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Wednesday, May 7, 2003

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Wednesday, May 7, 2003

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

Prayers.

SENATORS' STATEMENTS

MOTHERS AGAINST DRUNK DRIVING

Hon. Marjory LeBreton: Honourable senators, representatives of Mothers Against Drunk Driving, MADD Canada, were in Ottawa yesterday and are today. They are meeting with ministers, members of Parliament and staff. They are urging parliamentarians to introduce new legislation that will ensure more effective impaired driving laws, safer roads and a reduction in the number of deaths and injuries as a result of impaired driving.

These MADD Canada spokespersons are all mothers who know first-hand the tragedy and pain of losing loved ones. They are here to press for new legislation, to enhance police powers, to eliminate certain defences, to eliminate conditional sentencing and to commit Parliament to a regular review of impaired driving laws. MADD Canada's proposed measures are achievable. Parliament can easily introduce and implement these policies.

As a result of these two days of meetings, MADD Canada will be issuing a Mother's Day report on the federal Parliament. This report will identify the next steps in bringing in more effective drunk driving laws to Canada.

I wish to thank these mothers who spent the past two days in Ottawa. It takes a tremendous amount of courage and strength for these MADD Canada volunteers to come to Parliament to share their personal stories and express their hopes.

These courageous mothers are: Louise Knox from St. Paul's, Alberta, the national President of Mothers Against Drunk Driving; Helen Hoeflicker from Surrey, British Columbia; Cathy Unsworth from Sarnia, Ontario; Carolyn Swinson from Toronto, Ontario, a past-president of MADD; Sandra Di'Quinzio from Montreal, Quebec; and Karen Dunham from Saint John, New Brunswick.

I hope that the honourable senators will welcome these women when they call you or visit your office.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— CAPABILITY OF SIKORSKY AIRCRAFT

Hon. J. Michael Forrestall: Honourable senators, I was a relatively young man, playing basketball in Shearwater, when the Sikorsky HORS was the mainstay of our carrier fleet. The Sikorsky company has been a part of my entire adult life.

In the last day or two, I have noticed, in casual reading, that the Sikorsky Aircraft Corporation has been selected to receive the prestigious 2002 Robert J. Collier Trophy, honouring the new medium-lift S-92 helicopter. Along with the EH-101 and one other commercial interest, the Sikorsky craft is a prime contender to replace the current Sea King.

Given the importance of Sikorsky to the Maritime Helicopter Program, I wanted to call this event to the attention of honourable senators. It demonstrates that there is a technological capability out there, that we have some obligation to reach out and embrace. The failure to do so at this crucial time in the replacement program could be fatal.

In the next few days, there will be a critical time-lapsing event, a time by which all contenders must have responded to a document comprising thousands of pages, setting forth the requirements of the government. I have serious doubts whether any or all of the companies bidding for the Sea King replacement will be able to meet those requirements. I wish to express regrets in that regard. I had hoped that they would be able to do so.

Nonetheless, I wanted to draw to the attention of the honourable senators that if we do not move quickly, we might be without seaborne helicopter eyes for our fleet, perhaps for the next 15 or 20 years. That is simply not acceptable.

• (1340)

THE LATE JACK DONOHUE

TRIBUTE

Hon. Consiglio Di Nino: Honourable senators, on April 16, 2003, Canada lost a great one. Jack Donohue, a native of the U.S., came to Canada some 30 years ago with a mandate to build a national basketball program — and build it he did. Under his leadership, Canadian basketball rose to new heights, receiving both national and international acclaim. As coach of the national team, a position he held for 17 years, Jack led Canada to numerous victories, including a World University Games gold medal and a fourth place finish at the 1980 Los Angeles Olympics.

I first got to know Jack through his volunteer work with the Canadian Foundation for Physically Disabled Persons and the Terry Fox Hall of Fame.

Jack was one of the most beloved figures in Canadian amateur sport. He earned the respect of his peers, not only for his commitment to basketball and to amateur athletics, but also for his mentoring and leadership abilities. Jack was a dedicated family man with a wonderful sense of humour who contributed significantly to his community. Being senators, you would understand that I was often on the receiving end of his jokes — publicly, I might add — which were always delivered with his unique sense of humour and the utmost respect.

Jack Donohue's dedication to family and involvement in sports and community life leaves a legacy of respect, commitment and values. His greatest legacy may very well be the positive influence he has had on the lives of countless young Canadians, many of whom went on to great success, not only in basketball, but also in life's many other endeavours.

Colleagues, Jack Donohue made a real difference. He will be missed.

QUESTION PERIOD

FOREIGN AFFAIRS

UNITED STATES—PARTICIPATION IN MISSILE DEFENCE SYSTEM—EFFECT ON POLICY AGAINST WEAPONIZATION OF SPACE

Hon. Douglas Roche: Honourable senators, will the Deputy Leader of the Government accept my question and ensure that I receive an answer tomorrow from the Leader of the Government in the Senate? If so, I will proceed.

The government is considering entering into formal discussions with the United States on the U.S. ballistic missile defensive system. The government states that the current U.S. development of ground-based interceptors is different from the Star Wars concept of a few years ago, and thus Canada might be able to join in.

Is the government aware that the present U.S. architecture, starting on the ground, is inextricably linked with U.S. plans to put weapons in space and that, therefore, if Canada joins in the U.S. missile defence program, that will inevitably lead to the abandonment of Canada's policy to keep weapons out of space?

Some time ago, the government said that it would be "very happy to launch an initiative" for an international convention preventing weaponization of space. What is the government doing in this regard? Does it realize that promoting an international convention preventing the weaponization of space and joining in the missile defence system are mutually incompatible?

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I take note of the question by the Honourable Senator Roche and we will provide an answer as soon as possible.

[*English*]

Senator Roche: Honourable senators, due to the urgency of this question, namely, that it is going back to cabinet for continued consideration next week, would the Deputy Leader of the Government in the Senate give me the assurance that my question will be answered tomorrow?

The Hon. the Speaker: Honourable senators, according to our rules, senators cannot ask questions of the Deputy Leader of the Government. Questions can only be asked of ministers and committee chairs. Senator Robichaud has taken Senator Roche's question as notice. However, the Deputy Leader cannot respond to further questions, particularly with regard to the time frame within which a response is to be given..

Senator Roche has put his question and notice of it has been taken. We will just have to wait and see what happens.

Senator Roche: Honourable senators, I have made my point.

CRIMINAL CODE FIREARMS ACT

BILL TO AMEND—MESSAGE FROM COMMONS

The Hon. the Speaker: Honourable senators, the Senate has received a message from the House of Commons concerning amendments made by the Senate to Bill C-10, to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act. That message is accompanied by a further message dated Tuesday, May 6, 2003:

> *ORDERED*—That, in relation to the amendments made by the Senate to Bill C-10, An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act, this House concurs with the Senate's division of the Bill into two parts, namely, Bill C-10A, An Act to amend the Criminal Code (firearms) and the Firearms Act, and Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), but
>
> That this House, while disapproving of any infraction of its privileges or rights by the other House, in this case waives its claim to insist upon such rights and privileges, but the waiver of said rights and privileges is not to be drawn into a precedent: and
>
> That a Message be sent to the Senate to acquaint Their Honours therewith.
>
> *ATTEST:*
>
> William C. Corbett
> *The Clerk of the House of Commons*

• (1350)

Senator Forrestall: Do we applaud now?

Some Hon Senators: Oh, oh!

POINT OF ORDER

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I would like to discuss the message His Honour just read. Yesterday, the House passed two bills, one called Bill C-10A and one entitled Bill C-10B. They are both shown as being passed by the House of Commons on October 9, 2002. I will not get into an argument about that one.

