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(HANSARD)

Wednesday, May 18, 2005

THE HONOURABLE SHIRLEY MAHEU
SPEAKER *PRO TEMPORE*

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THE SENATE

Wednesday, May 18, 2005

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

Prayers.

SENATOR'S STATEMENT

NOVA SCOTIA

DALHOUSIE MEDICAL SCHOOL
MUSIC-IN-MEDICINE PROGRAM

Hon. Jane Cordy: Honourable senators, recently I had the opportunity to attend a concert, entitled "Tuned In To Words," at the Alderney Landing Theatre in Dartmouth. This concert was in support of the Margaret and John Savage Endowment Fund.

However, honourable senators, I want to speak today about the concert performers. In the fall of 1998, the music-in-medicine program was started at Dalhousie Medical School. Dr. Ron Stewart, a former health minister in Nova Scotia, is the Director of Medical Humanities at Dalhousie Medical School. Dr. Stewart is also the founder of the music-in-medicine program.

The program brings medical students, medical educators, doctors and members of the medical community together in song. The Dalhousie music-in-medicine program raises money for health-related causes.

Honourable senators, these medical students and their friends give so much of their time and talent to raise money for others. Despite end-of-term papers, exams and clinical obligations, they were not only willing but eager and energetic performers. The director of the "Tuned In To Words" concert in Dartmouth was a talented, enthusiastic young man, Jonathan Brake, from Corner Brook, Newfoundland, who is in his second year at the Dalhousie Medical School. He does a wicked impersonation of Sir Elton John.

Honourable senators, these young men and women have given so much to our community in Nova Scotia. They perform not only in the Chorale, but some are members of a chamber vocal group called The Ultrasounds, and some are in a men's sextet called The Testoster Tones. To quote Dr. Ron Stewart:

> Making music is a great release from the stress of medical school, but the Chorale does so much good in the community at the same time...and that makes us feel even better.

Honourable senators, a banner on the stage during the concert read "Good Music, Good Medicine." How fortunate we are that Dalhousie Medical School will graduate bright, enthusiastic, compassionate doctors who are using their musical talents to explore the humanistic aspects of medicine.

I wish to take this opportunity to thank Dr. Ron Stewart and the music-in-medicine performers.

[*Translation*]

ROUTINE PROCEEDINGS

CRIMINAL CODE
DNA IDENTIFICATION ACT
NATIONAL DEFENCE ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Lise Bacon, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Wednesday, May 18, 2005

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

TENTH REPORT

Your Committee, to which was referred Bill C-13, An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act, has, in obedience to the order of reference of Monday, May 16, 2005, examined the said bill and now reports the same without amendment.

Respectfully submitted,

LISE BACON
Chair

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

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

[*English*]

CANADA GRAIN ACT
CANADA TRANSPORTATION ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Joyce Fairbairn, Chair of the Standing Senate Committee on Agriculture and Forestry, presented the following report:

Wednesday, May 18, 2005

The Standing Senate Committee on Agriculture and Forestry has the honour to present its

SIXTH REPORT

Your Committee, to which was referred Bill C-40, An Act to amend the Canada Grain Act and the Canada Transportation Act, has, in obedience to the order of reference of Monday, May 16, 2005, examined the said bill and now reports the same without amendment.

Respectfully submitted,

JOYCE FAIRBAIRN
Chair

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

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

• (1340)

BUSINESS OF THE SENATE

MOTION TO RESUME REGULAR ADJOURNMENT PROCEDURE AND AUTHORIZE COMMITTEES TO MEET DURING SITTING OF THE SENATE ADOPTED

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a) and the order of the Senate of November 2, 2004, I move:

That today, Wednesday, May 18, 2005, the Senate continue its proceedings beyond 4 p.m. and follow the normal adjournment procedure according to rule 6(1); and

That committees of the Senate scheduled to meet today be authorized to sit even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

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

Hon. Senators: Agreed.

Motion agreed to.

STATE IMMUNITY ACT CRIMINAL CODE

BILL TO AMEND—FIRST READING

Hon. David Tkachuk presented Bill S-35, to amend the State Immunity Act and the Criminal Code (terrorist activity).

Bill read first time.

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

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

THE SENATE

TRIBUTE TO DEPARTING PAGES

The Hon. the Speaker *pro tempore***:** Honourable senators, I have the honour to mention the names of two more pages who will be leaving.

Janelle Boucher is a proud Nova Scotian from the small northeastern community of Monastry. Next year she will be busy finishing an honours degree in political science and communications at the University of Ottawa. She considers herself incredibly lucky to have been given the opportunity to participate in the Page Program and to meet all the fascinating people she has within the Senate and beyond.

Though one is never sure what the future will hold, Janelle expects that travel will be somewhere in her picture. She will undoubtedly never forget the kindness and smiles of honourable senators and hopes that we will not forget hers either.

Hon. Senators: Hear, hear!

[*Translation*]

The Hon. the Speaker *pro tempore***:** David Bousquet, from Saint-Hyacinthe, Quebec, recently finished his degree in science and philosophy.

[*English*]

He looks forward to using his newly available time to get involved a little more in local and provincial politics, especially with the Board of Education, to which he was elected two years ago. His experience as a Senate page will certainly inspire his leadership and values throughout his life.

Hon. Senators: Hear, hear!

ORDERS OF THE DAY

MIGRATORY BIRDS CONVENTION ACT, 1994 CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

BILL TO AMEND—THIRD READING—DEBATE SUSPENDED

Hon. Elizabeth Hubley moved third reading of Bill C-15, to amend the Migratory Birds Convention Act, 1994 and the Canadian Environmental Protection Act, 1999.

POINT OF ORDER

Hon. Willie Adams: Honourable senators, if I may, I would like to explain what happened in the Energy Committee yesterday during its review of Bill C-15. The committee was supposed to give the bill clause-by-clause consideration. I was not aware that

the committee room assigned for the meeting had been changed and was therefore delayed in getting to the right room. In the meantime, I was replaced by another senator and was unable to vote on the motion to deal clause by clause with Bill C-15.

The Hon. the Speaker *pro tempore***:** Senator Adams, order.

Senator Stratton, is it understood that Senator Adams has 45 minutes?

Hon. Terry Stratton (Deputy Leader of the Opposition): I believe that Senator Adams is raising a point of order.

The Hon. the Speaker *pro tempore***:** Senator, are you reserving 45 minutes for your time to debate this bill?

Senator Stratton: Are we on a point of order with respect to Bill C-15 or is this a separate point of order?

Hon. Bill Rompkey (Deputy Leader of the Government): We are on Bill C-15.

Senator Stratton: I would therefore like to reserve the right for our side to have 45 minutes to speak. Is Senator Adams recognized now as the first speaker on the Liberal side?

Senator Rompkey: No.

Senator Stratton: Therefore he has 15 minutes. It is a point of order.

The Hon. the Speaker *pro tempore***:** Point of order, Senator Adams.

Hon. Elizabeth Hubley: Honourable senators, I wonder if I might clarify if this is indeed a point of order on Bill C-15 or if it is a point of order on another matter.

Senator Adams: It is a point of order on what happened yesterday morning at the committee hearing.

Committee members received a message from the chairman last Thursday. Somehow the time was changed and the room changed on Monday night. We usually meet in room 257 East Block, and yesterday I was lost and could not find the committee. I found out it was over at the Victoria Building, but by the time I got there the bill had been passed by a motion, with no clause-by-clause consideration.

• (1350)

I have been in the Senate for 28 years and, according to the rules here, we usually do clause-by-clause consideration before we pass a bill. However, yesterday Senator Milne moved a motion to dispense with clause-by-clause consideration, and that motion passed, although the chairman was not happy about it, and Bill C-15 was passed.

I attended the committee meetings on Bill C-15, and I was very concerned about the criminal aspects of it. More than 300,000 birds die every year as a result of oil spills.

The committee hired an independent lawyer to ensure that it was on the right track. We also heard testimony from constitutional lawyers and lawyers who are expert in international law to ensure that this is good law.

It was a very strange thing that happened yesterday. It is not very often that we pass a bill without clause-by-clause consideration. In clause-by-clause consideration, the last thing to pass is the title. Once the title is passed, the bill has been passed by the committee, but, as a result of the motion that was passed yesterday, there was no clause-by-clause consideration.

I do believe that the bill is good law.

On Monday afternoon at 3:45, the Minister of the Environment gave a press conference with animal rights groups and said that the bill was still in the Senate committee and had not yet been passed.

I asked the witnesses before the committee from the animal rights groups whether they were involved in the drafting of the bill with the government, and they said that they were not involved. Therefore, why, on Monday afternoon, did Minister Dion give a press conference with animal rights groups to say that the bill would be passed in the Senate yesterday? I do not believe that a minister can announce that a bill has been passed until it has received Royal Assent. I believe that that is typical of the government, much as it likes to rewrite the past.

I attended every committee meeting and I can say that the committee made sure that it dealt with this bill in the proper way.

My point of order is that I do not know whether Bill C-15 was legitimately passed by the committee without clause-by-clause consideration.

Hon. Tommy Banks: Honourable senators, Senator Adams has raised two or three points, some of which have to do with the bill itself, which I will address later, if the opportunity arises during debate. However, I would now like to address his point of order with respect to the procedure of yesterday.

The practice to which Senator Adams refers is set out in Chapter 16 of Marleau and Montpetit on page 650, in a paragraph headed "Consideration of the Clauses," which refers to study and voting upon bills by committees of Parliament.

The first sentence says:

> Each clause of the bill is a distinct question and must be considered separately.

That is true, and I suppose it once might have been the case that that practice was always followed. However, it has become the case, with some frequency in my very limited and short experience here, that that is not always the procedure followed.

When we convened yesterday to consider the bill, the first motion that was made was that clause-by-clause consideration be dispensed with and that the bill be considered in its entirety and reported unamended to the Senate.

Based on the fact that Senate committees are masters of their own procedures, and since I had seen that process followed several times, including on contentious bills, I ruled that that procedure was, in fact, in order. The motion was passed by a vote of seven to three, and it was therefore determined by the committee that the bill would be reported to the Senate unamended.

As to the issue of the timing of the meeting, I apologize to Senator Adams and other senators for the inconvenience. However, we are governed in that case, as in all things, by the rules and procedures of the Senate. I had fully anticipated that there might be some time spent in discussion of that bill in committee and had, therefore, asked for an instruction from the Senate to sit yesterday morning, Tuesday, at nine o'clock, in addition to our regular Tuesday sitting time of five o'clock, because I thought we might need that much time.

I gave the notice of that motion, which is required to be given in advance of the motion, unless I were to receive leave of the house, last Thursday evening. The motion, therefore, to instruct the Senate committee to sit on Tuesday morning at nine o'clock was dependent upon the passage by the Senate of a motion at its sitting of Monday evening. "Motions" is, as we know, the last item on the Order Paper.

That vote occurred here in the Senate at 8:33 p.m., by virtue of which the Senate instructed the committee to meet Tuesday morning at nine o'clock. At 8:34 p.m., notice went out to every member of the committee that, first, the meeting was to take place at 9 a.m. Tuesday and, second, that the committee would meet in a room different from our usual meeting room, although a room in which we have met before. Every member of the committee received the notice in the same way at the same time. Therefore, I regard yesterday's proceedings as correct and in order.

Hon. W. David Angus: Honourable senators, I am quite interested in Senator Adams' point of order and am very sympathetic to the points he has made, having been present at the committee and being cognizant of what Senator Banks just stated, namely, that in addition to the three hours yesterday morning we may well have needed two hours yesterday evening to consider clause by clause this very complicated bill, which had been the subject of three months of study during which we had 12 sessions and heard 42 witnesses.

• (1400)

Honourable senators can imagine my surprise when I arrived yesterday morning in the correct committee room, only to find that Senators Adams and Lavigne were not present, even though their opposition to the bill was well known. Suddenly, a motion was made to dispense with clause-by-clause consideration of the bill, the result of which was total confusion. The record is clear. I have a copy of the transcript. I am sure Her Honour will wish to refer to the transcript in her consideration and adjudication on this motion.

The reality is that, for whatever reason, Bill C-15 was dealt with very quickly, before all senators who are members of the committee and who were prepared could be there to deal with the matter. The committee had even hired outside counsel to guide members in regard to clause-by-clause study. The motion to dispense with clause-by-clause consideration was passed by about 9:03. As I said yesterday, it was game over at that point. There was no discussion allowed.

I do not wish in any way to impugn the chairman; he was clearly surprised by the motion. The whole thing was over before anybody really understood what had happened.

Honourable senators, a long discussion ultimately took place and the bill was reported, because we were told by the chairman that it was quite in order that there be no clause-by-clause study. Rightly or wrongly, no one raised a point of order or a complaint at the time. Thereafter, the bill was reported with observations attached to the report.

Honourable senators will be able to see that this was not a normal procedure for a piece of legislation. I have not been here as long as many of my fellow senators, but I have been here since June 13, 1993, and as such have been in committees where we have been informed that a bill is a housekeeping matter. In such a case, at clause-by-clause consideration, the chairman or the deputy chairman will often say, "Honourable senators, are you prepared to move that we dispense with clause-by-clause consideration?" I acknowledge that that is a practice that I have observed happening from time to time in committees of this place.

However, with legislation as complicated as Bill C-15, with clear division on the committee with, lawyers having been retained and senators ready to debate amendments that had been prepared by the legislative offices in English and French that were to be introduced, although they may not have passed, those amendments ought to have seen the light of day.

Therefore, I support Senator Adams in his point of order. The events yesterday were outrageous. I say this without impugning the chair or the deputy chair, because it was an unusual circumstance. I must admit that many of us were in a state of shock well into later in the day, notwithstanding other events that occurred yesterday, honourable senators, which were equal causes of shock.

Senator Rompkey: Honourable senators, I do not wish to repeat the arguments and the narrative given by Senator Banks. The honourable senator adequately covered the process that was followed. That process was, as he has said, correct.

It is unfortunate that word did not reach Senator Adams' office, but I am satisfied that word was sent out after the procedure was followed. Senator Banks gave notice of his motion; he moved the motion. Once the motion was passed, notice was sent to senators' offices.

The whip did her job. The responsibility of both whips is to fill whatever gaps there may be in committees, particularly if clause-by-clause consideration of proposed legislation is taking place. Although Senator Losier-Cool anticipated that Senator Adams would be at the meeting in the morning, he did not get to the meeting because he was not able to read the notice that had been sent to his office.

Likewise, we were informed by Senator Lavigne that he would not be attending the meeting that morning. The whip replaced members on our side, as she does regularly and as is her responsibility. I am satisfied that proper procedures were followed in that respect.

