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(HANSARD)

**Wednesday, April 21, 2010**



THE HONOURABLE NOËL A. KINSELLA  
SPEAKER

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

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## THE SENATE

Wednesday, April 21, 2010

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

[*Translation*]

Prayers.

Honourable senators, take the time to read this book written by one of our own.

[*Translation*]

Good work. Good research. An extraordinary book. Congratulations.

### SENATORS' STATEMENTS

[*English*]

#### DR. GARY W. O'BRIEN

##### *OSWALD'S POLITICS*

**Hon. Percy Mockler:** Honourable senators, I am rising today to urge all senators on both sides of the chamber to read a very well-written book based on excellent research and written by one of our own, a very great Canadian, Dr. Gary W. O'Brien. The book is entitled *Oswald's Politics*.

[*English*]

Congratulations are in order, honourable senators.

Dr. O'Brien was appointed Clerk of the Senate and Clerk of the Parliaments in 2009. He began his career on Parliament Hill in 1975, after getting his MA in political science from Carleton University. Mr. O'Brien began his career in the Library of Parliament, and in 1976 he became a procedural analyst in the House of Commons. In 1984, he was made the Chief of Journals in the Senate. While at his post, he completed his PhD at Carleton University. In 1999, Dr. O'Brien stepped into the position of Deputy Clerk. He published several articles and book reviews and presented papers to the Canadian Political Science Association and at events such as the Canadian Presiding Officers Conference, the Joint Canadian-American Clerks Conference and the Inter-parliamentary Conference and Meeting of the Association of Secretaries General.

What a great work of art. *Oswald's Politics* traces the political thought and behaviour of the historical Lee Harvey Oswald before the events of November 22, 1963. It presents an alternative explanatory model of Oswald to the psycho-historical one used by the Warren Commission and argues that his ideas and actions resulted more from environmental and intellectual influences than attitudinal factors. It examines the impact the political culture of the American South and events of the Cold War had on his outlook and places Oswald within the political world of the new left.

The book concludes with a discussion on Oswald's possible involvement in the John F. Kennedy assassination and motives, and provides a compendium of all his known political writing and other key documents. Such analysis is integral to any speculation about his possible guilt or innocence and the most important question of all, which the physical evidence is unlikely ever to answer: Why was JFK killed?

#### NATIONAL VOLUNTEER WEEK

**Hon. Catherine S. Callbeck:** Honourable senators, next week marks National Volunteer Week. It is an annual event that recognizes the enthusiasm and commitment of Canadian volunteers across the country.

National Volunteer Week began in 1943 as a way to honour the contributions of women during the Second World War. In the years since then, the focus has expanded to include all volunteers, but the purpose is the same: To celebrate all those who unselfishly give their time and services to help others.

According to Statistics Canada, there are about 12.5 million volunteers in Canada, and those dedicated people across the country contribute over 2.1 billion hours a year in volunteering — the equivalent of more than 1 million full-time jobs.

My home province of Prince Edward Island has a long legacy of volunteering. Islanders have long been recognized for their dedication and hard work in the volunteer sector, generously giving of themselves to create a better quality of life for everyone. In fact, 56 per cent of all Islanders over the age of 15 are active volunteers, contributing 9.4 million hours or the equivalent of more than 4,500 full-time jobs.

Next week, Prince Edward Island's Volunteer Recognition Awards will be presented to a number of dedicated Islanders whose names have not been released yet.

Honourable senators, every individual volunteer makes a difference in the lives of others. We all benefit from their contributions. Volunteers across Canada are to be commended because they give so much of themselves to create a better life for all Canadians.

Please join with me today to recognize and to celebrate Canada's volunteers for their hard work and dedication to their communities and their country.

#### WORLD CURLING CHAMPIONSHIPS 2010

**Hon. Fred J. Dickson:** Honourable senators, building on the success of Canada's curling teams at the Olympics and the World Curling Championships in Italy, let us all cheer to victory our senior women's and men's teams and the mixed doubles team in the World Curling Championships now taking place in Russia.

Two Nova Scotia teams and one from Ontario are representing Canada. From Nova Scotia in the mixed doubles are Mark Dacey and his wife Heather May Dacey out of the Mayflower Curling Club in Halifax. The international mixed doubles is a two-person event founded in 2008 and is the focus of the International Olympic Committee for possible inclusion in the 2014 Winter Olympics.

Colleen Pinkney and her rink of Wendy Currie, Karen Hennigar, Susan Creelman and alternate and coach Judy Burgess are out of the Truro Curling Club. They were winners of the 2009 Canadian Senior Women's Curling Championships in Summerside. Pinkney opened the 2010 championships in Russia with a 14-0 win over the Italians and rolled over Sweden 10-5. They are currently at the top of the standings with five wins and no losses.

Bruce Delaney and his team of Rick Bachand, Duncan Jamieson and George Mitchell, out of the Royal Canadian Navy Curling Club in Ottawa, are winners of the 2009 Canadian Senior Men's Curling Championships. They opened with a 7-4 victory over Switzerland and are currently undefeated, with four exciting wins.

Honourable senators, I want to make special mention of Colleen Pinkney and her team out of the Truro Curling Club, as their representation of Canada at this international tournament is a first for Truro and their curling club. Colleen had a remarkable 10-1 run in the 2009 Canadian championships in Summerside and was able to narrowly defeat British Columbia's Kathy Smiley 6-4 in the finals. Pinkney's team was the third win for Nova Scotia since the championships began in 1973. Skip Verda Kempton from Halifax won twice for the "Bluenosers" in 1982 and 1987.

Pinkney and Wendy Currie were selected the skip and third stone for the first all-star team in the 2009 championships.

Honourable senators, please join me in wishing our Canadian curlers the best of luck in Russia as they continue to sweep their way along victory lane.

### NATIONAL VOLUNTEER WEEK

**Hon. Terry M. Mercer:** Honourable senators, the voluntary sector in Canada is quite a large collection of charities, foundations, associations and, most importantly, volunteers. As we celebrate National Volunteer Week, we are reminded how much volunteers and charities improve our lives.

• (1340)

Volunteers play an important role in the social fabric of our country. Collectively, charitable organizations in Canada draw on over two billion volunteer hours. This is the equivalent of one million full-time jobs. Over 12.5 million volunteers in Canada work hard every day in our hospitals, schools, charities, political parties and even in our own offices. When we think about it, there is no part of our everyday lives that is not affected in some way by a volunteer.

[ Senator Dickson ]

As a volunteer in several organizations over many decades, I believe volunteering is one of the most important things we, as a caring society, can do to help our fellow citizens.

Honourable senators have been volunteers, and I am sure they will continue to do so. I ask honourable senators to join me in wholeheartedly thanking those people who volunteer to enrich all aspects of our lives every day.