If these two bills have been passed by the House of Commons and sent over to us, what is the status of Bill C-10B, which is now before the Standing Senate Committee on Legal and Constitutional Affairs? There is a note on the Commons Bill C-10B that states:

> Pursuant to the Order of the Senate on December 4, 2002, and the Order of the House of Commons on May 6, 2003 to divide Bill C-10 as passed by the House of Commons on October 9, 2002, into two parts (Bill C-10A and Bill C-10B).

This note is also on Bill C-10A, both of which are shown as having been passed by the House of Commons as C-10 on October 9, 2002, and one of which is still before the Standing Senate Committee on Legal and Constitutional Affairs.

Before we proceed to do anything, could someone, somewhere, sort this whole mess out for us? It appears that the House has deliberated on a bill that is still before our Legal and Constitutional Affairs Committee. How can the House pass a bill that is still before a Senate committee?

The Hon. the Speaker: This is a point of order.

Senator Lynch-Staunton: It is.

Hon. Anne C. Cools: Honourable senators, I wonder if we could all have a copy of the message that His Honour has read. I have no doubt that the Leader of the Opposition, in being leader, probably has seen a copy of the message. However, perhaps copies of the message could be shared with all senators so that we could know exactly what we are discussing.

The Hon. the Speaker: Honourable senators, I will request that a copy of the message that I read be distributed.

Senator Cools: I would like to have something to say once it is received. Obviously, messages such as this are debatable questions, so it would be good if we could have it in front of us.

The Hon. the Speaker: I am not sure that a message of this nature from the other place is a debatable matter. Senator Lynch-Staunton's comments are taken as a point of order as to the orderliness of our proceedings. I have just read a message from the House.

Did Senator Cools wish to comment further?

Senator Cools: As long as we are speaking on a point of order, maybe we could clarify. My understanding is that these messages are debatable, and I think we had a debate on that issue back in December. My understanding is that such messages are debatable and are also actionable. My understanding, also, is that such messages can even be referred to committees.

Senator Lynch-Staunton: Let me be clear. I did not see the message before it was read. It does mention the two bills that were passed by the House.

On the schedule that appears on a regular basis in our *Journals* entitled Progress of Legislation, under Government Bills, House of Commons, Bill C-10B is shown as being before the Standing Senate Committee on Legal and Constitutional Affairs. Yesterday, or this morning, in our offices, we received a copy of a bill, Bill C-10B, as passed by the other place. How can the same bill be before two different Houses at the same time? If the bill has been passed by the House of Commons, what is the status of this document before the Standing Senate Committee on Legal and Constitutional Affairs, which is still identified as a bill?

Someone whispered "pre-study." It is not a pre-study.

I regret that I was not able to be here the day that someone proposed that the bill be split. I think this chamber committed a grave error in doing so without first going to the House of Commons and saying, "We feel that your legislation would be best served if it were split; do you agree or not?" Instead, I am told that the Minister of Justice, who was behind the bar, pushed this chamber into taking this highly unprecedented decision, one that goes beyond the wishes of the House of Commons.

Senator Robichaud: No, no.

Senator Lynch-Staunton: Now we are into this confused procedure whereby one bill is in two different places at the same time. I would like some further clarification before we proceed.

Senator Cools: Honourable senators, the issues are becoming increasingly more complex. Now that I have a copy of the message in front of me, in addition to the questions that Senator Lynch-Staunton has raised around the nature of the split and whether Bill C-10B is a bill, the second paragraph of the message states:

> That this House, while disapproving of any infraction of its privileges or rights by the other House, in this case waives its claim to insist upon such rights and privileges, but the waiver of said rights and privileges is not to be drawn into a precedent;

My understanding of what I am reading is that the other place has made a judgment and has expressed an opinion that this house has committed an infraction of its rights and privileges. Let me read this paragraph again so that we are crystal clear:

> That this House —

— meaning the other place, the House of Commons —

> — while disapproving of any infraction of its privileges or rights by the other House —

— the Senate —

> — in this case waives its claim to insist upon such rights and privileges...

Honourable senators, the other place has made a finding that this place, this chamber, this house, has committed an offence against their privileges. They have found that we have committed an infraction, and they are saying that they are not insisting on taking any action about the infraction that we have committed.

If another chamber, the other place, has made a finding and judgment that we have committed an infraction, then we should set about to ascertain the nature of the infraction that we have committed. In all of the debates that have ensued, never, to my understanding, has the Senate admitted to making any infractions. This very clearly is a judgment and an order of the House of Commons that the Senate has committed an infraction, and we definitely must deal with it.

The Hon. the Speaker: Do any other honourable senators wish to comment on this point of order?

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we had this discussion when the Senate asked the committee to split the bill into two separate bills. The committee presented its report to the Senate, mentioning splitting of the bill, and recommending that Bill C-10A be adopted without amendment. The committee report was adopted in the Senate. A message was then sent to the other place, informing it that the Senate had split the bill into two separate bills and asking them — as is done with any amendment — to adopt the split bill as returned to them.

• (1400)

In actual fact, this bill comprised what we had included in Bill C-10A and, as well, what we left in Bill C-10B. The House of Commons dealt with a single bill. We were totally within our rights to split the bill and to inform them that we had done so.

It is my firm belief that, when a bill leaves the other place to come here, we are, while not wishing of course to encroach upon or diminish the privileges of the other place, masters of our own procedures. I believe that was precisely the case, in this instance.

The House of Commons agrees with our splitting the bill into Bill C-10A and Bill C-10B, and concurs in Bill C-10A without amendment. The other part, Bill C-10B, is in committee at this time and will be reported. It will come back here, either with or without amendment. Another message will be sent to the House of Commons asking for their concurrence in Bill C-10 as passed by our chamber.

I do not see this as particularly complicated. Privilege is being claimed, but we were very careful when we considered the bill and when we sent the message to the other place. We were asking for their concurrence in what we had done.

I see this as our chamber retaining its independence and privileges without encroaching on the privileges of the other chamber.

[*English*]

Senator Lynch-Staunton: Honourable senators, if I may, I will read the message that this place sent to the House of Commons following the decision to divide the bill. It can be found on page 289 of the *Journals of the Senate* of December 4, 2002. It states:

> Ordered, That the Clerk do carry this Bill back to the House of Commons and acquaint that House that the Senate has divided the Bill into two Bills, Bill C-10A...and Bill C-10B...both of which are attached to this Message as Appendices "A" and "B" respectively; and
>
> That the Clerk further acquaint that House that: (*a*) the Senate desires the concurrence of the House of Commons in the division of Bill C-10; (*b*) the Senate has passed Bill C-10A without amendment; and (*c*) the Senate is further considering Bill C-10B.

In other words, the House of Commons was told, "We are sending back to you the whole bill. We think you should split it. Agree with us on Bill C-10A and await our comments on Bill C-10B."

Instead, the House has impinged on our privileges — it is, with its members, more than a little touchy about its privileges — by deciding to send us back Bill C-10A and Bill C-10B. In effect, it paid no attention to the fact that Bill C-10B is still under study here. It even decided, brazenly, and without alerting us, that what it did should not be considered a precedent. I, for one, will certainly consider it a precedent from now on. However, Bill C-10B was not sent back to them except for its contents, forming part of Bill C-10, with the understanding that we agreed on Bill C-10A and hoped for their concurrence in that and alerted them that Bill C-10B was still under study and would be forwarded to them in due course, with or without amendments.

Instead, that last part was ignored. The House has sent us back Bill C-10A and Bill C-10B. Perhaps this is turning into a question of privilege. However, I will not go that far. It is a point of order worth being considered.

Hon. Jack Austin: Honourable senators, I would like to make two points on this point of order.