I wish to read to the Senate from page 42 of *Rulings of Senate Speakers 1984-1993* on the point of order. A point of order was raised by Senator Murray in 1990 on exactly the same situation with regard to practices in committee. The Speaker ruled, in part, as follows:

> ... the essence of his point of order is that because the Banking, Trade and Commerce Committee did not conduct a clause-by-clause study of Bill C-62, the Senate should not proceed at this time with the consideration of the report.

The Speaker's ruling continues:

> Traditionally, Senate Committees are masters of their own procedure and some have made use of the clause by clause procedure while others have not.

The Speaker at that time ruled that he could not uphold the point of order raised by Senator Murray.

I have been here since 1995, prior to which I was in the House of Commons. It has been my experience that sometimes clause-by-clause consideration is followed while at others it is not. The committee in question is the master of its fate, and the decisions were taken correctly by Senator Banks.

It is unfortunate that Senator Adams was not at the committee at the time. I understand his concerns, and I share those concerns. Specifically, 300,000 birds are being killed a year. I was born on an island, and I know that these things happen in that region, too.

Your Honour, as far as I can see, there is no point of order.

Hon. John Buchanan: Your Honour, I was told by Senator Adams that he planned to raise this point of order, and I told him that I would be here. I apologize for not being here earlier; I had some visitors from Nova Scotia to look after. They are seated in the gallery. It is nice to have them here. I must say something about Nova Scotia whenever I have the chance.

An Hon. Senator: We have noticed.

Senator Buchanan: I have a few comments about the point of order. As I said, I was aware that Senator Adams planned to raise a point of order, and I know he is upset. I was present at the committee meeting.

Even if the procedure were properly followed, I believe that I am not out of line in saying that even the chairman was somewhat surprised when the motion was put to dispense with clause-by-clause consideration of the bill. On reflection, in addition to not proceeding to clause-by-clause consideration, I do not think we passed the title of that bill. That may be neither here nor there.

I have been in this place since 1991. Prior to that, I was in another legislature for 24 years, so I know procedures well. Honourable senators, I was taken aback by how quickly this matter occurred yesterday. There are two members who were not present who did arrive within minutes of the motion being made and passed. Three of us objected to the motion, but it passed nonetheless.

I sympathize with Senators Lavigne and Adams, who walked in, it is safe to say, three or four minutes after the motion was passed. I understand the chairman's reluctance at that time to revert to clause-by-clause consideration, because the motion was already passed.

• (1410)

It is unfortunate, because we also had legal counsel for the committee present to answer any questions raised during clause-by-clause consideration, but we never had the opportunity to do even that. We had other legal opinions. I suspect that, when the bill comes up, we will debate them. The way in which circumstances developed yesterday is unfortunate, including the fact that two members did not have an opportunity to become involved in the debate on the motion. It is also unfortunate that, as a committee, we did not get the opportunity to consider the bill clause by clause, including the title.

Hon. Marcel Prud'homme: My office was called, but I was at a meeting of the House of Commons Foreign Affairs and International Trade Committee, where, at the last minute, they invited the Senate Foreign Affairs Committee to engage in an exchange with the delegation from the Shura of Saudi Arabia. I was asked to give consent to sit after 4:00, and I did not rush to say no. I know it is late, so I can live with that.

However, it would distress me to see the Senate begin to do what I resented most in the House of Commons and what I resent is happening in the Quebec National Assembly. We arrive at the last minute — the last minute of what, I do not know. There is no last minute for me. An event that may take place tomorrow is irrelevant to what we are doing today in conducting our affairs. This is the Senate of Canada. We are not a replica of the National Assembly of Quebec or a replica of the other chamber. At the last minute, for reasons unknown today, we have had pushed on us a bill that may not have met the satisfaction of a man I respect so much, Senator Adams. This is not the way the Senate of Canada should conduct its affairs.

I wish to inform those honourable senators who think that bill can be passed today that there are other options — we can introduce an amendment — if that is the way you want to conduct your affairs. I have not spoken to the Conservatives about this proposal. I hope someone will put an amendment. The amendment will be debatable and votable, but the final vote on this issue will not be taken today because I will be the one who will say, "At the next sitting of the Senate."

Your Honour, I urge you to consider strongly the point I am making. Is there a national urgency to pass a certain bill that seems to be so important to Senator Adams? We see again a bill,

for the fourth time, on the question of the treatment of animals. Again, we see a lack of sensitivity. We keep talking about sensitivity to the First Nations. We are good at making speeches, but when it is time to apply sensitivity to their feelings, we send Her Majesty the Queen of Canada. The first people Her Majesty met in Saskatchewan were First Nations people. Are they only there for photo ops, or are they also there out of respect?

I put to you what has been said by Senator Buchanan and others, that we may consider the fact that, rules aside, we are the Senate, and we should not behave in such a manner. I have had strong feelings for Senator Adams ever since I met him years and years ago. He may not be as at ease here as some of you are. He and I have that in common. I am speaking to you in a language other than my first language, and I try to be at ease.

On that note, I thank Senator Hubley, who corrected me yesterday. I learned two new words. I also thank Senator Fraser, who corrected one of my words yesterday.

I keep going on every day. Do not make me upset, because I will go on for hours in French. On behalf of those who may not want to get up today, I hope we will finish this question of receiving bills at the last minute for reasons unknown to us, reasons that should not influence the Senate of Canada. Otherwise, we will be a replica of another chamber. God knows we have enough of one chamber and do not want two that look alike.

[*Translation*]

Hon. Raymond Lavigne: Honourable senators, I asked my secretary to call the whip's office to tell them that I would be away on Monday, because I had to be in Montreal to advocate in the Shriners Hospital file, but that I would be back on Tuesday morning. I left home at 3:45 to be here in time. Like Senator Adams, I had been told the meeting was being held in the East Block. I went there and then had to go to the Victoria Building.

Last week, the chair of the committee asked me whether I would be attending the meeting and informed me that he would be proceeding to the clause-by-clause consideration of Bill C-5. I am not saying the process is illegal. I am simply saying that we worked months on a file, and, as we were about to finish, a motion gets passed and, poof, it is all over. There is nothing more to be said. I had, however, been told that the committee would begin clause-by-clause consideration of the bill.

This morning my secretary had to call the clerk of the committee to find out whether it would be sitting tomorrow morning. The answer was no, the committee would not be sitting tomorrow morning. I called Ms. Hogan, the clerk, to find out whether I was still a member of the Senate Standing Committee on Energy, the Environment and Natural Resources. She told me I was, that I had simply been replaced yesterday. I do not understand anymore. Am I a member of the committee or not? When we miss committee meetings, the whip tells us we are not attending our committee meetings. We do, from time to time, have work to do outside Ottawa for causes such as the Shriners Hospital, for example. We have work to do on site as senators. It is part of our job, and I do it.

When I arrive at a meeting of my committee and everything is over, I do not understand why I have been made to work for months and then, all of a sudden, I am no longer a member. My secretary told the whip I would be present on Tuesday. When I arrived, I learned that I had been recorded as absent. When we are absent, the whip asks for our reasons and informs us that he will remove one day from the 21 we are allotted for absences. I spoke up this morning in the Quebec caucus.

Senators Gill and Watt often say they have a hard time being heard and understood. As senators, we have to be responsible for what we say and what we do. Senator Prud'homme put it very well earlier. It is important we remain Canada's upper house. If we have bills to adopt and clause-by-clause consideration is planned, we should do it. If there are changes in schedule or location, they should not be made at the last minute, after our staff has left for the day.

• (1420)

[*English*]

Hon. Noël A. Kinsella (Leader of the Opposition): Honourable senators, I wish to participate in helping Her Honour deal with a question of order as raised by the Honourable Senator Adams.

Notwithstanding the citation of Senator Rompkey, rule 96(7) states the following:

> Except as provided in these rules, a select committee shall not, without the approval of the Senate, adopt any special procedure or practice that is inconsistent with the practices and usages of the Senate itself.

That is the key point that I would like to make. If there is agreement in committee to expedite the clause-by-clause analysis of a bill, that is one thing. We often expedite matters in the chamber if there is unanimity. However, where it is clear there is no unanimity and an honourable senator who is a member of the committee wishes to move an amendment, he or she has the right to do so, just as we have that right when we are at third reading of a bill in the chamber.

Rule 96(7) says that we must operate in a manner that is consistent with the practices of the Senate. The practice of the Senate is always to give full opportunity to senators who wish to bring an amendment to a bill. We cannot bring an amendment to a bill at second reading; that is out of order. We cannot bring an amendment to a bill at first reading; that is also out of order. There are only two opportunities to bring an amendment to a bill, either at third reading in this place or at committee.

To bullishly cut off an honourable senator in committee who wishes to bring an amendment to the analysis of a bill where there is no unanimity to proceed with clause-by-clause consideration in a holistic fashion is to act in a manner inconsistent with the way

we should be acting. It is clear that honourable senators have the opportunity and the right to bring an amendment before the chamber. It is not to adjudicate as to what its fate would be.

Why would honourable senators go to a committee and hear all the evidence but never have an opportunity to digest that evidence and conclude their study by bringing forward propositions that certain clauses should be amended? It is totally inimical to the situation.

We can look back at other experiences where committees have used this practice. There may have been slippage. I have not done the research because I just heard the point of order a few moments ago.

We will find in most cases that there is an agreement in the committee to deal with clause-by-clause consideration in a holistic fashion. I do not think there has ever been an attempt in committee to block an amendment from coming forward. That is fundamentally wrong, and the principles contained in the rule that I have just cited would help the Speaker to make that clear. This is an important matter.

I happen to support the bill in question, but that is another matter. I am very concerned with the improper procedure that has occurred. There is no clarity as to whether clause-by-clause consideration can be done holistically when it is known that a member of the committee wants the opportunity to bring forward an amendment.

Let me turn to a second issue that has been raised, one that Her Honour should reflect upon. We have heard honourable senators tell us this afternoon that their judgment had been removed from a committee by the whip because they did not agree with the proponents of a bill.

Senator Losier-Cool: That is not what happened.

Senator Kinsella: Allow me to rephrase. As I heard it articulated here, some honourable senators felt they were not working on the committee. They had been elected to these committees, and I wish to underscore this point. As senators are elected by the Senate chamber to be members of committees, it seems to me that removing a senator from a committee should be done in consultation with the senator who has been elected to that committee and with the consent of that senator.

Another rule stipulates that the leader of either side can make substitutions. We need to look at that case. What if the senator who is being replaced does not want to be replaced, the Senate itself having elected that senator to the committee? That is a conflict that should be examined.

Hon. Lowell Murray: Honourable senators, I have heard enough of the debate to recognize certain discussions we had in this place on a point that I raised myself as long ago as 1990.

The traditional way that houses of Parliament dealt with bills after second reading was to give clause-by-clause consideration in Committee of the Whole. Plenty of us around here are old enough to remember when that was the practice, both in this place and in the House of Commons.

In relatively recent years, the Senate has taken to sending bills to standing or special committees for that purpose. We would like to think that the purpose of the committee stage is to hear from interested parties, and that is an important add-on to the process, but the purpose of the committee stage is to do clause-by-clause study.

Senator Cools: That is right.

Senator Murray: A few years ago, after a ruling which I believe was adverse and was wrong on this matter, I took the occasion to consult people who have served in both Houses of this Parliament. They must be nameless because I am not at liberty to say who they are. The point they made to me was that the clause-by-clause study of a bill is as essential to the parliamentary process as first, second or third reading. I conclude by saying that we can no more dispense with clause-by-clause consideration by majority vote than we can dispense with second or third reading by majority vote.

I hope that serious consideration will be given to the points that I have already heard raised and to the legitimacy of using a majority to dispense with an essential part of the parliamentary consideration of a bill.

[*Translation*]

• (1430)

Hon. Rose-Marie Losier-Cool: Honourable senators, I think it is important to clarify what happens when there are substitutes in committee. It often happens that a senator is replaced at a meeting. If he feels he cannot attend, he is not removed from the committee. Senator Lavigne is still a member of the committee, and if he did not get notice of tomorrow's meeting, it is because the chair has not called one. Senator Lavigne is still a committee member; he is not off the committee. He was replaced instead, at his request, because he was absent. He knew he would be late. Those are the facts.

Senator Lavigne: Honourable senators, Madam Whip tells me there is no meeting tomorrow, but I have one listed on my agenda for eight o'clock tomorrow morning. The clerk responsible for notifying members that there will be no meeting called everyone but me. My secretary had to call her to find out if there was a meeting. You can ask my secretary. The clerk truly did not call. All I knew was that I had to attend a committee meeting at eight in the morning.

The clerk called everybody with her apologies for my having temporarily been struck from the list of committee members, saying that I would now be put back on.

[*English*]

Hon. Anne C. Cools: Honourable senators, I would like to speak to this point of order, especially in support of what Senator Kinsella had to say. I also wish to thank Senator Murray for bringing forward his viewpoints on the question.

Honourable senators, a bill moves through this chamber as a thing in motion. The language is always about moving it along. There are many stages of the consideration of a bill, and Senator Murray is correct in saying that clause-by-clause consideration is one of those stages.

This current trend, as was encouraged by the motion of Senator Milne in the Senate committee on Tuesday, May 17, to dispense with clause-by-clause consideration is one of those continuing pernicious practices. Indeed, it is extremely pernicious and unparliamentary. These pernicious and mischievous practices keep creeping into our existence. I have raised many objections, in several committee meetings, to this particular practice.

A committee is a delegated authority. In other words, a committee exists to obey an order that is given to the committee, and the order is usually called an order of reference. The committee is ordered to study and to consider the matter, as Sir Reginald Palgrave would have said, so as to be able to assist the house in its conclusions.

Honourable senators, the only procedure a committee has of really proving to the entire house that all the members have wrapped their mind around every single word of a bill is the clause-by-clause consideration. This language has a very important history. They call it the "reading of bills" because members were supposed to read them. We know that we live in an era where many members do not read bills, but the term "reading" meant they literally had to read.

There was a time when first, second and third reading of bills were actually done clause by clause. Clause by clause is an indispensable part of consideration and debate on a bill because it is the only proof the entire house has that the committee actually did obey the reference and the commands that the house gave to it to study and to consider the bill.

Many senators have raised the important issues of being able to make amendments or not being able to make amendments. Those are all very important, but the fact of the matter is that the only way the committee can express its opinion on the bill is in its clause-by-clause consideration where all the members of the committee make a judgment on every single line of the individual bill.

Honourable senators, it is of great concern to me that many shabby habits are not only creeping into this place but galloping in. I deplore and condemn them. Whenever I am in a committee, I try, wherever possible, to make sure that the proper rules or practices are followed. The mere fact that this question is even before us is proving the point and proving the concern.

We hear quite often that a committee is the master of its own procedure, but the fact that a committee is the master of its own procedure means it is the master within the established rules and customs of the law of Parliament. A committee is not the master of its own affairs such that it can dispense with making a report to the house. If the other side is arguing that the committee can dispense with clause-by-clause consideration, I would argue that it can also dispense with reporting the bill back to the house.