[Translation]

### HONOURABLE MR. JUSTICE PIERRE BOUTET

**Hon. Roméo Antonius Dallaire:** Honourable senators, I would like to speak about a man who has recently returned from one of his missions in Africa with physical and psychological effects. His story deserves to be heard.

Pierre Boutet studied law at Laval University. He worked in the same firm as Jean Lesage for a few years before joining the Armed Forces as a lawyer. He moved up the ranks until he became Judge Advocate General in 1992, in the midst of the turmoil surrounding the Somalia Commission of Inquiry, where he was able to ensure dignity and justice for all parties involved, both on the military and government sides.

He worked with the Chief Justice of the Supreme Court, the Honourable Mr. Dickson, to reform the body of military law that now enables our soldiers to work in foreign countries while respecting human rights, humanitarian laws and the laws of war.

[English]

In 1997, Justice Boutet moved into the Department of Veterans Affairs to become an adviser on the reforms essential to meet the requirements of a new generation of veterans. He spent five years there under Admiral Murray who was the Deputy Minister. He ultimately established a committee to review and to advance problems of veterans and their families that led to the New Veterans Charter.

In 2003, after nearly six years at Veterans Affairs Canada, Justice Boutet was chosen by the Canadian government to be the lead judge in the international criminal tribunal in Sierra Leone following the civil war in which child soldiers were the primary weapons system. Justice Boutet sat on that court as the only non-African for six and a half years. The court provided justice, guidance, education and a reference for the youth of that nation, that justice can be delivered even after conflicts in extreme scenarios. Not only were perpetrators brought to justice, not only were peacekeepers carrying out their duties according to law, but the children who were massively abused were respected and given help to rehabilitate in a newly rehabilitated country.

Pierre Boutet is now gravely ill in Quebec City. I think his career is quite a career.

[Translation]

## ROUTINE PROCEEDINGS

### AUDITOR GENERAL

#### 2010 SPRING REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table, in both official languages, the 2010 spring report of the Auditor General of Canada, as well as the addendum containing copies of petitions concerning the environment received between July 1, 2009, and December 31, 2009.

### JUSTICE FOR VICTIMS OF TERRORISM BILL

#### FIRST READING

**Hon. Gerald J. Comeau (Deputy Leader of the Government)** presented Bill S-7, An Act to deter terrorism and to amend the State Immunity Act.

(Bill read first time.)

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

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

### THE SENATE

#### NOTICE OF MOTION TO ESTABLISH NATIONAL DAY OF REMEMBRANCE AND ACTION

**Hon. Roméo Antonius Dallaire:** Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That in the opinion of the Senate, the government should establish a National Day of Remembrance and Action on Mass Atrocities on April 23 annually, the birthday of former Prime Minister Lester B. Pearsons, in recognition of his commitment to peace and international cooperation to end crimes against humanity.

[English]

## QUESTION PERIOD

### INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

#### FUNDING FOR THE FIRST NATIONS UNIVERSITY OF CANADA

**Hon. Robert W. Peterson:** Honourable senators, my question is to the Leader of the Government in the Senate. Since the federal and provincial governments pulled their funding from the First Nations University of Canada this spring, the future of this great

Canadian institution has been in peril. I am proud to report that much has changed at First Nations University, thanks to the support and hard work of the community, including students, faculty, the Federation of Saskatchewan Indian Nations, the University of Regina and members in the other place. The university now boasts a new board of governors and a new interim president. The university is developing a sensible, sustainable business plan.

These meaningful changes have helped the university to receive a renewed commitment from the province. However, to date, the Minister of Indian Affairs and Northern Development has committed only to a one-time lump sum to ensure operations through to August of this year. This lack of commitment has caused layoffs, uncertainty and the impending closure of the university's Saskatoon campus.

Can the Leader of the Government in the Senate report on the progress being made to secure long-term funding for the First Nations University of Canada?

**Hon. Marjory LeBreton (Leader of the Government):** As honourable senators are aware, this particular university has been the subject of much controversy. There have been many examples of poor stewardship. The government remains committed to ensure First Nations students have access to, and continue to enjoy, the same educational opportunities as other Canadians. Our focus has been on the students. As the honourable senator knows, Minister Strahl committed to invest up to \$3 million to complete the programs presently underway.

I take note of the honourable senator's comments about how the university took steps to rectify some of the serious problems at the university. Minister Strahl has committed to the students for the completion of this academic year. I will take Senator Peterson's question as notice as to where the minister plans to take this file in the future.

• (1350)

**Senator Peterson:** First Nations education figured prominently in the 2010 Speech from the Throne. It is further reflected in commitments made in the current budget. Budget 2010 indicates that the government will work with the First Nations to develop options, including new legislation to improve the governance framework and clarify accountability for First Nations education.

Based on these commitments, I would ask again that the Leader of the Government in the Senate encourage the minister and the department to work to resolve this impasse.

**Senator LeBreton:** I do not think there is any doubt about the commitment of the government or the minister to Aboriginal education. As honourable senators know, and as I have often repeated in this place, we have invested \$395 million since 2006 in the completion of 94 school projects. The Economic Action Plan provided for 10 new schools and three major renovations. The Building Canada Fund provides for eight new schools or renovation projects.

There is a significant amount of money put into the important subject of Aboriginal education. Honourable senators, I believe one would agree that the commitment of the government and the

minister is not to be questioned. However, I would be happy to take the second question as notice and add it to the one I will send on to the minister.

**Hon. Lillian Eva Dyck:** I have a supplementary question for the Leader of the Government in the Senate, and I thank her for those answers.

We know that the First Nations University of Canada is still in a state of crisis. As I have said in the past, my mailbox is filling up with letters, not sent to me but directed to Minister Strahl, asking him to restore full funding to the First Nations University of Canada.

For instance, I have a letter in my hands from the Saskatchewan Chamber of Commerce:

The First Nations University of Canada has many more successes than challenges, and unfortunately of late, it is the challenges that have drawn attention. We see the potential for the future of FNUC as very bright, especially under the terms of the Memorandum of Understanding that was signed on March 22, 2010.

Basically, the board of directors of the Saskatchewan Chamber of Commerce is asking the government to maintain its commitment of funding of \$7.2 million to the university for the full year. As it stands now, the government has only committed \$3 million until the end of August. As Senator Peterson has stated, without full funding, it is likely that the Saskatoon campus will close and faculty will be laid off. The viability of the whole university is in peril.

Will the minister please do her best to ensure that Minister Strahl recognizes how serious this situation is and ask him to restore full funding for the full fiscal year for First Nations University of Canada?

**Senator LeBreton:** I thank Senator Dyck for the question. I believe that Minister Strahl is an excellent Minister of Indian Affairs and Northern Development. He has worked hard on a host of issues and he is a committed minister. Based on what I am told by people who work with him in Ottawa and also by the major stakeholder groups in the Aboriginal community, they have a great deal of respect for him because he has a great deal of respect for them.

