

This is a serious matter, as I have attempted to underscore. The procedural literature on this matter leans to the side of caution on this matter, to not allowing this motion. There is not much of a question to be explicated or explored in terms of whether or not the substance of this motion is substantially the same or different from that which was decided by the house a few days ago. I think it is a *prima facie* case, and that it is the same, by the plain language in which the motion is couched.

I urge His Honour to accept the point of order that has been raised, and to rule this motion out of order.

Hon. Sharon Carstairs: Honourable senators, I wish to address the three issues raised by the honourable senators on the other side.

First, Senator Lynch-Staunton raised the question of whether a member other than the leader or deputy leader could indeed introduce such a motion under Government Motions. It is very clear that I am a government member of this chamber.

Senator Berntson: You are a supporter, not a member.

Senator Carstairs: In addition, I have been the sponsor of Bill C-69 and first addressed it in this chamber at second reading.

Second, I would argue that this motion is, indeed, substantially different because, in its second paragraph, it orders the committee to report back without amendments. That is very different from the original motion proposed earlier in this chamber.

Third, it is clear that rule 63(1) and (2), which I have read carefully, refer to substantive motions. This is a procedural motion, clearly, asking for a committee of this chamber to report. It does not, quite frankly, affect anything of a substantive nature, other than the report of a committee. It is procedural in the same way that a motion to adjourn is procedural, and that can be done every single day in this chamber.

Hon. Orville H. Phillips: Honourable senators, I checked the original motion in the *Debates of the Senate*. The only difference in the wording is that it states that the committee will report no later than Monday, December 11. Everything else in that part of the motion is identical to the one we voted on last Tuesday.

Senator Carstairs has stated that this motion gives instruction to the committee. I question whether the Senate has the authority to direct the committee on how it should report.

In making your decision, Your Honour, I ask you to look up a decision made by His Honour Jean-Paul Deschatelets. I remember well that decision because I moved the motion, and it was seconded by the Honourable Senator Grosart. His ruling is to the effect that the Senate cannot instruct a committee.

This is an instruction to the committee. What would be the purpose of having a committee do a study if a motion by an

individual senator, who may or may not be a member of that committee, can instruct the committee what to write? Therefore, it is completely against our normal procedure.

Our committee reports are made up by the members of the committee in committee sessions, not in this chamber. They report to the chamber. The chamber does not instruct the committee what to report.

Hon. John B. Stewart: Honourable senators, I had not planned to intervene on this discussion, but a point just made by Senator Phillips seems to me to be so wrong that one feels compelled to rise to refute it.

Senator Phillips is advancing the proposition that the Senate, once having referred a matter to a committee, abandons any right to attempt to retrieve that matter.

Senator Murray: No, he is referring to the content, to the second part of the motion.

Senator Olson: That is why Senator Phillips is wrong.

An Hon. Senator: Pay attention!

Senator Stewart: There are two things running together here. One relates to the view, implied by Senator Phillips today and put forward previously by Senator Beaudoin, that a committee, having decided that the content of a bill is unconstitutional, has the right to pigeon-hole that bill. That device used to be used — perhaps is still used — in Washington, D.C., and it is deplored by all so-called parliamentarians. I hope that we will not go that route.

• (1430)

Surely when the Senate has ordered a committee to examine a bill that the Senate wishes to amend, the Senate can follow the practice which is used continuously at Westminster, and even in Ottawa; that being rather than attempting to change the bill at third reading, instructing the committee to make that change.

I do not remember the precedent to which Senator Phillips has referred, but if there is such a precedent, we should not follow it because it will take us down a path which I think is procedurally quite dangerous.

Hon. Lowell Murray: Honourable senators, what follows may not help Your Honour reach a resolution of this matter, but I cannot help but comment on the statement that Senator Stewart has made objecting to the idea that a committee could, as he put it, “pigeon-hole” a bill.

In a previous Parliament, there was at least one example that springs readily to mind in which a committee pigeon-holed a bill for far less substantive reasons than that it posed constitutional problems. The bill had been passed by the House of Commons and related solely to that body in that it dealt with the pay and