If the committee can dispense with all of those things, then the chamber can dispense with a whole bunch of other things, including first, second and third readings. It is not beyond the realm of possibility.

There was a particular minister, a house leader on the other side, who was a great believer that three readings was a total waste of time.

Senator Mercer: Name him.

Senator Cools: He shall remain nameless.

Some of these customs and practices are centuries old. All practices around the stages of a bill and the stages that bills should go through in terms of first, second and third reading can be dated. I have been able to find references to three readings dating back to the 1300s.

It is improper and impossible to argue, quite frankly, that shabby performance or that shoddy practices in committees can produce good and fine work.

Honourable senators, in closing, I sincerely subscribe to the notion that clause-by-clause consideration is an essential part of the study of this bill and that the committee does not have within its powers to dispense with it because it only has powers that the house has given it, and this house has never given a committee any powers to dispense with clause-by-clause consideration.

• (1440)

I would go a little bit further, honourable senators. I would say that to dispense with clause-by-clause consideration of a bill is to defeat the order from the house and would disqualify and disable the bill from proceeding any further, because a very critical stage in the review of the bill has been ignored.

Honourable senators, I would like us to understand that many of these kinds of practices have become commonplace. I wish that we could wrap our minds around this whole phenomenon. This is a very special place. We work within a set of trusts that have been transmitted to us for many centuries. We have a duty to uphold those trusts and to bring forth legislation that has received proper consideration by all senators.

Honourable senators, many senators raise Speakers' rulings in this place. My experience is that many Speakers' rulings are quite mercurial, fluid and often do not speak to the law of Parliament, but rather, to the political masters of the Speakers. I would urge

Her Honour today to understand very carefully that these dimensions of the consideration of a bill are indispensable to the proper operation of a House of Parliament. If we dispense with those, we have dispensed with things parliamentary. It is a serious problem.

The Hon. the Speaker *pro tempore***:** I suggest that we go very briefly to a second round, as long as honourable senators keep it brief. I have heard quite a few important recommendations.

Senator Banks: Honourable senators, some of us have been misunderstood. We have gone off in a slightly wrong direction here and have to get ourselves back to the question, which is, as I understand it, whether this bill can proceed properly. That is the question. If I understand Senator Adams' point of order correctly, it is that we should not now proceed with this bill because the proceedings yesterday were out of order.

I want to make a couple of points about that view. First, as Senator Lavigne can plainly see, there is no difficulty standing up and being heard in this place, on the part of any of us. All we have to do is stand up and speak. The second thing is that it is not possible that a notice was sent out indicating that the meeting of Tuesday morning at nine o'clock was to be held in room 257 of the East Block. That is not possible. I know for a fact that did not happen.

I apologize again for the inconvenience, which was caused by the procedural necessity of giving notice of a motion and at the next sitting moving the motion, which occurred at the end of the sitting, less, as it turns out, than twelve and a half hours before the beginning of the meeting, but those are the procedures of the house.

The second thing is that the Leader of the Opposition characterized it correctly when he referred to the observance of the question of clause-by-clause consideration, or non-observance, as a matter of slippage. I think that is a perfectly good term. We perhaps have slipped in that respect. However, the rule to which the Honourable Leader of the Opposition referred said that we were constrained in our operations in committees by the practice of the Senate, including its committees, rightly or wrongly, of from time to time not proceeding clause by clause. Whether that is right or wrong is not part of the point of order.

Senator Rompkey quoted the Speaker's ruling from the *Rulings of Senate Speakers* of 1990, and this is what Senator Murray referred to. I want to read something further from it. The argument was that the Senate should not proceed further after reporting with the consideration of that report. The Speaker said:

> As some senators noted ... it appears that this procedure —

— by which the Speaker meant clause-by-clause procedure, literally —

> — has not always been followed by Senate Committees. Traditionally, Senate Committees are masters of their own procedure and some have made use of the clause by clause procedure while others have not.

Here is the cogent part, honourable senators, in support of my argument that there is no point of order:

> The Chair is not being asked to decide whether or not Senate committees should study bills clause by clause.

That is not the question that has been asked. I resume the quote:

> It is more proper that this question be decided by our Standing Rules and Orders Committee and by the Senate as a whole than by the Speaker. The Chair is being asked, however, to decide the question that because a certain practice or rule was not followed in a committee, should a subsequent proceeding flowing from the deliberations of the committee be delayed?
>
> As I ruled earlier today ... it does not appear feasible that a proceeding can be prevented from happening simply because a question of privilege, or in this case a point of order, has been raised regarding alleged infractions of the rules or practices of the Senate by a committee or its Chairman.

I will skip several paragraphs and end with the quote that Senator Rompkey referred to earlier.

> I cannot uphold the point of order raised by Senator Murray.

That is exactly the same point of order that I understand has been raised by Senator Adams. Therefore, honourable senators, there is no point of order.

Senator Day: *Res judicata*.

Senator Angus: Honourable senators, I would respectfully disagree with our colleague Senator Banks and I would say, once again, having heard the arguments, which I found very persuasive in favour of this point of order, I believe that we need to find a solution to a difficult situation.

If one, as I am sure Her Honour will do, reads the transcript, she will see what transpired yesterday. I would simply share with honourable senators who have not read the transcript that I, as temperate and as calm an individual as you know me to be, characterized the proceedings as a kangaroo court. It was very, very bad, and it shocked my very sense of natural justice, honourable senators. The very principles of natural justice were violated, in my view. I had amendments and everyone knew I had them. They were in my hands, translated, and there were copies for everyone, even the poor senators who had gone to another building.

What I suggest to you, Your Honour, in seeking a solution is that the logical conclusion to this well-founded point of order is to refer the bill back to the committee with an instruction that we carry on with clause-by-clause consideration, and let nature, the proper legislative process, unfold as it is decreed in the rules.

One last comment on the alleged precedent that Senator Murray was personally involved in some years ago. I think you should take note, Your Honour, of Senator Murray's statement that that was an incorrect ruling for reasons which he cogently outlined to you.

• (1450)

Quite frankly, we did not even approve the title of the bill, let alone have clause-by-clause consideration. I understand from those who are more learned than I in the rules of this place and the precedents relating thereto that this, in itself, eviscerates the process. I submit that this bill is not properly before this chamber at this time and should be referred back to committee.

Senator Adams: Your Honour, I do not want to say too much. I have a copy of Senator Murray's point of order on September 26, 1990.

Beginning with what happened last Thursday morning during the committee meeting, Senator Milne put forward a motion for clause-by-clause consideration of the bill. However, the chairman said the deputy chair was not available; she was in Newfoundland with another committee. Senator Lavigne and I voted against Senator Milne's motion last Thursday morning that clause-by-clause consideration of the bill would take place at the next meeting of the committee. Yesterday morning, the committee moved to clause-by-clause consideration of the bill.

I wanted to ensure that the committee gave the bill clause-by-clause consideration because we heard from 42 witnesses, many of whom did not agree with Bill C-15, which has to do with international law.

Senator Murray's point of order on Bill C-62 in 1990 concerned the thirteenth report of the Standing Senate Committee on Banking, Trade and Commerce, the subject matter of which was international law. Shippers in England came here to explain to the committee how the system worked. We did not only hear from Canadians. In this case, we are talking about something that is international in nature, not only about Canadians. I think Bill C-15 is a little different from Bill C-62, as are the Speaker's ruling in 1990 and Senator Milne's recent motion.

I say again to both the leader and the whip that there are rules in the committee. The chairman must wait for a quorum, which he did not do. I was replaced by another senator, and someone took the place of Senator Lavigne, without notice to the chairman that I would not be there. If I cannot attend a committee, I can let the whip know and someone can replace me. However, the whip did not do that. When I arrived late, the other senator was already there in case I voted against the bill. If I had wanted to vote against the bill, I could have made my concerns about the bill known here. However, I did not do that, because I was not going to vote against the bill yesterday. I just wanted to make sure that we heard from our legal counsel, Mr. Gold, and from Mr. Sharpe, as to the international law of shipping and its implications for this bill.

I only wish to add my concern that the committee should have conducted clause-by-clause consideration of this bill. That is proper procedure according to our rules. I think we should not say, "I am a friend of the minister and he wants to pass this bill today." We all have friends and we want to make sure we do a good job. I have been here for many years and this has happened to me twice, in particular with respect to the Tuktut Nogait National Park bill quite a few years ago. As everyone knows, I opposed that bill for the simple reason that we cannot protect animals in a park because they are free to move anywhere.

I do not know how the department came up with the figure of 300,000 birds killed each year by oil. The Sierra Club came before our committee and I asked them, "How many members do you have?" I was told, "This year, we have 300,000 members." That is the same number as birds being killed every year. That is strange. I asked them how they came up with that number, but they could not give me an answer. I find that difficult to understand.

Honourable senators, something must be done, either in clause-by-clause consideration in the house or in committee.

Senator Murray: Honourable senators, I want to reinforce one or two points. The issue here is not whether a committee or the Senate is the master of its own rules. I think we all accept that we are the master of our own rules and procedures.

However, in just about all the cases with which I am familiar, clause-by-clause stage is dispensed with by unanimous consent. The issue here is whether this vital stage of the legislative process can be dispensed with by majority vote, thus precluding an honourable senator who was standing, I am told, from putting forward a sheaf of amendments that he wanted to propose.

On its face, it is outrageous that the majority should be able to do this. I think very serious consideration must be given to this matter. We ought not to be bound — and we are not bound — by the ruling given by Speaker Charbonneau in 1990. The Senate will be aware that our practice here is to accept as a precedent a Speaker's ruling that has been upheld after an appeal. My recollection is that there was no appeal of Speaker Charbonneau's ruling. Therefore, Her Honour is at complete liberty to do the right thing.

Senator Kinsella: Honourable senators, I want to place on the record several citations from Beauchesne's 6th edition, which Her Honour no doubt will find helpful.

On page 205, paragraph 688 reads as follows:

> The function of a committee on a bill is to go through the text of the bill clause by clause and, if necessary, word by word, with a view to making such amendments in it as may seem likely to render it more generally acceptable.

On the same page, paragraph 690 reads:

> Unless the committee otherwise orders, the text of a bill is considered in the following order:
>
> (1) Clauses.
> (2) New Clauses.
> (3) Schedule.
> (4) New Schedules.
> (5) Preamble (if any).
> (6) Title.

Paragraph 691(1) states:

> The clauses of a bill in committee must be considered in their proper order; that is, beginning with Clause 1...

Furthermore, page 206, paragraph 694, reads as follows:

> Amendments may be made in every part of a bill, whether in the title, preamble, clauses or schedules; clauses may be omitted; new clauses and schedules may be added.

• (1500)

Clearly, the whole of the procedural literature is indicating and envisaging that the opportunity to bring amendments forward must be respected by the committee. I would commend those citations to Her Honour.

Senator Banks: If I may, I would ask Senator Kinsella to reread the paragraph in the first citation to which he referred that begins with the word "unless."

Senator Kinsella: Yes. It is paragraph 690:

> Unless the committee otherwise orders, the text of a bill —

Senator Prud'homme: Since we have been told by our honourable colleague, Senator Angus, that, in the urgency of passing Bill C-15 yesterday in committee, the title was not voted on, I just wanted to ask, what are we talking about now? There is nothing in front of us if the title has not been passed. Am I clear?

I am sure Mr. Speaker must be happy to be out of the Senate today.

Senator Cools: What is before us?

The Hon. the Speaker *pro tempore***:** I should like to thank honourable senators for their comments on this point of order. I would ask honourable senators to indulge me, to give me permission to leave the chair for about 15 minutes, in order to come back with a ruling as soon as possible.

Hon. Senators: Agreed.

Senator Prud'homme: Take the day off!

The sitting of the Senate was suspended.

• (1520)

The sitting of the Senate was resumed.

The Hon. the Speaker *pro tempore***:** Honourable senators, I will proceed with my ruling on the point of order of Senator Adams. Bill C-15 was given second reading in the Senate on February 2, 2005. It was referred to the Standing Senate Committee on Energy, the Environment and Natural Resources. The committee held 13 meetings and heard the testimony of more than 40 witnesses. At its meeting yesterday, the committee adopted a motion to dispense with clause-by-clause consideration of the bill. The bill was reported by the committee on May 17, yesterday, without amendment. The Senate then adopted an order to have the bill considered at third reading at the next sitting of the Senate.

Traditionally the committee is regarded as the master of its own proceedings. At the same time, rule 96 (7) provides that:

> ...a select committee shall not, without the approval of the Senate, adopt any special procedure or practice that is inconsistent with the practices and usages of the Senate itself.

The purpose of the reference of a bill to a committee is to allow for detailed examination of the bill, which usually includes clause-by-clause as well as the hearing of witnesses. As Senator Banks noted in citing Marleau and Monpetit, clause-by-clause consideration is a practice that allows members to propose amendments to a bill as the committee proceeds through its consideration of the bill.

In making my ruling, I need to consider various issues. A motion that has the effect of preventing members from moving amendments, a fundamental purpose of the reference by the Senate, strikes me as irregular. However, it is difficult for me, as Speaker, to take retroactive action on the proceedings that appear to have taken place in the committee, given that the Senate adopted yesterday the order to proceed to third reading today.

It is important that all senators be mindful of the right possessed by each senator who is a member of a committee to propose amendments as they see fit. A motion that prevents senators from exercising this right seems to me to be out of order. It might be contrary to rule 96(7) of the *Rules of the Senate*.

If the committee seeks to suspend a rule or practice with respect to clause-by-clause consideration, the committee might consider the advisability of doing it through leave, rather than by motion, to ensure that no rights to which a senator is entitled are unduly infringed.

As I mentioned, I do not feel I have the authority to undo decisions that have already been taken by the Senate. At the same time, I remind senators that they still retain the right to propose amendments to clauses in the bill during third reading debate. It is my ruling, therefore, that I cannot undo what was done by the committee and already accepted by the Senate. Debate on third reading can begin in the full knowledge that senators have the right to move amendments to clauses of the bill.

• (1530)

It is my personal feeling that the Rules Committee could examine the advisability of reviewing the practice, that unless leave is granted by members of the committee to dispense with the procedure, committees are bound to examine bills that are referred to them clause by clause.

Therefore, there is no point of order. We can now commence debate on third reading of Bill C-15.

Hon. Elizabeth Hubley: Honourable senators, I am pleased to speak today about Bill C-15, to amend the Migratory Bird Convention Act, 1994 and the Canadian Environmental Protection Act, 1999. The bill was recommended to the Senate for third reading following careful deliberations of the Standing Senate Committee on Energy, the Environment and Natural Resources.

I wish to express my appreciation to the chair of the committee, Senator Banks, to the deputy chair, Senator Cochrane, and indeed to all committee members for their constant deliberation and fairness to this bill.