As the honourable senator mentioned, there are obviously great concerns about the viability of this university. I have indicated what the minister has done thus far. As to where we go from here, the government and the minister are extremely encouraged by the changes, as outlined by Senator Peterson, that we have seen thus far.

However, there is still a great deal of work to be done. We hope that all parties will conclude the legal agreements as per the MOU and bring about the changes the Aboriginal students expect and deserve. Also, we hope it would be accountable to the Canadian taxpayer for these expenses, as we all would want it to be.

Things are moving along the right track, but there is still a great deal of work to be done. We remain committed to supporting First Nations learners to ensure they graduate with the skills and

the education they need to join with other Canadians in the future economic prosperity of our country.

**Senator Dyck:** With all due respect, I was not implying that Minister Strahl was not respected. I think he is well respected and does an excellent job. I was not in any way trying to claim that he was not paying attention to the file.

However, First Nations University of Canada is in dire straits. The federal government seems to be committed to pouring billions of dollars into its "tough on crime" agenda but unable to come up with \$4 million more to support about 700 students at First Nations University.

It has been estimated that it costs far less to educate a student than to put them in a prison and keep them there. The money that the university would cost, \$7.3 million, would only pay for the incarceration of 80 inmates, whereas it would educate at least 700 to 800 students at the First Nations University of Canada. Where is the priority? The priority seems to be on crime rather than education.

**Senator LeBreton:** One priority does not suffer at the hands of another. We have a priority to keep our communities and streets safe. That does not mean that commitments made in one area come at the expense of commitments and attention required in another.

I have simply answered the honourable senator's question. Minister Strahl, as we have already said, has put \$3 million forward to ensure the students are able to complete this school year. As I also reported, the government and the minister are encouraged by the changes they have seen; they are working on it and are happy with the changes thus far. However, there is still work to be done. Minister Strahl is well aware of the importance of education to our Aboriginal youth.

Again, it would be totally unfair to say that one area of importance is overlooked at the expense of the other, because that is not the case.

#### MISSING AND MURDERED ABORIGINAL WOMEN AND GIRLS

**Hon. Sandra Lovelace Nicholas:** Honourable senators, my question is for the Leader of the Government in the Senate. Today, the Native Women's Association of Canada released a new report. We learned that an amazing 582 Aboriginal women and girls in Canada are missing and murdered. It is imperative that the government address the heart-rending issues of missing Aboriginal women and girls.

This issue is not just another Indian problem. This is about Canada. We cannot be a great country if we cannot fix these wrongdoings.

The Sisters In Spirit initiative is working to enable families and communities to raise their voices and to establish a clear leadership role for the rights of Aboriginal women. Ten million dollars were allocated in the last budget to support the investigation of this issue, but no details have been given on how this money will be used.

When will the Government of Canada truly commit itself to addressing the alarming number of murdered Aboriginal women and girls in our country?

**Hon. Marjory LeBreton (Leader of the Government):** I thank the honourable senator for the question. The government is committed to this serious matter, evidenced in the fact it was referenced in the Speech from the Throne.

• (1400)

As the honourable senator pointed out, Budget 2010 has committed \$10 million to the issue. The government is working hard with our partners to address the many forms of violence against women, such as rape, domestic violence, cyber stalking, culturally-based violence, and violence against Aboriginal women. As honourable senators know from my previous answers in this place, the government takes the entire issue of missing and murdered Aboriginal women and girls extremely seriously.

The Native Women's Association of Canada has been successful in bringing awareness of this issue to the government, which is pursuing collaboration with the NWAC by funding the program Evidence to Action. This community-based approach will be the first in a series of projects over the next five years, building on the important work that has been done in this area by the Sisters In Spirit and other organizations.

**Senator Lovelace Nicholas:** The Sisters In Spirit have been asking for an inquiry. When will the government proceed with this investigation?

**Senator LeBreton:** I just answered the honourable senator's question when I confirmed that the government is pursuing work with the Native Women's Association of Canada by funding Evidence to Action, which is the first step in addressing this serious matter of murdered and missing Aboriginal women.

The government is aware of the seriousness of the matter. The prudent way to proceed is to put some of this money to use in the communities and to work with our Aboriginal partners to resolve these matters, rather than to study what is known to be a terrible tragedy.

**Hon. Gerry St. Germain:** Honourable senators, I also attended the press conference given by the Sisters In Spirit this morning. The spokesperson was complimentary of the actions that the government is taking. Concern was expressed that the process should be accelerated by putting in place the \$10 million allocated in Budget 2010. I spoke to the minister responsible, who indicated that the issue was first and foremost in her files. Perhaps the honourable leader could tell the house when the \$10 million will be put in place.

The Sisters In Spirit were complimentary of the efforts made by the government, which is encouraging. The new program Evidence to Action was also discussed at this press conference.

**Senator LeBreton:** I thank Senator St. Germain for the question. I would be happy to report to the Senate on the various programs as the government moves forward on the expenditures under the \$10 million in support of this initiative.

I should have mentioned in my previous answer that in addition to the work under way, the government is also in partnership with the provincial and territorial governments. A working group has been established to deal with missing women, including missing Aboriginal women. It is hoped that the Department of Justice Canada in conjunction with the resources of the provincial and territorial governments will be able to properly deal with this serious issue of missing and murdered Aboriginal women.

## JUSTICE

### VICTIMS OF CRIME

**Hon. Pierre-Hugues Boisvenu:** Honourable senators, yesterday I attended an event in Edmundston, New Brunswick, for the fifth annual National Victims of Crime Awareness Week 2010. I had the opportunity there to experience the commitment and devotion of many men and women working with victims of crime and to get a sense of the resources they require to accomplish their mission.

[*Translation*]

My question is for the Leader of the Government in the Senate. As honourable senators know, the week of April 18 to 24, 2010, is the fifth annual National Victims of Crime Awareness Week.

Can the minister tell us about recent measures implemented by the Conservative government and measures that it plans to implement in the near future to ensure the safety of Canadians, protect victims' rights and support the organizations that help victims?

[*English*]

**Hon. Marjory LeBreton (Leader of the Government):** I thank the honourable senator for the question. Before I respond, I want to commend Senator Boisvenu for the extremely courageous work he has done and will continue to do on behalf of the victims of crime. Having been through a similar experience, I find it takes a great deal of courage for people to take action with regard to the perpetrators of crime.

As the honourable senator knows, the government established the Office of the Federal Ombudsman for Victims of Crime and provided more than \$52 million over four years to increase support for victims of crime. Budget 2010 provides an additional \$6.6 million over two years for this purpose. As well, the government passed the Tackling Violent Crime Act, which toughens sentences and bail requirements for serious gun crimes, strengthens penalties on impaired drivers and provides better protection for society from dangerous offenders, including strong measures to protect society from sexual predators. Recently, the government introduced a bill that would strengthen the way in which the system deals with violent and repeat young offenders. As announced in the Speech from the Throne, the government will introduce a number of other bills to strengthen the rights of victims, including legislation to make the victims' surcharge mandatory, which would increase funding for victims' services, and to facilitate access to Employment Insurance benefits for family members of victims of crime.