First, the message is not specific in any way. It is a general message. It states:

> That this House, while disapproving of any infraction of its privileges or rights by the other House...

I point out that none are noted or specified. Therefore, it is essentially a saving clause, and only that. However, the issue that Senator Lynch-Staunton raises is a different one.

If we look at rule 80, we will see that it states:

> When a bill originating in the Senate has been passed or negatived a new bill for the same object shall not afterwards be originated in the Senate during the same session.

The question that, I believe, deserves His Honour's consideration is whether, in dividing the bills, we have in fact created new bills or that they continue to be some emanation of old legislation.

Senator Cools: Honourable senators, Senator Austin has brilliantly and clearly pointed out the enormity of the complexity of the questions that have been placed before us.

First, I would like to point out the difference between the messages and the language of the Senate and the House of Commons. The message from the House of Commons states that it concurs with the Senate division of the bill into two parts. The Senate, when it took those actions, stated clearly that it was dividing Bill C-10 into two bills.

If honourable senators will remember, I raised that question back in the fall. At the time I asked: How is it possible that the Senate could give birth to two House of Commons bills? I think I posed an analogy at that time by asking how can an elephant give birth to a giraffe, or something like that.

It seems clear to me that the message from the House of Commons is not consistent with what the Senate itself declared that it did. Clearly, the instruction that was formulated here, as well as in the committee, to divide the bill, talked about dividing Bill C-10 into two bills. I notice that the House of Commons' message is saying here "two parts."

My understanding was that once Bill C-10 was divided, Bill C-10 was no more. Senator Sparrow rose again and again on the floor of this chamber asking: Where is Bill C-10? Did it evaporate or disappear? As I said, Bill C-10 is an interesting bill. It has appeared, disappeared and keeps reappearing. As such, it is a bit of an oddity.

I am no longer convinced that this is a point of order. I think it may even be larger than a point of order. It may be a question of privilege. The Deputy Leader of the Government has just said that the Senate was acting within its own privileges in taking this action to divide the bill and that, clearly, this particular message is in order. It seems to me, either the Senate was acting within its privileges or it was not. It cannot be doing both. Clearly, the message from the House of Commons states that the House of Commons disapproves of the Senate's infraction of the privileges of the House of Commons. Therefore, the House of Commons does not believe that the Senate was acting within its own privileges.

• (1410)

The House of Commons is quite clear here. Not only is the House of Commons making the assertion that it is disapproving of the actions that the Senate took in violating their privileges, but is even being a bit audacious in making sure we know about it. They were not content to just take the position, they had to notify us to make sure that we know, so it is an odd kind of thing. They are telling us not to let this happen again.

Honourable senators, it is a very interesting phenomenon that the Minister of Justice, Mr. Cauchon, would take the initiative to have this bill divided here in the Senate. The minister sat right here, just behind the bar, in this very chair right here, while the motion for the instruction to the committee to divide the bill was passed, this after he had said in the House of Commons that it was indivisible. The minister having done that, the Senate having divided the bill and senators having been instructed, by the leadership and other knowledgeable people here, that the Senate was acting within its privileges, we now find ourselves with a message from the House of Commons. That message says clearly that the House of Commons disapproves of the infraction of its privileges but has chosen not to hold us in contempt, not to order the Speaker of the Senate or individual senators before the bar of the House of Commons to answer for an infraction of their privileges.

This is, indeed, a great oddity, honourable senators, and to my mind this message is indicative of the general state of affairs that has befallen Bill C-10, Bill C-10A and Bill C-10B. As far as I am concerned, this message is an infraction of the privileges of the Senate, and I am no longer convinced that this should be dealt with as a point of order. This message deserves serious study.

This message deserves to be referred to a committee for serious review. Perhaps it is all right with many senators here, but it is not all right with me that we are being told by a message of the House of Commons that the House of Commons disapproves of the fact that I, Senator Cools, in concert with other senators, have committed some sort of infraction of the privileges of the House of Commons. My natural instinct is that, right now, they are committing an infraction of my privileges because this statement, whether some of us admit it or not, is impugning, if not the moral character, at least the constitutional character of many senators.

I do not know how we will proceed. Honourable senators will remember that at the time many senators were concerned that Bill C-10A would not have had three readings in the Senate because of the bill's division. Many senators, here in the Senate chamber and in the committee, raised concerns about the business of how the proceeding was moving ahead and how the division of the bill was taking place. I, for one, believed that the concurrence of the House of Commons should have been sought early in the process.

Senator Cools: Your Honour, this is a very serious matter.

The Hon. the Speaker: I realize that. I appreciate, Senator Cools, your review of the record and it is very important. I have at least one other senator wanting to speak and I have to make a determination, at some point, as to when I have heard enough from senators so that I can deal with the point of order.

Could I have an indication of how many senators wish to speak on this?

Senator Forrestall: We all do!

The Hon. the Speaker: There are three other senators who wish to speak. I wish to remind honourable senators to confine their comments to the matter of procedure that is in question. I would appreciate that very much. The motives and the history are things that I can review from other sources.

Senator Cools: I would be quite happy to yield the floor to another senator and then continue later on. However, the point I am driving at is that our privileges are being infringed upon by this message.

[*Translation*]

Hon. Gérald-A. Beaudoin: Honourable senators, I want to come back to the key word here. We had decided to return the bill to the other place, the only one having the power to split Bill C-10. The important thing was whether the other place concurred or not.

[*English*]

The word "concur" is a very important word.

[*Translation*]

If the other place said, "We accept the message from the Senate and are prepared to split the bill," then it is split by the other House, which alone has the power to do so. It could be a money bill.

We did not oppose section 53 of the Constitution because the other place did concur. That is the first point. I have always said in the Standing Senate Committee on Legal and Constitutional Affairs and in the Senate that it should not be called Bill C-10A and Bill C-10B, but document 10A and document 10B. My statement is on record with the Standing Senate Committee on Legal and Constitutional Affairs. Our intention was very clear. That is why I am very interested in what the Leader of the Opposition has to say. It is true that the same bill cannot be in two places at once.

The committee considered only Bill C-10. It considered just one bill. The suggestion was made to split it.

I have always preferred to talk about document 10A and document 10B. If this had been done, there would not have been so many problems. Sometimes, it is referred to as C-10A and C-10B. If the other place agrees to split the bill — because there is only one — now, it has the power to do so.

The House of Commons did that with the word "concur." We have looked at the precedents. The other precedent that did not succeed was one in which the other place did not use the word "concur." In this case, they did use it. Never before have we had two bills at the same time, because we did not have the power to split them. Twice, I have stated before the Standing Committee on Legal and Constitutional Affairs that what we were doing was considering a document, and I did not like the decision to use the wording "Bills C-10A and C-10B." But that is what happened.

Senator Bolduc: We have a problem.

Senator Beaudoin: Yes, we have a problem. The other problem is that the House of Commons waived certain privileges. That is part of what I would call *lex parliamenti*. We are in two legislative Houses and we have the right to raise questions of privilege and defend our privileges. However, if the other House says that it concurs — that is all we were asking of them — in the splitting of the bill, that is what it has done.

• (1420)

In terms of legal procedure, I applaud them. I am not talking about the bill; that is another matter. I am simply talking about parliamentary procedure.

I think that it would have been better to talk about a document. You can have a document being considered in both places, but having two bills in the two Houses is not easy, as we can see today. However, as to the privileges of the other House, the other House has the right to waive them if it wants to. Are they attacking us? That is another matter.

Of course, one House cannot dictate to the other. There are two legislative Houses. There is a bill and there is a question of splitting it. Both have said yes. The word document should have been used in the first place, but unfortunately it was not.