The goal of the bill is to improve our ability to enforce Canadian environmental legislation for the protection of birds from marine pollution, particularly ship-sourced oil pollution. This goal was strongly supported by all witnesses who appeared before the committee, including members of the marine shipping industry. The problem addressed by Bill C-15, that is, that hundreds of thousands of seabirds are killed annually in Canada's marine environment, has been described in great detail.

I am sure that honourable senators will agree it is unacceptable that Canada, a country known around the globe for its rich biological diversity, abundant natural resources and strong environmental ethics, is used as a dumping ground by a small proportion of shipowners. Currently, this minority operates beyond the reach of enforcement under the Migratory Birds Convention Act, 1994 and the Canadian Environmental Protection Act, 1999.

Although there is widespread agreement for the goal of Bill C-15, there have been a number of questions from the marine shipping industry. Near the end of committee deliberations, the Honourable Stéphane Dion, Minister of the Environment, and Mary Dawson, Associate Deputy Minister, Justice Canada, appeared and answered all of the remaining questions to the committee's satisfaction.

Let me briefly describe the deliberations. Concerns have been raised that Bill C-15 establishes strict liability provisions. However, the strict liability regime works admirably in the Canadian legal system. Offences of this nature have been present for almost 60 years under the Migratory Birds Convention Act, 1994 and for at least 30 years under the Fisheries Act, as well as under many other federal statutes, such as the Canada Shipping Act. The constitutionality of the strict liability regime has been tested and upheld by the Supreme Court of Canada.

We also heard concerns that Bill C-15 leads to the criminalization of seafarers. We recognize that this is a concern held by many parties around the globe, especially in countries where rights of the accused are not always protected. However, Canada's judicial system fundamentally protects the rights of the accused with the presumption of innocence, especially when prison sentences are a possible penalty. Bill C-15 does not change these facts.

Furthermore, courts impose penalties for offences in proportion to the gravity of the offence and the conduct of the offender, and with consideration of sentencing criteria, such as those being added to the Migratory Birds Convention Act, 1994 through adoption of Bill C-15.

Canada's international obligations will also affect and guide the recommendations for sentencing that a Crown prosecutor would put forward in the case of foreign crews of foreign vessels.

Some members of the marine shipping industry proposed that the provision incorporating minimum fines be removed from Bill C-15. This provision was added in the other place. The bill currently states that vessels of "5,000 tonnes deadweight or over" found guilty of contravening the Migratory Birds Convention Act, 1994, by illegally discharging oily wastes and other harmful substances would face minimum fines up to $500,000 for an indictable offence. The minimum fine ensures that penalties in Canada approach a magnitude comparable to those imposed in other countries, particularly in the United States. Ships should not be able to dump in Canadian waters as a convenience because Canadian federal laws do not sufficiently deter such pollution.

Some maritime shipping industry representatives continue to express concern that the bill may conflict with other Canadian laws or international conventions. Honourable senators, Bill C-15 does not conflict with other Canadian laws. It specifically introduces provisions to coordinate the authorities of the two acts it seeks to amend with other acts of Parliament. Moreover, during committee hearings we learned that there are many safeguards in Bill C-15 as well as administrative policies and judicial practices that will ensure that the application of Bill C-15 conforms to international law. The Department of Justice, during its drafting of Bill C-15, ensured that it was consistent with all of Canada's international commitments.

Bill C-15 recognizes international oil pollution standards that existed previously. Any company currently operating as required under Canada's domestic law, which in turn respects Canada's commitments and obligations under international conventions, need not fear the amendments of the two acts that will be achieved by the adoption of Bill C-15.

Bill C-15 clarifies the authority to enforce the two acts in Canada's exclusive economic zone and gives to federal enforcement personnel powers that are equal to the scale of their responsibility. As for the financial resources required to enforce the amended acts, the Honourable Stéphane Dion, Minister of the Environment, has told us that there will be internal reallocation of resources to increase efforts to deal with alleged illegal discharge of oily bilge and other pollutants.

Some concerns were expressed about the capacity of game officers to enforce the provisions of this bill. Rest assured, enforcement activities will be coordinated across key federal departments and agencies to provide the specialist expertise required for successful action. Bill C-15 does not create new prohibitions, but it will reduce the economic advantage currently enjoyed by those who continue to break the law by dumping their wastes in Canada's exclusive economic zone with impunity.

• (1540)

I urge honourable senators to support Bill C-15 to help protect Canada's marine resources for future generations.

Hon. Ethel Cochrane: Honourable senators, I am pleased to offer a few words today at third reading of Bill C-15.

The Standing Senate Committee on Energy, the Environment and Natural Resources has heard many witnesses in its study of this bill, representing the viewpoints of all stakeholders, and I thank all of them for their valuable contributions.

The sight of seabirds harmed by bilge oil is, unfortunately, not uncommon in my province. In fact, the practice of ships releasing oil into the ocean off Newfoundland and Labrador dates back to the 1950s. Oil spills producing serious environmental damage have occurred throughout the decades, with the most recent incident taking place early this spring. In early March, wildlife officials in my province reported that oiled eider ducks were washing ashore along the East Coast. Tests showed that they were covered with bilge oil. In all, about 1,400 birds were affected. According to the Canadian Wildlife Service, the incident resulted in the death of the single largest number of eider ducks they have ever witnessed.

Eider ducks tend to stay close to the shoreline. Therefore, officials believe the vessel dumped its bilge oil in that vicinity. Despite its supposed close proximity to land, the responsible vessel in this particular case was not charged because it could not be found. It is worth noting that the area of the province in which the oiled ducks were found includes Witless Bay and Baccalieu Island, both well-known marine ecological reserves.

The bill before us aims to strengthen and expand the enforcement measures that protect our country's marine environment. In particular, vessels illegally discharging bilge oil into the ocean will now be financially responsible to a maximum of $1 million. This will raise our fines to a level comparable with those handed out in the United States.

A problem witnessed in the past has involved ships en route to the United States dumping their bilge in Canadian waters, due in no small part to our weaker penalties. Hopefully, this tougher stance will end our reputation as a safe haven for marine polluters. The increased fines and penalties under this bill are much appreciated, but to truly be effective they must be matched by a renewed federal commitment in our Coast Guard. As Coast Guard funding has been cut, the number of patrols has been significantly reduced.

Honourable senators, we must ask ourselves: How can this legislation be enforced if we cannot catch those responsible for contravening it? The federal budget of February 23 of this year included an allocation of $276 million over the next five years for the Canadian Coast Guard. The government says that this funding will begin the modernization of the fleet and will include the purchase of four midshore fisheries patrol vessels. While I welcome this increase of financial commitment, it is my belief that the department must provide additional resources dedicated to the enforcement of this legislation.

In reporting this bill back to the chamber the committee has attached observations in three important areas, beginning with our concerns about Canada's marine surveillance and enforcement efforts. The committee makes note of information provided from the Minister of the Environment, the Honourable Stéphane Dion, which told of an anticipated increase of $3 million in resources for surveillance and enforcement. The committee has responded to this potential allocation in the observations, and I quote:

> This is a tiny step in the right direction, but it is entirely inadequate to the task. For Canada's efforts to save our migratory birds to be effective, a significantly more serious commitment by the Government of Canada is required. The capabilities, in this specific respect, of the Canadian Coast Guard need very substantial upgrading, improvement and critical mass.

Honourable senators, this is an area that we must watch carefully, as it is vital to any success that may be achieved in this regard. An active Coast Guard presence could do more than catch vessels which break the law. It could discourage them from illegal dumping in the first place.

In the observations the committee states its intent to hear from the minister a year after the tabling of the report, to learn how the legislation has been enforced and to inquire about our main concerns. Those concerns also include an observation that testimony before the committee had indicated that enforcement of the bill's strict liability measures would violate the Canadian Charter of Rights and Freedoms. The committee stated its concerns regarding testimony from witnesses that indicated certain provisions of the bill would be in violation of international commitments to which Canada is a signatory. While these are quite serious issues, in both instances the committee was informed that the government would take the utmost care to ensure that such violations would not take place. I would also like to assure all honourable senators that the committee will also pay close attention to developments surrounding the bill's application.

In his appearance before the committee, Newfoundland and Labrador's Environment Minister reminded us that this bill is not just about birds. The Honourable Tom Osbourne said that they are an indicator of the cumulative effect of oil spills on the onshore and offshore ecosystems, including fish.

Honourable senators, I am hopeful that the passage and subsequent enforcement of Bill C-15 will result in the deaths of fewer birds in waters under Canadian jurisdiction. In fact, I believe it will go a long way to protecting the habitat of millions of seabirds on both coasts.

Senator Angus: Honourable senators, I move that the debate be adjourned.

Senator Banks: No!

The Hon. the Speaker *pro tempore*: It is moved by the Honourable Senator Angus, seconded by the Honourable Senator Eyton, that further debate be adjourned until the next sitting of the Senate.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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

Hon. Senators: Yea.

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

Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker *pro tempore*: Call in the senators. There will be a 15-minute bell.

• (1600)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Adams
Angus
Buchanan
Comeau
Cools
Corbin
Di Nino
Gill
Johnson
Keon
Kinsella
McCoy
Murray
Oliver
Prud'homme
Stratton
Watt—17

NAYS
THE HONOURABLE SENATORS

Bacon
Banks
Bryden
Callbeck
Chaput
Christensen
Cochrane
Cook
Cordy
Cowan
Day
De Bané
Fairbairn
Finnerty
Fraser
Grafstein
Hubley
Jaffer
Léger
Losier-Cool
Mahovlich
Mercer
Milne
Mitchell
Moore
Munson
Pearson
Phalen
Poulin
Poy
Robichaud
Rompkey
Trenholme Counsell—33

ABSTENTIONS
THE HONOURABLE SENATORS

Ferretti Barth
Joyal
Sibbeston
Tardif—4

MOTION IN AMENDMENT

Hon. Willie Adams: Honourable senators, I move:

> That Bill C-15, An Act to amend the Migratory Birds Convention Act, 1994 and the Canadian Environmental Protection Act, 1999 be not now read a third time but referred back to the Standing Senate Committee on Energy, the Environment and Natural Resources for clause-by-clause consideration.

• (1610)

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

POINT OF ORDER

Hon. Tommy Banks: Honourable senators, I rise on a point of order. Your Honour has already ruled that the Senate has determined that it will today consider third reading of the bill, which has been reported by the committee to the Senate. I do not see how we can go back on that now.

Hon. W. David Angus: Honourable senators, I wish to speak to the point of order of the Honourable Senator Banks. My understanding of the Speaker's ruling was that in the event of issues of this nature the ultimate authority is this chamber.

Whereas it was clear from the Speaker's ruling that the procedure conducted yesterday was out of order and inappropriate in all the circumstances; and whereas we are now here and honourable senators are seized with the nature of what is going on; and whereas the senators present are well aware that there are serious amendments to be made and serious discussion needed that would unnecessarily take up the time of this chamber if it were done as the Speaker suggested today, I suggest it is totally in order that this chamber decide to send the bill back to committee. If senators want the committee to meet early tonight or at midnight, I do not care. That is the appropriate place for this matter and I wholeheartedly support the Honourable Senator Adams.

The Hon. the Speaker *pro tempore***:** Before I listen to other senators, I will refer to *Beauchesne's Parliamentary Rules & Forms*, 6th edition, paragraph 737(1):

> A bill may be recommitted to a Committee of the Whole or to a committee by a Member moving an amendment to the third reading motion.

Hon. Eymard G. Corbin: Honourable senators, I wish to speak to the point of order in support of Senator Adams' motion in amendment.

I will not comment on the Speaker's previous ruling, but I do differ from the point raised by my friend Senator Banks to the effect that the Speaker's ruling can be interpreted as barring any amendment at third reading. On the contrary, the Speaker emphatically stated that amendments can be made at third reading. The motion by Senator Adams is an amendment. The effect of that amendment is for the house to pronounce upon.

Deeper than that, the wrong caused in this case should be properly dealt with at committee stage. I feel very strongly about that. I have been following this issue for the last two days. I feel very uncomfortable with what has been done. The matter should be allowed to return to committee.

The Hon. the Speaker *pro tempore***:** The amendment is in order. I understand Senator Cools and Senator Murray wish to speak.

Hon. Anne C. Cools: Honourable senators, I wish to speak in support of Senator Adams. I also take issue with Senator Banks' point of order. Senator Banks has not raised a valid point of order. As a matter of fact, I would say that he has misunderstood Her Honour's ruling. I understood Senator Banks to say that the Speaker has ruled that no such action as proposed by Senator Adams could happen because third reading debate must proceed. I do not think Her Honour addressed the issue of the proceeding today. I believe what Her Honour has said is that the Senate adopted an order yesterday to move ahead to third reading; in other words, that the bill be placed on the Order Paper today for third reading. However, Her Honour made no judgment whatsoever in respect of the actual disposition in this place of third reading debate. Thus, Her Honour's ruling is not a bar whatsoever to the chamber adopting or speaking to the motion of Senator Adams. I would argue that the Speaker's ruling, in essence, pointed out that it was highly irregular for a committee to do what this committee did in dispensing with clause-by-clause consideration, and also cautioned the house to be mindful of its committees dispossessing senators of any rights.

An Hon. Senator: Her Honour has ruled that the amendment is in order.

Senator Cools: Did she? How can she rule before the debate on the point of order is finished?

Hon. Lowell Murray: On the point of order, I believe the previous point of order is completed. Her Honour has ruled that Senator Adams' amendment is in order. Senator Rompkey was rising. I do not know whether it was his intention to appeal the Speaker's ruling. That is the only course open to us other than commencing the debate on Senator Adams' amendment.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, it is clear that Senator Adams' motion is not an amendment; it is a motion to move the bill back to committee. That is Senator Adams' motion, as I understand it.

Her Honour was very clear in her earlier ruling. We had a full debate. Her Honour heard both sides, ruled on that particular issue and we continued debate. Senator Adams has now moved that we return the bill to committee. I will oppose that motion.

Senator Banks is quite right. The issue was dealt with properly. We have had that debate in committee. We should now vote on Senator Adams' motion.

The Hon. the Speaker *pro tempore***:** I have already ruled the motion in order, senators.

Some Hon. Senators: Question!

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

Senator Murray: Honourable senators, I had not intended to take part in debate on this bill. Frankly, I do not have strong opinions on the merits of it. I will defer to others for that matter.

I do not even know how many clauses there are to the bill. I have not studied it that closely. However, what we have here in Senator Adams' amendment —

An Hon. Senator: It is not an amendment.

Senator Murray: It is an amendment. Excuse me, I stand to be corrected, but the main motion that is before the house is that the bill be now read a third time. In amendment, Senator Adams moves that the bill be not now read a third time but that it be referred back to the committee for clause-by-clause examination. I think that is what it before us.

