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(HANSARD)

Thursday, April 15, 2010

THE HONOURABLE NOËL A. KINSELLA
SPEAKER

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

Debates Services: D'Arcy McPherson, National Press Building, Room 906, Tel. 613-995-5756
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THE SENATE

Thursday, April 15, 2010

The Senate met at 2 p.m., the Speaker in the chair.

Prayers.

[*Translation*]

POLAND—VICTIMS OF TRAGEDY

SILENT TRIBUTE

The Hon. the Speaker: I would ask honourable senators to rise and observe one minute of silence in memory of the tragic loss sustained by the Republic of Poland with the death, on April 10, 2010, of its President, Lech Kaczynski, along with Polish political, military and civil society leaders.

(*Honourable senators then stood in silent tribute*.)

[*English*]

Honourable senators, I draw to your attention that on the west side of the Senate foyer, beneath the portrait of Her Majesty the Queen, there is a book of condolences in which honourable senators and others are invited to express their condolences.

[*Translation*]

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw your attention to the presence in the gallery this afternoon of Mrs. Jean-Robert Gauthier.

Mrs. Gauthier is accompanied by the family and friends of our colleague, the Honourable Senator Jean-Robert Gauthier.

SENATORS' STATEMENTS

TRIBUTES

THE LATE JEAN-ROBERT GAUTHIER, C.M.

The Hon. the Speaker: Honourable senators, I have received a notice from the Leader of the Opposition, requesting, pursuant to rule 22(10), that the time provided for the consideration of Senators' Statements be extended today for the purpose of paying tribute to the Honourable Senator Jean-Robert Gauthier, who passed away on December 10, 2009.

I would remind senators that, pursuant to the Rules of the Senate, each senator will be allowed three minutes and may speak only once.

Do honourable senators agree that tributes to Senator Gauthier will continue under Senators' Statements for 30 minutes and any time remaining after tributes may be used for other Senators' Statements?

Hon. Senators: Agreed.

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, it is an honour and a privilege to pay tribute to our former colleague, the Honourable Senator Jean-Robert Gauthier, for whom I had great admiration and respect.

I can say unequivocally that francophone communities always found a treasured ally in Jean-Robert Gauthier. As the Honourable Marie Poulin said in December, the Honourable Jean-Robert Gauthier truly did embody the meaning of the expression "having the courage of one's convictions."

Elected in 1972 and re-elected for six additional terms in the House of Commons, he served the citizens of his riding, Ottawa East, later Ottawa-Vanier, as well as all Canadians, with passion and dedication.

He held a number of portfolios: Parliamentary Secretary to the Minister of State for Urban Affairs; Official Opposition House Leader; Liberal Party House Leader; Whip; and party critic for the public service, Canada Post Corporation, the Treasury Board and, most important, the cause that he cared most strongly about, official languages.

During his decade of loyal service in the Senate, from 1994 to 2004, the Honourable Jean-Robert Gauthier sat on nine senatorial committees and served as Vice-Chair and Chair of the Standing Committee on Privileges, Standing Rules and Orders.

From 1972 to 2004, Jean-Robert Gauthier dedicated himself to the work of Parliament; the official count was 31 years, 11 months and 24 days. However, he was unofficially involved in politics long before he was elected and long after he retired from the Senate.

Thanks to his Bill S-3, since 2005 the Official Languages Act has required that federal institutions take positive measures to support the development of official language communities and to foster the full recognition and use of both English and French nationwide.

A strong advocate for Canada's francophones, he has worked to help foster the development of the French fact across Canada, as well as linguistic duality within Canadian society. For the past seven years, Senator Gauthier ran the Jean-Robert Gauthier Foundation's annual literary essay competition. I had the privilege of sitting on the panel, as honorary chair for three years.

This competition encourages francophone youth from across the country to reflect on their shared values and interests.

• (1410)

This initiative is just one of many examples of the ongoing support provided by Jean-Robert Gauthier to the younger generations, students and francophones throughout Canada. I know that the Franco-Albertan community joins me in extending sincere condolences to his wife, Monique, his children and grandchildren.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I rise today to pay tribute to one of our former colleagues, Senator Jean-Robert Gauthier, with whom I had the pleasure of serving in both the House of Commons and the Senate.

During his 32 years in Parliament, Senator Gauthier was recognized as a great champion of official language communities. He always defended the Franco-Ontarian community with courage and enthusiasm and without reservation. He took on a leadership role in the Fonds de la résistance S.O.S. Montfort and his dedication to the cause of francophone minorities was well-known throughout Canada.

He received many honours during his career, including the Boréal prize from the Association canadienne française de l'Ontario in 1988, the Ordre de la Pléiade, the Ordre de la Francophonie et du dialogue des cultures, the Order of the Legion of Honour in 2002, the Order of Canada in 2007 and the Order of Ontario in 2009. In 1996, he was awarded an honourary doctorate in education by the University of Ottawa.

I had the honour of working with Senator Gauthier on a number of issues. For example, I remember that we were very dissatisfied with how the Standing Joint Committee on Official Languages was functioning at the time and we took upon ourselves to establish our own official languages committee here in the Senate.

While there was resistance from the leaders of both chambers — Senator Carstairs will remember this, as she was the leader in the Senate at the time — Senator Gauthier, with his usual determination, got his way. In October 2009, the Senate established its own Standing Committee on Official Languages, which has been working very well ever since then.

It was not at all difficult to discern his position on matters of the day, especially if they had any bearing on Canada's French-speaking communities.

Senator Gauthier was a principled man who was dedicated to the francophone community, especially francophone minority groups in Ontario.

Honourable senators, as I said in this place when he retired in October 2004, Senator Gauthier was known for his perseverance and courage and for advancing Canada's linguistic duality. He provided Parliament with invaluable help.

Despite a serious illness that would have stopped many others, the senator kept on defending his community. Nothing could dampen his enthusiasm for the cause.

I am glad to have known and worked with Senator Jean-Robert Gauthier. I extend my sympathies to Monique and his family.

Hon. Pierre De Bané: Honourable senators, "Convaincre . . . sans révolution et sans haine"; to convince without revolution or hatred. These words perfectly sum up the life and life's work of a great politician, the late Senator Jean-Robert Gauthier. The story of the outstanding political career of Jean-Robert Gauthier is also the story of 40 years of struggle for respect for linguistic duality in Canada. We sat together for many years in the House of Commons.

As a Liberal MP, this man of principle and integrity won the respect of all Canadians. At the expense of his own personal advancement, he objected very strongly to the phrase "where numbers warrant" in the historic vote on the patriation of the Constitution in 1982. To him, what this simple phrase did was to enshrine in the Constitution an unacceptable proviso concerning the rights of Canadian citizens to be served in the language of their choice. This act marked the collective consciousness of the country's official language minority communities. To this day, the Honourable Jean-Robert Gauthier remains one of the most influential figures in Canada's francophone community and a champion of francophone rights.

A tireless promoter of the official languages, he worked non-stop until the final hours of his term with us here in the Senate. Our former colleague's legacies are many. Bill S-3, his final bill, gave teeth to the Official Languages Act. Thanks to Senator Gauthier's efforts, federal institutions are now responsible for taking positive steps to develop French-language minority communities.

In addition, his foundation organizes an annual essay-writing contest in post-secondary institutions across the country. In exchange for bursaries, Senator Gauthier called on our youth, the driving force of our nation, asking for their thoughts on matters of linguistic duality. Senator Gauthier was a firm believer in social justice and he advocated for the hard of hearing by raising awareness in federal institutions of the need for real-time captioning and interpretation services. Despite his illness, his office was teeming with friends and colleagues seeking his advice and support.

Jean-Robert Gauthier was a highly intelligent man who had a deep love for his country. He was a man of conviction who did not stand for injustice. He had the courage and statesmanship to fight injustices with his innate and generous passion.

Together with all my colleagues, I pay tribute to this great man. Thank you, Ms. Jean-Robert Gauthier.

Hon. Pierre Claude Nolin: Honourable senators, as a Quebecer, I wish to pay tribute to Senator Gauthier. When I met him for the first time in the Senate, I had already heard about him. He was a Member of Parliament at the time, but I had not rubbed shoulders with him then. When I met him in the Senate, I still saw myself as a Quebecer and did not appreciate how easy it was to be part of a majority. It was Senator Gauthier's determination that made me realize what francophones, French Canadians in minority situations, have to go through on a daily basis and what I take for granted. The vast majority of French Canadians in Quebec do not even realize how much they take for granted.

When you work alongside people like Senator Gauthier, you get a sense of their significance. It is people like him who make our country one of the best in the world.

• (1420)

Many thanks to those who will most certainly carry his torch. You are living proof that he did this out of love; you can bear witness to that and we thank you.

Hon. Lowell Murray: Jean-Robert Gauthier, champion of bilingualism, whom I knew and greatly admired, would have insisted that someone among us speak at least a few words in the language of Shakespeare, our country's other official language.

[*English*]

The life of a Canadian parliamentarian is one of multiple loyalties and obligations to constituents and region; to caucus colleagues; to a political party, its platform and its leader; to the national interest; to one's own principles, convictions and opinions; and to one's informed conscience. These often compete for attention and priority and the parliamentarian strives for balance. No one achieved that balance better than our late friend and colleague Jean-Robert Gauthier.

[*Translation*]

The minority rights he defended; the public servants' concerns that he took to heart; the key federal Liberal Party roles that were entrusted to him, such as chief whip and parliamentary House leader — these were all legitimate interests that coexisted with delicacy and sometimes with difficulty. Jean-Robert Gauthier rose to the challenge of balancing these responsibilities. He accepted the challenge of this daily, arduous and complex task. Such commitment from parliamentarians like Jean-Robert Gauthier and all of us is vital to Canadian unity.

It has been more than a quarter of a century since Jean-Robert and I co-chaired the Joint Committee on Official Languages. He represented the Commons and I represented the Senate. Here in the Senate, we worked together on the Standing Senate Committee on National Finance, notably on the significant changes to the Public Service Act. These experiences left me with deep admiration for this man, his integrity and his idea of public service.

[*English*]

He was truly an exemplary parliamentarian and Canadian.

[*Translation*]

Hon. Maria Chaput: Honourable senators, it is a great honour to speak today to pay tribute to one of the greatest parliamentarians in Canadian history.

The late Senator Jean-Robert Gauthier was an exceptional man. He enthusiastically represented the interests of francophones in Canada, and he fought for the equality of our two official languages until the day he died.

In 1977, the Honourable Jean-Robert Gauthier himself said:

> The minimum objective in all the provinces should be that every person have the right to live in their first language, that every parent have the right to send their child to school in the first language of their choice . . . that every person have the right to communicate with the government and public officials in the official language of their choice, and have the right to appear before the courts in either of the two official languages.

Today, we are getting a little closer to that "minimum objective" thanks to the tenacity of Jean-Robert Gauthier.