Has all this been a waste of time? I have always said that when the House of Commons says, "we concur," then Bill C-10 becomes Bills C-10A and C-10B. Obviously, it has been split. Given that the Senate Standing Committee on Legal and Constitutional Affairs considered the bill and that the record indicates that this was merely consideration of a document, there is no conflict with the Legal Affairs Committee's mandate. We have done our job. We will know whether or not there are amendments to be made, and we will settle the problem.

I am talking strictly about procedure. While it may not be perfect as far as I am concerned — we do not live in a perfect world — at least the bill has been split. Others may take a different attitude. The mistake we made was referring to Bills C-10A and C-10B, instead of consideration of documents C-10A and C-10B. We would not have had problems if we had done so. This is purely my personal opinion.

Senator Prud'homme: Which does not commit your party.

Senator Beaudoin: Not at all.

Senator Lynch-Staunton: Honourable senators, I would like to respond to Senator Beaudoin. Yes, the House of Commons agreed to split the bill. That is not the point. The point is that the House of Commons did not respect the Senate's decision when we returned Bill C-10 and informed them that we wanted to split it and that we had already passed Bill C-10A. The message dated December 4, 2002 was that "the Clerk...further acquaint that House that... the Senate is further considering Bill C-10B."

We did acquaint the House of Commons that we were keeping Bill C-10B, even though it was identified elsewhere in the table entitled "Progress of Legislation" in the *Journals of the Senate* as a bill. The Journals and the charts contained in our Journals present Bill C-10B as a bill. We may like to think that it is a document, but legally, in terms of procedure, it is a bill.

The House of Commons disregarded our will and did not accept the fact that Bill C-10B had been kept by the Senate. It decided to legislate and proceed with third reading on two bills, one of which is Bill C-10B.

What gives that other place the right to disregard the will of the Senate and ignore the fact that the Senate committee has been considering this bill for several months? How can that other place disregard the work being done with witnesses called to discuss a bill so that the Senate might provide the House of Commons with its opinion? How is it that, all of sudden, out of the blue, the House of Commons has passed Bill C-10B? We should object to this. This point of order is based on this argument.

[*English*]

The Hon. the Speaker: Honourable senators, a point of order is an opportunity to clarify whether a matter is within our rules, customs or procedures. It is sometimes helpful to have a debate, although debate is not traditional in discussing or making a point of order. I want to observe that if each honourable senator tries to dispose of his or her position one-on-one, we could be here for a long period of time.

Honourable senators have asked me, as the presiding officer, to make a decision on whether these procedures are in order or whether they are questionable for some reason. I remind honourable senators that the purpose is to direct comments to the presiding officer that may be helpful or important to that end. However, when honourable senators become engaged in an exchange with one another and, in effect, debate whether the point made is correct, it could take a long time. In the end, I would ask that honourable senators leave that debate, as flawed as it may be, to the presiding officer to rule on this matter.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, some of the points that I wanted to raise have been canvassed, so I will turn to another point that concerns me. The second paragraph of the message that we received from the other place states:

> That this House, while disapproving of any infraction of its privileges or rights by the other House —

— that point being raised by Senator Cools a little earlier —

> — in this case waives its claim to insist upon such rights and privileges —

— and this is my point —

> — but the waiver of said rights and privileges is not to be drawn into a precedent;

I would not want it ever to be understood that this house acquiesced in accepting that what has occurred is not a precedent because I believe it is an important precedent from the standpoint of this house. I would want His Honour to make a clear comment that we cannot change the message or the motion adopted by the House of Commons. However, I would urge honourable senators not to accept that what has occurred is not a precedent. Indeed, I believe that it is a precedent we may wish to fall back on, again. I draw His Honour's attention to Erskine May, pages 4, 5, 625 and 626, where he may find a short reference in the procedural literature to the question of precedent.

We would want to protect this precedent. I shall not comment on the other points because other honourable senators have done so.

[*Translation*]

Senator Robichaud: I agree with my honourable colleague. A precedent has been created. It could be used as when the other place had created a precedent with Bill C-15, which comprised three parts: child pornography, firearms and cruelty toward animals. Now, Bill C-10 comprises two of the three parts of that first bill, Bill C-15, that we had split and sent back to the other place.

• (1430)

When the Senate considers a bill and then passes it without amendment, it sends a message to the House of Commons indicating that the bill was passed. In this case, we passed part of the bill without amendment, and we asked the House of Commons to concur in the splitting of the bill.

The Honourable Senator Cools said that the House of Commons does not agree to this, but the following shows quite the opposite:

[*English*]

> — this House concurs with the Senate's division of the Bill into two parts —

[*Translation*]

Clearly, the House of Commons has concurred with the splitting of the bill.

Honourable senators, I hope this has enlightened you. However, the decision is yours to make.

[*English*]

Hon. John G. Bryden: Honourable senators, I participated in virtually every discussion in our committee on this bill. To a large extent, the way in which the committee proceeded was very much, to my recollection, as Senator Beaudoin has outlined.

I draw to the attention of the Honourable the Speaker that the Senate instructed the Standing Senate Committee on Legal and Constitutional Affairs to divide the bill. We reported on that.

When we reported the division, we reported Bill C-10A and Bill C-10B —

Senator Lynch-Staunton: You did not report Bill C-10B.

Senator Bryden: No, we reported that we had made the division.

Senator Lynch-Staunton: Yes, that is all.

Senator Bryden: We reported the division of Bill C-10 into Bill C-10A and Bill C-10B.

Senator Lynch-Staunton: You kept Bill C-10B.

Senator Bryden: We kept it, yes. We had followed the instruction of this house in doing that. The Senate adopted our report.

We have proceeded in the committee to study the contents of a bill. Senator Beaudoin was forever saying that.

We had asked that the clerk carry the bill back to the House of Commons and acquaint the House that the Senate had divided the bill into two bills, Bill C-10A and Bill C-10B. I will deal with the other one later.

If you look carefully, as lawyers tend to do, at what happened when they sent this document in concurrence, they have tracked our request in their first paragraph, about as closely as it is possible to track it, which reads:

> That, in relation to the amendments made by the Senate to Bill C-10, An Act to amend the Criminal Code...and the Firearms Act, this House concurs —

That is what we asked. We asked them to concur. The House concurs with the Senate's division of the bill into two parts, namely Bill C-10A and Bill C-10B. In doing that, they have basically attempted, at least, to carefully do what we asked them to do, which was to concur in the action that we asked them to take.

Honourable senators, whether they take this as a precedent is up to them. Whether we take it as a precedent is up to us. Those are the points I wanted to make.

Hon. A. Raynell Andreychuk: Honourable senators, we talked at great length both in the committee and here about splitting the bill, which was the order from the Senate to the committee. If we had two parts of the bill, we would have to seek concurrence of the House of Commons. We were using a previous precedent.

In the end, we did send Bill C-10A to them for concurrence and sought their concurrence in splitting the bill. However, Bill C-10B was not before the House. It was here, pending. Bill C-10 remained as the only bill that had come from the House. There was no such thing as Bill C-10B on the House side. I am having great difficulty understanding how they could speak to Bill C-10B in the way they have.

It troubles me that after we sought their concurrence on the splitting, they would say that they concur, but that they disapprove. If we agree to this message, it means that we did something wrong. We split a bill that we should not have split. The House, in telling us that they disapprove of this infraction and refuse to take it as a precedent, is reprimanding us.

I do not think that they have that right. They can decline our request. They cannot disapprove of it. They can either decline it or accept it. They do not have the choice of commenting on what we are doing.

The earlier precedent was clear. They declined our request. In this case, they could have done the same thing. However, they cannot tell us what we should do in this house, nor can they say that they disapprove. They can stay within the bounds of their House and decline to accept the bill as we returned it. We could argue for a long time.