I say that what we are presented with in Senator Adams' amendment is an opportunity to undo the irregularity to which Her Honour referred in an earlier ruling and which she has stated she cannot undo retroactively. We have an opportunity to undo that irregularity — I cannot speak for anyone but myself — and to take that opportunity expeditiously.

• (1620)

I do not know how many clauses there are or who might want to speak to them or move amendments to them. We have been given a wonderful opportunity to send the bill back to the committee and have a proper clause-by-clause examination, as Her Honour has acknowledged would be the proper thing to do.

Senator Rompkey: I think we should be clear on what we are dealing with here. Our understanding was that Senator Angus wanted to move an amendment, and perhaps Senator Buchanan wanted to move an amendment. They can move their amendments. We do not have to send the bill back to the committee for them to move amendments.

The Hon. the Speaker *pro tempore***:** I have already ruled Senator Adams' motion as being in order as an amendment to third reading. Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker *pro tempore***:** It was moved by Senator Adams, seconded by Senator Angus, that Bill C-15, to amend the Migratory Birds Convention Act, 1994 and the Canadian Environmental Protection Act, 1999, be not now read a third time but referred back to the Standing Senate Committee on Energy, the Environment, and Natural Resources for clause-by-clause consideration.

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

Some Hon. Senators: No.

Some Hon. Senators: Yes.

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

Some Hon. Senators: Yea.

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

Some Hon. Senators: Nay.

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

And two honourable senators having risen:

The Hon. the Speaker *pro tempore***:** Call in the senators. Is there agreement on the bell?

Hon. Rose-Marie Losier-Cool: One hour.

• (1720)

Motion negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Adams	Kinsella
Angus	Murray
Atkins	Oliver
Comeau	Prud'homme
Cools	Sibbeston
Di Nino	Stratton
Gill	Watt—15
Keon	

NAYS
THE HONOURABLE SENATORS

Bacon	Hubley
Banks	Léger
Bryden	Losier-Cool
Callbeck	Mahovlich
Chaput	Mercer
Christensen	Milne
Cochrane	Mitchell
Cook	Munson
Cordy	Pearson
Cowan	Pépin
Day	Phalen
De Bané	Poulin
Fairbairn	Poy
Finnerty	Robichaud
Fraser	Rompkey
Grafstein	Smith
Harb	Trenholme Counsell—34

ABSTENTIONS
THE HONOURABLE SENATORS

Ferretti Barth	Moore—2

Hon. W. David Angus: Honourable senators, I was on my feet in this chamber just one week ago speaking to Bill C-33 and using the words of the Honourable Senator Moore, "that bill was bad law." Notwithstanding that, I regret to remind senators, who are duty bound, I believe, to the role of sober second thought, that they allowed Bill C-33 to go forward even though it contained taxing powers retroactive to 1988, which violates every true and time-tested principle of tax law.

Now I find myself on my feet urging honourable senators to vote against Bill C-15, which has been debated for the last three or four hours, for reasons that I was unable to express in the Energy Committee yesterday under circumstances that all senators would agree should not and will not be repeated.

On its face, this proposed legislation is bad law, pure and simple. I say that with zero hesitation as a member of the Barreau du Québec, the Bar Association of Montreal, the Canadian Bar Association, and as an honorary life member of the Canadian Maritime Law Association, as well as on the basis of the uncontradicted opinion of an eminent, constitutional lawyer from Toronto, Mr. Alan D. Gold, who circulated to all honourable senators documentation outlining why he takes his opinion. Purely and simply, Mr. Gold said that the bill, as drafted, violates the Charter of Rights and Freedoms. He said that it is not justified as good law, is not constitutional and is not intra vires because of the Supreme Court decisions referred to in our deliberations flowing from the *Sault Ste. Marie* case. The reason, quite simply, is that Bill C-15 criminalizes certain activities of seafaring individuals, particularly masters, chief engineers and second engineers of sea-going vessels who, pursuant to this legislation, could be taken off a vessel and thrown in jail without any proof of a criminal offence. Their basic right would be violated. As well, they could be subjected to lengthy prison

sentences and exorbitant fines. In some circumstances, the minimum fines could be $500,000. Because of these onerous penalties and the unusual criminalization of individuals, Mr. Gold was unequivocal in his opinion that Bill C-15 would be struck down by the courts.

Honourable senators, it is not right that we collectively pass a bill before the house that we know is ultra vires and, therefore, will be struck down by the courts. In respect of the principle of the bill, all senators are in agreement.

• (1730)

If the real intention of this bill is to prevent migratory seabirds from being oiled by ship-source pollution that is deliberately put over the side of ocean-going ships, the perpetrators should be severely punished and there should be deterrents to stop such polluting from happening in Canadian waters. I have heard of no argument about that in either this chamber or the other place.

Before honourable senators vote on this bill at third reading, I want them to understand that we have this undisputed legal opinion.

The Honourable Senator Banks is the Chairman of the Standing Senate Committee on Energy, the Environment and Natural Resources. As members of both sides of the committee have said, he conducted exhaustive hearings, has shown great balance and has been an excellent chairman. I do not impugn him in any way for what happened at the committee yesterday at 9 a.m.

The committee decided to ask the Minister of Justice, Irwin Cotler, to appear before it, and we were promised that he would be there. We were even advised of that in a notice that I have right here. However, at the last minute he could not come, and he sent officials in his place.

I have great respect for our civil servants and officials. I also have great concern for them when, at the last minute, they are sent to defend a bill on which they have not heard or read the evidence and when they are asked to say things that they cannot substantiate.

What happened in this case is a matter of public record. As the lawyer said, if we do pass the bill, thereby passing bad law, the courts will strike it down. They will review the legislative history and see that the officials from the Department of Justice were unable to give clear or cogent rebuttals to the legal opinions we had obtained. That was all I needed to determine my opposition to the bill, although there are many other things that make it bad law.

This is a maritime law that is being put into a corpus of other statutes that deal with the protection of our environment, known as green legislation.

I am now known in many quarters as the "green senator," a born-again environmentalist, and I am proud of it, and that is due in part to being a member of this committee.

Hon. Senators: Hear, hear!

Senator Angus: Under the great leadership of Senator Banks, I am a totally committed "green."

This legislation would fit better under the auspices of Transport Canada because it deals, in large measure, albeit not entirely, with maritime matters that require the enforcement processes of nautical experts to board ships and requires knowledge of oily water separators on ships. This bill deals with the strict liability of crimes that require the arrest and incarceration of people, even in the case of accidental spills.

We were told that there was a fight at the early legislative stage between Transport Canada and Environment Canada. Transport wanted to split off the maritime matters and put them in a bill that would be enforced by the Coast Guard. The Transport folks lost the fight and now there is bad law interwoven in this bill.

Normally legislation like this affects a number of industries. I have 45 years of experience practising maritime law. In the preparation of all maritime laws that have been enacted since 1961 there was widespread stakeholder consultation with regard to whether the laws were workable and made good sense and, indeed, whether they might be ultra vires.

In this case, honourable senators, there was no proper stakeholder consultation. Indeed, a bill came before the previous Parliament in nearly the same form as this bill and died on the Order Paper. However, the industry had become aware only at that time that the legislation was in the parliamentary process. When this Parliament began, the bill was introduced in the other place and stakeholders, including the international shipping community, except for the Maritime Law Association and one small shipping group, were denied a hearing in the other place. They told us about that at our committee hearings.

I will have some things to say about why we have a bad reputation when we talk about our new code of conduct.

Honourable senators, we are in the public eye. Some of the hearings that were held under the leadership of Senator Banks were on television, and there are transcripts of all of them. We are being watched.

When the minister responsible for the bill, the Honourable Stéphane Dion, came before the committee, his performance was pathetic. I need only refer you to the transcript. I say with no partisanship that I was ashamed to be a Quebecer and ashamed to be a member of this process. His approach to this bill was to say: "Don't confuse me with the facts; give me the bill."

Within 24 hours of leaving the hearing room, Mr. Dion held a press conference impugning the good name of Senator Banks and the good name of the leadership on both sides of this chamber. He questioned why we were delaying the bill, when we were only doing our job, trying to avoid falling into the trap of Bill C-33 and making bad law.

What are we here for if we are going to put our stamp of approval on a bill that is clearly and manifestly ultra vires? I want no part of that. The process we are going through today appears to the public to be a charade, and I hate every bit of it. Every bell that rings and every procedural delay turns me off, as I am sure it turns off all honourable senators. I am sure that we all have better things to do today. I have had neither breakfast nor lunch today because of this bill.

Senator Mercer: We will buy you a sandwich.

Senator Angus: I urge honourable senators to read the observations that were submitted with the report on this legislation. They outline a number of problems with the bill. I will refer to only a couple more, just to give everyone the tone of them.

In maritime matters, Canada is party to numerous international treaties that are developed through multi-governmental organizations, in many cases UN sponsored. One of them is the United Nations Convention on the Law of the Sea. We were told by several learned experts that this bill has the potential, depending upon how it is implemented and enforced, to violate some of our international obligations. That, too, could easily be remedied by a small change.

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

Senator Angus: May I have leave to continue for a little longer?

The Hon. the Speaker *pro tempore***:** Is leave granted for Senator Angus to continue for five minutes?

Hon. Senators: Agreed.

Senator Angus: The violation of certain of our international obligations is not something to which I want to be party. I am not saying that this is my expert opinion, but the evidence we heard indicates that this would be the case.

This bill potentially criminalizes seafarers, masters and chief engineers, and we were told by the leadership of unions representing in excess of 35,000 seamen, I believe, that this will be a great disincentive for people to go to sea. These ships, we were told, cost millions of dollars a day to operate and cost in the order of $100 million to construct. They are highly technical, expensive pieces of equipment. They are international capital assets that move around the world. To have other than highly trained and skilled people running those ships is an invitation to pollution of our waters, to oiling of our seabirds and other wildlife habitats, and generally a huge threat to our ecological surroundings. There is that menace in the bill that could be changed by two words. No one has any objection to huge penalties or to having the ship — which in maritime law is normally personified — liable to these penalties.

• (1740)

MOTION IN AMENDMENT

Hon. W. David Angus: Honourable senators, without going further, I would simply move at this point the following amendments that I have had prepared, I hope in accordance with the rules. I have given copies in English and French to everybody in this chamber.

I move:

That Bill C-15 be not now be read a third time but that it be amended in clause 9,

(*a*) on page 13,

(i) by replacing lines 12 to 15 with the following:

"(1.11) Where a vessel of 5,000 tonnes deadweight or over is convicted of an offence under section 5.1, and the offence was committed intentionally or recklessly,

(*a*) a fine imposed on the vessel under paragraph (1.1)(*a*) for the offence", and

(ii) by replacing line 17 with the following:

(*b*) a fine imposed on the vessel under paragraph (1.1)(*b*) for the offence"; and

(*b*) on page 14, by adding after line 23 the following:

"(1.9) No individual shall be convicted of an offence under this Act if

(*a*) the offence is alleged to have been committed in the course of the operation of a vessel, and

(*b*) at the time when the offence is alleged to have been committed, the individual is a master, officer or member of the crew of the vessel, or is in the service of the vessel on board the vessel,

unless it is provided that

(*c*) the individual acted intentionally or recklessly, and

(*d*) if, at the time when the offence is alleged to have been committed, the individual is a foreign national and the vessel is a foreign vessel, the offence was committed in the internal waters or territorial sea of Canada.

(1.91) Subsection (1.9) is not a bar to the conviction under this Act of a vessel or a person other than an individual described in paragraph (1.9)(*b*) in respect of the conduct of an individual described in that paragraph.".

Honourable senators, the committee, as you heard today, had its own legal counsel, approved by the Internal Economy Committee. It is my understanding from the advice of that legal counsel as well as outside lawyers that, if we were to put in those small amendments they would render this bill Charter-proof and intra vires of this Parliament and remove the criminalization

of seafarers. They would not have to worry about going to jail for something that happens when they might be asleep in their bunk on their eight hours off watch.

I will say no more. Senator Buchanan will speak about the human elements of the criminalization of seafarers.

I have one last point, as I urge honourable senators to adopt these amendments. We were told that if this bill is found to violate our obligations under international agreements such as UNCLOS, MARPOL and other anti-pollution conventions, and/or is an unconstitutional piece of law, Canada will not only be greatly embarrassed in the international community big time, but will also be subject to huge financial penalties. There was a recent case in Vancouver in the Federal Court where the Government of Canada was condemned for $4 million in an analogous situation. I do not have the reference for the case, but it is all on the record from the hearings of this committee.

Without further ado, I thank honourable senators for their patience. I do this exercise in good faith. I urge honourable senators to seriously consider approving these amendments so that we can fix this bill. The birds will be saved. Imagine what would happen if we passed this bill as drafted and on the first case it is struck down by the courts. The birds will be oiled big time, honourable senators.

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

There are two senators who would like to ask questions. Is leave granted?

Some Hon. Senators: Agreed.

Hon. Wilfred P. Moore: Will the honourable senator accept a question?

Senator Angus: I will.

Senator Moore: The honourable senator mentioned at the beginning of his remarks that masters, chief engineers and first mates could be incarcerated without an opportunity to due process: Is that correct?

Senator Angus: Honourable senators, I do not think I used that exact language. I should point out that the proposed legislation does not refer to mates but that it refers to masters, chiefs and second engineers.

Basically, this is a strict liability offence. There is a due diligence defence available, but because it is a criminal offence, and because the penalties are so high, it was deemed by lawyer Alan D. Gold that the offence violates the Charter, especially in cases where an incident might be accidental, where there would be no way to prove beyond a shadow of a doubt that people are innocent; this is a reverse onus.

Senator Moore: If there were a malfunction of equipment on board — for example, if the ship is running along fine and something happens — and things do break down on ships — is the honourable senator saying that there would be an absolute liability on those officers?

Senator Angus: Yes, I say that, and there would be a due diligence defence. There is a presumption of guilt right off the top.

Hon. Jerahmiel S. Grafstein: I was disturbed by some of Senator Angus's comments with respect to the conflict between the Department of Justice and independent counsel that the committee retained.

I apologize that I have not had an opportunity because of other matters to look at that opinion. However, with Senator Banks' help, I have looked at the report that is now part of the *Journals of the Senate*. The report indicates:

> The Government has given assurances that under the statutory and jurisprudential sentencing guidelines, and their policy for implementation of Bill C-15, care will be taken that its enforcement will not violate the Canadian Charter of Rights and Freedoms.

I understand the point of the honourable senator. I take it at face value that the independent counsel cautioned against this. What is the interpretation of the honourable senator of the government's response to this particular position, which is that they will implement the sentencing guidelines? I understand that the government has given assurances. I wish to address that point, because I am not satisfied that government assurances are appropriate in regard to a criminal statute.

• (1750)

Senator Angus: There you have it.