## FEDERAL OMBUDSMAN FOR VICTIMS OF CRIME

**Hon. James S. Cowan (Leader of the Opposition):** Honourable senators, I hesitate to intrude on this self-congratulatory exchange between the honourable senators opposite, but I cannot help but draw to the attention of the leader and ask for her comments on the testimony given by Steve Sullivan, the outgoing Federal Ombudsman for Victims of Crime, before the Commons Public Safety Committee on Tuesday. He said that the government's tough-on-crime agenda is not helping the victims of crime and that the government is falling seriously short in its efforts to help them. He said that the government is talking a lot about being tough on crime and about making Canada's streets safer by putting more people in jail for longer periods of time, but it is ignoring and short-changing the victims of those crimes. Would the Leader of the Government in the Senate care to comment?

**Hon. Marjory LeBreton (Leader of the Government):** I would be happy to comment because media stories concerning the outgoing ombudsman said that the funding had been cut, which is false. The funding remains unchanged. As I said in response to Senator Boisvenu, the government will introduce legislation to provide a mandatory surcharge, the proceeds of which will go directly to the victims of crime.

**Senator Cowan:** Perhaps I could draw to the attention of the leader a further comment by Mr. Sullivan in a letter addressed to the Prime Minister on Monday. The article in *The StarPhoenix* stated:

In a letter to Prime Minister Stephen Harper on Monday, Sullivan painted a picture of a single-minded government bent on hiking spending for the prison system rather than focusing on the programs and services that victims need to heal.

• (1410)

This is the quote:

"If the focus remains solely on sentencing, the concerns of most victims won't be addressed," Sullivan wrote. "A better balance must be struck."

Would the Leader of the Government in the Senate comment on that?

**Senator LeBreton:** Honourable senators, first, let us go back to the beginning. It was our government that established the Office of the Federal Ombudsman for Victims of Crime. We are the only party that has consistently stood up for victims of crime. We committed \$52 million, \$13 million per year over four years starting on April 1, 2007. This was to go directly towards victims' services and Budget 2010 is providing an additional \$6.6 million over two years.

With regard to the statements, we are obviously committed to making sure that people who commit serious crimes are properly penalized and that they do not continue to harm society. It is quite incorrect to say that is done at the expense of victims.

[Translation]

## FOREIGN AFFAIRS

## RESOLUTION OF INTERNATIONAL CONFLICTS

**Hon. Roméo Antonius Dallaire:** Honourable senators, in 2005, I was serving as the Prime Minister's representative in Darfur, where Canada wanted to play a leadership role in trying to resolve an ethnic conflict that had degenerated into a genocide that is still going on today.

I recently received letters from soldiers in South Africa who are serving in Darfur and are concerned about the lack of security there, to the point of wondering if this conflict is going to degenerate into a state of ethnic conflict, as has happened in other parts of the world.

At this time, fervent extremist views can be heard on the radio in Darfur. Will the government recognize the urgency of the situation and show greater interest in trying to prevent a catastrophe, as Brian Mulroney so generously did for the advancement of the anti-apartheid movement?

[English]

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, we should all be concerned about what is happening in these countries. There has been much speculation in the newspapers as to what the government should, could, or must do.

I can simply tell Senator Dallaire that all of this is speculation at the moment. Obviously, whatever decision the government takes on behalf of the people of Canada will be in the interests of assisting and helping the people who need help the most.

**Senator Dallaire:** If I may, this brings me to the fact that, as the leader is aware, we created a parliamentary group on genocide and mass atrocity prevention. We know the Secretary-General of the United Nations has an advisory board that does exactly the same thing. We were recently briefed on an interesting study entitled the *Will to Intervene*, which called upon nation states to intervene because it is in their self-interest to not see these states crash and implode.

I am wondering whether or not this current government is preparing to or will articulate a policy in regard to applying responsibility to protect and intervene in order to prevent mass atrocities and mass abuses of human rights.

**Senator LeBreton:** I have answered that question in this place before. There has been a considerable commitment made on behalf of our government to various countries, particularly in Africa. The situation that Senator Dallaire describes is dire; there is no doubt about it. I am not in a position at the moment, honourable senators, to provide any detailed answer as to what decisions may be made by the government and by the Minister of Foreign Affairs, but I will take the question as notice.

## ENVIRONMENT

### CARBON TAX

**Hon. Grant Mitchell:** Honourable senators, I have a question about climate change for the Leader of the Government in the Senate.

Recently, the Minister of the Environment explicitly said that if the United States moves ahead with cap and trade, then Canada will also proceed with it definitively; and if the U.S. advances a regulatory regime instead, then Canada will absolutely and definitively go adopt a regulatory regime. In an irony of ironies, the thinking in the U.S. is beginning to move away from cap and trade and toward carbon tax.

Given that the minister and the government are so intent on a made-in-U.S. climate change policy, if the U.S. actually moves forward with a carbon tax, will the Canadian government impose a carbon tax as well?

**Hon. Marjory LeBreton (Leader of the Government):** Honourable senators, Senator Mitchell should know better than to ask me a hypothetical question. Of course, hypothetical questions are unanswerable.

As honourable senators know, and as I have said in this place before, interestingly enough, I think there is widespread support for our policy. As we live on the North American continent and share the same land space, especially with our neighbours to the south, the United States, obviously there are many things within the subject of climate change, as well as other environmental issues, for which we have a shared responsibility. With our back-and-forth, cross-border economic links, we cannot put our industries and citizens in a position where they will be left economically penalized by actions we may take that our neighbours and major trading partners do not.

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## ORDERS OF THE DAY

### MEDICAL DEVICES REGISTRY BILL

#### SECOND READING—DEBATE ADJOURNED

**Hon. Mac Harb** moved second reading of Bill S-217, An Act to establish and maintain a national registry of medical devices.

He said: Honourable senators, I rise to ask for your support for Bill S-217, An Act to establish and maintain a national registry of medical devices.

This bill was formerly known as Bill S-221 and, as such, it received approval at second reading and was referred to committee before the session ended. It was reintroduced as Bill S-243 last fall, but died on the Order Paper in December when Parliament was prorogued.

Despite these delays, I trust that we will be able to come together and once again agree on the importance of this legislation to the health and well-being of Canadians and ensure it is sent on to committee for further study.

• (1420)

Many of us and many of those about whom we care will depend upon a medical device at some point in our lives. Reports indicate that one in ten Canadians has some form of medical implant. Canada's orthopaedic surgeons are performing 100 per cent more hip and knee replacements than they were 10 years ago. Along with the rise in the use of implants, thousands more Canadians are using prescribed medical devices such as blood glucose monitors or portable oxygen tanks.