Honourable senators, I believe that the second paragraph is unwarranted and causes confusion. If we agree to this, we are agreeing, first, that we were wrong, and second, that it is not a precedent. I, for one, put it on the record that we were wrong in splitting the bill and that we were entering into the realm of the House of Commons work. That was during our internal debate.

If the majority here chose to do something, the House does not have the right to disapprove. They have the right to decline the suggestion to split the bill.

We are in a conundrum. Never mind that it is a precedent on the other side. It would be a precedent to accept a reprimand from the House of Commons. We would be accepting instructions on how we conduct ourselves within this chamber.

Hon. Lowell Murray: Honourable senators, I appreciate that it is rather late in the day for me to be making this point. However, I do not think that there is a point of order here at all. I am not sure that Senator Lynch-Staunton meant to raise it as a point of order.

Nobody has cited a rule of the Senate that is being infringed. We have here a message from the House of Commons. The Honourable the Speaker read it, as he is obliged to do at the appropriate time.

There is no question of the message being in order or out of order. We must decide whether we want to debate it. Our rules do not provide for debate of those messages, but there is precedent for sending such a message to a committee. I recall that being done here. If that is what somebody wants to do, somebody should move that it be sent to a committee.

Perhaps Senator Cools is correct that it is not a question of order but a question of privilege. If it is, there is a process for dealing with questions of privilege. However, I do not see the point of order, and I do not see how we could have the discussion that we have been having for the last while under the rubric of a point of order.

Senator Cools: Honourable senators, I should like to thank Senator Andreychuk for so clearly comprehending and articulating the point that I have been trying to make.

• (1440)

I also concur with Senator Murray that the particular questions the Speaker is being called to settle and resolve are beyond his purview. I do not need to repeat what others have said. No clear arguments are being brought forth on the issues of orders per se, but a lot of evidence is being brought forward here today that there is something very wrong in this message, and that we have to look at it and adopt a proper position.

If honourable senators were to look at the two new bills that have just arrived in our hands — Bill C-10A and Bill C-10B — they say, "As passed by the House of Commons, October 9, 2002." If you go down to the note below — I am looking at Bill C-10A right now — it says:

> Pursuant to the Order of the Senate on December 4, 2002, and the Order of the House of Commons, on May 6, 2003, to divide Bill C-10 as passed by the House of Commons on October 9, 2002, into two parts (Bill C-10A and Bill C-10B).

There is something wrong with that as well. That is not only wrong, it is dishonest. It is not true. It did not happen.

Senator Robichaud: Order.

Senator Cools: There is something very wrong with this; and I thank the honourable senator who caused me to look at this. These issues are about the Criminal Code. These are amendments to the Criminal Code. These are actions that Parliament is taking in legislation that we are passing, that criminalizes people, that causes individuals in this country to be prosecuted. We owe it to the population of this nation to pass laws in accordance with the rules, and to abide by the constitutional principles that guide us, especially when we are purporting to criminalize what I would consider to be innocent behaviour.

This is beyond the Speaker's purview. It is more a question of privilege than a point of order, and we have to find a way to resolve it.

I want to say, again, that it is not possible to rise and to fall simultaneously; just as it is not possible to concur and not concur simultaneously. It is not possible to agree and disagree simultaneously, or to approve and disapprove simultaneously.

What we are dealing with here is a message that is saying, basically, members of the House of Commons are happy that you divided the bill, even though you were wrong to do it. What we have here is a message of political expediency, or convenience. The House of Commons is saying, "We do not like what you did and do not want you to do it again, in fact, never do it again; but we like the result because it suited our convenience."

Senator Robichaud: Order.

The Hon. the Speaker: Honourable senators, we have spent a lot of time on this matter. Because some senators are having difficulty in understanding how this procedure has unfolded — as to its orderliness — I have allowed a rather lengthy intervention. As you know, under the rules, the presiding officer is to say when he or she has heard enough. I take that position now.

I remind honourable senators that the question that was touched on, although not raised — whether a message from the other place is debatable — was ruled on in this place on December 4, 2002, to the effect that the message is not debatable. It deals at some length with an example of discussions that took place in a similar circumstance, and how they were not in accordance with the then rules or the current rules.

We are not debating the message. We have a ruling that it is not debatable. However, a number of questions have been asked as to whether the procedures that have been followed are in order. Because a lot has been said, and because it is not a simple matter, I will bring down a ruling. In terms of Senator Murray's point, sometimes the ruling is that there is no point of order, or there may be a point of order. In any event, I will decide that to the best of my abilities and report to this place at the earliest possible time.

[*Earlier*]

PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

The Hon. the Speaker: Honourable senators, we have with us, from the House of Commons, a guest page. Jennifer Wight of St. Albert, Alberta, is studying in the Faculty of Arts at the University of Ottawa, specializing in mathematics. Welcome.

ORDERS OF THE DAY

STATISTICS ACT

BILL TO AMEND—THIRD READING—
DEBATE CONTINUED

On the Order:

> Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Chalifoux, for the third reading of Bill S-13, to amend the Statistics Act.

Hon. Lowell Murray: Honourable senators, for reasons which I explained to Senator Milne already, I was not in my place when she opened debate on third reading of this bill. However, as I assured her, I ran the next morning to the Senate Web site and read her speech carefully in its entirety.

I do not think there is much I can add, either to her arguments for the bill or to the recital of its historical background, which, in the one case, were convincing enough, and in the other, so far as I know, completely accurate.

Following her speech, there were interventions, questions and comments on the part of Senator Comeau and the Leader of the Opposition, Senator Lynch-Staunton. Needless to say, I also read those with great care. It is to those matters that I would like to address myself briefly this afternoon.

The points they raised are substantive and important. They are serious matters that I grappled with in considering this bill; albeit, perhaps their considerations led them to a different conclusion on the bill from that which I have reached.

However that may be, I do not disagree with what Senator Comeau said in underlining, as he did, the critical importance of privacy as a right that Canadian individuals enjoy in this society. He disagrees, as I do, with what I take to be — although I am not competent to judge these matters — some kind of prevailing legal doctrine to the effect that one's right to privacy declines over time and, in fact, disappears with your death.

That may be prevailing legal doctrine, but I do not believe it is right. If it is the state of the law, we ought to fix it — change it and put it right.

Senator Comeau implies, and I agree, that the fact that the government collects personal information on individuals does not then make that information government information. It is still personal information of which the government, for good and sufficient public policy reasons, has custody. The government is, and ought to be, bound to protect the privacy of Canadian citizens on these matters. This information should only be made public in cases of pressing necessity, such as criminal proceedings and the like.

In his interventions, Senator Comeau identified flaws that perhaps exist in two acts, the Privacy Act and the Access to Information Act, that allow for the release of government files 25 years after they have been compiled.

• (1450)

To that, I would add the Personal Information Protection and Electronic Documents Act, which we passed several Parliaments ago. That act touches upon personal information collected about an individual, mostly by business firms, for commercial purposes. I am referring to the information collected about you and me by credit card companies, or the information, for example, that pharmacies collect or have to collect about you or me personally. A provision in that act, which I tried to have removed in a desperate last-minute amendment, makes it possible for the personal information collected for commercial reasons to be released 20 years after your death. I say never. Other than criminal proceedings and the kind of things that need to be demonstrated in court, I cannot conceive of the circumstances in which personal information relating to you, collected for commercial purposes, ought to be released to the public even 20 years after your death. Why should your children and grandchildren have to explain or live with your past conduct or sins, if that is what is in the information? I will not rest easy until I see that provision deleted.