In his roles as school board trustee, member of Parliament and senator, he never hesitated to remind Canadians and their successive governments of the importance of official language communities within the Canadian federation.

It was Jean-Robert Gauthier who fought tirelessly to have French-only schools in the National Capital Region, and who won a tremendous victory.

It was Jean-Robert Gauthier who stood up to Mr. Trudeau in 1982, voting against the patriation of the Constitution. He wanted the rights of the Franco-Ontarian community to be recognized in the Constitution and refused to give that up. He voted with his conscience.

In 2005, a bill that the honourable senator introduced was passed by Parliament. These amendments to the Official Languages Act made the federal government's commitment to official language minorities binding. He gave some teeth to the legislation and, in doing so, he buttressed the protection of official languages.

French-speaking Canadians recognize the scope of his efforts, his extraordinary dedication to public life and all the benefits they derive from his hard work.

I would like to quote the words of Bernard Grandmaître, a former minister in the Government of Ontario, who said:

> There are few people of the same calibre as Jean-Robert Gauthier. He already serves as an example and will continue to do so. I hope others will carry on his legacy and pick up his torch.

To Monique Gauthier and her family, I would like to express my most sincere condolences and my utmost gratitude for having shared him with us.

[*English*]

Hon. Hugh Segal: Honourable senators, I think it is fair to say that I am the only member of this chamber who on many occasions knocked on doors against Jean-Robert Gauthier in the riding of Ottawa—East or Ottawa—Vanier. It was a formidable experience and very character-building, because to knock on doors without the slightest hope of success, and to do so election after election, reflected the depth of his popularity and the respect with which he was held.

[*Translation*]

That is how it is in the entire riding, among all voters, young and old, and from all walks of life. In my office here in the Senate of Canada, I have a Province of Ontario flag and a Franco-Ontarian flag. They both represent my tremendous respect for the work he always did to protect not only freedom of expression, but also freedom of expression in French, across the country and especially in the province of Ontario, which was founded by francophones and anglophones.

The work he did for the Montfort Hospital clearly demonstrates his remarkable ability to bring people together for important, critical causes.

It is with the utmost respect that I convey my deepest sympathies on behalf of all anglophones in the community who worked with him to defend the rights of francophones and in recognition of the huge contribution he made for us all.

The Hon. the Speaker: I thank honourable senators for their tributes.

[*English*]

POLAND

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, early Saturday morning the Polish people suffered an unimaginable tragedy when their president, Lech Kaczynski, and his wife, Maria, along with a large number of Polish government and military officials, were killed in a plane crash.

As the world now knows, they were on their way to Katyn to mark the seventieth anniversary of the horrific massacre that took place there in 1940 when the Soviet secret police, on orders from Stalin, murdered close to 22,000 Polish military officers, doctors, professors, law makers, police officers and public servants.

The plane crashed on the approach to the airport in Smolensk, not far from the site of those executions. Among the 96 people who died on Saturday were elderly relatives of some of those murdered in the Katyn forest.

The magnitude of this tragedy cannot be overstated. There are simply no words to capture the loss or the irony at the shock of one accident claiming the lives of so many political, military, religious and other leaders while travelling to commemorate a massacre that decimated an earlier generation of Poland's elite.

Yet, honourable senators, even from these heart-breaking ashes, some good can arise. Many feared for the future of Polish-Russian relations, which already carried a weight of a history marked by mistrust and enmity. However, it seems that the outpouring of emotion in the aftermath of this terrible tragedy may help to open possibilities for the warming of relations between these two nations.

• (1430)

It has been reported that the public expressions of strong sympathy from the most senior Russian government officials were met with strong appreciation in Poland and by individuals of Polish descent throughout the world, including in Canada.

The leading Polish newspaper, *Gazeta Wyborcza*, wrote in its editorial on Monday:

> If our two nations do not forgive each other at such a moment, will they ever forgive each other? A similar "chance" will never repeat itself. We cannot allow it to be wasted.

Honourable senators, Poland today is a country deep in mourning. Canadians of Polish descent are deep in mourning. Their grief is felt by us all.

Our thoughts and prayers are with them, and especially with the families and friends of the victims of this tragedy.

2010 INTERNATIONAL ICE HOCKEY FEDERATION WORLD WOMEN'S UNDER-18 CHAMPIONSHIP

CONGRATULATIONS TO CANADIAN WOMEN'S HOCKEY TEAM

Hon. Wilfred P. Moore: Honourable senators, I rise today to recognize and celebrate Canada's under-18 women's hockey team, which won the gold medal at the International Ice Hockey Federation's World Championship held in Chicago last weekend, with a 5-4 overtime win against the United States of America. This game was the third straight time that Canada and the United States squared off in a gold medal game, with the U.S. winning the first two.

Canada was behind 3-1 after the first period and 4-3 after the second. With only eight minutes left in regulation time, Jenna McParland scored to tie the game for Canada. At the 3:10 mark in overtime, Jessica Campbell, captain of Canada's team, tipped in Brigitte Lacquette's point shot to win the game and the gold medal for Canada.

Ms. Campbell's overtime goal gave her seven goals and 15 points in five games and earned her the Most Valuable Player award for the tournament. Ms. Lacquette finished second in points, with 13. She had a plus-minus of plus 15, and was named the top defenceman.

Jillian Saulnier of Halifax, Nova Scotia, was our team's assistant captain and finished fourth in scoring with four goals and 10 points in five games.

Team Canada was back-stopped by Carmen MacDonald, a 17-year-old goalie from Pictou, Nova Scotia. She made 37 stops in the championship game. MacDonald's .947 save average was tops in the tournament, and she posted a minuscule 1.12 goals against average in three and a half games.

Assistant coach Lisa Jordan, who is also head coach of the Saint Mary's University women's hockey team, said of Ms. MacDonald:

> She made two of these "Wow!" saves during a 5-on-3 penalty kill in the third period. It was just amazing and it allowed us back in the game and sent it to overtime. She was a major positive influence in how the game turned out.

Following the game, Dan Church, coach of Canada's team said:

> It's historic for us. It's our first win at this age group and we really worked hard to improve the skill level. As most Canada-U.S. games are, it was a true test of the rivalry again and I thought both teams performed really, really well.

It is with much pride that I say to this team of talented, athletic young women, congratulations and well done. Très bien! Go, Canada, go!

THE LATE CATHERINE ITZIN

Hon. Nancy Ruth: Honourable senators, Catherine Itzin has left us this week at age 65. Professor Itzin was one of the great thinkers who first challenged the sexualization of violence in our culture. *The Guardian* said she influenced many British policies on violence and abuse.

Professor Itzin was a feminist academic, responsible for more than 30 British government policies on the effects of domestic and sexual violence on women's mental health. She worked for the Department of Health from 1992 until 2008 and was a key player in developing its role in implementing policies on sexual violence, abuse and exploitation.

These policies were subsequently included in cross-government documents such as the *Action Plan on Sexual Violence and Abuse* and the *UK Action Plan on Human Trafficking*. Professor Itzin's work was included in a number of Department of Health policy documents, such as the *National Suicide Prevention Strategy* and the *Public Health White Paper*.

Professor Itzin's expertise and experience on the links between sexual violence and mental health was unrivalled. Between 2004 and 2008, she was chair of six expert groups for the Department of Health on domestic violence; childhood sexual abuse; rape and sexual assault; prostitution; pornography and trafficking; and adolescent and adult sex offenders. She was diligent in her advice to educate health professionals on what she named "the hidden health needs."

Born in Iowa City, U.S., Catherine Itzin moved to Britain in the late 1960s to complete her PhD. After taking a decade from work to raise her two children, in 1985 she began working for the local authorities in various roles relating to anti-discrimination.

She also held academic posts at the universities of Essex, Bradford and Sunderland, and from 1999 to 2004 was the co-director of the International Centre for the Study of Violence and Abuse at Sunderland University. After that, she held the chair in mental health policy at Lincoln University.

Catherine Itzin was an activist, and in 1987 she founded the Campaign against Pornography and Censorship.

In 1993, her book, *Pornography: Women, Violence and Civil Liberties*, was published by Oxford University Press. It was a brave attempt to argue a coherent case for the regulation of pornography, based on empirical, philosophical and legal grounds.

In the introduction, she sets out her stall and argues that feminists should take pornography as a core area of activism because:

> . . . pornography plays an important part in contributing to sexual violence against women and to sex discrimination and sexual inequality"

Professor Itzin outlines an historical account of regulation, through obscenity law principally in Britain, and a powerful argument for regulating pornography rather than obscenity.

A staunch feminist from the early days of the women's movement, Professor Itzin was never afraid to stand up for what she believed in, however unpopular and contentious.

In her spare time, she liked walking in the hills and spending time with her grandchildren. Recently, she had been writing her memoirs.

She is survived by her husband, her children, her mother and all of us who will miss her intellect and her leadership.

[*Translation*]

ROUTINE PROCEEDINGS

PUBLIC SAFETY

CANADIAN SECURITY INTELLIGENCE SERVICE— 2008-09 PUBLIC REPORT TABLED

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the 2008-09 public report of the Canadian Security Intelligence Service.

[*English*]

STUDY ON ISSUES RELATING TO FEDERAL GOVERNMENT'S CURRENT AND EVOLVING POLICY FRAMEWORK FOR MANAGING FISHERIES AND OCEANS

SECOND REPORT OF FISHERIES AND OCEANS COMMITTEE TABLED

Hon. Bill Rompkey: Honourable senators, I have the honour to table, in both official languages, the second report of the Standing Senate Committee on Fisheries and Oceans entitled: *Controlling Canada's Arctic Waters: Role of the Canadian Coast Guard.*

(On motion of Senator Rompkey, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

• (1440)

THE SENATE

NOTICE OF MOTION TO RECOGNIZE NATIONAL KOREAN WAR VETERANS DAY

Hon. Yonah Martin: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Senate recognize and endorse July 27th annually as National Korean War Veterans Day.

QUESTION PERIOD

FISHERIES AND OCEANS

SNOW CRAB QUOTA

Hon. Elizabeth Hubley: Honourable senators, my question is for the Leader of the Government in the Senate. In response to a question I asked yesterday regarding the decision of the Minister of Fisheries and Oceans to reduce the snow crab quota for 2010 by 63 per cent, the leader indicated that the minister based her decision on scientific advice. Is this the same scientific advice from Fisheries and Oceans reports that showed a rapid decrease in the snow crab biomass beginning in 2005?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I will have to take the honourable senator's question as notice. I do not know the exact dates of the scientific data. I imagine that the minister, having made this decision, did so based on the newest scientific data. In any event, I will attempt to find this data for Senator Hubley.

Senator Hubley: Honourable senators, departmental reports show year-over-year decreases in the crab stocks from 84,900 tonnes in 2004, to 48,000 tonnes last year, to just 26,100 tonnes this year.