Senator Grafstein: I do not want to lead my honourable friend. I was troubled when I looked into this issue and studied the report. Exactly what assurances did the government give? Was it assurances or was it their opinion, which we do not have access to, that in fact this did not contravene the Charter?

Senator Angus: Honourable senators, all I can tell Senator Grafstein is that this document of observations is worth what it is worth. Legal opinions are worth what one pays for them.

The committee was advised by certain government officials from Environment Canada that they were in the process of drafting an MOU between the departments as to these multi-jurisdictional regulations. It is like crossing party lines. Some of this stuff falls within the mandate of Environment Canada, some within the Department of Fisheries and Oceans and some within Transport Canada. It is a complicated situation.

Interestingly, a number of years ago, by Order-in-Council, all of the operational authority for the once-proud Canadian Coast Guard was transferred to Fisheries and Oceans. We had a bill in this chamber the other day. The government realized, as a result of big pollution cases and the oiling of birds in similar

circumstances, that it was wrong to take the Coast Guard away from Transport Canada where there were mariners used to dealing with shipping problems. Now the government has given it all back to Transport Canada.

Our chairman, Senator Banks, did his job diligently. He met with the Minister of the Environment and the Minister of Transport. He met with officials. He told us that he had assurances that in the enforcement and the implementation of Bill C-15 those things will be done. I have no reason to doubt Senator Banks. However, what I told Senator Banks, and what I tried to argue in the committee and what I argue before my colleagues here today, is that this document is not worth the paper it is written on. There will be a different person tomorrow and yet a different person on Friday, for all I know.

This is a very bad piece of legislation as it is currently drafted. It can be easily fixed by my amendments. I urge honourable senators to please come on board with the "green."

Senator Grafstein: Honourable senators, I am just reading the report's observations for the first time. Perhaps Senator Angus can help me. Under the paragraph entitled "Canada's International Undertakings," the report states:

> Your Committee will follow surveillance, enforcement, prosecutions, and sentencing under C-15 with great interest and careful scrutiny.

The committee is obviously undertaking to provide active oversight on the prosecutions under this statute.

The committee goes on to say in the unanimous report:

> We hope that there will *be* surveillance and enforcement; and we expect that great care will be taken in prosecution and sentencing.

This is a rather unusual statement. Perhaps Senator Angus or Senator Banks can explain it. What it is really saying is that the statute appears to be less than perfect, less than constitutional-proof as it applies to both the Charter and our international undertakings. We hope that the prosecution and the enforcement will not be deleterious as it applies to the Constitution or our international undertakings. This is a rather curious document. This is a unanimous report. Can my honourable friend explain this to those of us who were not on the committee?

Senator Angus: I would be more than delighted to explain this to Senator Grafstein, particularly because he was not here earlier today when we had quite a long contretemps in this chamber.

What happened yesterday morning, in a nutshell, is we came to the committee for clause-by-clause consideration of the bill. I had these amendments ready to go. A motion was summarily made that we would dispense with clause-by-clause study and report the bill unamended. This is called, in my world, half a loaf. This is what Senator Angus, Senator Buchanan, Senator Lavigne and Senator Adams were able to extract from our colleagues in lieu of the right to even argue and present amendments.

Hon. Ione Christensen: As a point of clarification, Senator Moore asked a question regarding a seaman perhaps having to face criminal charges. I believe Senator Angus replied that yes, it was absolute liability. I think it is strict liability, is it not?

Senator Angus: I think his word was "absolute"; I said strict liability with a due diligence defence.

Hon. Tommy Banks: Honourable senators, I wish to speak to the amendment now, following which I will have a few things to say about the bill and the process.

I admire Senator Angus's speech. It was very good, particularly the part about being green and being converted. I can attest to that. He is finding that it is easy being green.

The concerns that the senator expresses are on a continuum of concerns. As all senators know, there is a breadth of views on any given question, particularly on legal questions. If I were to ask three lawyers to give an opinion on something, I would get seven opinions.

It is not correct, with respect, to say that the views expressed by some legal experts before us were not refuted. They were refuted. We can believe the refutation or we can believe the posit made in the first place or we can believe somewhere in between. It is not true or correct to say that the expression of opinions by either of the counsel engaged by the committee or by Mr. Gold or any of the lawyers who appeared before us representing the interests of the shipping community were not refuted by the government. They were refuted. One can believe one way or the other.

The concerns to which the senator has referred are correctly set out in these observations. I also want to say that it is not correct for Senator Angus to say that these observations were extracted as a sop to the right thing. The record of the committee meeting will show that I said at the time that all members of the committee understood from a long time ago that there would be observations attached to this bill setting out the concerns we had with it. Some of the concerns are over here, some are over there, and some are in the middle, but these concerns are legitimate.

There is concern with respect to what has been represented by some as the introduction of new things in this bill. I call to the attention of senators that the concept of strict liability, testy though it may be, exists in a substantial body of law in this country. If we were to change the concept of strict liability — and I do not suggest we ought not to — as it appears in the present bill, we would also have to then logically change it in a very large number of other acts of Parliament, many of which have to do with environmental law. I want honourable senators to understand why that is so.

I hope a lawyer will correct me if I am wrong on the concept of strict liability. An event has occurred, and it can be shown to a court beyond a reasonable doubt that the event has occurred. The demonstration can be made in this case that there is a proximity of a vessel or a person. The same concept would apply if an individual were driving down the road in a pickup truck with a deer in the back.

• (1800)

An event has occurred, and once that event has occurred there is, in the case of strict liability, a presumption of guilt, a reverse onus. It exists in much environmental law. If we were to apply *mens rea* to that concept of law, we would be obliged to prove the state of mind of the person who killed that deer or the state of mind of the person who was in one way or another responsible for the release into the ocean of oily bilge.

Debate suspended.

BUSINESS OF THE SENATE

The Hon. the Speaker *pro tempore***:** Honourable senators, I am sorry to interrupt Senator Banks, but I must advise the senators that it is now six o'clock.

Is it your wish, honourable senators, that I not see the clock?

Hon. Senators: Agreed.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, if that were agreed to, I could assure honourable senators that there would be some very tasty food served in the Reading Room. My suggestion is that Senator Angus be the first to partake because, by his own admission, he has not had any breakfast or any lunch, and I would not like to lose so soon a converter to the Green Party.

Hon. Terry Stratton (Deputy Leader of the Opposition): The question I have, and I believe everyone in this chamber would have as well, is how long the deputy leader expects the evening to take. What will we do for the balance of the evening? Surely to goodness we will not go through the entire scroll. Would the honourable senator tell us which issues he wishes to deal with and for how long?

Senator Rompkey: My hope would be to deal with the bill that is before us now and then proceed to the conflict of interest code. The other items, as far as I can recall, can be dealt with tomorrow. Once we get through with this debate, I would want to move to the code, and then we could adjourn for the evening.

Senator Stratton: I would expect that everything not heard today would stand in its place.

Senator Rompkey: Yes.

Senator Stratton: Thank you.

MIGRATORY BIRDS CONVENTION ACT, 1994
CANADIAN ENVIRONMENTAL PROTECTION ACT, 1999

BILL TO AMEND—THIRD READING

On the Order:

> Resuming debate on the motion of the Honourable Senator Hubley, seconded by the Honourable Senator Mercer, for the third reading of Bill C-15, to amend the Migratory Birds Convention Act, 1994 and the Canadian Environmental Protection Act, 1999.

And on the motion in amendment of the Honourable Senator Angus, seconded by the Honourable Senator Buchanan,

That Bill C-15 be not now be read a third time but that it be amended in clause 9,

(*a*) on page 13,

(i) by replacing lines 12 to 15 with the following:

"(1.11) Where a vessel of 5,000 tonnes deadweight or over is convicted of an offence under section 5.1, and the offence was committed intentionally or recklessly,

(*a*) a fine imposed on the vessel under paragraph (1.1)(*a*) for the offence", and

(ii) by replacing line 17 with the following:

(*b*) a fine imposed on the vessel under paragraph (1.1)(*b*) for the offence"; and

(*b*) on page 14, by adding after line 23 the following:

"(1.9) No individual shall be convicted of an offence under this Act if

(*a*) the offence is alleged to have been committed in the course of the operation of a vessel, and

(*b*) at the time when the offence is alleged to have been committed, the individual is a master, officer or member of the crew of the vessel, or is in the service of the vessel on board the vessel,

unless it is provided that

(*c*) the individual acted intentionally or recklessly, and

(*d*) if, at the time when the offence is alleged to have been committed, the individual is a foreign national and the vessel is a foreign vessel, the offence was committed in the internal waters or territorial sea of Canada.

(1.91) Subsection (1.9) is not a bar to the conviction under this Act of a vessel or a person other than an individual described in paragraph (1.9)(*b*) in respect of the conduct of an individual described in that paragraph.".

Hon. Tommy Banks: Honourable senators, many acts of Parliament have accepted the fact that *mens rea* is impossible to apply to environmental law. That is law. Strict liability offences have been upheld by the Supreme Court of Canada. They are in place and they have been found to be appropriate.

The amendments proposed by Senator Angus have the effect of removing personal responsibility for acts that occur on vessels. That is like removing from the Highway Traffic Act the responsibility of the driver for what the car does. You cannot do that.

The proposed amendments would also have the effect, in some cases, of removing Canada's jurisdiction in the exclusive economic zone. We cannot do that. We have to extend that jurisdiction.

The proposed amendments would also have the difficulty of requiring provable culpability on the part of a member of a crew for something that happened.

Honourable senators, I must explain. When a ship is in a fog at night and some oil comes out of that ship in that fog at night, it is not impossible — in fact, it is often very possible — to prove that that oil came from that ship because oil has a fingerprint. It can be shown with no doubt that that oil came from that ship. Ships can be prosecuted under maritime law. The question now is whether the ship is responsible for the oil, and the answer is that the ship is responsible. Is the master of the ship, the engineer, the second engineer — all of them or any of them — guilty of an offence? They may be, and they are presumed to be, unless they can show due diligence.

Due diligence is a lower requirement of proof than beyond a reasonable doubt. Due diligence only needs to be shown on a balance of probability; it is a much lower threshold of proof.

Honourable senators, we do not have one law having to do with death. An individual can cause the death of a person and be found guilty of negligence or not guilty of negligence, or guilty of manslaughter or guilty of murder or guilty of capital murder. Different levels of penalty are applied to those things, as there will be under this law.

Prosecutions for offences that can result in jail do not normally proceed in this country unless the Attorney General determines that there is a likelihood of a successful prosecution obtaining a conviction.

That is the case with the more onerous sections of this bill, too. Bill C-15 will not allow, willy-nilly, people who are demonstrably innocent to be charged unreasonably with a crime or put in jail or fined. If we were to put into all Canadian law some kind of stricture that exempted people unless they could be proven beyond a reasonable doubt to have committed something in the *mens rea* sense, we would obviate all Canadian environmental law in one fell swoop. We cannot do that.

Prosecutions do not normally proceed unless there is the likelihood of conviction, and it is that style of reliance we accept in the committee from the government in respect of applying these penalties.

[Senator Banks]

Honourable senators, that is my view with respect to the proposed amendments to the bill. I will have more to say later on about the body of the bill.

Hon. John Buchanan: Honourable senators, I do not oppose this bill per se. I have said in the committee, as the chairman knows, that, in principle, I support this bill. Who would not support this bill? It is motherhood. I am an Atlantic Canadian. We have to protect seabirds and migratory birds; there is no question about that.

We do not have the serious problem that, obviously, they have in Newfoundland. I do not know why that is, but if 300,000 birds a year are killed off the coast of Newfoundland by bilge oil, then so be it. I have not seen any proof of that at all, by the way. I have heard people from Environment Canada talk about it, but, as Senator Angus and, I believe, Senator Adams said, there is no proof. They were not able to give any proof of that.

It is interesting to note something that I just found, which I think honourable senators should be aware of. It begs the question as to what causes marine pollution. The Group of Experts on the Scientific Aspects of Marine Pollution — a United Nations body — says the following: "Eighty-eight per cent of ocean pollution comes from non-marine sources; 44 per cent comes from land discharge; 33 comes per cent from atmospheric fallout; 1 per cent comes from offshore exploration; and 10 per cent comes from illegal dumping from offshore outside maritime industry." Honourable senators, that leaves 12 per cent from marine sources. Granted, 12 per cent could be a big number when you are talking about a lot of birds that have been killed by bilge oil.

However, honourable senators must understand something else. There are, as the United Nations study indicated clearly, many other reasons for birds being killed at sea, just as there are many reasons for birds dying on land. We have to take that into account — but forget that for a minute.

• (1810)

The principle of the bill is fine. However, had evidence from the International Shipping Federation, Fairmont Shipping Canada, British Columbia Ferry Services, the Canadian Shipowners Association and the International Chamber of Shipping, and they told us that 90 per cent, and perhaps more, of Canadian vessels are not causing the so-called bilge oil pollution. That means that only 5 to 10 per cent of Canadian vessels may be causing it, and most of the pollution is caused by international vessels.

That was the testimony given by the witnesses from the shipping federations, including the national coordinator of the International Transport Workers Federation. I asked them who they represent and they said that they represent the longshoremen in Halifax and other ports, the Checkers' Union and masters and engineers. In fact, they represent about 35,000 seafarers in this country.

Incredibly, that union group agreed with all the shipping federation people and the shipowners. I cannot recall one of them being opposed to the principle of this bill, which is to stop offshore pollution.

The point was made that, since the United States imposes heavy fines for polluting, ships dump off the coast of Newfoundland and perhaps Nova Scotia rather than off the coast of the United States. That may be correct. However, for the most part the United States does not criminalize for accidental spills. It does criminalize for wanton recklessness and they impose heavy fines for that, but they have more civil cases than criminal cases.

The American law is enforced to a much greater extent than is Canada's. It is enforced by the United States Coast Guard, which is the third-largest navy in the world. They catch the polluters, sue them in civil court, seize the vessels and fine them heavily.

We have no problem with heavy fines for polluters. However, when we criminalize captains and engineers because of accidental oil spills, we have gone too far. That violates the Canadian Charter of Rights and Freedoms.

Let us remind ourselves of reverse onus and presumption of innocence. That goes back to our system of common law.

An Hon. Senator: Were you there?

Senator Buchanan: That honourable senator tried for 25 years to defeat me in government. He helped to do so in 1974, but in 1978, 1981, 1984 and 1988 we beat them, so he had better be careful about what he says to me.

Senator Mercer: Do you want a rematch?

Senator Buchanan: I am getting too old for that.

Let us go back to the common law. There is a general presumption that a person is innocent until the contrary is proven, and, in general, the more serious the crime, the more clearly it must be proven. That is the common law. That is found in *Halsbury's Laws of England* and the *Oxford Companion*.

The Canadian Bill of Rights says that a person has the right to be presumed innocent until proven guilty.

