stand on, that I think no less of them. We all have to stand up for what we believe in. If we fail to respect each other for our beliefs, then we head down the slippery slope that has been mentioned.

My biggest concern is that we sometimes get into areas of legislation and the tyranny of the minority is given an opportunity to rear its head, because we govern for the majority.

In closing, we have stated our cases. Some of us still feel we should have had a better opportunity to hear more witnesses. I think that the government took ownership of the bill by virtue of allowing it to proceed in the way it has. It had a responsibility on an issue that goes to the very soul of the nation. The people who immigrated to this country from around the world came here because they knew they could exercise their freedom of expression and freedom of religion. If these freedoms are put in jeopardy in any, way shape or form, and some of us believe they might be, that would be a giant step backward for this country.

In the spirit of wanting to continue to work together, I hope this never becomes personal and that we continue to work for the betterment of the nation.

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

Some Hon. Senators: Question!

The Hon. the Speaker *pro tempore***:** It was moved by the Honourable Senator St. Germain, 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.".

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

Some Hon. Senators: Yes.

Some Hon. Senators: No.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

Senator Stratton: With respect to the motion in amendment and the main motion, I believe we have agreement in this chamber for a vote at three o'clock tomorrow.

Hon. Bill Rompkey (Deputy Leader of the Government): That is the agreement.

Hon. Marcel Prud'homme: Honourable senators, am I to understand that the vote on the motion in amendment will take place tomorrow, following which we would be back to the main motion? One of the difficulties when the vote on an amendment is deferred is that we do not know if the amendment will pass. If the amendment does not pass, then we go back to the main motion. If the amendment does pass, the kind of speech that one would make would be different. Where are we at this time? Can we speak on the main motion or can we still speak on the amendment?

Senator Lynch-Staunton: You cannot speak. It is finished.

Senator Andreychuk: Senator Joyal's motion finished it.

The Hon. the Speaker *pro tempore*: The vote has been deferred to 3 p.m., and we agreed on the following motion earlier today:

> 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, An Act 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 15 minutes, after which the Senate shall proceed to take each vote successively as required without the further ringing of the bells.

Accordingly, the vote is deferred until 3 p.m. tomorrow afternoon.

BUSINESS OF THE SENATE

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, I propose that all other items on the Order Paper stand in their place to be called at the next sitting of the Senate.

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

Hon. Senators: Agreed.

The Senate adjourned until Wednesday, April 28, 2004, at 1:30 p.m.

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