Would the leader confirm that the departmental scientists noted this decline and recommended cuts to the quota over the past several years? Have the scientists been calling for a reduction in quota for several years? If so, could the leader tell this chamber why the Minister of Fisheries and Oceans has not heeded these calls for conservation and acted in a responsible, balanced way to preserve the stock and the viability of this industry?

Senator LeBreton: Honourable senators, Minister Shea has been the Minister of Fisheries and Oceans for over a year. I know that she is very respectful of the advice she receives, especially advice based on scientific information. I will have to take the honourable senator's question as notice.

Honourable senators, I repeat that the minister is concerned about the people who are affected by this reduction and will be working with the communities, the provinces and the areas involved to try to reach solutions to help them through this difficult time.

[*Translation*]

NATURAL RESOURCES

FOREIGN ACQUISITION OF RAW ENERGY PRODUCERS

Hon. Céline Hervieux-Payette: Honourable senators, my question is for the Leader of the Government in the Senate.

Madam leader, Canada's non-renewable natural resources, such as the oil in the oil sands, are a strategic resource for Canada and, as such, are vital to our national security.

The purchase of a minority stake in Syncrude by the Chinese state-owned firm Sinopec for $4.6 billion, with a veto right, should alert us to the threats foreign companies can pose to our national security in the energy field.

Sinopec is controlled by the Chinese government, which has virtually no openness to the free market, as you know.

What does the government plan to do to protect Canada's net benefit, as stipulated in section 20 of the Investment Canada Act, because our non-renewable natural resources have strategic value to our country?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): I thank the honourable senator for her question. This question was asked of the Prime Minister when he was in Washington to attend the nuclear summit hosted by President Obama.

The Prime Minister indicated that the government would review Sinopec's bid, as it would any foreign investment. The minister only approves applications for review where an investment demonstrates that it is likely to be to the benefit of all Canadians.

[*Translation*]

Senator Hervieux-Payette: As we know, the current government was certainly not a member of the Petro-Canada fan club and now we are talking about a state corporation from another country. The government's lack of intervention is a serious threat to Canada's strategic interests. The Investment Canada Act urgently needs to be revised with respect to our ability to preserve our strategic enterprises and maintain our discretion over them and our capacity to help Canadians take advantage of all their employment spinoffs.

Accordingly, when will the government amend the Investment Canada Act to assure us that foreign companies are no threat to Canada's economic, social and environmental interests?

[*English*]

Senator LeBreton: Honourable senators, I believe I answered that question in my first answer. The minister only approves applications for review where an investment demonstrates that it is likely to be to the net benefit for all of Canada.

EXPORT OF BITUMEN

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, Senator Hervieux-Payette has highlighted the fact that China is interested in importing raw bitumen from Alberta's oil sands. These imports would go against the Prime Minister's 2008 campaign promise to prevent any company from exporting raw bitumen. It is true that the government announced yesterday that it was committed to implementing its campaign pledge.

However, we see today in *The Globe and Mail* a report that Sinopec has veto power over the crucial decision whether to upgrade more oil in Alberta or to export the raw bitumen for processing. There is also a plan by Enbridge Inc., in Calgary, to build a pipeline to the West Coast to facilitate bitumen exports to the Pacific Rim.

In light of these two issues contradicting the campaign pledge of not exporting raw bitumen, can the leader tell us how the government will honour its pledge?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I will neither comment upon nor judge comments that are written in *The Globe and Mail*. I am well aware of the commitment with regard to bitumen. I will certainly take the honourable senator's question as notice in order to ask my colleagues how they would respond to the newspaper stories in *The Globe and Mail*.

As the government said, our campaign commitment stands.

[*Translation*]

INFRASTRUCTURE

BROADBAND ACCESS TO REMOTE AREAS

Hon. Francis Fox: My question is for the Leader of the Government in the Senate and has to do with high-speed Internet in rural regions that, by definition, are underserved.

Last week we learned from the Fédération québécoise des municipalités that people living in the country's rural regions are still waiting for critical funding that would allow them to connect to high-speed Internet.

Following the creation of a $225 million fund in the 2009 budget, Prime Minister Harper himself reiterated the budget promise originally made in one region on July 30, 2009, with Minister Christian Paradis, saying:

> By the end of the summer, broadband access will be available in remote communities far away from major centres.

The government promised to disburse the money by the end of December 2009, but there is still no sign of these services or the necessary funding.

Can the minister tell us when Canadians in rural areas will receive the funding they so greatly need in order to enjoy the same advantages as their fellow citizens in urban areas?

• (1450)

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, one thing our government is extremely proud of is the commitment and progress we have made in expanding broadband and Internet connection across the country. With regard to the honourable senator's specific comments about Quebec, I do not have that kind of detailed information with me. I will take the honourable senator's question as notice.

[*Translation*]

Senator Fox: Honourable senators, in reference to Mr. Harper's promise and the government's lack of action, last Friday, the president of the Fédération québécoise des municipalités, Bernard Généreux, criticized the government for neglecting rural areas, saying, "We are in total limbo," and noting that 40 Quebec municipalities have no Internet service, while 250 others have poor service. In total, 300,000 Quebecers do not have access to adequate Internet services. The Fédération québécoise des municipalités estimates that, of the $225 million allotted, $60 million should go to Quebec municipalities.

Could the Leader of the Government in the Senate confirm that Quebec municipalities will indeed receive their fair share of this $225 million?

[*English*]

Senator LeBreton: As the honourable senator knows, we are fully committed to the fund. There is no reason to believe that the fund will not be equitably distributed across rural parts of the country. However, I will seek confirmation of that for the honourable senator.

ENVIRONMENT

EMISSIONS REGULATION

Hon. Grant Mitchell: Honourable senators, the Standing Senate Committee on Energy, the Environment and Natural Resources had the pleasure this morning of having the Minister of the Environment, Jim Prentice, appear. It was an excellent presentation appreciated by all of us.

He said that if the United States implements cap and trade, then Canada will implement cap and trade. He then said something startling. If the U.S. does not implement cap and trade, then Canada will probably end up implementing climate change policy by regulation.

Why does this hard-nosed, business-driven, Conservative government want to abandon cap and trade — which at least has a good portion of market mechanisms driving it — for the old proverbial red-tape approach? This is hardly consistent with a government that says it cares about business and wants to promote it in an effective, efficient and competitive manner.

Hon. Marjory LeBreton (Leader of the Government): I am glad the honourable senator appreciated the appearance before the committee of my colleague, the Honourable Jim Prentice. He is an outstanding minister who knows the file and has great credibility in the area of the environment.

The honourable senator knows that with an integrated economy such as we have with the United States, whether it was with regard to the announcement last week about greenhouse gas emissions, that we will put our industries at a distinct disadvantage if we do not view all these issues as cross-border issues. Minister Prentice was simply being upfront and honest, which is exactly the type of person he is.

Senator Mitchell: My colleague Senator Day has suggested, "Prentice for leader."

An Hon. Senator: You have your own problems.

Senator Mitchell: The leader is correct to suggest that the real issue is competitiveness, which is about how carbon is priced in Canada versus the U.S. However, there is no given that Canada cannot price carbon through a cap-and-trade program that competes and synchronizes directly with a carbon price on the much less efficient regulatory red-tape program the U.S. might use. Has anyone in this government given any consideration in this process to trying to calibrate a made-in-Canada cap and trade in a way that makes us competitive with the red-tape, inefficient regulatory process that might be implemented in the U.S., rather than to mimic that red tape in Canada?

Senator LeBreton: Honourable senators, I will resist weighing in on the Liberals' leadership problems and Mr. Ignatieff's flip-flops on every issue from health care to child care. Whatever the issue, he is passionate about it. It is like Paul Martin; everything was a priority. Mr. Ignatieff is passionate about everything.

Honourable senators, we have a skilled and knowledgeable Minister of the Environment who not only has a good legal mind, but also has a good understanding of the industry because of where he is from. I am sure there are few possibilities or alternatives that Minister Prentice and the qualified individuals who work with him in the Department of the Environment have not thought about, studied and considered as we go forward in all areas with regard to the environment and energy. However, I will take the honourable senator's suggestion to the minister.

Hon. Tommy Banks: It is wonderful when they heckle one before the question is even asked.

Speaking of flip-flops, does the leader remember the phrase, "a made-in-Canada solution"?

Some Hon. Senators: Oh, oh.

Senator Mockler: That is not a question.

[*Translation*]

INFRASTRUCTURE

BROADBAND ACCESS TO REMOTE AREAS

Hon. Maria Chaput: Honourable senators, my question is for the Leader of the Government in the Senate and concerns broadband Internet access. In Manitoba, rural municipalities do not always have access to broadband Internet. Several of them got together at least three years ago and submitted an application for funding to the federal government, complete with a strategic plan and an action plan, to obtain the necessary funding to have access to broadband Internet.

Could the Leader of the Government in the Senate find out exactly where the application made by these Manitoban municipalities stands?

[*English*]

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, I will be happy to inquire. As I mentioned, there is significant funding in the Community Access Program to provide access across the country to the Internet. I saw interesting charts not long ago that showed great uptake of broadband use all over the country in rural Canada. I did not hear if the honourable senator was asking on behalf of a specific community organization or group, but I will be happy to make an inquiry.

[*Translation*]

Senator Chaput: A number of municipalities in Manitoba banded together to submit an application for funding.

DELAYED ANSWER TO ORAL QUESTION

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, I have the honour to table a delayed response to an oral question raised by Senator Tardif, on March 16, 2010, concerning Citizenship and Immigration, regulations for refugee status.

CITIZENSHIP AND IMMIGRATION

REGULATIONS FOR REFUGEE STATUS

(*Response to question raised by Hon. Claudette Tardif on March 16, 2010*)

> The Government of Canada recognizes that many individuals affected by the lifting of the temporary suspension of removals (TSR) for Rwanda, Liberia, and Burundi on July 23rd, 2009 have developed significant ties to Canada. As such, measures for those affected by the lifting were implemented.
>
> Persons affected by the lifting and subject to a removal order, as a result of a failed refugee claim or other circumstances, were given 6 months from July 23rd, 2009 (i.e. on or before January 23, 2010) to apply for humanitarian and compassionate (H&C) considerations. Individuals who made an H&C application in this

timeframe will not be removed from Canada pending their H&C decision. Although the deadline has passed, individuals may still apply for permanent residence under H&C grounds. It should be noted, however, that applicants who apply after the 6-month deadline will not benefit from a deferral of removal.

Nationals of Rwanda, Liberia and Burundi currently before the Immigration and Refugee Board (IRB) will have 6 months from the date of a negative decision to apply for H&C consideration. Individuals who make an H&C application in this timeframe will not be removed from Canada pending their H&C decision. Affected individuals are also entitled to apply for a pre-removal risk assessment.

Citizenship and Immigration Canada is committed to enhancing and maintaining the vitality of Francophone minority communities in Canada and works with federal, provincial, territorial, and community partners to encourage French-speaking immigrants to settle in and integrate into Francophone minority communities. This commitment to Francophone minority communities, however, must be balanced by an overall commitment to program integrity within the immigration system, which provides avenues for consideration of exceptional circumstances, including for those affected by the lifting of the TSR.