Let us move ahead to 1982 when the Charter of Rights and Freedoms that we fought so hard for was signed by Prime Minister Trudeau and the 10 Canadian premiers.

The Charter of Rights and Freedoms says:

> Any person charged with an offence has the right...
>
> d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;

Senator Banks: Read section 1.

Senator Buchanan: I am just about to do that. We put this in the Charter of Rights to protect —

Senator Mercer: To protect masters and engineers. What about the birds?

The Hon. the Speaker *pro tempore***:** Order, please.

Senator Buchanan: Section 1 reads:

> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

What did the learned counsels who appeared before the committee say about that? They understand the Charter of Rights and Freedoms and the presumption of innocence.

Alan Gold appeared before the committee. He is one of the top criminal lawyers in Canada, and he is recognized internationally. Mr. Gold said:

> In my opinion serious constitutional issues exist regarding the validity of certain of the amendments in Bill C-15.

He was talking about amendments made by the House of Commons.

I should mention that more than 50 per cent of the witnesses we heard were never asked to appear before the House of Commons committee. They sent letters to the House of Commons committee and never received a reply, and they were not invited to appear. However, they were heard before the house of sober second thought.

Mr. Gold also said:

> The reverse onus is unconstitutional....it is clear that the reverse onus for the defence of due diligence is incontrovertibly contrary to section 11(d) of the Charter's guarantee of the presumption of innocence. To survive, the reverse onus would have to be justified under section 1 of the Charter. In my opinion that justification is not forthcoming. Therefore the reverse onus is unconstitutional as contrary to the presumption of innocence guaranteed by the Charter rights of Canada.

Mr. Gold said that the penalties and criminalization imposed by Bill C-15 could not be justified before any judge. It would not be justified under section 1 of the Charter of Rights and Freedoms and, therefore, section 11 is still the law of Canada.

• (1820)

There cannot be a reverse onus. It contradicts and violates the Charter of Rights and Freedoms of this country to criminalize. Would anyone want their son or daughter to be a captain or a chief engineer or a seafarer of a vessel that had an accidental spill? The observations appended to the report of the Energy Committee state that the minister said the government would not let that happen. That just is not true. What happens if a game warden is the person who could charge the engineer or the

captain? I know that game wardens in Cape Breton or in Nova Scotia catch deer hunters who are hunting deer illegally. Let us suppose that a game warden is trained to go to sea. Senators, according to Mr. Alan Gold and Mr. William Sharpe, to whom we paid good fees for an independent legal opinion, Bill C-15 would criminalize a captain and an engineer because they could be charged with a criminal offence if, while they might be asleep and traveling through fog, their vessel were to accidentally spill oil.

The Hon. the Speaker *pro tempore***:** Senator Buchanan, I regret to advise that your time has expired.

Senator Buchanan: Honourable senators, I request leave to continue for five minutes.

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

Hon. Senators: Agreed.

Senator Buchanan: The captain or the engineer might be off the coast of Nova Scotia or Newfoundland when suddenly someone sees a DFO vessel pulling alongside with a game warden aboard who could charge the captain and the engineer because there was an accidental spill of oil. Some officials might say that game wardens would not dare do that, while others would say, yes, they would. The Minister of the Environment said he would not allow that to happen, but the problem is that the minister is in Ottawa.

Someone once said that one has to call the Minister of Transport to get permission to drive a snowmobile across a highway. A friend wondered what he would do if he were out on his snowmobile on a Sunday afternoon and had to cross the highway but the Minister of Transport could not be reached. He decided that he would not be able to cross the highway. The same thing would happen in the case of the captain and the engineer.

A pollution control officer could board the vessel, explain that oil had been found at the side of the vessel, and the captain et al would be charged under the related section in the proposed legislation. If the accused were able to prove by due diligence that he did not cause the spill, fine; but he would nevertheless still be charged and have to appear in court for that determination.

The poor captain and his engineer, both of whom might have a clear 25-year record, would have to go to court to prove that they did not know anything about it. They could be acquitted of the charges, but the criminal charge would remain on their records. The stigma of that would remain on their records.

Seriously, that could happen under this bill. Mr. Alan Gold said that it is unconstitutional. Mr. William Sharpe said that it is unconstitutional. Representatives of the Shipping Federation of Canada and the Western Canadian Shippers' Coalition said that it is unconstitutional. That is okay; they all went to law school. No one should challenge Alan Gold, because if ones does, one will be up the wrong creek without a paddle.

Think about this: Why should honourable senators pass a bill that will not only be challenged as unconstitutional but also be found unconstitutional by the courts? At the UNCLOS conference, Canada will be challenged, because every one of the shipping lawyers that gave us evidence, including our own counsel and Alan Gold, said that this bill contravenes UNCLOS and MARPOL and that it will be challenged.

Honourable senators, think back to the MMT bill, Bill C-94. It cost Canada $26 million. This is what happened. MMT was a fuel additive used by refineries, including in Halifax and Dartmouth. The refineries objected to Bill C-94, but the motor companies were insisting that MMT be banned. Environment Canada said that it would put forward a bill to ban MMT. Ethyl Corporation, manufacturers of MMT, argued that the government could not ban MMT because it violated NAFTA and interprovincial trade. Environment Canada gave assurances that NAFTA would not be violated, just as it has given assurances about Bill C-15.

That bill was passed. Some objected to it, including myself, and voted against it on legal grounds, because of Canada's international treaties and because of interprovincial trade, which I know something about. What happened? Ethyl Corporation said that if the bill were passed, they would complain immediately to the NAFTA tribunal and to the interprovincial trade group — and they did. What happened? The government failed on interprovincial trade. It lost the battle and was told that it would lose the battle at the NAFTA tribunal. What did the government do? It settled, repealed the bill, and paid $26 million in damages — because no one would listen to the legal advice. Rather, Parliament listened to departmental officials who assured that this would not happen; $26 million was what happened. Why is this place doing the same thing now?

Think about it. This place is considering passing a bill that will be proven unconstitutional and thrown out by the courts. There will be more dead birds in Newfoundland than imaginable, because the bill will be gone and we will have to start over at point zero. We have the opportunity, as Mr. Sharpe and Mr. Gold said, with the addition of one small amendment to correct the bill and still protect the birds.

Some Hon. Senators: Hear, hear!

Hon. Willie Adams: I wish to say a few words about Bill C-15. I have never said that I am opposed to the entire bill. In the 1960s there was an international agreement between the Government of Canada and other countries to regulate the treatment of migratory birds. The territories did not have any representation, and national law applied. I heard from many people in the communities and there was government lobbying.

• (1830)

In 1970, the leghold trap was banned. At that time, the price of a white fox pelt went from $70 to $5. Seal skins went from $40 down to $5. The hunters could not afford to trap. Dog teams ceased to exist. People were buying Ski-Doos to go out on the land and hunt.

People in the community could not afford to buy things. They could no longer teach their kids how to live on the land and to hunt. Beginning in 1970, the government stepped into the schools and the community. People had nothing to do so they went on welfare. They stayed in the community, stayed home and got drunk. Drugs were coming into the community.

Prior to 1970 there were few incidents of suicide. After that time, however, parents were not teaching their children to hunt, so they stayed at home. Many children between the ages of 10 and 14 were talking about suicide.

If we pass Bill C-15, it will be criminal. If the animal rights activists have more rights in the future, it will be criminal. We will not be talking only about sea birds, but about any kind of birds. There are many geese in the North, but the Inuit are not allowed to hunt in the spring because geese are out of season then.

There used to be a game warden in my community. At the time of the year when there are 24 hours of daylight, when we would go out on the weekend we would make sure the game warden was sleeping. We made sure to come home by two o'clock in the morning so we did not get fined or put in jail.

If Bill C-15 passes, I do not want animal rights activists saying that the people in northern communities are criminals for killing seabirds. It does not matter how much oil is spilled, whether it is a litre or a half litre, they could be charged. Every weekend when we go hunting, we use a boat with an outboard motor. We use oil. I asked at the beginning of the hearings if the bill applied to only oil spills on the sea, and the department officials said no, anywhere — the land, the lakes, the rivers.

The Hudson's Bay Company was established over 300 years ago, and now we have no more Hudson's Bay in the community. It was the Hudson's Bay Company that built Canada. Most of Canada at that time was owned by Hudson's Bay. I believe that was around 1800, and then the government started buying land piece by piece.

We felt sad when we lost our culture and our hunting. That is why I have to make sure that our hunting rights are protected and not infringed by legislation. Hunting is part of our future.

In December of 2002 our Senate committee dealt with Bill C-5, the species at risk legislation. Quotas for whales and polar bears were cut back, which means less income for hunters. If the animal right activists lobby any other country, such as Japan, prices go down.

In the 1970s and 1980s, a polar bear skin was selling for $3,000 to $4,000. Today we are lucky to get $1,000 or $1,500. In the meantime, the cost of food and other things has doubled in price.

• (1840)

Every summer we have a sealift. I represent 26 communities in Nunavut. There is only one community inland; the other 25 are on the coast. We do not have a highway. We only have a few stores, such as a co-op. Once a week food comes into the stores to make sure we have fresh fruit, milk and bread for our kids. Two litres of milk costs $10 to $11.

When we order fresh food from Grise Fiord or Pond Inlet in Nunavut and Baffin Island, we pay $6 per kilogram just for the freight. If we buy chicken, pork, beef or something like that, it might cost up to $15 per kilogram by the time the food is delivered.

My concern is if there are fines for the shippers, insurance rates will rise if a spill happens. They will have to pay the fines. That is why Bill C-15 is coming into law. The bill will criminalize the killing of seabirds and the spilling of even small amounts of oil.

I am not accusing anyone here, but you live in the South. Food is advertised through coupons and junk mail sent to your home. We do not get that in Inuktitut. Between 60 and 80 per cent of our food comes from the land and the water.

The Hon. the Speaker *pro tempore***:** Senator Adams, I regret to inform you that your time has expired.

Is the house ready for the question?

Hon. Senators: Question!

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

And two honourable senators having risen:

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

Hon. Terry Stratton (Deputy Leader of the Opposition): I would suggest a 30-minute bell because a committee is in session over in the Victoria Building.

The Hon. the Speaker *pro tempore***:** There will be a 30-minute bell.

• (1910)

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Angus	Murray
Buchanan	Oliver
Comeau	Prud'homme
Di Nino	Stratton
Kinsella	Tkachuk—11
McCoy	

NAYS
THE HONOURABLE SENATORS

Bacon	Harb
Banks	Hubley
Bryden	Léger
Callbeck	Losier-Cool
Chaput	Mahovlich
Christensen	Mercer
Cochrane	Milne
Cook	Mitchell
Corbin	Moore
Cordy	Munson
Cowan	Pearson
Day	Pépin
De Bané	Phalen
Fairbairn	Ringuette
Ferretti Barth	Robichaud
Finnerty	Rompkey
Fraser	Smith
Gill	Trenholme Counsell
Grafstein	Watt—38

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

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

Hon. Senators: Question!

The Hon. the Speaker: It is moved by the Honourable Senator Hubley, seconded by the Honourable Senator Mercer, that the bill be read the third time.

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

Hon. Senators: Agreed.

An Hon. Senator: On division.

Motion agreed to, on division, and bill read third time and passed.

• (1920)

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

THIRD REPORT OF COMMITTEE ADOPTED

On the Order:

> Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Robichaud, P.C., for the adoption of the third report of the Standing Committee on Rules, Procedures and the Rights of Parliament (conflict of interest code for senators), tabled in the Senate on May 11, 2005.—(*Honourable Senator Angus*)

Hon. W. David Angus: Honourable senators, when we vote tomorrow — as I believe we will, unless there is another surprise tonight — to adopt the conflict of interest code for senators, it will represent a most significant milestone in the venerable history of the Senate.

By adopting the code, we will be concluding a lengthy and complex, but very worthwhile, process, which, in its modern-day iteration, commenced more than 10 years ago, during the First Session of the Thirty-fifth Parliament. At that time, a special joint committee of the Senate and the House of Commons was established, with a mandate to develop a code of conduct to guide senators and members of the House of Commons in reconciling their official responsibilities as parliamentarians with their personal interests and activities in private life.

The work of the joint committee was not completed at the time of prorogation of the First Session of the Thirty-fifth Parliament. Accordingly, that special joint committee was reconstituted on March 21, 1996, at the outset of the ensuing session of Parliament, under the joint chairmanship of our colleague the Honourable Donald Oliver and the current Speaker of the House of Commons, Peter Milliken.

I had the honour and privilege to serve as a member of that joint committee, along with Senators Bosa, Di Nino, Gauthier, Spivak and Stollery. I commend the leadership provided to that joint committee by Senator Oliver, who fought an uphill battle all the way through. Senator Oliver did a great job for us.

Hon. Senators: Hear, hear!

Senator Angus: This joint committee completed its work and reported to both Houses of Parliament in March of 1997. The report included a draft code of official conduct for parliamentarians.

Honourable senators, this important initiative of the joint committee constituted Parliament's response to a growing perception among Canadians that its MPs and senators were out of step with other parliaments and legislatures in the democratic world in that they were not making adequate public disclosure of their personal interests and activities.

This situation in turn was fostering a disquieting issue among Canadians as to whether their federal parliamentarians were in fact making decisions in the best interests of the general public and as to whether our system was unduly vulnerable to abuse of office by members of Parliament and senators.

Honourable senators, when I was summoned to this chamber on June 10, 1993, I was leaving a practice of law where I suffered through a daily barrage of lawyer jokes.

A "good start'' was 200 lawyers at the bottom of Lake Ontario.

Somewhere near Calgary an Indian walked into the chief's wigwam, and the chief said, "What is your news?" The Indian said, "I have good news and bad news." "What is the bad news?" The Indian replied, "There are 300 Montreal lawyers who have just arrived on the reservation." The chief asked, "What is the good news?" "They taste like buffalo."

I had not been in this place more than two weeks when I was beset with senator jokes. This place and people like us were fodder for newspapers, which daily ran allegations or articles denigrating us and the work we were trying to do in good faith for the country.

All of us, in good faith, tried to obviate the public's concerns. The code developed at that time in the joint committee was but one of the initiatives taken to try to correct the image of this place.

At the time the joint committee was set up, the Library of Parliament noted, in part, in a background paper for that joint committee, the following:

> Public disclosure of private interests is a feature of virtually all modern conflict of interest regimes. Public disclosure is typically preceded by confidential disclosure to the responsible authority, who then prepares the public disclosure documents. Most regimes exclude from public disclosure such items as residences, recreational properties, cars and so on.

The report of the joint committee emphasized in March 1997 that the purposes of the proposed draft code, which were appended to that report, were — and I quote some of them:

> (i) to recognize that service in Parliament is a public trust;
>
> (ii) to reassure the public that all Parliamentarians are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case;
>
> (iii) to provide guidance for Parliamentarians in how to reconcile their private interests with their public duties, including establishing common rules of conduct and providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan adviser.