Therefore, I accept the validity and the urgency of the points that Senator Comeau has raised, and I will join with him in the months and years ahead to try to put some of these things right. We have our work cut out for us. Maybe we will be able to enlist colleagues from the other side. Perhaps some of them will volunteer to take up the cause that our former colleague Senator Sheila Finestone championed so passionately throughout her parliamentary career. We may be able to enlist the assistance of the Privacy Commissioner, although he appears not to share my view that the right to privacy should be written right into the Charter. Perhaps that is an impossible dream, but I draw the attention of honourable senators to the fact that in the early 1980s, during the constitutional discussions, both Prime Minister Trudeau and then Minister of Justice Jean Chrétien favoured the inclusion of a right to privacy in the Canadian Charter of Rights and Freedoms.

I accept all that Senator Comeau has said on the subject of privacy.

Bill S-13 relates only to personal information collected by the government in the course of a census. It deals exclusively with the census. A different legal regime applies to census information than to other personal information collected by the government, or so we thought until recently.

The legal situation relating to the census since 1905 consists of regulations passed pursuant to the 1905 and 1906 Census and Statistics Act. These provisions, generally, were written right into the Statistics Act of 1918, and further provisions were contained in legislation of 1948, 1970, 1971 and 1972. In previous debates, I have read the text of some of these provisions into the record, and I will not do so today. In a word, these provisions, regulations and legislation assured the confidentiality of personal data collected by the government for the sake of the census.

That brings me to Senator Lynch-Staunton's intervention, which I recognize and respect as a principled position on his part. However, we must agree that alongside the legal regime that I have described, there were certain other provisions. One was the provision that these censuses had to be transferred to the National Archives "for future reference." Another was the 1983 Privacy Act, providing as it does for the disclosure of personal information in the hands of the government after 92 years.

The question with which several generations of parliamentarians and others have grappled is this: Do these later provisions qualify the previous law regarding census information? Do they overtake it? Do they trump it? No, said the Chief Statistician. No, said the Privacy Commissioner. No, said the Department of Justice, until recently. I should interject that there was a ministers' panel, appointed by Mr. Manley, I believe, when he was Minister of Industry, comprised of, among others, a former justice of the Supreme Court of Canada, Gerard La Forest. That panel had no difficulties with the legal consequences of releasing everything pre-1918, was less certain about 1918 and following years, and felt that, for greater certainty, legislation would be needed.

In any case, the Department of Justice has done, as I said at second reading, a 360-degree flip-flop in its opinion.

Let me read for honourable senators the statement of the Chief Statistician when he appeared before the Standing Senate Committee on Social Affairs, Science and Technology on Wednesday, April 9. It will give senators a good idea of the predicament in which Dr. Fellegi, the Chief Statistician, found himself. He says:

> ...one cannot ignore that there are conflicting legal opinions. In fact, it might well be that the legal opinion would say, everything considered, censuses should be released after 92 years without restrictions. That may well be what the courts decide.
>
> Certainly, the latest legal opinion we have from the Department of Justice says that is the better opinion. ...their latest view is that, as things stand now, from a purely legal perspective, the census may not be fully protected after 92 years. Some clarification is needed.

Now, if that is the state of the law as seen by the Department of Justice, senators will readily understand the predicament that the Chief Statistician found himself in after all the years of stating no to requests to opening it up, which led him to an agreement with the present National Archivist, with the present Minister of Industry, Minister Rock, and with Senator Milne, acting, as she was, on behalf of people interested in genealogy and historical research.

What is the compromise involved here? Let me back up a little. There was a previous compromise a couple of years ago. It involved Statistics Canada and the Privacy Commissioner, who was then Mr. Bruce Phillips, although the consensus agreement was endorsed by his successor, Mr. Radwanski. In a nutshell, the compromise provided for access by individuals to the personal data in order to trace their family histories under strict conditions, and it provided access for historians in respect of peer-reviewed research, also under strict conditions.

When I spoke to Senator Milne's private member's bill, Bill S-15, that she brought in December 1999, and her private member's bill, Bill S-12, that she brought in February 2001, I opposed those bills but said that I could and would support a bill that contained the elements of the compromise agreement to which I just referred. I believe that Bill S-13 contains those elements.

• (1500)

Mr. Radwanski, the Privacy Commissioner, is not satisfied on that score. He says that the conditions in the new compromise agreement reached by Statistics Canada, the government, the archivist and Senator Milne are not as strict as they were in the original agreement, and he points out that the present agreement, as reflected in this bill, provides unrestricted access after 112 years.

The Chief Statistician was also a party to the previous compromise, and he supports the new bill. While he agrees with Mr. Radwanski that some ground was lost in the new compromise by the addition of the 112-year rule, he points out that there is a very important gain from his perspective in the new compromise. That gain is the requirement for informed consent henceforth. Informed consent means that you will have to sign your consent for the eventual release of this information, failing which it cannot be released. That provision was not present in the past compromise agreement that Mr. Radwanski supported, which is very important.

Again, I draw the attention of honourable senators to the testimony of Dr. Fellegi on that point before the Standing Senate Committee on Social Affairs, Science and Technology on April 9, 2003. He said:

> That is the difference between the two compromises. There was ground given on the access side and ground given on the protection side. On the protection side, it is informed consent for future censuses. On the release side, it is the 112-year and beyond unrestricted access.... That is the difference between the two compromises.

Later, addressing himself without realizing it to Senator Lynch-Staunton, he said:

> ... it is very easy to argue on the basis of principles. I could easily defend to not give any ground whatsoever on the confidentiality issue. Protect it forever. Do not compromise. Intellectually it is easy to defend that argument. It is much more difficult to defend intellectually a compromise. However, I fully support this compromise because I realize the value of offsetting public goods even though I am responsible for only one of those two public goods, statistical information. I am not responsible for the other one but I am a public servant and I understand the value of setting public goods. I fully endorse this compromise.

Honourable senators, these are the factors and that is the background that led me to support Bill S-13 for the reasons I stated when it was before us at second reading. These are the considerations and the background that led me to oppose amendments presented at the committee that would have destroyed the consensus agreement and which led me to move that the bill be reported without amendment, a motion which passed over, I think, three dissenting votes from the other side.

Honourable senators, these are the considerations that lead me to maintain my support for the bill at third reading and to commend it to your support today.

Hon. Gerald J. Comeau: My question for Senator Murray has to do with the fact that, as I understand it, the bill now authorizes the government to release, after 92 years, censuses from 1918 on, including the last census. In the last number of censuses in which I personally provided information to Statistics Canada an undertaking was given to me that this information would not be divulged. Through his support of this bill, is Senator Murray accepting that all of the information I provided in censuses that I signed by way of contract with the Government of Canada, which contract assured the confidentiality and privacy of the information I provided, can be released after 92 years, in spite of the fact that I may not wish it to be released?

Senator Murray: Honourable senators, I will make two points in response to my friend. First, not all of that information will be released after 92 years. What will be released is the tombstone information. I could state what tombstone information is, but I think my friend knows what it is.

Second, the reason the bill is being brought forward in this form and why those restrictions are on it is precisely because of the concern that without this bill the state of the law was such that we would have ended up with unrestricted access after 92 years to not only the tombstone information but to all of the personal information required to be given on the long form.

Senator Comeau: I understand that the information that is not tombstone information will become completely public after 112 years. In effect, 112 years from now the confidentiality contract is over.

Senator Murray: As I understand it, there will be unrestricted access after 112 years. However, Senator Comeau will be responding to quite a few censuses in the future and will have the opportunity to refuse to sign the informed consent order. In that case, the public will not get access to any of the information filed about him.

Senator Comeau: One thing has greatly bothered me throughout this entire process. I commend Senator Milne for the tremendous campaign that she and her group have mounted. I understand the importance of genealogical information. I am extremely interested in the tracing of ancestry myself.