ORDERS OF THE DAY

BUSINESS OF THE SENATE

MOTION TO CHANGE COMMENCEMENT TIME ON WEDNESDAYS AND THURSDAYS AND TO EFFECT WEDNESDAY ADJOURNMENTS ADOPTED

Hon. Gerald J. Comeau (Deputy Leader of the Government), pursuant to notice of April 14, 2010, moved:

That, for the remainder of the current session,

(*a*) when the Senate sits on a Wednesday or a Thursday, it shall sit at 1:30 p.m. notwithstanding rule 5(1)(a);

(*b*) when the Senate sits on a Wednesday, it stand adjourned at 4 p.m., unless it has been suspended for the purpose of taking a deferred vote or has earlier adjourned; and

(*c*) when a vote is deferred until 5:30 p.m. on a Wednesday, the Speaker shall interrupt the proceedings, immediately prior to any adjournment but no later than 4 p.m., to suspend the sitting until 5:30 p.m. for the taking of the deferred vote, and that committees be authorized to meet during the period that the sitting is suspended.

(Motion agreed to.)

• (1500)

BOARD OF DIRECTORS GENDER PARITY BILL

SECOND READING—DEBATE ADJOURNED

Hon. Céline Hervieux-Payette moved the second reading of Bill S-206, An Act to establish gender parity on the board of directors of certain corporations, financial institutions and parent Crown corporations.

She said: Honourable senators, it gives me great pride to speak in this chamber at second reading of a bill that is very important to me. I am also happy to be reintroducing it in this new session.

The purpose of Bill S-206 is to ensure parity for women on the boards of directors of publicly traded corporations, financial institutions and federal Crown corporations.

Women are active participants in the business community, as business owners, shareholders, officers, managers and employees, and they also play an important role in the market as consumers, so they should have equal representation in the management of Canadian businesses.

A great many women in Canada have the qualifications and experience to act as corporate directors, but the number of women in top corporate positions does not come close to reflecting their economic importance.

A recent Catalyst study published last month, based on 2009 data collected from the *Financial Post* 500 companies, is unequivocal. I would like to quote from the study, which is entitled *2009 Catalyst Census: Financial Post 500 Women Board Directors*.

[*English*]

> In 2009, women held 14 per cent of board seats at Financial Post 500 companies, an increase of one percentage point since 2007. In both 2007 and 2009, more than 40 percent of companies had no women directors.
>
> In both 2007 and 2009, less than one-fifth of companies had three or more women on their boards. Nearly half of public companies (which have shares traded on a stock exchange) have no woman board directors.
>
> A previous Catalyst Census has shown that, in 2001, 10 per cent of women were represented on the FP500 boards.

[*Translation*]

As we can see, the fine rhetoric and the good intentions of many people to promote gender parity on boards of directors are no longer enough. The need for action by Canada's Parliament is more acute than ever, given how slow the progress toward parity has been.

Another Toronto consulting firm, Corporate Knights, came to this conclusion: "At this rate, only one out of five board seats will be held by women by 2020."

Bill S-206, which I introduced, requires the following corporations and financial institutions to achieve parity in the number of women and men serving as directors: every corporation that is a distributing corporation under the Canada Business Corporations Act; every bank that is listed in Schedule I to the Bank Act; every insurance company and every trust and loan company that is a distributing company; and every cooperative credit association. The gender parity requirement also applies to Crown corporations listed in Schedule III to the Financial Administration Act.

These entities have a maximum of three years to comply with the gender parity requirement.

I will soon introduce another bill that will propose, among other measures, to limit participation by any individual to four boards of directors. This means that vacancies will occur and, thanks to Bill S-206, we will be able to appoint women to these positions.

To those honourable senators who may see this as a dangerous precedent on the part of the Canadian Parliament as regards the proper management of corporations, I remind them that, in 2006, the Quebec government passed similar legislation. When he proposed this reform, Quebec's Minister of Finance, Michel Audet, said:

> A new element that has been particularly welcome is the increased number of women on boards of directors. Crown corporations have been asked to have equal representation of men and women on all boards of directors within the next five years.

With this measure, we are acknowledging the fact that Quebec can count on the expertise of many highly qualified women who have the required skills and have proven their commitment to society.

The Premier of Quebec, Jean Charest, went even further by appointing an equal number of women and men to his last two cabinets. This is a fine example that should be followed here by the federal government, and by all the other provincial governments.

Major industrialized nations in Europe have also decided to take action by legislating to increase women's representation on the boards of directors of their publicly traded corporations.

For instance, since 2006 Norway has required that women make up 40 per cent of all public corporations' boards of directors. Spain has passed similar legislation and France also decided to take action earlier this year. The French Senate is currently reviewing legislation passed by the National Assembly to have women make up at least 40 per cent of the boards of directors of publicly traded corporations. The legislation proposes a 20 per cent quota by the end of a three-year period beginning on the day that the legislation is passed. However, the minimum of 40 per cent will have to be achieved within six years after the law is enacted.

Last January, the prestigious *New York Times* published an extensive report on European countries that have passed legislation promoting gender parity. The report's title is *Getting Women Into Boardrooms, By Law*. The New York daily reported this:

[*English*]

> A 2007 McKinsey study of the largest European companies found that those with at least three women on their executive committees significantly outperformed their sectors in terms of average return on equity by about 10 per cent; operating profit was nearly twice as high. The study stopped short of attributing this performance to a "critical mass" of women but found that companies with pronounced gender capacity at the top tended to rank highly in terms of management quality and organization.

[*Translation*]

Honourable senators, it should come as no surprise that a number of studies show that having equal representation of women and men on boards of directors makes businesses more profitable.

[*English*]

The most recent study, entitled *Groundbreakers* and done by the firm Ernst & Young, is positive. I quote:

> Economic analyses by the World Bank, United Nations, Goldman Sachs and other organizations show a significant statistical correlation between gender equality and the level of development of countries. The evidence is compelling that women can be powerful drivers of economic development.
>
> Several studies from a broad spectrum of organizations — including Catalyst, Columbia University, McKinsey, Goldman Sachs and The Conference Board of Canada — have examined the relationship between corporate financial performance and women in leadership roles. Their undisputed conclusion is that having more women at the top improves financial performance.

There are many reasons that explain this result, and here is one of them, says the study: "Diversity is strategy, diversity is an equation for success." It continues:

> Academic research has established that diverse groups of people tend to outperform homogenous groups if both groups' people have equal abilities.

[*Translation*]

We need board members who can suggest new ways of tackling old management problems and who reject the group-think that may have contributed to the global financial challenges we have been facing.

• (1510)

Honourable senators, many of you will agree with that statement, but not everyone agrees. Well-known investment manager Stephen Jarislowsky said out loud what some people undoubtedly think to themselves, when he recently spoke out against Quebec's law on parity.

He said:

> Because they raise children, it is much more difficult for women to become good administrators. They have not lived their whole lives in this type of culture, they come from outside. Something is missing and that is industrial competence.

In his comments, which were reported extensively in the Quebec media, Mr. Jarislowsky nevertheless confirmed that he was in favour of parity, provided that the members of boards of directors are curious, courageous and competent. I would say that all women agree with him there.

However, Premier Jean Charest was also quick to respond and defend the Quebec law, as reported in the May 28 edition of the *Le Devoir*. The article states that the premier pointed out that the Quebec law has actually forced the government:

> . . . to think outside the box when making appointments. In this way, we were able to discover people who apparently did not exist previously, but who were suddenly brought to our attention.

However, is the qualification criterion the only one explaining why there are so few women sitting on boards of directors, asked the renowned magazine *The Economist*, which, at the beginning of 2010, dedicated an entire issue to the climb of women in the workforce over the past 40 years. *The Economist* reported:

[*English*]

> Women make up less than 13 per cent of board members in America. The upper ranks of management consultancies and banks are dominated by men. In America and Britain the typical full-time female worker earns only 80 per cent as much as the typical male.
>
> This no doubt owes something to prejudice. But the biggest reason why women remain frustrated is more profound: many women are forced to choose between motherhood and careers.

As honourable senators know, in Quebec, with our daycare system, we do not have to make that choice. The article continues:

> Childless women in corporate America earn almost as much as men. Mothers with partners earn less and single mothers much less. The cost of motherhood is particularly steep for fast-track women.

[*Translation*]

Because the qualifications of men versus women are still an issue, here are the latest Statistics Canada data, which were released in July 2009 and concern the degrees awarded in 2007 by all Canadian universities. Honourable senators will see that we have ample numbers of female graduates who could qualify.

In 2007, out of 241,600 university graduates, nearly 61 per cent, or 146,700, were women, continuing a long-term trend in which female graduates outnumber their male counterparts. Since 1994, women have outnumbered men at every level except the doctorate level.

At that level, the federal agency reports that, in 2007, universities granted 4,800 doctorate degrees. Women accounted for 45 per cent of these doctorates, up from 36 per cent a decade earlier.

Let us now turn to the figures for degrees granted by field of study. In 2007, in the fields of business, management and public administration, 22,926 university qualifications were awarded to men, compared to 25,767, or 53 per cent, to women. In the fields of physics, life sciences and technologies, men received 7,641 qualifications, and women, 11,085, or 59 per cent.

As you can see, the figures speak for themselves.

With this new bill, I am beginning a reform of the financial system and business management that I plan to continue with other bills. In light of the moral crisis in the capitalist system, an overhaul of the culture of boards of directors is urgently needed.

Gender parity on boards of directors is a part of these absolutely necessary changes.

[*English*]

The *Groundbreakers* study states the following:

> There may be no quick fix to the current financial crisis, but a sure-fire, long-term resolution is to advance more women into leadership positions and provide the right environment for new perspectives to be heard.

Let me conclude with the words of a recent editorial from *The Globe and Mail*, the favourite newspaper of the Leader of the Government in the Senate, published last January, about gender parity in the boardroom:

> Women have come a long way in four decades, but the final "power" frontier is as important to conquer as all the others that have come before. Those who lead must take the responsibility to make change happen. They must adopt the issue as a personal challenge.

[*Translation*]

Honourable senators, with that in mind, I urge you to take up this challenge and pass this bill. Canada's Parliament has an opportunity to play a leadership role with other industrialized nations and work to achieve the economic and social progress that Canada greatly needs today.

(On motion of Senator Comeau, debate adjourned.)

[*English*]

CRIMINAL CODE

BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED

Hon. Tommy Banks moved second reading of Bill C-464, An Act to amend the Criminal Code (justification for detention in custody).

He said: Honourable senators, the bill now before us seeks to amend the law of bail. Its author is a member of the House of Commons from Newfoundland, Mr. Scott Andrews.