That report of March 1997 underlined that MPs and senators should conduct themselves with honesty and integrity and uphold the highest ethical standards so as to maintain and enhance public confidence and trust in the integrity of each and every MP and senator, as well as in the institutions themselves — the House of Commons and the Senate.

In short, that code provided that MPs and senators should perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny. All of this was to be accomplished through that new and far-reaching system of public disclosure that I referred to. It was to be a whole new regime of transparency, a rules-based approach heretofore unknown in this part of the world.

• (1930)

Honourable senators, as we all know, that code was never adopted, notwithstanding persistent public concern and almost daily public criticism by the likes of Jack Aubry of the local Ottawa newspaper from March 1997 to the beginning of the last session of Parliament when the government, in its wisdom, declared its intention to implement that code, together with appropriate legislation.

Honourable senators, there were various good and valid reasons for this seemingly long delay in getting to where we are today. Perhaps the most important of these, from our viewpoint as senators, is our consistent and strongly-held conviction that one size does not fit all, that the roles and characteristics of the Senate and its appointed senators are markedly different from those of the House of Commons and both its back-bench members of Parliament and those with the enhanced responsibilities of cabinet ministers. It followed logically that the honourable members of this chamber insisted that there be a separate code of conduct or set of rules governing the public and private behaviour and ethical standards of senators.

On March 31, 2004, after much debate both here and in the other place, Bill C-4 of the Third Session of the Thirty-seventh Parliament, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other acts in consequence, was enacted. This is the enabling legislation referred to yesterday by the Honourable Senator Joyal in his comprehensive remarks about our proposed new code in this chamber and pursuant to which Mr. Bernard Shapiro of Montreal was appointed Ethics Commissioner for the other place and Mr. Jean Fournier was appointed Senate Ethics Officer, both appointments being made by the Governor-in-Council after due consideration and approval by the House of Commons and the Senate. It is as well the governing statute for the conflict of interest code that we have before us this evening and will vote on tomorrow.

This conflict of interest code for senators is a remarkable document. It is the excellent fruit of a long and thoughtful but arduous labour by many of our honourable colleagues and their assistants and advisors, to all of whom we owe a substantial debt of gratitude. It differs greatly in scope and application from the 1997 Code of Conduct for Parliamentarians, while at the same time retaining its noble and essential tenor with respect to our service here being a public trust and the need for us to conduct ourselves in accordance with a particularly high standard of integrity and ethical standards.

Honourable senators, Senator Smith, Senator Di Nino and Senator Joyal have assured us that this is still an organic document. Although it will be voted in and become our code of conduct, it can be amended.

A high standard of ethical conduct and behaviour is very important, honourable senators, because, as we know, we live in a fish bowl. It is 2005, and we are scrutinized in everything we do and on how we conduct ourselves both in our private lives and here on the Hill in Ottawa. We should learn a lesson from the kind of behaviour we talked about earlier today, which the Speaker *pro tempore* emphasized in her ruling. I counted four articles in *Quorum* today that were critical of us. There are such articles in *Quorum* every day. We owe it to ourselves to clean up our act.

Why should we pass Bill C-33 when it violates the principle of giving the taxpayer a fair kick at the can in accordance with centuries-old law and principle? Why should we pass it when we are told by all the experts that it is wrong? Why did we pass Bill C-15 when we know it is unconstitutional and could easily be fixed? I do not know why. I hope that in the future we will keep in mind the obligations that we have to the public.

The time-worn label, or sobriquet, of "chamber of sober second thought" is as valid today as it was in 1867. I am delighted that it has been so well recognized and accommodated in the drafting and redrafting of this new code. As a result, our code is much better than the one that was adopted earlier this year in the other place — because we gave it sober second thought. We owe a tremendous debt of gratitude not only to the chairman and the members of the special committee but also to all of our colleagues who took the time to send in letters over the Christmas holidays and to attend the meetings of the committee. Senator Joyal said he attended 26 meetings. The result of all those efforts is that we have a document that is custom made for us. I suggest that we treat it with great respect and that we show Canadians that we care.

I am delighted, honourable senators, to note one of the basic guiding principles of this code in section 2(1)(9):

> Senators are expected to remain members of their communities and regions while serving the public interest and those they represent to the best of their abilities.

It recognizes that we have another life in the real world, and we are encouraged to carry out the functions that we were conceived of when this institution was created in 1867.

Sir John A. Macdonald said:

> It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, but it will never set itself in opposition against the deliberate and understood wishes of the people.

A Legislative and Historic Overview of the Senate of Canada, which I believe is available to all of us and is in the package made available to new senators, reads:

> As a Senator's writ of summons states, he or she has been appointed "for the purpose of obtaining your advice and assistance in all weighty and arduous affairs which may be the State and Defence of Canada concern". In theory, then, Senators are given a different function than that of the popularly elected members.

The Hon. the Speaker *pro tempore***:** Senator Angus, your time has expired. Are you seeking another five minutes?

Senator Angus: Yes, please.

Hon. Senators: Agreed.

Senator Angus: Thank you.

Honourable senators, in 1980, the report of the Legal and Constitutional Affairs Committee on certain aspects of the Canadian Constitution listed four roles of the Senate, all of which were complementary to the functions of the House of Commons. They were: A revising legislative role; an investigative role; a regional representative role — hence the need to have a profile and a real life in our districts so that we can do our work there — and a protector of linguistic and other minorities role.

Who would argue with the suggestion that we are doing that and doing it very well? The question is whether we are getting credit for it.

These are the roles, honourable senators, that this chamber has historically played through its appointed senators. It is for that reason that we are clearly different from our friends in the other place. That is why it is important that we took the time, with the able assistance of people like the Honourable Senators Smith, Di Nino and Joyal, to get a custom-made code that recognizes us for what we are and what we are supposed to be and the genius of Sir John. A. Macdonald and the other Fathers of Confederation when they created this place.

• (1940)

Honourable senators, I cannot tell you, even in my short stay in this place, how many newly appointed senators came to my office and simply said, "Wow, this is an amazing institution." Whether it is the Parliament of Canada library facilities, the wonderful staff we have in the Senate, the wonderful offices, the generous budgets to carry out our work, can you imagine abusing such a wonderful place and institution as the Senate? However, we all know that it is not well regarded out there, which is a shame.

I look around this chamber and see senators from all different parts of this great nation, and we all care about what we are trying to do here. Then we hear jokes about the Senate: "What do you call a lawyer gone bad? A senator." Give me a break, but that is the reality.

I urge honourable senators to read the code, and I am sure you all have. It is not perfect by any means. It has many areas that might give us difficulty, but the spirit is right. The general tenor is in accord, I believe, with what the fathers had in mind and we can easily live with it. We can do Canadian citizens proud as well as the prime ministers who appointed and summoned us here. That is the least we can do.

Honourable senators, I earnestly believe that this code in its present form is a fine product, appropriate to our particular needs in the Senate and responsive to the public's need and right to be sure that our conduct is appropriately monitored and that a cogent, fair and balanced rules-based process is in place to ensure we fulfill our public trust, on the one hand, yet, on the other hand, continue to enjoy privacy in the conduct of our personal lives and affairs.

I would like to share with honourable senators that at one stage I was quite concerned that the new rules-based approach had the potential to tip that important balance in a manner that would unduly restrict senators in the conduct of our private lives and affairs and, perhaps, even serve as a disincentive to other Canadians of goodwill to respond positively to a summons to the Senate.

My concerns have been allayed, honourable senators. Tomorrow we can proceed with confidence to vote in favour of this code. We all owe a tremendous vote of thanks to Senator Smith, Senator Di Nino and all our other colleagues who worked so hard to ensure that we ended up with a conflict of interest code for senators that appropriately serves the purposes intended.

Hon. Senators: Hear, hear!

Hon. Terry M. Mercer: I wonder if the honourable senator will permit a brief question to clarify something. He was very generous in his praise of Senator Di Nino, Senator Joyal and Senator Smith. I am sure it was an oversight on his part to leave out of that equation the great work done by Senator Fraser. I would like to make sure the record is corrected, and I know that my honourable friend would want to join me in thanking her for her work.

Senator Angus: Absolutely; I certainly do.

Hon. Marcel Prud'homme: Honourable senators, there is nothing like being open with each other. I have to replace someone who was supposed to be the host tonight for a very influential delegation visiting Canada. It would be very impolite not to be there.

In case the two sides have made an agreement to adopt the report tonight, as Senator Rompkey seems to have indicated that there will be no debate on it tomorrow, I will abstain. If it is put to a vote by agreement, I will say "on division." I will not mind meeting the press on the issue.

Senator Angus, who has his facts correct, mentioned the famous committee of Senator Oliver, whom I respect very much, and Mr. Milliken. I happened to sit on a committee a long time ago on the same subject. Honourable Senator Callbeck and I are survivors of an old code of ethics that we wanted to have in place. We were in favour of it.

My concern is the election to this new committee of two senators from each side and then a fifth one to be chosen by the four. I still have concerns that I want registered. I have concerns about their legislating us. Parliamentarians should debate like this — on the spot, listening to each other and without notes.

Senators are aware that before the Oliver-Milliken committee, there was a well-known committee co-chaired by Senator Richard Stanbury, a famous ex-President of the Liberal Party of Canada, and Mr. Don Blenkarn from the other place. I am going back now 20 years.

I am not happy with the way we will choose those who will represent us. Is Senator Angus satisfied that this committee is absolutely essential? We will be attacked about having a committee of our own looking over the shoulder of the Senate Ethics Officer.

Senator Angus: As I said, this is an organic code. Senator Joyal eloquently explained yesterday that it was important to find a way to place the interests of this chamber under the appropriate supervision of the Senate and the SEO. This was the mechanism devised by the committee on which Senator Fraser was an important player. I believe that either Senator Smith or Senator Fraser would be the better person to answer the question. I am comfortable with the concept.

I stated yesterday in my question and I reiterate now that it will be a hell of a job for those five people. It is new ground; it is rules-based. Do not forget those words.

In the past, we operated on principles. There is the Criminal Code, a House of Commons and a Parliament of Canada Act. That system of operating has worked well and has served us well, and I wrote a letter saying so. However, we were not in step with other democracies with respect to transparency. That is why we have come this way. I was worried, as I said.

The mechanism is ingenious. I thought it was terrific. I empathize with the 11 senators mentioned yesterday who do not fall into either the government side or the opposition side. I proposed an easy solution, namely, a sentence stating that for the purpose of this code, all 11 unaffiliated senators shall be deemed to be Conservatives.

Hon. Senators: Oh, oh!

Senator Angus: That would handle the situation pretty well.

Maybe Senator Smith or others could answer. It is a good solution, and I do not know how we deal with Senator Prud'homme.

The Hon. the Speaker *pro tempore***:** Honourable senators, Senator Angus's time has expired.

Senator Prud'homme: Senator Angus is a long-time friend, and a friend of my best friend in Montreal, Father Gabriel. He would be happy to know that. When he says he does not know how to accommodate, it is not a question of accommodating me. It is a question of knowing what is right, what is doubtful and what is wrong.

Senator, I am sure you do not mind that I tip my hat to your friend and mine, Father Gabriel.

• (1950)

[*Translation*]

Hon. Gerald J. Comeau: Honourable senators, I want to share with you my comments and thoughts on the code of ethics. I have served in one chamber of Parliament or another for 20 years. Given my experience and my observations in all those years, I believe I have non-partisan advice to offer, which honourable senators might have found useful.

It was the great American "philosopher" Yogi Berra who said:

> You can observe a lot by watching.

Unfortunately, today is the last day to take part in the debate. The message is clear: it seems paramount to rush through the code of ethics, and therefore my comments are unwelcome.

This code being a political issue, we must proceed carefully and reflect on how to present our comments because this is a delicate subject. Under the circumstances, it is difficult to make comments without running the risk of being misunderstood. Senator Prud'homme indicated earlier that we should be able to stand and comment on anything, without notes. However, it is better to weigh one's words carefully when it comes to such a sensitive subject.

We are well aware that journalists can twist our words in their stories. I would have liked my comments to be welcomed by all those who have spent so much time producing this code of ethics.

For all those reasons, I will limit my remarks to the process the government followed. The committee often met in camera in order to develop this code. I greatly appreciate all the time spent and work done. However, this should not replace real public debate.

Last Wednesday, I was told that, if I had any comments, I should have made them in committee. I will quote exactly what was said to me:

> The train has left the station.

The reason I did not take part in committee discussions was because I had other responsibilities. If you look at this side of the chamber, you will see that there are very few of us. This is because, increasingly, we must divide our time to do more and more work.

It was my hope that, with a bit of goodwill from the government, we would have been given a bit of time to debate the matter in this chamber, but that is not the case. We are passing bills at top speed, without any reflection and without adhering to the historical standards of this chamber.

Since most of the committee proceedings were in camera, I think that it would have been appreciated if some of the debate had been public. The meek majority of senators, however, having given their opinions, will limit and end the debate, and that will be that.

My remarks today on the code related to the minority in this place. Everyone will agree with me that the quality of democracy is measured by the respect for the minority shown by the majority.

How can this chamber respect the minorities in Canada when it does not respect its own minority? The lack of respect for differing opinions and the obvious haste are clear proof of how little the government values senators as a group.

Our concerns are of no value. The government can do as it pleases, with impunity, backed up by its majority. That is how this place operates now. Let us not forget that it was designed along the principles of respect, reflection and civility.

Out with the fine principles that once made this place a Chamber of sober second thought. The reality is that the majority imposes decisions from the Prime Minister's Office and, as we can see, the fine principles are futile and outdated.

Again today we saw what happens when there is a lack of preparation and reflection. We saw this almost all day. What are we to do? The Leader of the Government in the Senate clearly indicated he will be imposing time allocation on the debate. Am I expected to drop all my other responsibilities and duties in order to quickly prepare my comments on the code of ethics? I am not prepared to do so.

To prepare my observations on such a complex and controversial issue, I would need to have enough time to do so. However, I now have no choice but to submit to the will of the majority.

I remind all senators that, every time we limit debate, every time the minority is pushed into a particular course, we lose a little bit more of the value and spirit of this chamber. Honourable senators, if that is the case, then we all lose.

[*English*]

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

Hon. Senators: Yes.

The Hon. the Speaker *pro tempore***:** It is moved by the Honourable Senator Smith, seconded by the Honourable Senator Robichaud, that this report be adopted now.

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

Senator Comeau: On division.

Motion agreed to and report adopted, on division.

Hon. Bill Rompkey (Deputy Leader of the Government): Honourable senators, is there agreement to stand other items on the Order Paper until tomorrow?

Hon. Senators: Agreed.

The Senate adjourned until Thursday, May 19, 2005, at 1:30 p.m.

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