The premise of the lobby campaign was that this information should have been released. The letters I received and many of the petitions that were presented in this house were based on the premise that there was no legal restriction. Senator Milne spoke last week about government files being completely open after 25 years. If there were no restrictions on the release of such information, why did we need legislation? If this was only a legal question, why was it not taken to court where lawyers could deal with it rather than having Parliament retroactively, on behalf of the government, break a promise, which is what we are doing with this legislation? This is not a legal issue. This is legislation retroactively breaking a promise, an undertaking of government, with its citizens. If it is a legal question, take it to court and let the lawyers deal with it and earn their dollars.

Senator Murray: Honourable senators, no longer being on the inside of government, it is rather difficult for me to answer that question. However, from the outside, the situation seemed to me to be the following: The government — certainly the Chief Statistician — declined, for many years, to open this information up to researchers, and he was supported in his view by the opinion, at the time, of the Department of Justice.

• (1510)

Since that time, the Department of Justice revisited their opinion in light of the provisions that require that the census information be sent to the National Archives, most of whose material is open to the public, and in light of the provisions of the 1983 Privacy Act that government information generally be released after 92 years. The Department of Justice revisited their opinion and came up with a new opinion that left Statistics Canada and the integrity of Statistics Canada very vulnerable to just the kind of litigation to which my friend has referred.

I do not want to put words in anyone's mouth, but this is my interpretation. In order to avoid a worse outcome, they sat down and did the compromise that is reflected in Bill S-13, and which, for all those reasons, I continue to support.

Senator Comeau: Senator Milne said last week that government files are available to Canadians anyway after 25 years. It had not dawned on me that a file in government archives, somewhere, could be opened up under the Access to Information Act. From what I understand, any Canadian can apply to see files after 25 years, income tax returns excluded. My understanding is that this applies to an application for a student loan or a gun licence, to all kinds of files, those that we know about. However, what would happen with access becoming available to files after 25 years, files we do not know about? That issue might relate to a concern the honourable senator mentioned earlier about the privacy of Canadians. We might want to look at this area.

Senator Murray: I read what my friend had to say about that when he intervened following Senator Milne's speech last Wednesday. I have not had a chance to delve into the relevant statutes to that extent.

I will say that the Access to Information Act, on the one hand, and the Privacy Act, on the other hand, must be read together. That would be my answer to the question in a general way. There is the 25-year rule. It even affects cabinet documents, minutes of cabinet meetings and so forth, as I have learned somewhat to my sorrow or expect to learn to my sorrow. I did not realize that was the case until one day I woke up and saw that all the minutes of the Trudeau cabinet meetings of 1967, the de Gaulle visit, were laid out on the table in 1992, 25 years after the event. Quite a few people who were in that cabinet were still in politics, and their private cabinet comments were put out for the edification of the public.

The Access to Information Act and the Privacy Act will have to be read together. I am very sensitive to the issues that my friend raised, such as applications for student loans, where some of the questions are quite intrusive, and the application for the registration for long guns. That is what I meant when I said that I think we had better get at this in the coming months and years.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): The information that one gives under student loan applications or so many of these other areas is effectively voluntary. One supplies the information if one wants to apply for a student loan. Is it not true that one is obligated to provide the information that is sought by Census Canada, and if it is not given, one could end up in jail?

Senator Murray: Yes, that is true, although I do not think that we should attach any less importance to the privacy of information that is given voluntarily in the course of applying for a student loan or to register one's gun than one does to the information collected on the census.

I think I said in committee that there are penalties. On the very day we were meeting, April 9, I went, as is my custom, to the Web site of the *Cape Breton Post* and found that a Cape Bretoner had refused to give some of the information required of him in the long form because, he said, "The government has already got that. Various departments have come to me asking for this. I am always filling out forms. To hell with them. I am not giving out any more information." The judge told him that that was not a sufficient reason for not filling in the long form census and fined him several hundred dollars and let him go.

Senator Kinsella: Honourable senators, Senator Murray has drawn to our attention a complete change of view in the Department of Justice on this file. I think that change of view spoke volumes to Dr. Fellegi, the Chief Statistician. I think he found himself in the position of almost being abandoned. With the original decision, he had a good margin of comfort.

Would Senator Murray not agree that our Chief Statistician, who is one of the top civil servants we have in Canada, has the main preoccupation of protecting the integrity of the census and that he would not want anything done to diminish the integrity of the census? He had this protection, as it were, within the machinery of government when the Department of Justice was of the original view. Why does the honourable senator think that the Department of Justice made such a radical, 360-degree change to its view?

Senator Murray: Honourable senators, I have no idea. That is the short answer. The longer answer is that they may have been going on an opinion that predated the Privacy Act of 1983 and that they had not really brought it up to date sufficiently. I will give them the benefit of the doubt. In any case, they did a major flip-flop. Of course, those opinions are not available to us. Normally, the opinions law officers provide to departments of government are not made public.

Hon. Lorna Milne: I gave them to the Social Committee.

Senator Murray: I gather the opinions are somewhere on file. I just took it for granted that, like all legal opinions, they are not available to Parliament. I did not get a chance to examine them. Perhaps we should do that at some point.

Senator Kinsella: The Chief Statistician testified very clearly that, at the end of the day, he can live with it — indeed, more than "live with." He testified directly that he supports the bill as a public servant. I do not know what other position he could have taken.

Perhaps, more important, was the testimony of the Privacy Commissioner. I put a question to him, and I would like Senator Murray's comment. The question was this: When we are dealing with a compromise, such as the compromise agreement worked out by the different players in this case, does not the right in question become the loser? Was that not the testimony of the Privacy Commissioner? The compromise agreement upon which this bill is based is a compromise in which the Privacy Commissioner sees the right of privacy as the loser.

• (1520)

Senator Murray: The Privacy Commissioner made the point in his testimony on April 9 that retroactivity is being introduced here. However, retroactivity was being introduced in the compromise to which he agreed a couple of years ago. The principle is the principle. He is right. Privacy is not as absolute as we thought it was when we had another opinion from the Department of Justice.

As Dr. Fellegi pointed out, in any compromise there are gains and losses. What we lost on one side from the previous compromise, by somewhat lesser conditions, we gained by this provision for informed consent henceforth. Your information will never be released unless you sign an informed consent form. As was pointed out on a previous occasion, that is the process they have in Australia.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I want to remind this chamber that years ago, under Mr. Pearson, the government introduced the social insurance number. We were reassured then that its only purpose was for limited government purposes. I remember Mr. Diefenbaker pointing out that once you introduce such a notion, it will become widespread in no time. That is what has happened to the social insurance number today. It is public. The first question every credit institution, every credit card company or anyone who wants information on you asks is: What is your social insurance number? With the number, they gain access to all your credit information, and more, even though by law they are not entitled to do so. Canadians are not informed by their government that they have a right to limit the information they give.

I sense, in this bill, that we are opening the door for people to come around and say, either later this year or in a few years, "Let us give them the census data right away." I will not be here at the time, but I hope my anxieties will be proven false.

I have read the transcripts of the meetings that the committee held. I did not sense much enthusiasm for this bill. The word "compromise" comes back repeatedly, which does not give me much comfort. I am more impressed with the categorical statement made by the Privacy Commissioner, which I found nowhere being challenged. On April 9, he said before the committee:

> This bill, if passed, will violate a promise repeatedly made to Canadians by successive governments and eliminate existing privacy rights retroactively.

I would like to ask Senator Murray how we can justify breaking such a pledge that has been made to Canadians successively over the years by many governments.

Senator Murray: As I said, I appreciate the principled position taken by the Leader of the Opposition. As I have also said, I challenge the Privacy Commissioner in these words. What he says of this bill was true of the compromise that he agreed to a couple of years before.

