

Senator Nurgitz: No. I might say that Bill S-2 would have prohibited that.

Senator Hicks: That is right.

Senator Nurgitz: Bill S-5, once more, is not different from the current law.

Senator Flynn: We amended that.

Senator Nurgitz: Yes. I apologize to Senator Flynn; we did amend Bill S-2 to remove the adoption prohibition, the theory being that the committee wanted to remove prohibitions and not add them.

The advice given to the committee by experts such as Professor Hubbard, of the University of Ottawa, recommended that the scope of the present prohibitions be narrowed to exclude prohibitions against the marriage, and his view was that eugenic and social justifications by retaining prohibitions are no longer persuasive or appropriate by today's medical or ethical standards.

Professor Hubbard brought to the attention of the committee the Australian experience, which was to remove prohibitions generally, not unlike what we have done, although, in fairness, I should point out that the Australian legislation does prohibit adopted brothers and sisters from marrying.

Especially for honourable senators who may not have been familiar with the work done by the committee dealing with the previous legislation, the committee did hear from leading medical geneticist, Dr. Abby Lippman, of McGill University. In dealing with the aunt-nephew, uncle-niece matings, she indicated that genetic disorder, or rather the possibility of genetic disorder, hardly increased among such related persons as opposed to non-related persons, which would justify the removal of prohibitions in those particular areas.

The chance of a problem birth among non-related persons is a certain percentage, and it increases by something of the order of less than 1 per cent when there is an aunt-nephew, uncle-niece relationship. There is a small increase in the risk.

Senator Frith: In that case attributable to that fact?

Senator Nurgitz: Yes.

Senator Flynn: And they are not even sure of that.

Senator Frith: That is a possible statistical average?

Senator Nurgitz: Yes.

I also want to point out that the committee heard from 13 religious groups—that is, it heard from every single religious group that had a membership in excess of 100,000 persons. Every provincial Attorney General was also consulted, as were the chief law enforcement officers of the Yukon and the Northwest Territories.

While I do not propose to go into any great detail in terms of what the proposals of the various religious groups were, I do recommend that honourable senators read the comments of Senator Neiman on those matters. Suffice it to say that the view of the committee was that inasmuch as the religious groups could still maintain prohibitions for marriages within their own churches—they could still have their rules—the

[Senator Frith.]

general law of the land ought to treat the matter in a less parochial manner.

● (1510)

As Senator Neiman said—and I am quoting from page 1747 of *Debates of the Senate*:

In a pluralistic society like Canada the general law should not be constrained by any particular religious views.

Let me conclude by saying that I am informed by the Parliamentary Counsel that there are another 22 applications ready to be heard, if we wish to hear them. That would amount to 22 bills that would come before Parliament from persons wishing to be married and who seek an exemption from the general law because they require one—applications that would not need to be made in the event that Bill S-5 became the law of the land.

Honourable senators, I urge upon you the passage of this bill.

Hon. Royce Frith (Deputy Leader of the Opposition): Honourable senators, I believe that Senator Neiman will adjourn the debate. I do not want to enter into the debate, but I would like to ask Senator Nurgitz if he would underline one thing that he has said and add something. Could he tell us the qualifications of Professor Hubbard, what his discipline is or what his disciplines are, and then reread that sentence where he said, "no longer justified by—." It seems to me that this is important for our consideration.

Senator Nurgitz has told us that the essence of the legislation before us now is an attempt to solve the problem that I thought he put very succinctly, namely, that if the present law needs that many exemptions, then why not change the general law? That is an appealing and persuasive argument. The only reservation that some of us might have is that if there is sufficient evidence before us concerning the genealogical and ethical foundation, whatever it is, for those laws, then that reason is no longer sustainable. So, could you give us the qualification and reread that sentence?

Senator Nurgitz: Professor Hubbard, at the time that he appeared before us, was acting Dean of the Law School at the University of Ottawa. Indeed, he was also Professor of Family Law at the University of Ottawa. He was the only person that I can recall, as we looked for information, who has written on this subject, and he had written one excellent article on this very subject. The article was published in the McGill Law Journal, and was entitled "Marriage Prohibitions, Adoption and Private Acts of Parliament: The Need for Reform." He has made a study of this matter. We found him to be excellent.

Senator Frith: Not just the legal side but the genealogical side?

Senator Nurgitz: Yes, he dealt basically with the legal side. He made a compelling point, that is that we have no laws prohibiting sexual relations between these people.

If your fear is that you are running around creating less than perfect people, sort of genetically damaged people, then