

THE SENATE

Tuesday, April 27, 2004

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

* excerpts of all of day's proceedings related to Bill C-250 which adds 'sexual orientation' to hate crimes section of the Criminal Code

SENATORS' STATEMENTS

Question of Privilege

Notice

(First item of the day)

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.

(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.

ORDERS OF THE DAY

Fisheries and Oceans

Committee Authorized to meet During Sitting of the Senate

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.

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, 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 negated 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 propoganda) 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	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	Oliver

Di Nino	Sibbeston
Eyton	St. Germain
Kelleher	Stratton
Lawson	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, 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.

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 till 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, who 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 that a "Minister," and if you read through the literature, there is reference to "governments" and a "Minister."

If one were then to look to Marlowe 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 and to politics in this nation, because what 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 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:

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 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.

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 there is 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 said to 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.

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.

Senator Lynch-Staunton: 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.

Hon. Bill Rompkey: 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 that 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, and 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 that Bill C-250 amends 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 again 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 inhibitor 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. Epp 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. Epp 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 that 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, 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 is 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. Once we did, however, and we did it, I believe, for historical reasons, for compassionate reasons and for educational purposes some years ago, and you heard Senator Lynch-Staunton eloquently indicate that there were those who said we did not to go down this route, but we did, therefore we cannot now pick and choose between identifiable groups.

I would hope that when we are revising the Criminal Code provisions we will remove this section out 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 it 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 huge 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 given 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. Epp 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 in point of fact 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 be 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. What Mr. Owens was charged with was 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, 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 impose 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 behoves 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 torment in hell and 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.

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 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.