Health Canada is the body responsible for reviewing and licensing medical devices to assess their safety, effectiveness and quality before authorizing them for sale in Canada. Between 2005 and 2009, the number of devices licensed by Health Canada rose by 62 per cent as 37,259 more types of devices became available.

As the number of devices has risen, so has the number of warnings and recalls relating to these devices. During the same period, 2005 to 2009, more than 2,500 defective medical devices were reported to Health Canada.

While there are records for licensed devices, there is no central registry for the patients who are using those devices. This bill, if approved, will establish and maintain a national registry of medical devices. This registry will also contain the names and addresses of people who use certain implantable or prescribed home-use medical devices. The information will be provided voluntarily by the users of the devices.

This bill also requires manufacturers and distributors of medical devices to notify the registrar if a medical device poses a risk to the health or safety of a user. The registrar then is required to notify registered users.

Let us look for a moment at the current situation. Current regulations call on manufacturers to notify health care practitioners and users if something goes wrong with a medical device, but these regulations can fail due to such common occurrences as simple human error, a medical practitioner who moves out of the country, a lost patient database, or a device manufacturer going out of business.

Case studies abound of individuals who were not notified, despite the requirement for manufacturers to contact affected individuals. Health Canada does not have patient information at its disposal, counting on individuals to monitor its website or the media in hopes of coming across a product recall or related information.

Take as an example the case of Jodi Logan of Hamilton. She received a Proplast implant in 1985 to treat a jaw disorder. Her pain became worse, but it was not until eight years later that her periodontist told her about the problems with some implants. She called Health Canada but was told that they had no information.

In 1990, the manufacturer had issued a voluntary recall of the implant but then declared bankruptcy. In the United States, the regulator, the Food and Drug Administration, followed up and contacted all patients who received the implant. Health

Canada did not follow suit nor could it without the necessary contact information required. To compound the problems, Ms. Logan's surgeon said later that he did not feel the recall was important, and besides, he had moved out of the country.

The current regulations depend upon this tenuous connection between the manufacturer, the health practitioner and the patient. We have seen too often that the regulations are only as strong as their weakest link.

Unaware patients who otherwise could seek immediate treatment to remove or repair the defective device may continue to experience ever more serious symptoms, compounding the personal and financial costs of eventual treatment.

[*Translation*]

According to the Canadian Institute for Health Information, the public sector spent \$129 billion on health care in 2009. The registry will allow us to cut costs, as well as reduce the pain and suffering of users.

When an unfortunate incident occurs, Health Canada issues warnings, public health notices and other industry notices as a service to health professionals and consumers. When Health Canada receives a notice, it posts the warning on its website and issues a notice.

Does the consumer stay informed? There is no way to be sure. However, one thing is certain: this process alone is not a good substitute for a device registry.

[*English*]

My colleague, Senator Raine, brought up an interesting point when this issue was raised last fall. She pointed out that the user of the medical device will be motivated to stay abreast of news on their particular device, and she proposed that the onus be placed on the individual to stay in touch with the registry. While this legislation leaves the decision up to the individual whether to voluntarily provide his or her name and contact information to this central registry, the registrar will have the responsibility, and I believe must have the responsibility, to contact the individual if their device fails.

While some Canadians might be capable of navigating the online data necessary to stay on top of the latest news about their particular device by product class, serial number, year of manufacture, or specific date a problem may have been reported, many more Canadians who, for reasons of infirmity, lack of Internet access, language barriers, or what have you, will be unable to navigate the complex device identification information. We cannot take the chance that they will fall between the cracks.

[ Senator Harb ]

Canadians need to know that if they take the time to submit their contact information voluntarily to the registrar for medical devices, and they keep that information up to date, they will be notified if something goes wrong with their device.

If a car is affected by a recall, the owner is notified. Surely we can provide similar protection to Canadians who depend upon medical devices.

I have also heard concerns expressed that somehow Health Canada will face heightened liability if it is responsible for this registry. Health Canada will have no increased exposure to liability after this legislation is in place. Health Canada is already responsible for reviewing and licensing these devices, as well as for posting recall information provided by manufacturers on its website and through the media. I am confident that it is possible to ensure that this legislation is limited to its intended purpose, that is, the timely and direct notification of those affected if a device they depend upon is found to have problems. The registrar's obligations relate to informing registered users, and that is all.

Honourable senators, Health Canada's stated mission is to protect the health and safety of Canadians. Creating a national medical device registry will allow Health Canada to be proactive and specific in the dissemination of information about medical devices that it has approved for use in this country. A national medical device registry will allow Health Canada to take its responsibility "the last mile," ensuring timely notification to registered users.

• (1430)

As honourable senators may be aware, medical devices are divided into four classes, with Class I being the lowest risk and Class IV being the highest risk. Obviously, the scope of devices covered by the registry requires consideration. The legislation allows for regulations defining the scope and the class of devices involved.

[*Translation*]

There are a number of medical device registries already in existence. For example, Health Canada funds the Canadian Joint Replacement Registry. There are also registries in other countries, such as Sweden, Finland, Norway, Denmark, Hungary, Australia and Saudi Arabia.

In the United States, the Food and Drug Administration is very interested in the possibility of maintaining a national registry that would include more than orthopaedic implants.

Generally speaking, these registries are established to provide in real time information about problems with devices and to give immediate feedback to the medical community and device manufacturers about the performance of these devices, as well as to provide information for clinical research purposes. There is no question that such registries are beneficial. However, for the time being, the measure I am proposing is designed to provide users with information on defective devices as efficiently and quickly as possible.

[English]

As I mentioned when I rose to speak to this issue last fall, there is a push for a device registry for users in the United States as well. Aaron Moskowitz is with the Biomedical Research and Education Foundation. In an email to my office recently, he said:

User notification, for all devices, is of great interest . . . . There is a lack of information making its way to purchasers, doctors, and patients. A fast recall and warning system for devices could save a lot of money, time and improve patient safety. A registry should work at both the population and individual level.

Here are a few more of the supportive comments I received from stakeholders when I first introduced this bill.

The College of Physicians and Surgeons of Alberta wrote:

The stated intention of this bill . . . is very worthy and is generally supported.

The chief of the surgical oncology division at the Tom Baker Cancer Centre in Calgary wrote:

I would certainly agree with your approach of having a federal registration of these products as one cannot rely on solvency of the industry or rely, without a lot of bureaucracy, that the industry in fact is compliant with regulations about notification of individual devices.

Finally, this letter is from the Riverside Health Care facility in Fort Frances, Ontario:

I agree that there is a problem with our current system. We rely on the manufacturers to report a recall to us, but in the recent past this did not happen . . . Good luck with this endeavour. . .

Honourable senators, Canada is a world leader in the development of life-saving medical technology. Canada is a world leader in the field of information technology. Let us commit to using these tools to ensure that we are world leaders in the protection of the health and safety of our citizens as well.

