

## THE SENATE

Wednesday, February 11, 1976

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

### DISTINGUISHED VISITOR IN GALLERY

MR. ELKADI KW KUSSAI OF IRAQ

**The Hon. the Speaker:** Honourable senators, on your behalf I would like to welcome a distinguished visitor from Iraq, Mr. Elkadi Kw Kussai, who is visiting our country.

### REGULATIONS AND OTHER STATUTORY INSTRUMENTS

STANDING JOINT COMMITTEE—CHANGE IN SENATE MEMBERSHIP

**Senator Petten,** with leave of the Senate and notwithstanding rule 45(1)(i), moved:

That the name of the Honourable Senator Riley be substituted for that of the Honourable Senator Robichaud on the list of senators serving on the Standing Joint Committee on Regulations and other Statutory Instruments; and

That a message be sent to the House of Commons to acquaint that House accordingly.

Motion agreed to.

### CRIMINAL LAW AMENDMENT BILL, 1975

SECOND READING—DEBATE CONTINUED

The Senate resumed from Thursday, February 5, the debate on the motion of Senator Langlois for the second reading of Bill C-71, to amend the Criminal Code and to make related amendments to the Crown Liability Act, the Immigration Act and the Parole Act.

[Translation]

**Hon. Jacques Flynn:** Honourable senators, first of all I should like to say to Senator Langlois that even though I interrupted him when he was explaining Bill C-71, I nonetheless admire the manner in which he explained it, except perhaps on this particular point: this is an omnibus bill; that is, a bill containing a great number of amendments to the Criminal Code which are not necessarily interrelated. We may very well fully agree with some of the amendments while having some misgivings about others and even oppose a few.

It is never very easy for a legislature to come to a decision about this type of legislation on second reading, because one has to approve in principle a bill dealing with several things with which one may not entirely agree.

Nevertheless, I do not think this bill raises very serious difficulties in this regard. But in other circumstances it

might happen and when such bills are before us that we should consider the possibility of putting every question; in other words, of dividing the subject matter so that the views of the Senate may be accurately recorded on every question before us.

As far as I am concerned, I intend to deal only with clause 75 of the bill today. Other honourable senators on this side of the house, and probably on the other side, will deal with the other amendments provided in this piece of legislation.

[English]

Honourable senators, I will restrict my remarks today to the amendment provided by clause 75 of this bill, which was referred to by the sponsor of the bill, Senator Langlois, as the *Morgentaler* case.

**Senator Langlois:** Amendment.

**Senator Flynn:** Yes, the *Morgentaler* amendment.

● (1410)

This case, since it is before the courts, is *sub judice*. I shall, therefore, try valiantly to restrict my remarks simply to the principle embodied in the legislation. But that may not be easy because it is very difficult to discuss this kind of legislation without referring to some of the facts which have given rise to the amendment proposed by the government.

As honourable senators know, this amendment follows a decision of the Supreme Court of Canada rendered last year in the case of *Morgentaler vs. the Queen*, where—

**Senator Connolly:** What was the case?

**Senator Flynn:** *Morgentaler*. Am I pronouncing it incorrectly?

**An Hon. Senator:** It is pronounced “taller.”

**Senator Flynn:** It is “taller” than I thought. In any event, this was a case where the accused was acquitted by a jury. The Appeal Court of Quebec found that the instructions of the judge to the jury had been wrong in law, and decided it would apply the present provision of the Criminal Code in this respect. Since the facts were admitted and since the defence offered in law was unacceptable, the appeal court decided that the verdict of the jury should be changed to one of guilty. It could have ordered a new trial but, since the facts were all admitted, it apparently saw no need.

This decision of the Appeal Court of Quebec was brought before the Supreme Court, and the Supreme Court, in a judgment of five to four, upheld the decision. Following the judgment of the Supreme Court there was an outcry all across Canada to the effect that this should not be allowed to take place. There was quite a public debate on the question.