My friend says that as soon as he hears the word "compromise" he becomes leery. The country was built on compromise. I have tried to explain that the Chief Statistician, who has been at the forefront in defending the absolute privacy of this information, saw the writing on the wall. With the change in the legal position of the Department of Justice, he saw the real possibility that the courts would find, absent any further intervention by Parliament, that there was to be unrestricted access to census information after 92 years. Thus, he was driven to this compromise, which he supports, all in all, pretty much without reservation. He implored us not to pass the amendments that were before the committee at the time, but he gave his full support to the compromise to which he was a party, and to the bill, which reflects that compromise.

On that basis, and my own reading of the situation over the period of several years that Senator Milne has been bringing in her private member's bills, I came to the conclusion that I for one ought to support the bill, which is what I am doing.

Senator Lynch-Staunton: To be clearer, perhaps I should have said that I do not believe in compromise when it comes to the basic rights of the individual, and certainly the basic right of privacy. The fact that Senator Murray has shown more than passing interest in having privacy introduced into our Charter, I think, probably indicates he agrees with me more than he would like to let on.

Senator Robichaud: That is interpreting.

Senator Lynch-Staunton: I would like to ask Senator Murray one other question. If passed, this bill will become law. However, it will only be implemented through the regulatory process. By clause 2 of the bill, the Governor in Council may prescribe the forms, categories, et cetera. The success or failure of this bill, if it becomes law, will be on the regulations.

Has the committee asked to see a draft of the regulations, before the bill is proclaimed, to ensure that whatever the restrictive nature of this bill may be, it is respected in the regulations?

Senator Murray: Honourable senators, I generally agree with the point that is made inferentially by the Leader of the Opposition and that was made more directly by the Privacy Commissioner, namely, that I prefer to see things in the legislation rather than in regulations.

However, this is what we have. I will say that, to its credit, the government, even before second reading, put out, if not all the regulations, I think most of the regulations that will apply to this act. Those regulations include even the application forms that one would have to sign if one wished to delve into one's ancestry. The draft application forms are there as part of the record. They were released by the government. Also included are the application forms that historians would have to fill in to do historical research.

I think it is fair to say we have most of the regulations. All of the definitions and so on are contained in the various materials that the government put out. Most of it was provided even before second reading, although some of it has been provided in the period since then. In other words, they are available.

On motion of Senator Lynch-Staunton, debate adjourned.

[*Translation*]

OFFICIAL LANGUAGES ACT

BILL TO AMEND—SECOND READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Morin, for the second reading of Bill S-11, to amend the Official Languages Act (promotion of English and French).—(*Honourable Senator Chaput*).

Hon. Maria Chaput: Honourable senators, I rise to endorse Senator Gauthier's words on the subject of his Bill, S-11, which concerns the accountability of governments with respect to implementation of section 41 of Part VII of the Official Languages Act.

I listened to Senator Beaudoin's speech, expressing his position that section 41 of the Official Languages Act is declaratory and not simply directory. Thus, honourable senators, I find myself debating a bill that, in my humble opinion, ought to reflect the real commitment of the government and its institutions to the development and vitality of official language minority communities.

• (1530)

My comments today are based on my own community experience as a francophone in Western Canada and on the fundamental importance of having legislation that will allow us to intervene when it is not complied with. Intervening at the Supreme Court is not our first choice, but when it is a question of ensuring respect for our rights, we will do so. Take, for example, the Forest decision in Manitoba, which enabled us to gain the power to manage our French schools.

Until now, the current legislation has been found wanting when it comes to ensuring continuity in the various initiatives established to support the development of our communities. The measures now in place depend on the goodwill of the people in charge and fall by the wayside when the individuals who initiated them move on. That is our lot, because there is no recognized official recourse regarding compliance with Part VII of the Official Languages Act.

Our only recourse is to the Office of the Commissioner of Official Languages. We find ourselves lodging complaint after complaint, in a long, difficult process. Having worked for a number of years with public servants in various federal departments, I have noticed that public service managers, as a general rule, do not have a good understanding of sections 41 and 42 of the Official Languages Act.

Many of them simply see them as a list of minimum requirements for providing services in both official languages. As a rule, they feel that promoting this linguistic duality is mainly the responsibility of the Department of Canadian Heritage and not a concern for them.

In any case, francophone initiatives that require funding from their respective departments rarely meet their criteria. They are constantly turned down. For years, we witnessed policies and programs for francophones outside of Quebec that were developed solely based on assessing the needs of the majority and which, therefore, contributed in large part to our assimilation.

Our communities had to fight for a few crumbs from programs that were ill-suited to their situation. Despite the implementation framework that was announced in 1994 targeting some 27 federal departments and agencies, the government did not recognize a responsibility to act under Part VII. The federal government's problem may not lie in its will, but in enforcing this will, which requires that the obligations of these departments be recognized, in addition to obligatory practices to be followed in enforcing Part VII of the Official Languages Act.

We must constantly monitor the situation and lodge complaints with the Official Languages Commissioner — for example, an ad for an RCMP position that does not list as a requirement knowledge of both of the country's official languages; Air Canada and its signage; Health Canada and its refusal to support initiatives for francophone seniors; Canada Post, which has closed small post offices in rural francophone communities and which has established an agreement for delivery services with the private sector. Are services in French being protected?

The impact on our development is terrible. There is hardly any access to research and development programs to ensure sufficient data on our communities. There is very limited access to government programs and services. Responsibilities are being downloaded to the provinces and other levels, including the private sector, without any guarantees for the protection of the rights of official language minority communities. Large amounts of money are being transferred from the federal government to the provinces without any requirement for them to serve their minority communities.

Furthermore, since Part VII of the Official Languages Act is not recognized as requiring that federal bodies work together with official language minority communities, we have not benefited from the arrival of a great many immigrants, who have swelled the ranks of the majority, because there is no appropriate selection policy and integration program.

We are also still not involved in major federal initiatives such as those in the voluntary and community sector. Is it any surprise, then, honourable senators, that the percentage and the actual numbers of the francophone population in Canada continue to drop, in Western Canada particularly?

Francophones outside Quebec are not second-class citizens. They are entitled to develop and flourish in their own language. The fact is that French Canada is still forgotten too frequently in the federal vision based on recognition of the two linguistic entities, which are unfortunately perceived as being an anglophone Canada and a francophone Quebec.

The Honourable Stéphane Dion has just tabled his action plan and acknowledges that official language communities in minority situations have different needs, depending on their state of development. He proposes an administrative framework for implementing Part VII of the Official Languages Act.

This offers a glimmer of hope, although the concerns still remain, because the act is still perceived by governments as declaratory and not directory. So far, it has proven inadequate to ensure our survival and support for the development of our communities. The federal departments that are targeted will never manage to do that if there is no acknowledgment of their obligation to do so.

The debate surrounding the directory character of section 41 must address three important points: an obligation for senior management to report — in other words, accountability; an obligation to consult the communities; and an obligation to reach quantifiable results based on common objectives.

That is the message I wanted to deliver today, in support of Senator Gauthier's bill.

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

Hon. Senators: Agreed.

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

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

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

On motion of Senator Robichaud, bill referred to the Standing Senate Committee on Official Languages.

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, Wednesday being a day when some committees meet at 3:30 p.m. and some at 4 p.m., I ask that all remaining items on the Order Paper stand at the next sitting in the order in which they are today.

[*English*]

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

Hon. Terry Stratton: Honourable senators, there is one particular item on the Order Paper that is at day 15. Is the house recommending that all remaining items stand?

The Hon. the Speaker: Is it agreed, honourable senators, that the remaining items on the Order Paper stand in their place until the next sitting?

Hon. Senators: Agreed.

The Senate adjourned until Thursday, May 8, 2003, at 1:30 p.m.

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