(On motion of Senator Comeau, debate adjourned.)

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Martin, seconded by the Honourable Senator Lang, for the second reading of Bill C-268, An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years).

**Hon. Anne C. Cools:** Honourable senators, I rise to speak to second reading on Bill C-268. All senators here are united in their wishes to see the children of this country well looked after. All senators here share a natural reflex instinct to protect children, recognizing their total vulnerability and dependency. Nations and governments have developed many bodies of law and vast and large child welfare agencies for the protection of children.

Honourable senators, I have spent much of my life in social services working with families in conflict and in crisis. I have had close experience with the suffering of children and with child protection. I have rescued and assisted many children, both very young and teenaged. I know something of adult sexual predators, both male and female.

Honourable senators, most people share a natural repugnance to sexual offences against children. We recoil from the heart of darkness that is unscrupulous adults' use of young children for sexual gratification. Unfortunately, our natural abhorrence and the ugliness of these offences render it difficult for us to examine these matters. I have always noted the disinclination of the houses of parliament to study these sexual deviances and paraphilias as part of statute making, including the different forms of pedophilias, both heterosexual and homosexual, leaving these subjects to the study of psychiatrists and other specialists who, though learned and well studied, do not make laws.

This bill has proceeded with no study of the nature of the offences or the offenders and even the offended: the victims. We are all indebted to Senator Carstairs for yesterday's excellent statement on victims. However, our hearts want to see young people well protected by the law.

Honourable senators, the sole purpose of Bill C-268 is to propose mandatory minimum sentences for its proposed criminal offence that is trafficking in persons who are under 18. This bill does not address child welfare or child protection laws, which are provincial, but is solely confined to the Criminal Code.

Honourable senators, this bill is the result of the efforts of Manitoban member of Parliament Joy Smith and of the University of British Columbia's assistant professor Benjamin Perrin. The bill was welcomed by senators because of our deep concerns for children's well-being. Before prorogation, I had spoken on a question of privilege on December 3, 2009 and on December 15 on second reading of the previous Bill C-268. In recent months, I was somewhat disappointed by the many and forceful gratuitous personal attacks in my direction that flowed from the co-creators of this bill, Joy Smith and Benjamin Perrin. These public attacks were unkind, uncharitable and unchristian. Further, they were unwarranted and unnecessary. For me, they were a reminder that human beings wilfully hurt others, often in the name of good, often in the name of justice and in the name of Christianity. This is the paucity of our flawed human selves, the human condition. As a Christian, it always gives me pause.

Honourable senators, Bill C-268 proposes to amend the Criminal Code in its Part VIII. For those honourable senators who may not know, the Criminal Code is codified and organized in a systematic and distinct way, divided into parts, and each part is then divided into sections. This bill seeks to amend the Criminal Code in Part VIII, entitled "Offences Against the Person and Reputation," mainly in its sections entitled "Kidnapping, Trafficking in Persons, Hostage Taking and Abduction," and sections with the number 279.

Honourable senators, pay careful attention to this: kidnapping, trafficking, hostage taking and abduction. Bill C-268 proposes to add after the Criminal Code section 279.01 a new section, 279.011, which will create a new offence, the “trafficking of persons under the age of eighteen years.”

• (1440)

Bill C-268 was born of very good intentions both from its creators and its supporters, but as life is full of strange twists, the bill before us does not deliver on their good intentions. The bill before us does not do what its creators believe it does. Bill C-268 is not what they think it is or what they hoped it would be. In fact, Bill C-268 does not even touch the illicit sexual use and abuse of trafficked young people, which is, as we know, the bill’s origin and the bill’s motivation.

Honourable senators, this proposed new section is almost an identical replica of the current section in structure, construction and language. It is almost an exact copy, save for the addition of the words “under the age of 18 years” and the two mandatory minimum sentences. This almost identical replication suggests a forced graft to the section to add another purpose that the Criminal Code, in codifying Part VIII and its sections, neither contemplates nor permits.

Honourable senators will find that the word “trafficking” is not actually used in the legal text of the bill; it is only in the margins. The legal text uses words such as “transport” and “movement,” all for the purposes of exploitation. I shall read Bill C-268, clause 2. Honourable senators, please note that the text does not use the word “trafficking.” Clause 2 states the following:

The Act is amended by adding the following after section 279.01:

279.011 (1) Every person who recruits, transports, transfers, receives, holds, conceals or harbours a person under the age of eighteen years, or exercises control, direction or influence over the movements of a person under the age of eighteen years, for the purpose of exploiting them or facilitating their exploitation is guilty of an indictable offence and liable . . .

We note, honourable senators, there is no mention of sexual exploitation whatsoever or sexual uses. The clause continues:

. . . (a) to imprisonment for life and to a minimum punishment of imprisonment for a term of six years if they kidnap, commit an aggravated assault or aggravated sexual assault against, or cause death to, the victim during the commission of the offence; or

(b) to imprisonment for a term of not more than fourteen years and to a minimum punishment of imprisonment for a term of five years, in any other case.

(2) No consent to the activity that forms the subject-matter of a charge under subsection (1) is valid.

Honourable senators, I will make one brief remark here. It is significant that this “no consent” clause is in Bill C-268, and it is drafted as an exact copy of the original Criminal Code section, which does not apply to minors. When Criminal Code sections apply to minors, they usually do not use such “no consent” clauses because children, in law, cannot give consent. This is another forced graft. Another fact that I want to point out here, honourable senators, is that the only mention of sexual assault or any sexual activity is in subsection (a), and it only addresses the situation where the trafficker, the person who has done the trafficking, sexually assaults the victim. However, there is nothing whatsoever in the bill that speaks to the fact of the traffickers themselves exposing the victim to sexual violation, prostitution, forced sex and so on; that whole range of sexual offences by third parties.

Honourable senators, the meanings and definitions of the words “exploit” and “exploitation” in these trafficking sections are defined in Criminal Code section 279.04, whereas the meanings of the words “exploit” and “exploitation” here are very circumscribed. Section 279.04 states:

For the purposes of sections 279.01 to 279.03, a person exploits another person if they

(a) cause them to provide, or offer to provide, labour or a service by engaging in conduct that, in all the circumstances, could reasonably be expected to cause the other person to believe that their safety or the safety of a person known to them would be threatened if they failed to provide, or offer to provide, the labour or service; or

(b) cause them, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed.

Honourable senators, that the word “exploit” in these Criminal Code sections regarding trafficking means forced labour and forced services is not in doubt. If there is any doubt, the notes in the annotations to section 279.01 as per *Martin’s Criminal Code* explain this in prose, not legal text:

This section creates the offence of trafficking in persons. It is an offence to recruit, transport or deal with persons in any other methods specified in the section for the purpose of exploiting them or facilitating their exploitation. Exploitation is defined in Section 279.04 and, broadly speaking, envisages two circumstances. One circumstance is where the victim is forced to provide services or labour because they fear for their safety or the safety of someone they know. The other form of exploitation is using deception or coercion to have an organ or tissue removed.