A specific but, sadly, not unique event gave rise to the impetus to do something about the law of bail. That event was the death — indeed, the murder — of Zachary Turner. I hope that all honourable senators have taken, or will take, the time to see the DVD of the film by Kurt Kuenne called *Dear Zachary*, a copy of which was sent by me to each of your offices. The viewing of that film will provide an understanding and a compelling advocacy of this bill better than anything that I or anyone else can possibly say.

The end purpose of the bill is to substantively reduce — because, unfortunately, we cannot eliminate — the likelihood of the recurrence of the awful tragedy of what happened to Zachary Andrew Turner, or of what happened to Shirley Turner, or of what happened to Zachary's paternal grandparents. I will try to encapsulate the story.

In short, Shirley Turner was a medical doctor from Newfoundland. In the United States, she began an intimate relationship with another medical doctor named Andrew Bagby. In November 2001, in Latrobe, Pennsylvania, Andrew Bagby ended that two-year relationship and then, on November 5, in a state park in Pennsylvania, Dr. Andrew Bagby was shot five times and he died of those wounds. Dr. Shirley Turner became the prime suspect in the killing, and she fled home to St. John's, Newfoundland.

In the next succession of events, the State of Pennsylvania preferred murder charges against Dr. Turner; Dr. Turner was arrested and jailed in St. John's, pending extradition to face those charges; Dr. Turner announced that she was pregnant with Dr. Bagby's child; Dr. Turner was granted bail; and Zachary Andrew Turner was born on July 18, 2002.

Dr. Andrew Bagby's parents, Kate and David Bagby, packed up from their California home and moved to Newfoundland to apply for custody of their grandson, whose mother had been charged with the murder of their son.

On November 14, 2002, Newfoundland Chief Justice Derek Green ordered Dr. Turner committed to custody, pending a surrender order for extradition from the federal Minister of Justice. By then, the senior Bagbys had obtained an order stipulating that if Dr. Turner were incarcerated, they would have full care of their grandson.

• (1520)

On January 10, 2003, Court of Appeal Judge Gail Welsh released Dr. Turner on bail pending the outcome of her appeal of Mr. Justice Green's committal order. Dr. Turner thereupon regained custody of her son Zachary.

The process of extradition dragged on and, early on the morning of August 18, Dr. Turner took Zachary to Conception Bay South where she murdered her infant son and committed suicide.

Honourable senators, I believe that if all the turbulent facts about Dr. Turner that had been known to the Pennsylvania authorities, known to the people in charge of Dr. Turner's imprisonment, known to the child welfare agencies of Newfoundland, and known to the medical people who had from time to time treated Dr. Turner, if all of those facts were known and presented clearly and forcefully by the Crown to the Newfoundland court of Judge Welsh in a strong argument against the granting of bail, Zachary Turner would still be alive.

However, sadly, neither of those things were true. I do not believe that all of the facts arguing against her release on bail were known to the Crown, or that an assiduous argument was made by the Crown in opposing the granting of bail.

In fact the Child and Youth Advocate of Newfoundland commissioned a review, conducted by Dr. Peter Markesteyn, which was released in October 2006. It said:

> Had Dr. Turner not been released on Bail on 12 December 2001 or on 10 January 2003, my review would have been unnecessary. Zachary would be alive today.

When we were looking at how to preclude a recurrence of anything like this, we first looked at the question of bail in extradition cases. Bail pending an application for extradition is covered by a different section of the Criminal Code than ordinary bail. This section has criteria that are different from ordinary bail. It requires that a bail application for the accused must establish; first, that the application is not frivolous; second, that the accused will appear in court; and third, that the detention is not necessary in the public interest.

Judge Welsh decided that frivolousness was not an issue in an extradition matter, leaving only appearance in court and the public interest. However, the Supreme Court of Canada has declared that the "public interest" criterion is "impermissibly vague," which left only the "appearance in court" criterion. Whatever arguments, if any, were made by the Crown in that respect were, one must assume, not found by the judge to be compelling.

We actually looked at the concept of the automatic detention without bail for all persons charged with murder, but this flies in the face of my, and every reasonable thinking person's, unalterable opposition to the removal of judges' discretion. It would also be contrary to the presumption of innocence, which is the very basis of bail, and that is the matter with which this bill deals.

The presumption of innocence is the ground upon which our system of criminal law and our system of justice rests. That presumption means that, absent good reasons to the contrary, bail will almost automatically be granted to any person charged with any crime, even the most serious of crimes.

Those good reasons, the reasons for the denying of bail, are set out very clearly in subsection 515(10) of the Criminal Code. It states that bail will pretty well automatically be granted unless it can be shown that the detention of the accused must be necessary, first, in order to ensure the attendance of the accused in court; second, for the protection or safety of the public, including any victim of or witness to the offence, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; or, third, in order to maintain confidence in the administration of justice, et cetera.

It is the second of these provisions that the present bill seeks to amend by adding the words "or any person under the age of 18 years," so that the second reason for the denying of bail would read, in paragraph 515(10)(b) of the Criminal Code:

> [W]here the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances. . . .

Honourable senators, it is precisely that consideration — "or any person under the age of 18 years" — which, if it had been part of the bail law would, we hope, have caused the judge to take into consideration things which, in the event, she did not.

They are just a very few words, and they may seem innocuous, but they may be enough to cause judges to look a little more carefully at the children involved in or affected by a bail hearing, "having regard," as the code says, "to all the circumstances."

Honourable senators, this bill received not merely unanimous, not merely all-party, and not merely unquestioned support, but enthusiastic support on all sides and from all views in the other place. It is an entirely non-partisan and, I believe, highly useful and practical bill that does no harm. The sooner it becomes law, the sooner the children who are found in dangerous or potentially dangerous situations having to do with persons charged with a criminal offence will receive the attention and, one sincerely hopes, the protection of the courts.

I urge honourable senators to view the film *Dear Zachary* that is in their possession; that we carefully consider this bill; that we send it forthwith to committee for further consideration; and that, by making it law with alacrity, we can help to make very long the odds that anyone else suffers Zachary's fate, or the anguish of those who loved him.

Hon. Anne C. Cools: Honourable senators, I want to thank Senator Banks for this initiative. This case touched us all very deeply. I thank the honourable senator for all his work.

From what I glean from what the honourable senator is saying, his amendment is proposing a change to the bail provisions in the Criminal Code.

There are many things that went wrong in this case, but one of the things that was pretty clear all along was that the person in question, or the accused person in question, had already fled from one jurisdiction to the other to avoid taking responsibility and facing charges.

My understanding has always been that the essential ingredient in the granting of bail is whether or not the person will appear for trial and for prosecution. In this instance, the individual had already demonstrated that she may not appear. If the honourable senator has any information about that, could he amplify that a bit? Maybe it will come up in debate, but it seems to me that it should have been crystal clear that there was a problem of appearance for trial.

Senator Banks: At the time that these unhappy events happened, Dr. Shirley Turner had been charged with murder by the State of Pennsylvania. The order of events is that on November 5 of that year, Dr. Bagby was shot to death in a park in Pennsylvania. It became apparent to Dr. Turner, I guess, that she was the prime suspect and she fled — and I use that word advisedly — to St. John's, Newfoundland, which was her home.

A few days after that, the State of Pennsylvania preferred murder charges against her. She was arrested in St. John's and put in jail, pending an order by the federal Minister of Justice for extradition to face the charges in Pennsylvania. She was granted bail, pending an application that she made to appeal that order of extradition. During that entire process, she (a) gave birth to her son, (b) regained custody of him when she was released on bail, and (c) killed him and herself.

The point I believe Senator Cools was making was that hindsight is 20/20. One would assume that the Crown, if they were pursuing the business of opposing bail, which they ought to have done, and had they been in full possession of all the facts, would have been successful. There are three criteria for the denying of bail. One is the likelihood of appearance, as the honourable senator said. The third is the possibility that doing so will throw into disrepute the administration of justice. The second is whether the person will be a danger to himself or anyone else, or is likely to commit a crime.

• (1530)

In the first two instances, I believe that a judge in full possession of those facts would have, as a matter of course, denied bail in this particular case. I have found — and Scott Andrews, member of Parliament from Newfoundland and Labrador, in examining this case has found — that the Crown was in possession of some of those facts but did not mount an assiduous opposition to the granting of bail in this case, for reasons that I do not know.

However, facts were known that, in the aggregate, would have made an incontrovertible argument against the granting of bail, including the fact that at the moment that bail was granted there were eight restraining orders issued against Dr. Turner. The

orders were issued by other people with whom she had had tumultuous relationships. There was a murder charge against her. She had been under observation by medical doctors for reasons relating to the state of her mind, et cetera.

If the combination of all those things had been known and pointed out to the court, I cannot believe that a judge would have granted that she be released on bail and take possession of her infant son.

When we looked at how to devise this bill, we looked at whether it was possible to keep all persons charged with murder in jail. That is not possible. It goes against everything. We looked at whether it is possible to compel the Crown to be more diligent in its questioning of whether it ought to avidly oppose the granting of bail. There is no way to do that. We looked at whether we can constrain the discretion of judges by saying that if the charge is murder, for example, an extra investigation must take place and the results must be presented to the judge, but that again flies in the face of judicial discretion, and no circumstances are the same.

We looked at many other things, most of which, as in the example of continuing retention of people who are charged with murder, would not survive a court challenge because they fly in the face of the presumption of innocence.

This step is a small one, but by adding these words, we believe, a judge will look at the provisions for bail in section 515 of the Criminal Code and see the words, "or any person under the age of 18 years," having regard to the circumstances, and that a judge may ask of the Crown a question, or the Crown may be directed by their own devices to ask that question of themselves.

It is not possible to devise a law or an amendment to the Criminal Code that will preclude every such instance, but I believe, and Mr. Andrews believes, that this addition will substantially lengthen the odds against such a thing happening again.

I hope I have answered the honourable senator's question.

Senator Cools: Yes; I remember reading about this case at the time. I thank the honourable senator again for bringing this issue forward. This case is not as unusual as one might think. Murder is an unusual and a rare event, thank God. This sort of situation is not as unusual as one might think. I shall look forward to speaking to the honourable senator's debate. I thank him for the quantum of work he has put in in the name that little baby.

Senator Banks: Thanks are due mostly, honourable senators, to Mr. Andrews.

(On motion of Senator Marshall, debate adjourned.)

CRIMINAL CODE

BILL TO AMEND—SECOND READING—POINT OF ORDER—SPEAKER'S RULING RESERVED

On the Order:

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

Hon. Anne C. Cools: I rise on a point of order regarding Bill C-268, An Act to Amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of 18 years).

Bill C-268 is out of order because it offends Senate rules, the established law of Parliament and the constitutional independence of both houses. This bill is before the Senate by the power of the House of Commons Standing Order 86.1, which orders a continuation of Bill C-268 after prorogation, a continuation not permitted by our Senate rules and procedure. I assert that Commons Standing Order 86.1 has no jurisdiction over the Senate of Canada and has no force or effect over Senate proceedings or matters that the Senate is or was in possession of.