Honourable senators, the intent of Criminal Code section 279.01 is as clear as day. Bill C-268, like the Criminal Code, refers to exploitation only in respect of forced labour and forced services and organ removal. The bill that is before us is also confined to those aspects. Bill C-268 does not touch the sexual uses of young people by third parties in terms of money, prostitution and the whole host of sexual offences that so terribly afflict children. The term “forced services” cannot mean, in modern jargon, sexual services or sexual work. There is a lot of modern jargon around — “sexual trade,” “sex workers,” “the work of sex,” and so on.

The Criminal Code does not give a scrap about this jargon. The Criminal Code admits of no illicit sexual activity with children as services of any kind. It is important that we understand that.

Bill C-268 does not touch upon minors trafficked for sexual purposes, neither does it propose to. The co-creators of the bill, Joy Smith and Benjamin Perrin, in all their public communications and also the senator proponents here in the Senate, all use the word “trafficking” interchangeably with the notion of the sexual use and misuse of children, as though the legal word “trafficking” actually means illicit sexual activity with children. It does not. Trafficking is the action and offence of moving people.

Any illicit sexual activities must engage other and additional offences and charges which are not before us. Bill C-268 and the Criminal Code section 279.01 are aimed solely at forced labour, forced services and organ removal. Trafficking is one species of criminal offences found in one part of the Criminal Code in its respective sections. The sexual use, abuse and violation of minors are other and different species of offences codified in other and different parts of the Criminal Code.

Honourable senators, the two offences are not synonymous, neither do the words have the same legal meaning. Honourable senators, one simply cannot wish this into existence. To use the word “trafficking” interchangeably with “sexual use” or “sexual exploitation” is to create misunderstanding and confusion. I see Senator Dyck looking at me and nodding. This is a huge problem.

• (1450)

I have another page. Could I have five minutes to complete my remarks?

**Hon. Suzanne Fortin-Duplessis (The Hon. the Acting Speaker):** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**Senator Cools:** Honourable senators, I happen to know that Senator Dyck put in a lot of time and effort to discover this, and I also want to say that I have been studying this issue for many months.

Honourable senators, the major drafting problem with this bill is that sexual offences against minors are codified in other parts and sections of the Criminal Code, which sections have not been opened by this bill. There is, for example, Part VII of the Criminal Code, which is “Disorderly Houses, Gaming and Betting,” and section 212, procuring, which includes living on the avails of the prostitution of persons under the age of 18. Another example is the offence of sexual exploitation, which is section 153 in Part V of the code, called “Sexual Offences, Public Morals and Disorderly Conduct.” None of these sections have been opened by Bill C-268.

The matter, honourable senators, is further complicated because section 153, the offence of sexual exploitation, is somewhat circumscribed and limited to persons in positions of trust and authority towards a young person, and also in dependency relationships and other relationships. I hope the committee will pay careful attention and sort out these more than trivial drafting details.

Honourable senators, I come now to mandatory minimum sentences and the role of judges in sentencing. I am deeply concerned about the growing practice of ousting the judges from sentencing and the resulting transfer of discretionary power from the judges to the prosecutors and law enforcement officers. This is undesirable and constitutionally unhealthy. Sentencing is a process by which the judges confront the accused individually and deal with the circumstances of the individual case quite individually.

Honourable senators, much flawed and bad public policy has been extremely reckless with children’s lives. We must uphold children and their needs. We need good, well-drafted Criminal Code provisions. Honourable senators, we must take the time and do the work that is required to produce good Criminal Code provisions to protect children.

I close, honourable senators, with the famous Psalm 127, *Nisi Dominus*, which I have quoted many times: “Children are a gift from the Lord; they are a real blessing.”

All of us here, all senators, under the doctrine of *parens patriae* are charged with the grievous responsibility of protecting and looking after children, and I do believe that we should take this responsibility very seriously.

Honourable senators, one of the most important people under this doctrine is the Attorney General of Canada. As honourable senators know, the Attorney General has two roles — I see Senator Murray looking at me. I would tell him, incidentally, that after Confederation, Sir John A. Macdonald assumed the role of Attorney General and Prime Minister.

**Senator Mercer:** He was there at Confederation.

**Senator Cools:** I am sure. That was a proper thing to do if one knew all the problems that had existed in Upper Canada with the role of the Attorney General. I am sure the Honourable Senator Murray has read of it.

Honourable senators, the point I am making is that there is a political role, which is the Minister of Justice, and there is the Attorney General. In Canada, the two roles are encompassed by the same individual. In the role of the Attorney General, that particular person has an extremely onerous set of responsibilities in respect of the criminal law itself and, in addition to that, the responsibility for ensuring that there are good provisions in the Criminal Code in respect of children. When a minister moves with a bill under the notion of responsibility, he brings all the expertise, specializations and drafting talents of the department.

I have no doubt that the committee will call over the people from the Department of Justice to obtain some real input.

I just wanted to put these questions and matters on the record because, honourable senators, too many serious bills go by here without many people ever reading them. I thought that perhaps I could do a service for some people by putting this on the record. To be quite frank, I was urged to do this by many of my supporters in the field, especially by many of those people they call social conservatives.

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

**Hon. Senators:** Agreed.

(Motion agreed to and bill read second time.)

REFERRED TO COMMITTEE

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

**Hon. Yonah Martin:** I move that Bill C-268 be referred to the Standing Senate Committee on Human Rights.

**The Hon. the Speaker:** We have a motion from Senator Martin that the bill be referred to the Standing Senate Committee on Human Rights, seconded by Senator Neufeld. Does the house wish to make points on this? I saw several senators rising.

**Hon. Sharon Carstairs:** Honourable senators, I was under the clear impression, because this is a significant amendment to the Criminal Code of Canada, that this bill was to go to the Standing Senate Committee on Legal and Constitutional Affairs.

**Hon. Gerald J. Comeau (Deputy Leader of the Government):** Honourable senators, we often have to make judgment calls as to where bills ultimately go. I will give an illustration.

Currently, we have a bill regarding the Motor Vehicle Safety Act, which we introduced today, Bill S-5. There are three or four committees to which we could send the bill. This bill involves a transport issue, and the Minister of Transport will be the lead minister on the bill. We could make the case that the bill should go to the Standing Senate Committee on Transport and Communications. We could also make the case that the bill should go to the Standing Senate Committee on Foreign Affairs and International Trade because it deals with trade with another country. We could also send the bill to the Standing Senate Committee on Energy and the Environment because it deals with environmental issues.