The Senate was in the possession of Bill C-268 when the House of Commons, without the Senate's authority, withdrew it from the Senate. I ask His Honour, Senator Kinsella, to rule Bill C-268 out of order because it is a well-known principle that the Speaker ought not to put a question to the house if it is out of order. I ask His Honour to uphold the Senate rules, which permit no continuation of bills after prorogation and which permit no withdrawal of a bill or withdrawal of Senate proceedings from the Senate pursuant to any House of Commons order, standing or otherwise.

Honourable senators, by Standing Order 86.1, the House of Commons assumes a power of the possession, ownership and control of a Senate proceeding. This power has no basis in the ancient law of Parliament, received into Canada in the British North America Act of 1867, section 18, which is the source of the privileges, immunities and powers of both the Senate and the House of Commons. By Standing Order 86.1, an order contrary to section 18, the Commons has reached into the Senate and has, without any Senate authority or permission, withdrawn Bill C-268 from the Senate's possession.

This action violates Senate independence because Bill C-268 was in the possession of the Senate, and standing on the Senate Order Paper, where it died at prorogation. Death and prorogation are conditions not easily altered. However, despite prorogation, Bill C-268 was dubiously spirited out of the Senate and carried down to the Commons by an unknown procedure, on an unknown day, at an unstated time.

On March 3, 2010, by the power of Standing Order 86.1, it appeared in the House of Commons, was deemed adopted at all stages and passed by that house, and then by message was carried up to, and received, by the Senate. During this, the Commons Speaker did not notice or mention that no Senate message ever carried Bill C-268 down to the Commons, to subject it to Commons Standing Order 86.1.

Honourable senators, the House of Commons obviously believes that Standing Order 86.1 has power and jurisdiction in, and over, the Senate and Senate proceedings, and can simply withdraw bills from the Senate. The conclusion is inescapable that

the House of Commons, by Standing Order 86, has claimed a power over Senate proceedings and a power to withdraw bills from the Senate. This House of Commons power claimed over the Senate seems to have no limits.

Honourable senators, Standing Order 86.1 asserts that private members' business "shall continue from session to session."

• (1540)

I wish to clarify that I raise no concerns or doubts about the Commons' exclusive power and control over its own proceedings and on those matters in its own possession. Each house has exclusive possession of its proceedings. My point of order is directed solely to the jurisdiction and force of Standing Order 86.1 over the Senate and Senate proceedings and the scope and extent of that jurisdiction and force.

Honourable senators, by our Senate Rules and by the royal law of prorogation, Bill C-268 died at second reading in the Senate; yet, Standing Order 86.1 claims that Bill C-268 was alive at prorogation, and deemed continued, thereby withdrawn from the Senate and removed to the Commons House for the Commons Speaker's pronouncement. This is constitutional vandalism. The same bill is both dead and alive, and while in the possession of the Senate, and with no Senate action, is simultaneously repossessed by the House of Commons — dead in one, alive in the other, and in the possession of both houses.

Honourable senators, this is neither constitutional law nor proper parliamentary practice. This is voodoo, or black magic, or just plain, old-fashioned constitutional idiocy, if not constitutional lunacy. The House of Commons has grown a long robotic arm, which, at its Standing Orders' command, can reach into the Senate and withdraw bills from the Senate, all without the Senate's permission or knowledge. Some may think this is legitimate, but it is not. This is a mighty and enormous breach of power and an illegal and unparliamentary one.

Honourable senators, I speak now about three parliamentary laws. First, the law about the house's possession of its own proceedings and the procedure by which the Senate takes possession of motions and bills; second, the law and process of withdrawing motions and bills and the Senate's own process of withdrawing motions and bills from the Senate and its own Order Paper; and, third, the law and process called messages, namely, the tool of interchange and exchange of communications on bills between the two houses.

First, there is the law of possession of the houses. In *Parliamentary Procedure and Practice in the Dominion of Canada*, fourth edition, about motions and bills in the possession of the house, Bourinot wrote:

> When a motion has been stated by the speaker to the house, and proposed as a question for its determination, it is then in the possession of the house, to be decided or otherwise disposed of according to the established forms of proceeding. It may then be resolved in the affirmative or passed in the negative; or superseded by an amendment, or withdrawn with the unanimous consent of the house.

Honourable senators, by Senator Comeau's and Senator Martin's motions for second reading in October 2009; and by Senator Carstairs' adjournment motion in December 2009; and by the Senate Speaker, Senator Kinsella, placing all those questions before the Senate, the Senate was clearly and unquestionably in the possession of Bill C-268. Honourable senators, the Senate's possession of a bill is not easily changed, altered or lost without Senate action, and never lost by a standing order of the House of Commons, or by any order of the House of Commons.

Second, there is the law of withdrawing motions and bills. In the *House of Commons Procedures and Practice*, Marleau and Montpetit tell us about the normal process for removing a bill or a motion from the Senate's possession. The key word is "possession," honourable senators. They said:

> Once a notice has been transferred to the *Order Paper* and moved in the House, it is considered to be in the possession of the House and can only be removed from the *Order Paper* by an order of the House; that is, the Member who has moved the motion requests that it be withdrawn, and the House must give its unanimous consent.

Clearly, the only proper way to have removed Bill C-268 from the Senate Order Paper was by an action of the mover and sponsor — in that case, it was Senator Martin — seeking such withdrawal, followed by the Senate's agreement and order. Senate rule 30, honourable senators, confirms that a senator who has made a motion may withdraw it by leave of the Senate; that is, by the Senate's agreement to its withdrawal.

Honourable senators, I come now to number three, the law of messages, which is all about the cordial and dignified exchange of communications between the two houses, because it has always been thought that the two houses should not order each other to influence action. Erskine May's *Treaties on the Law, Privileges, Proceedings and Usage of Parliament*, 18th edition, describes these messages as follows:

> A message is the most simple and frequent mode of communication; it is daily resorted to, for sending bills from one House to another; for requesting the attendance of witnesses; for the interchange of reports and other documents; and for communicating all matters of an ordinary description, which occur in the course of parliamentary proceedings.

Honourable senators, Bill C-268 — sometime; I do not know when — was removed from the Senate and its Order Paper and carried to the House of Commons without any Senate authority and without any Senate message. No proper parliamentary processes were followed. The Senate never agreed to Bill C-268's withdrawal from its possession, and never ordered that it be carried down to the House of Commons for its possession, or that a message be sent to the other place regarding the cordial delivery of Bill C-268 from the Senate's possession into the possession of the house. The Senate and the House of Commons houses hold their powers jealously and must resist any trenching from the other. Each house is the master of its own proceedings, yet it

appears that the Senate's mastery of its own proceedings has been subordinated to the House of Commons' Standing Order 86.1 on a bill which was in the possession of the Senate in a Senate proceeding.

Honourable senators, the House of Commons has claimed an enormous, inordinate and illicit power over the Senate to withdraw and repossess certain bills from the Senate and its proceedings. They also claim to define the limits of this power. Honourable senators, having taken this power to withdraw bills from the Senate under certain conditions, the House of Commons could soon create the power to withdraw bills from the Senate under other conditions. I pose the question: What is the limit to this power and how valid is this power? The British North America Act granted no such power to the Commons House over the Senate; neither did it grant such a power to the Senate over the Commons, and the Senate claims no such power over the House of Commons. Both houses hold exclusive cognizance over their own proceedings and coexist in a condition known as constitutional comity. For many new senators, this is an important term. The condition known as constitutional comity is the respectful deference of each house to the other, to their exclusive cognizance and the respectful deference of both houses to Her Majesty, particularly around that body of law we call the law of the prerogative. It is a comity without which the whole Parliament could not function.

Honourable senators, I ask His Honour to rule Bill C-268 out of order because this bill appeared in the Senate and entered the Senate by a power the House of Commons has exercised over the Senate which is improper.

• (1550)

The whole thing is a bit of an oddity. The phenomenon of "deeming" is a most interesting phenomenon. I have taken no issue with the House of Commons mastering everything that is in its possession. I have no problem with that or the House of Commons having cognizance over its own matters and affairs, et cetera. My complaint and concern is about the long Commons' arm that has reached into the Senate. It is a serious matter.

For those who do not look at how laws are constituted and how power is exercised, it may seem unimportant or trivial or a bit of minutia, but the richness of the knowledge of Parliament and this robust system that has survived for many years exists in the mastery of the details. The richness of knowledge is always in the mastery of the details.

One of my reasons for raising this issue for debate, for discussion concerning the propriety of it, is the fact that the House of Commons deems all private members' bills to continue from session to session. First, they do not mention how they recover the bills, which is my concern here, but they deem these bills adopted at all stages.

I shall share with honourable senators a definition of "deeming." I have every legal dictionary you can think of in my office, but I looked to *Black's Law Dictionary*. This is the definition that *Black's Law Dictionary*, seventh edition, page 425, gives us of "deeming." It says:

> To treat (something) as if (1) it were really something else, or (2) it has qualities that it doesn't have . . .

Then, on the next column, there is this wonderful statement:

> "Deem" is a useful word when it is necessary to establish a legal fiction either positively by "deeming" something to be something it is not or negatively, by "deeming" something not to be something which it is . . . .

Further:

> . . . all other uses of the word should be avoided.

Then, you go down the passage and *Black's Law Dictionary* says:

> Phrases like "if he deems fit" or "as he deems necessary" or "nothing in this Act shall be deemed to . . ." are objectionable as unnecessary deviations from common speech.

Then, *Black's Law Dictionary* continues again and says:

> "Deem" is useful but dangerous. It creates artificiality and artificiality should not be resorted to if it can be avoided.

I just wanted to put that definition to honourable senators. My reading of it may be staccato because I was reading from Black's and did not have time to indicate the necessary ellipses between the quotes.

Honourable senators, there was a famous publicist in the 19th century named Francis Lieber, who wrote *On Civil Liberties and Self-Government*. Mr. Lieber always supported and upheld the notion that the civil liberties of a people are really found in the rules and proceedings of the law of parliament, that the real guarantee of the true liberties of the people are in this body of law here called the law of parliament, the body of law by which we make laws.

Those who read and look at these matters have always believed that if we would operate in conformity with the principles and processes of the law of Parliament, in conjunction with the principles and the concepts of the law of the prerogative, we would never pass a bad law or a bad statute. We would never pass a bad law or a bad statute because these two areas of law contain all the principles, maxims, concepts and rules that we would ever need to know and to use.

Honourable senators, I hope that I have been able to make that clear. It is quite a task to tease out some of these issues and articulate them, especially when few senators pay them any attention. It is easy, quite often, to ignore certain issues and to be unaware of the depth or the importance of them.

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, Bill C-268 was no longer in the Senate after prorogation. We had prorogation and the bill was no longer in existence here. No other papers were in existence. We came back with a new session. We did receive a bill from the House of Commons. It was not a repossession. The bill no longer existed. We received Bill C-268 from the House of Commons in the new session.

If honourable senators wish to refer to Journals of March 4 in which we received the message where the House of Commons requested that it desired the concurrence of the Senate. Honourable senators, at that time this chamber agreed with the process of receiving the message from the house, which was Bill C-268. It was an order of this chamber that this bill be placed on the Order Paper. The Senate by majority announced that it was in agreement with the process used in the House of Commons.

Senator Cools would have us pass judgment on what the House of Commons can or cannot do in placing a new bill, in this case Bill C-268, on its Order Paper and dealing with it the way they dealt with it over there. It is not for us to judge how the House of Commons made Bill C-268. In fact, we cannot pass judgment on how the House of Commons does these things. Whether we agree with the process they use in the House of Commons or not is irrelevant. They use the process. They sent us the bill on March 4, a brand new bill, because we did not have the bill here. It was no longer in existence.

Honourable senators, to make a long story short, there is no breach of the Rules. This is a brand new bill. We have received it. The Senate has spoken on it and has placed it on its Order Paper. We have passed judgment on it and it is in good form to proceed with it as it is now.

Hon. Sharon Carstairs: Honourable senators, once again, Senator Cools has raised an interesting point of order on which the rest of us have little knowledge or expertise.

In this particular case, she takes us on an interesting journey. She talks about the possession of the bill. The bill passed all stages in the House of Commons and was sent to the Senate. It was here in the Senate. Clearly, the House of Commons has a right, at any time, to revive its own bills. That is clearly their authority. However, they did not have the bill, according to the argument brought forward by Senator Cools. The bill, in fact, had come over to us.

• (1600)

Senator Cools is questioning whether they have a right to revive a bill they no longer have possession of, using their standing order. If the bill was in third reading in the House of Commons, then clearly it would be in their possession and clearly they could make the argument that they could revive it, but it was not. It had left the House of Commons and it had come here.

The question is: Do they have the right to revive a piece of legislation they no longer have possession of? If they had revived it in their possession, there would be no question, as that is totally within their prerogative. However, they revived something that was in the possession of another chamber.

Senator Comeau would argue it was no longer in our possession, either, because it died on the Order Paper as a result of prorogation. Therefore, it could be argued that the bill was in a state of limbo. It might have been interesting if the house had introduced the bill under a new title and a new number, and then decided, as the house can decide, to do first, second and third readings all in one session and then send the bill to the Senate. Then the bill would have been in their possession, which they then passed, which they then sent to the Senate.

The point is an interesting one. Honourable senators, I do not know whether the point is valid, but I do think it is worthy of our consideration.

To put things in perspective for some of our newer senators, a number of Senate bills were passed that were sent to the House of Commons. The House of Commons was not sitting at that particular point in time. The bills had left our possession. They were at the House of Commons but somewhere in limbo, and they have not been revived.

The point of order is esoteric. With the greatest respect to Senator Cools, the only senator, I suspect, who sees all this esotericism, for which I congratulate her. At least one person in the house has an in-depth knowledge of the rules of procedure. However, I recommend Your Honour take her point of order under advisement.

Hon. Joan Fraser: Honourable senators, as Senator Carstairs said, Senator Cools has the gift of raising points of order that the rest of us do not see because we operate on a different plane. I simply do not have anything like her experience in the reading of parliamentary law or other law, or the centuries of evolution of these laws.

Until she rose to speak today, I assumed, as I expect most of us assumed, approximately what Senator Comeau advanced as an argument: A bill dies at prorogation. It is dead and it is gone; it does not exist in any form any longer. Therefore, if the House of Commons chooses to pass another bill in the same form and send it to us, the bill is in order.

However, not changing the number of this bill raises a fascinating question of its continued validity and, therefore, the question of which chamber was in possession of the bill. I await with profound interest Your Honour's ruling on this point.

However, there is a subsidiary element perhaps beyond that point, which I hope Your Honour will also explore. That element is the question of whether the rights accruing to a given chamber's possession of a bill survive through prorogation in whole, in part, or in some form of successor rights.

I had never thought about this point before, and I thank Senator Cools for making me think about it now. However, the question strikes me as being of significant importance and the ruling will have some importance for all of us, Your Honour.

Hon. Tommy Banks: Honourable senators, I never thought I would address a question of procedure, but my attention has been directed to this one by the fact that a bill I authored has been susceptible to Standing Order 86.1 in the other place, and I have one now that is susceptible to that Standing Order.

I also think that Senator Cools, as she always does, raised an interesting question, at the least. Senator Comeau may be right when he said that, if a mistake was made, it was made in the other place and not here. We were innocent of any mistake. However,

I happen to be in favour of this bill, and I do not want us to think that we have passed a bill into law only to find out after the fact there is something along the way that causes it not to be a law.

One interesting turn to which I hope Your Honour will address his attention is what bills are when they move from one place to the other. I noticed when this situation first happened to me a couple of Parliaments ago. A private member's bill, of which I was the author, was passed by this place and sent to the other place. It was not a private member's bill anymore when it arrived there. It was not treated as a private member's bill anymore once it was there. It was treated differently, in a different order of precedence in that place than a private member's bill. It became a Senate bill in the other place.

Bill C-464, to which I spoke prior to Senator Cools, is no longer a private member's bill. The facing page of the bill does not say "Mr. Andrews" anymore. When my bill went to the other place, it did not say "Senator Banks" anymore. This bill is a House of Commons bill. When our bills go to that place, they become Senate bills, not private members' bills.

Therefore, Standing Order 86.1 talks about private members' bills, but when Bill C-268 was obviated in this place by prorogation, I do not think it was a private member's bill.

The Hon. the Speaker: Do other honourable senators wish to contribute to the discussion?

Senator Cools: I thank all honourable senators for their remarks and comments. I want to respond especially to Senator Comeau's statements. Senator Comeau has said the bill is dead. That is one of my points: The bill died here.

Let us say, for example, that someone somewhere else wanted to perform voodoo and bring it to life. They still need to have the bill's carcass to be able to do it. Whenever Jesus resurrected people, he tended to follow the body. This resurrection the honourable senator is talking about — with the bill being dead, which is my position, by the way — does not answer the essential question. The essential question is: How did the House of Commons recover the bill from the Senate? That is the whole question. How does it recover it? By what parliamentary process?

Senator Comeau's responses do not answer that question. Furthermore, the new Bill C-268 that is here right now is not a new bill. Standing Order 86.1 does not pretend that it is a new bill. Standing Order 86.1 says that private members' bills — and there is no doubt there are private members' bills, Senator Banks — continue from session to session despite prorogation. Presumably, the bills can continue from session to session until the House of Commons has been emptied of all the original members who ever voted on them in the first place.

• (1610)

I am not questioning, as Senator Carstairs has said, whether or not the House of Commons can revive bills; but remember, they no longer say they reinstate bills or revive them. They do not use those words. They use the word "continue."

All I am saying is that their standing orders have force and effect over matters that are in their possession over there and not over matters that are in the possession of the Senate here.

Interestingly, this is the position the Senate practice has taken. When the Senate, on the other hand, is trying to revive bills that were passed in the Senate and died in the House of Commons at some stage, and when the Senate is acting to send those bills back down to the House of Commons, the Senate does not take the shortcuts. A senator introduce the bill at first reading and it goes through sometimes a hastier process, but it receives first, second and third reading and has a new number.

We have to understand that the Senate itself does not acknowledge or agree with what Senator Comeau is saying. The position of the Senate Rules is that the bill is dead here, not in the Commons. It is the House of Commons that claims it is alive, even though we say it was dead here. It is not as simple as some would think.

I wanted to differentiate between ownership and the possession of the house. This is not easy. The language is always "the house in the possession of" whatever. A bill is a jointly owned instrument of Parliament. No house has ownership of that tool. However, each house attaches its brand of origin on it, so to speak — C or S bills, Commons bills and Senate bills — but there is no ownership, only temporary possession.

The only bills that the House of Commons has ever seriously, nearly successfully, tried to claim as its own have been supply bills.

Can I tell you a secret, honourable senators? We do not see too many supply bills die on the Order Paper at prorogation because, frankly, they are too important and most governments will not adjourn, prorogue or dissolve usually unless they can get the supply bills passed. They understand the serious consequences.

Therefore, if Senator Comeau says the bill was dead — which I believe the bill was dead but it died here — he does not explain how the Commons repossessed it, or how the same bill with the exact same number flies through the House of Commons in a split second and is back here in the Senate.

The last thing I want to talk about is communication between the houses. I do not want to have to repeat. What I am trying to say is that if the House of Commons had wanted that bill or any bill — because they knew a prorogation was coming, as everyone did — they would have sent a message to us asking us to return the bill, to send the bill back, which we would do by message and then they could repossess it.

In other words, bills and motions just do not fly from house to house; they move as a definite object. They are carried from house to house by message. To date, I know of no bill that has flown. I just know they are carried. The language is, the bill is carried down to the House of Commons or the bill is carried up to the Senate. The fact that there were no messages from the Senate proves my point.

The real problem that we have to look out for is the fact that so few senators have even noticed any of this. That should give us deep concern because I have been raising this issue in a Senate committee as to how the House of Commons recaptures matters that are in the Senate for quite a few years now.

In any event, honourable senators, thank you very much for your attention. The real lesson from all of this is that the notions we think are so simple, straightforward and obvious are really enormously complicated, and we should not take so many of them for granted.

The Hon. the Speaker: I wish to thank all honourable senators for their contribution to this point of order raised by Senator Cools. You have been teasing me during this important discussion because, at times, the metaphors got me thinking theologically about resurrection and whether or not it was going to be in some form of transformation. Then I was drawn into the realm of metaphysics, whether the bill is or is not.

I am always saved by Senator Carstairs, who said it may be wise to take this point of order under consideration. I did recall the passage that is carved in the Speaker's quarters from Seneca, which says, in Latin, "*Nihil ordinatum est quod praecipitatur et properat,*" which, translated, means, "Nothing that rushes headlong and is hurried is well ordered." Therefore, I shall take this under consideration and report back in due course.

EROSION OF FREEDOM OF SPEECH

INQUIRY—DEBATE CONTINUED

On the Order:

> Resuming debate on the inquiry of the Honourable Senator Finley calling the attention of the Senate to the issue of the erosion of Freedom of Speech in our country.

Hon. Nancy Ruth: Honourable senators, Senator Finley has called an inquiry into the erosion of freedom of speech in Canada. Any inquiry on the freedom of expression must be full, fair and accessible to all Canadians, to the full range of all of our experiences, opinions, knowledge and proposals.

I agree with Senator Finley, Senator Tkachuk, Senator Wallin, Senator Eaton and Senator Duffy, et cetera, that freedom of expression has deep roots in Canada and is essential to our way of life. However, I disagree with the removal of section 13 of the Canadian Human Rights Act, especially since sections 318 and 319 of the Criminal Code do not extend protection on the basis of sex and some other categories enumerated in section 13 of the Canadian Human Rights Act.