With regard to Bill C-268, we have the issue of the subject matter that deals with sexual exploitation on the one hand and the concomitant legal issues on the other hand. We have made a judgment call in this case that the bill should go to the Standing Senate Committee on Human Rights. That does not necessarily mean that there are non-lawyers on the committee. In fact, we have some eminent lawyers on the Human Rights Committee, including Senator Andreychuk, Senator Jaffer, and Senator Baker.

**The Hon. the Speaker:** We are dealing with a procedural motion. We are not into a debate, as such. This is what I would call negotiations on the floor, rather than through the usual channels, to see if the house can arrive at some kind of a common agreement.

At some point, I will have to put the motion that has been made and, if that motion is not carried, I will have to put the question again: When shall the bill be read the third time? If another motion is brought forward, I will put that before the house. Maybe I should hear from the Leader of the Opposition.

• (1500)

**Hon. Claudette Tardif (Deputy Leader of the Opposition):** Thank you, Your Honour. I am sorry, but I was not here for the beginning of this discussion and argument.

I wish to take the adjournment for a day. It is not because I am trying to delay, honourable senators, it is simply because I want to refresh my memory on what our discussion was in regard to where this bill was to go. There was a prorogation and it has now been at least four months since this bill was last discussed in December. I want to come back to it. We can return to the question tomorrow, honourable senators.

**The Hon. the Speaker:** Honourable senators, to be helpful, we must understand that we are dealing with a procedural question. It is not subject to debate; therefore, it cannot be adjourned.

We have the option of seeing whether the usual channels can be used to determine which committee. If not, we will deal formally with the question that has been put, if that is the will of the house. Is it the will of the house?

Honourable senators, we have a procedural motion before us. It was moved by the Honourable Senator Martin, seconded by the Honourable Senator Neufeld, that this bill be not read the third time now but that it be referred to the Standing Senate Committee on Human Rights.

**Some Hon. Senators:** Agreed.

**Hon. Anne C. Cools:** Your Honour, I want to raise a point of order.

**The Hon. the Speaker:** That is the motion, which is not debatable. If there is an issue of order and advice, we always welcome Senator Cools' advice.

**Senator Cools:** There are many issues of order. The biggest order is that a surprise has been pulled upon the house and a surprise motion has been put.

Honourable senators, according to my understanding of this place, Criminal Code amendments invariably have gone to the Standing Senate Committee on Legal and Constitutional Affairs. I do not know the rubric under which I am speaking now. However, before I express all my opinions — I prefer to hold them for tomorrow — Senator Tardif has asked for the accommodation and the indulgence of the house to give her a day to be able to reacquire herself with the bill, and, perhaps, to look at the question.

Honourable senators, it would seem to me the most polite and cordial way to proceed is for Senator Martin to withdraw her motion, since the question is not properly before the house yet, and allow Senator Tardif to take the adjournment. Tomorrow, Senator Martin will then be free to bring back her motion at any time. All she has to do is rise and request leave to withdraw her motion. It is easy to do so. As a matter of fact, it may not even need full leave; she could rise and withdraw it. Perhaps that is the best thing for the Honourable Senator Martin to do.

**The Hon. the Speaker:** Honourable senators, a proper motion has been put before the house, and I will put it to the house.

It was moved by the Honourable Senator Martin, seconded by the Honourable Senator Neufeld, that this bill be referred to the Standing Senate Committee on Human Rights.

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

**Some Hon. Senators:** Agreed.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Those in favour of the motion please say “yea.”

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Those opposed to the motion please say “nay.”

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the “nays” have it.

We are now without a motion. The question before the house is this: When shall the bill be read the third time?

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

**The Hon. the Speaker:** No, it is procedural still.

**An Hon. Senator:** No.

**Senator Cools:** It is.

**The Hon. the Speaker:** Honourable senators, we want to look at rule 86(2). The Senate may decide what we will do in terms of sending a bill to committee. We are at the stage of trying to identify the committee and to take a decision as to which committee we will send this bill. We have made a decision that we will not send it to the Standing Senate Committee on Human Rights. The question is this: When shall the bill be read the third time?

**An Hon. Senator:** No.

**Senator Comeau:** Your Honour, we wanted a standing vote!

**The Hon. the Speaker:** I did not see two senators standing up.

**Senator Comeau:** We are standing.

**An Hon. Senator:** Both of us were standing.

**The Hon. the Speaker:** Honourable senators, I am advised that two senators stood.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Two senators, having risen —

**An Hon. Senator:** No.

**The Hon. the Speaker:** I am advised that there were not two senators.

**Senator Carstairs:** Honourable senators, I move that this bill be sent to the Standing Senate Committee on Legal and Constitutional Affairs.

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

**The Hon. the Speaker:** It was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Hervieux-Payette, that this bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Are honourable senators ready for the question?

**Some Hon. Senators:** Question.

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

**Some Hon. Senators:** No.

**Some Hon. Senators:** Yes.

**The Hon. the Speaker:** Those in favour of the motion please say “yea.”

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Those opposed to the motion please say “nay.”

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** This time, I hear the nays carrying the vote.

*And two honourable senators having risen:*

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

Do the whips have advice as to the length of the bell?

**Senator Cools:** There is something wrong in all of this.

**The Hon. the Speaker:** If there is no agreement from the whips, the vote will take place at five minutes past four.

**Hon. Jim Munson:** One hour.

**Hon. Consiglio Di Nino:** One hour.

**The Hon. the Speaker:** It is a one-hour bell. The vote will take place at five minutes after four.

Do I have permission to leave the chair?

**Hon. Senators:** Agreed.

• (1600)

Motion negatived on the following division:

YEAS  
THE HONOURABLE SENATORS

Baker	Jaffer
Banks	Joyal
Callbeck	Lovelace Nicholas
Campbell	McCoy
Carstairs	Mercer
Cools	Merchant
Cordy	Mitchell
Cowan	Moore
Dawson	Munson
Day	Murray
De Bané	Pépin
Downe	Poy
Dyck	Ringuette
Eggleton	Robichaud
Fairbairn	Smith
Furey	Tardif
Harb	Watt
Hubley	Zimmer—36

NAYS  
THE HONOURABLE SENATORS

Andreychuk	MacDonald
Angus	Manning
Boisvenu	Marshall
Brazeau	Martin

Brown  
Carignan  
Champagne  
Cochrane  
Comeau  
Di Nino  
Dickson  
Duffy  
Eaton  
Finley  
Frum  
Gerstein  
Greene  
Housakos  
Keon  
Kochhar  
LeBreton

Meighen  
Mockler  
Nancy Ruth  
Neufeld  
Ogilvie  
Plett  
Poirier  
Raine  
Rivard  
Rivest  
Runciman  
St. Germain  
Seidman  
Stewart Olsen  
Tkachuk  
Wallace  
Wallin—42

ABSTENTIONS  
THE HONOURABLE SENATORS

Nil

[*Translation*]

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

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

(The Senate adjourned until Thursday, April 22, 2010, at 1:30 p.m.)

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