The freedom of expression in Canada has never been absolute or privileged over and above other rights. Canada has never treated it as "a strategic freedom," to use Alan Borovoy's term, or applied it to trump all other rights and freedoms. To privilege a freedom of expression would be a fundamental change in law and practice in Canada. An inquiry cannot reaffirm what has never been affirmed.

Indeed, Canada affirmed something quite different in the Canadian Charter of Rights and Freedoms. Section 2(*b*) provides:

> (*b*) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

There are other rights, including equality rights in sections 15 and 28, which are equally fundamental to our way of life. Our human rights codes also have an array of rights.

The law recognizes what is true in real life; we are a complex and diverse society, we come from different places and we bump and cross each other, sometimes very seriously. It is fact, undeniable, that we experience these interactions differently, based on our life histories and experiences.

I agree with Catharine MacKinnon, the famous American legal scholar, that words are not often and only words. The phrase "it is only words," favours the speaker. Words can be acts, with real-life consequences for the subject or recipient.

I agree with MacKinnon when she asserts that pornography, racial and sexual harassment and hate speech are acts of intimidation, subordination, discrimination and sometimes even terrorism. Assaults with words, injuries from words can be as damaging as assaults with fists or weapons.

• (1620)

It is precisely because we are different, that we are not the same, that the speaker is not me, that the speaker can dismiss or trivialize the effect of his or her words on me. I believe that this tension was at the heart of what happened to Ann Coulter at the University of Ottawa, and I grant that we do not always manage these tensions as best we can or should, but we diminish them at peril to the kind of country we are.

Is it not ironic, in an important debate about how our society balances its fundamental freedoms and rights, that the language we use here in the Senate is itself heated, with reference to important public bodies as "censors" who "leverage a complainant and certain favoured minority groups."

I support an inquiry about how we can best balance competing interests, not how we can favour interests. An inquiry that denies implicitly or explicitly that historical and systemic disadvantage exist and must be balanced would be a disservice to our diverse population.

I have a particular concern about the call for the removal of section 13 of the Canadian Human Rights Act. That section prohibits the repeated electronic transmission of messages that are likely to expose an individual or a group of individuals to hatred or contempt based on a prohibited ground of discrimination. Under the CHRA, the prohibited grounds include race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for which a pardon has been granted.

If section 13 were removed, the only remaining prohibitions would be section 318 and section 319 of the Criminal Code of Canada. There is a world of legal difference between the

Canadian Human Rights Act and Criminal Code provisions. One of the most important differences is who is protected. The Criminal Code protects only certain persons, those distinguished by their race, religion or ethnic origin and sexual orientation. The second important difference is the level of proof with respect to both intent and action.

I note the recent Quebec court decision involving Jean-Claude Rochefort. On his blog, he defended the actions of Marc Lepine, who killed 14 women at Montreal's École Polytechnique. As the court noted, he "invited men to kill women solely because they are women." Rochefort called his site "an opinion site." The Crown was unsuccessful in bringing charges of inciting hatred towards women against Mr. Rochefort because section 318 and section 319 of the Criminal Code do not extend protection on the basis of sex.

It is beyond ironic — it can have deadly consequences — that women and girls have been excluded from these protections because of the difficulty of distinguishing between everyday treatment and acts of hate. Do we want to break the direct and strong links in the chain connecting disregard and disrespect for women with violence against women? If so, then we must protect women and girls from hate crimes.

Many Canadians are included under section 13 of the Canadian Human Rights Act hate speech provisions. Many Canadians are excluded from any protection under Criminal Code section 318 and section 319.

While a study on how best to protect Canadians from hatred may be in order, I am opposed to proposals that have the immediate effect of putting more Canadians at risk of hate crimes with no recourse or remedy. Do remember that most of the groups who would be hurt by the loss of the Canadian Human Rights Act provision 13 are those who are under-represented in this Senate.

Hon. Percy Mockler (The Hon. the Acting Speaker): Will the honourable senator accept a question?

Senator Nancy Ruth: Yes.

Hon. Serge Joyal: I want to bring to the honourable senator's attention that when the Parliament of Canada amended section 318 of the Criminal Code, which she quoted in her compelling remarks this afternoon, the issue was raised of including gender among the prohibitions covered by that section. There was support on both sides of the house for that proposal. As the honourable senator correctly stated, hate crimes on the basis of gender are not prohibited within the ambit of the Criminal Code.

Senator Murray reminded me that gender was raised at that time. We realized that it was omitted, and I think that even our dear friend Senator Cools mentioned it. An amendment to the private member's bill that we received from the House of Commons would have meant that we would have to send the bill back to the other place. Considering the calendar, there was a chance that the bill would be lost.

However, I remember very well that gender was raised. Will the honourable senator consider introducing a bill that will add to the Criminal Code so that her concern will be dealt with on the important issue that she has raised so eloquently this afternoon?

Senator Nancy Ruth: I thank the honourable senator for the question. Maybe, maybe not; I will look into it. I have talked to the Minister of Justice about this issue over the last two or three years, and there is yet no movement. I have also talked to the former ministers responsible for the status of women about this issue and will be talking to the present minister about it as well.

Hon. Anne C. Cools: Will the honourable senator accept a question?

Senator Nancy Ruth: Yes.

Senator Cools: Section 318 of the Criminal Code was originally focused on genocide. This focus is why hate speech, hate crime and hate propaganda become tangled and are unclear.

Will the honourable senator expand on the phenomenon of genocide as it is spoken of in section 318? Perhaps the honourable senator does not have a copy of the Criminal Code in front of her.

Senator Nancy Ruth: I do not have a copy, and I do not know if I have enough knowledge to expand on that point.

I will make one more comment about the former senator's remark that if women or gender had been included, it would be lost in the other place. This phenomenon still exists in Canadian society, although perhaps not precisely about this chamber or that chamber. If one works to protect women, one often loses a bill. Do not forget this, and I will not let the Human Rights Act go down without doing my part to protect it.

Senator Cools: Perhaps I can give the honourable senator an opportunity to expand on something else.

Perhaps Senator Nancy Ruth can look at that phenomenon at another time. The whole issue in section 318 is genocide. Many evils are perpetrated daily that will never be genocide, be they casual slights, dismissals or just plain hurtful statements.

Hon. Lowell Murray: I hope to be able to take part in this debate at some time, but not immediately. I have a question or comment for the Honourable Senator Nancy Ruth, and inferentially and indirectly for the Honourable Senator Cools. I have the Criminal Code in front of me. I was sent scurrying to the table to get it when Senator Nancy Ruth spoke.

It is true that section 318(1), (2) and (3) have to do with advocating genocide, but section 319(1) is entitled "Public incitement of hatred":

> Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace is guilty of . . .

• (1630)

It is therefore much broader than genocide. The identifiable groups, as Senator Nancy Ruth has pointed out, are people distinguished by colour, race, religion, ethnic origin or sexual orientation, but not, unfortunately, by gender.

(On motion of Senator Comeau, debate adjourned.)

[*Translation*]

ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

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

> That when the Senate adjourns today, it do stand adjourned until Tuesday, April 20, 2010, at 2 p.m.

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

Hon. Senators: Agreed.

(The Senate adjourned until Tuesday, April 20, 2010, at 2 p.m.)

THE SENATE OF CANADA
PROGRESS OF LEGISLATION

(*indicates the status of a bill by showing the date on which each stage has been* ***completed***)

(3rd Session, 40th Parliament)

Thursday, April 15, 2010

(**Where royal assent is signified by written declaration, the Act is deemed to be assented to on the day on which the two Houses of Parliament have been notified of the declaration.*)

GOVERNMENT BILLS
(SENATE)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-2	An Act to amend the Criminal Code and other Acts	10/03/17	10/03/29	Legal and Constitutional Affairs					
S-3	An Act to implement conventions and protocols concluded between Canada and Colombia, Greece and Turkey for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	10/03/23	10/03/31	Banking, Trade and Commerce					
S-4	An Act respecting family homes situated on First Nation reserves and matrimonial interests or rights in or to structures and lands situated on those reserves	10/03/31							
S-5	An Act to amend the Motor Vehicle Safety Act and the Canadian Environmental Protection Act, 1999	10/04/14							

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-6	An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2010 (*Appropriation Act No. 5, 2009-2010*)	10/03/24	10/03/29	—	—	—	10/03/30	10/03/31	1/10
C-7	An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2011 (*Appropriation Act No. 1, 2010-2011*)	10/03/24	10/03/29	—	—	—	10/03/30	10/03/31	2/10

COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-232	An Act to amend the Supreme Court Act (understanding the official languages)	10/04/13							

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
C-268	An Act to amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years)	10/03/04							
C-464	An Act to amend the Criminal Code (justification for detention in custody)	10/03/23							

SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-201	An Act to amend the Office of the Superintendent of Financial Institutions Act (credit and debit cards) (Sen. Ringuette)	10/03/04	10/03/30	Banking, Trade and Commerce					
S-202	An Act to amend the Canadian Payments Act (debit card payment systems) (Sen. Ringuette)	10/03/04							
S-203	An Act respecting a National Philanthropy Day (Sen. Mercer)	10/03/04							
S-204	An Act to amend the Criminal Code (protection of children) (Sen. Hervieux-Payette, P.C.)	10/03/09							
S-205	An Act to provide the means to rationalize the governance of Canadian businesses during the period of national emergency resulting from the global financial crisis that is undermining Canada's economic stability (Sen. Hervieux-Payette, P.C.)	10/03/09							
S-206	An Act to establish gender parity on the board of directors of certain corporations, financial institutions and parent Crown corporations (Sen. Hervieux-Payette, P.C.)	10/03/09							
S-207	An Act to amend the Fisheries Act (commercial seal fishing) (Sen. Harb)	10/03/09							
S-208	An Act to amend the Conflict of Interest Act (gifts) (Sen. Day)	10/03/09							
S-209	An Act respecting a national day of service to honour the courage and sacrifice of Canadians in the face of terrorism, particularly the events of September 11, 2001 (Sen. Wallin)	10/03/09							
S-210	An Act to amend the Federal Sustainable Development Act and the Auditor General Act (involvement of Parliament) (Sen. Banks)	10/03/09	10/03/18	Energy, the Environment and Natural Resources					
S-211	An Act respecting World Autism Awareness Day (Sen. Munson)	10/03/10							
S-212	An Act to amend the Excise Tax Act (tax relief for Nunavik) (Sen. Watt)	10/03/10	10/03/31	National Finance					

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
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S-214	An Act to amend the Bankruptcy and Insolvency Act and other Acts (unfunded pension plan liabilities) (Sen. Ringuette)	10/03/24							
S-215	An Act to amend the Criminal Code (suicide bombings) (Sen. Frum)	10/03/24	10/03/31	Legal and Constitutional Affairs					
S-216	An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans (Sen. Eggleton, P.C.)	10/03/25							
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No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.

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